

AGENDA

Montana Sage Grouse Oversight Team (MSGOT) December 15, 2017: 10:00 a.m. – 2:00 p.m. Montana State Capitol, Room 137

10:00: Call to Order, John Tubbs, DNRC Director

- Administrative Matters:
 - Approve minutes November 3, 2017 Conference Call
 - Confirm meeting date: January 30, 2018, 11:00 a.m. – 2:00 p.m.
 - Potential meeting dates for the 2nd quarter:
 - Friday April 20, Friday April 27, Friday May 4, Monday May 14, Friday June 1
 - Potential meeting dates for the 3rd quarter:
 - Tuesday Aug. 31, Friday September 14, Friday September 28, Friday Oct. 5
 - Potential meeting dates for the 4th quarter:
 - Tuesday Nov. 27, Thursday Nov. 29, Friday Nov. 30, Tuesday Dec. 4, Thursday Dec. 13

10:15 – 10:40: Reports and Implementation of Executive Order 12-2015

- Reports from Individual MSGOT Members
- Montana Sage Grouse Habitat Conservation Program
- MSGOT Discussion, if any

10:40 – 11:00: Federal Agency Partner Reports

- BLM
- USFWS
- USFS

11:00 – 11:10: Conservation Spotlight, National Wildlife Federation Fence Marking Project

11:10 – 11:45: Development of Sage Grouse Mitigation Informational – Part I

- Program Introduction

11:45 – 12:15: LUNCH BREAK

12:15 – 1:00: Development of Sage Grouse Mitigation Informational – Part I (continued)

- Program Presentation
- MSGOT Discussion
- Public Comment

1:00 – 1:15: Break

1:15 – 1:45: Development of Sage Grouse Mitigation Informational – Part II

- Program Presentation
- MSGOT Discussion
- Public Comment

1:45 – 2:00: Public Comment on Other Matters

NOTE: Agenda item times are approximate. Actual times may vary by up to one hour. Attendees who may need services or special accommodations should contact Carolyn Sime (406-444-0554 or csime2@mt.gov) at least 5 working days before the meeting.



SAGE GROUSE HABITAT CONSERVATION PROGRAM

EXECUTIVE ORDER 12-2015 CONSISTENCY REVIEW SUMMARY REPORT

Report Period: January 1, 2017 through December 5, 2017

Report Date: 12/5/17 at 17:32:17

The Sage Grouse Program (Program) compiles statistics to document its performance while reviewing all proposed activities in Greater sage-grouse habitats designated as a Core Area, General Habitat, or a Connectivity Area pursuant to Executive Order 12-2015. Through the consultation process, the Program reviews the proposed project for consistency with Executive Order 12-2015. The Program provides written documentation of its review to the project proponent, who then submits the Program's letter with their permit application to the respective permitting agency.

The following statistics for the period January 1, 2017 to the close-of-business on December 5, 2017. This period spans the original web portal version 1.0 and the new system launched in April, 2017.

All Projects:

- 107 projects are in draft¹
- 290 total projects actually submitted for review (includes withdrawn, archived, Core Areas, General Habitats, Connectivity Area, and projects missing data)
 - 9 were withdrawn by proponent²
 - 6 were archived³
 - 4 returned to proponents for more information⁴
- 271 total active or completed projects⁵

¹ **Draft** means the proponent is still working on the project in the virtual sandbox and has not formally submitted it for Program review. In the Draft stage, proponents can explore options and modify projects prior to initiating the consultation process. The website stores their information, and proponents work at their own pace. The Program does not start the review process until the proponent clicks the "submit" button, which officially enters the information into the system and notifies the program that a new project has been submitted.

² **Withdrawn** means the proponent withdrew the request for Program review of the project for some reason of their own accord (e.g. changed their mind). The Program can't withdraw a project on a proponent's behalf.

³ **Archived** refers to legacy projects submitted in the old system or stored by the Program for future reference.

⁴ **Returned** means the Program returned the project to the proponent because it did not have sufficient information to complete the review. Proponents receive an email with information about why their project was returned. Occasionally, project proponents request that the Program return the project after the official submission because the project proponent desires to make a change of their own accord.



- 16 currently under Program review⁶
- 255 completed reviews; response letters provided and proponent advanced to permitting⁷
- ***255/271 = 94.1% all projects completion rate (withdrawn, archived and returned not included)***⁸

Core Areas:

- 52 - projects in Core Areas
 - 1 withdrawn; 0 archived
 - 0 currently returned to the proponent for more information
- 7 still under Program review
- 44 completed reviews; letters provided and proponent advanced to permitting
- ***44/51 = 86.27% Core Area completion rate (withdrawn, archived and returned not included)***

General Habitat:

- 228 projects in General Habitat
 - 7 withdrawn; 0 – archived
 - 4 currently returned to the proponent for more information
- 9 still under Program review
- 208 completed reviews; letters provided and proponent advanced to permitting
- ***208/217 = 95.85% General Habitat completion rate (withdrawn, archived and returned not included)***

⁵ **Active or completed reviews** is the total number of submitted projects for which Program review has either been requested by a member of the public or completed by the Program.

⁶ **Currently under review** means the Program has received a submitted project, has all the necessary information, and is still reviewing the project.

⁷ **Completed review** means the Program has completed its review and provided written documentation (a letter) to the proponent who can then initiate a permit application with the appropriate permitting agency and move forward.

⁸ **Completion rate** is calculated as number of projects formally submitted for which the Program had complete information and could initiate review divided by the number of projects for which the Program has completed its review, expressed as a percent.

Connectivity Areas:

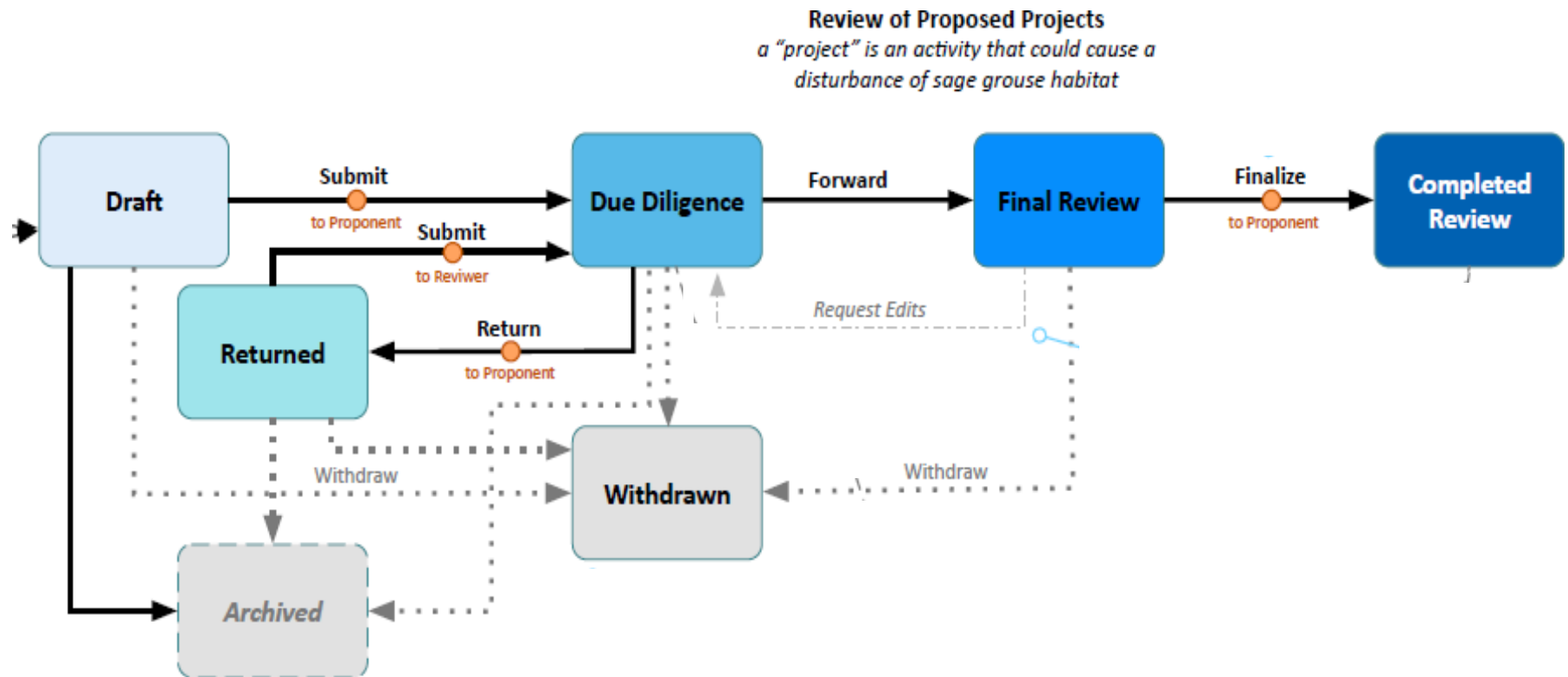
- 0 project in Connectivity Areas
 - 0 withdrawn; 0 – archived
 - 0 currently returned to the proponent for more information
- 0 still under Program review
- 0 completed review; letter provided and proponent advanced to permitting
- ***0/0 = NA% Connectivity Area completion rate (withdrawn, archived and returned not included)***

Other:

All other projects were either outside designated habitats or were submitted without location information for the proposed project. The majority of these were submitted prior to launching the new website.

- 9 outside EO habitat
 - 1 withdrawn; 5 archived because the proponent did not respond to Program requests for complete information
 - 0 currently returned to the proponent for more information
 - 0 still under Program review
 - 3 completed reviews with letters sent
- 1 missing disturbance data (0 in progress, 0 letters sent); proponent did not respond to Program requests for information

SAGE GROUSE HABITAT CONSERVATION PROGRAM
EXECUTIVE ORDER 12-2015 CONSISTENCY REVIEW WORKFLOW PROCESS





The Nature Conservancy in Montana
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P.O. Box 8316
Missoula, MT 59807

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nature.org

September 29, 2017

Carolyn Sime
Sage Grouse Habitat Conservation Program Manager
Department of Natural Resources and Conservation
PO Box 201601
1625 11th Ave
Helena, MT 59620

Dear Ms. Sime,

I am writing to happily inform you that, as of today, The Nature Conservancy has a fully signed grant agreement that formally secures \$4,950,000 in NRCS- Agricultural Land Easement (ALE) Program funds towards the purchase of a perpetual conservation easement on approximately 13,800 acres of Hansen Livestock Company ranch land in Beaverhead County, Montana.

I have attached a copy of ^{the 1st portion of} this agreement for your records.

Please let me know if you, your program staff, or MSGOT members have any questions.

Thank you very much,

A handwritten signature in black ink, appearing to read "Jim Berkey".

Jim Berkey
Southwest Montana Program Director
The Nature Conservancy



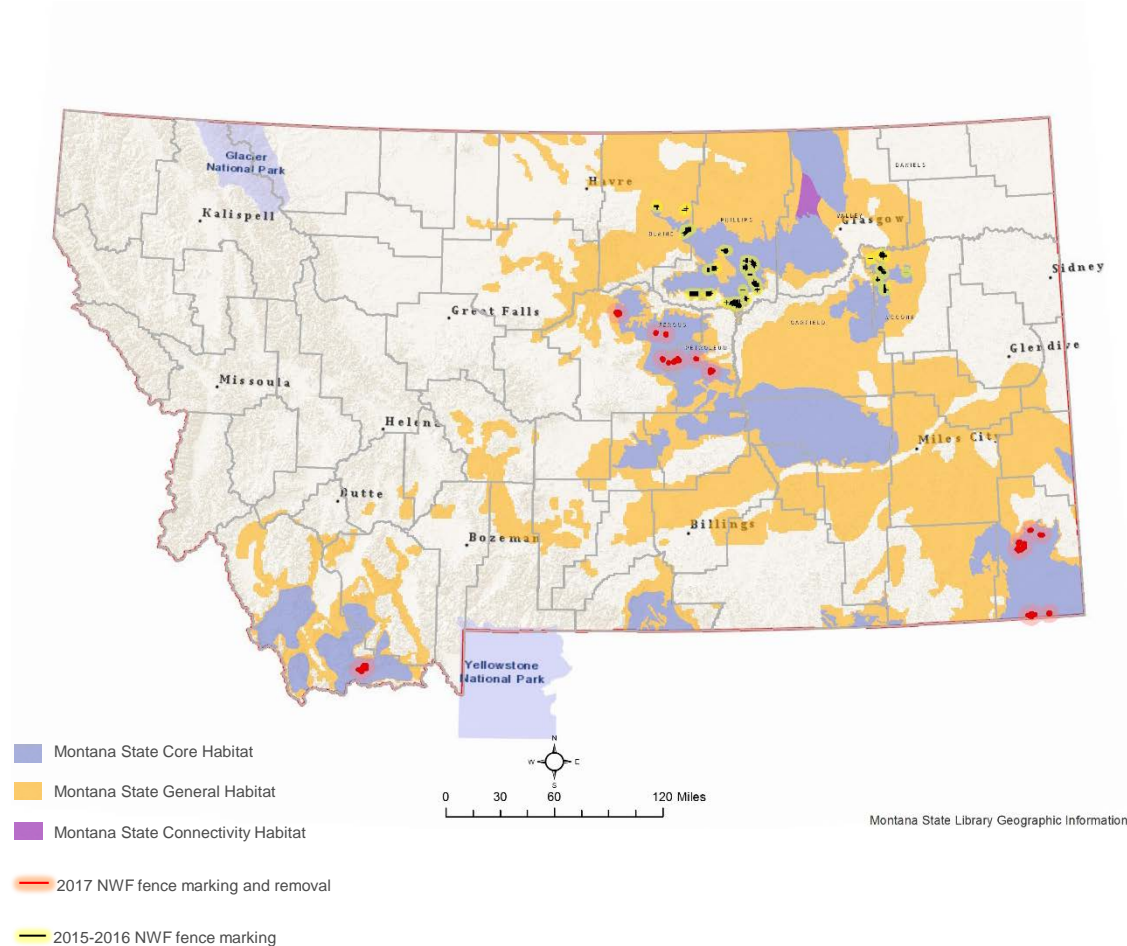
OPERATION SAGE-GROUSE 2015-2017

CONSERVATION

- 230 miles flagged
- 5 miles removed

ENGAGEMENT

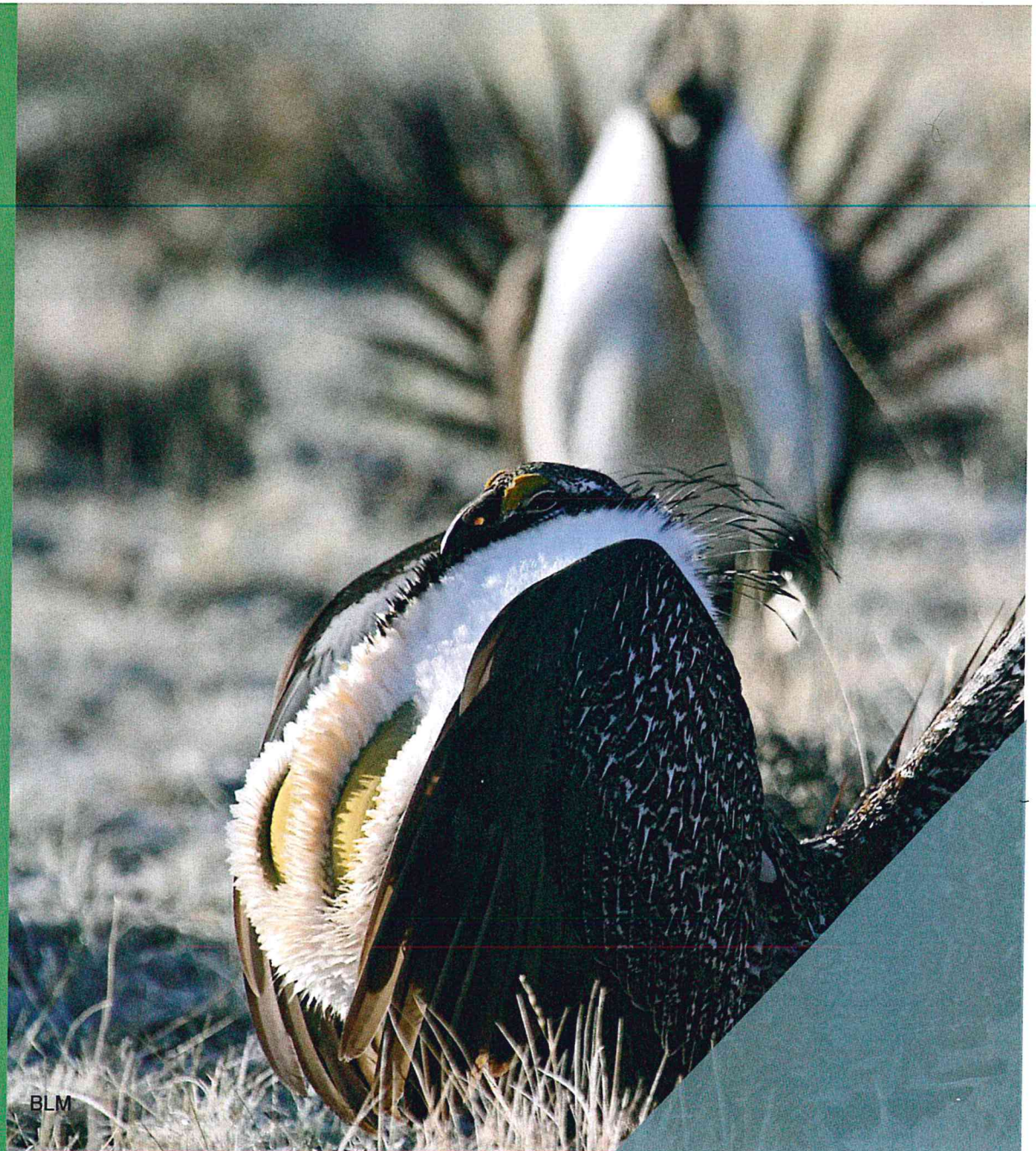
- 60 Crew members
- 20 Volunteers





OPERATION SAGE-GROUSE

One Bird, One Mile at a Time



THE NATIONAL WILDLIFE FEDERATION
Northern Rockies, Prairies & Pacific Region

Project Accomplishments
2015-2017

Partners

National Fish and Wildlife
Foundation

U.S. Bureau of Land Management

Montana Conservation Corps

Montana Fish, Wildlife and Parks

Assiniboine and Gros Ventre Tribes
of the
Fort Belknap Indian Community

Trapper Creek Job Corps

U.S. Fish and Wildlife Service

Montana Department of Natural
Resources and Conservation

Sage Grouse Initiative

Fergus County Conservation District

American Prairie Reserve

Private Land Owners
across Montana



"A healthy sagebrush landscape also supports a healthy Western economy—for ranching, outdoor recreation, and energy that powers our nation."

Sally Jewell, Former Secretary of Interior

Securing a Better Future for Sage-Grouse

The National Wildlife Federation is part of a broad coalition of government agencies, organizations and landowners working to recover Greater Sage-Grouse, a once-abundant Western bird now struggling to stay off the Endangered Species List.

Unfortunately, the Trump administration and the leadership of the Interior Department under Interior Secretary Ryan Zinke are now trying to break apart this coalition and reverse the progress that has been made in conserving sage-grouse. One of the ways the National Wildlife Federation is fighting back is by working to implement conservation plans adopted and supported by state and federal agencies, private landowners and the conservation community. It will take time and great commitment to overcome both these political obstacles and the great challenge of protecting and restoring the vast sagebrush habitats that are critical to the survival of sage-grouse and many other wildlife species. In Montana, as well as other areas of the West, the National Wildlife Federation is taking tangible, achievable and effective action to produce immediate results—saving sage-grouse today and for many years to come.

The first phase of the National Wildlife Federation's Montana-based "Operation Sage-Grouse" project addresses a significant but sometimes overlooked threat to sage-grouse: barbed-wire fences.

Low-flying sage-grouse have trouble seeing strands of barbed wire that crisscross everywhere in the West. Researchers have shown collisions with wire fences to be a significant risk to sage-grouse and other wildlife. Birds die or suffer crippling injuries on impact. In certain, identifiable areas, fence collisions kill an estimated one grouse per mile of fence per year. With thousands and thousands of miles of fences out there, such numbers add up to unacceptable, preventable losses for the struggling species.

The National Wildlife Federation has gone to work "flagging" barbed-wire fences with high-visibility plastic markers proven to dramatically reduce bird collisions by making the wire easier for grouse and other wildlife to see and avoid.

Focusing on a single identified threat to sage-grouse survival has provided a solid foundation for broader habitat enhancement work. In the first three years of this project, the National Wildlife Federation has established critical relationships with resource managers and local conservation partners whose trust and cooperation will be essential to achieve full protection and recovery of this iconic species.

By taking on this promising project, the National Wildlife Federation has harnessed the energy and enthusiasm of teens and young adults. Working as teams in remote areas, our young recruits gain meaningful, firsthand conservation experience. Their work marks the beginning of a new generation of citizen-conservationists as it secures a better future for sage-grouse.

Thomas France
National Wildlife Federation
Regional Executive Director

Hayley Connolly-Newman
National Wildlife Federation
Sage-Grouse Project Coordinator



Jeremy Roberts, Conservation Media

Fences:

Thousands of Miles of Danger

Make no mistake: Habitat loss and fragmentation are chiefly to blame for accelerated declines in sage-grouse populations throughout the West. Restoring sage-grouse to robust numbers requires coordinated, public-and-private commitments to manage sagebrush-dominated habitat better. The National Wildlife Federation is fully committed to that larger, long-term goal.

When states in the West, the U.S. Fish and Wildlife Service and the Bureau of Land Management joined to craft a series of federal and state management plans to address declining populations and habitat fragmentation, a key goal was to reduce direct sage grouse mortality and make good habitat more accessible. One universally accepted step for achieving this was flagging—attaching plastic markers to the top wire of fences—to reduce fence/sage grouse collisions.

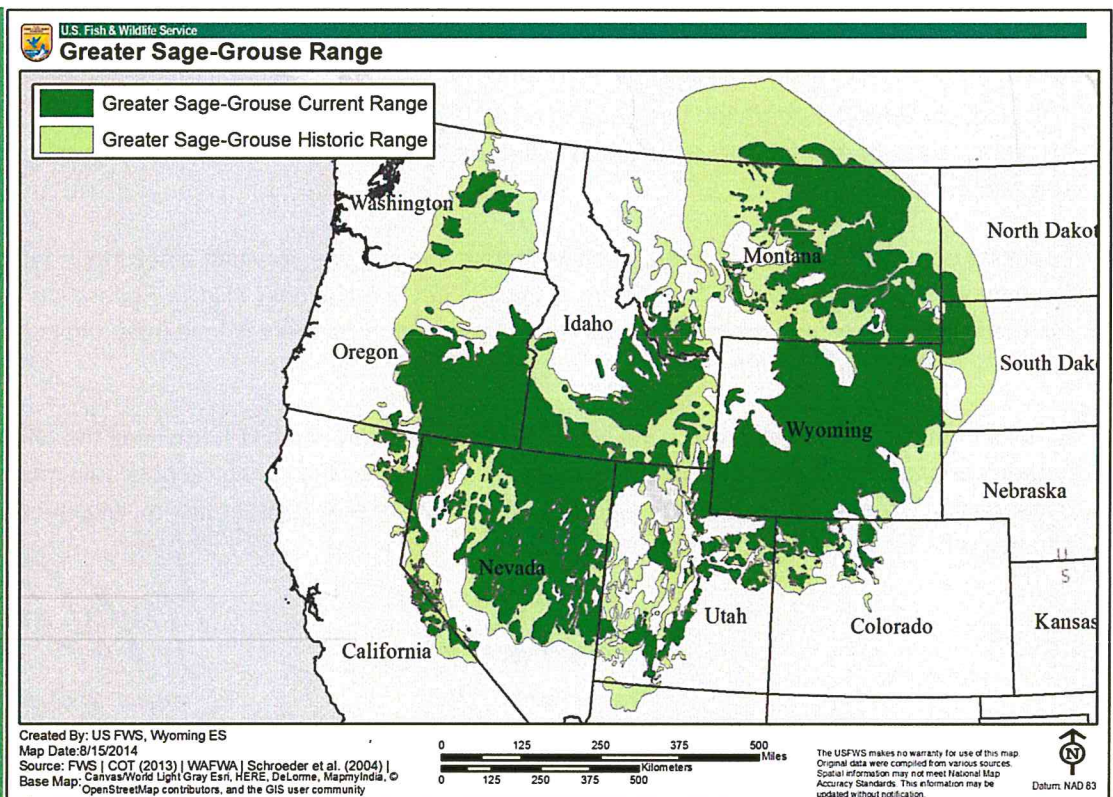
But with sage-grouse numbers so diminished, we can't afford to overlook additional threats that could contribute to further population declines.

Barbed-wire fences are one such risk.

"One thing I liked was the tangible aspect of the project—how it's clear through research that one mile of fence flagged is one saved bird. Not all projects are like that."

Nate Hess, 23

MCC youth crew leader



The historic range for the Greater Sage-Grouse is increasingly fragmented.

Researchers who have studied the tendency for sage-grouse to fly into wire fences estimate an average of 1.2 grouse killed per mile of fence per year near breeding areas (known as “leks”) and wintering grounds.^{1,2,3,4} Those same researchers caution that those numbers are conservative because dead or injured birds are quickly eaten by scavengers and predators, making counting fence-collision casualties an inexact affair.

Considering the tens of thousands of miles of barbed-wire fences stretched throughout sage-grouse habitat, the potential toll from fence collisions is significant. Thriving populations of sage-grouse in large expanses of healthy habitat likely could sustain mortality at such levels without serious overall consequences. But, as sage-grouse risk joining the Endangered Species List, every bird saved can make a difference. Reducing avoidable deaths becomes a necessary objective. Indeed, improving survivability is one way to improve sage-grouse habitat.



Why are fences such a danger?

Sage-grouse are big, ground-dwelling birds that evolved in flat or rolling terrain with few obstacles. Sage-grouse are powerful flyers, flying fast but low – often in the low-light conditions of dawn and dusk. They have trouble negotiating immovable and widespread obstacles, such as fences.

Across the West, sage-grouse habitat also happens to be cattle country. Cattle grazing is the primary economic activity on millions of acres of sagebrush-steppe ecosystems—including private, state and federal lands. And wherever you find cattle, you generally find fences.

If it came to conflict between cattle grazing and sage-grouse conservation, sage-grouse would lose. That’s the political and economic reality in the West. Fortunately, there are ways to resolve and mitigate conflicts with livestock. The National Wildlife Federation has years of experience resolving wildlife-livestock conflicts in win-win ways.

Sage-grouse evolved in ecosystems once dominated by bison. Sage-grouse can generally co-exist with cattle, which have supplanted bison in their habitat. But grouse don’t do well with fences, and so reducing the danger to grouse posed by fences can be an effective way to reduce wildlife-livestock conflicts, which benefits everyone.

Not all fences pose an equal threat to sage-grouse. Research shows that about three out of every four grouse collisions with fences occur within one-third mile of breeding grounds. Over 90 percent of the collisions happen along fences within a mile of their breeding grounds.³ In addition, fences near wintering areas and migration corridors also pose heightened danger.

In all, the fences posing the highest risk to sage-grouse total roughly 10 percent of all livestock fences in sagebrush country.^{5,6} The National Wildlife Federation uses state-of-the-art mapping tools to prioritize which fences to flag. And the tools indicate that there is a lot of fence work to be done.

Operation Sage-Grouse

Removing the high-risk fences might be the surest way to prevent collisions. But that's not practical in most cases as those fences are part of a working landscape—needed to contain and manage livestock.

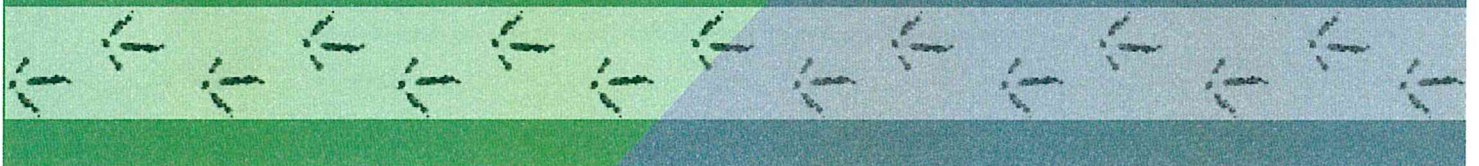
However, sage-grouse can generally avoid fences if they can see them. So the trick is to make them more visible. One simple and effective way to do that is to “flag” them by attaching inexpensive plastic markers to the top strand of wire.

Studies show flagging fences with visible markers reduces collisions and sage-grouse mortality by as much as 83 percent.^{3,4,7}

Attaching markers to fences is relatively easy—the plastic “flags” simply snap onto the wire. But it's tedious work made time-consuming because of the many miles of fences that extend across remote landscapes. Land management agency budgets and manpower have limited capacity to flag fences. Private landowners and public-land grazing permittees often have higher priorities as well. While the individual markers are relatively inexpensive and the labor to apply them not onerous, the cumulative challenge of finding and marking many miles of high-risk fence is substantial.



“There’s more going on out here than I originally thought. After this work I think the crew will have more respect for the sage-grouse, or at least more curiosity. I’m happy I’ve seen sage-grouse, and I can tell people that.” Riley, 24; Youth crew leader



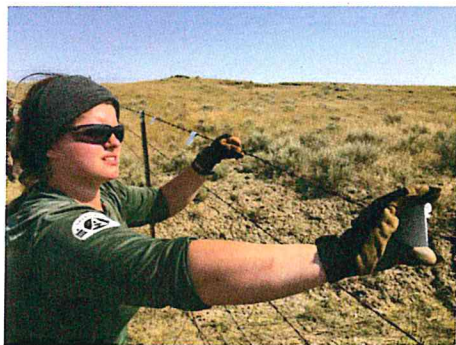
Developing the Next Generation of Conservationists

The National Wildlife Federation approached this challenge by combining our goal of sage-grouse conservation with one of our other organizational priorities—engaging young people in nature.

Starting in 2015, the National Wildlife Federation partnered with Montana Conservation Corps and the Trapper Creek Job Corps to lead crews of teens and young adults on intensive fence-flagging missions in seven Montana counties. These crews successfully marked 142 miles of high-risk fences across federal, state, tribal and private lands that are classified as core and general sage-grouse habitat.

Participants range in age from 14 to 26 years old. They work in supervised six-person crews. The crews typically mark fences for one to two weeks, camping on the prairie near work sites.

Crew members have found the work engaging and meaningful—offering a hands-on opportunity to learn about sage-grouse, other wildlife and conservation. Fence-flagging calls for teamwork, endurance and perseverance through sometimes harsh conditions. For some participants, flagging fences for sage-grouse has been their first real introduction to the great outdoors. For others, the project has kindled interest in conservation. Knowing they are contributing to the survival of an iconic American species has been a clear source of pride for the National Wildlife Federation and the Montana Conservation Corps young fence-flagging troops.



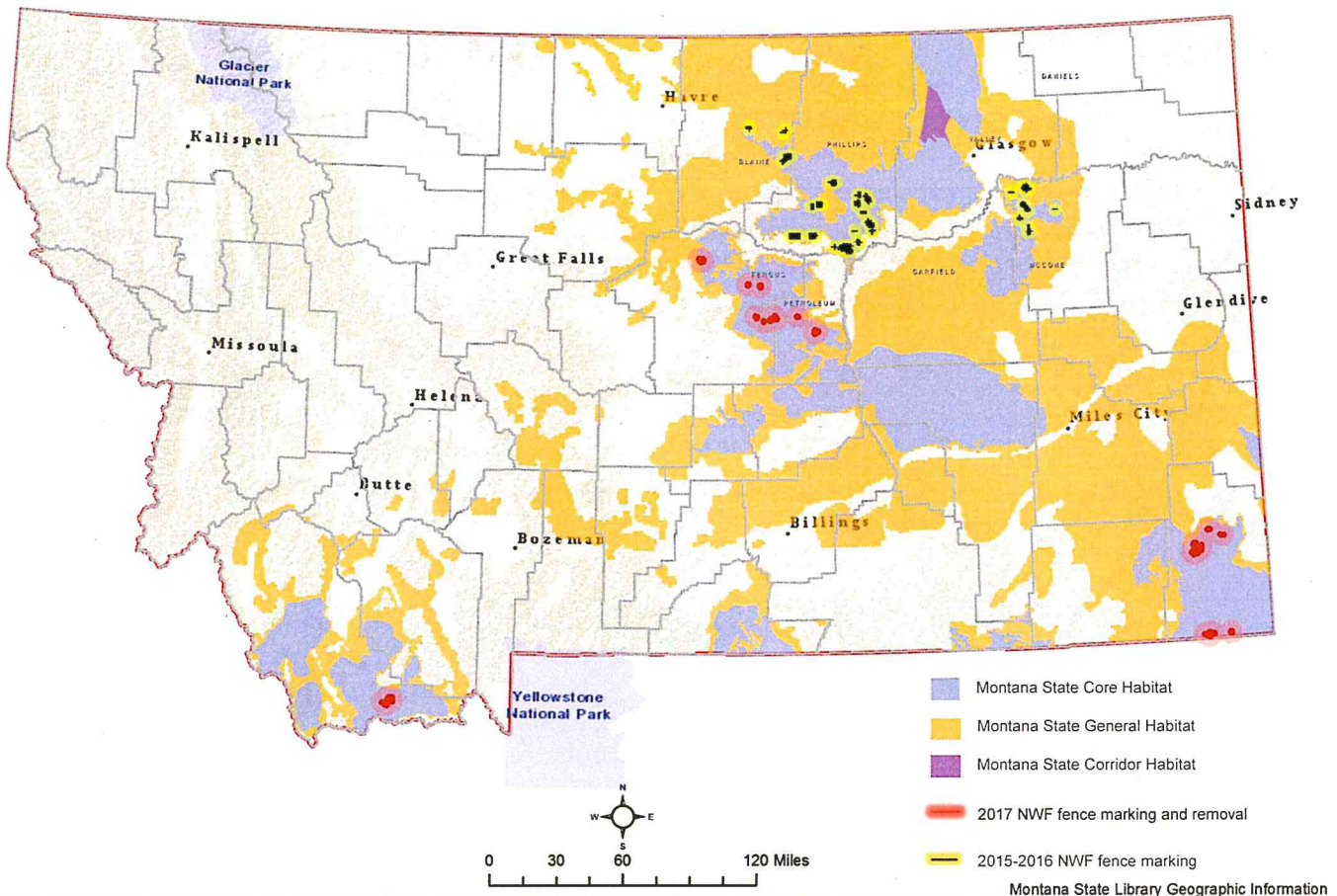
Montana Work Locations

The National Wildlife Federation's flagging project focuses on areas containing a high density of nesting sage-grouse in central, southeastern and southwestern Montana.

The majority of fences flagged have been located in a grassland/shrubland landscape, interspersed with developed agriculture. Grazing occurs on almost all lands within this area, so fencing is extensive.

The topography of the project areas includes bench lands and relatively steep drainages. The fence-flagging efforts focus on the flatter bench lands, which constitute preferred sage-grouse habitat. To date, flagging efforts have been completed in Beaverhead, Fergus, Petroleum, Blaine, Phillips, McCone, and Carter counties.

By focusing on high-risk fencing in core habitat for sage-grouse, the National Wildlife Federation's work aims to reduce mortality in the birds' strongholds. Improving security and productivity of the best habitat can help stabilize and increase sage-grouse populations as a step toward eventually improving enough habitat to help populations expand and thrive.

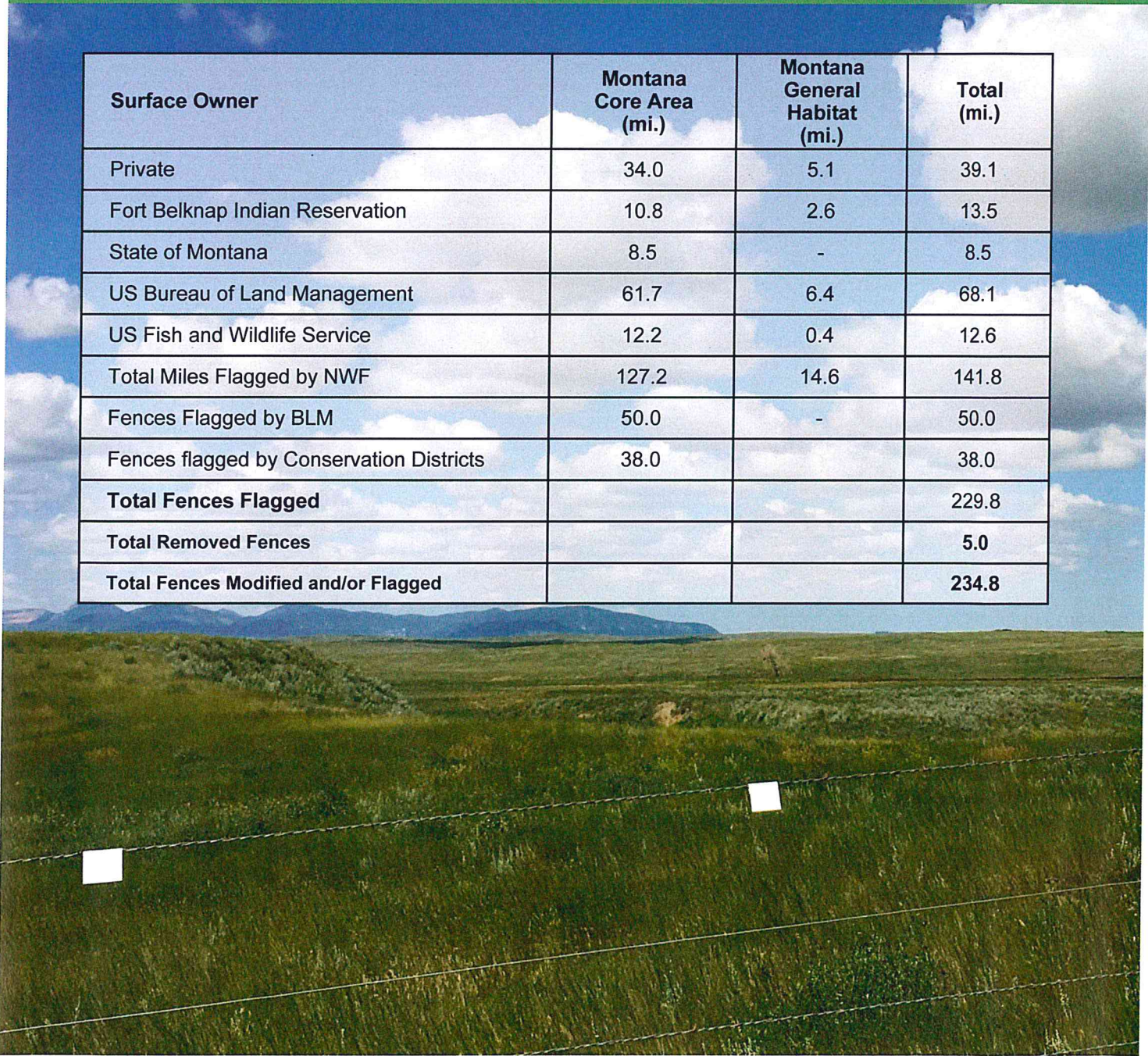


Projects Completed to Date

From 2015 to 2017, the National Wildlife Federation successfully marked 142 miles of pasture fences. Additionally, 5 miles of high-risk fencing were completely removed from the landscape. Land ownership included federal, state, tribal, and private.

The National Wildlife Federation also provides markers to federal and local conservation agencies for placement on private and leased public lands. In 2016, Montana Conservation Corps crews assisted Bureau of Land Management biologists in manufacturing enough markers to flag 50 miles of fencing. Additionally, in 2017, the Fergus Conservation District was able to distribute 38 miles' worth of markers provided by National Wildlife Federation to private landowners in Petroleum and Fergus counties.

To date, the National Wildlife Federation has completed or contributed to 235 miles of fence modification, effectively reducing the danger of fence collisions for sage-grouse across thousands of acres of habitat.

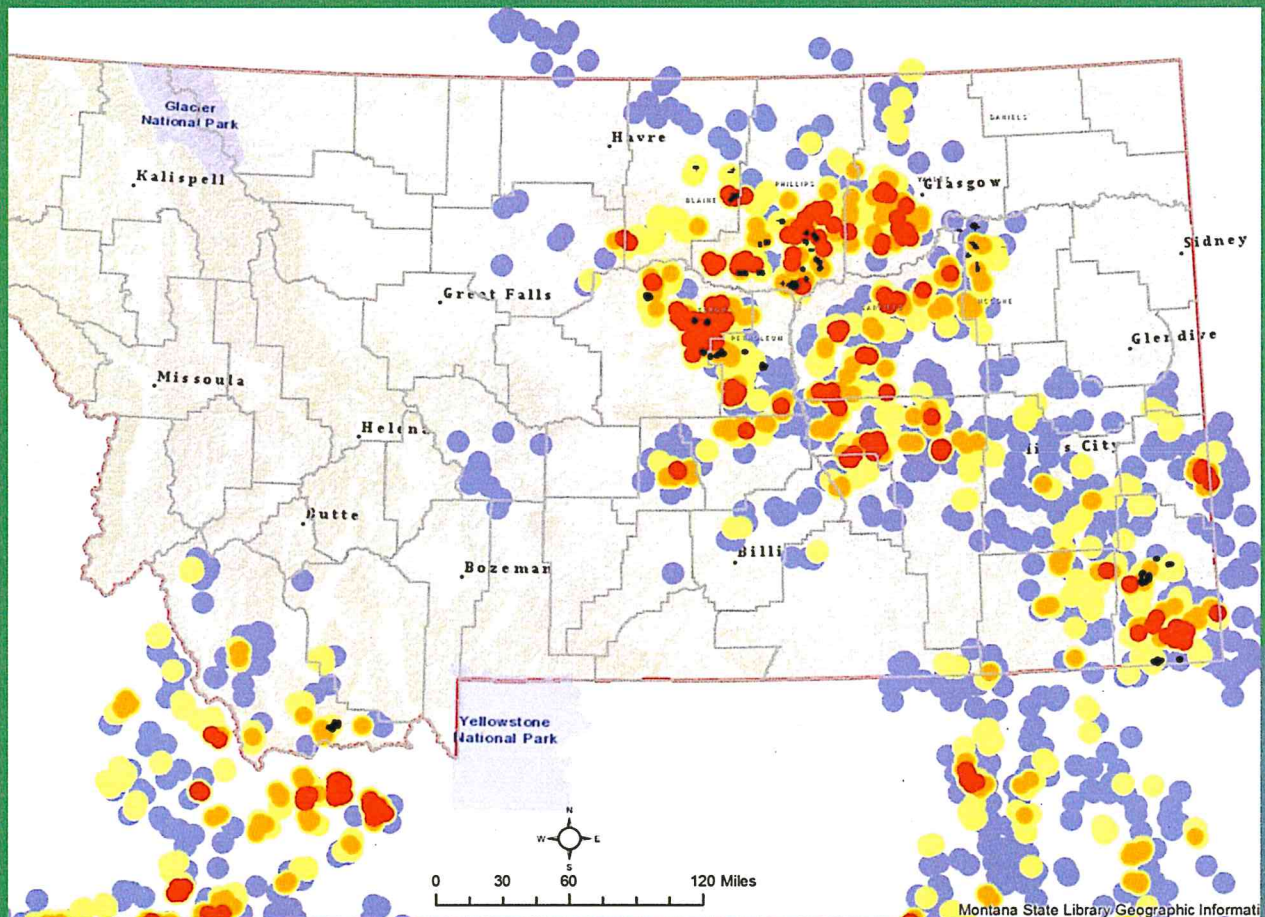


| Surface Owner | Montana Core Area (mi.) | Montana General Habitat (mi.) | Total (mi.) |
|---|-------------------------|-------------------------------|-------------|
| Private | 34.0 | 5.1 | 39.1 |
| Fort Belknap Indian Reservation | 10.8 | 2.6 | 13.5 |
| State of Montana | 8.5 | - | 8.5 |
| US Bureau of Land Management | 61.7 | 6.4 | 68.1 |
| US Fish and Wildlife Service | 12.2 | 0.4 | 12.6 |
| Total Miles Flagged by NWF | 127.2 | 14.6 | 141.8 |
| Fences Flagged by BLM | 50.0 | - | 50.0 |
| Fences flagged by Conservation Districts | 38.0 | | 38.0 |
| Total Fences Flagged | | | 229.8 |
| Total Removed Fences | | | 5.0 |
| Total Fences Modified and/or Flagged | | | 234.8 |

Project Success

Follow-up analysis conducted by Ecosystem Research Group shows that the National Wildlife Federation's fence flagging occurred in sage-grouse habitats classified as high-quality and/or high breeding density, in close proximity to known leks.

Not included in this total were the additional fences flagged by Bureau of Land Management and Conservation Districts with contributions from the National Wildlife Federation. The map below indicates, in red, the mapped high abundance population centers. Sage-grouse breeding abundance is highly "clumped" from range-wide to state-wide analysis scales. The National Wildlife Federation fence-flagging and removal locations, shown in black, are all within or very near these high density centers.⁸



| Greater Sage-Grouse Breeding Density | Flagged Miles |
|--------------------------------------|---------------|
| 25% | 33.5 |
| 50% | 55.5 |
| 75% | 40.2 |
| 100% | 11.8 |
| 0% | 0.8 |
| Total | 141.8 |

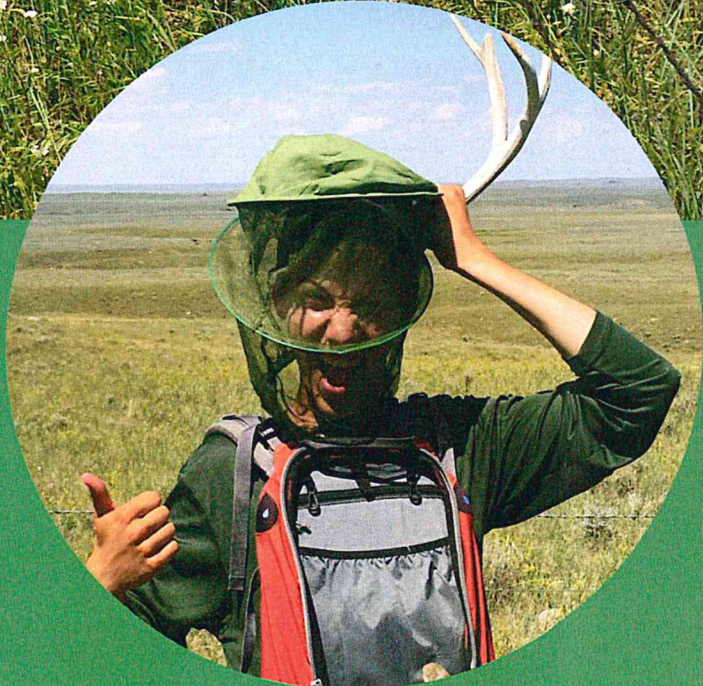
Tangible Population Benefits

Calculating using the average strike rate of 1.2 collisions per mile annually, along with the 61-83% reduction in mortality from flagging fence, the initial three years of work completed by the National Wildlife Federation crews are preventing an estimated 192 fatal fence collisions annually.

Because most fence collisions occur during the breeding season, the numbers of deaths prevented likely translates to more birds surviving to breed and nest. The population benefits of this work extend beyond individual birds saved to include potentially greater recruitment in areas where fence collisions have been reduced.



National Wildlife Federation
is saving hundreds of
birds a year



"The obvious and tangible part of this project were the miles of fence that we flagged. But after talking with the kids and working with them for several weeks, I grew to see that the real success of this project were the hands-on learning opportunities. Most of the participants were not aware sage-grouse existed before this project and came away with a deeper respect for both the bird and the landscape it calls home."

– Hayley Newman, NWF Project Coordinator



The Work Ahead

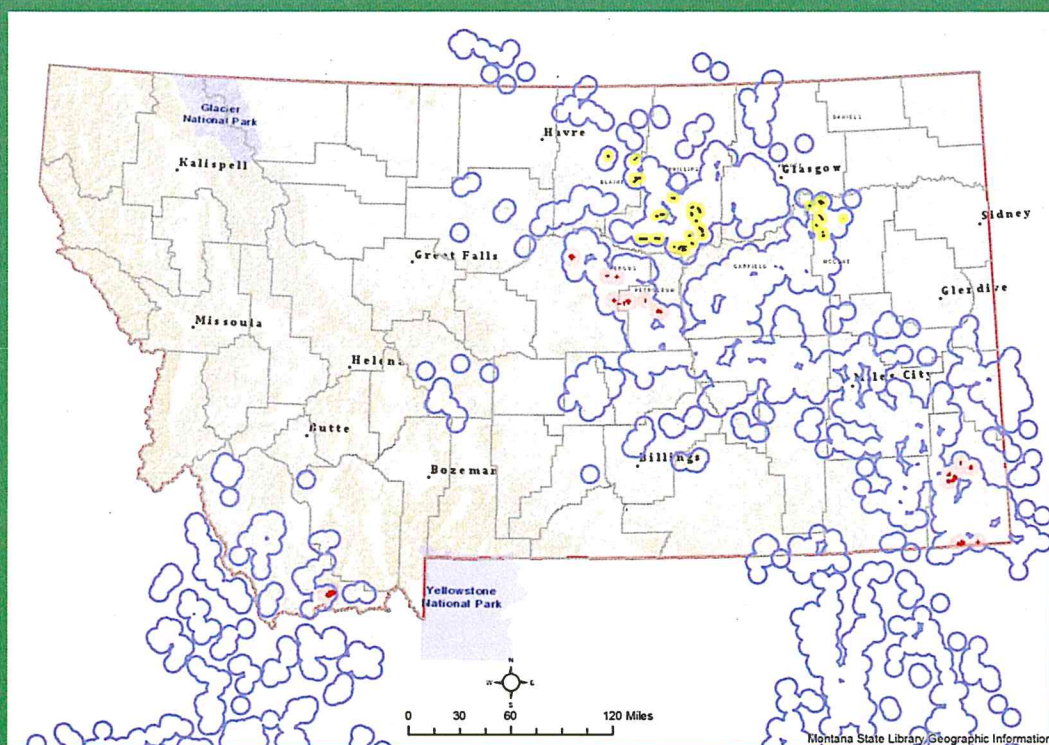
Countless opportunities remain for marking fences and improving sage-grouse survival throughout Montana and the West. National Wildlife Federation is committed to pursuing these opportunities and to work with other organizations and agencies to expand our efforts.

As it works to flag high-risk fences in Montana, National Wildlife Federation has developed an economical model for mitigating the threat fences pose in sage-grouse habitat throughout the West. The methods and partnerships that are producing concrete results in Montana can easily be replicated and expanded throughout other states.

Meanwhile, National Wildlife Federation is broadening its approach to habitat protection in sagebrush ecosystems. National Wildlife Federation is in the planning stages for projects that address habitat needs for a variety of wildlife, working to include more complex analysis of wildlife interactions with linear features (e.g. fences, roads, railroad tracks).

Opportunities to enhance habitat for sage-grouse abound, from citizen-based scientific monitoring to targeted fence modifications and removal to restoration of wet meadows and ephemeral wetlands crucial to sage-grouse in late summer.

As with the first phase of this project, National Wildlife Federation will continue to enlist young conservationists, striving to make a difference in their lives as well as in the future of wildlife.



There is ample opportunity across Montana for additional flagging and fence modification. Working in areas where breeding density is highest (outlined here) will have the greatest effect on maintaining healthy sage-grouse populations.

Progress Amid Uncertainty

Eleven Western states and Federal agencies in 2015 launched the Greater Sage Grouse Conservation Plan, perhaps the largest and most comprehensive wildlife-conservation initiative in American history. This sweeping strategy calls for protections and restoration measures aimed at keeping sage-grouse off the Endangered Species List, building upon state-specific conservation plans that reflect collaborative approaches crafted by Western governors, landowners, local elected officials, sportsmen and other community members.

In the fall of 2017 the Department of the Interior moved to reconsider and possibly amend the conservation plans, creating new contention over sage-grouse. The National Wildlife Federation urged the Secretary of the Interior to follow through on the government's commitment to give the state plans a chance to work and not to undermine a conservation framework that is essential to recovery and long-term survival of the sage-grouse.

On multiple fronts, the National Wildlife Federation is committed to finding ways to better secure sage-grouse habitat and conserve the species. Projects like Operation Sage Grouse, National Wildlife Federation's initiative to reduce sage-grouse mortality from fence collisions, address immediate threats while longer-term solutions are addressed. As debate over sage-grouse conservation continues at the highest levels of government, the National Wildlife Federation is working to conserve these remarkable birds from the ground up.

Contact Us

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Visit us on the web-
www.nwf.org



Uniting all Americans to ensure wildlife thrive in a rapidly changing world.

nwf.org



Literature Cited:

1. Fink, Katherine E., and Jessica L. Watkins. 2010. Greater sage-grouse fence marking project 2010. Internal BLM Report.
2. Schindel, Michael, and J. Kerby. 2013. *BLM Burns District, greater sage-grouse fence collision analysis*. Arlington, VA.
3. Stevens, B.S., K.P. Reese, J.W. Connelly, and D.D. Musil. 2012. Greater sage-grouse and fences: Does marking reduce collisions? *Wildlife Society Bulletin*. 36:297-303.
4. Van Lanen, N.J., A.W. Green, T.R. Gorman, L.A. Quattrini, and D.C. Pavlacky. 2016. *Evaluating efficacy of fence markers in reducing greater sage-grouse collisions with fencing*. Brighton, CO.
5. Stevens, B.S., D.E. Naugle, B. Dennis, J.W. Connelly, T. Griffiths, and K.P. Reese. 2013. Mapping sage grouse collision risk: spatially explicit models for targeting conservation implementation. *Wildlife Soc. Bull.* 37(2) 409-415.
6. NRCS. 2012. Applying the sage grouse fence collision risk tool to reduce bird strikes. CEAP Conservation Insight. Natural Resources Conservation Service, Washington, D.C. Nov. 2012; 5 pp. http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1049415.pdf.
7. Christiansen, Thomas J. 2009. Fence marking to reduce greater sage-grouse (*Centrocercus urophasianus*) collisions and mortality near Farson, Wyoming-Summary of interim results. October 26.
8. Doherty, K.E., D.E. Naugle, and B.L. Walker. 2010. Greater sage-grouse habitat: The importance of managing at multiple scales. *Journal of Wildlife Management* 74: 1544-1553.

Development of Sage Grouse Mitigation:

Special Focus on HQT

**Montana Sage Grouse Oversight Team
December 15, 2017**

*Presentation and all meeting materials will be available on the MSGOT
Meeting Archive webpage at: <https://sagegrouse.mt.gov/Team>*

Acknowledgements:

- Mitigation Stakeholders (many and diverse)
- BLM, USFWS, USFS, NRCS, FWP
- SWCA Environmental Consultants
- Willamette Partnership
- DNRC OIT, especially the GIS Team & Nick Swartz
- Program: Therese Hartman, Graham Neale
- Countless others ...

Roadmap: Focus on the HQT

- **11:10 – 11:45: Part I - Mitigation in Context**
 - Overview
 - HQT:
 - definitions and model overview
 - Journey to date
- **12:15 – 1:00: Part I Cont'd – HQT Examples**
 - Hypothetical Projects
 - Key concepts in a nutshell
- **1:15 – 1:45: Part II – Putting it all together**
 - Key concepts in a nutshell

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Why Mitigation?

- One tool, among many, to incentivize conservation using market forces
 - developers make business decisions to keep costs as low as possible
 - credit providers get paid for doing conservation
 - habitat oriented, so many species benefit
 - proactive approach for public resources
- Helps keep at-risk species safely away from the edge of ESA listing: candidate, threatened, or endangered
- Balance conservation and economic development activities

Executive Order
12-2015

**Mitigation
Market
Place:
incentivize
voluntary
conservation**

GOALS:

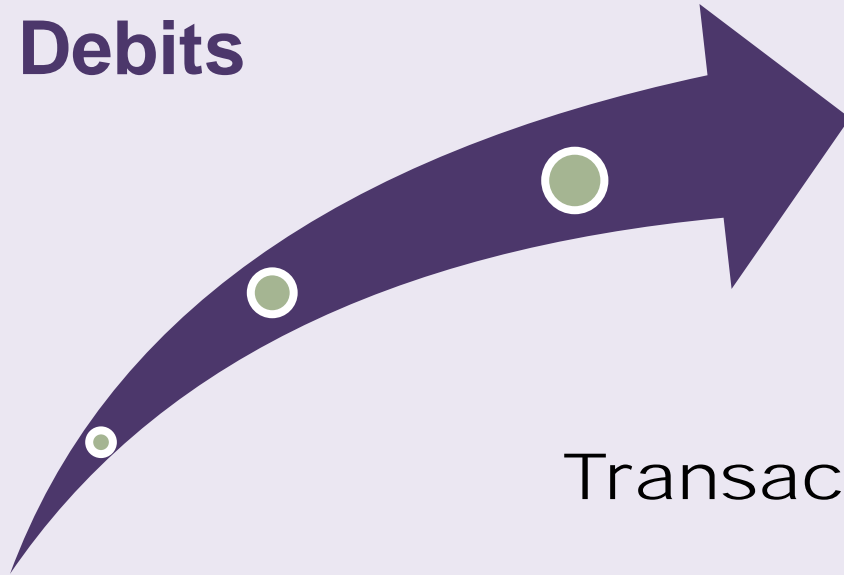
**Maintain viable sage
grouse populations and
conserve habitat**

**Maintain flexibility to
manage our own lands,
our wildlife, and our
economy**

Sage Grouse
Stewardship
Act:
Grant Fund
Mitigation

Private Land
Stewardship

Debits

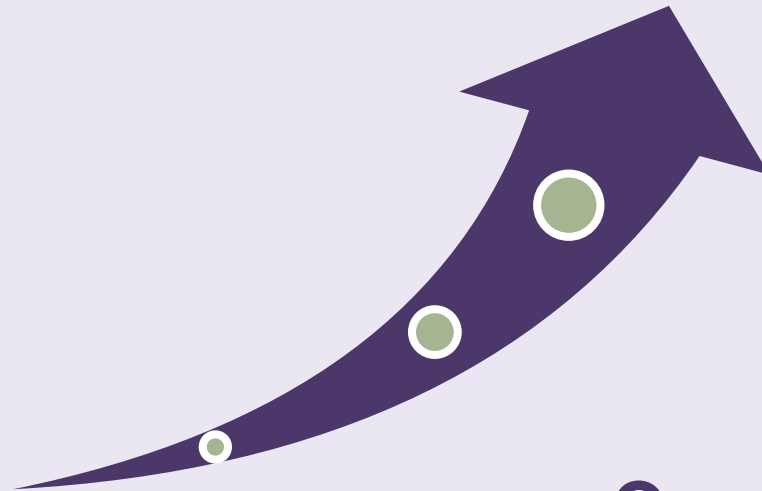


Transactional

GOALS:

**Maintain viable sage grouse
populations and conserve
habitat**

**Maintain flexibility to manage
our own lands, our wildlife, and
our economy**



Credits

Debits



Mitigation Hierarchy:

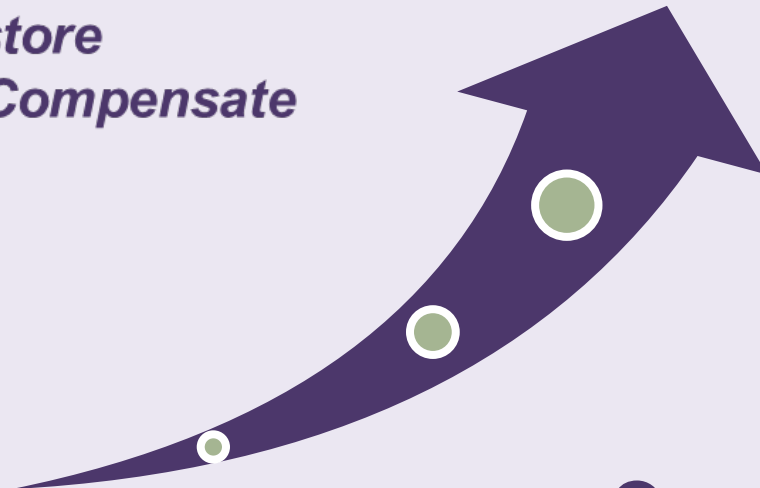
1. *Avoid*
2. *Minimize*
3. *Restore*
4. *Compensate*

**Mitigation
Market
Place:
incentivize
voluntary
conservation**

GOALS:

**Maintain viable sage grouse
populations and conserve
habitat**

**Maintain flexibility to manage
our own lands, our wildlife, and
our economy**



Credits

Guidance:

- Montana observes the mitigation hierarchy:

1. avoid 2. minimize 3. restore 4. compensate

compensatory mitigation: the preservation, enhancement, restoration and/or establishment of a resource to compensate for or offset unavoidable adverse impacts (i.e. residual impacts)

- **Act**: the Legislature finds that allowing a developer to provide compensatory mitigation for debits is consistent with purpose of incentivizing voluntary conservation. The developer may provide compensatory mitigation by ...
- **EO**: Hierarchy; mitigation required for residual impacts, even if adverse impacts are indirect or temporary ...

Applying the mitigation hierarchy reduces residual impacts & mitigation obligations

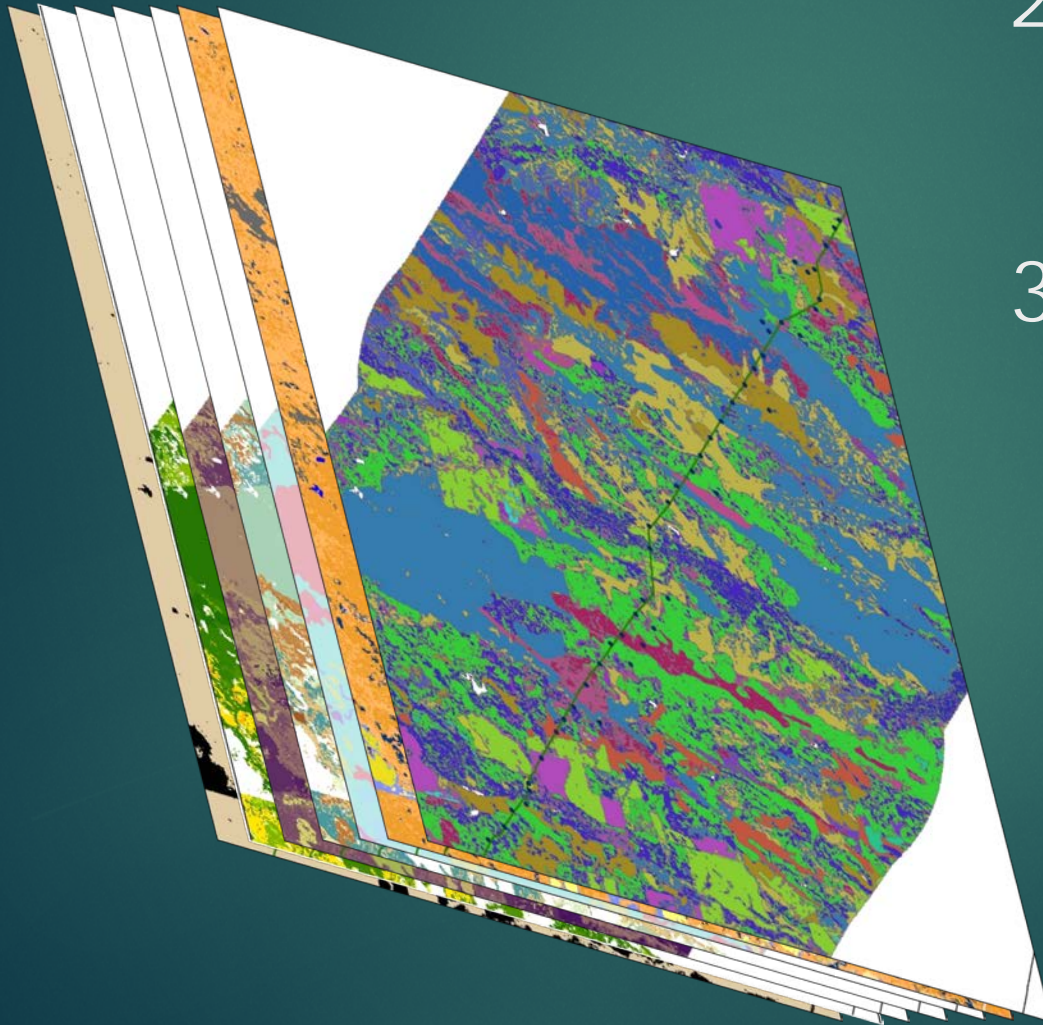
- *hierarchy reduces project impacts to the smallest possible effect*
- *accomplished through avoiding and minimizing landscape level and site-specific impacts through strategic planning and business decisions*
- *residual impacts are unavoidable because new or increased activity or surface disturbances in sage-grouse habitat will have some level of impact on sage-grouse*
- *remaining unavoidable residual impacts are reconciled through compensatory mitigation*
- *only way to avoid residual impacts is to not implement a project in sage-grouse habitat*

HQT: the scientific method to evaluate vegetation and environmental conditions related to quality and quantity of habitat

MCA 76-22-103(9)

- A GIS model
- Key variables:
 - vegetation & birds
 - existing disturbance
- Answers the questions:
 - What's the habitat quality before the conservation or development project?
 - What happened to the habitat after the project?

1. Habitat Characteristics Combined to
Quantify Baseline: functional habitat



2. Implement
the Project

3. Quantify the
Impacts for
the Life of
the Project

(functional acres)

HQT to Estimate Debits

- Baseline map: habitat quality
- Project type, size, etc.
- Location on the landscape: core, general, or connectivity
- Site & project specific: direct and indirect effects
- Time: construction + operation + reclamation
 - reclamation is the number of years for site and vegetation to return to pre-project condition
- RESULT: single number “raw HQT” score
- Total mitigation obligation expressed as DEBITS:
raw HQT score + policy modifiers

HQT to Estimate Credits

- Baseline map: habitat quality
- Project type, size, etc.
 - restoration, enhancement, preservation
- Location on the landscape: core, general, or connectivity
- Time
 - if easement: assume perpetuity means 100 years
- RESULT: single number “raw HQT” score
- Conservation expressed as CREDITS = raw HQT score + policy modifiers

An aerial map of a river valley, likely the Klamath River, showing various land uses and habitat quality. The map is overlaid with numerous colored dots: green, yellow, magenta, and brown. These dots represent different levels of habitat quality or functional acres. The river is visible as a winding blue line through the landscape. County boundaries for Garfield, Rosebud, and Treasure are indicated in the upper right. A large, irregularly shaped area in the lower half of the map is outlined in red, possibly representing a project area or a specific habitat zone. The map is used as a background for the text on the slide.

HQT shows how the habitat will be affected by the project:

1. Conservation: restoration, enhancement, preservation

- functional acres expressed as “credits”

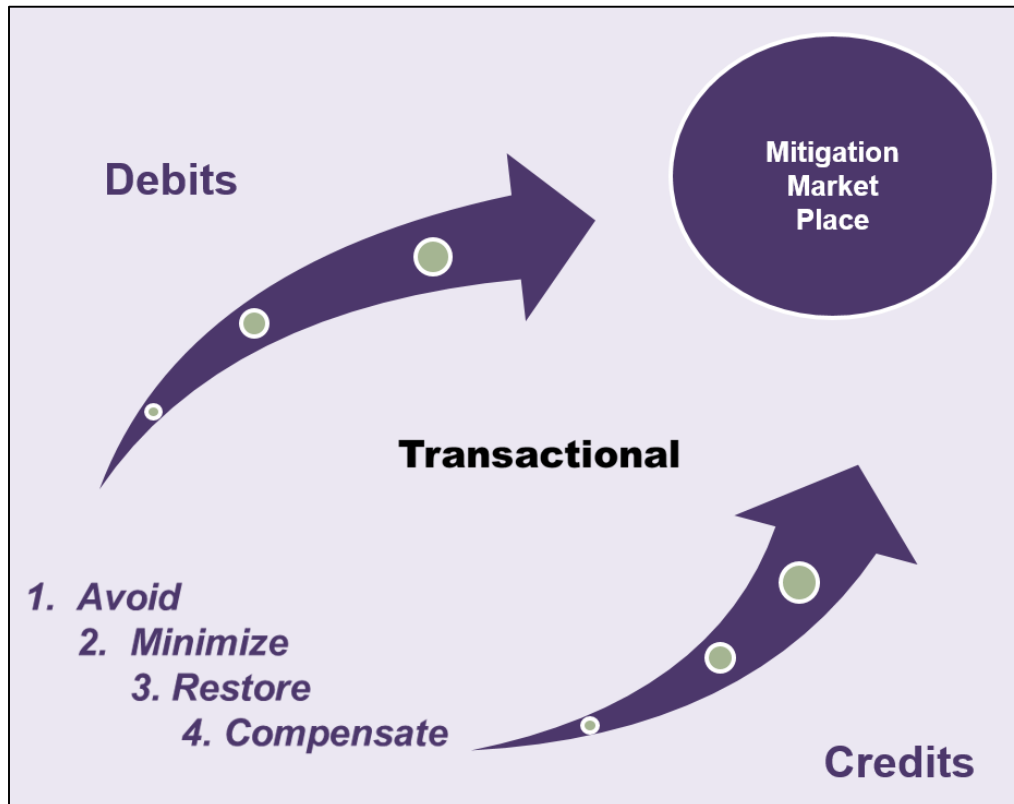
2. Development:

- functional acres expressed as “debits”

- **Debit**: defined unit of trade representing the loss or resource functions or value at an impact or project site.
MCA 76-22-103



- **Credit**: defined unit of trade representing the accrual or attainment of resource functions or value at a proposed project site. The unit of measure for a debit is the same as for a credit.
MCA 76-22-103



Basic Moving Parts

Credits



The HQT is the
common currency
used to balance the
mitigation ledger

(equitable exchange)

Debits



Administration



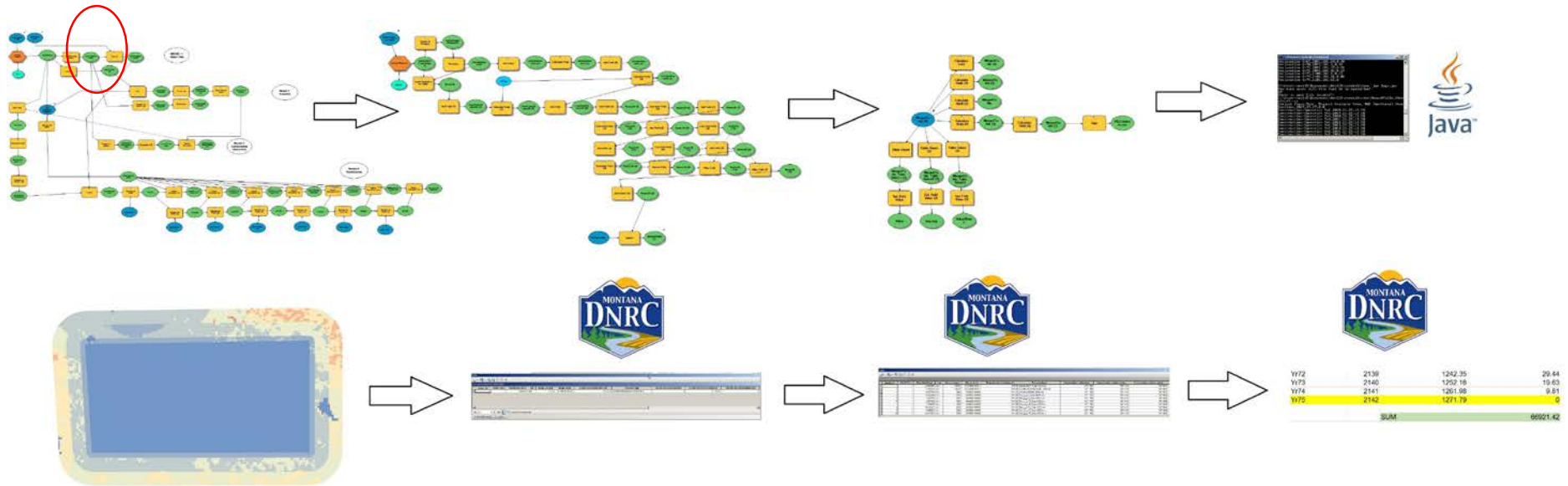
A Few HQT Pointers

- Math inherently results in large numbers both sides of ledger
 - time is included (life of project)
 - don't worry; reflects habitat quality using same base map on both sides
- A logical, objective, and repeatable approach
- HQT scales to the project; scores are proportional
- HQT scores are policy neutral: results from the GIS model
- Mitigation hierarchy and HQT are tools in the policy area
 - encourage / discourage activities using multipliers

Journey to Date:

- **Diverse stakeholders, agencies worked with professional collaborators**
 - Sept. 2016 – July 2017: about 12 (2-day) meetings, webinars, conference calls
 - multiple drafts / opportunities for stakeholder comment
 - initial proposed administrative rules in early 2017 not adopted
 - issues remained
 - material complicated
 - wanted more time and pilot testing
- **July 2017: 2 draft documents -- Guidance and HQT**
 - concepts, approaches, literature review
 - “red flag” comments
 - issues narrowed, but not fully resolved
- **Sept./Oct. 2017: begin transfer HQT electronic work product to MT**
 - DNRC OIT GIS Team primary lead; Program assistance
 - work ongoing
 - developing a complete, integrated model, add automation, etc.
- **No one is being held up; project by project basis**

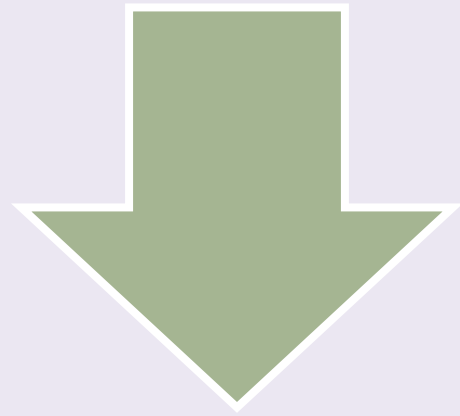
DNRC GIS Team started with simplified, partial electronic work product.



DNRC GIS Team kept working to build the HQT model to get farther along and closer to implementation:

- an HQT model that proponents can use themselves, proactively
- will simply future RFP to add to Program's website

Mitigation Market Place



**Development
Impacts
Habitat
(Debits)**

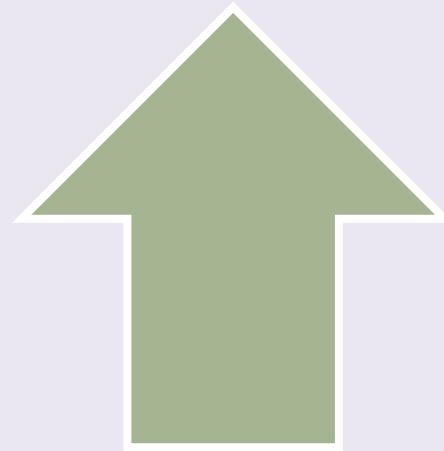
1. *Avoid*
2. *Minimize*
3. *Restore*
4. *Compensate*

Habitat Quantification Tool = GIS Method to Measure Habitat



**Land Conservation Creates Credits:
Stewardship Fund Grants
Private Land Stewardship
Public Land Stewardship**

(restoration, enhancement, preservation)



**Conservation
Actions (Credits)**

Roadmap: Focus on the HQT

- **11:10 – 11:45: Part I - Mitigation in Context**
 - Overview
 - HQT:
 - definitions and model overview
 - Journey to date
- **12:15 – 1:00: Part I Cont'd – HQT Examples**
 - Hypothetical Projects
 - In a Nutshell
- **1:15 – 1:45: Part II – Putting it all together**
 - Key concepts and take-aways

Preview:

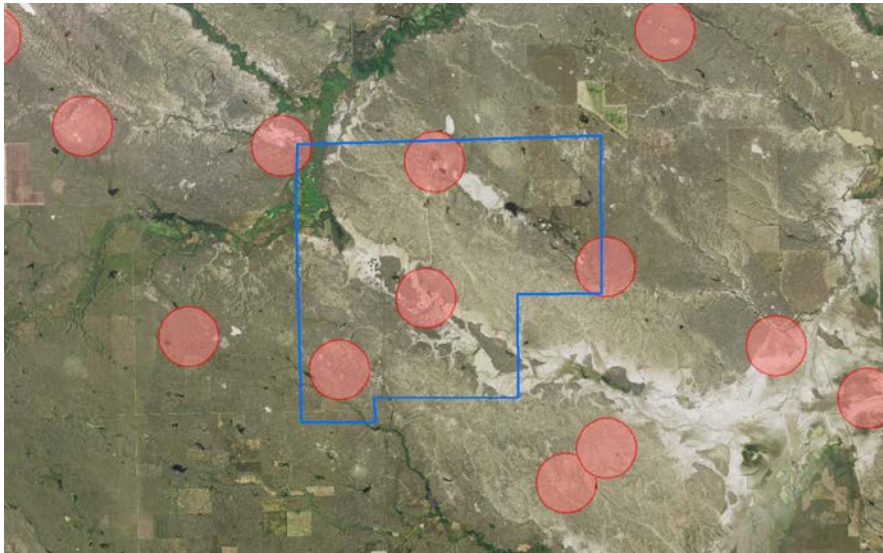
1. Location, location, location!
 - landscape scale: core vs. general vs. connectivity vs. outside
 - avoid high quality habitat
2. Project attributes matter
 - type, size, location, duration, above/below ground
 - construction, implementation, restoration
3. Consistency with Executive Order 12-2015 matters
 - avoid, minimize, restore, compensate
4. Ultimately, degree to which hierarchy followed drives:
 - HQT results
 - informs business decisions and incentives voluntary conservation
 - final mitigation obligation

Hypotheticals: Methodology

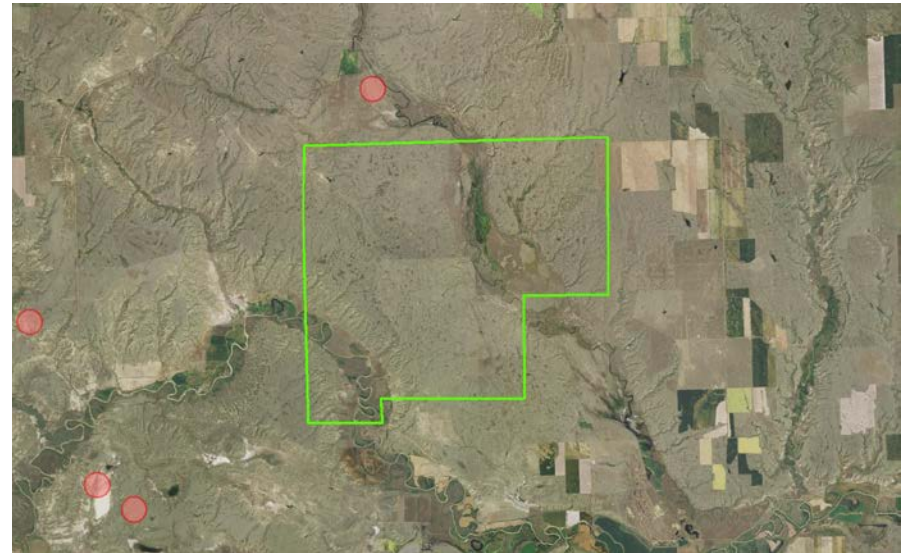
1. Program created hypothetical projects
 - informed by actual projects
 - illustrate important concepts and what we've learned so far
 - only have capability to do simple geometry presently
 - geometry simulates
 - conservation easement
 - different development project types, project attributes, and sizes
2. Applied present HQT baseline map (still need to unpack this)
3. Applied appropriate buffers, plausible duration for life of project (construction, operations, reclamation)
4. Results: raw HQT scores (no Guidance document multipliers today)
5. Since still working, HQT model will evolve and results may change

Hypothetical Conservation Easement

- 18,000 acres
- Phillips County
- assume 100-year duration
- aerial image with lek NSOs
 - lek density higher in core habitat



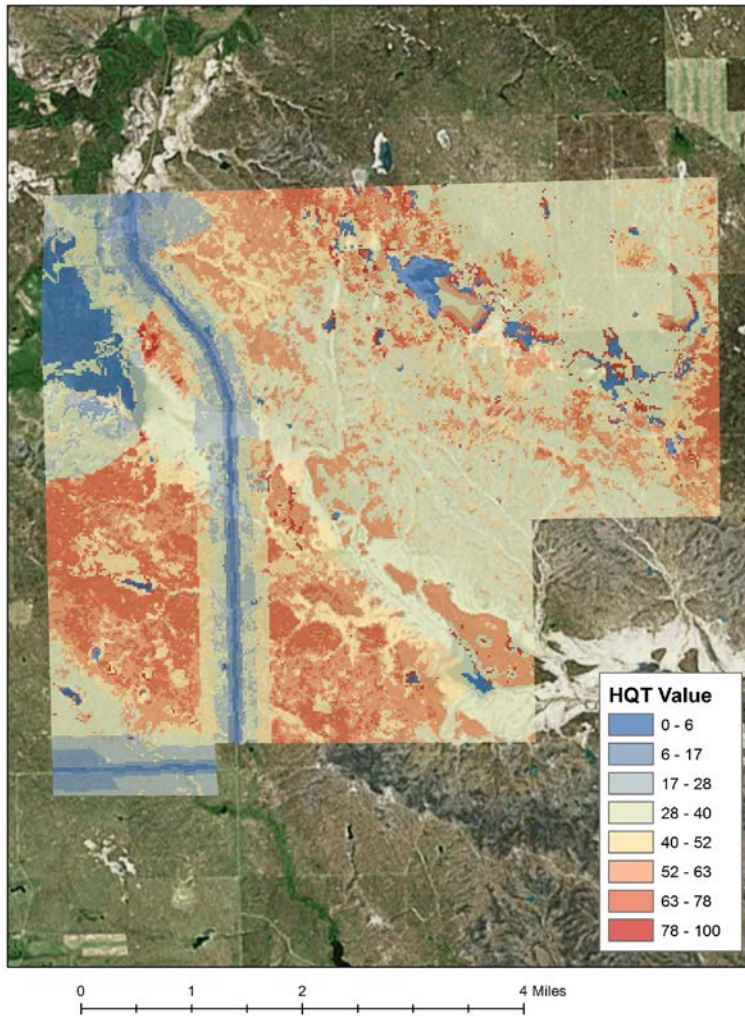
Core Area



General Habitat

Hypothetical Conservation Easement - HQT Maps

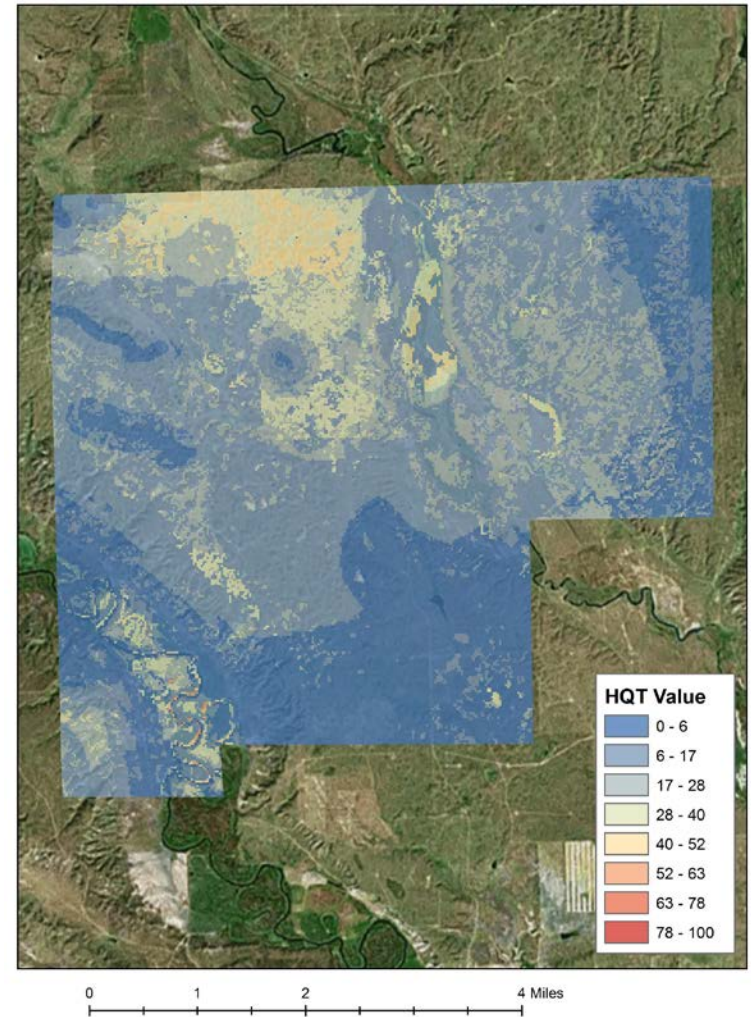
Conservation Easement - Core Habitat



HQT Raw Score:

773,049 functional acre credits, life of project (100 yrs)

Conservation Easement - General Habitat

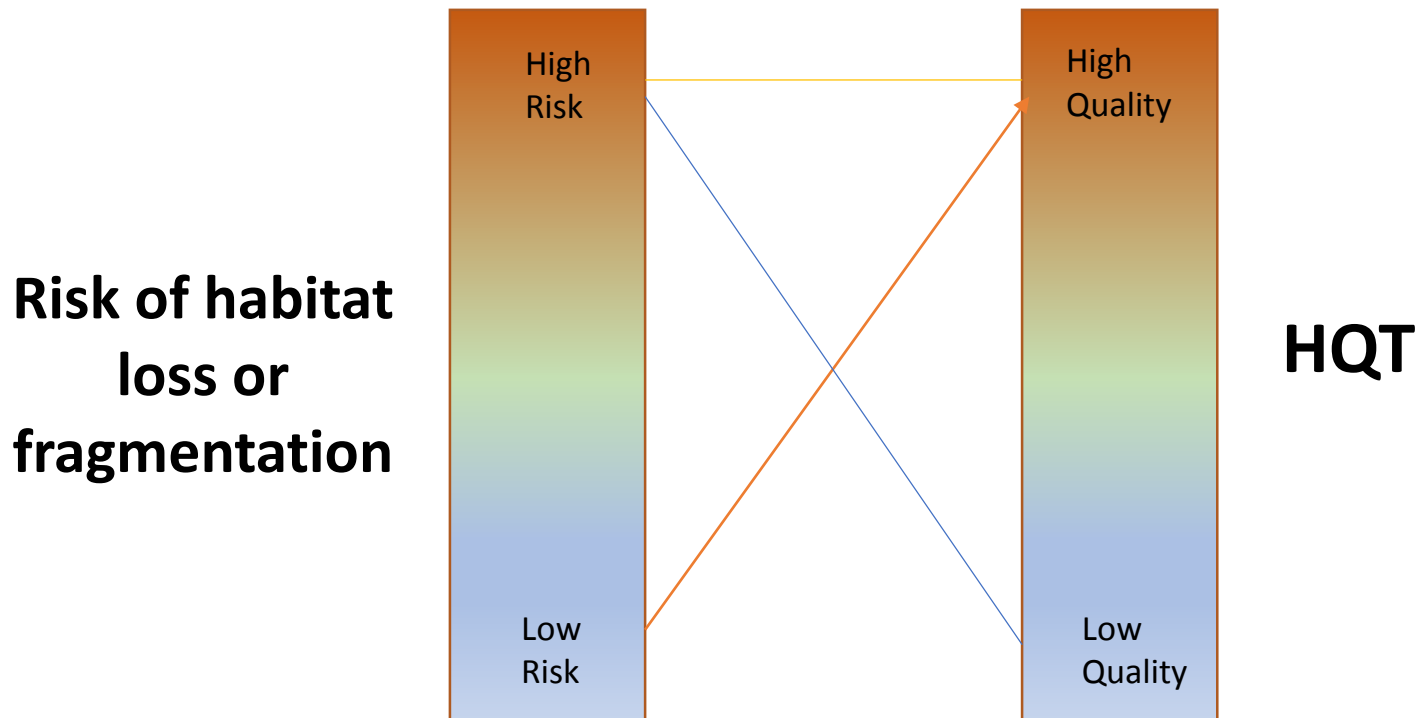


HQT Raw Score:

247,573 functional acre credits, life of project (100 yrs)

What kind of projects should MSGOT fund?

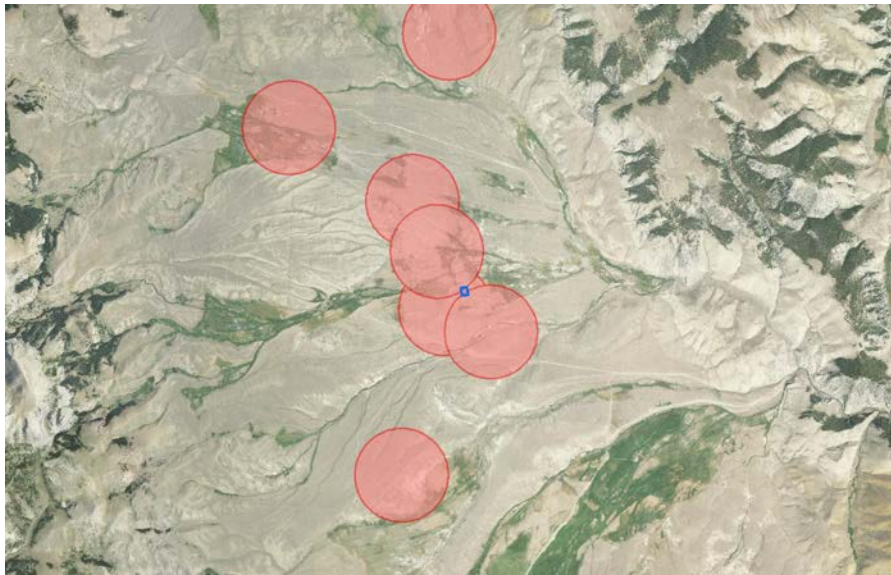
Interaction Between Habitat Quality and the Number of Credits that could be marketed from a credit site



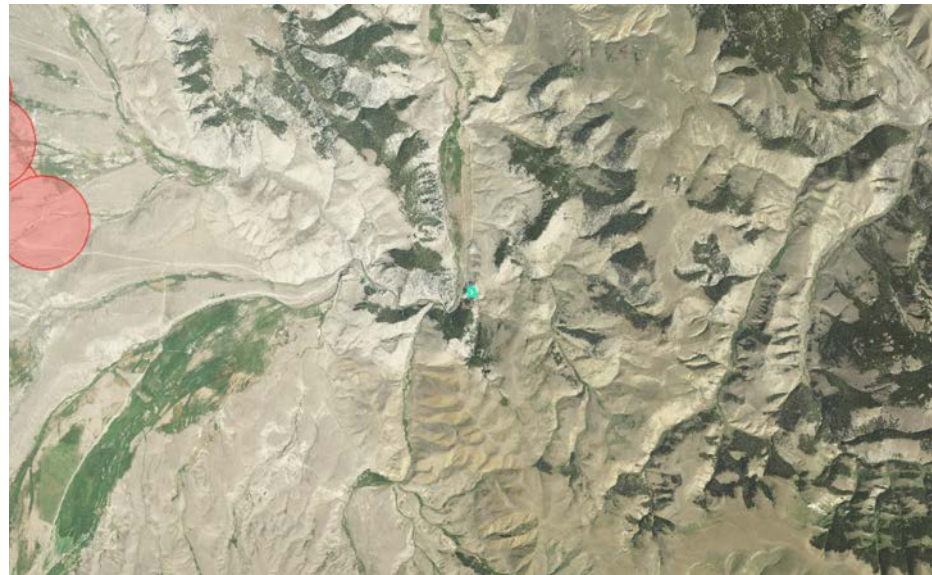
Best use of Stewardship Funds: high quality habitat with high risk of development

Hypothetical Mining

- 5-acre gravel pit, hard rock or even bentonite
- Beaverhead County
- 10-year construction/operation phase
- 75 years until reclamation phase complete



Core Area

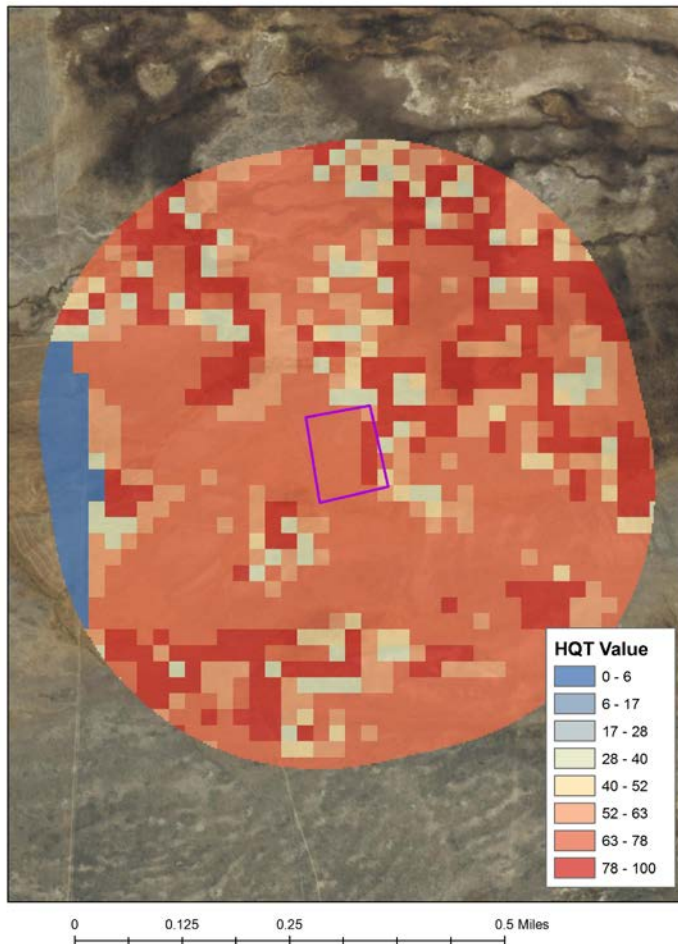


General Habitat

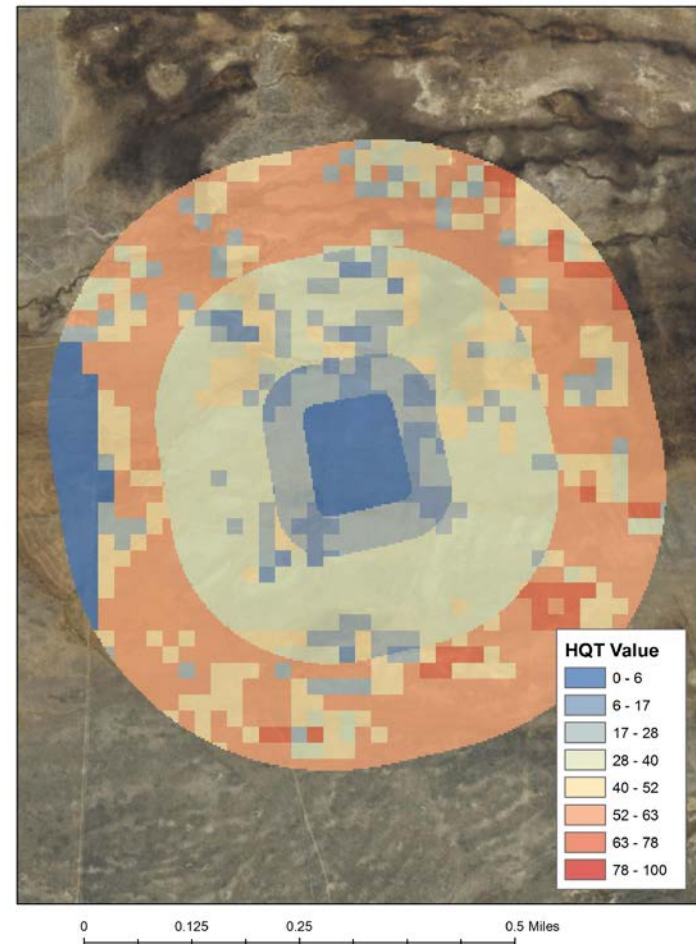
Hypothetical Mining – Core Area

- High baseline values (left) mean high quality habitat
- Construction and operations (right): direct and indirect impacts
- Raw HQT score, life of project: 869 debits

BaselineHQT - Gravel Pit - Core Habitat



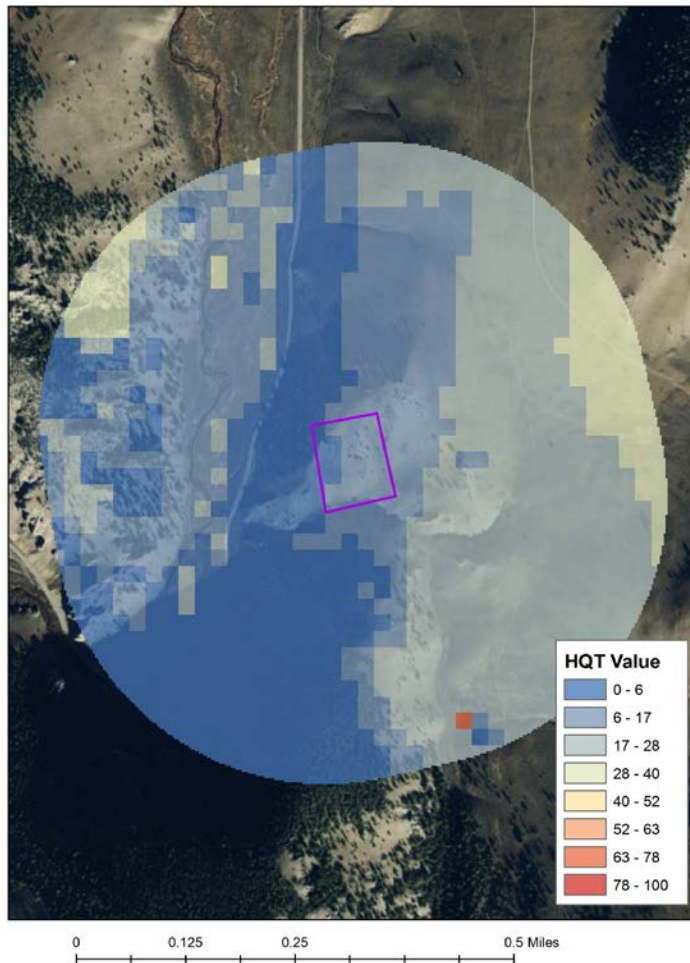
Operations Phase - Gravel Pit - Core Habitat



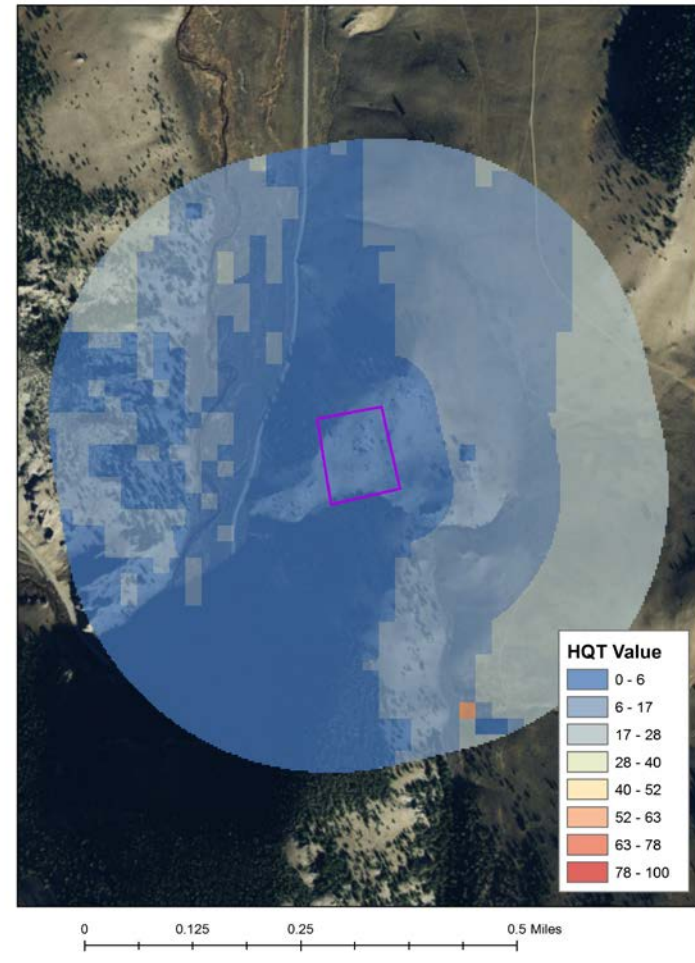
Mining – General Habitat

- Low baseline values (left) mean low quality habitat
- Construction and operations (right): direct and indirect impacts
- Raw HQT score, life of project: 161 debits

BaselineHQT - Gravel Pit - General Habitat

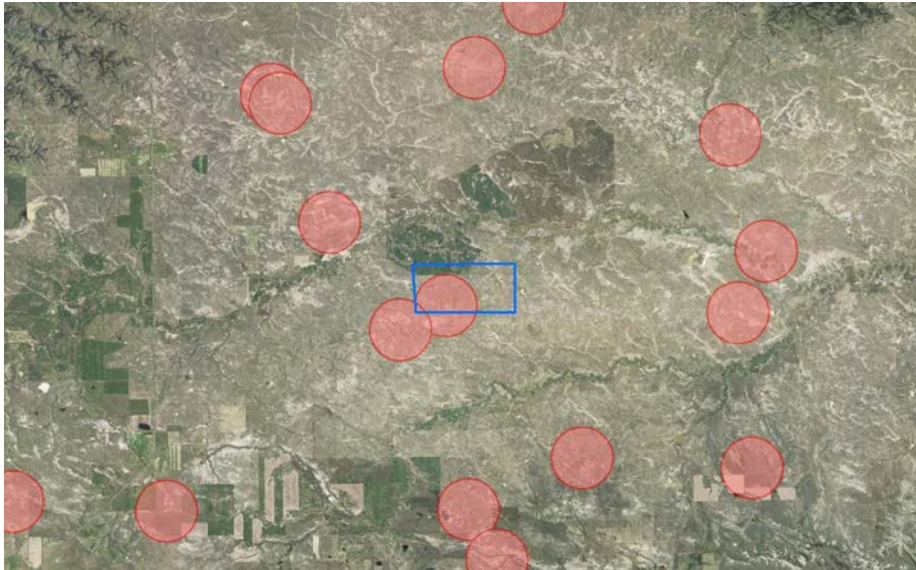


Operations Phase - Gravel Pit - General Habitat

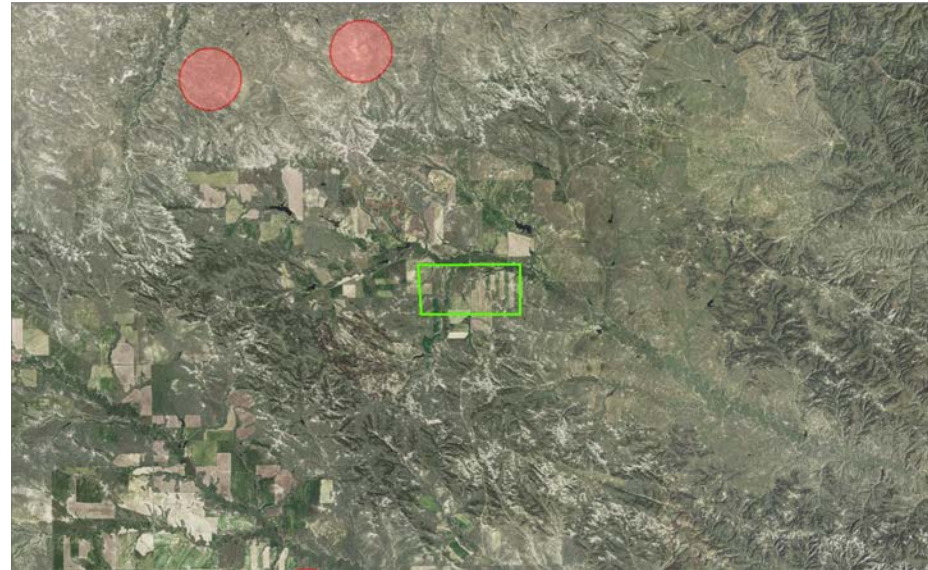


Hypothetical Energy - Solar

- 1000 acre solar farm
- Phillips County
- 50-year construction/operation phase
- 75 years until reclamation phase complete



Core Area

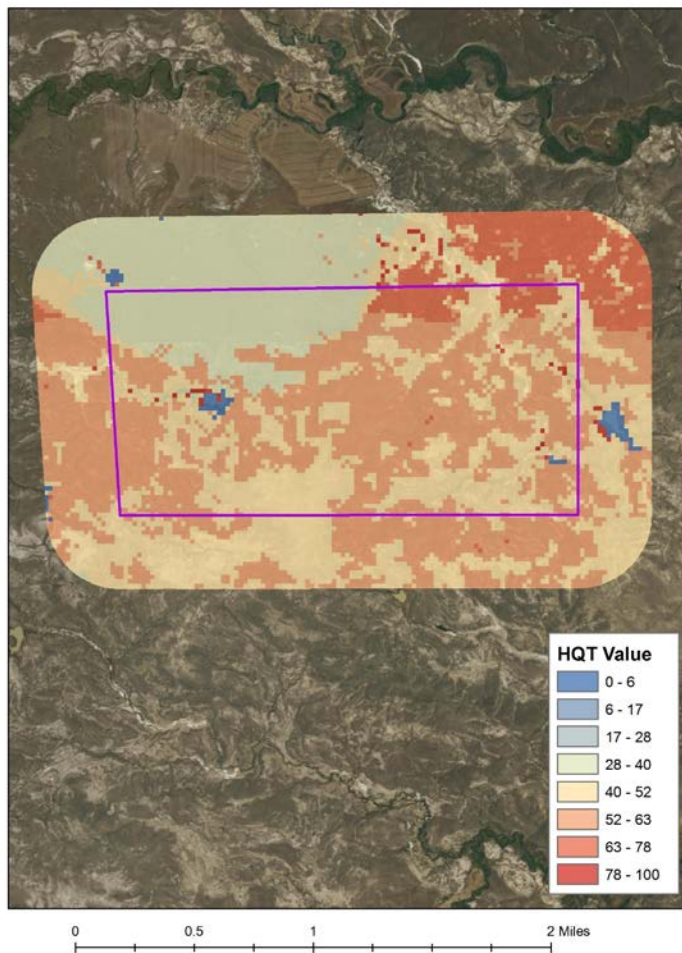


General Habitat

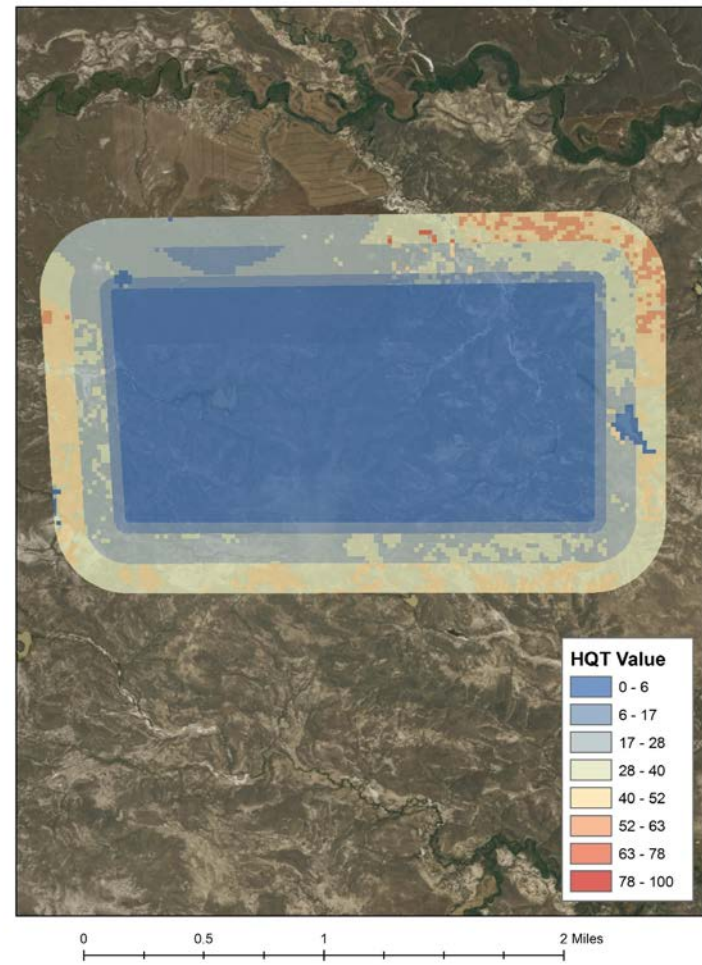
Hypothetical Energy – Solar: Core Area

- High baseline values (left) mean high quality habitat
- Construction and operations (right): direct and indirect impacts
- Raw HQT score, life of project: 66,921 debits

BaselineHQT - Solar Farm - Core Habitat



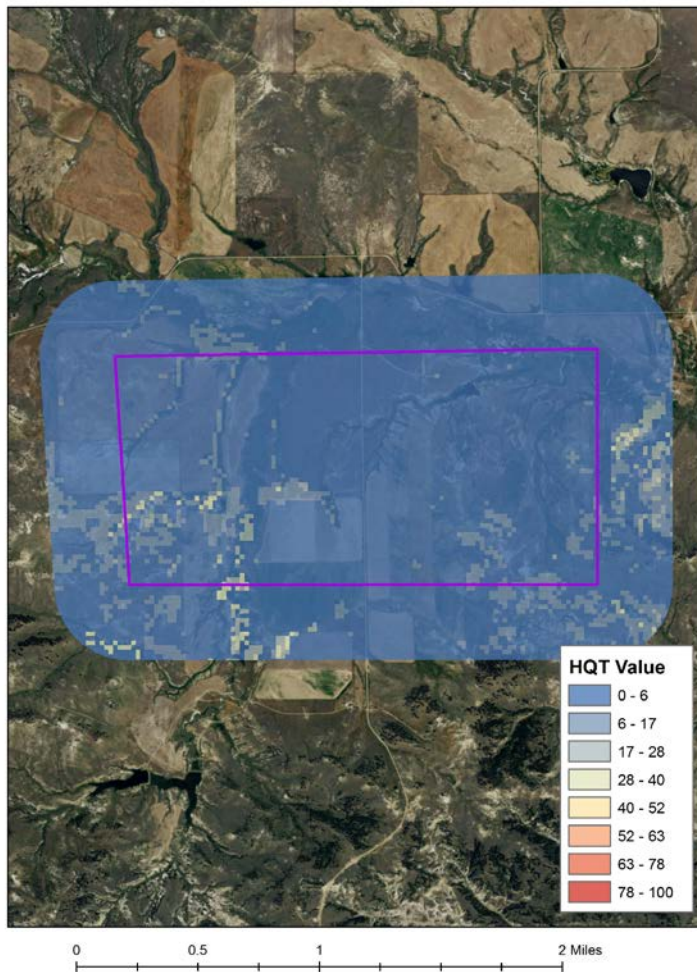
Operations Phase - Solar Farm - Core Habitat



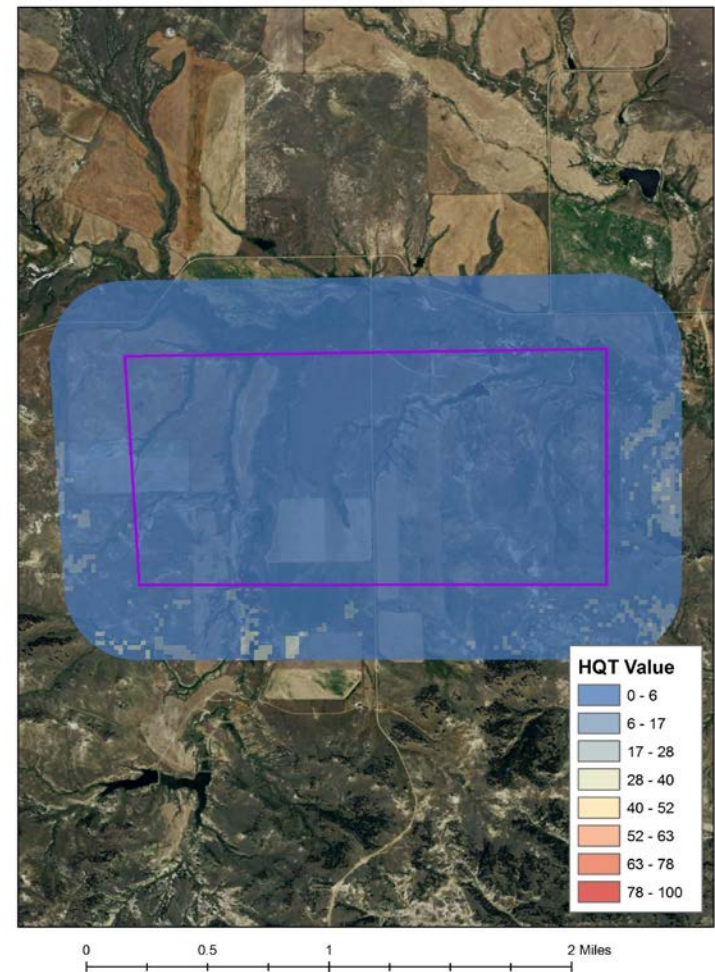
Hypothetical Energy – Solar: General Habitat

- Low baseline values (left) mean low quality habitat
- Construction and operations (right): direct and indirect impacts
- Raw HQT score, life of project: 3,300 debits

BaselineHQT - Solar Farm - General Habitat

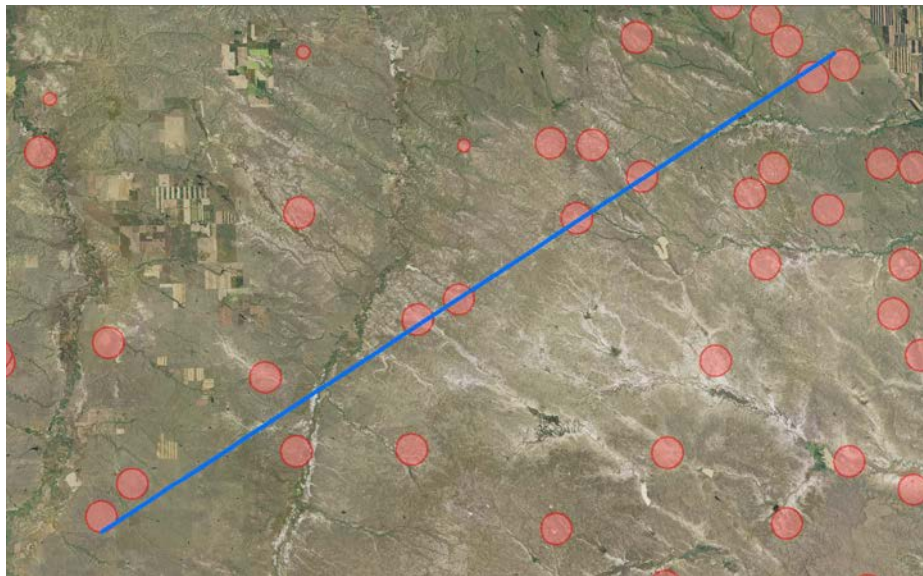


Operations Phase - Solar Farm - General Habitat



Hypothetical Infrastructure – Pipeline (major)

- 30 miles long, 200 feet wide
- Valley and Phillips County
- 1-year construction / operation phase: buried feature
- 75 years until reclamation phase complete



Core Area

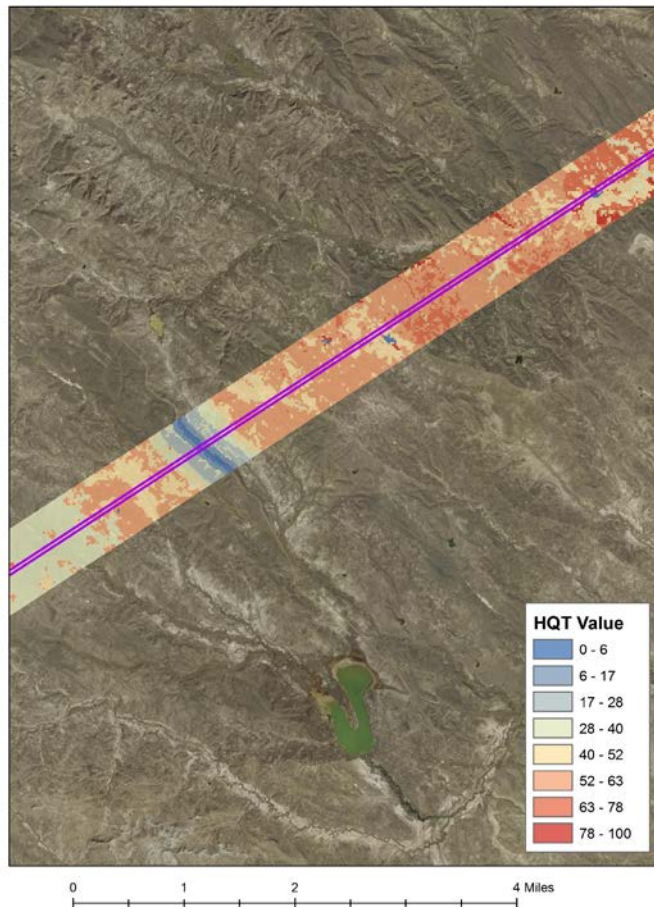


General Habitat

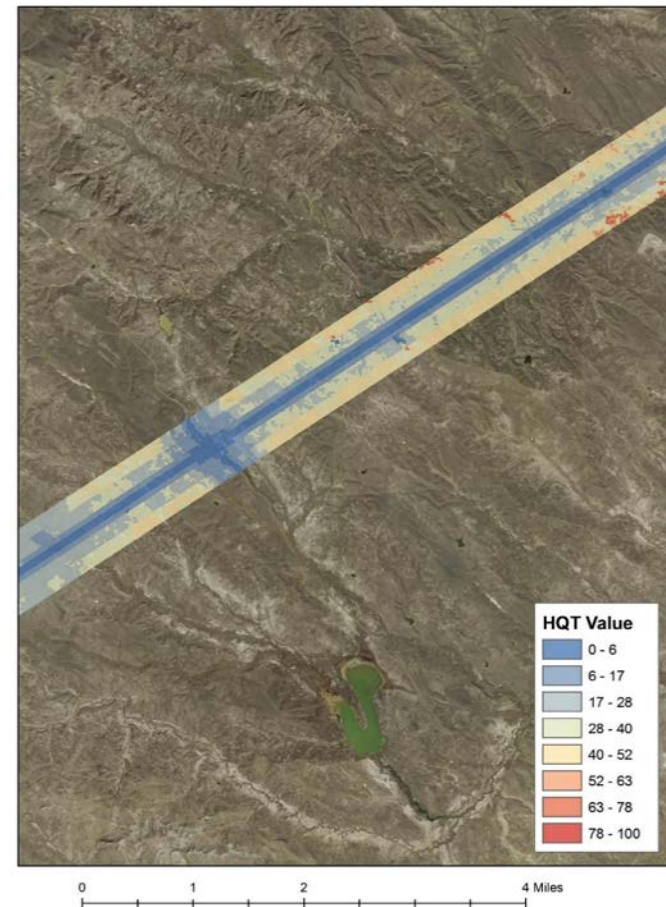
Hypothetical Infrastructure – Pipeline (major): Core Area

- High baseline values (left) mean high quality habitat
- Construction and operations (right): direct and indirect impacts
- Raw HQT score, life of project: 14,929 debits

BaselineHQT - Pipeline - Core Habitat



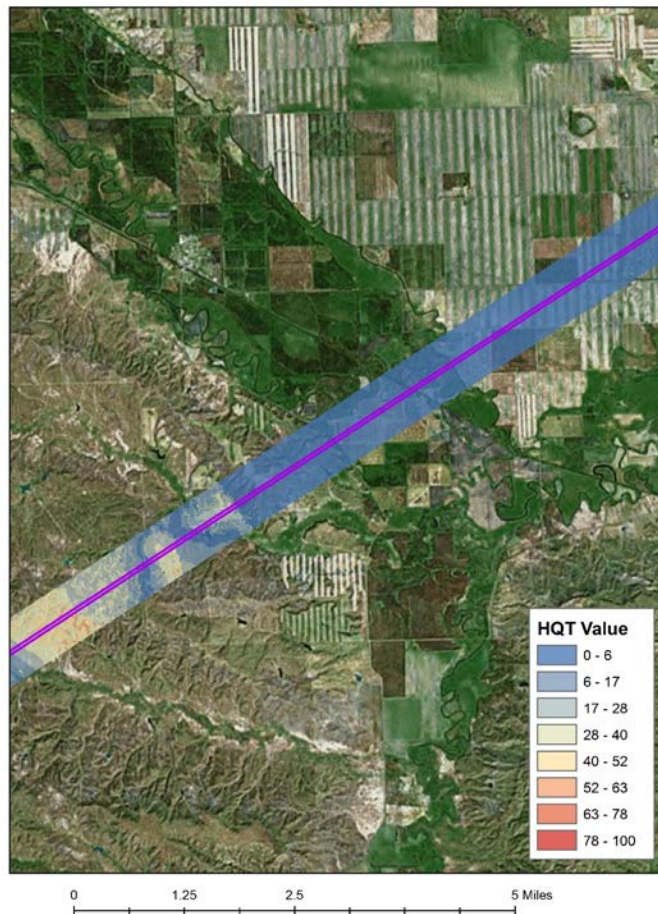
Operations Phase - Pipeline - Core Habitat



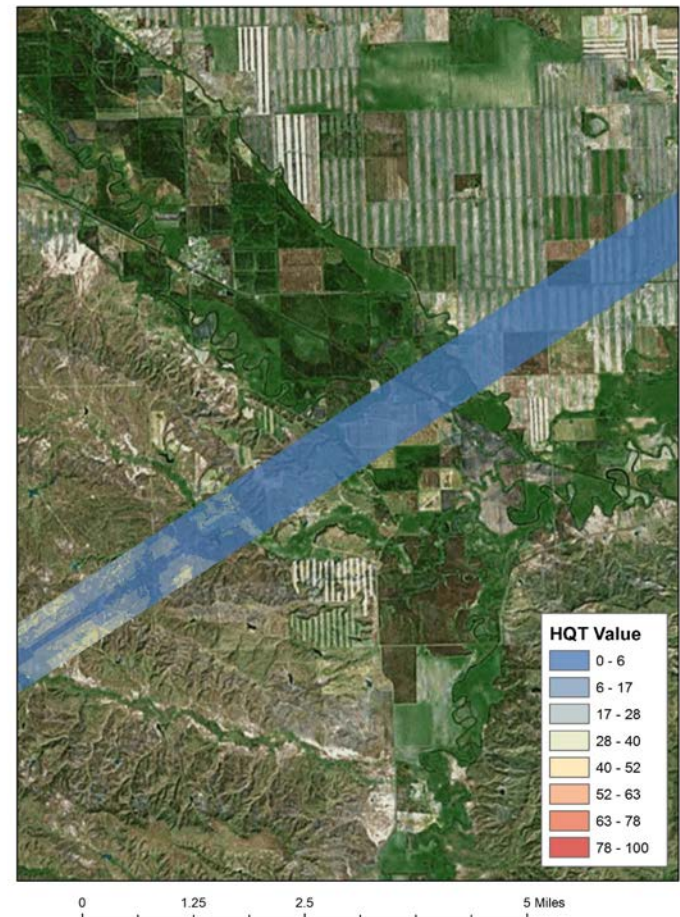
Hypothetical Infrastructure – Pipeline (major): General Habitat

- Low baseline values (left) mean lower quality habitat
- Construction and operations (right): direct and indirect impacts
- Raw HQT score, life of project: 2,645 debits

BaselineHQT - Pipeline - General Habitat

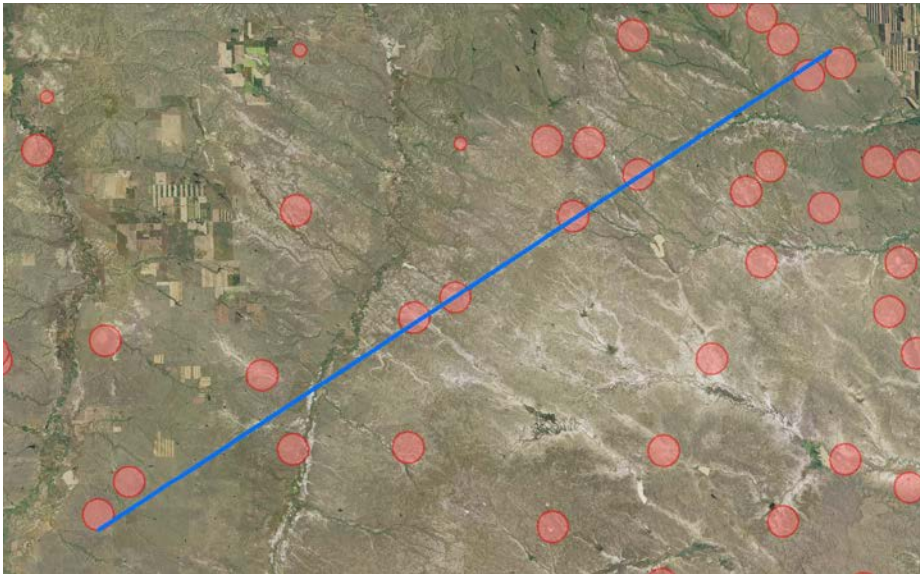


Operations Phase - Pipeline - General Habitat



Hypothetical Infrastructure – Transmission Line

- 345 kV line
- 30 miles long, 200 feet wide
- Valley and Phillips County
- 100-year construction/operation phase: above ground feature
- 75 years until reclamation phase complete



Core Area

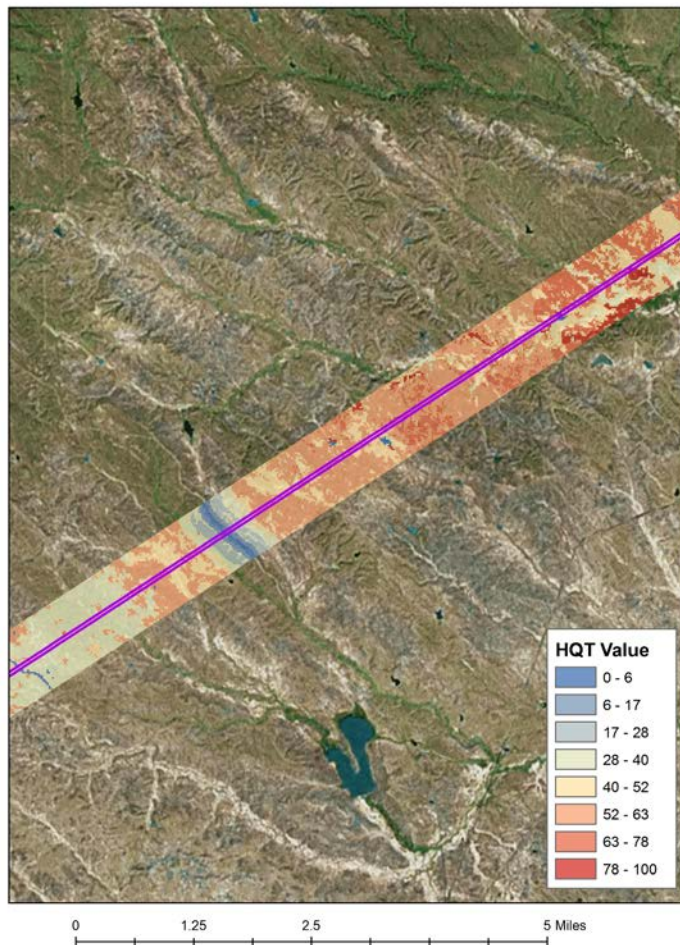


General Habitat

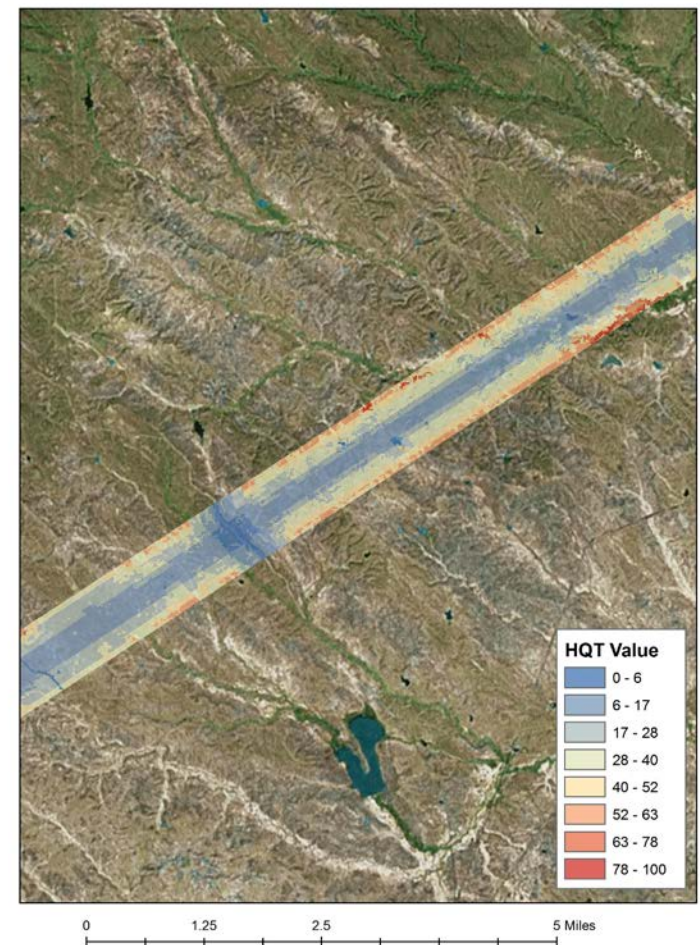
Hypothetical Infrastructure – 345 kV Transmission Line: Core Area

- High baseline values (left) mean higher quality habitat
- Construction and operations (right): direct and indirect impacts
- Raw HQT score, life of project: 384,667 debits

BaselineHQT - Transmission Line - Core Habitat



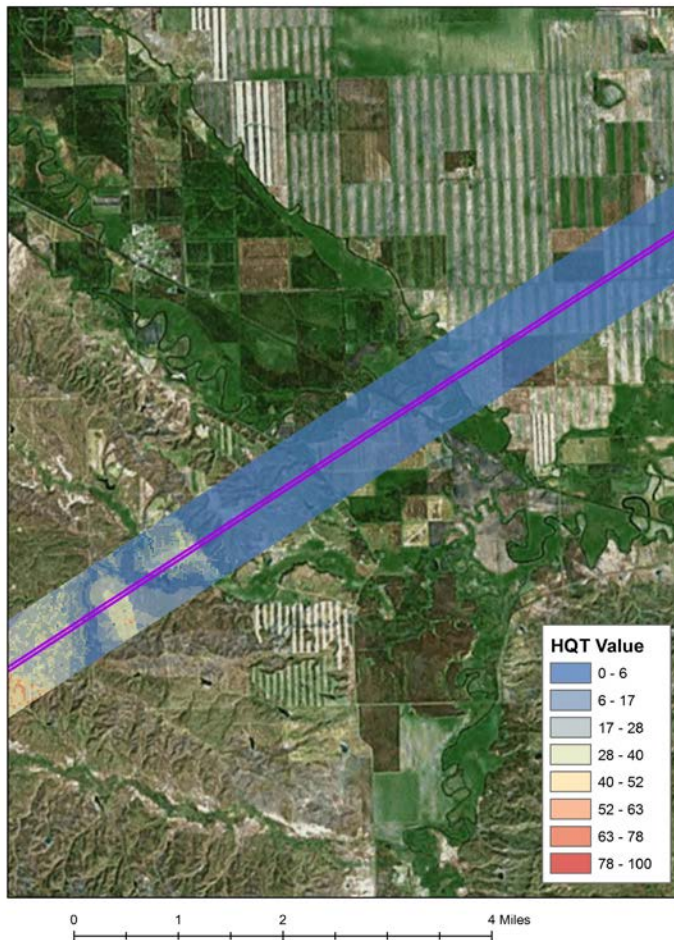
Operations Phase - Transmission Line - Core Habitat



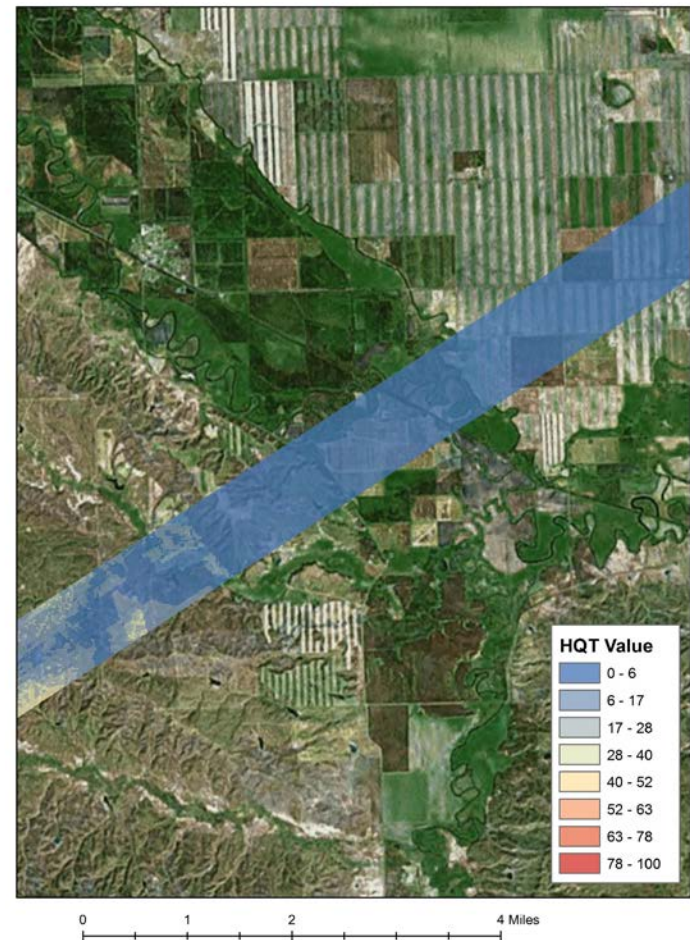
Hypothetical Infrastructure – 345 kV Transmission Line: General Habitat

- Lower baseline values (left) mean lower quality habitat
- Construction and operations (right): direct and indirect impact
- Raw HQT score, life of project: 73,031 debits

Baseline HQT - Transmission Line - General Habitat



Operations Phase - Transmission Line - General Habitat



Nutshell: HQT Credit Side

1. Location, location, location!

- highest HQT scores in core habitat

2. Raw HQT score can be a big number

- single easement could offset > 1 development project, but depends on the easement and the development project

3. Perpetual conservation easement is the gold standard

- “avoided” habitat loss & fragmentation = CE terms
 - no cultivation, subdivision, other development
- for HQT “life of project” purposes, suggest 100 years

Nutshell – HQT Debit Side:

1. Location, location, location!
 - landscape scale: core vs. general vs. connectivity vs. outside
 - HQT scores highest in core - avoid high quality core habitat
2. Project attributes matter
 - type, size, location, duration, above/below ground
 - some inherently have more impacts – HQT scores higher and proportional
3. Site-Specific, project scale consistency with EO 12-2015 matters
 - avoid, minimize, restore, compensate
 - Increased consistency keeps potential for modifiers low
4. Ultimately, degree to which hierarchy followed drives:
 - HQT results
 - informs business decisions and incentivizes voluntary conservation
 - determines final mitigation obligation

Roadmap: Focus on the HQT

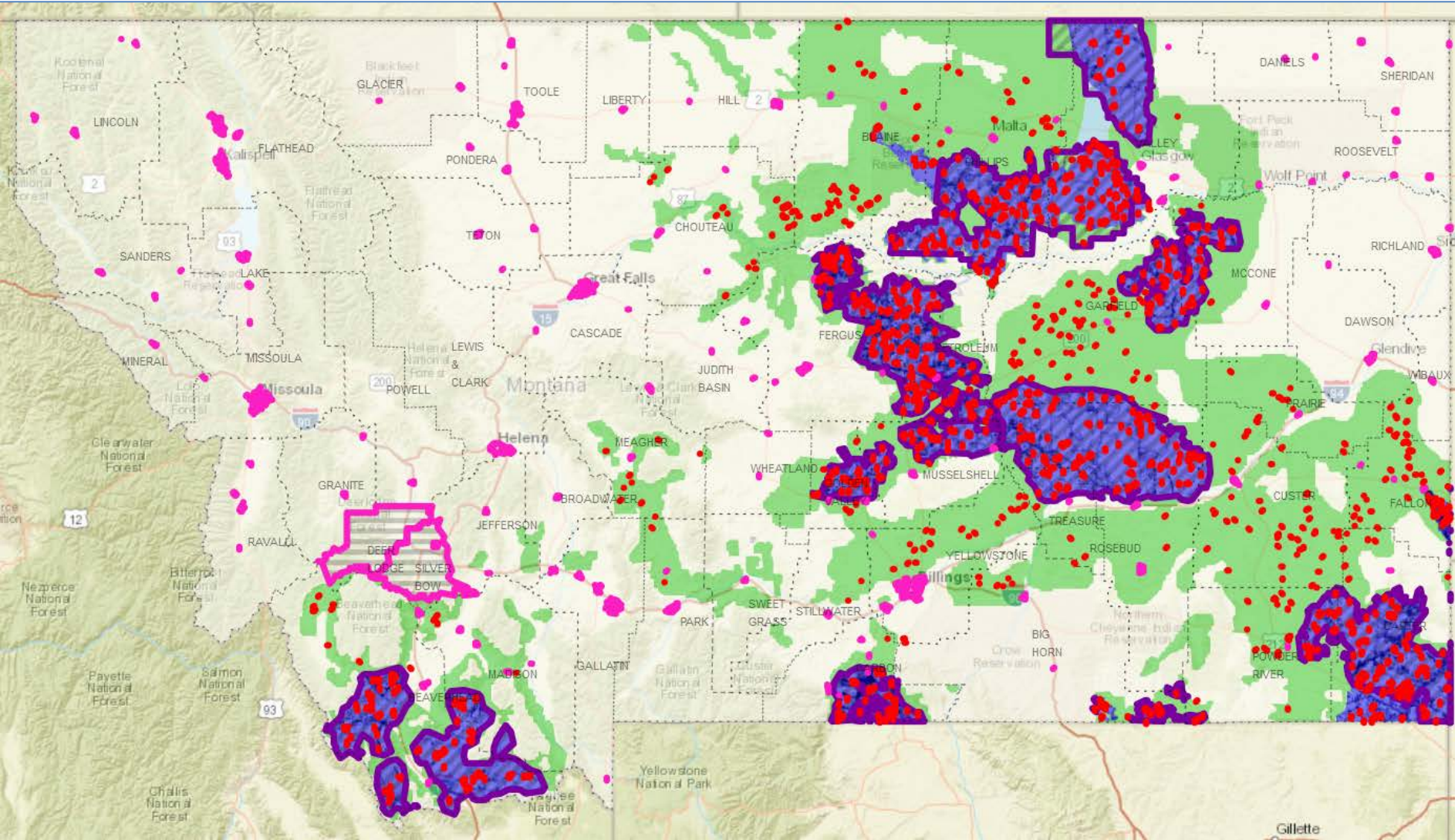
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 - Overview
 - HQT:
 - definitions and model overview
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- **12:15 – 1:00: Part I Cont'd – HQT Examples**
 - Hypothetical Projects
 - Key concepts in a nutshell
- **1:15 – 1:45: Part II – Putting it all together**
 - Key concepts in a nutshell

Preview:

1. Core Area Strategy premised on idea that some habitats are higher quality, more valuable to SG and more important to conserve
 - mitigation should incentivize conservation by developers through higher obligations in core areas
 - mitigation should incentivize conservation by credit providers in core areas because more credits can be created per unit area
2. Both landscape and site-specific scales are ecologically relevant to sage grouse... and so are the EO's general guidance and stipulations
3. Mitigation balances development and conservation
4. Timely, effective mitigation is fundamental to sage grouse conservation

Core Areas Strategy

“All Lands, all Hands”

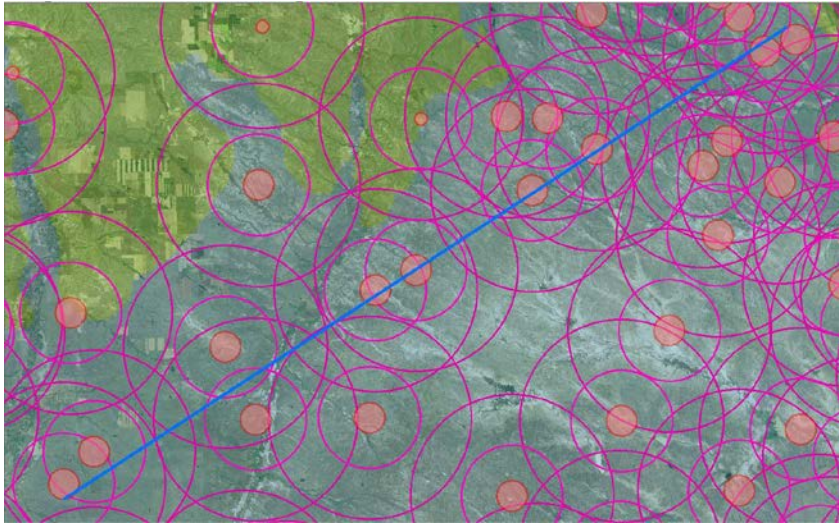


As a General Premise

- **Clear, transparent mechanisms to incentivize voluntary conservation**
 - encourage / discourage practices: development & conservation
 - 2 scales: landscape and site-specific
- **Outcomes should be predictable, provide certainty**
- **Mitigation obligations should increase proportional to impacts and their duration**
- **Potential to develop credits should increase with habitat quality**
- **Most credits will come from private lands**
 - that's where the high quality habitat is
 - must be attractive to landowners

Landscape Scale: Where are you in sage grouse country?

- Location, location, location!
- Core areas have higher HQT baseline scores; obligation will be higher
- Hierarchy:
 - avoid core areas; try to avoid general and connectivity
 - minimize size of project footprints (i.e. HQT: direct, indirect impacts)



Core Area Raw Score:

1. Buried Pipeline: 14,929
2. Transmission: 384,667
3. Gravel Pit: 869



General Habitat Raw Score:

1. Buried Pipeline: 2,646
2. Transmission: 73,032
3. Gravel Pit: 161

Why Landscape Scale Avoidance & Minimization Matter to a “Core Areas” Strategy

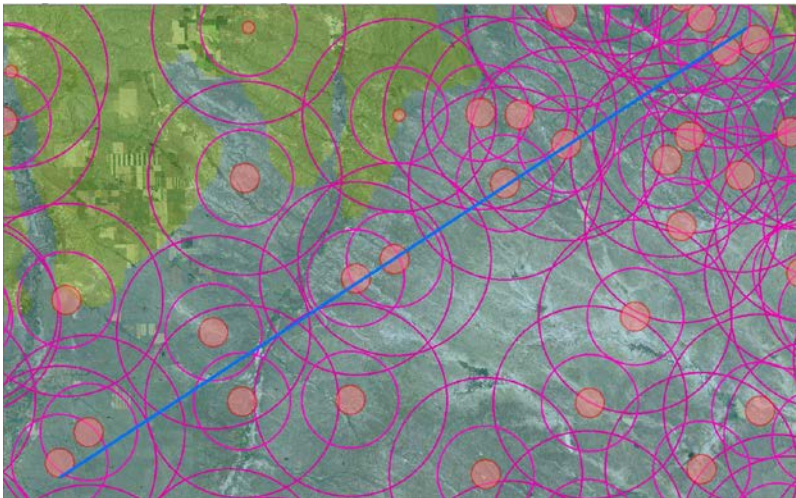
- Core Areas: best habitat left
 - habitat quality is high, HQT scores high
 - contains 75% of breeding males
 - important for long term persistence and dispersal (stepping stones)
- EO 12-2015 discourages new disturbance in core; stipps more conservative
- Any new development in core areas becomes part of the existing disturbance layer
 - habitat loss & fragmentation of remaining intact blocks
 - lowers habitat quality through time unless mitigation effective and timely

Why Landscape Scale Avoidance & Minimization Matter to a “Core Areas” Strategy

- General Habitat areas:
 - relatively few leks; spread out and isolated
 - already impacted – noticeably
 - habitat and HQT scores much lower
 - Still important for dispersal and long term persistence
- EO 12-2015 still has steps for new projects in General
- Some activities evade EO altogether: cultivation
- Increased disturbance lowers habitat quality and quantity unless mitigation is timely, effective
 - HQT base map pixel values decline through time
 - lowers mitigation obligation for next proponent
 - decreases incentive to site properly

Site Specific, Project Scale: What are you doing once you get there?

- Project type, duration, and attributes matter
 - some project types will have higher scores, no matter where they are located
 - buried pipeline vs. 345 kV transmission line vs. gravel pit
- Hierarchy and Consistency with EO stipulations matter
 - multipliers adjust the raw HQT score upward if violate stip
- Obligations higher for some project types; any project when not observing hierarchy and inconsistent with EO stip



Core Area Raw Score:

1. Buried Pipeline: 14,929 + ?
2. Transmission: 384,667 + ?



General Habitat Raw Score:

1. Buried Pipeline: 2,646 + ?
2. Transmission: 73,032 + ?

Why Site-Specific Project Avoidance & Minimization Matter: EO Effectiveness

- If no incentive to be consistent with the EO, no need to try
 - habitat loss and fragmentation not curtailed
 - impacts to habitat, leks, and population
- EO stipulations are a compromise, not as conservative as science suggests they should be
 - mitigation helps make up for that
- Recognizes different stipulations by
 - habitat importance and quality (core vs. general)
 - project type
- Lek-centric for a reason: bird ecology

Coming Full Circle:

- One tool, among many, to incentivize conservation using market forces
 - developers make business decisions to keep costs as low as possible
 - credit providers / private landowners get paid for doing conservation
- Helps keep at-risk species safely away from the edge of ESA listing: candidate, threatened, or endangered
- Balance conservation and economic development activities
- HQT is the scale of measurement; important we get it right

Suggested Next Steps:

- DNRC GIS Team continues work and completes a fully integrated, automated HQT model
- Pilot testing complicated projects and Stakeholder opportunity if desired
- January: MSGOT Special Focus on Guidance
 - Guidance document itself
 - multipliers and other important unresolved issues
 - Guidance and HQT working together
- Finalize documents
- Propose rules: general, “circular” approach and point to the documents

NOTE: Originally Presented to MSGOT on June 2, 2017



Photo source: montanaotg.com

Montana Sage-Grouse Mitigation Principles and Processes

Sara O'Brien
June 2, 2017



WILLAMETTE PARTNERSHIP



Overview

1. Mitigation: Intent and Challenges
2. Key Principles
3. Proposed Process



Mitigation: Definitions

"Mitigation sequence" means taking steps to:

- **avoid** impacts by not taking a certain action or parts of an action;
- **minimize** impacts by limiting the degree or magnitude of the action and its implementation;
- **rectify** impact by repairing, rehabilitating, or restoring the affected environment;
- **reduce** or eliminate impact over time by preservation and maintenance operations during the life of the action; and
- **compensate** for impact by replacing or providing substitute resources or environments.



Mitigation: Definitions

"Compensatory Mitigation" means the preservation, enhancement, restoration and/or establishment of a resource to compensate for, or offset, unavoidable adverse impacts to the resource. (draft MT rule)



Photo Source: BLM MT



Mitigation: What's It Good For?

Allow development to move forward **WITHOUT** creating significant, persistent, and cumulative losses in basic ecosystem services (clean water, wildlife populations, ecosystem services, etc.)



Photo Source: BLM MT

Mitigation: Challenges

It's hard to:

- Recreate nature
- Ensure that interventions provide needed results
- Predict, measure, track, and sustain outcomes
- Anticipate how much money will be needed
- Manage risk associated with all of the above

Mitigation: Challenges



Principles of Successful Mitigation

- Strength
- Endurance
- Flexibility



Strength

- Set a clear goal and track progress
- Check to see if impacts can be reasonably avoided or minimized (mitigation hierarchy)
- Actions that would've occurred anyway shouldn't receive mitigation credit
- Pay attention to habitat quality, not just quantity



Endurance

- Mitigation should last at least as long as impacts
 - Legal: Preclude conflicting uses
 - Financial: Full-cost accounting
- Make clear who is responsible for what
- Make clear how problems will be communicated and resolved
- Make clear how agreements will be enforced



Endurance

Everything in mitigation is about risk and the management of risk. We cannot eliminate risk, we can only manage it.

- Steve Martin, US EPA



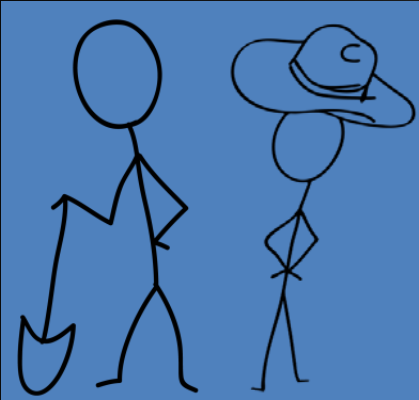
Flexibility

- Set clear standards, let people figure out how to meet them
- Look for opportunities to localize decisions and regionalize tools and information
- Don't skimp on adaptive management



Basic Moving Parts

Credits



Debits



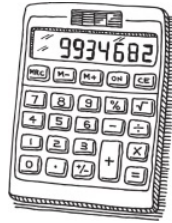
Administration



Crediting Process



Proposal



Credit
estimate



Program/
MSGOT review



Sign mitigation
instrument



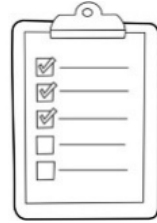
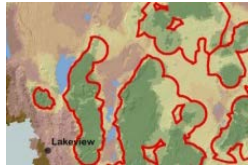
Implementation

- Protection
- Restoration
- Management



Credit and fund
release based on
agreed-upon criteria

Debiting Process



Propose
impact



Program/MSGOT
evaluation



Calculate and verify
credit need



Purchase or
develop credits



Credits tracked
through registry,
must cover life of
impact

Evaluate siting and
design options

Questions?

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NOTE: Originally Presented to MSGOT on June 2, 2017

Montana Greater Sage-Grouse Habitat Quantification Tool (HQT)



SWCA
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Overview

- ▶ Why Develop an HQT?
- ▶ Discuss HQT Development
- ▶ Describe HQT Use and Outputs

Basic Moving Parts

Credits



The HQT is the common currency used to balance the mitigation ledger

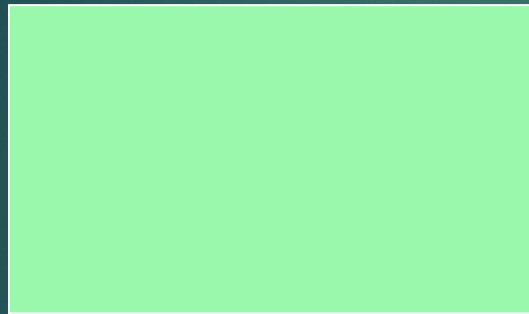
Debits



Administration



Not all Habitat is Created Equally



20 acres of this
habitat...

=



...may have the
same value as 10
acres of this habitat

- ▶ Need to account for differences in habitat quality and functionality
- ▶ A common definition of habitat function needs to be used on both the debit and credit sides of the mitigation ledger

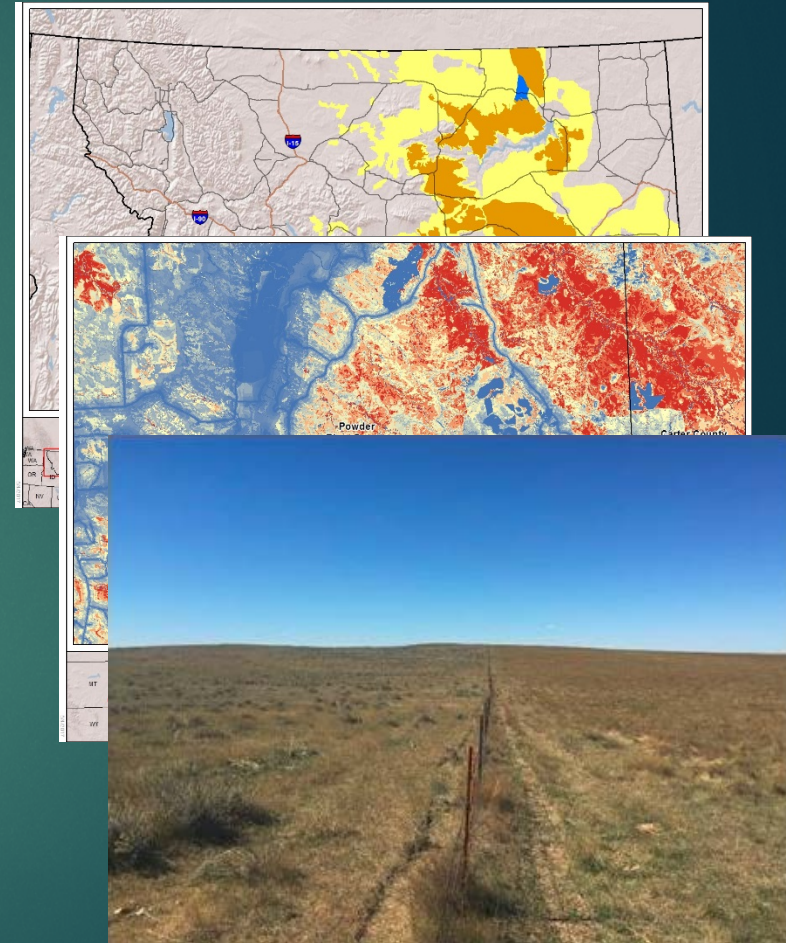
The HQT Follows A Very Simple Process

- ▶ Define baseline habitat conditions
- ▶ Identify when and where habitat losses or gains will occur
- ▶ Quantify those gains or losses over the life of a project



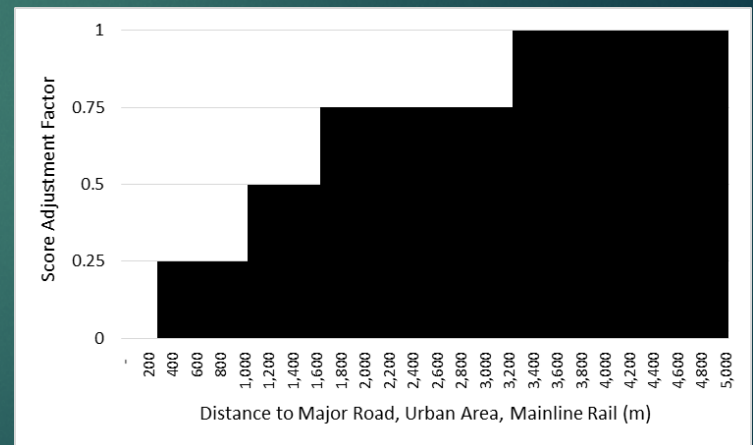
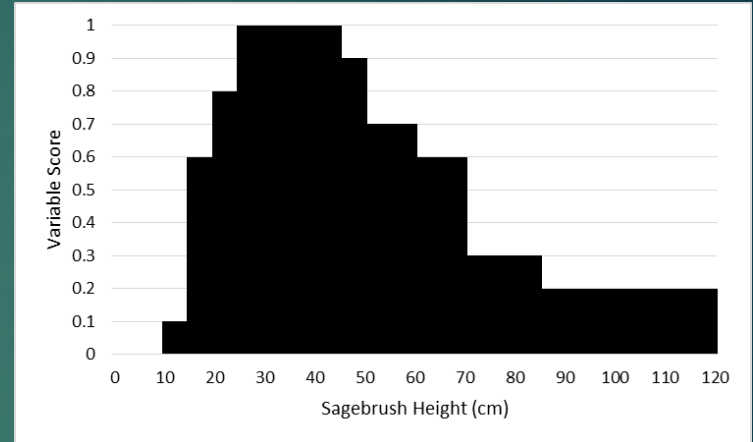
Multiple Scales of Assessment

- ▶ Broad Scale – Am I in Core, General, or Connectivity Habitat?
- ▶ Landscape Scale – What are the habitat conditions in the landscape surrounding my project?
- ▶ Site Scale – What are the specific characteristics of the habitat on my project site?

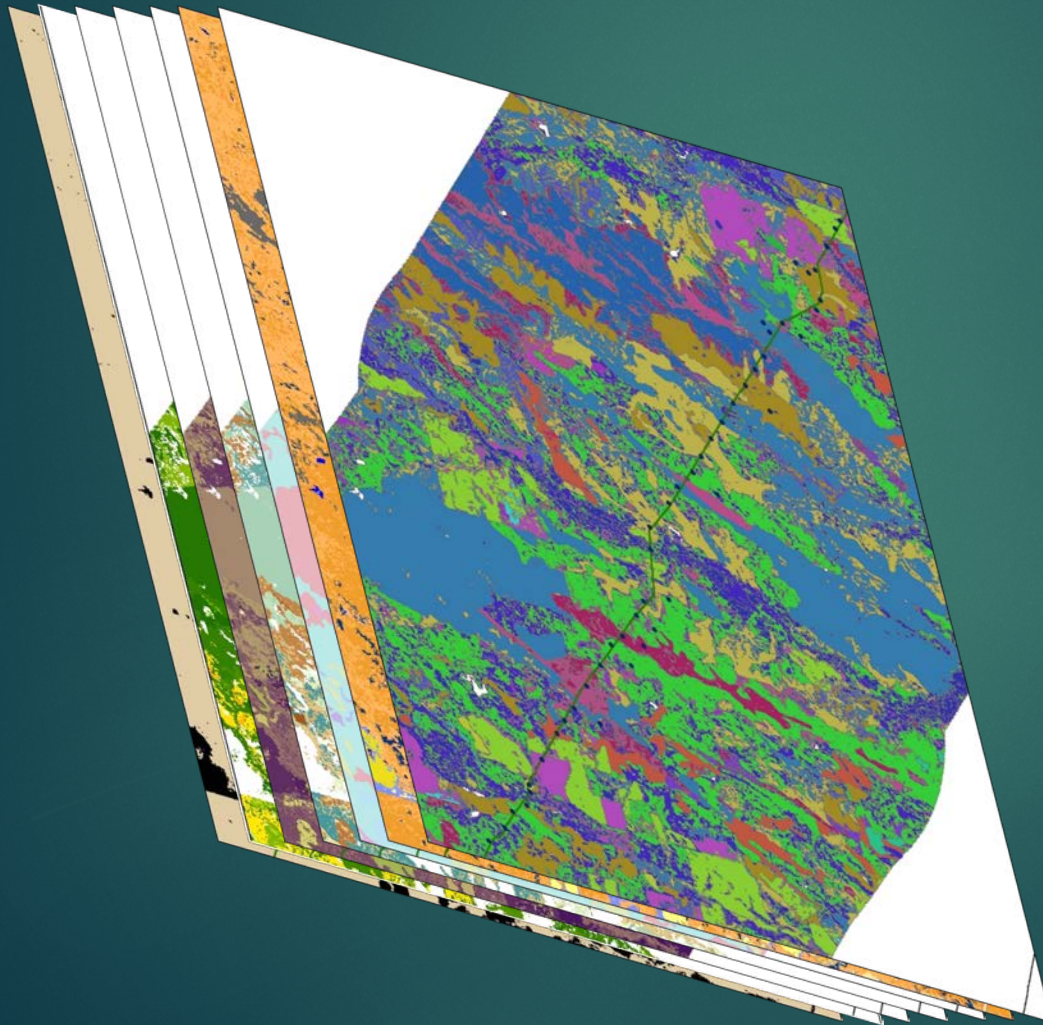


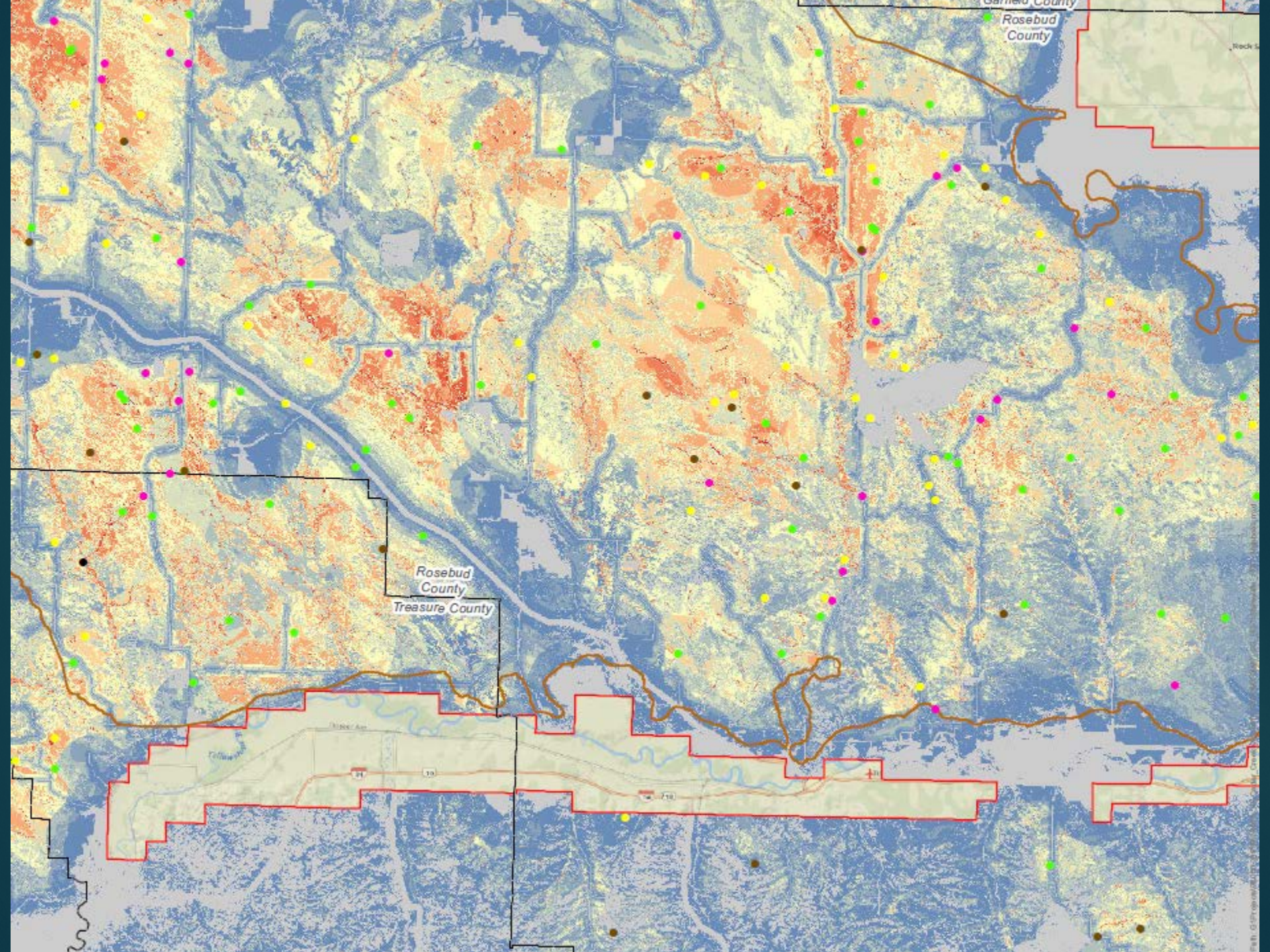
Defining Baseline Conditions

- ▶ Uses characteristics of seasonal habitats
 - ▶ Breeding and nesting
 - ▶ Brood-rearing
 - ▶ Winter
- ▶ Quantifies relationships between these characteristics and habitat quality
- ▶ Accounts for natural and anthropogenic modifiers of habitat quality



Habitat Characteristics Combined to Quantify Baseline





Using the HQT – Broad Scale

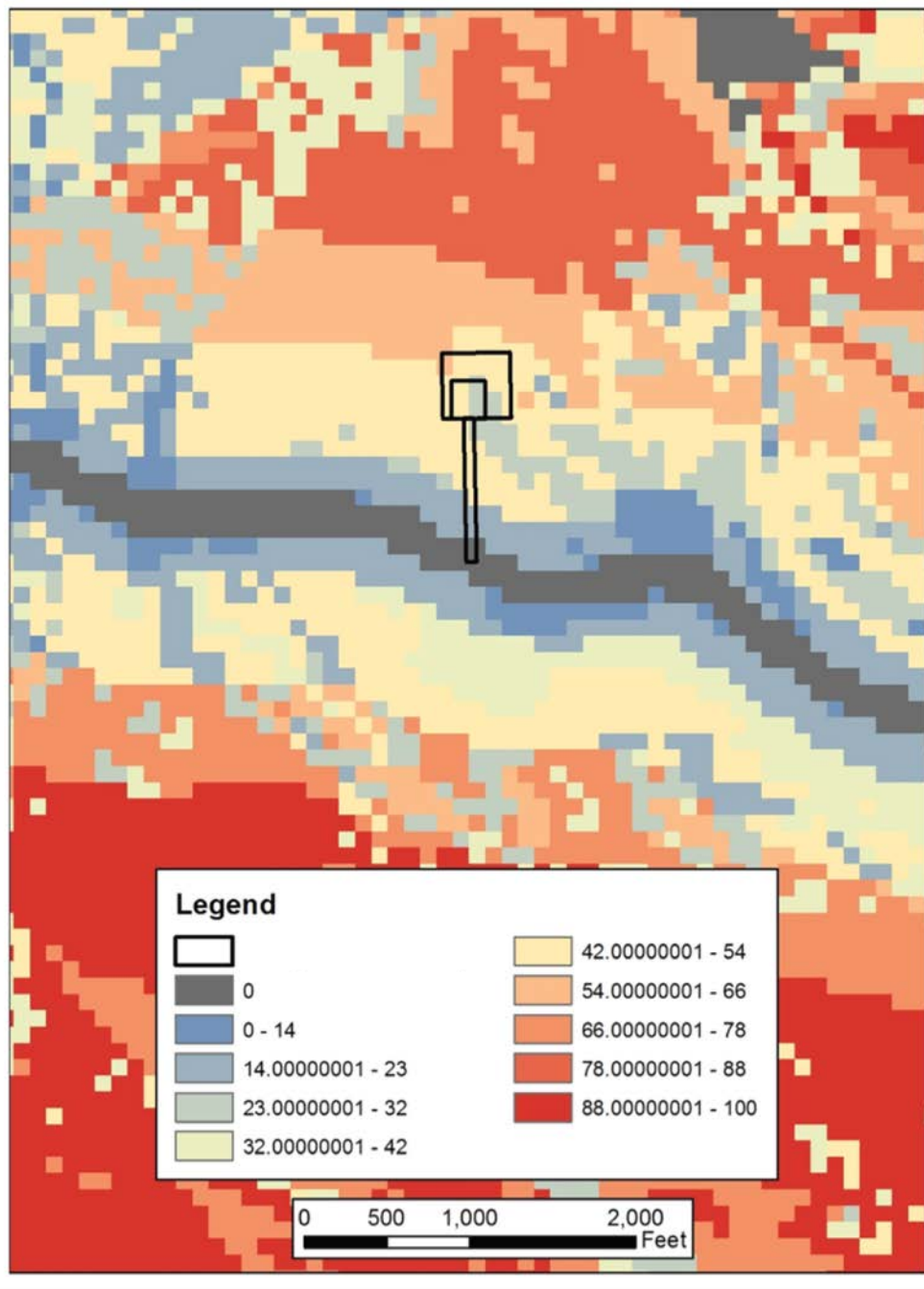
- ▶ Is my project located in core, general, or connectivity habitat?
- ▶ If no, your project does not require mitigation for sage-grouse
- ▶ If yes, project may require mitigation and should proceed to the landscape scale assessment process

Using the HQT – Landscape Scale

- ▶ Define your project footprint and project type
- ▶ Quantify the project assessment area
- ▶ Calculate the baseline habitat function in the assessment area
- ▶ Measure losses or gains of habitat function over the life of your project
- ▶ Losses or gains of habitat function provide the base values for calculating debits and credits

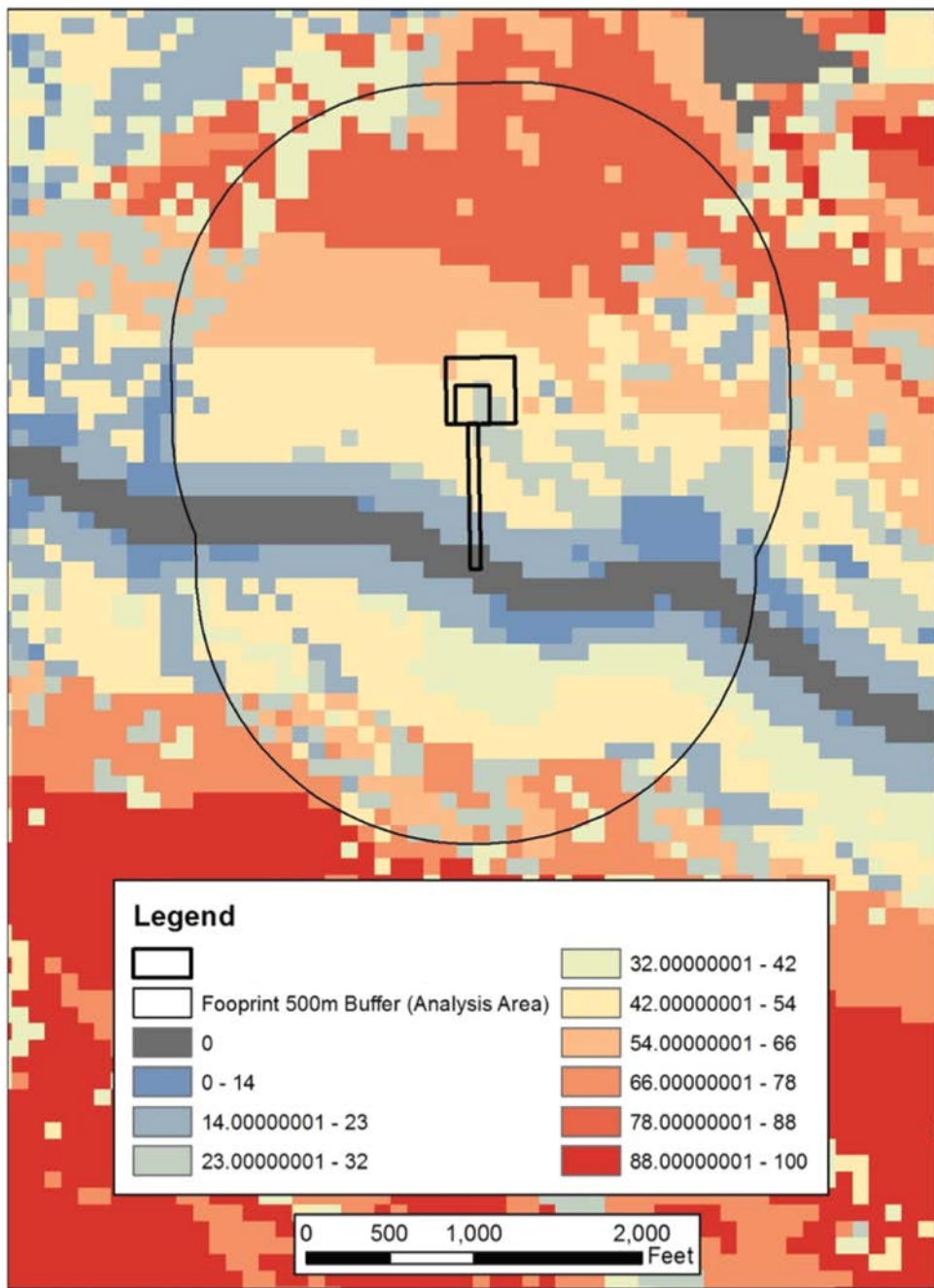
Project Definition

- 4 acre initial disturbance with 1 acre access road adjacent to existing highway
- 1 acre long-term disturbance with 1 acre access road
- Moderate habitat function



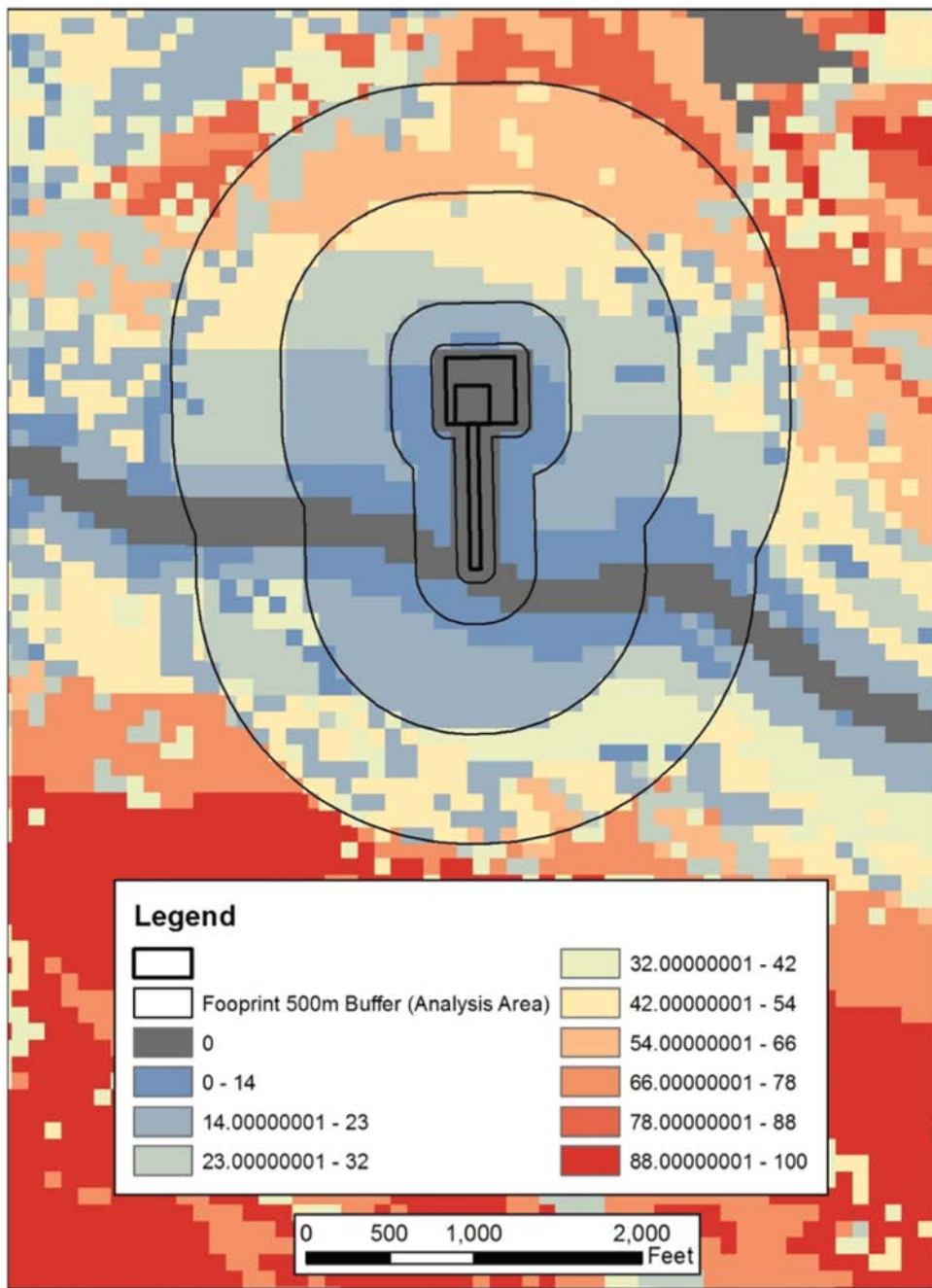
Assessment Area

- Direct footprint + indirect impact envelope
- Baseline values extracted within the assessment area footprint
- Extracted values become the baseline values from which habitat losses or gains are calculated



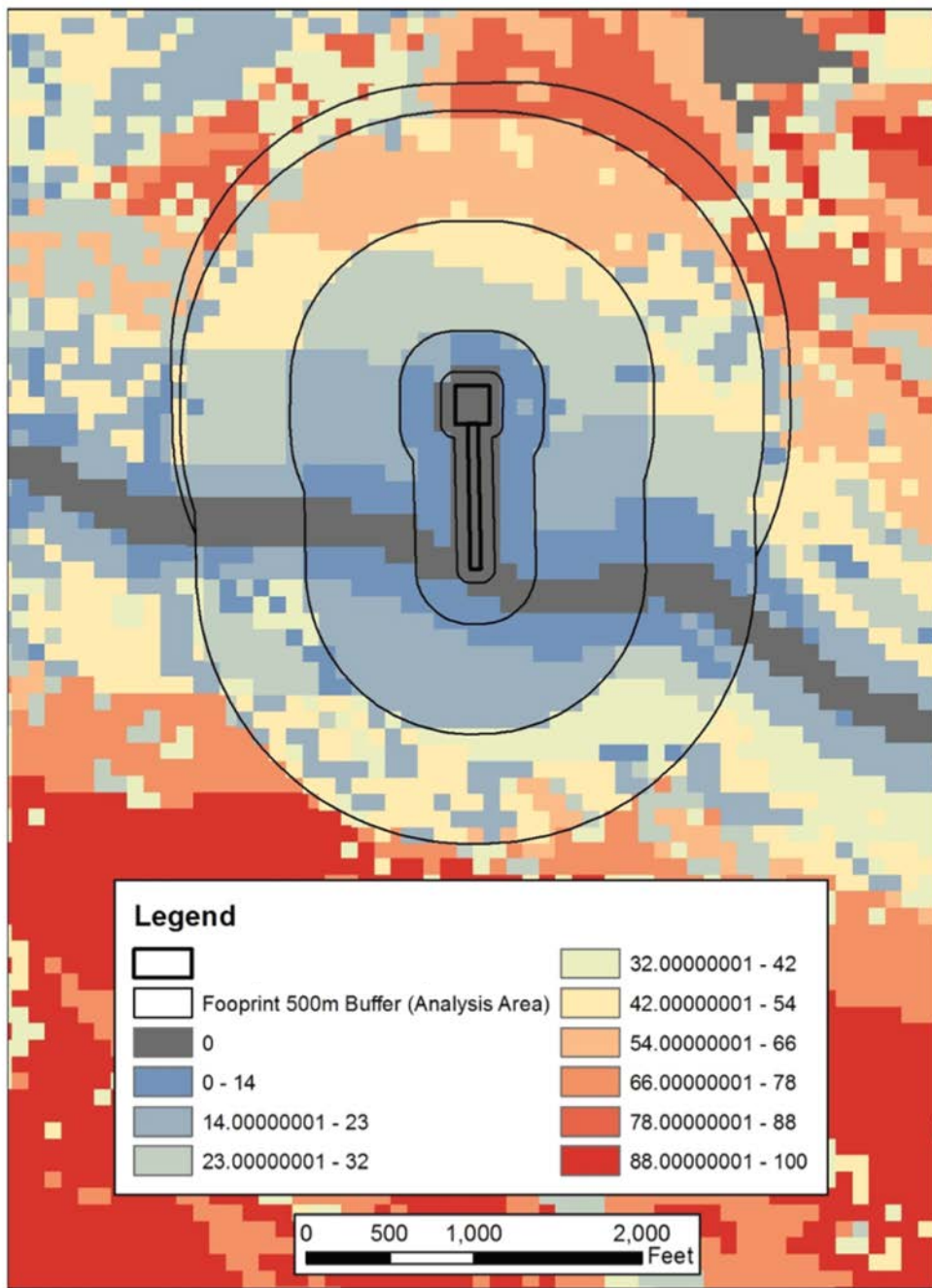
Construction

- Zero habitat function in initial direct footprint
- Indirect impacts applied in assessment area around initial disturbance footprint
- Difference between baseline habitat function and construction habitat function is quantified



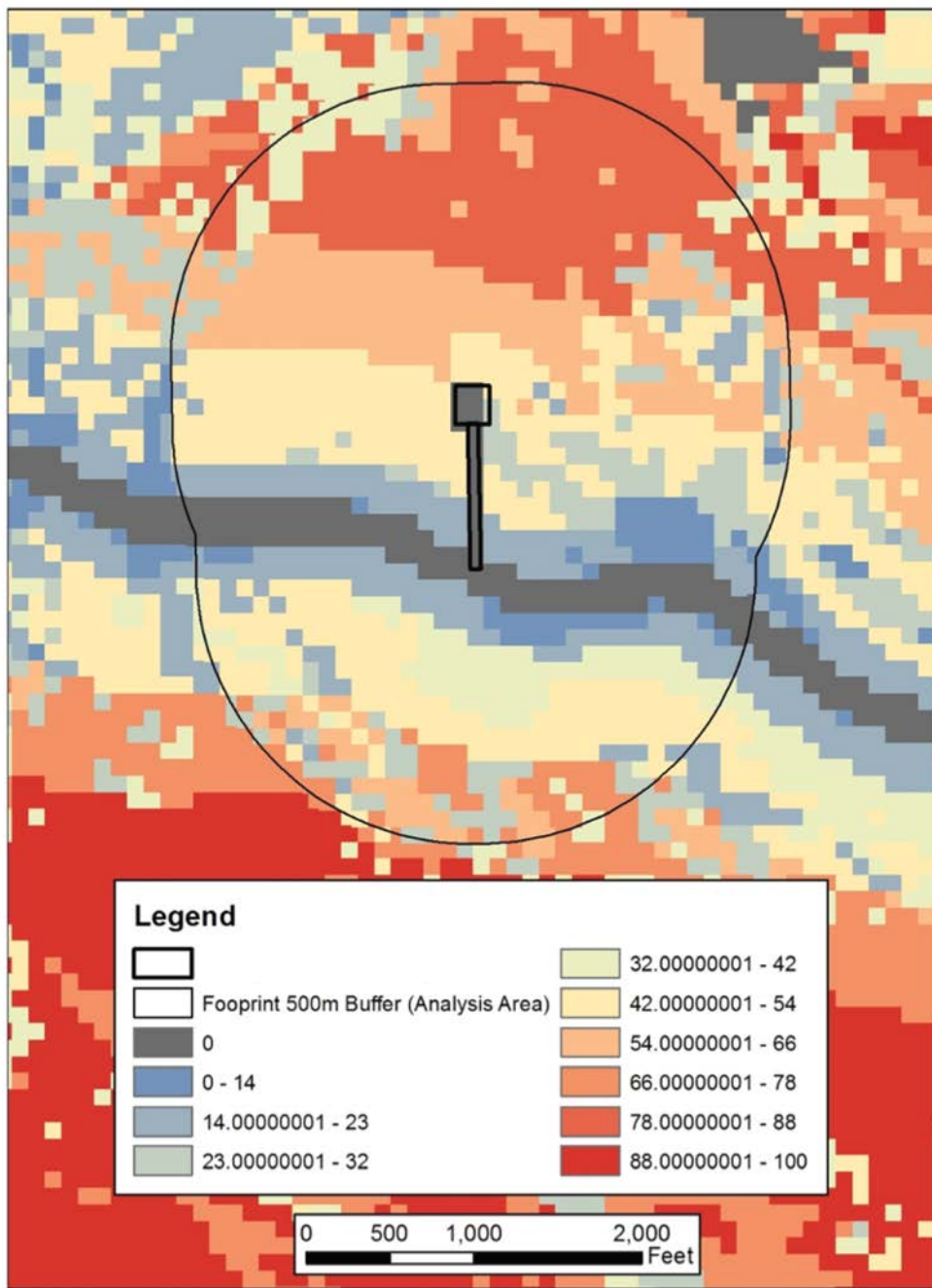
Operations

- Zero habitat function in long-term direct footprint
- Indirect impacts applied in assessment area around long-term footprint
- Reclamation in initial project footprint begins to return habitat value in the assessment area
- Difference between baseline habitat function and operations habitat function is quantified



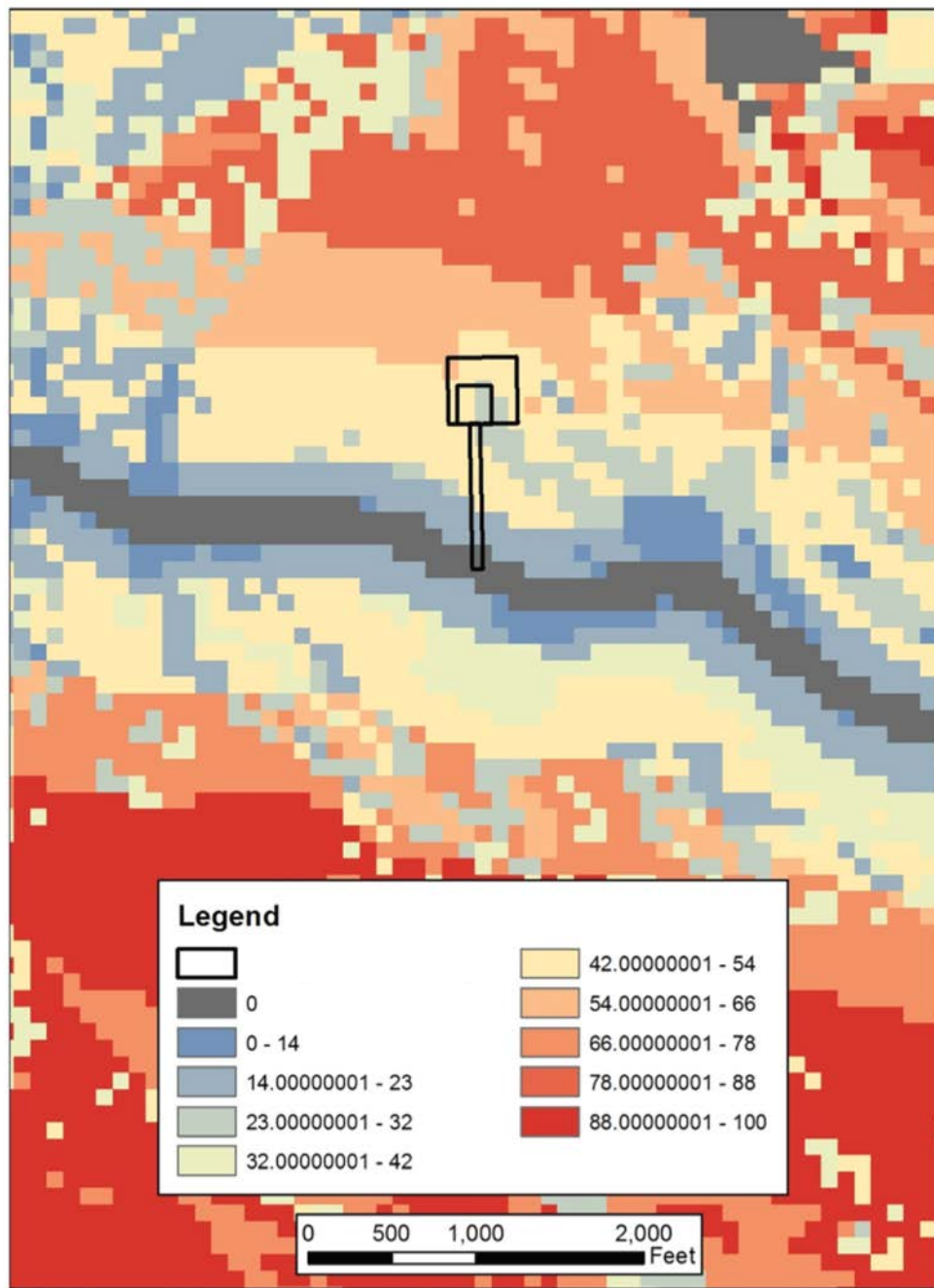
Final Reclamation

- No indirect impacts
- Habitat function in long-term footprint is gradually returned as site is reclaimed
- Difference between baseline habitat function and final habitat function is quantified

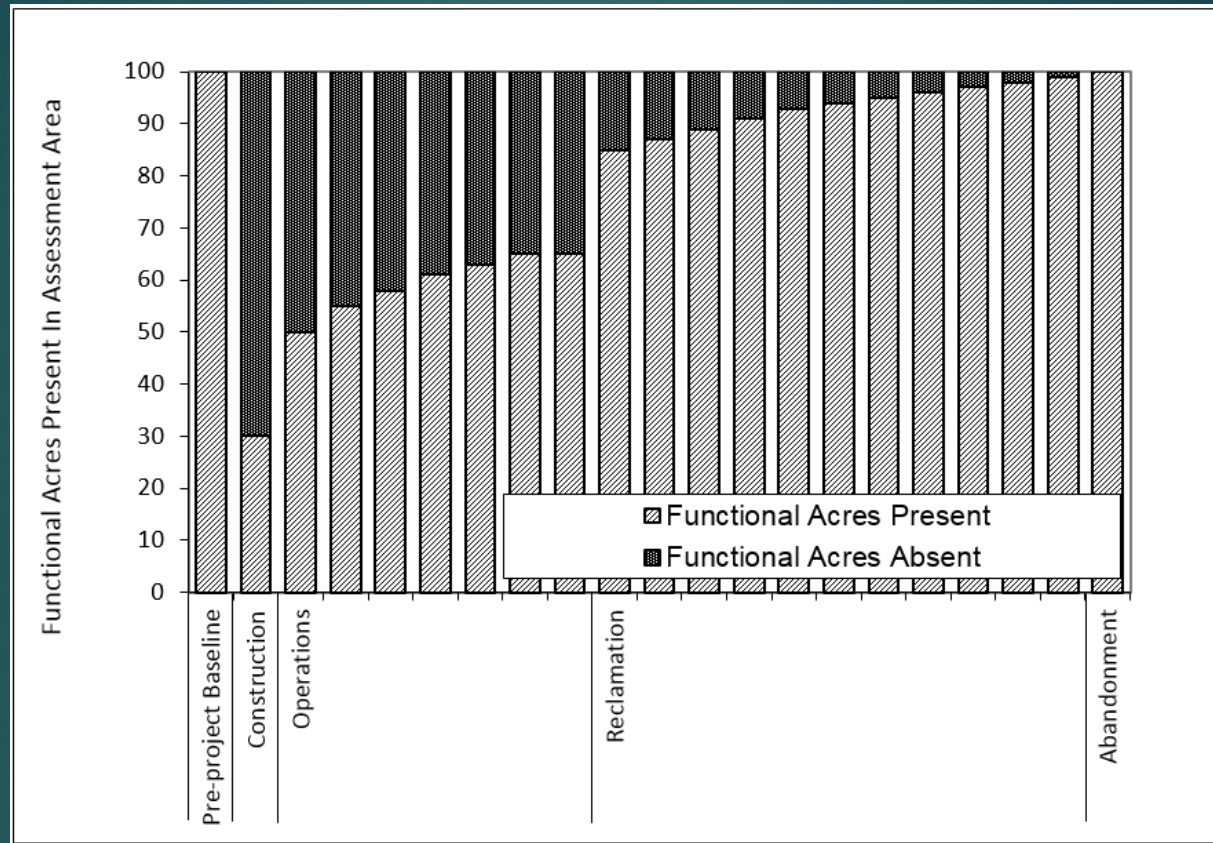


Recovery

- Baseline conditions have been returned everywhere as final reclamation has been successful



Losses and gains over time



- Summed losses or gains over time represents the base value for determining debit/credit quantities

Using the HQT – Site Scale

- ▶ Complete field validation of landscape scale habitat values
- ▶ Correct/refine habitat function based on field validation process
- ▶ Quantify losses or gains of habitat function over the life of your project using corrected/refined habitat function estimates

Calculating Debits and Credits

- ▶ Corrected/refined estimates of habitat gains or losses following site scale evaluation are final values used to calculate debits and credits
- ▶ Adjustments to final estimates of gains or losses may be made by Program/MSGOT following the procedures identified in the Mitigation Guidance Document

Questions?

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July 7, 2017 Guidance Document “Red Flag Review” Comment Summary by Issue

The Policy Guidance document has been offered to the stakeholders for comment on multiple occasions. As a result, the Guidance document has evolved with each successive draft and been discussed at each meeting. The stakeholders amicably concluded that agreement for some issues is unlikely, and that MSGOT will have to make a decision for the draft Guidance document made available for general public comment in conjunction with proposed rules during the rulemaking process.

By agreement, the stakeholders affirmed that they would provide one last set of written comments on the July Guidance draft as the final “red flag” review. This was an opportunity to restate their most important issues and whether the July draft still posed concerns. The following table shows how several key issues were stated in the July Guidance draft and stakeholder written comments on the July draft. If the July written comment was “silent” on an issue, it is generally understood to mean that while the issue may still be important, the July draft did not pose a “red flag” concern.

| | Issue, as stated in the July Draft | Dave Galt et al. | The Nature Conservancy, Environmental Defense Fund, et al. | Montana Wildlife Federation | Farm Bureau Federation | Rural Electric Coop | FWP | BLM, USFWS |
|---|--|--|--|--|---|--|--|--|
| 1 | Credit for avoided loss – 60% adjustment of the baseline for perpetual CE’s. [HQT result * 0.60]; meaning that the number of credits actually available from a perpetual CE is 60% of the HQT total. [prior comments were that 20% was too high] | 60% too high; will limit credit project development and drive up costs; long term / perpetual restrictions add conservation value and should not be limited; will increase cost and could have negative impact on future development | Supports 20-30% discount; (or risk of conversion) no higher than 30%. Would prefer baseline be calculated on a case by case (or county by county) basis (<u>for credit projects 70-80% of post-project condition, reflects a 20-30% risk of conversion</u>) | Supports 20-30% discount; no higher than 30%. Habitat value can diminish over time (<u>for credit projects to 70-80% of post-project condition, which reflects a 20-30% risk of conversion</u>) | Concerned 60% will limit credit project development and reduces incentives for ranchers/farmers to participate in CEs | Silent on baseline | Consider adjusting baseline for credit projects to 70-80% of post-protect condition which reflects a 20-30% risk. Recommend the Program consult relevant research publications | 60% is preferable, conservative and more defensible than 80%. Recommend exploring more science based method (based at least partially on threats, local development or conversion rates to the extent they are known or can be reasonably predicted, etc.) |
| 2 | Net Conservation Benefit [or Gain] of 10% as a required policy multiplier on the HQT for all development projects in all habitats; [has generally been included as 10% all along] | Oppose and delete it; its controversial, under federal review and the subject of legal discussions on its merit | Support using a net conservation benefit goal; there should at a minimum be no-net-loss of the remaining habitat or its biological function necessary to support sage-grouse | Support net conservation benefit goal. Should be at a minimum no-net-loss | Silent on Net Conservation Benefit | Do not support as goal of program; silent whether to retain percentage | Support following USFWS mitigation policy and compensatory mitigation requiring net benefit. 10% is consistent with USFWS | Recommend keeping Net Conservation Benefit; intent to condition the application of sequencing requirements ; minimum, neutral or positive sage-grouse population trends and habitats would be maintained; achieving net conservation benefit for the species |

| | Issue, as stated in the July Draft | Dave Galt et al. | The Nature Conservancy, Environmental Defense Fund, et al. | Montana Wildlife Federation | Farm Bureau Federation | Rural Electric Coop | FWP | BLM, USFWS |
|---|---|--|---|--|---------------------------------|---------------------------------|--|---|
| 3 | Landscape scale explicit policy signal: all development projects (DEBITS) in core area has 10% multiplier (landscape important to integrity of large patches and to ensure connectivity between core areas) | Concerned that the combined list of multipliers is excessive | Believe mitigation is fundamental and must be required for projects in Core and General Habitat. | Support mitigation for projects in Core and General Habitat. Silent on specific percentage | Silent on multiplier percentage | Silent on multiplier percentage | Support the 10% multiplier for Core area and less rigorous standards for General Habitat | BLM supports Core area 10% multiplier adjustment |
| 4 | Site specific project scale – 10% multiplier for each EO stipulation violated (draft does not differentiate between core and general presently) (site specific scale locally important to birds) | Concede that 10% multipliers for violating 0.6 NOS and seasonal limits appropriate adding 10% for core and then each stip violated is excessive | Support multipliers and adjustments for seasonal stip violations | Support mitigation for projects in Core and General Habitat. Silent on specific percentage | Silent on multiplier percentage | Silent on multiplier percentage | Support the 10% Core Area multiplier for credit and debit projects | Silent on multipliers for stipulations |
| 5 | Landscape scale multipliers as explicit policy statement: 10% multiplier for all CREDIT projects in core | If project is located in Core developer should pay for it. Silent on credit multiplier percentage | Letter silent on credit multiplier, but supported during meetings and prior comment opportunities | Silent on credit multiplier | Silent on credit multiplier | Silent on credit multiplier | Support the 10% Core Area multiplier for credit and debit projects | Supports 10% multiplier for credit projects in Core |
| 6 | Reserve Account multiplier for risk and uncertainty: 10% required for all development projects regardless of habitat classification [has generally been included as 10% all along – very little debate] | Silent on Reserve Account | Letter silent on Reserve Account, but supported during meetings and prior comment opportunities | Silent on Reserve Account | Silent on Reserve Account | Silent on Reserve Account | Silent on Reserve Account | (5/5/2017) Supports Reserve Account multiplier |

| | Issue, as stated in the July Draft | Dave Galt et al. | The Nature Conservancy, Environmental Defense Fund, et al. | Montana Wildlife Federation | Farm Bureau Federation | Rural Electric Coop | FWP | BLM, USFWS |
|---|--|---|--|---|--|------------------------------|---|--|
| 7 | <p>Apply HQT to all development projects to determine compensatory obligation [i.e. when is compensatory mitigation required?]</p> <p>HQT: the scientific method used to evaluate vegetation and environmental conditions related to the quality and quantity of SG habitat and to quantify and calculate the value of credits and debits; MCA 76-22-103(9)</p> <p>credit: defined unit of trade representing the accrual or attainment of resource functions or value at a proposed project site. The unit of measure for a debit is the same as that for a credit; MCA 76-22-103(4)-(5)</p> | <p>Oppose; understood since 2013-14 that if follow EO stip no compensatory mitigation</p> <p>[i.e. presume no impacts and no compensatory mitigation required if abide by all EO stip]</p> <p>MSGOT needs to decide</p> | Letter silent, but supported during meetings and prior comment opportunities | Silent, but likely support; participation during meetings limited | Silent, unknown; participation during meetings limited | Silent; unknown | Silent, but supported during meetings | Silent, but supported during meetings |
| 8 | Apply HQT to all potential credit | Silent | Silent | Silent | Silent | Silent | Silent | Silent |
| 9 | <p>Advance Payment (donation) to Stewardship Account 10% multiplier, all areas</p> <p>(compensate for time lag between impact and mitigation offsetting the impact; i.e. make up for violating durability)</p> | Silent about advance payment | Silent about advance payment | Silent about advance payment | Silent about advance payment | Silent about advance payment | 5/5/2017 -want to entice proponents to find credits before impacts. Silent about percentage for advance payment | BLM 5/5/2017 - Supports advance payment, silent regarding percentage |

| | Issue, as stated in the July Draft | Dave Galt et al. | The Nature Conservancy, Environmental Defense Fund, et al. | Montana Wildlife Federation | Farm Bureau Federation | Rural Electric Coop | FWP | BLM, USFWS |
|----|---|---|---|---|---|---|---|--|
| 10 | Mitigation General Habitat “less rigorous” but draft silent about what “less rigorous” means or how to achieve it | Silent regarding what less rigorous means | Silent regarding what less rigorous means | Silent regarding what less rigorous means | Silent regarding what less rigorous means | Silent regarding what less rigorous means | Silent regarding what less rigorous means | BLM Silent regarding what less rigorous means 5/5/2017 – supported requiring compensatory mitigation in general habitat |
| 11 | Minimum duration of credit projects: 15 year term, permanent preferred; permanent credits required if permanent debits | Silent about credit duration | Support minimum credit duration of 15 years. Credit duration should exceed debit duration | Silent about credit duration | Silent about credit duration | Silent about credit duration | Support minimum credit duration of 15 years. Credit duration should exceed debit duration | FWS support credit durations identified in draft. For impacts <15 years minimum duration for credit should be 15 years |
| 12 | Dynamic permanent credits allowed up to 25% of permanent debits at the statewide scale & requires MSGOT approval (i.e. sequentially renewed term credits having minimum 30 year duration) | Silent regarding dynamic credit | Silent regarding dynamic credit | Silent regarding dynamic credit | Silent regarding dynamic credit | Silent regarding dynamic credit | Silent regarding dynamic credit | FWS recommends the 25% cap be applied at the individual Service Area level. |
| 13 | Service Areas: 3 total; if not enough credits / service area, MSGOT discretion to allow \$\$ payment to Stewardship Account or allow credits from different service areas <u>without</u> penalty when greater benefit to the species can be demonstrated | Single central area is too large; divide central into north, central and south central; 5 total | agree with the BLM proposal to split the central Service Area into 3 | Silent on Service Areas | Silent on Service Areas | Silent on Service Areas | MTFWP agree with the BLM proposal to split the central Service Area into 3 | BLM advocating the central area be split into 3 areas FWS agree with the BLM/MFWP proposal to split the central Service Area into 3 |
| 14 | Obtaining credit offsets from out of state – allowed with MSGOT approval (see above) | Consider eliminating; politically and functionally unworkable; maybe contrary to 76-22-111(3)MCA; MSGOT approval rare | Silent about obtaining credit outside of MT; support unlikely | Silent about obtaining credit outside of MT | Silent about obtaining credit outside of MT | Silent about obtaining credit outside of MT | Concerned about allowing credit outside of MT | BLM, 5/5/2017, If going out of state services the same population of birds |

| | Issue, as stated in the July Draft | Dave Galt et al. | The Nature Conservancy, Environmental Defense Fund, et al. | Montana Wildlife Federation | Farm Bureau Federation | Rural Electric Coop | FWP | BLM, USFWS |
|----|--|--|--|-----------------------------|------------------------|------------------------|------------------------|--|
| 15 | Land Use Conflict: Split Estate; when a project fails to meet performance standards because of a legally unavoidable land use conflict, the party creating the new impact is responsible for replacing the credits, either through purchasing credits from the Stewardship Account or reserve account (at the discretion of the Program) or by implementing a crediting project at another site | 5/5/2017 - Split estate lands should not be used for credits or there should be an ability to transfer credits | Support allowing credit projects where there is split estate as long as Program make a determination concerning the likelihood of development of the mineral estate and BLM provide oversight for the duration of the impacts from the public land use | Silent on split estate | Silent on split estate | Silent on split estate | Silent on split estate | USFS Cautions that mineral estate has a prior-existing legal right to use surface of the property. If the mineral estate owner is not a signatory to the agreement, he is not subject to its terms and conditions. |

OFFICE OF THE GOVERNOR
STATE OF MONTANA



Steve Bullock
GOVERNOR

Mike Cooney
LT. GOVERNOR

November 30, 2017

The Honorable Ryan Zinke
Secretary of the U.S. Department of the Interior
1848 C. St. N.W.
Washington, D.C. 20240

Dear Secretary Zinke:

On behalf of the State of Montana, please accept these comments in response to the Department of Interior (Department) and Bureau of Land Management's (BLM) Notice of Intent (NOI) to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation published in the Federal Register on October 11, 2017.

The BLM land use plans now being considered for amendment were finalized in September 2015, after lengthy planning efforts across the range of the Greater Sage-grouse (GRSG). In Montana, BLM amended the Lewistown Resource Management Plan (RMP), HiLine, Miles City, and Pompey's Pillar National Monument areas within the Rocky Mountain Region Record of Decision (ROD). Additionally, the Southwest Montana (Dillon) RMP was amended and included in the Great Basin ROD.

In announcing Secretarial Order 3353, you indicated that the spirit of the Order is to work hand in hand with states and ensure that their efforts in conserving the greater sage-grouse are fully recognized. I appreciate your acknowledgement of the western states' considerable role in conserving greater sage-grouse and would further emphasize the importance of meaningful collaboration with state officials prior to finalizing any modifications to federal policies or federal land use plans.

There is a long history of bipartisan, state-led collaboration to conserve Greater sage-grouse across its range in the west. States have served as the primary convener of diverse stakeholders for decades and have been the primary drivers of policy initiatives targeting sage-grouse conservation through executive action and through the Western Association of Fish and Wildlife Agencies and the Western Governors' Association Sage Grouse Task Force.

Alongside other western Governors, I have worked hard to strike the right balance between conservation, sportsmen, energy development, agriculture and ranching, tribes, and local governments. Montana's goal is to maintain viable sage grouse populations and conserve habitat to maintain

management authority of our lands, our wildlife, and our economy so that a listing under the federal Endangered Species Act is never warranted.

The Department and BLM have not proposed specific plan or policy changes for public comment at this time, instead only stating that the BLM “intends to consider the possibility of amending some, all or none of the BLM land use plans that were amended or revised in 2014 and 2015.”¹ Additionally, the Department and the BLM have already initiated efforts to revise policies and instructional memoranda. States, including Montana are unaware of the geographic scale, nature, and scope of policy revisions currently being undertaken and likely finalized in the very near future.

Therefore, I fully expect that states and the public will be afforded notice and an opportunity to review and comment on any specifically-proposed policy changes and amendments in the future. I continue to urge the Department and BLM to meaningfully collaborate with the Western Governors’ Association through the Sage Grouse Task Force prior to making any changes.

I appreciate the opportunity to provide formal written comment during BLM’s NOI scoping period. This letter supplements comments previously provided to local Montana BLM representatives and through the Sage Grouse Task Force in response to Secretarial Order 3353. This letter will first summarize Montana’s perspectives. Next, it will provide background information about Montana’s long history of collaborative efforts to conserve GRSB for context and to deepen the Department’s and the BLM’s understanding of Montana’s Strategy and our unique circumstances. Next, it will provide general comments and then close with comments on specific issues.

SUMMARY

Montana’s comments are informed by the earnest and diligent efforts a diverse group of stakeholders undertook when I issued our first executive order in 2013 and through the tangible track record and experience gained collectively since 2015 when implementation of the BLM plans and Montana’s Strategy formally began. Montana has thoughtfully considered and engaged with stakeholders on the question of whether implementation of existing land use plans, alongside Montana’s Strategy has revealed inconsistencies or implementation conflicts of such significance that a plan amendment is needed to resolve them. We find the answer to be no, even if there is not perfect consistency. Montana has found ways to successfully address issues through bipartisan collaboration between private landowners, conservation groups, industry, and state and federal partners.

It is important that we analyze and exhaust the full range of administrative tools to address inconsistencies and resolve conflicts before resorting to lengthy, costly plan amendments under the National Environmental Policy Act. It is equally important that we ensure that any newly proposed changes to the federal sage-grouse plans not create further inconsistencies with state policy rather than resolve them.

Federal land use plans were always expected to evolve based on changing needs and circumstances. Modernization through adaptive implementation of the land use plans should address changing conditions, incorporate new science and build consistency with state strategies across all ownerships. Formal plan amendments should not be triggered at every turn. If that were the case, BLM would be perpetually planning and not focused on implementation and learning through experience. Instead, the Department and the BLM should use all available tools, including the issuance of guidance,

¹ See 82 Fed. Reg. 47248 (Oct. 11, 2017).

instructional memoranda, training, public outreach, and other strategies to build consistency and improve adaptively through time.

One specific area appropriate for adaptive management under the existing plans is grazing management. Despite the fact that proper livestock grazing is not a threat to GRSG, confusion and conflict has arisen over the Habitat Objectives Table 2.2. This can be remedied by increased flexibility at the local level to adopt values more ecologically appropriate to Montana and ecological site potential, providing updated policy guidance and training as to the purpose of Table 2.2 and how it is to be used, and improving outreach and collaboration with grazing permittees.

The Department and BLM should avoid policy and land use plan changes that foster uncertainty and could disproportionately impact individual states. Any policy or land use plan changes should be supported by the best available, peer-reviewed science and not undermine the conservation measures that USFWS relied upon when reaching its conclusion that Endangered Species Act protections were not warranted in 2015.

It is imperative that we avoid prolonged and unnecessary work that would unravel the foundation of the 2015 “not warranted” finding to the point that we all risk obtaining a result we worked so hard to avoid. The Department and BLM can best move forward by refining the existing plans. Adaptive implementation of the plans can reduce uncertainty for our partners, industry, and working ranch families who take care of the land and the wildlife on our behalf and can help address inconsistencies efficiently.

That being said, however, limited plan amendments may be needed in two key issues if other adaptive implementation approaches such as policy, training, outreach, and plan maintenance are not legally supported. They are mitigation and sagebrush focal areas. Other concerns raised in my 2015 Consistency Review letter or that have arisen since 2015 have already been discussed with local BLM officials or through the Western Governors’ Association Sage Grouse Task Force in conjunction with Secretarial Order 3353 and are already likely to be addressed through this process.

With respect to mitigation, the Department and BLM should defer to and adopt Montana’s mitigation framework because it will fulfill the intent of and satisfy the requirements of the existing Montana BLM plans. Montana’s framework is transparent and objective, providing certainty for developers, credit site providers, the state, and BLM. No plan amendment is necessary. A maintenance action to clarify a previously approved decision incorporated into the existing plan and to align with Montana’s mitigation framework would not expand the scope of resource uses or restrictions or change terms, conditions, and decisions of the approved BLM plans. This would be entirely appropriate, supported by Montana stakeholders and would comply with BLM regulations.²

Sagebrush Focal Areas (SFAs) and the proposed mineral withdrawal were added to the BLM plans very late in the planning process. The extent to which the USFWS relied on them to reach a not warranted conclusion in 2015 is now apparent. Reclassification of SFAs within Montana to Priority Habitat Management Areas (PHMAs) may be warranted but is a lower priority because the mineral withdrawal process was terminated and no implementation conflicts have arisen with these lands.

² See 43 C.F.R. 1610.5 and 1610.6 (plan preparation, maintenance, amendment).

BACKGROUND

Montana has a long history of bipartisan collaboration to conserve Greater Sage-Grouse and their habitats. Montana sportsmen, resource managers, landowners and other conservation interests have been concerned about the status of sage-grouse as far back as the 1950s. Similar concerns across the west crystallized in a formal Memorandum of Understanding signed by Western Association of Fish and Wildlife Member Agencies and federal natural resource management agencies in 2000. Each state committed to convene a work group and craft a plan.

Montana adopted its first formal Greater Sage-Grouse Management Plan in 2005. It was the product of a diverse working group that included representatives of federal and state agencies, tribal representatives, private organizations, and the public. The Plan charted a path to achieve long-term conservation and enhancement of sagebrush steppe that would support not only sage-grouse, but people and other wildlife. It also created local working groups. As importantly, it provided for coordinated management across jurisdictional boundaries and development of community support to balance conservation with social, cultural, and community values.

New science, coupled with new or expanded potential threats to sage-grouse habitat and populations and litigation prompted Montana to update its original 2005 plan. Early in 2013, following efforts in Wyoming and other states, I issued Executive Order 2-2013 creating a diverse citizen-based advisory council. The council was directed to gather information, furnish advice, and provide recommendations for a state-wide strategy to preclude the need to list the GRSG under the federal Endangered Species Act (ESA).

Private landowners, conservation groups, industry, and state and federal partners worked together intensively for nearly a year. After extensive public comment and meetings around the state, the council finalized their recommendations. In 2014, I issued Executive Order 10-2014 based on their work.

Recognizing the value of active stewardship and conservation, in 2015 the Montana Legislature passed the Greater Sage-Grouse Stewardship Act (Stewardship Act) by an overwhelming bipartisan majority, codifying many of the recommendations of the advisory council. The Legislature created the Montana Sage Grouse Oversight Team, which has met regularly since fall, 2015. Separately, the Montana Legislature appropriated funding to implement Montana's Sage-Grouse Program (Program) and encourage voluntary conservation of private lands to address threats. In fact, Montana has committed \$10 million towards private land conservation. In partnership with others thus far, Montana will have protected 72,000 acres of private land from the threat of cultivation. Additional conservation measures have been implemented on private lands through Montana Fish, Wildlife & Parks.

In 2015, I issued Executive Order 12-2015 to address additional Program needs. Taken together, Executive Order 12-2015 and the Stewardship Act comprise Montana's Conservation Strategy (or State Plan). Montana's plan aligns closely with Wyoming's core areas approach, only with a greater emphasis on private lands where most of Montana's best sage-grouse habitat occurs. Executive Order 12-2015 designates and the Stewardship Act defines Montana's core areas as having the highest conservation value for GRSG and has the greatest number of displaying male GRSG and associated habitats. Montana also statutorily recognizes certain areas designated as general habitat and connectivity areas.

Montana has nearly 1,000 leks. Montana supports an estimated 18% of the total GRSG population and nearly 20% of the habitat rangewide. However, about 78% of the occupied range in Montana is in state, tribal and private landownership. Only about 22% of the occupied range is federally owned and managed in Montana. About 20% is administered by BLM, and about 2% is administered by the U.S. Forest Service.

Montana takes an “all lands, all hands” approach to sage-grouse conservation because private lands and state trust lands are intermingled with federal lands in a checkerboard fashion. The BLM only manages 32% of Montana’s GRSG core areas and 15% of Montana’s GRSG general habitat areas. Nonetheless, many facets of the BLM land use plans are mirrored in Montana’s Strategy and are integral to the state’s success. This is because of the checkerboard nature of surface ownership, BLM’s extensive subsurface mineral ownership rights, and the value of BLM rangeland grazing opportunities to working agriculture in Montana. Many Montana ranchers utilize BLM lands for livestock grazing, in conjunction with their own private lands. By working with private landowners, conservation groups, industry, and federal agencies, Montana has found a path forward that conserves working landscapes and that supports sage-grouse, other wildlife, agriculture, economic opportunities for industry, and outdoor recreation.

Diverse stakeholders have been at the table every step of the way in Montana. They lobbied extensively in support of the Stewardship Act in 2015 and continue to be directly engaged with Montana’s Sage-Grouse Program on a regular basis. Moreover, they continue to testify before the Montana Legislature and various interim committees to support Montana’s sage-grouse conservation efforts to this day. They also express support for how the federal plans and the state plan work together and in concert towards Montana’s common, shared goal: maintaining authority to manage our lands, our economy, and our wildlife.

Habitat conservation for sage-grouse also translates to habitat for big game. Montana has a deep tradition of hunting on both public and private lands. Big game hunting alone in Montana contributes \$324 million annually to the Montana economy. In counties that contain designated sage-grouse habitats, big game hunters spend over \$113.5 million annually when hunting Montana’s checkerboard landscape.³ For these 38 rural counties, hunter expenditures have significant impacts on local economies. Montana’s motto of “Think Habitat” applies equally to sage-grouse and big game. We actively recognize and promote the synergies between sage-grouse conservation, maintaining working private ranchlands, public lands, and our hunting heritage.

GENERAL COMMENTS

1. The Department and BLM should avoid policy and land use plan changes that foster uncertainty and hold potential to disproportionately impact individual states.

In 2010, the U.S. Fish and Wildlife Service (USFWS or Service) identified habitat loss, fragmentation, and the inadequacy of existing regulatory mechanisms to address threats as the key factors leading to the determination that ESA protections for the GRSG were warranted. Populations had been in decline for decades and some local populations had been extirpated.⁴

³ Montana Fish, Wildlife & Parks (2016); *see* <https://mtfwp.maps.arcgis.com/apps/Cascade/index.html?appid=0fa1de4222074cdeb7dbf0710ecb2ee0>.

⁴ *See* 80 Fed. Reg. 59858, 59870 (Oct. 2, 2015).

In September of 2015, the Service concluded that the primary threats were ameliorated by conservation efforts implemented by Federal, State, and private landowners. Regulatory mechanisms were adopted in three state plans and in the federal land use plans, incorporating conservation principles identified by the scientific experts to substantially reduce risks through land use allocations and avoidance and minimization measures at a landscape scale and consistently across the range.⁵ These efforts were complimented by voluntary conservation efforts on private lands by individual landowners, the NRCS Sage Grouse Initiative, and Candidate Conservation Agreements with Assurances.

Along with Wyoming and Oregon, Montana is one of the three states that adopted affirmative regulatory mechanisms that addressed threats to sage-grouse. In contrast, other states adopted primarily voluntary state plans. Federal land use plans filled the gaps across the west through sage-grouse specific provisions and land use allocations. Federal land use plans provided the high degree of certainty required to demonstrate that threats would be reduced across approximately 90% of the breeding habitat and the majority of occupied range because common elements were included across the range which avoided and minimized disturbance in the remaining large priority blocks of habitat where sage grouse still exist, while also providing management flexibility in areas that are less critical for conservation.⁶

The federal plans and state plans from Wyoming, Oregon, and Montana provide protective, regulatory mechanisms for the majority of the most important habitat for GRSB. All told, the Montana, Wyoming and Oregon plans provide assurances for over 56 million acres of occupied range on state, tribal and privately-owned lands.

All states benefited from the federal plans contributing to habitat conservation and threat abatement in consistent ways across the range, regardless of whether individual state plans were regulatory or voluntary. This is because the Service analyzed the adequacy of habitat conservation measures, threats, and the combined effect of state and federal regulatory mechanisms at a landscape scale and rangewide. Nonetheless, the USFWS relied primarily on the regulatory plans in the states of Wyoming, Montana, and Oregon.⁷ If key conservation measures in the BLM lands were relaxed rangewide or, for example in non-regulatory states, beyond a threshold which would still sustain GRSB into the future, regulatory states may bear a higher conservation burden and be disproportionately impacted to avert population declines to avoid a listing, or to sustain recovery efforts in the alternative.

Shortsighted, piecemeal changes to federal policies and land use plans (individually or collectively) would also be a step back in time to the days when management was focused on administrative boundaries alone, not natural resources on a landscape scale. Piecemeal changes could impact and fragment larger blocks of known valuable habitat, and as a result, could lead to population declines and eventual listing. Montana would be disproportionately impacted by such a result.

Lastly, Montana's most valuable sage-grouse habitats occur on private lands. In fact, 66% of Montana's sage-grouse habitat is privately owned. That's 21,582,000 acres. An additional 2.2 million acres of sage-grouse habitat is state trust land. All told, about 75% of Montana's sage-grouse live on private and state trust lands. For generations, Montana ranchers have knit together grazing opportunities on private, state, and federal lands to sustain their families and the integrity of the land.

⁵ See 80 Fed. Reg. 59858, 59874-59882 (Oct. 2, 2015).

⁶ See 80 Fed. Reg. 59858, 59874-59882, 59928, 59931, 59934 (Oct. 2, 2015).

⁷ See 80 Fed. Reg. 59858, 59873, 59933-34 (Oct. 2, 2015).

The impacts to private landowners and Montana's economy if sage-grouse were listed or even designated as a candidate species would be severe, in both regulatory and pragmatic ways. Montana's private landowners should not be forced to carry the burden for more than their fair share of the stewardship responsibility to preclude or respond to an ESA listing.

2. The Department and BLM should avoid policy and land use plan changes that would undermine the conservation actions that USFWS relied upon when reaching its conclusion that ESA protections were not warranted in 2015.

Montana is very concerned that potential changes to federal policy and the land use plans may erode the very underpinnings that were critical to achieving conservation rangewide and that was sufficient to avoid both a listing and a candidate finding in 2015.

State plans alone are not, and will not ever be, adequate. The 2015 not warranted finding relies on the foundation of both the regulatory state plans and the federal plans. The regulatory nature of state plans from Wyoming, Oregon, and Montana provided the greatest degree of certainty in addressing threats on state and private lands and were complemented by other voluntary state plan efforts that lacked the requisite certainty for implementation and effectiveness, and the voluntary work of NRCS with private landowners.

The federal plans provided new regulatory mechanisms on over half of the occupied sage-grouse range that did not exist in 2010 when listing was warranted and GRSG became a candidate species for listing.⁸ More to the point, the BLM plans are the "principal regulatory documents for the activities allowed on BLM lands" which comprise an extremely high percentage of the most important occupied GRSG habitat rangewide.⁹ Thus, changes to the BLM land use plans hold the highest potential to change the population trajectory and conservation status of this species rangewide. Changes to these regulatory documents should be undertaken with caution.

The new sage-grouse measures and BLM land use allocations adequately addressed threats, and through common elements, conserved the most important habitats across the range of the species.¹⁰ The Plans' tiered land use allocation approach provided the greatest level of protection for the most important habitats supporting the highest densities of GRSG through designations of focal areas, priority habitat areas, and general habitat areas. In fact, the 2015 USFWS not warranted finding concluded that:

A centerpiece of all of the conservation efforts is the protection of the most important habitats for sage-grouse that are necessary to maintain redundant, representative, and resilient populations (i.e. PACSs). These important habitats for conservation were identified in conservation planning efforts as the places where large, undisturbed expanses of sagebrush habitat were supporting leks and the highest density of breeding birds.¹¹

To that end, it is clear that the USFWS analysis and the not warranted conclusion relied upon the following approach to habitat conservation in the BLM plans, which is a combination of:

⁸ See 80 Fed. Reg. 59858, 59873-59882, 59928 (Oct. 2, 2015).

⁹ See 80 Fed. Reg. 59858, 59874 (Oct. 2, 2015).

¹⁰ See 80 Fed. Reg. 59858, 59874-59882, 59928, 59931, 59934-59936 (Oct. 2, 2015).

¹¹ See 80 Fed. Reg. 59858, 59873 (Oct. 2, 2015).

1. land use allocations
2. human caused disturbance caps and density limitations
3. lek buffers
4. monitoring
5. adaptive management
6. mitigation; and
7. a landscape-scale strategy for addressing the threat of fire and invasive species.¹²

Montana believes there are potential legal issues that could arise from taking a hasty and narrow view towards changing federal plans. First, a thoughtful analysis is needed to identify elements of the federal plans that were necessary to conserve habitat through allocations and avoidance and minimization measures in key habitat blocks across the range and that were relied upon by the Service when it concluded that listing was not warranted in 2015. Any changes that would undercut the efficacy of these conservation measures to address threats, as measured against the best available science, should give the Department and BLM pause to reconsider.

Sage-grouse do not tolerate habitat loss and fragmentation, nor are they good pioneers. Negative relationships between anthropogenic disturbances and GRSG populations are well documented. The scientific literature is unambiguous in that regard. These truths are borne out in the USFWS administrative record. The record is replete with status reviews and the outcomes of eight different petitions to list GRSG, but only briefly summarized in the 2015 finding.¹³

Secondly, the sum of changes within individual states must be analyzed when they are aggregated up to a landscape scale and across the range. If the aggregate of changes undercuts that which is necessary to address threats adequately and sustain sage-grouse into the future, then litigation is not only certain, but a listing is also likely. Here, Montana again stresses the need for due diligence and meaningful consultation prior to moving forward.

Lastly, the USFWS 2015 analysis and not warranted conclusion were predicated on implementation of the BLM and respective state regulatory plans for the foreseeable future of 20-30 years.¹⁴ This duration was selected for a variety of reasons discussed in the 2015 finding. The salient point is that the USFWS analysis and conclusions were based on its assumption that the BLM plans would be implemented, as they were finalized in 2015 and “that the extent of impacts from energy development, infrastructure, grazing, mining, and other regulated activities will be dictated by the stipulations” in the BLM plans.¹⁵

More to the point, USFWS concluded that “[b]ased on the best available scientific and commercial information available . . . the primary threats to Greater Sage-grouse have been ameliorated by the conservation efforts implemented by Federal, State, and private landowners” and that the regulatory mechanisms of the Federal and three state plans (Montana, Wyoming, and Oregon) reduce threats across approximately 90% of the breeding habitat rangewide.¹⁶ Changes to the stipulations and other

¹² See 80 Fed. Reg. 59858, 59875 (Oct. 2, 2015).

¹³ See 80 Fed. Reg. 59858, 59859-60, 59933-34 (Oct. 2, 2015).

¹⁴ See 80 Fed. Reg. 59858, 59933 (Oct. 2, 2015).

¹⁵ See 80 Fed. Reg. 59858, 59933 (Oct. 2, 2015).

¹⁶ See 80 Fed. Reg. 59858, 59858 (Oct. 2, 2015).

facets of the BLM plans now will call the prior assumption into question and could be seized upon by litigants or even by would-be petitioners as “new information” that should at a minimum trigger a status review because regulatory mechanisms across a significant expanse of the range on BLM lands have changed.¹⁷

3. The Department and the BLM should ensure that any policy changes or changes to land use plans are supported by the best available, peer-reviewed science and that proposed changes to BLM sage grouse conservation not be analyzed in isolation from other regulatory or policy changes contemplated by the Department, USFWS, or BLM, such as mitigation.

I am concerned that if policy changes and land use plan changes are not supported by the best available science, the Department and the BLM will likely spark new litigation or invite new petitions for listing under the ESA. It is imperative that the best available, peer-reviewed science inform the decisions regarding any potential policy changes or changes to BLM plans and that the outcomes adequately and effectively address threats to GRSG identified in the Conservation Objectives Team (COT) Report and by the USFWS consistent with the science.

There is a long tradition of science informing policy, conservation and management of GRSG and its habitat. The Western Association of Fish and Wildlife Agencies developed the first comprehensive strategy for GRSG conservation in 2006. Later in 2011, BLM formed a National Technical Team of experts to “identify the best available, science-based information to guide development of the Federal land management plans.”¹⁸ The National Technical Team Report ultimately articulated the scientific basis for the conservation measures proposed for inclusion in the current BLM land use plans.

In 2013, a Conservation Objectives Team of experts was assembled and produced the COT Report, which itself was peer-reviewed and based upon the best scientific and commercial data available at the time. The Report identified rangewide conservation objectives and concluded that the highest level objective should be the minimization of habitat threats to reverse negative population trends and achieve a neutral or positive population trend.¹⁹ The Report called for designation of key habitats essential for GRSG conservation (Priority Conservation Areas or PACS) and concluded that they were important for the long term viability of the species. The COT Report also identified very specific conservation objectives and detailed measures to address specific threats to GRSG and its habitat. All of these documents were ultimately relied upon by the Department, USFWS, BLM, and the western states when developing their respective plans precisely because they were based on the best available science regarding GRSG biology, its obligatory relationship with and dependency on large, in-tact sagebrush landscapes and the species’ inability to maintain viable populations when confronted with habitat loss and fragmentation. As importantly, in 2015, the USFWS applied the best available science to analyze the adequacy of the state and federal land use plans to address threats and arrest population declines and concluded that listing was not warranted.

¹⁷ See 80 Fed. Reg. 59858, 59941 (Oct. 2, 2015) (“Our determination today is based on the best scientific and commercial data currently available. That determination, however, cannot guarantee that the sage-grouse (or other sagebrush ecosystem species) will not in the future warrant listing under the Act. New threats may develop, management may change, or the species may not prove as resilient as we concluded based on the currently available science. Thus, although our best judgment today indicates that successful sage-grouse conservation will be achieved by continued implementation of the regulatory mechanisms and conservation efforts we relied on in our finding above, we and our partners must carefully monitor threats to the sage-grouse and its response to those threats.”).

¹⁸ See 80 Fed. Reg. 59858, 59872 (Oct. 2, 2015).

¹⁹ See 80 Fed. Reg. 59858, 59872 (Oct. 2, 2015).

New science has undoubtedly emerged that should come to bear and inform the Department and BLM moving forward. The U.S. Geological Survey should be consulted. The Department and BLM should clearly articulate “purpose and need” statements for any potential plan amendments, including the scientific support for proposed changes to provide assurance that threats to GRSG and their habitats are not exacerbated. If proposed changes to policy and/or BLM plans are not supported by the science, the Department and BLM should reconsider.

Before reaching decisions about policy or land use plan changes, the Department and BLM should simultaneously consider them alongside other policies or regulatory changes being contemplated by the Department and the federal Administration. For example, relaxation of energy development stipulations should not be simultaneously implemented alongside a relaxation in the mitigation standard. Development stipulations and mitigation are two opposite sides of the same coin, facilitating both conservation and development in a balanced way.

4. The Department and BLM should prioritize efforts to avoid costly and time consuming plan amendments so that the full measure of available funds and staff resources are dedicated to on-the-ground conservation and management of federal lands and fulfilling their commitments to state partners and Montana citizens.

The existing land use plans account for the complexity of managing millions of acres at a landscape scale and endeavor to balance multiple use mandates with conservation. This work is expensive, but critical to sustaining future energy development, grazing, fish and wildlife, and outdoor recreation over the long haul. New planning efforts to amend the existing land use plans should be paid for using funds wholly separate from BLM’s appropriations to implement the existing plans.

SPECIFIC COMMENTS

In July of 2015, I voiced a number of concerns regarding potential issues with the BLM land use plans in my Governor’s Consistency Review letter. We continue to see the need for improvement and consistency in some areas, as previously discussed with local BLM officials and through the Sage Grouse Task Force. However, the state, Montana stakeholders, and Montana BLM have also learned a lot in the first two years of implementing both the state and federal plans. Many issues flagged at the outset in 2015 have either not materialized, not created serious implementation conflicts, or have not proven to be insurmountable. We have found ways to address them administratively and expect to find new ways in the future. None have suggested a plan amendment was critically necessary.

In short, we can best move forward by refining the existing plans. Adaptive implementation of the plans can reduce uncertainty for our partners, industry, and working ranch families who take care of the land and the wildlife on our behalf and can help address inconsistencies efficiently. Montana’s top priority for adaptive management efforts is to address grazing management needs in Habitat Objectives Table 2.2.

Limited plan amendments may be needed to address concerns with Sagebrush Focal Areas and mitigation should other adaptive implementation approaches such as policy, training, outreach, and plan maintenance not be legally supported.²⁰ To that end, I offer the following specific comments on issues of highest priority to Montana. Other concerns raised in my 2015 Consistency Review letter

²⁰ See 43 C.F.R. 1610.5 and 1610.6 (plan preparation, maintenance, amendment).

have already been discussed with local BLM officials and through the Western Governors' Association Sage Grouse Task Force and are already likely to be addressed through this process.

1. Conflict and confusion over livestock grazing habitat objectives Table 2.2 should be remedied by increased flexibility at the local level to adopt values more ecologically appropriate to Montana and ecological site potential, providing updated policy guidance and training as to the purpose of Table 2.2 and how it is to be used, and improving collaborative outreach to grazing permittees.

Montana sustains viable GRSG populations at the northern extent of the species' range. Accordingly, Montana sustains these populations in areas with shorter and less dense sagebrush canopy cover than elsewhere in the range, including in areas dominated by other shrubs and silver sage during certain seasons of the year and under some weather conditions. Most of Montana's GRSG habitat is grazing by domestic livestock. As a general premise, enhanced flexibility is needed so that local BLM managers can adapt plan implementation to Montana's habitats in an ecologically meaningful, appropriate manner and in consideration of ecological site potential.

It is worth reiterating, here and subsequently by the BLM, that proper livestock grazing is not a threat to GRSG conservation and is a compatible land use. However, consistent with concerns expressed in my 2015 Consistency Review Letter, Montana continues to experience confusion with the grazing provisions of the plans. Specifically, significant confusion and conflict has been triggered by the Habitat Objectives Table 2.2. It is too rigid and prescriptive to cover the broad range of ecological settings and landscape of the 11 western states with GRSG populations. In some cases, the table metrics are clearly inappropriate for Montana habitats and do not appropriately account for variation in highly heterogeneous sagebrush landscapes like Montana.

Values in Table 2.2 need to be adjusted to reflect Montana habitats. Establishing a range would also be appropriate. Montana offers to work with BLM to refine Table 2.2 and the grazing provisions in whatever way is legally appropriate. Montana stakeholders have a strong interest in the grazing provisions of the plans and plan elements related to monitoring. Their inclusion in that effort is important because the success of Montana's conservation efforts depend on the integrity of Montana's rangelands and voluntary private land stewardship.

Furthermore, there is considerable concern on the part of BLM permittees who believe that lack of adherence to the values in Table 2.2 will result in termination of grazing permit authorizations on public lands. This is due to confusion over whether BLM applies the values in Table 2.2 as an assessment or evaluation of how permittees manage their grazing on BLM lands or whether Table 2.2 sets forth fine-scale habitat metrics for purposes of monitoring desired rangeland condition, land health, and GRSG habitat suitability.

To be clear, it is inappropriate for BLM to apply Table 2.2 to inform near-term management decisions for site-specific individual allotments or pastures. Local BLM managers can remedy these concerns through additional policy guidance and training for BLM employees as to the appropriate monitoring scale and applicability of Table 2.2 metrics. More importantly, BLM can remedy the concerns expressed by permittees through increased outreach and partnership with Montana ranchers. This will go a long way towards building trust and confidence in these valuable relationships.

2. The Department and BLM should defer to and adopt Montana's mitigation framework because it will fulfill the intent and satisfy the requirements of the existing Montana BLM plans, and it is a transparent, objective approach that will provide certainty for developers, credit site developers, Montana, and the BLM.

Mitigation plays an important role in GRSG conservation by balancing the impacts of development with conservation. In other words, mitigation is the proactive way to balance development with conservation. All states within the range rely upon mitigation as a fundamental part of their approach to conservation of the species, which along with compensatory mitigation on federal lands, was instrumental in the USFWS 2015 finding that listing was not warranted. The USFWS even cited mitigation in the list of elements contained within the BLM plans upon which it relied.²¹ Mitigation allows economic development to move forward without jeopardizing conservation or exacerbating the threat of habitat loss and fragmentation.

The Montana Greater Sage Grouse Stewardship Act and Executive Order 12-2015 establish that Montana will observe the full mitigation hierarchy for development projects, including compensatory mitigation for residual impacts. In fact, the Montana Legislature has found that allowing a project developer to provide compensatory mitigation for the loss of resource functions or value at an impact or project site is consistent the purpose of incentivizing voluntary conservation measures for GRSG habitat and populations.²²

The mitigation hierarchy prioritizes avoidance and minimization of impacts to GRSG and its habitat from proposed human development activity. Often it is not possible to both advance a development project and avoid negative impacts altogether. Avoidance and minimization measures can greatly reduce impacts, but there may still be a residual loss of habitat function (from direct and/or indirect) that impacts the species. Any avoidable, residual impacts to GRSG and its habitat should be compensated for, or offset, in the form of habitat restoration, establishment, enhancement, or protection. Compensatory mitigation can respond to the threat of habitat loss and fragmentation resulting from development activities by incentivizing conservation actions proactively as an element of project design and siting, well ahead of construction.

Perhaps even more importantly, mitigation frameworks incentivize conservation by encouraging the creation of credit sites voluntarily by interested parties. Legal principles around private property rights dictate that creation of credit sites can't be forcibly imposed on private landowners. Habitat restoration, enhancement or protection activities provide functional habitat that can then be sold and used offset impacts of development. For interested landowners, this diversifies and increases the economic value of a parcel of land. Thus, mitigation can incentivize voluntary conservation on private lands by landowners interested in generating a new revenue stream by maintaining their existing ranch practices or even enhancing habitat for both GRSG and domestic livestock. Mitigation is an especially important tool in Montana where the most valuable habitats are in private ownership. Creating mitigation credit sites on state trust lands can also generate revenue to fund public schools in Montana. It is imperative that mitigation standards and policies attract interested private landowners so that credit sites are available to offset impacts of development.

States have the responsibility to establish appropriate statutes, regulations, policies and programs to manage GRSG, including the mitigation hierarchy and compensatory mitigation. The federal

²¹ See 80 Fed. Reg. 59858, 59875 (Oct. 2, 2015).

²² See Mont. Code Ann. §§ 76-22-101 et seq., especially § 76-22-111 (2017).

government has responsibilities related to habitat through the management of public lands, which should also include the mitigation hierarchy and compensatory mitigation for residual impacts. The current BLM plans provide for compensatory mitigation. That is entirely appropriate and should remain as an integral facet of the Department's and BLM's approach to permitting development and other human activities on federal land.

Compensatory mitigation approaches do vary from state to state (e.g. functional acre with multipliers vs. physical acre with ratios); however, all approaches have common principles at their core. Each state recognizes that habitat functionality is the outcome that matters most. Each state also recognizes the importance of economic development, and therefore has adopted mitigation approaches that ensure appropriate development can occur, including in GRSG habitat, so long as the residual impacts are offset to maintain or enhance overall habitat function.

Present state mitigation frameworks (hierarchy, including compensatory mitigation) include transparent, established, and objective methodologies to allow developers and regulators to determine whether residual impacts occur and to quantify them if so. Accordingly, requirements for offsets are commensurate and fair, based on project type, its size, its location, and level and duration of residual impact. Therefore, mitigation obligations are commensurate with and proportional to the actual impacts created. This allows developers to proactively design and site projects to have the least amount of impacts to GRSG populations and habitat, thereby lowering the developer's mitigation obligation as a facet of project planning and business decision-making.

State frameworks are designed to fully offset residual impacts to habitat function at the landscape and site-specific scale across the range in order to achieve a rangewide impact and ensure that a listing will not be warranted in the future. Both federal agencies and states have a responsibility to advance compensatory mitigation. Collectively, state and federal mitigation efforts must be sufficient to fully offset residual impacts at the site-specific scale, as well as aggregate up to the rangewide scale to ensure that there is always sufficient functional habitat where GRSG presently exist and a listing is not warranted.

If changes to land use allocations or the required standards to achieve avoidance and minimization are relaxed through changes to the current land use plans, then residual impacts to GRSG populations and habitats may in fact increase, based on the scientific literature. Further, if changes to federal plans simultaneously include lowering the mitigation standard, mitigation may be insufficient at both the site-specific scale and at the rangewide scale—thereby exacerbating threats rather than ameliorating them because impacts would eventually overcome other conservation efforts and result in population declines.

State compensatory mitigation standards, and Montana's in particular, are consistent with and sufficient for the existing Montana BLM plans. When residual impacts to GRSG habitat or populations are documented by a state process, BLM should defer to state-supported compensatory mitigation approaches. This allows developers to adhere to a single approach across state, private, and federal ownerships within a single state, which provides certainty.

A single unitary approach within a state across all landownerships is especially important in a state like Montana where important GRSG habitat is a checkerboard pattern of mixed ownerships. Inconsistent state and federal standards may incentivize inefficient development practices in landscapes with mixed ownership, ultimately impacting both habitat and responsible development efforts.

BLM should adopt and implement state compensatory mitigation programs or policies, as long as they meet the following key objectives, which are consistent with universal mitigation principles:

1. achieve measure outcomes for habitat function that can be documented;
2. result in conservation actions that remove or ameliorate a potential threat to GRSB, have a positive influence on and lead to improvement of habitat function and the overall conservation status of the species, are scientifically sound, and are above what would have occurred absent the mitigation action;
3. provide habitat and conservation values, services, and functions that are at least equal to the lost or degraded values, services and functions caused by the impact;
4. incorporate measures to account for risk that a particular mitigation action may fail or not achieve its stated objectives;
5. incorporate measures to account for uncertainty about the level and duration of the estimated impact;
6. provide benefits that are durable and in place for at least the duration of the residual impacts;
7. encourage the application of offset prior to the impact occurring to ensure no lag time occurs between impacts and offsets; and
8. offer transparency, objectivity, consistency, and certainty to developers and regulators.

For Montana's part, we have engaged another diverse group of stakeholders over the last year to develop Montana's approach to mitigation. Participating interests included industry (e.g. oil and gas, transmission, wind, coal, open cut mining), agricultural private landowners, non-governmental land conservation organizations, state and federal agencies. Efforts to finalize the approach and promulgate administrative rules are ongoing and expected to be completed in the first six months of 2018. Significant changes from the stakeholder process outcomes are not expected. Representatives from BLM, USFWS, and U.S. Forest Service have been actively engaged throughout the process and have been supportive of the outcomes.

Stakeholders have agreed on the value of a single, unitary mitigation framework in Montana that would be applicable across all landownerships: state, private, and federal lands. I urge the Department and BLM to defer to and adopt Montana's final mitigation framework. Montana's methodology to estimate the functional habitat values impacted or conserved, respectively, is transparent, objective, and based on the best available science. A plan amendment is not required. A maintenance action to clarify a previously approved decision incorporated into the existing plan and to align with Montana's mitigation framework would not expand the scope of resource uses or restrictions or change terms, conditions, and decisions of the approved BLM plans.²³ Montana's mitigation framework will fulfill the intent of and satisfy the requirements of the existing BLM plans. It is also consistent with the aforementioned key objectives.

3. Reclassification of Sagebrush Focal Areas to Priority Habitat Management Areas may be warranted but is a lower priority because the mineral withdrawal process was terminated and no implementation conflicts have arisen with these lands.

My initial assessment in 2015 was that the designation of sagebrush focal areas and the proposed mineral withdrawal were problematic. Approximately 984,000 acres were classified as a Sagebrush Focal Area (SFA), which is about 59% of the original area designated as a Priority Habitat Management Area PHMA. Of particular concern was the "no new surface occupancy" (NSO) without

²³ See 43 C.F.R. 1610.5 and 1610.6 (plan preparation, maintenance, amendment).

exception requirement and the proposed withdrawal. At the time, I requested that NSO restriction be removed and that the proposed mineral withdrawal be removed or significantly scaled back. Alternatively, I requested that the SFA designation be removed and that these lands be managed as PHMA.

It is also important to acknowledge that SFAs were added to the BLM plans very late in the planning process and were not properly vetted and discussed with stakeholders. In fact, Montana stakeholders have expressed frustration with this fact and continue to do so. To them and me, it is a matter of honoring the integrity of the collaborative process. Considerable confusion remains, even as to whether livestock grazing is still allowed in SFAs. I request enhanced outreach with Montana stakeholders to repair relationships and re-build trust.

Nonetheless, it is now apparent that USFWS relied on the SFA designated lands as a BLM land use allocation that protected important GRSG population centers that were previously identified in the scientific literature as “critically important for the species.”²⁴ USFWS recommended that SFAs be managed as strongholds and receive the highest priority for GRSG conservation and protection from the threats of anthropogenic habitat loss and fragmentation because development could still occur in PHMA and GHMA areas.²⁵ SFA designations were important to USFWS’s analysis of the BLM plans and to USFWS reaching the conclusion that the federal land use plans provided adequate regulatory mechanisms and that listing was not warranted. Achieving the same result in the 2020 status review is imperative.

Separately, the U.S. Geological Survey analyzed the proposed mineral withdrawal from 2015 to 2017. The USGS determined that the proposed SFA in North Central Montana, for example, had a low potential for future hydrocarbon production and hard rock mining. Many dry holes have already been drilled in this area historically. Active production is limited or non-existent. However, the SFA does contain locatable deposits of bentonite. Subsequently, the BLM recently published a notice that it had canceled its withdrawal application.²⁶ BLM terminated an environmental impact statement to evaluate the withdrawal proposal and concluded that the lands are “no longer needed in connection with the proposed withdrawal.”

Termination of the mineral withdrawal process addresses one of the key concerns I expressed in my 2015 Consistency Review Letter. Additionally, no significant implementation conflicts have arisen with these lands, including livestock grazing. Therefore, a plan amendment to reclassify SFAs to PHMAs is a lower priority for Montana.

In conclusion, I strongly urge BLM to invest in and undertake increased outreach in local Montana communities in sage-grouse country. It is simply not enough to adopt new plans and implement them remotely from an office once the ink dries. Regular, ongoing dialogue with stakeholders at open houses or community work sessions is needed in order to successfully implement the plans and responsively adapt through time. Some of the current controversy surrounding the existing BLM plans is fed and perpetuated by a lack of understanding of what’s in the plans and how they are being implemented. I pledge participation by the Montana Program and ongoing collaboration through Montana’s Sage Grouse Oversight Team.

²⁴ See 80 Fed. Reg. 59858, 58875 (Oct. 2, 2015).

²⁵ See 80 Fed. Reg. 59858, 59878 (Oct. 2, 2015).

²⁶ See 82 Fed. Reg. 47248 (Oct. 11, 2017).

Thank you for the opportunity to comment. I look forward to continuing our work to improve certainty, address inconsistencies with state policy through adaptive actions informed by our collective experiences, and support the collaboration among diverse partners that resulted in the 2015 not warranted finding.

Sincerely,



STEVE BULLOCK
Governor

CC Deputy Secretary David Bernhardt, U.S. Department of the Interior
Acting Director Jon Raby, Montana/Dakotas Bureau of Land Management
Electronic submission to the Bureau of Land Management e-planning at
<http://bit.ly.GRSGPlanning>



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**Montana Fish,
Wildlife & Parks**

Montana Fish & Wildlife Commission

November 7, 2017

The Honorable Ryan Zinke, Secretary
United States Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

RE: Sage Grouse Plans

Dear Secretary Zinke:

As Montana's Fish and Wildlife Commission, we are entrusted with managing our state's public wildlife resources. Over the past several years, the Commission and the Department have managed Sage Grouse populations with a keen focus on keeping the Sage Grouse season open for hunters and for insuring that the Sage Grouse is not listed under the Endangered Species Act.

Throughout your career, you have been an advocate for natural resource management decision making on the local level. Consistent with that approach, the Commission, the Department, and the surrounding states collaborated to create Sage Grouse plans that would insure both the continuation of a consumptive Sage Grouse hunting season and the non-listed status of the Sage Grouse.

We are, therefore, concerned with the Department of the Interior's plans to make significant changes to the Sage Grouse Plans that took years to work out. These plans were the result of significant collaboration by diverse stakeholders to conserve sage grouse, protect their core habitat, maintain existing uses and preserve our Western economy. Those plans were essential to keeping sage grouse from becoming endangered. That's why we support maintaining the plans.

If the Department of the Interior decides to review and revise these plans, here are some key considerations for the Interior Department during this review:

1. No Substantial Changes

The current plans were the result of an extensive process to develop a workable framework to conserve the sagebrush steppe ecosystem and permit other ongoing uses of the affected public lands. This effort resulted in the U.S. Fish and Wildlife Service finding that the greater sage-grouse is no longer warranted for listing under the Endangered Species Act. The Western Governors Associations' Sage Grouse Task Force has indicated that wholesale changes to the plans are not needed. Changes that rise to the level of an amendment are likely to undermine the overall

structure of the plans and their ability to succeed. We should let the plans continue to work and focus on ways to ensure their success. As evidenced by Montana's hunting season on Sage Grouse and the non-listed status of the Sage Grouse, these plans are working.

2. Science Based

A wealth of science supports the current structure of the plans and does not support major changes. Habitat protection and conservation should remain the focus employed by the state and federal plans. We do not support the use of tools like captive breeding programs or predator control over conserving and restoring priority habitat needed by sage grouse and other sagebrush-dependent species. These tools are already available to state wildlife agencies, but are not designed to be stand-alone strategies for conservation. Habitat conservation is the foundation for successful ecosystem conservation, including the West's sagebrush steppe. As evidenced by the failure of Pacific Salmon and Steelhead hatcheries to revive fish populations, it is very clear that "hatchery" sage grouse are not the solution – sound science based management is.

3. Public Involvement

There must be adequate opportunities for public input. There were meaningful opportunities for public engagement in the initial planning process and similar opportunities must be provided at this point. There should be workable comment periods, public meetings and sharing of information throughout the process. The first step is extending the comment period from 45 days to 90 days. In addition, efforts by states or state fish and game agencies to conduct stakeholder outreach should be supported by the Interior Department, with their input incorporated.

Any effort to amend these plans should be carried out through an environmental impact statement. BLM's own NEPA Handbook states that an EIS should be prepared where there are significant effects from the potential actions. Changing the sage grouse conservation plans will potentially effect 67 million acres across 11 states.

4. Protect the Highest Value Habitat

The structure of the plans was developed to provide the most protections to the highest value habitat while providing more flexibility for other activities to occur outside habitat and in other habitat areas. Maintaining the overall structure of the plans to focus on protecting the highest value habitat is not only the most likely to succeed in conserving the species, it is also having limited impacts on activities like oil and gas development. It is essential for the functioning of the plans that Priority Habitat Management Areas and Core Habitat, including Sagebrush Focal Areas, are maintained and provided with the most protections.

5. Monitor and Adjust the Plans

The plans need to clearly demonstrate that any major problems (such as precipitous drops in population or habitat condition) will be identified and can be addressed quickly. The plans include a Habitat Objectives Table, Habitat Assessment Framework, and Assessment, Inventory and Monitoring procedures that provide for data collection and measurement of conditions and analysis. These elements of the plans yield detailed information to show that the plans are working. They can also feed into the plans' adaptive management framework, which leads to immediate action when certain triggers are met.

6. Additional Measures

While we strongly recommend not weakening the plans, there are aspects of the plans that could be strengthened. For instance, guidance regarding prioritizing oil and gas leasing outside habitat is an important requirement of the plans. Unfortunately, BLM's current guidance does not actually provide direction consistent with the plans.

We ask that you keep this historic collaboration and conservation effort moving forward and request any future decisions in regard to federal sage grouse plans be developed in a transparent and public process that we may engage in further. Montana sportsmen and sportswomen value the sagebrush ecosystem that is home to more than 350 different species of plants and animals, including such iconic species like mule deer, pronghorn and elk that are important to Montanans, our economy and our western way of life.

Thank you for your consideration and the opportunity for us to comment on this very important decision making process.

Sincerely,

Dan Vermillion, Chairman
Montana's Fish and Wildlife Commission



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October 24, 2017

Jodi Bush, Field Supervisor
Montana Ecological Services Field Office
US Fish and Wildlife Service
585 Shephard Way, Suite 1
Helena, MT 59601

Re: Montana Candidate Conservation Agreement with Assurances

Dear Ms. Bush,

Please accept the following comments on the Draft *Montana Greater Sage-grouse and Declining Grassland Songbirds Programmatic Candidate Conservation Agreement with Assurances* (CCAA) between The Nature Conservancy and the U.S. Fish and Wildlife Service and the associated Draft Environmental Assessment.

The intent of this CCAA is to provide ranchers and agricultural producers with an opportunity to voluntarily conserve the covered species and their habitat, while carrying out agricultural operations in a manner that benefits the species. This CCAA also provides private landowners with assurances that additional conservation measures will not be required on enrolled acres and activities if the species were listed in the future as threatened or endangered under the Endangered Species Act. This approach is consistent with recent state policy that encourages the creation of voluntary incentives to conserve sagebrush habitat and grazing lands on private and state lands (Montana Executive Order 12-2015).

Voluntary opportunities that are clear, transparent, and streamlined will be in the best interest of Montana's producers. The USFWS's preferred alternative in the Draft Environmental Assessment streamlines the enrollment and compliance process for Montana's landowners. Thus, the State of Montana supports the process outlined in the preferred alternative and has only a few comments on the draft CCAA, as follows:

Ensure the Conservation Measures are consistent with other state and federal policies in sage-grouse habitat

The State of Montana advocates an "All Hands, All Lands" approach to sage-grouse conservation. The Montana Sage-grouse Habitat Conservation Program is working to minimize

impacts and incentivize conservation of sage-grouse habitat. The Bureau of Land Management and the US Forest Service are working toward the same goal on federal lands through their Land Use Plans. The Natural Resources Conservation Service is helping to incentivize conservation on private lands through their Sage-grouse Initiative. These agencies have established basic minimum standards for conservation practices and are cooperating to ensure consistency for landowners. The USFWS is encouraged to explicitly state how the conservation measures detailed in the draft CCAA will be consistent with the management standards for sage-grouse that are already being implemented in Montana. This will ensure that Montana's landowners in sage-grouse habitat receive consistent information and are afforded fair and transparent opportunities.

Clarify limitations on simultaneously enrolling in the CCAA and other conservation opportunities

There are multiple opportunities for Montana's landowners to voluntarily participate in conservation programs that benefit sage-grouse, grassland songbirds, and other wildlife species. Some of the currently available programs include range management cost-share programs (e.g., NRCS EQIP, Partners for Fish and Wildlife), wildlife habitat enhancement cost-share (e.g., FWP's Upland Game Bird Program), grassbanks (e.g., The Nature Conservancy), and long-term protections through leases and easements (e.g., land trusts, Montana Fish, Wildlife and Parks). This CCAA will expand the options available to Montana's landowners. However, it is not clear how landowners might enroll in the CCAA and simultaneously take advantage of other conservation opportunities. Other than a statement that protection mechanisms need to meet or exceed the duration of the CCAA, the draft CCAA does not explicitly state if enrollment in other conservation programs in the future will be consistent with the CCAA, and if there are inconsistencies how they will be addressed. The USFWS is encouraged to include clarifying language so landowners understand if there will be limitations or additional process involved with enrolling in other programs for the duration of the CCAA.

Apply Conservation Measures limiting recreational access very conservatively

The draft CCAA states that specific Conservation Measures included in each Certificate of Inclusion will vary depending on site-specific details; not all the Conservation Measures listed in the draft CCAA will apply to each situation. While it may at times be appropriate to apply the measures limiting recreational access to sensitive wildlife habitat, these measures should not be applied indiscriminately. The people of Montana value our outdoor heritage and the unparalleled recreational opportunities in the state. Montana's recreationists contribute to local economies, transfer conservation ethics to future generations, and typically are champions for wildlife and wildlife habitat conservation. Large-scale conservation benefits generated by recreationists generally far exceed localized impacts from recreational activities. The USFWS is encouraged to ensure that access restrictions are not in conflict with other programs designed to expand access opportunities, and to consult with Montana Fish, Wildlife and Parks on a site-by-site basis prior to adopting any access restriction measures.

Prioritize Certificate of Inclusion applications from all sage-grouse Core Areas

When implementing the CCAA, it is appropriate to prioritize limited staff time to landscapes with the highest biological and resource values. Montana's Core Areas, as identified by Montana Fish, Wildlife and Parks, are the State's priority landscapes for sage-grouse conservation efforts (Montana Executive Order 12-2015). However, the prioritization ranking described in the draft CCAA uses the USFWS Partners for Fish and Wildlife Conservation Focus Areas, which do not prioritize all sage-grouse Core Areas (e.g., Rosebud County Core Area is listed as low priority). The USFWS is encouraged to recognize the State's on-going sage-grouse conservation efforts by prioritizing Certificate of Inclusion applications received from any sage-grouse Core Area.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Paul C. Sehn, for". The signature is written in a cursive style.

Martha Williams
Director

Cc: Patrick Holmes, Governor's Office
John Tubbs, DNRC
Ken McDonald, FWP
Carolyn Sime, DNRC
Catherine Wightman, FWP