

AGENDA

Montana Sage Grouse Oversight Team (MSGOT)

June 9, 2020: 9:00 – 11:30 a.m.

Video Conference

9:00 – 9:15: Call to Order and Administrative Matters, John Tubbs, MSGOT Chair and DNRC Director

- Introductions
- Approve Minutes: November 18, 2019

9:15 – 9:50: MSGOT, Program, and Partner Reports

9:50 - 10:05: Spring Creek Mine TR1 Permit Revision, Greater Sage Grouse Mitigation Measure

- Introduction, Montana Dept. of Environmental Quality
- Public Comment
- MSGOT Discussion and Possible Executive Action

10:05 – 11:00: Modified Mitigation Policy Approach for Development Projects Utilizing Trenchless Methods

- Introduction, Carolyn Sime, Habitat Conservation Program Manager
- Public Comment
- MSGOT Discussion and Possible Executive Action

11:00 – 11:15: Board of Oil and Gas Conservation Implementation of Senate Bill 299 (2019) [Informational: MSGOT notification under § 76-22-115 MCA]

- Introduction, Jim Halvorson, Administrator, Board of Oil and Gas Conservation
- Public Comment
- MSGOT Discussion

11:15 – 11:30: 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.



MINUTES MONTANA SAGE GROUSE OVERSIGHT TEAM

November 21, 2019 Meeting Summary
Montana State Capitol, Room 152

Members

Mr. John Tubbs, Chair, Montana Department of Natural Resources & Conservation, Director
Mr. Mike Tooley, Montana Department of Transportation, Director
Mr. Jim Halvorson, Montana Board of Oil and Gas, Administrator
Mr. Shaun McGrath, Montana Department of Environmental Quality, Director
Ms. Martha Williams, Montana Department of Wildlife, Fish and Parks, Director
Senator Mike Lang, Senate District 17
Representative Rhonda Knudsen, House District 34 (Absent, voting by proxy via Senator Lang)
Ms. Diane Ahlgren, Rangeland Resources Committee
Mr. Patrick Holmes, Governor's Natural Resource Policy Advisor (Absent, voting by proxy via Director Tubbs)

Staff Present

Ms. Carolyn Sime, Sage Grouse Habitat Conservation, Program Manager

Calls to Order

00:16:25 Director Tubbs called the meeting to order.

Approval of Minutes

00:18:05 Approval of September 18, 2019 meeting minutes. Motion to approve by Director Williams, seconded by Senator Lang. Motion passed unanimously.

MSGOT, Program, and Partner Reports

00:18:50 Mr. Chris Savage, U.S. Forest Service (USFS) Renewable Resource Management Director, Missoula:

States of ID, CO, NV, WY, and UT decided to revise their sage grouse plans. USFS released the Final Environmental Impact Statement (FEIS) and just finished the objection process, which ended Oct. 1, 2019. The agency is finalizing responses and will call an objection-response meeting in December 2019. Twenty-five people objected to the FEIS, which had no changes to the 2015 plan related to Montana, specifically the Beaverhead/Deerlodge National Forest. USFS intends to release its FEIS records of decision in January or February, 2020. One FEIS will have multiple records of decision.

The 9th Circuit Court's current temporary injunction on the BLM's updated plans doesn't impact USFS.

A key difference between the Forest Service FEIS and BLM FEIS is the BLM has the ability to do compensatory mitigation while USFS does not. The USFS doesn't have a rule in place allowing the agency to look at offsite or compensatory mitigation.

In Montana, USFS sage grouse work occurs mainly in the Beaverhead/Deerlodge National Forest. Projects include the Pintler Face Management Area, which expects a decision in 2020. The Selway-Saginaw Management Areas expect a decision in 2021, where conifer removal will be the primary work to improve sage grouse habitat. A few treatments for aspen restoration and meadow habitats have been implemented in the Beaverhead/Deerlodge area. The Madison Ranger District treated about 80 acres for habitat improvement, especially in the Ruby River drainage.

FEIS requirements include manual monitoring pre- and post-treatment of those activities. They are planning prescribed burning around conifer encroachments and looking at response to that compared with responses to mechanical treatments.

00:23:20 Ms. Sime: Discussed staff transitions. Jamie McFadden and Graham Neale have left the Program, so the Program has been understaffed, but it is doing its best to keep up with the workload. The Program now consists of myself, Therese Hartman, Logan Cain (who has transitioned from part time to full time), Erin Reather (who is a new employee working full time since mid-September), and Ella Lunny (who will be working full time for the next year as a temporary hire term. We continue to run a lean operation with a lot of responsibilities and appreciate support from the host agency, DNRC and its assistance with additional resources there.

2019 Stewardship Grants — Developing templates of grant agreements and new guidance documents for monitoring term leases. Drafts should be finalized in next few weeks to share with landowners and their respective attorneys. Have executed grant agreements for the 2019 easement projects, based on existing documents that didn't require redrafting from whole cloth. Those have been executed, committing funds and clearing the way for continued negotiations with land trust organizations and their respective landowners participating in those projects.

Website Upgrades — Contracted with a company to provide assistance, upgrades, and development for the Sage Grouse website. Started the contract mid-August. It stems from the promulgation of final rules to incorporate mitigation into the Program and workflow. Have worked with this Contractor in the past. Working on a few major tasks: bringing the HQT into the web application, so it's available in a streamlined and efficient process. Developers can use it for their design and siting process, to be more proactive in the planning and siting of their projects. Contractor will also help incorporate a registry into the website per the requirements of the final rules mandating public access. The Contractor will move legacy data to the new system. The project should take a full year with stress-testing starting in late 2020. External partners will be invited to participate, to help identify and fix bugs before rolling it out to production. Seen as an incredible opportunity to identify opportunities for increased efficiency. The project brings automation and enhanced communication, making the whole review process more efficient for external users and staff.

Conservation Assessment in 2020 — Last MSGOT update on this was in late 2018. It will be a significant focus of work in 2020. Sage Grouse have been petitioned for listing eight times. Status reviews have been done range-wide. Montana, Oregon, and Wyoming continue to be strongholds for grouse. The most recent comprehensive reviews from 2010 concluded "listing is warranted but precluded by other priorities". In 2015 the finding was "not warranted." Foundational to the U.S. Fish and Wildlife Service's (USFWS) 2015 decision: the States had respective plans, and federal agencies had respective plans, and the plans altogether would be successful in addressing key threats of habitat loss and fragmentation. There was a lot of well-founded optimism. There were Herculean efforts by lots of people, including the voluntary stewardship by private landowners. The Service also indicated the states' plans would adequately address threats. In 2020, the states have the burden to demonstrate their track records of implementation. There are two key questions: What happened to land and habitat and how are birds doing? States will have to report on the implementation of their respective strategies. Federal partners will, too. What commitments did they make? Have the plans been implemented? Are there any applicable policy or statutory amendments? MSGOT oversight is a crucial part of documenting implementation. There are also additional questions to consider: How are plans addressing concerns of habitat loss and fragmentation? Has the plan been effective in addressing habitat loss and fragmentation? Montana has done great work and has opportunities to show how effective MSGOT's work has been, through stewardship grants and mitigation. FWP will be key in monitoring populations and reporting status / trends.

The effort will be led by the Western Association of Fish and Wildlife Agencies. Representatives from several states will pull together draft documents. Federal agencies will contribute and document their work from the last five years. The goal is to cast a wide net, capturing the voluntary efforts and work of non-governmental organizations. There will be an assessment team — Montana representatives

Carolyn Sime and Catherine Whiteman (FWP). The report will be given to USFWS.

- 00:34:20 Director Williams: The next WAFWA Sagebrush Executive Oversight Committee meeting will be in January, 2020. Williams will attend. She will stop in Nevada to meet with Tony Wasley, the NV Division of Wildlife Director who chairs that Sagebrush Executive Oversight Committee. He is key in revamping the Committee to make it more effective and encouraging the assessment to move forward. Williams will lend support.
- 00:35:22 Director Tubbs: Called for questions.
- 00:35:35 Senator Lang: Asked if the web contractor will take up discrepancies between the sagebrush values in Southeast and Central sage grouse habitat. Will that be rectified in that program?
- 00:36:03 Ms. Sime: Not directly. The contractor's work deals more with the framework and the website itself. Senator Lang's question deals more with changing information or data that are entered into system.
- 00:36:23 Senator Lang: In the last discussion, there were some discrepancies of habitat health in Southwest Montana, which were valued at a higher rate than what Central MT habitat showed, yet the Central Montana habitat had higher populations. Wanting to know if those discrepancies have been handled.
- 00:36:45 Ms. Sime: This was touched on during the September MSGOT meeting. Believe it's best addressed through adaptive management review. Contractors are doing coding that determines what the user sees on their computer screens when log into the website. What Senator Lang is speaking to is best addressed during a more comprehensive discussion targeted for the adaptive management review explained in the HQT manual and policy guidance. Once those conversations take place, our contractor can incorporate any new directions and information coming out of the adaptive management review.
- 00:37:49 Director Williams: Asked for schedule/timing for the adaptive management review.
- 00:38:06 Ms. Sime: Have not determined a timeline yet. The Stakeholders and Program understood adaptive reviews are to occur at one-year increments. They are meant to document what's working and not working and identify knowledge gaps. Deferred additional discussion to the last agenda item.
- 00:38:53 Director Tubbs: Called for further questions. None.
- 00:39:10 Mr. John Carlson, BLM MT Sage Grouse Implementation Lead: Commented on the status of BLM's work with the Program. Continue to implement plans the BLM developed in 2015. Thanked Montana for staying the course to implement the 2015 plans and use administrative means and adaptive management to address problems. Colleagues in other states were devoted to planning and making amendments to those 2015 plans, which have since been enjoined from implementation. Now, those states are back to managing under the 2015 plans. The Program and MT BLM are working well together. BLM has submitted information to the interagency conservation efforts database as part of status review. Will work with the Program to make sure the BLM's work is complementary and not redundant.
- 00:41:12 Director Tubbs: Called for questions. None. Director Tubbs thanked Mr. Carlson for being a good partner. Asked if anyone was interested in reporting anything to the MSGOT members. Noted the Rangeland Resource Committee just met and is continuing to be active. They had Leopold Award for first time in Montana, which was given to Milton's Ranch in Roundup. The video is posted on the DNRC Website under the Rangeland tab.

No additional reports from MSGOT members.

Montana Fish, Wildlife & Parks Greater Sage-grouse Population Report

00:42:51 Ms. Catherine Wightman, FWP Wetland Sagebrush Grassland Farm Bill Coordinator and FWP's lead on sage grouse: Have previously presented FWP's population report and how FWP monitors sage grouse. Historically, FWP monitored sage grouse by counting male birds on their display grounds (leks) in spring. The FWP can then use these counts to reflect trends in the populations. They have consistent data from 1980, and they use these long-term monitoring trends to make management decisions that the department has authority over. Can use current metrics and compare them with long-term trends, to make decisions based on how those counts are relative to the long-term average. With partners (e.g. BLM, NRCS), as many leks as possible are monitored across the landscape. Doing so helps to provide robust information from across the state.

In 2017, HB 211 passed, which required an annual population estimate of how many birds are in the state and an accounting of the number of leks in the state. To produce the report, they worked with the University of Montana to develop a model using lek-count data to make assumptions and estimate the number of birds we have on the landscape and estimate the variation around that estimate, so we have an idea of range (confidence intervals). Can generate some modeling estimates going back to 2002, but can't generate population estimates using the model back any further even though the long-term trend data goes back further in time.

In the 2019 Report, the 2019 population estimate was 43,887 sage grouse, which is down from the 2018 estimate of 59,951. Believes decline from was from the severe drought in 2017 and thinks residual impacts are carried forward a couple years. That creates poor nest success and chick survival because of difficult conditions on the landscape, which translates to fewer birds at the leks in the following spring. The good news is their researchers have found good nest success and chick survival for 2019. These factors typically drive good numbers in the next spring. They are optimistic the numbers will trend up next year.

Also in the 2019 Report is the number of leks the state manages. There were just over 1000 confirmed active leks in the state as of 2019 (1017 leks).

00:48:30 Director Tubbs: Called for questions.

00:48:38 Director McGrath: Noted the data in the Report appears to be across the state. Asked if data are available broken out into the different service areas.

00:48:58 Ms. Wightman: FWP is working on that. Intent is to scale down to put a finer point on where we might be seeing different trends relative to the statewide trends. The U.M. researcher they are working with is working with the model. Needs some adjustments so estimates can be at different scales. Waiting to have the most robust models moving forward, and then can pinpoint to service areas.

00:49:53 Senator Lang: Asked if any reports are available from biologists in different areas. Are there any areas in the state that are in trouble?

00:50:10 Ms. Wightman: Yes. Trends in the southwestern part of the state don't follow statewide patterns. They seem to be following patterns seen in Idaho and western states, which makes sense with the different landscapes. The southwestern part of the state is not necessarily seeing good recruitment this year, so the numbers may be different there. It's not alarming; it's just a different trend. Biologists remain concerned about the development impacts they see on the landscape, but nothing new this year.

00:51:30 Director Tooley: The numbers swing pretty wildly. Asked if it makes sense to use three- or five-year rolling averages to identify trends and determine the effectiveness of interventions.

00:51:51 Ms. Wightman: Yes. They're already done with long-term averages. FWP makes harvest management decisions relative to the long-term average (30+ years of data). The trigger for closing the hunting season is three years at 40 percent, or more, below long-term average. As part of the process of looking at population data at finer scales, FWP is working to figure the triggers, taking in as much data as possible to flag when problems occur.

- 00:53:09 Senator Lang: Noted can't exactly predict numbers with weather variables, but noted FWP is doing a good job.
- 00:53:52 Director McGrath: Asked what is the alarm-level reference point, so we can understand fluctuations.
- 00:54:21 Ms. Wightman: FWP is working with available model tools to help identify what the threshold may look like with a larger dataset of population estimates. Working to step it down regionally around the state. In the interim, FWP has a flag with long-term monitoring. In past, FWP hit their trigger in parts of state, so FWP closed the sage grouse hunting season for a couple of years. Believe numbers came back up because of the weather, but adjusted hunting seasons to make sure the population wouldn't continue to drop.
- 00:55:52 Director Tubbs: Called for additional questions. None.

Policy Direction for Staff Concerning Term Lease and Term Easement Negotiations for Future Stewardship Account Grants

- 00:56:21 Director Tubbs: The first three term leases were introduced to MSGOT at the last meeting, which were unanimously approved. It was a good investment. Like conservation easements, term leases don't actually provide a lift to sage grouse conservation. Leases protect existing status for 25- or 30-year terms. Juxtaposition that against the three permanent easements that were also approved – which provide same conservation in first 30 years, but then continue on in perpetuity (which the Program counts as 100 years). It was first time his attention was drawn to the Policy, which provides no adjustments to the term lease up to 30 years easement in terms of baseline and credits made available from the project.

Whereas the conservation easements are deducted 60 percent of the number of credits made available in the market using the HQT model. One [e.g. a term lease] with less protection (30 years vs. perpetuity) is provided no reduction, and those were terms under which those three leases were negotiated.

Although Director Tubbs supports approval of those three term leases, concerns were raised by Director Williams and public testimony about weight given toward shorter-term protection strategies vs. weight given to long-term protective strategies.

The Policy document recommends MSGOT ultimately adopts and directs staff to apply the same baseline reduction to term [leases] and perpetual easements. Doing so would even out playing field in terms of credit production. Not certain what that means for the landowner. Not sure it would even mean much for landowner, because the amount of generated credits does not equal price. Price is a negotiated term on each of these deals.

Would encourage staff to find granting programs other than MSGOT that might be willing to participate in assisting those landowners in securing a term lease. Oftentimes, perpetual leases come in with as much as 50 or greater percent of funding from another source, and MSGOT is providing a share. That's what drives the negotiated price. As Director Tubbs understands the agreements, price was bottom-line issue and doubts that the issue was how many credits the land generated. It was about how much money is this deal worth to the state and whether it was an acceptable value to the landowner.

This Policy does not impact that decision. This Policy goes to the instrument of the HQT. The amount of credits generated are the same on both properties -- permanent easements or the same land for first 30 years. Do we award more credits for those conservation efforts that terminate in 30 years vs. those that are perpetual? This Policy would make them equal. Director Tubbs does not think this is a staff-level policy question. It's MSGOT's job to set policy. Wanting to provide clear direction for the staff. If don't get this policy change, Director Tubbs's direction to staff will be to stop negotiating term

leases. That's a heavy hammer, but feel strongly about this issue.

- 01:01:49 Director Tubbs: Called for public comments on the issue of providing direction to the staff regarding the baseline adjustment on term leases, then motions, then discussion and decisions. There are differences of opinion on this policy from how he looks at it, willing to listen, but hard positioned.
- 01:02:12 Mr. Glenn Marx, Montana Association of Land Trusts: Brought up the issue at the last meeting. The Land Trust community would support the proposal. Term leases are ok, they provide landowners with options, and shows the Program is flexible. But term leases should not be incentivized over other kinds of conservation. Proposal makes things equal, fair, and the Program consistent. Support it.
- 01:02:57 Director Tubbs: Asked for additional comments. None came forward. Asked for a motion.
- 01:03:10 Director Williams: Moved that MSGOT direct staff to apply baseline adjustments consistently between perpetual easements and term leases and term easements and leave it at that. Director Tooley seconded.
- 01:03:28 Director Tubbs: Called for Discussion.
- 01:03:38 Ms. Ahlgren: Said it's hard to defend a term lease getting paid for 100% of the credits versus 40% for a perpetual easement. **[HANDOUT #2: Adaptive Management section from the Policy Guidance document]** Referred to the earlier discussion about adaptive management. Looked up the adaptive management section in the Mitigation Policy Guidance document. Sees the proposal / motion as a fairly significant change. Director Tubbs may be right that the change may not affect the price, but views it as basically killing the term-lease credit option, which is in statute. The term lease option has a considerable amount of landowner interest. Term leases are a good option. MSGOT needs more time to discuss how to make it more fair. The Policy discusses an annual review, so that would be coming up shortly. Referred to Ms. Sime.
- 01:06:00 Ms. Sime: The Program has been implementing the Mitigation Policy Guidance document since the rules took effect in January 2019. Would expect some efforts at holding an adaptive review in early 2020.
- 01:06:27 Ms. Ahlgren: The Policy dictates an annual review for adaptive management, getting stakeholder feedback, assessing the economics of mitigation, incentivizing private landownership, etc. Referenced the end of page on 87: "MSGOT must provide public notice of any major or minor changes in its contemplating and provide opportunity for written and oral comment prior to making final decisions." Proposed tabling the agenda item. Ms. Ahlgren understands no other grant cycle will take place for a considerable amount of time. Referred to Ms. Sime.
- 01:07:36 Ms. Sime: The timing of the next grant cycle is dependent on additional contributions to the Stewardship Account. Decisions for the September awards almost fully expend the current balance. Wouldn't expect the next grant cycle until mid to late 2020 at the earliest. It depends on the timing of when and how fast those funds are deposited in the Account and don't have the ability to predict. Based on the first two grant cycles, the Account balance should be roughly \$3 to \$4 million in order to offer a meaningful grant opportunity for applicants and due to the nature of the projects that are considered for funding.
- 01:08:35 Ms. Ahlgren: Don't see the need to hurry this proposed change. If don't have a grant cycle request, then there's more time for discussion. Believe based on the Policy Guidance, need to get public comment. It's too big of a change not to get public comment. Made a motion to table the discussion until take more time to take for public comment and to address it more thoroughly.
- 01:09:26 Director Tubbs: Discussed the process for tabling. Tabling motion is non-debatable, requires a second and it would go up or down. [Sen. Lang asked whether it did require a second; Director Tubbs said he would accept that process for a motion and then vote and it either passes or not.] Requested not to

table the item in order to have a discussion then take executive action. Director Tubbs said he understood Ms. Ahlgren's concerns and would have a recommendation if it goes that way.

- 01:10:15 Director Williams: Had clarifying questions for Ms. Ahlgren. Is she basing her desire to move to table the Policy change on her concerns about baseline adjustments being applied consistently to term leases/easements, and perpetual easements taking away landowner's option to enter into term leases? Wants to better understand that concern. Stated she believed in the tool and said the baselines should be applied consistently between perpetual terms and leases, to have equity. What drives Ms. Ahlgren's concern that doing so will take that option away?
- 01:11:35 Ms. Ahlgren: Believed doing so would drive the price of term leases down enough so landowners would have no incentive for landowners to participate. Would like time to have it shown that that won't be the case [referring to Director Tubbs's prior statements] Ms. Ahlgren believes it will drive the price down enough that there won't be any incentive to participate. What's currently in the Policy went by stakeholders and they put in a lot of time. It was done to encourage participation by landowners who will not do a perpetual easement. I believe it's worthwhile and there's tremendous habitat will not be protected if the proposed policy change drives price down to the point where people will not participate. It's in the Policy Guidance document at least two places that want to encourage landowners to participate in term leases who will not participate in perpetual easements. If producers had options to participate for 20 or 30 years, it will help them mitigate risks in the markets – when cattle prices crash, landowners could plow up land to diversify and this can be a big help in mitigating the risk. From what she understands, this will take the price down to the point where landowners will not participate.
- 01:14:06 Senator Lane: Agreed with Ms. Ahlgren. Agrees with the idea that the price is important determinant of how things go. Addressed previous discussions of how conditions vary across state. System is protecting the existing status of the birds, a good thing. Glad to see term leases and liked to see neighboring ranchers working together. People back in the eastern part of the state had expressed excitement about seeing MSGOT approve term leases. With term [leases] have more opportunities to maintain the current status quo [of habitat]. Most of the cultivation has been done already, but never say never. Ranchers want to do their part. But would not want to see ranchers excluded because of money. Argued that taking more time for discussion wouldn't hurt. It would allow people talk and possibly generate other ideas.
- 01:17:20 Director Tubbs: Called for further discussion.
- 01:17:24 Administrator Halvorson: If it comes to the vote of whether to delay, have a question directed to Ms. Sime. How was 40 percent derived for perpetual easements? What considerations went into that, and why should it be discounted below full value? Don't defend the 40% but why is the reduction necessary?
- 01:18:12 Ms. Sime: Baseline was one of most hotly contested topics during the stakeholder conversation. Very high level of complexity for all the different moving pieces and parts and how they fit together. The 40% was a compromise stakeholders were willing to support to get off the dime and get moving so we could set the stage for future discussion and adaptive management.

Some wanted a much higher percentage. That number [i.e. baseline] affects how many credits are made available from the project in the marketplace to offset development. That baseline number does affect supply of credits. Recall that presently talking about MSGOT's supply of credits because only working with credits created from Stewardship Account grants.

Whether talking about perpetual easement or term easement under the Open Space Act or a term lease which more closely resembles a contract, the status quo is being preserved. For example, in a term lease, there's a contractual arrangement where a landowner agrees to do and not do certain things in exchange for a payment. In exchange, MSGOT owns the credits and the credits are used to offset impacts of development when a developer chooses to offset their impacts by making a

contribution to the Account. They would be considered preservation of the status quo - preservation credits. The landowner agrees to maintain current uses and manage / steward the lands as traditional agriculture.

The preservation of status quo is something that would be pointed to in order to offset a real change in the landscape if a gravel pit were to be implemented. Has to do with trying to level the scale to the point where it's encouraging habitat conservation but also recognizing that if 100 percent of credits were available from just preserving the status quo, it would be upside down at some point in future, because there would be impacts due to developments elsewhere.

It has to do with calibration of supply and demand, calibration of impacts vs. conservation. It's made more complicated because we're dealing with units of habitat quality, not physical acres. The quantification tool produces a number of habitat quality units. Depending on where that calibration lands, it could have a very high supply of preservation credits to offset the impacts of development for a long time. Stakeholders were aware of these tradeoffs. If supply is high, price would be low. If supply is really low, then price should be high. It would be better to discuss calibration issues after the Program has a longer track record of implementation.

01:22:53 Director Tubbs: Why less than 100%? Because perpetual easements don't provide any additional habitat. Wetlands typically get 10 percent of the value. For any other model, the discount is 80-90%, not 60%. MSGOT adopted one of most liberal allocations in the U.S. of credits for simple conservation easements. That's what one side was looking at. The other side was uncertain about how many debits the development would incur so wanted to maximize credits so no discounting. But that's unacceptable.

Another way to look at it is how do you incentivize through credit generation real uplifts, reestablishment of sage grouse and removing sage grouse threats? Give 100% to that. But someone only maintaining status quo can't equal someone investing in additional habitat, that's where there's a differential in conservation in general. It's a highly discounted investment in most cases. Fought tooth and nail and ended up with 40%.

MSGOT missed this [particular policy application to term leases] in earlier drafts of the Policy. People on both sides claimed it was never discussed, even though it's apparently in black and white in the adopted final Policy, they never talked about it. That's why MSGOT discussed it for the first time at the last meeting. Doesn't believe it's good policy as USFWS would look at it to incentivize short-term conservation efforts over long-term conservation. The policy is the first place in the Program where will have a measurable deficit when it goes under a [USFWS] consistency review, which is unacceptable. Director Tubbs said that open to an alternative motion that would direct Program staff they will not negotiate term leases until MSGOT finalizes the discussion and establishes a new policy direction in the future or future negotiations will be based on 40% baseline [i.e. either stop and wait for future policy direction or this proposed new policy be adopted by MSGOT today].

01:26:10 Ms. Ahlgren: Thanked Director Tubbs for the clarification. Would go along with that type of motion for stopping and waiting for future policy direction if it's settled [i.e. so long as there's an endpoint to the discussion].

01:26:40 Director Tubbs: Willing to have it on every agenda until it's agreed upon, but will not change position. Doesn't believe it falls under the adaptive management policy. It's not a significant change, because it's black and white in the current Policy. The current policy in the first sentence states, "There shall be no adjustment to baseline for term easements or leases when term is 15 to 30 years" [suggesting a big change]. The last sentence states, "MSGOT may approve a 10-percent adjustment above or below 30 or 50 percent as described in similar perpetual agreements." It gives MSGOT a Policy window of 20 percent or 60 percent or choose 100%. That is in current policy, as adopted in October, 2018.

It is not a change in Policy to direct staff within those two boundaries. If MSGOT members had read this section critically, they would have seen the two sentences don't work well together. But have the

policies now. Don't need [to invoke] the adaptive management provision to set the direction to continue to use the existing policy as an option but to direct to stay within the boundary by focusing on the last sentence. Willing to have a discussion in adaptive management, to determine if 40 percent is still a good number and how term leases may still be an issue, but don't want staff to not hear him and to continue. Was surprised and don't like to be surprised, especially when that there's an imbalance that can be measured and that's why position is hard.

- 01:29:11 Director Williams: Believes there is some confusion. Disagreed that applying the baseline consistently would take away incentive for term leases. It only applies the policy the same. Shared anecdote of talking with Montana's only rancher who entered a term easement with FWP. He eventually converted the term easement to a perpetual easement. There's a boogey man about the difference between term easements and perpetual easements. Fully support term easements but don't think that by applying the baseline consistently is not a change that will take away the tool and don't want to take away the tool. If going to encourage term, should do it fairly and consistently.
- 01:30:42 Director Tooley: Question directed to Director Tubbs/Ms. Sime. For current leases that have gone through, has there been any analysis on how they would have changed in terms of price?
- 01:31:06 Director Tubbs: Responded to Director Tooley. Staff applied a methodology in negotiations, which linked the number of credits times the price, to generate a value. Directed question to Ms. Sime: Are credits the basis for the price of a perpetual easement? Is the negotiated value of permanent easement based on the credits generated?
- 01:31:49 Ms. Sime: No.
- 01:31:53 Director Tubbs: Directed question to Ms. Sime: In the negotiation of term leases, did you use the number of credits generated as the basis for negotiation?
- 01:32:03 Ms. Sime: Responded to Director Tubbs. No. Clarified background as follows. Grant cycle begins with request and interested individuals can submit their application. In the case of perpetual easements, grant applicants step forward with a potential project, identify sources of matching funds, and request a certain amount from the Stewardship Account. Often, applications for perpetual easements are informed by a preliminary [market] appraisal, sometimes by a final appraisal. Project is put together after considering sources of matching funds.
- For term leases, grant applicants and their sponsors stepped forward and the Program asked about what lands would be included in the project and if there would be any restoration or enhancement opportunities because that's where the uplift happens.
- Applied the same HQT equally to term leases as would for perpetual easements. The HQT result is the number of functional acres gained in one year. For perpetual easements, multiplied functional acreage by 100 [for 100 years]. For term leases, multiplied functional acreage by the number of years of the lease or its duration. If term lease is 25 years, multiply one-year HQT result by 25. That final number is shared with term lease applicants. But need to cross walk number of credits created to money – what is the level of request from the Stewardship Account to support that term lease?
- The request level from the Stewardship Account was determined by \$13 cost per credit paid by developers with a 3-percent discount for the duration of the development project. The \$13 was informed by the value and the parameters for 2016 perpetual easements that MSGOT funded. With taking \$13 for 100 years for a perpetual easement, developed a graduated scale where the value per credit in five-year increments decreased for each five-year increment of a term. That information included in Program's recommendation report from the last meeting.
- 01:35:44 Director Tubbs: Said Ms. Sime did use number of credits generated times a value to negotiate price, so therein lies the concern. It's not necessarily the basis of what a negotiation has to be [for term leases]. Similar to perpetual easements, the value of the land, with and without easements, has

nothing to do with the credits generated. Unless a landowner is into selling credits, they want to say they have high valued resources worth investing in for conservation. Once at that level that the property has high value to sage grouse, then it becomes a price negotiation. Landowners know that value [or worth] of agreeing not to do something on their property for 30 years. They negotiate the price. The policy doesn't set price. It just says landowners get to count 40 percent of the credits generated, just like permanent easements.

- 01:37:54 Director McGrath: Would vote in favor of motion on the floor if it moves forward. Said Director Tubbs made a compelling argument that the current policy may create unintended, perverse incentive. May be value to consider a substitute motion. The motion may solve the perverse incentive but does not completely address the issue. MSGOT may benefit from further discussion of what the fix is. Good that landowners are taking advantage, but longer term / perpetual easements should be more valued. Having them at an equal 40 percent doesn't seem to be creating that. Further consideration with options back to MSGOT for a longer term solution may be worthwhile.
- 01:39:28 Director Williams: Clarifies that motion was to apply baseline adjustments consistently between perpetual easements and term leases/easements. That does not preclude the ability down road through the adaptive management process. The adaptive management process allows the discretion to negotiate 40 percent. That percentage may change. Most concerned about applying them consistently and not creating a perverse incentive.
- 01:40:21 Director Tubbs: As MSGOT opens it up to adaptive management, there's risk to term leases. One may say fewer credits are available for term leases because they are less protective because the term ends. But when not discounted in the same way as perpetual easements, that 30 [years] is overcome by applying 100% of credit. Even though it's less protected, we end up in a better position in terms of credits generated.
- Have had direct communications with Mr. Holmes and this proposal has been cleared through the Governor's Office. Holmes was in strong support of Director Williams's Motion. Can't support a program where there's a differential and disadvantage to perpetual conservation easements. If MSGOT adopts Director Williams's motion, then staff can feel free, when the opportunity presents itself, to enter initial discussion with parameters the Director can support. If MSGOT does not adopt the motion to change the policy, and if we get inquiries about term leases, there should be shadow of concern over that discussion since the policy may change. Better to direct to staff to not enter any negotiations until it's resolved and it's not going to be resolved under the status quo. Even though there presently isn't any money, sometimes it becomes available and people start talking when had no expectations. Don't want to leave staff in a confusing situation as to policy.
- 01:43:20 Senator Lang: Question for Director Tubbs. Aren't we reducing terms anyway? A 25-year lease only generates 25 percent of the credits generated on that property.
- 01:43:33 Director Tubbs: Responded to Senator Lang. It's equal for both the perpetual easement and the term lease for each year until the end of the term. At end of the term, they stop for the lease but continue for the perpetual.
- 01:43:49 Senator Lang: Follow-up question for Director Tubbs. Isn't it a small percentage according to how it's written up? Is there an algorithm, where, in 25 or 30 years, credits are there, there's just not a lot at the end?
- 01:44:02 Director Tubbs: Responded to Senator Lang. The HQT in any one year says it's generating 10,000 credits. In 30 years, it's generating 300,000 credits. Both sides [term lease and perpetual easement] would get 300,000 credits. Overall, the perpetual easement is calculated at 100 years, which would generate a million credits [10,000 x 100 years in terms of credits]. In terms of value, that's where the discount comes in – the \$13. The HQT does not reduce credits, it's the policy docking the number of credits by 60%. Over 100 years, at 40% baseline, a perpetual easement generates 400,000 credits [reduces credits available from the perpetual easement by 60%]. For a term lease of 30 years, a total

of 300,000 credits are available [10,000 per year x 30 years].

- 01:45:26 Senator Lang: Follow-up question for Director Tubbs. Isn't value determined by people presenting the perpetual easement? Do they put together numbers they think it will generate?
- 01:45:32 Director Tubbs: Responded to Senator Lang. The negotiated price point [for a project] does not have to be associated with credits generated. In perpetual easement negotiations, credits never come up. Credits only inform MSGOT whether property is valuable for conservation. Likes benefits of credits generated, but if question is whether to close the deal or reject the deal - it's high quality indicators of HQT results that justify expenditure of state funds. The number of credits generated is not the basis of negotiated price. The landowner, in most cases, is not basing decision on credits generated from property, basing decision on price state is willing to pay. Believes can figure out methods for term leases that are the same. HQT identifies high value properties to conserve, encourage highest match we can find. If programs like NRCS are not funding term leases, would like to have a discussion with them about what values they might see in that, to free up grant dollars. Doesn't want to be in a 5-year consistency review with USFWS, having to justify why the state applies a less protective strategy for credits generated. MSGOT is encouraging greater development through instruments that provide less protection, when permanent easements would provide greater protection when dock them 60%.
- 01:47:45 Senator Lang: Follow-up question for Director Tubbs. Don't see why have to be so affirmative now. MSGOT doesn't know what NRCS is going to do. A delay for a month or two wouldn't hurt.
- 01:48:36 Director Tubbs: Responded to Senator Lang. Could agree to delay if direct staff not to enter any negotiation on term leases until MSGOT comes back and addresses this issue.
- 01:48:48 Senator Lang: Responded to Director Tubbs. We have it in the Policy already for the top and the bottom [of the range], and the Program should come to MSGOT with what they think would go through MSGOT.
- 01:48:55 Director Tubbs: Responded to Senator Lang: In the first round, Program negotiated on the first sentence of the Policy, not the last sentence. MSGOT is the one that has to give direction to the Program. There will be no adjustment to baseline for term easements 15 and 30, unless we exercise authority under the last sentence to say that it's not 100 percent. Concerned Program staff does not have clear direction in terms that they would still negotiate at 100 percent until MSGOT tells them otherwise.
- 01:49:29 Senator Lang: Responded to Director Tubbs. Thought directions from the Committee to the Program is not to do that right now. We have basis at end where and we could do it now.
- 01:49:38 Director Tubbs: Responded to Senator Lang. Willing to put it on hold as long as it's emphasized we're not going to negotiate 100 percent on term leases before we can get Policy changed.
- 01:49:47 Senator Lang: Responded to Director Tubbs. Unfair to Montana citizens.
- 01:49:54 Director Tubbs: Responded to Senator Lang. Can't support term leases under the current Policy until have further discussion.
- 01:50:02 Senator Lang: Responded to Director Tubbs. Can't support Director Tubbs's proposal either.
- 01:50:08 Director Tubbs: Asked Ms. Ahlgren if wanted to make motion to table.
- 01:50:17 Ms. Ahlgren: Not adverse to directing staff not to enter any new term lease negotiations. Want public comment because had calls from landowners on this issue. Need discussion, in particular with landowners, who are the mainstay of the Program, correct?
- 01:50:57 Director Tubbs: Yes. Stated not in disagreement with the other members and had a public comment

period that no one responded to. Didn't feel out of alignment with MAPA situation for public comment. Asked Ms. Sime if this was the last meeting of the year.

- 01:51:35 Ms. Sime: Yes, last one scheduled but could accommodate a request for another.
- 01:51:42 Director Tubbs: Didn't see as subject to the Policy that was brought up, though didn't mind discussing the discount in that Policy. Can revisit and revise at the first 2020 MSGOT meeting. Directed to Ms. Ahlgren that she could motion to table and not have staff negotiate new term leases until the meeting concluded. Would give sufficient time for the public to comment. When get to the adaptive management discussion, need to discuss before sending the Program out to discuss the untested Policy. Have not yet completed one year of service. Need a year completed before MSGOT can address that Policy. May be able to provide some direction in January for what the adaptive management process would look like. Believe can resolve this issue and OK to hold it until January meeting. Staff can work with MSGOT to test veracity of assumptions about price.
- 01:53:54 Director Williams: Since motion to table is non-debatable, raise the question that not clear what we're waiting for. Comfortable if we need more comment. Hope not delaying because there's disagreement. If delaying for more info, would help to have an NRCS presentation about why they do not do term easements and why, when leveraging money, why other partners typically don't do term leases or easements. There are reasons for that and want to hear that. Didn't want to take away the tool, but incentivizing a short-term tool over a long-term tool doesn't make good policy sense when talking about habitat conservation. If delayed, wanted specific information and what looking for, other than delaying a vote due to disagreement. Want to know what more we are looking for.
- 01:55:38 Senator Lang: Discussions about credit banking. Happy conservation districts have stepped up and working in local communities. But what if the U.S. government removed NRCS funding, leaving no way to fund anything? Better off with small pieces of land and small projects like Watson – small parcel of private property surrounded by federal land. Not yet clear how this would work and not sure MSGOT fully understand it. Need more input on what could happen.
- 01:58:30 Director McGrath: Offered a substitute motion to direct staff not to move forward with any term easements [referring to term leases] until the next meeting, and secondly to do further analysis on the motion from Director Williams to have ready for the next meeting and recommend that the further analysis and outreach to appropriate groups to allow for input into Director Williams's motion and then take up at the next meeting.
- 01:57:52 Director Tubbs: Acknowledged substitute motion and asked for a second. Ms. Ahlgren seconded. Called for a discussion on the substitute motion for purposes of clarity.
- 01:58:11 Ms. Sime: Requested Director McGrath to repeat substitute motion.
- 01:58:23 Director McGrath: Repeated the substitute motion. Two parts – direction to staff to not bring any more term lease negotiations and secondly that staff should analyze the potential effects and to do outreach to landowners and NRCS to bring additional information to MSGOT.
- 01:59:28 Director Tubbs: Asked Ms. Sime if she had any stakeholder meetings planned.
- 01:59:35 Ms. Sime: Currently none scheduled. Hoping to schedule in January, specific to trenchless excavation. The invite list is a broad spectrum of core partners, stakeholders, individuals, and interests.
- 02:00:13 Director Tubbs: Called for further discussion or questions. No response. Question called. Asked for vote on substitute motion. All in favor, motion passed. Mr. Holmes voted aye by proxy via Director Tubbs.

Watson Conservation Easement: Increase Stewardship Grant Award Amount

- 02:00:30 Ms. Sime: Project was initially selected for funding in 2016. For personal reasons, the family did not move forward with the perpetual easement until recently. Montana Land Reliance is seeking additional \$100,000, bringing the total Stewardship Account award to \$262,500, if MSGOT agreed. [HANDOUT #3: showing location of all 2016 projects and 2019 awards] The Watson project is the only Stewardship Account project in the North Central Service Area north of the Missouri River. All other projects are located in other service areas.
- 02:02:31 Director Tubbs: Called for questions.
- 02:02:37 Director McGrath: Will the Montana Land Reliance provide additional funding?
- 02:02:53 Director Tubbs: Responded to Director McGrath. Calling for questions regarding the Program introduction. Hold easement-specific questions for the grant sponsor. Continued to comment that the map shows MSGOT-approved projects. One conservation easement in the southeast is owned by a private investment [as a permittee responsible]. Would be useful in the future to show all identified credit-generating acres. Would like them on the radar screen, so can see the potential for negotiating credits with Denbury. Looks like credits are zero, but private credits do exist, are available and there is a balance. Called for the Montana Land Reliance (MLR) presentation.
- 02:04:02 Mr. Brad Hansen, Eastern Manager MLR: The Watsons approached the MLR in 2016 about their interest in doing an easement. MLR applied for funding on behalf of the landowner. In addition to federal funding, MLR applied for funding to purchase the easement outright. NRCS would fund 75 percent of the easement's value. Sought another 25 percent from the State. In February 2019, met with Watsons. They were ready and wanted to move forward, but the preliminary appraisal numbers used in 2016 [to determine the grant requests from the state and NRCS] were no longer up to date. The final appraisal completed in October 2019 showed increased value [final appraisal had increased from preliminary appraisal due to changes in neighboring land values]. MLR was in a bind. Originally had hoped to provide funding for a fully purchased easement. Asking the Committee for an additional \$100,000 to bridge gap in the shortfall. MLR committed \$50,000 of privately raised funds, bringing a total of \$150,000 toward the easement to get it across the finish line.
- 02:06:56 Director Tubbs: Called for public comment on the Watson Conservation Easement. No public comment. Called for motion.
- 02:07:19 Director Tooley: Moved for approval of request. Director Williams: Seconded approval.
- 02:07:24 Director Tubbs: Called for discussion.
- 02:07:28 Director McGrath: Question for Brad Hansen. Increase in value has gone up almost 100 percent. Struggled to understand how that happened.
- 02:08:12 Mr. Hansen: Couldn't speak to the specifics of the appraisal it was based off. There's the "before" value and the "after" value with the encumbrances in place. The difference is the easement value. Trying to get to easement value with the additional funds. The appraisal itself was 581 pages. Sales in the area bumped up the value of land in the area.
- 02:09:01 Director Tubbs: Interjected that Director McGrath had miscalculated. Actually, MSGOT is only funding 25% of the project.
- 02:09:27 Mr. Hansen: Unsuccessful at getting more money from NRCS.
- 02:09:39 Director Tubbs: Interjected that the bump up created a gap that needs to be filled by non-federal dollars.
- 02:09:57 Senator Lang: Asked Mr. Hansen if it had to be done by December 2019.

- 02:10:07 Mr. Hansen: Responded to Senator Lang. It's the wish of the family. The drop deadline could be pushed into 2020.
- 02:10:20 Senator Lang: Asked Mr. Hansen if other NRCS funding could go into 2020.
- 02:10:26 Mr. Hansen: Responded to Senator Lang. MLR asked NRCS if there was any available funding to increase their allocation from 75 percent. No additional funding was available in the 2016 Farm Bill.
- 02:10:46 Senator Lang: Clarified question. If the number MLR is asking for is not approved by December 2019, could you still have the NRCS funds in 2020?
- 02:10:58 Mr. Hansen: Responded to Senator Lang. For a short period of time. Funds sunset very shortly after 2020. Due to the long NRCS review process, MLR could risk losing all funding if they were to push past end of 2019.
- 02:11:20 Senator Lang: Asked if there was a definitive date when NRCS funding will not be available for the project.
- 02:11:34 Mr. Hansen: Didn't have an answer to Senator Lang's question.
- 02:11:38 Senator Lang: For clarity, restated it could be used in 2020.
- 02:11:45 Mr. Hansen: Could provide that date. There is a 90-day review period for anything going before the NRCS. MLR has not been worried about the NRCS date because the landowner wanted to close by end of this year.
- 02:12:09 Director Tubbs: Asked for confirmation from staff that nothing has changed from the project. Assumed the numbers won't change in the next month and wanted to approve or deny at this meeting.
- 02:13:27 Senator Lang: Talked to family the previous night. The family is not worried if it doesn't close before the end of the year. Wants it funded. Had two Exhibit E's, one from the previous meeting and one in the current packet. There's a difference in the lek buffers. What are the changes in the status for the use of the property between the varying Exhibit E's?
- 02:14:20 Mr. Hansen: Briefly explained the easement process. First the MLR meets the family with the easement base document. The insert the minimum deed terms from NRCS and MSGOT to create a preliminary easement document. Then work with the family for their particular situation so no easement document is exactly the same. When the MLR presented the original easement document to the family, it had a 0.6-mile lek buffer zone for structures and limited impact activities. They took the document to the State for review. The State approved the buffer on the structures, but wanted 2-mile radius on surface/subsurface mining. The family approved, resulting in two different maps – the original easement document and the current one.
- 02:16:18 Senator Lang: For clarification, the red areas on the map show restrictions, except for the building development area. Wanted clarification on the 2-lek buffer (parcels showing diagonal green lines) — what restrictions in the documents could stop them from reseeding grasslands?
- 02:16:56 Mr. Hansen: From the easement draft, where the 2-mile buffer zone comes into play, the first says with regard to subsurface mining: "There shall be no subsurface occupancy associated with any new subsurface mining or hydrocarbon exploration or extraction within 2 miles from any active sage grouse lek." The second says with regard to limited impact activities: "All sand and gravel extraction must cease during nesting season for greater sage grouse in all locations within a 2-mile radius on an active sage grouse lek as depicted in Exhibit E." In talking with the landowner, they were not aware, and the mineral remoteness survey verified, that there is no gravel. The mineral report came back to be so remote that any sort of mining that would take place would be negligible. The Landowner thought the restriction was acceptable, and their attorney verified as much.

- 02:18:32 Senator Lang: Confirmed anything in that property, except what's in red, could be reseeded to have native grass.
- 02:18:46 Mr. Hansen: Replied yes.
- 02:18:51 Senator Lang to Ms. Sime: Concur? Ms. Sime Concurred.
- 02:18:58 Director Tubbs: Asked how many credits the easement generates.
- 02:19:04 Mr. Hansen: Didn't know.
- 02:19:06 Director Tubbs: Asked if the number of credits generated was the basis of the negotiating price.
- 02:19:15 Mr. Hansen: Replied no.
- 02:19:29 Director Tubbs: Called for further discussion. None came forward.
- 02:20:05 Majority approved the motion to move forward with the Watson agreement. Rhonda Knudsen opposed by proxy via Senator Lang. Mr. Holmes voted aye by proxy via Director Tubbs. The motion passed.

Update on Implementation of Senate Bill 299

- 2:20:20 Director Tubbs: Called for an update.
- 02:20:36 Ms. Sime: Senate Bill 299, sponsored by Senator Lang and others, became law in a May 2, 2019 statute. It codified specific language in the Executive Order. Program has been exercising a higher degree of diligence, paying attention to the language of the bill. Asking more questions of proponents to pin down the existence of prior permits, what areas and activities were in scope of the prior permit, what date the permit was issued relative to the effective date of the Executive Order. Answers to those new questions are applicable to the mitigation processes in place and adopted through formal MSGOT rulemaking.

Depending on the nature of a project, mitigation may or may not be applicable. Seasonal stipulations that are discussed in the statute and Executive Order similarly may or may not be applicable. Brings a greater degree of information exchange and deeper level of analysis. This increases the complexity of the review process. Based on how those answers fall, have to apply the HQT, if appropriate.

Senate Bill 299 also directs MSGOT and permitting agencies the opportunity to work together on projects requiring state permits or considered operations and maintenance. Those discussions have started.

Another directive of the Bill added new reporting requirements. Working on new ways to put together information that's responsive to those requirements. [HANDOUT #4 Memo to Environmental Quality Council provided for the September 2019 meeting].

Lastly, renewed efforts with stakeholders on the trenchless methods. The Bill directs the Program to work with stakeholders to streamline the compensatory mitigation review process, including calculation of reduced mitigation costs for low impact projects such as trenchless excavation. After initial one-one calls, have initiated that effort an organizational call. An in-person meeting is scheduled for January. Will exchange ideas and come up with an approach to bring for MSGOT's first-quarter meeting.

Last-week's kick-off introductory call, stakeholders given until December 9 to provide any feedback or input [as to how the current process is working, suggestions for how to stream line it and reduce costs].

- 02:27:58 Director Tubbs: Land disturbance activities are key in dialogue with agencies as to what's maintenance or not (under Section 3 of SB 299) in the dialogue with the Governor's Office and with agencies. Need practical solutions, so people on the ground understand what are land-disturbance activities. Called for public comment on SB 299.
- 02:29:42 Mr. Jim Morgan, private landowner from south of Bridger, involved with Mud Springs Wind Project: Felt unfairly excluded from it. Involved with the project before the Executive Order. [Handouts #5-7] Brought a permit signed with Mud Springs / EverPower to study wind on their land. Brought proof of lawyer fees in summer 2014 to review the easement. Brought maps showing land involved in wind project with turbines on it. His Interpretation of the Executive Order doesn't say anything about State or DEQ permits. It only mentions "a permit" and "outlined area of the project." Advocated his evidence fits fulfills those requirements. Wanted a letter from MSGOT to PacifiCorp stating he should be grandfathered in [included in the grandfathered area of the project].
- 02:31:02 Director Tubbs: Asked for materials for review at the Legal and Program level and do not expect to respond during this public comment period. Will look at the information again and give it a fair shake.
- 02:31:29 Mr. Morgan: If MSGOT won't grandfather, wants to know how he will be compensated for the taking of his private property rights.
- 02:32:13 Mr. Alan Olson, Executive Director Montana Petroleum Association: Came to agreements during the 2019 session as the legislation advanced. Had full confidence in Administrator Halvorson's agency to decide what is needed for operations and maintenance and what could be considered discretionary. Anything necessary for keeping wells operational falls under "operations and maintenance" in Section 3. Agree that if permitting new well, it comes under the Program. Once payment is made for compensatory mitigation, it covers any work that needs to be done on a well going forward. Agree that some of that work would be subject to stipulations of the strategy, like timing restrictions. But if work is needed to keep wells operational, its exempt. Need wells pumping and in compliance. Work needs to be done and work should be exempted from the HQT and willing live with timing restrictions.
- 02:35:13 Director Tubbs: Called for additional public comment. None came forward.

Public Comment on Other Matters

- 02:35:25 Director Tubbs: Called for public comment on other items.
- 02:35:37 Chris King from Winnett: Clarified that in his comments at the previous meeting that he was not complaining about the amount of funds offered. He had initially hoped for more and requested more in the grant request. What was offered was based on credits. He was voicing concerns about the image produced by the HQT and still concerned. These maps will become public record. Doesn't feel they accurately convey the quality of the habitat. Also concerned about the initial literature that said there'd be a third-level assessment. Scores from the second-level assessment could be adjusted based on changed pixel values, based on the results of a third-level assessment. [Handouts 8-9, Maps]. Discussed the color sections of the map. Dark blue areas are alfalfa areas should not be rated the same as farm ground, because alfalfa makes good brood-rearing habitat for sage grouse. The same problem with roads – these are low traffic roads and don't disturb grouse. Some leks indicated on the maps appear near those roads. Should be able to do a third-level assessment to address these problems – it's necessary. Approached other neighbors, thinking a larger parcel would be more beneficial to grouse than small parcel projects. Some neighbors showed interest but wanted to see how it went with the Schultz and King properties. None were interested in a permanent easement, but MSGOT has an opportunity to preserve a really large landscape there with term leases. While you say that price could be negotiated, the price that was offered was based on the credits generated. If credits devalued to 30 or 40 percent, people won't continue to use term lease option.
- 02:41:44 Director Tubbs: Stated a good example of what could be taken on for adaptive management strategy.

Computer models can't say it all and getting adjustments based on what's on the ground would be good. Understood the basis of the last negotiations were credit-based, but that is not the methodology that it has to be. Perpetual easement is not negotiated based on credits. MSGOT is looking for high quality land. Called for other conversations on the Committee.

- 02:44:03 Ms. Ahlgren: Agreed with Mr. King on the third-level assessment. Stated in all Winnett-area applications that the Program was undervaluing habitat. That needs fixing, even if won't go back and make changes for these projects. Policy dictates that third-level assessment is supposed to be part of the process. Wants assurances that will happen as soon as possible. Would like to see it as a priority.
- 02:45:48 Director Tubbs called for further public comment.
- 02:45:58 Sandy Morgan, landowner from south of Bridger: On the Mud Springs wind farm, wanted to know what the MSGOT was going to do for them and wanted commitment to look into it again. Does not want to be ignored. Was very frustrated.
- 02:47:58 Director Tubbs: Said the public comment period is not give and take. Accepted her material, saying it will be reviewed by the Program and attorneys. Understands their position and will need to read the material to see if their lands were included. Called for additional public comment. None.
- 02:49:13 Motion to adjourn. Seconded by Director McGrath. All in favor.

Chair for this meeting:

/s/ _____ x

Director John Tubbs

**MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET
JUNE 9, 2020**

AGENDA ITEM: SPRING CREEK MINE TR1 PERMIT REVISION GREATER SAGE-GROUSE MITIGATION MEASURES

ACTION NEEDED: CONSIDERATION AND EXECUTIVE ACTION TO ACCEPT A FINANCIAL CONTRIBUTION TO THE STEWARDSHIP ACCOUNT FOR COMPENSATORY MITIGATION AND AWARD THE FUNDS THROUGH FUTURE STEWARDSHIP ACCOUNT GRANTS

SUMMARY:

The scope of this agenda item is limited to the Montana Sage Grouse Oversight Team's (MSGOT) consideration of whether to accept a \$107,727 financial contribution to the Stewardship Account as compensatory mitigation for impacts to Greater Sage-grouse (GRSG) habitat and, target future Stewardship Account grants in the Southeastern Montana Service Area.

INTRODUCTION:

The Spring Creek Coal Company LLC (SCC) applied to the Montana Department of Environmental Quality (DEQ) for the Major Revision TR1 Project at the Spring Creek Mine (SCM) in November 2013. This is a major revision to SCC's existing mining permit. The TR1 project will add 977 acres of new disturbance within the existing permit boundary.

Executive Order 12-2015 does not apply because: 1. the mine was originally permitted prior to the effective date of Executive Order 12-2015; and 2. the *new* disturbance will occur within the existing defined project boundary of the previously-permitted mine. However, SCC's requirement to mitigate for GRSG habitat impacts originates in the Montana Strip and Underground Mine Reclamation Act (MSUMRA) (Section 82-4- 227(2)(a) and 82-4-231(10)(j), MCA).

In 2010, the BLM completed an Environmental Assessment (EA) that analyzed the environmental impacts of modifying two existing leases to include a tract of Federal coal reserves in the TR1 Project Area and issued a Finding of No Significant Impact (FONSI; BLM 2010). As part of the environmental review, a Habitat Recovery and Replacement Plan (HRRP) was developed between SCC and the BLM, in consultation with Montana Fish, Wildlife, and Parks (FWP) and DEQ. The HRRP included 14 stipulations to mitigate the loss of sage grouse and other wildlife habitat within the disturbance areas.

SCC has worked to implement the required stipulations; however, the requirement to deposit compensatory mitigation funds into the Montana Fish, Wildlife & Parks (FWP) Landowner Incentive Program (LIP) account has not been fulfilled because FWP's LIP fund no longer exists.

In a letter to BLM and FWP, DEQ requested BLM and FWP to: (1) concur with the sage grouse impact analysis in DEQ's MEPA review of the TR1 Major Revision proposal; and (2) agree that DEQ's mitigation measure satisfies the condition in the HRRP for SCC to provide funds to the now-defunct LIP program. In BLM and FWP response letters back to DEQ, respectively, each agency mutually agreed and concurred with DEQ's mitigation measure and placement of the mitigation funds in the Stewardship Account.

Spring Creek Coal Company LLC requests MSGOT accept the compensatory mitigation funds for impacts to GRSG habitat pursuant to MSUMRA and to satisfy SCC's HRRP stipulation.



BACKGROUND AND PROJECT SCOPE:

The SCM is in Big Horn County, Montana and has been in operation since 1979. Currently, the DEQ-approved permit boundary of the mine encompasses 9,220 acres. The TR1 project would add 977 acres of new disturbance within the existing (defined) permit boundary. If authorized by DEQ, the TR1 project would extend the life of the mine from 2027 to 2031 and increase the total disturbed area from 6,134 acres to 7,111 acres. SCM submitted the proposed TR1 revision application to DEQ in November 2013.

The TR1 major revision at the SCM was submitted by SCC, a wholly owned subsidiary of Cloud Peak Energy Resources, LLC (CPE). During the EIS development, CPE filed for bankruptcy and was acquired by the Navajo Transitional Energy Company (NTEC) in August 2019. A minor revision was approved in October, 2019 that made NTEC the contract miner at the SCM. The permit transfer from SCC to NTEC, which was submitted in November 2019, is pending.

Previously in 2008, SCC submitted two coal lease applications to the BLM. One application was for a coal lease modification to MTM-069782 and the other sought another to renew the Land Use Lease (LUL) MTM-74913 for an additional 20 years. BLM completed an Environmental Assessment (EA) that analyzed the environmental impacts of modifying the existing leases. BLM approved two SCM lease applications and included required mitigation. BLM issued a Finding of No Significant Impact (FONSI; BLM 2010).

As part of the federal environmental review; SCC and the BLM developed a Habitat Recovery and Replacement Plan (HRRP), in consultation with FWP and DEQ. This consultation was necessary due to BLM's requirements of the Unsuitability Criteria found in 43 CFR 3461.5(o)(1) to mitigate the loss of GRSG and other wildlife habitats within the disturbance areas. The HRRP included 14 stipulations for mitigation that were incorporated into the coal lease and LUL amendment making the HRRP a requirement of the TR1 lease (BLM 2010).

One stipulation in Part 2(b) of the HRRP, required SCC to provide funding in the amount of \$12 per acre, or the established Landowner Incentive Program (LIP) payment rate, at the time these funds are needed, for each acre to be disturbed by the LBM mining activities. Funds would be used to implement grazing systems, conservation easements, or to buy or retire private mineral leases. SCC was to provide FWP with a list of landowners either within the lands identified as crucial sage grouse habitat in the SEIS area or having similar habitat characteristics.

The HRRP also stated that failure to comply with agreements worked out under the HRRP would constitute noncompliance as described in Section 21 of the coal lease. Spring Creek Coal Company LLC indicated that the mitigation plan outlined in the HRRP had been implemented to the extent possible within the mine permit area and surrounding lands owned by the mine, with one exception. The payment of monetary compensation into FWP's LIP has not been fulfilled, because the program no longer exists.

BLM, FWP, DEQ, and SCC agreed to incorporate a mitigation measure to satisfy *both* the need to mitigate for impacts to GRSG under MSUMRA and to satisfy SCC's requirement to make a payment to FWP's LIP fund that was required by the earlier BLM authorizations.

Pursuant to MEPA, DEQ consulted with the Sage Grouse Habitat Conservation Program (Program) on October 2, 2018. The Program recognized that the TR1 Major Revision project was outside the consultation requirements of Executive Orders 12-2015 and 21-2015 and the Greater Sage-grouse Stewardship Act (personal communication J. Lane 2018). Notwithstanding, DEQ determined using a functional habitat quantification methodology similar to the MSGOT-approved Habitat Quantification Tool (HQT) for the TR1 EIS impacts analysis would more accurately reflect changes in habitat function within



TR1 and surrounding landscape where the various conservation plans have been implemented than the physical acre approach to estimating impacts. The SCM TR1 Mitigation Measure was based on the TR1 Greater Sage-Grouse Habitat Assessment Memorandum (Assessment Memorandum) produced for the GRSG analysis in DEQ's EIS.

The Assessment Memorandum quantified the amount of GRSG habitat likely to be impacted by direct and secondary impacts associated with SCC's proposed TR1 project using a functional acre approach that employed similar, but not identical, analytical methods as the Program's MSGOT-approved HQT. The Assessment Memorandum identified possible mitigation approaches to offset those impacts. It also considered the appropriateness of on-site mitigation on SCC properties vs. off-site mitigation. It also calculated the amount of a compensatory mitigation payment to the Stewardship Account, if SCC chose that option in fulfillment of its mitigation obligations.

DEQ sent the TR1 Greater Sage-Grouse Habitat Assessment Memorandum to BLM, FWP, and the Department of Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE) for review on March 27, 2019.

DEQ sent the TR1 Greater Sage-Grouse Habitat Assessment Memorandum to the Program on August 6, 2019. DEQ released a TR1 Draft EIS on August 27, 2019 and held a 30-day public comment period. Out of the 543 public comments DEQ received, 3 were related to sage grouse impacts. In the Final EIS, DEQ's preferred alternative incorporated the mitigation measure for impacts to GRSG. DEQ selected the preferred alternative in the Record of Decision and Written Finding on March 27, 2020. Implementation of this mitigation measure is a condition of DEQ's permit approval for the TR1 project permit under MSUMRA.

SPRING CREEK MINE TR1 GREATER SAGE GROUSE MITIGATION MEASURE:

Through the environmental analysis, DEQ determined that opportunities for effective, on-site sage grouse habitat mitigations were limited. Previous disturbances and the cumulative impacts of TR1 and potential future projects would impact sage grouse habitat in the area. Therefore, an approach to provide compensatory mitigation off-site was pursued.

The SCM TR1 DEQ EIS GRSG mitigation measures were informed by the TR1 Greater Sage-Grouse Habitat Assessment Memorandum. The Assessment Memorandum estimated a compensatory mitigation payment of \$107,727. Spring Creek Coal LLC is required to provide these funds as a condition of DEQ's final permit approval, which was issued on March 27, 2020.

DEQ made the final decision on the TR1 permit revision pursuant to MSUMRA and MEPA on March 27, 2020. DEQ's Written Findings and Record of Decision describe the conditions of approval and the mitigation measure in detail. Spring Creek Coal LLC is required to deposit the funds in the Stewardship Account prior to initiating mining activities. Spring Creek Coal LLC also needs to obtain OSMRE's approval of the federal Mine Plan to begin operations prior to commencing mining activities. This decision is expected in June 2020.

The sage grouse compensatory mitigation funds would address sage grouse impacts under MSUMRA and MEPA and satisfactorily fulfill BLM's LIP stipulation. If MSGOT accepts these funds, it would target future Stewardship Account grants for the Southeastern Montana Service Area.

PROGRAM RECOMMENDATION:

The Program Manager recommends MSGOT agree to accept a financial contribution to the Stewardship Account for compensatory mitigation for impacts to Greater Sage-grouse habitat developed by DEQ, BLM, and FWP.



MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET
JUNE 9, 2020

AGENDA ITEM: MODIFIED MITIGATION POLICY APPROACH FOR DEVELOPMENT PROJECTS UTILIZING TRENCHLESS METHODS

ACTION NEEDED: EXECUTIVE ACTION TO APPROVE THE MODIFIED MITIGATION POLICY APPROACH FOR DEVELOPMENT PROJECTS UTILIZING TRENCHLESS METHODS AND DIRECT IMPLEMENTATION FOR ALL TRENCHLESS PROJECTS SUBMITTED AFTER JUNE 9, 2020

SUMMARY:

In May 2019, Greater Sage-grouse Stewardship Act amendments became law. One amendment directed MSGOT and the Program to “. . . work with stakeholders to streamline the compensatory mitigation review process, including calculation of reduced mitigation costs for low impact projects such as trenchless excavation[.]”

The vast majority of trenchless projects reviewed by the Program to date were sited parallel to a road for business reasons, including access and ease of installation and future maintenance. Examples of trenchless projects include buried fiber, low voltage electrical lines, and small diameter oil and gas pipelines.

This agenda item is the result of a collaborative stakeholder conversation from November 2019 to May 2020. Stakeholders participated in two conference calls, one in person meeting and one webinar. Four comment opportunities on draft documents were offered.

The work product is a new section *3.3.4 Modified Approach to Mitigation Requirements Applicable to Development Projects Utilizing Trenchless Methods* that would be added to the previously-approved Montana Mitigation System Policy Guidance Document for Greater Sage-Grouse Version 1.0 October 2018 in Section 3. The full narrative adopts and reflects agreed-upon stakeholder outcomes. Further refinements can be made through adaptive management efforts in the future.

The Modified Approach: 1. provides a standard definition of “trenchless methods” which must be met to qualify; 2. streamlines the process using a two-part analysis that provides certainty, flexibility, and consistency; and 3. results in no mitigation obligations whatsoever for the vast majority of trenchless projects implemented to date. Stakeholders expect future projects to be implemented under similar circumstances as past projects; thus, mitigation obligations would only be expected in the rare cases.

A two-part analysis seeks to determine first whether the segment is co-located within a fixed distance of an existing road disturbance corridor, and second, if not, whether it meets the spirit of co-location by short deviations designed to avoid or follow certain landscape features or to comply with landowner or agency preference, as determined on a case by case basis. Next, consistency with any applicable stipulations from Executive Order 12-2015 (EO) is considered.

Co-located trenchless segments that are consistent with the EO would not be assessed mitigation – *i.e.* the vast majority of past and expected future projects. This is because the segments are co-located with an existing road disturbance corridor and can be implemented consistent with seasonal timing stipulations. However, segments that are not co-located and/or not consistent with the EO would be subject to a habitat quantification tool calculation and any applicable policy modifiers, as outlined elsewhere in the Policy Guidance. Under this Modified Approach, mitigation for future trenchless segments would be rare.

Additional details are included in the full narrative proposed for inclusion in the Policy Guidance document and the meeting’s PowerPoint presentation. Proposed implementation is immediately upon MSGOT approval of the Modified Approach for all newly submitted projects.

PROGRAM RECOMMENDATION:

The Program Manager recommends MSGOT approve the modified mitigation policy approach for development projects utilizing trenchless methods and direct the Program to begin implementing the modified approach for all Trenchless Projects submitted after June 9, 2020.



Trenchless Methods: Modifying Mitigation Policy to Streamline Process and Reduce Mitigation Costs

Montana Sage Grouse Oversight Team Meeting
June 9, 2020



SB 299: 2019 Session

“ . . . work with stakeholders to streamline the compensatory mitigation review process, including calculation of reduced mitigation costs for low impact projects such as trenchless excavation [.]”

Trenchless Methods Stakeholder Conversation

Goals:

1. Opportunity to increase understanding of MCA, EO, review process, HQT, and mitigation generally
2. Standardize definition of “trenchless” method
3. Streamline process
4. Reduce mitigation costs

Summary:

1. Most trenchless projects entail buried fiber optic cable; sometimes buried electrical, O&G pipeline
 - nearly always follow roads for business reasons
 - nearly all fell within the designated co-location zone
2. Current events reinforce the need for functional internet in rural areas
3. Streamlined approach will waive mitigation for nearly all trenchless projects reviewed to date
 - even better than “lower mitigation costs”
 - participating stakeholders agree to get underway with this outcome
4. Balance between increased complexity and cost savings: struck here
5. Balance between certainty / predictability and flexibility: struck here

Stakeholder Charter

- **Context and scope set by SB 299 / MCA, ARM, EO 12-2015, prior experience**
 - streamline review process
 - reduce costs for trenchless excavation method projects
 - mitigation goal: "no net loss of habitat and a net gain preferred"
- **Focus specifically on projects implemented using trenchless methods, applying agreed upon definition and criteria**
 - previous experience with trenchless projects and existing data informative
- **EO 12-2015 general guidance and specific stipulations still applicable; depends on project location relative to active leks**
 - added MCA complexity: must discern new project vs. replacement of existing within defined project boundary
- **Outcomes should accommodate business processes of permitting agencies, mitigation adaptive management, recordkeeping, future status reviews**



GIST:

- Policy Guidance: add new section specific to Trenchless Methods Projects (modified approach)
- Update business processes, web application

Stakeholder Process

- **Diverse group invited to participate, collaborated**
 - telecommunications, rural electric coops, conservation, agencies, oil & gas, mining, ag, and consultants with direct experience with the current web application
 - 2 conference calls, 1 in person meeting, 1 webinar
 - 4 written comment opportunities
- **Timeline**
 - **November 15:** kick off 3-hour conference call
 - **December 9:** written feedback on current process, proposed standard definition, ideas for revisions to streamline, opportunities to reduce costs
 - **February 4:** in-person meeting
 - **February 19:** written feedback on v1 straw dog approach
 - **February 27:** stakeholder call
 - **March 4:** distribute v2 straw dog approach [updated to incorporate stakeholder input; comments requested by March 6 to be ready for March 27 MSGOT]
 - **March 6-8:** comments received; most support v2 & signal readiness for MSGOT approval; a little support for additional conversation & edits
 - **March 18:** cancel MSGOT meeting set for March 27; transition to remote telework
 - **May 20 and 21:** stakeholder webinar call – refresh, additional comment
 - **June 9:** MSGOT meeting

The Journey: how we arrived at these recommendations together

1. Program Prework: reviewed nearly 100% of the trenchless projects ever submitted for review

- most paralleled existing roads, located relatively close; understood there is an business purpose behind staying close to roads
- most were buried fiber, with a few buried electrical lines [recall that residential electric exempt]
- different categories of roads: driveways / ranch access / local, county, state highway, interstate
- “cross-country” was rare; usually drawing error or clear reason
- ROWs on either side of pavement usually visible b/c vegetation changed, but not always
- actual fence lines were hard to see on aerial imagery; legal ROW unknown, but geospatial tools can automate and standardize
- NEED: fixed distance so predictable, certain for all industry; use GIS automation so consistently implemented by Program and efficient
- NEED: account for fact that buried segments did depart from roads occasionally

The Journey: how we arrived at these recommendations together

1. Program Pre-work: reviewed nearly 100% of the trenchless projects submitted

2. Program Pre-work: compared HQT vs. “Heads Up” Rules

- **HQT employs “heads up” digitized road layer, but:**
 - only 2 road categories: major and minor
 - based on MDT’s average yearly traffic counts
 - buffers go well into undisturbed habitat
 - projects to date never that far from a road
 - completely different purpose
- **“Heads Up” digitizing: rules used to create the original road disturbance layer**
 - satellite imagery and aerial photos – visible roads
 - classify road type (n=4) and identify centerline
 - buffer the centerline by fixed distance; width increased as road category increased
 - driveway / ranch access / local road: 24’ wide
 - county road: 56’
 - state highway: 68’
 - interstate highway: 76’
 - visual inspection of outcomes for accuracy
 - work product reflects the actual disturbance on the ground = road corridor
- **CONCLUSION: HQT bins not a good fit; start with “Heads Up” layer**

The Journey: how we arrived at these recommendations together

1. Program Pre-work: reviewed nearly 100% of the trenchless projects submitted
2. Program Pre-work: compared HQT vs. “Heads Up” rules
3. Program: used “Heads Up” road corridor – then tripled
 - 3x buffer in “Heads Up” digitized road layer
 - approximated the ROW + more space beyond
 - reviewed most existing trenchless projects in database
 - GOAL:
 - make sure accommodated projects to date
 - confirm segments outside 3x distance were rare
 - review segments outside 3x – ask why?
 - CONCLUDE: segments within the 3x bins implemented within existing disturbance attributed to the road corridor; outliers = data errors or good reason
4. Version 1.0 Straw Dog presented Feb. 4: Two Part Analysis
 - Part 1: within distance bins = co-located with existing road disturbance corridor
 - Part 2: case by case look at segments outside distance bins [rare]

The Journey: how we arrived at these recommendations together

1. Program Pre-work: reviewed nearly 100% of the trenchless projects submitted
2. Program Pre-work: compared HQT vs. “Heads Up” rules
3. Program: used “Heads Up” road corridor – then tripled
4. Version 1.0 Straw Dog presented Feb. 4 meeting: Two Part Analysis
5. Feb 4 Stakeholder Input: key take-aways
 - “we need more room”
 - trenchless method definition looks good
 - like 2-part analysis: certainty + flexibility
 - HOMEWORK: stakeholders review past & upcoming projects, provide more input
6. Version 2.0 Straw Dog distributed March 4
 - added more room
 - COMMENTS: yes, increased distances OK; fit past/upcoming projects or silence
 - majority supported; minority wanted more time to discuss, suggested changes
 - better explanation of methods resolved key concerns

Trenchless Methods Stakeholder Conversation

Goals:

1. Opportunity to increase understanding of MCA, EO, review process, HQT, and mitigation generally
- 2. Standardize definition of “trenchless” method**
3. Streamline process
4. Reduce mitigation costs

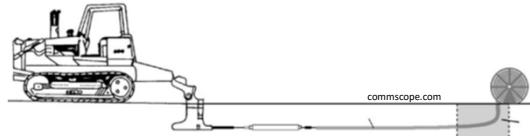
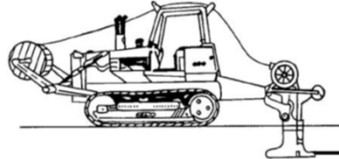
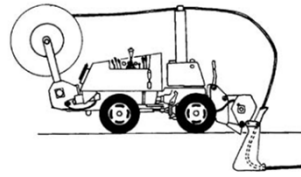
Standardized Criteria:

What’s a low impact “trenchless” methods project?

- **NEED:** standard criteria for consistent Program implementation AND for industry certainty and predictability
- **Criteria informed by:**
 - equipment type
 - on-the-ground impacts of the typical equipment
 - time – move through area 1x, quick single pass
- **Buried “trenchless” project types**
 - buried fiber or copper
 - low voltage electrical [but residential electrical already exempt]
 - small diameter pipelines

Typical Trenchless Equipment Types / Names

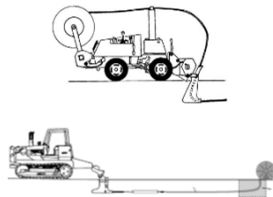
- Static Plow
- Vibratory Plow
- Pull Plow
- Pull Cat
- Plow Cat



Trenchless Equipment



buckscomm.net



constructionequipment.com

Trenchless Equipment in Action



Trenchless Equipment in Action



Plow Cat - Norval



Pull Cat and Plow Cat - Norval



Boring under a creek - Norval



Hill Straw Waddles - Norval

Trenchless Equipment in Action

- Trenchless:**
- narrow slot
 - shank
 - minimal disruption to root structure & vegetation



- Trenchless:**
- single pass
 - narrow slot
 - some veg crushed
 - next to existing local or county road
 - maybe future noxious weed concern



- Trenchless:**
- single pass
 - narrow slot
 - some veg crushed
 - next to existing local or county road
 - maybe future noxious weed concern



- Trenchless, backhoe stretch:**
- not single pass
 - active digging, disrupts root structure
 - not narrow slot
 - not next to existing road
 - future noxious weed concern



Equipment that Does Not Meet Trenchless Definition

- Surface disturbance
- Soil scrapped away first using blades
- Distinct trench excavated and backfilled
- Vegetation and root structure is removed from the trench
- e.g. trencher, backhoe



Trenchless Methods Stakeholder Conversation

Goals:

1. Opportunity to increase understanding of MCA, EO, review process, HQT, and mitigation generally
2. **Standardize definition of “trenchless” method**
3. **Streamline process**
4. **Reduce mitigation costs**

Trenchless Methods:



1. Streamlined Approach

- Two-Part Analysis
- Web Application Contract

2. Reduced Costs

- HQT - Yes or No?
- Consistent with EO 12-2015 - Yes or No?

Recap:

1. Streamline trenchless approach using 2-Part Analysis

- **Part 1:** fixed distance bins [certainty, automation]
 - If within, conclude new or replacement fiber installed within road's existing disturbance corridor or so close that no concern
 - CONCLUDE: co-located with road corridor, does not contribute new surface disturbance to landscape
- **Part 2:** outside distance bins = case-by-case [flexibility]
 - ASK: Why not co-located with road corridor? Does it still meet the spirit and intent of co-location?
 - CONCLUDE:
 - If outside = data error & meant to be co-located: correct the data
 - If outside = Part 2: meets the spirit of co-location
 - If outside / "cross country" = must be at that location: new surface disturbance
 - rare

Recap:

1. Streamline trenchless approach using 2-Part Analysis

2. Streamline trenchless approach by updating web application

- improvements + greater efficiencies
- new features
- add more automation
- Independent Contractor underway since September 2019
- updates rolled out periodically through 1st quarter 2021

Recap:

1. Streamline approach using 2-Part Analysis
2. Streamline approach by updating web application
3. **Reduce Mitigation Costs – factors determine if / how costs reduced**
 - new project vs. existing within defined project boundary?
 - co-located with existing road disturbance or meets the spirit of co-location [2-parts]?
 - consistent with Executive Order 12-2015?
 - near active leks?
 - project has to be implemented within seasonal period March 15 – July 15?
 - outcomes:
 - HQT = no [mitigation waived, documentation for permitting agency still needed; automate]
 - replacing existing within defined project boundary
 - co-located and consistent with EO
 - HQT = yes + any applicable policy modifiers
 - new project cross country, not co-located
 - not consistent with EO
 - * only analyze segments not co-located *
 - results will be low because HQT basemap already de-values habitat where trenchless projects typically go, buried feature type, short time

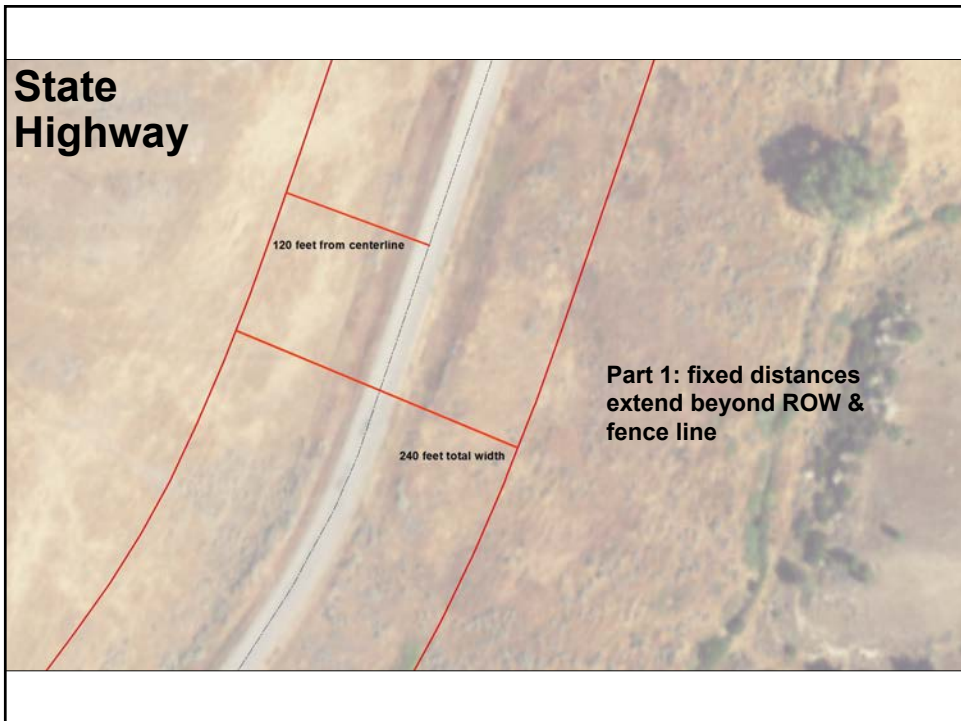
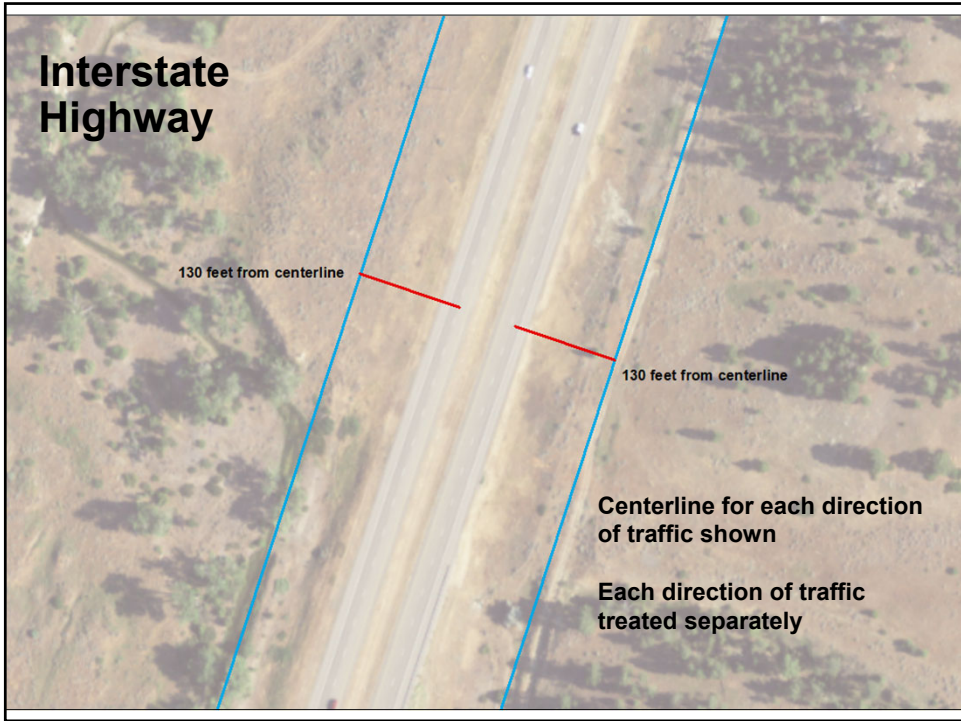
Part 1

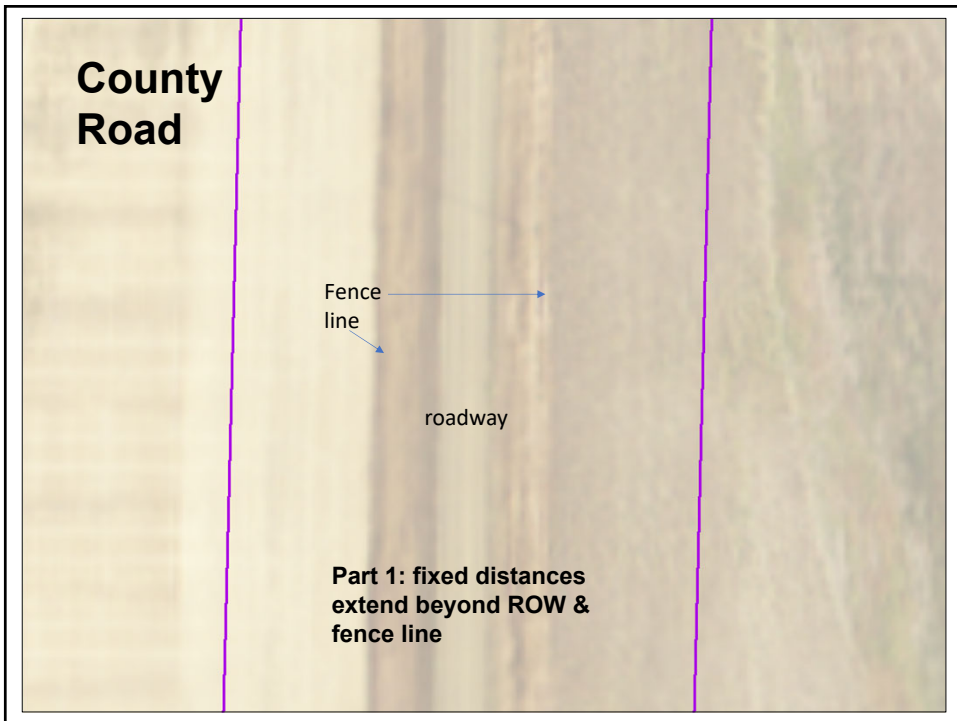
Fixed Distances: Co-location with the Existing Road Disturbance Corridor

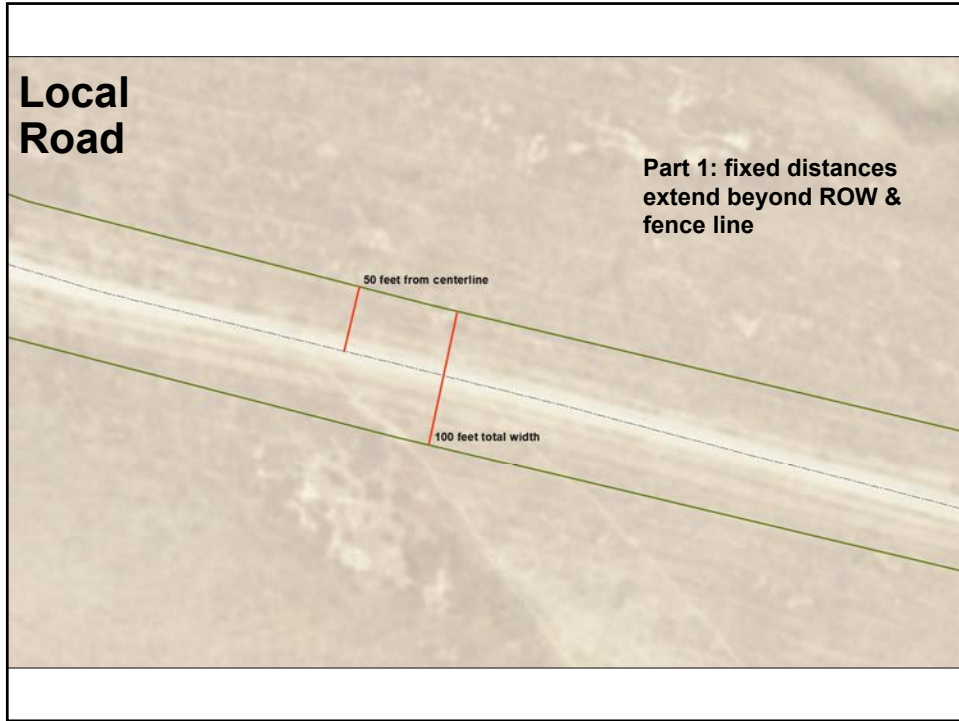
Part 1:**Co-located within Existing Road Disturbance
Predictable Fixed Distance based on Road Category?**

Road Category	Co-location Zone
Local	<ul style="list-style-type: none"> • 50 feet on either side of the centerline • corridor width = 100 feet
County	<ul style="list-style-type: none"> • 100 feet on either side of the centerline • corridor width = 200 feet
State Highway	<ul style="list-style-type: none"> • 120 feet on either side of the centerline • corridor width = 240 feet
Interstate Highway	<ul style="list-style-type: none"> • 130 feet from centerline of each direction of traffic • each direction of traffic is considered individually

Part 1**Examples of Fixed Distances for
Each Road Category (n=4)**







Part 2

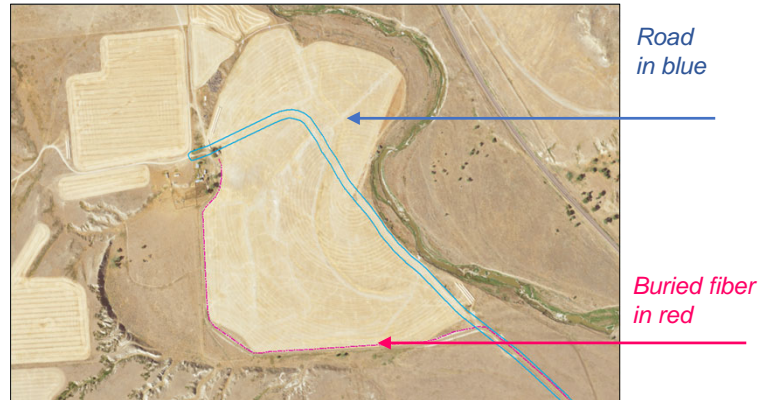
Case-by-Case: Meeting the Spirit
of Co-location

Part 2:**Case-by-Case – meet the spirit of co-location?**

- Accommodate local circumstances, landscapes, data errors
 - Program will ask about segments not within fixed distances, determine:
 - preferences or requirements of permitting agency?
 - avoiding landscape features?
 - following landscape features?
 - short segment deviations re-join main route?
 - data error: segment should actually follow close to the road?
- Rare

Part 2**Examples of Case-by-Case:
Meeting the Spirit of Co-location**

Part 2 Example: Landowner Preference



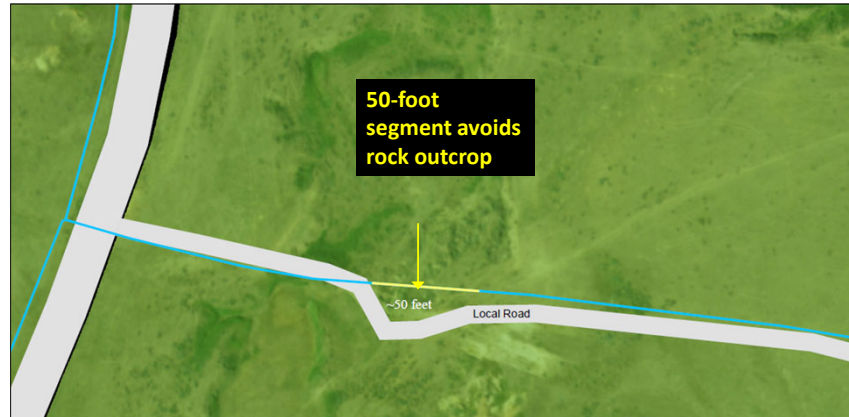
- **Observe & Ask:** Why doesn't the proposed route parallel the road?
- **Answer:** Landowner preference to go around the farm field and adjacent to pasture or other cultivated area. Yes, meets the spirit.

Part 2 Example: Data Entry Error or Efficiency (avoid short, sharp curves in road)



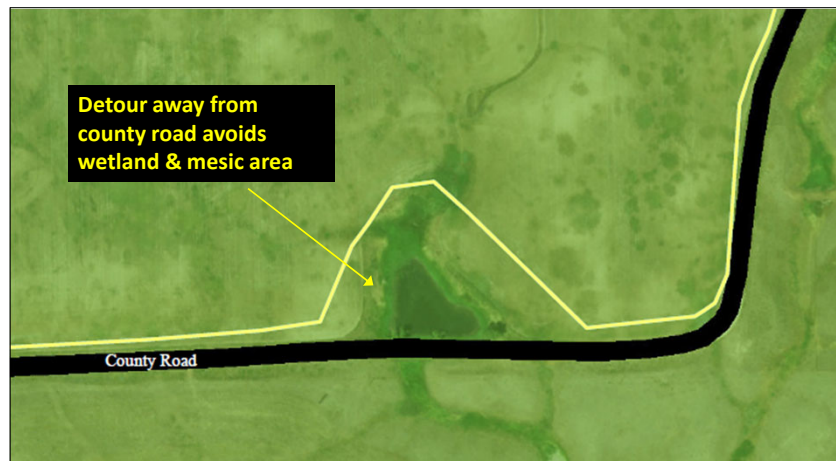
- **Observe & Ask:** Why doesn't the segment follow the road?
- **Answers:** 1. Data provided was not accurate. OR
2. Short efficiency segment then re-joins primary route.
Yes, meets the spirit.

Part 2 Example: Avoiding Surface Feature



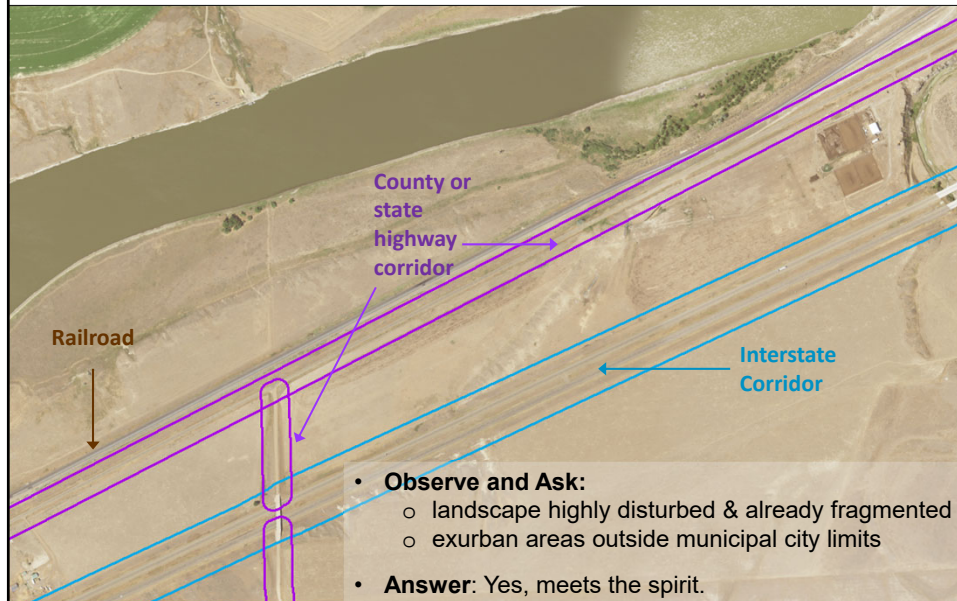
- **Observe & Ask:** Why doesn't the segment follow the road?
- **Answer:** Avoiding surface feature like rock outcrop. Yes, meets the spirit.

Part 2 Example: Avoiding Wetlands & Mesic Areas



- **Observe & Ask:** Why doesn't the segment follow the road?
- **Answer:** Avoiding wetlands and mesic areas. Yes, meets the spirit.

Part 2 Example: Highly Disturbed Landscapes

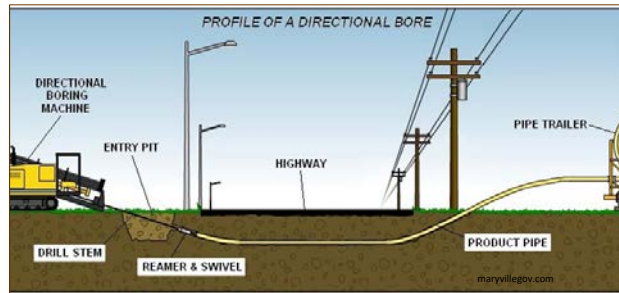


Special Cases of Trenchless Projects:

1. Directional boring under roads, waterways
2. Mixed projects
 - some trenchless features
 - some above-ground, long term features
3. Obstacles require backhoe / non-trenchless machinery during course of trenchless project

Special Case #1: Directional Boring

- Excavate entry and exit points using non-trenchless machinery
- Boring machine used to place fiber, electric line, pipeline under roads, waterways



APPROACH

- **Analyze:**
 - excavated entry and exit points + any new above ground features
- **Ignore:**
 - bored segment when under a road, creek, driveway, etc.
 - entry and exit points within fixed distances

Special Case #2: Mixed Projects

- Above ground features sometimes needed / added [e.g. lights, transmission poles]
- Trenchless portion analyzed using revised approach
- Above ground features analyzed for what they are
- Organize data as separate features



Special Case #3: Backhoe Needed in Course of Implementing Trenchless Project



SITUATION

- Trenchless machinery hits obstacles like rock, small outcrops
- Backhoe needed to remove rock or other obstacles
- Mineral soil scraped
- Vegetation crushed or removed completely

APPROACH

- Do not stop work to consult with SG Prg
- Complete the project
- Proponent expected to follow Best Mgmt Practices
 - pre-wash backhoe, other equipment
 - actively reseed the area
 - follow county weed coordinator's recs
 - control noxious weeds post project

Trenchless Methods:



1. Streamlined Approach

- Two-Part Analysis
- Web Application Contract

2. Reduced Costs

- HQT - Yes or No?
- Consistent with EO 12-2015 - Yes or No?

Big Picture: Two Flow Charts

Replacing Existing

- no new surface disturbance
- co-located?
- consistent with applicable EO stipulations?

Installing New

- new surface disturbance, even though temporary
- co-located?
- consistent with applicable EO stipulations?

Most trenchless projects are co-located and can be sequenced to be consistent with EO seasonal period for segments near active leaks.

Many projects combine replacement of existing cable and installation of new cable. Current practice – already being analyzed differently.



MODIFIED APPROACH: waives HQT + Policy Modifiers for all replacement and new segments when co-located & consistent with EO.

Trenchless Projects: Replacement

Trenchless Replacement of **Existing** Buried Line or Cable
(meets definition of “trenchless method”)

Within Defined Co-location Zone or Meets Spirit
(no new surface disturbance)

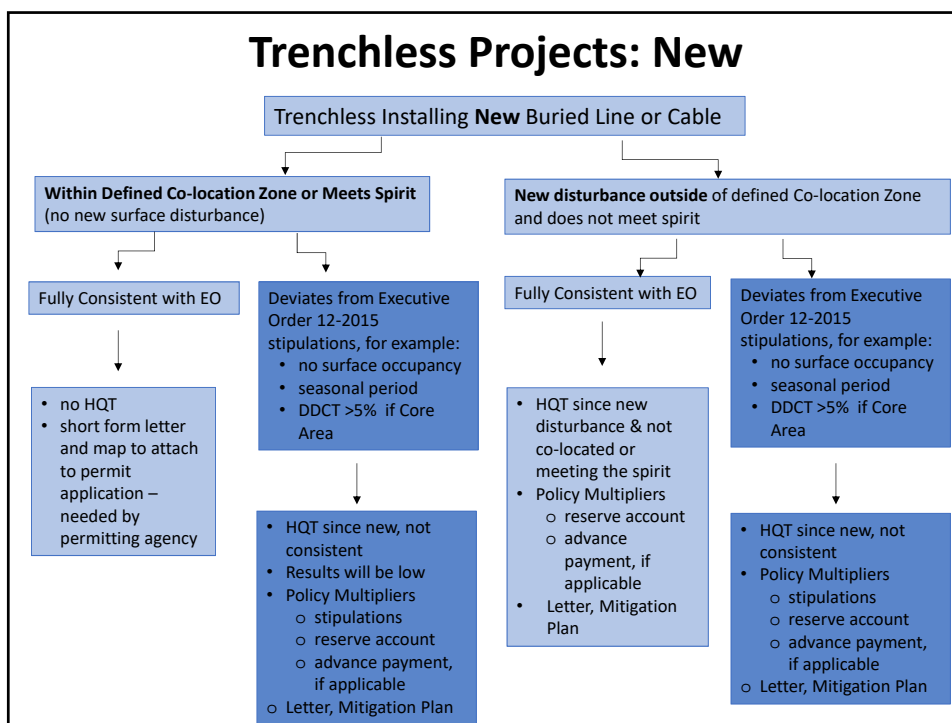
Fully Consistent with EO

- no HQT
- short form letter and map to attach to permit application – needed by permitting agency

Deviates from Executive Order 12-2015 stipulations, for example:

- seasonal period

- HQT (will be very low b/c co-located)
- DDCT waived if Core Area
- Policy Multipliers
 - for deviations from stipulations
 - reserve account
 - advance payment, if applicable
 - Letter, Mitigation Plan



Summary:

1. Most trenchless projects entail buried fiber optic cable; sometimes buried electrical, O&G pipeline
 - nearly always follow roads for business reasons
 - nearly all fell within the designated co-location zone
2. Current events reinforce the need for functional internet in rural areas
3. Streamlined approach will waive mitigation for nearly all trenchless projects reviewed to date
 - even better than “lower mitigation costs”
 - participating stakeholders agree to get underway with this outcome
4. Balance between increased complexity and cost savings: struck here
5. Balance between certainty / predictability and flexibility: struck here

Questions

Discussion

June 2020 NOTE: Upon approval by MSGOT, the following new section will be inserted into Section 3 of the Montana Mitigation System Policy Guidance Document for Greater Sage-Grouse Version 1.0, October 2018.

3.3.4: Modified Approach to Mitigation Requirements Applicable to Development Projects Utilizing Trenchless Methods

The following modified approach will be applied to disturbance types that are buried using equipment that meets the definition and criteria of “trenchless” methods and that are not otherwise exempted from Executive Order 12-2015. Examples include: buried telecommunication lines (e.g. fiber), buried electrical distribution lines or other utility lines, small diameter pipelines sometimes used in the oil and gas industry. Note that new residential electrical lines are generally exempt from Executive Order 12-2015, as described more fully in Attachment F.

To date, most trenchless projects have been buried telecommunication lines and nearly all of them were installed parallel to existing roads for ease of site access and maintenance. That track record, along with stakeholder input, informed this modified approach.

Buried telecommunication lines are typically proposed in discrete segments to bring fiber to a site. Individual buried telecommunication segments can vary from less than a mile to several miles in length. The Program is typically asked to review anywhere from a few segments to twenty or more segments proposed as part of a single project. In contrast, buried electrical distribution lines or small oil and gas pipelines are typically proposed as a single segment, running between two discrete points.

This modified approach was developed in collaboration with stakeholders from November 2019 through May 2020. The effort is an outgrowth of Senate Bill 299, which became law in May of 2019. The goals were to: (1) develop a standardized definition of “trenchless” method; (2) streamline the consultation process; and (3) reduce mitigation costs for low impact trenchless projects. Senate Bill 299 also requires discerning whether a proposed project existed prior to September 8, 2015, to determine whether or not seasonal use restrictions apply to what otherwise would be considered an existing land use within a defined project boundary.

Standardized Criteria: This modified approach only applies to buried disturbances that are implemented using machinery that meets a standardized definition. Having a standardized definition provides certainty and predictability to developers. As importantly, it instills confidence that the Program is implementing this modified approach fairly and consistently while reviewing projects and assures continuity of Program operations.

This modified approach to mitigation would be applicable to buried disturbance types that meeting the following criteria:

- machinery is equipped with a shank or vertical blade that penetrates the surface to bury cable, electric line or pipe as the shank is pulled forward; and
- machinery opens a slot in the ground about 6” wide, typically 3 -5’ deep; and
- conduit, cable or pipe is fed into the ground, through a chute behind the blade as the slot opening is made; and
- soil is not scraped or removed; and
- vegetation and its root structure are not excavated, or removed; and
- ground disturbance is primarily associated with the vertical blade/shank; and
- vegetation may be crushed out to 12 feet by the equipment but is expected to grow back within one growing season.

The precise design and configuration of trenchless equipment will naturally evolve through time. Accordingly, the key distinguishing features are that a narrow vertical slot is opened up and filled back in during a single pass of machinery. Typical equipment names include: static plow, vibratory plow, or pull plow (Figure 1). In contrast machinery known as trenchers, back hoes, bull dozers, or scrapers are not considered a trenchless method. This is because soil is scrapped away first using blades, a distinct trench is excavated and back filled, vegetation and root structure is removed from the trench, and clear surface disturbance can be attributed to the machinery type.

Special cases involving directional boring, mixed projects that include both trenchless buried features and above ground features, and trenchless projects where a backhoe is temporarily needed in a localized area are addressed in greater detail below.

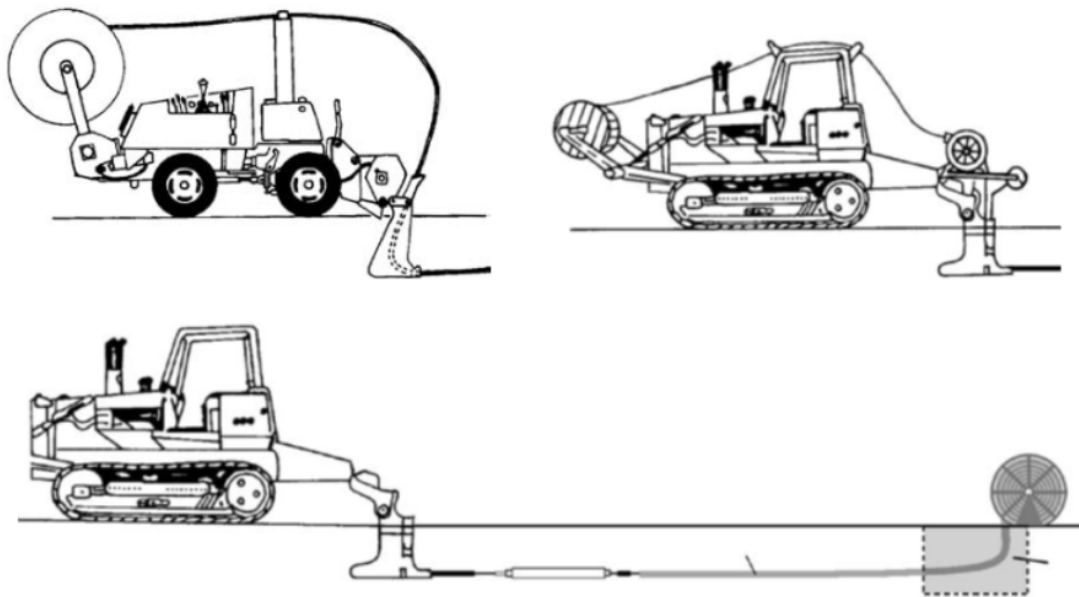


Figure 1. Schematic diagrams of typical trenchless equipment showing a single shank or blade cutting open a narrow slot and installing cable, conduit, or pipe in a single pass.

Streamlined Approach and Reduced Mitigation Costs:

Projects which meet the criteria to be considered “trenchless” will be reviewed according to whether or not it is replacing an existing project or is newly-proposed, its consistency with Executive Order 12-2015 as applicable, and whether or not it is co-located with the existing surface disturbance associated with a road corridor (Part 1) or meets the spirit of being co-located (Part 2).

Mitigation outcomes and the potential for reduced costs will depend on whether or not a project is new or replacing an existing buried feature, whether or not the segment is co-located under either Part 1 or Part 2, and whether or not the project is consistent with the applicable stipulations outlined in Executive Order 12-2015. Under some circumstances, mitigation obligations are waived entirely because there is no habitat quantification tool calculation, as illustrated in the flow charts in Figures 10-11 below. Based on past trenchless projects reviewed to date, mitigation would not be required for

the vast majority because the segments were implemented within the co-location zone and implemented consistent with any applicable stipulations outlined in Executive Order 12-2015.

When a project is reviewed, first, the Program will work with developers to identify which segments are proposed for replacement and which segments are newly-proposed. Second, each segment is then considered individually under a two-part analysis to determine whether it will be co-located with existing surface disturbance associated with roads or it is proposed to go “cross country” and create new surface disturbance, even if temporary owing to its buried attribute. Lastly, whether or not a segment would be implemented consistently with Executive Order 12-2015 is considered.

Part 1: Part 1 entails determining whether the trenchless segment is co-located with the existing disturbance associated with a road corridor. If a segment is within a fixed distance of a particular category of road, it is considered co-located. Four categories of roads were delineated based on the existing anthropogenic disturbance layer that was “heads up” digitized using satellite imagery and aerial photographs by a contractor hired by the Program. The existing disturbance footprint of each road category increases with the width of each road type, respectively (Table 1 and Figures 2-5).

The co-location zone scales to the specific road category and will abut existing roadways in most cases. The area will extend from the center line of the road out on either side for a fixed distance. This provides predictability for developers and the Program and facilitates computer automation to further streamline the process. If replacement or new segments would be installed within the fixed distance of the existing surface disturbance road corridor, it does not contribute to new, temporary surface disturbance. If the segment is proposed outside of the fixed co-location zone, the segment is analyzed under Part 2 to see if it meets the spirit of being co-located for reasons unique to that segment.

The co-location zone (zone) for trenchless methods projects is defined according to the road size category. The zone is a standard width, measured from the road centerline on either side of the road. The zone gets progressively wider as the roadbed gets wider. The total width of the zone accommodates variation in pavement or asphalt widths.

Distances are based on a thorough review of all buried fiber and power projects submitted to the Program through March 2020. Using satellite imagery, past projects were examined to determine whether segments were implemented parallel to an existing road corridor and the approximate distance away from the corridor. Past projects were also reviewed to determine if there were local circumstances or reasons a segment may not have been sited parallel to an existing road. Only rarely did segments depart from a pathway paralleling existing roads. When that was the case, reasons for the departure were usually very evident, such as topographic features that needed to be avoided. Occasionally, departures were because of errant spatial data.

Table 1. Co-location zones for determining whether a replacement or new segment of a feature buried using trenchless methods, scaled to the road category to provide for additional area (wider zones) with increasing width of roads, respectively.

Road Category ¹	From the Centerline of the Road, Measure in Either Direction	Total Width of Defined Co-Location Zone ²
<p>Local Road (see Figure 2 below)</p> <ul style="list-style-type: none"> - total width of approximately 5-12 feet - may or may not be paved - examples: dirt roads, driveways, USFS or BLM roads - not two-tracks 	50 feet, either side of the centerline	100 feet total
<p>County Road (see Figure 3 below)</p> <ul style="list-style-type: none"> - total width of asphalt edge to edge is about 28 feet - usually paved, but not always - two-way traffic 	100 feet, either side of the centerline	200 feet total
<p>State Highway (see Figure 4 below)</p> <ul style="list-style-type: none"> - total width of asphalt edge to edge is about 34 feet - typically, 2-lanes of traffic 	120 feet, either side of the centerline	240 feet total
<p>Interstate Highway (see Figure 5 below)</p> <ul style="list-style-type: none"> - may or may not have a grassy median between 2 lanes going the same direction - each traffic direction is treated as a separate road - measurement of reference point is the centerline of the pavement of the lanes for a single direction of traffic - very rare 	130 feet, either side of the centerline	260 feet total

¹ Categories based on the heads-up digitized layer which delineates existing roads in the roads layer included in the HQT Basemap.

² If a utility or pipe is installed using a trenchless method within zone, it would be co-located (Part 1) for purposes of considering reduced mitigation costs. See Figures 10-11 below. If a utility or pipe is installed outside this zone and met the case-by case criteria (Part 2), it would be considered co-located for purposes of considering reduced mitigation costs. See Figures 10-11 below.

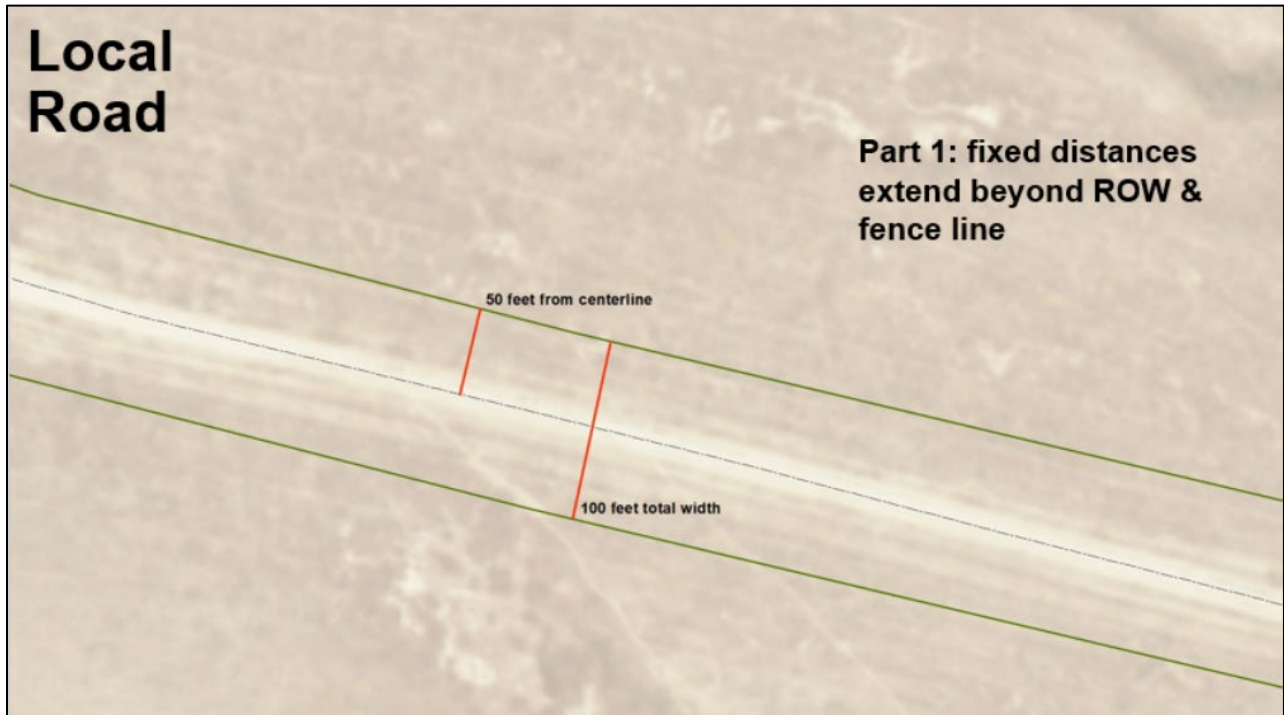


Figure 2. From the centerline of a local road, ranch access, or driveway, the co-location zone extends 50 feet in either direction for a total existing road disturbance corridor of 100 feet. The fixed distance extends beyond the right of way and the fence line.

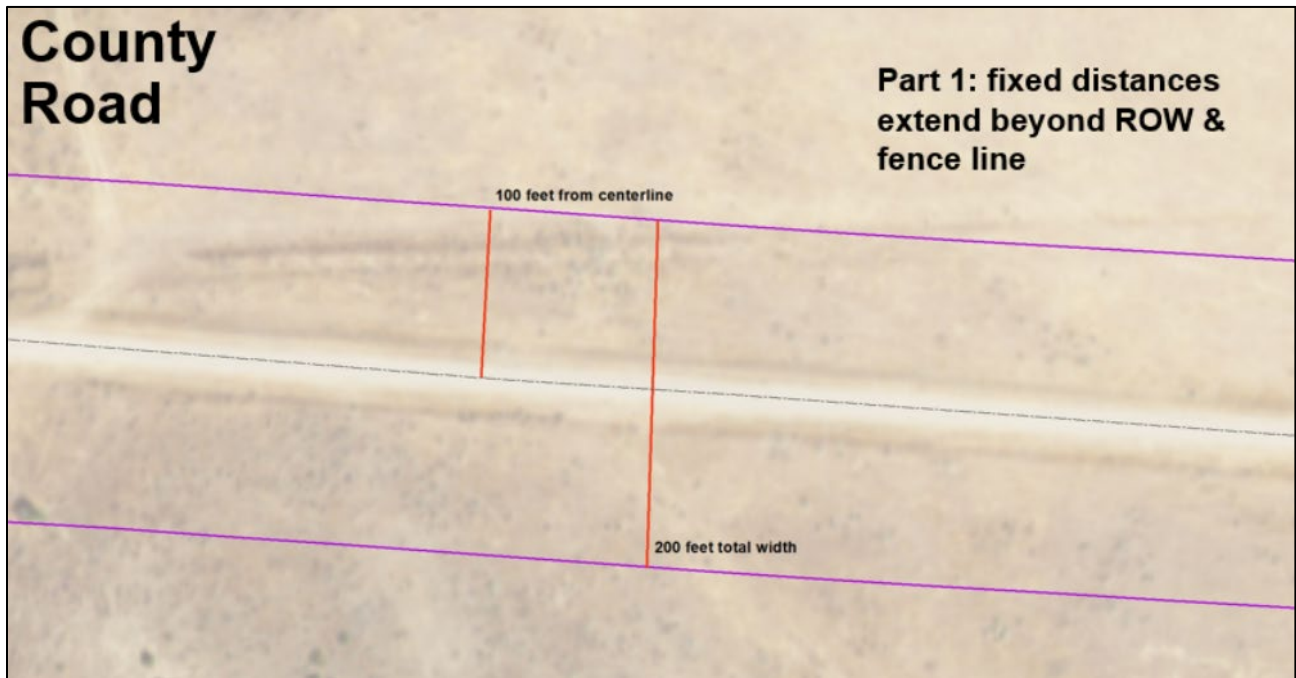


Figure 3. From the centerline of a county road, the co-location zone extends 100 feet in either direction for a total existing road disturbance corridor of 200 feet. The fixed distance extends beyond the right of way and the fence line.

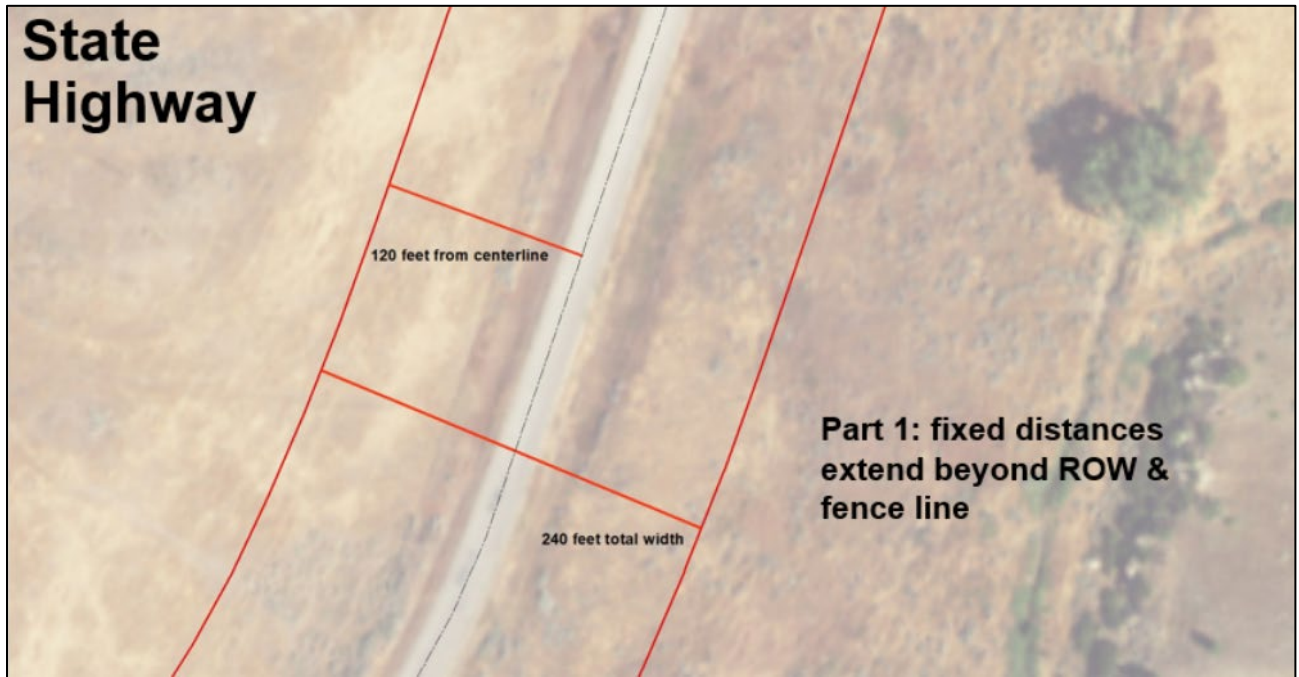


Figure 4. From the centerline of a state highway, the co-location zone extends 120 feet in either direction for a total existing road disturbance corridor of 240 feet. The fixed distance extends beyond the right of way and the fence line, which are both clearly visible by changes in vegetation patterns.

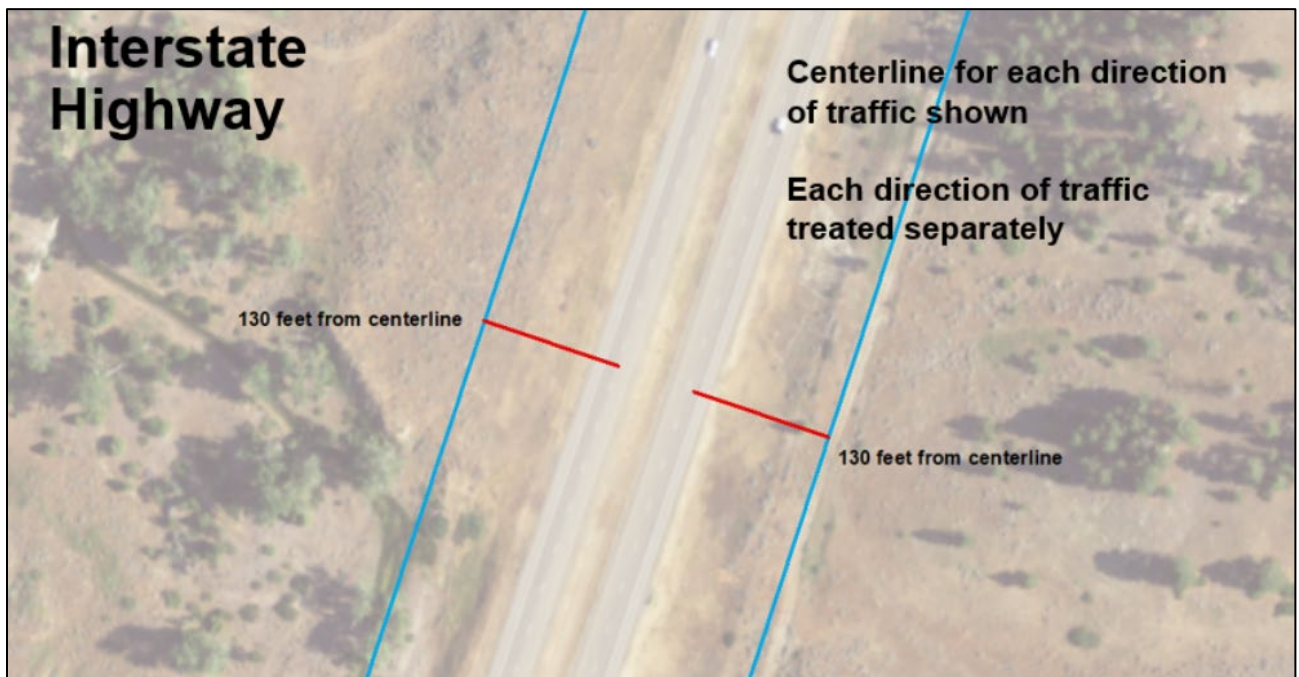


Figure 5. From the centerline of each direction of traffic on an interstate highway, the co-location zone extends 130 feet away and in the direction of the shoulder for each respective direction of traffic which are treated separately.

Part 2: Part 2 provides flexibility. It considers whether or not a segment falling outside the fixed distance co-location zone for that particular road category still meets the spirit of being co-located or whether there is a reason why it is being proposed outside the co-location zone. Part 2 allows a case-by-case determination to accommodate local circumstances, local landscape features, private landowner or permitting agency preferences, or whether or not there was a data error.

In the event a buried fiber optic cable, electric line, pipe or other buried utility utilizing trenchless methods must be sited outside of the co-location zone, the following criteria would be considered on a case-by-case basis to determine if the location outside the co-location zone meets the spirit of being co-located by paralleling an existing linear feature, being located within existing disturbance, avoiding or following specific landscape feature, or some other extenuating circumstance presents itself (Figures 6-9). For example:

- avoidance of a stationary feature on the landscape (e.g. building, wetland or mesic area, rock outcrop, parking area); or
- topography; or
- by request of the private landowner or permitting agency; or
- short efficiency segments to maintain a straight route while the road curves sharply and returns to its prior straight line; or
- highly disturbed landscapes that are already fragmented (e.g. exurban areas outside municipal boundaries).

Efforts to follow or avoid certain landscape features, as well as challenged posed by topography or other anthropogenic aspects of the landscape are readily obvious to the Program using satellite imagery. Where obvious, the Program will proceed accordingly.

Where there are no obvious landscape features, the Program will inquire about specific segments that are sited outside the co-location zone. Less obvious situations are where a segment is purposefully sited outside the co-location zone by request of the private landowner or the permitting agency (e.g. Montana Department of Transportation). Additionally, prior experience has also demonstrated that occasionally data submitted for review are in error. The developer made a mistake and sited the segment outside the co-location zone when it should have been inside the zone. Flexibility in Part 2 also allows accommodating such preferences and opportunities to correct the data before the Program completes its review.



Figure 6. Example of a trenchless segment satisfying the Part 2 co-location criteria (e.g. avoiding a rock outcrop, short efficiency segment of 50 feet that rejoins the primary route, or even data error).



Figure 7. Example of a trenchless segment satisfying the Part 2 co-location criteria (e.g. detouring around a wetland and mesic area upstream) and re-joins the primary route.

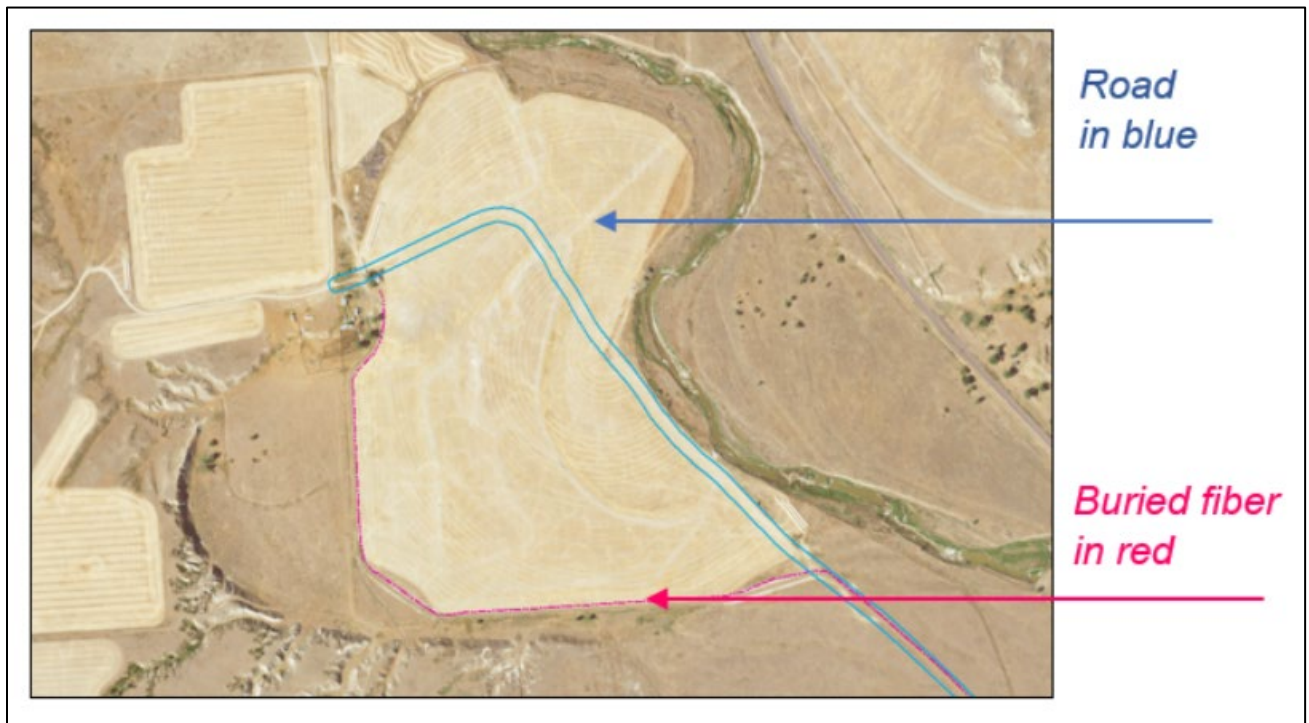


Figure 8. Example of a trenchless segment satisfying the Part 2 co-location criteria (e.g. due to private landowner preference and the route parallels other existing cultivation disturbance).

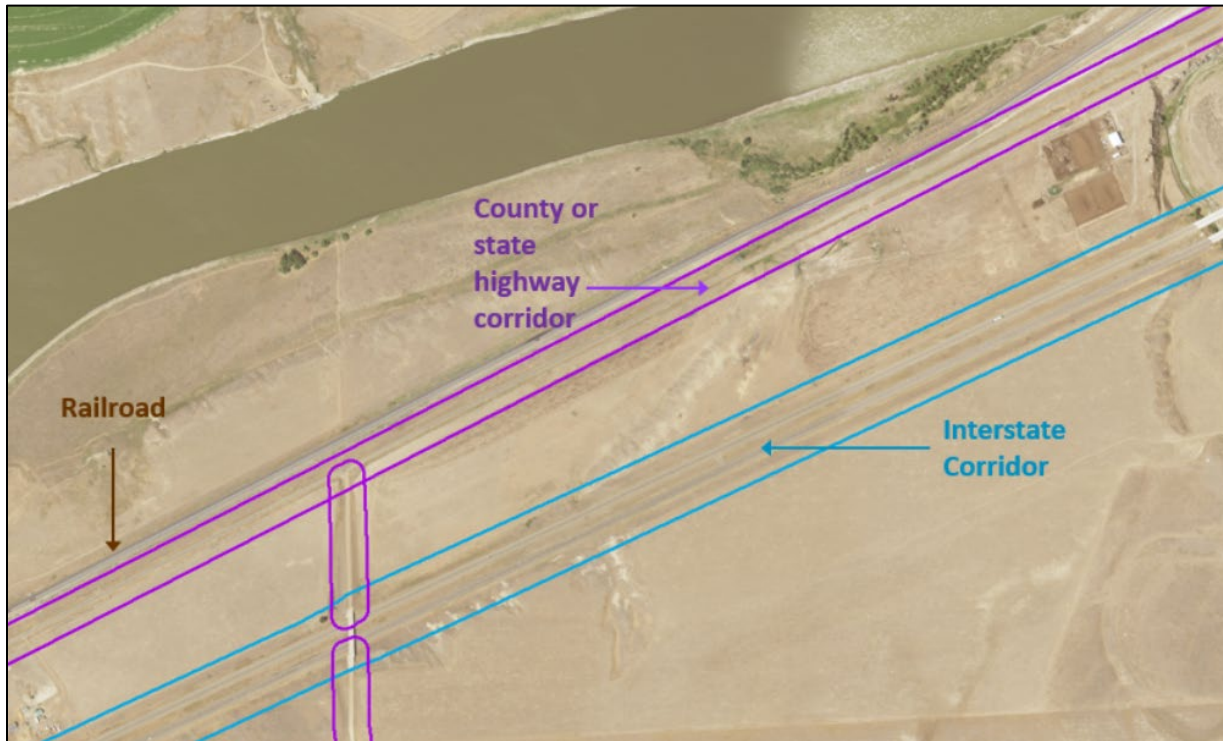


Figure 9. Example of a highly disturbed landscape setting that is already fragmented and that would satisfy the Part 2 co-location criteria.

Consistency Determination: After first determining whether a segment is replacing an existing segment and then whether or not the segment is co-located within a fixed distance of an existing road disturbance corridor (or meets the spirit of it in Part 2), the next determination is whether or not the segment location and its implementation are consistent with applicable stipulations outlined in Executive Order 12-2015. Applicable stipulations will be determined based on: (1) whether or not the proposed segment is replacing an existing segment that pre-dates Executive Order 12-2015 or is new; and (2) implementation dates and segment locations relative to active sage grouse leks. For example, the seasonal use stipulation of March 15 – July 15 is not applicable when a segment would be implemented farther than two miles from active sage grouse leks in General Habitat.

Potential for Lower Mitigation Costs: For replacement segments that are implemented fully consistent with Executive Order 12-2015 because seasonal use stipulations can be observed, no mitigation is required. There will not be a habitat quantification tool calculation. Consultation will still be required so that developers of trenchless projects can obtain the necessary documentation required by the permitting agency at the time a permit application is submitted. Documentation will consist of a short form letter and map that the developer can then attach to the actual permit application. It is likely that auto-generated documentation can be incorporated into the current web application.

For replacement segments that can't be implemented consistent with the seasonal use stipulations of Executive Order 12-2015, mitigation will be required. Each segment that must be implemented near active sage grouse leks within the seasonal stipulation period of March 15 to July 15, as outlined in Executive Order 12-2015, will be included in the habitat quantification tool calculation. Results are expected to be very low, based on prior experience. If the segment is co-located in a Core Area and the DDCT results exceed the 5% threshold, that multiplier will be waived. Otherwise, the Reserve Account Multiplier, along with any seasonal use stipulation multipliers will be included in the mitigation calculation. If the developer opts to make a contribution to the Stewardship Account instead of

implementing their own permittee-responsible credit project or working with a third party, the Advanced Payment multiplier will also be included. See Figure 10.

For newly-proposed segments, the review process similarly starts with determining whether or not the new segment is co-located within the fixed distances under Part 1 or met the spirit of co-location under Part 2. If a new segment is co-located and fully consistent with Executive Order 12-2015, then no mitigation is required. There will not be a habitat quantification tool calculation. If, however, a newly proposed segment is co-located but cannot be implemented consistent with Executive Order 12-2015, mitigation will be required. Each individual segment that can't be implemented consistent with Executive Order 12-2015 will be included in the habitat quantification tool calculation. Policy multipliers will be included in the mitigation outcomes, as applicable. See Figure 11

For newly proposed segments sited outside the co-location zone, the Program will closely examine surrounding landscape and confirm there are no data errors. If the segment is sited where it truly is supposed to be and the project is otherwise consistent with Executive Order 12-2015, mitigation will only be applicable to the segments sited outside the co-location zone. If the project can't be otherwise implemented consistent with Executive Order 12-2015, mitigation will be assessed and include any applicable multipliers for specific deviations.

Summary: Based on experience to date, the vast majority of all trenchless segments were co-located under the 2-part analysis (i.e. within the fixed distance zone or met the spirit of co-location) and could be implemented outside of the seasonal stipulation period of March 15-July 15 so they are fully consistent with Executive Order 12-2015. Therefore, the vast majority of trenchless projects to date would have no mitigation obligation. That is expected to be the case moving forward.

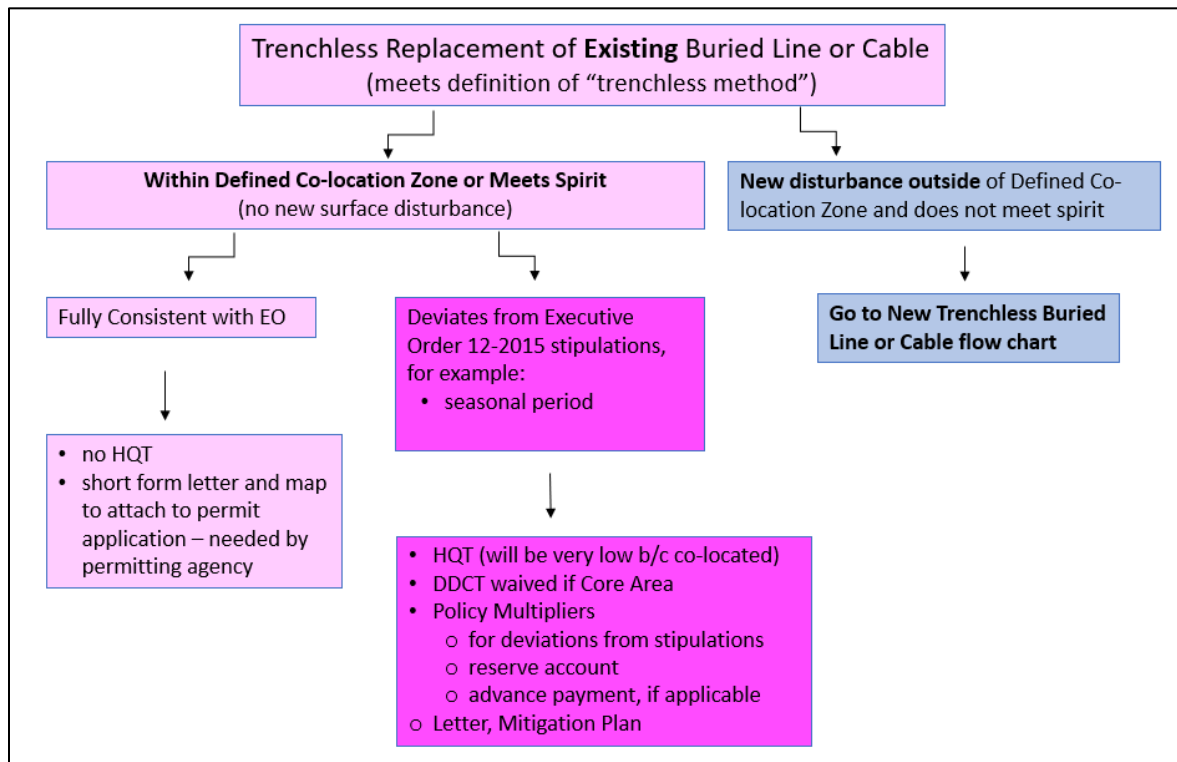


Figure 10. Flow chart for replacement trenchless segments showing potential mitigation outcomes (up to and including complete waiver), depending on whether the replacement is sited within the co-location zone and whether the segment is installed consistent with the March 15-July 15 seasonal use stipulation, as outlined in Executive Order 12-2015.

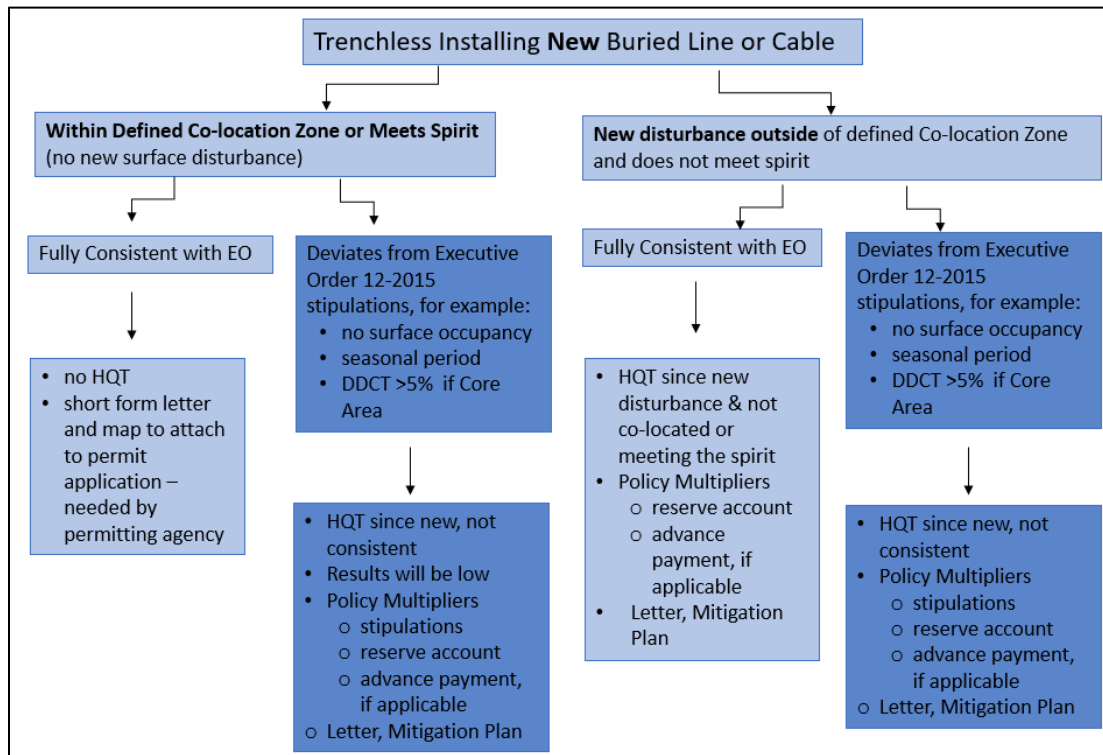


Figure 11. Flow chart for newly-proposed trenchless segments showing potential mitigation outcomes, depending on whether the new segment is sited within the co-location zone and whether the new segment is installed consistent with stipulations outlined in Executive Order 12-2015.

Special Cases of Trenchless Projects:

Three special cases were identified where unique circumstances require further refinement of the modified approach. Each is discussed in greater detail below.

1. Directional Boring

Prior experience has shown that it is not uncommon for buried utilities (e.g. fiber or electrical lines) and occasionally small diameter pipelines must be placed beneath existing roads or waterways for a short portion of a much longer trenchless project. In these situations, specialized equipment is needed and is usually called a boring machine. Construction consists of the use of a boring machine and or backhoe, to dig a hole for the entry and exit points of the bore or auger. A directional boring machine then runs the cable, electric line or pipe underground, directionally boring beneath the surface. The cable, electric line or pipe is pulled through the ground, exiting on the other side of the road or obstacle. New surface disturbance is limited to the entry and exit points. See Figure 10. Reclamation and revegetation of entry and exit points is standard practice.

Here, the segment that is bored under an existing road or waterway would be omitted from formal review and ignored for mitigation purposes. Only the entry and exit points would be reviewed in greater detail by the Program. If the entry and exit points fall within the co-location zone or otherwise fit the Part 2 criteria, no mitigation would be assessed for those new disturbances. If the segment fell outside the fixed co-location zone for trenchless projects and did not otherwise fit the Part 2 criteria, mitigation would be assessed in accordance with the size and duration of the new surface disturbance.

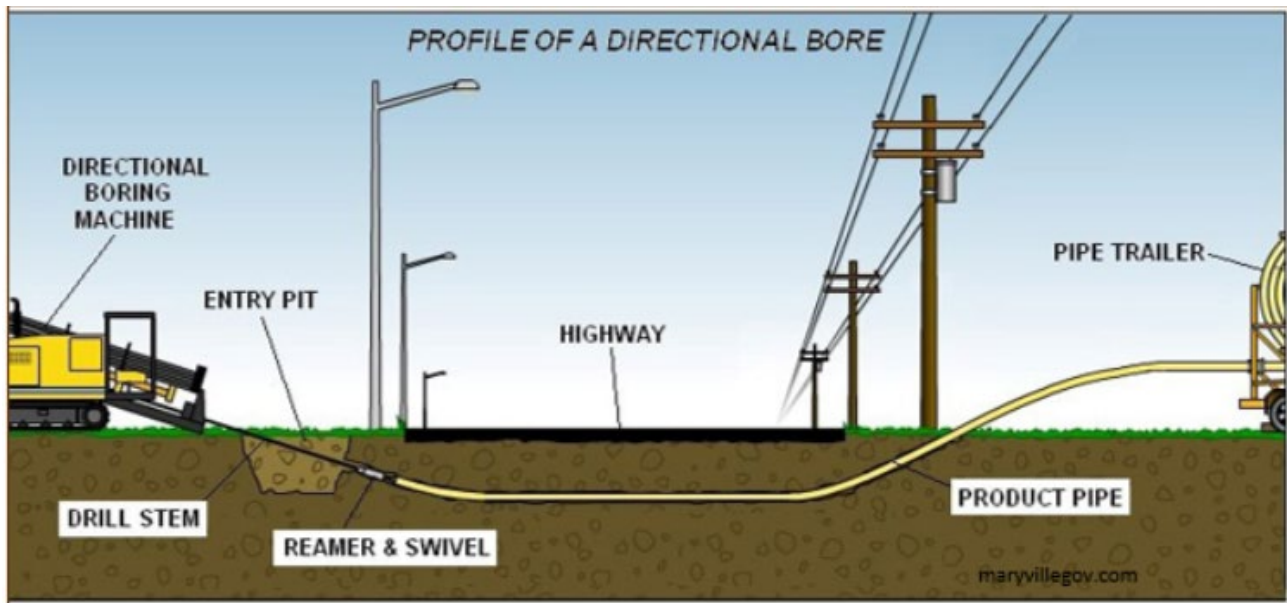


Figure 12. Schematic diagram of a trenchless segment that is bored under a highway using a directional boring machine. An entry pit is dug using a back hoe and the bore/auger creates the tunnel through which the product pipe or conduit is pulled.

2. Mixed Projects

There are three scenarios of mixed projects: (A) a project includes both features buried using trenchless methods and new, above ground features; (B) trenchless projects that include both buried replacement segments and buried new segment; and (C) trenchless projects that include a mix of segments where some, but not all segments, meet the co-location criteria.

A. Mix of above and below ground features

Above ground features are sometimes included in what would otherwise be an entirely buried trenchless method project. Examples include pedestals, overhead transmission poles and lines, cell towers, or overhead lighting.

Where there is a “mixed” project consisting of buried utility lines / segments using trenchless methods and new disturbances above ground, the trenchless portion of the project would be reviewed using the revised trenchless methods approach. However, the above ground features would be analyzed according to the type of disturbance and generally considered new surface disturbance. For example, if the segment being directionally bored under a newly-proposed highway was included alongside a proposal to install new overhead lighting and a new transmission line, the buried segment would be analyzed according to this section whereas the new overhead lighting and transmission line will be analyzed for what they are and in accordance with the mitigation framework because these features present impacts beyond the highway footprint even if they are co-located with the highway.

B. Mix of replacement segments and new segments

Prior experience has shown that some trenchless projects contain a mix of segments, some of which are replacing existing copper segments already in the ground while other segments are newly-proposed for burying using trenchless methods. Here, each segment would be analyzed according to its status as being either replacement or new. Mitigation outcomes would follow Figures 10 and 11.

C. Mix of segments, only some of which meet the co-location criteria under either Part 1 or Part 2

It's possible that a trenchless project would contain a mix of segments, some of which are co-located while others are not. Here, each segment would be analyzed according to its status as being either co-located or not, respectively. Mitigation outcomes would follow Figures 10 and 11.

3. Temporary Use of a Backhoe

Occasionally a backhoe is necessary, to remove rock or other obstacles encountered during the course of installing buried fiber optic cable, electric line, pipe or other buried utility. This is because the trenchless machinery is incapable of cutting through the obstacle, and the obstacle must first be removed before the trenchless machinery can proceed. In these scenarios, the back hoe is needed for a short distance and a small portion of a much longer trenchless project.

Typically, mineral soil is scraped and vegetation is crushed, if not removed by the equipment. Due to the hardship it would impose, proponents need not stop work to initiate a new consultation with the Program prior to using a backhoe to remove the object. The back hoe may be brought to the site and used temporarily at the site of the obstacle to remove it. Work may proceed continuously. However, developers are expected to follow Best Management Practices, as follows below.

Best Management Practices to Minimize Disturbance, Local Site Reclamation, and Weed Control:

- All equipment should first be washed before entering the area where a backhoe or trencher is needed. Equipment should be washed after use in areas having state-listed noxious weeds or other county-identified invasive species or species of concern.
- Follow the local County Weed Coordinator's recommendations and all county guidance.
- Actively reseed the area of localized disturbance caused by the backhoe. The seed mix should be according to private landowner preference, permitting agency specifications, or align with NRCS recommendations for the local area.
- Noxious weed control is mandatory by law. Noxious weed or invasive species should be actively managed within the first year after reseeding and thereafter. Either undertake the work directly or make arrangements with the private landowner to control noxious weeds.

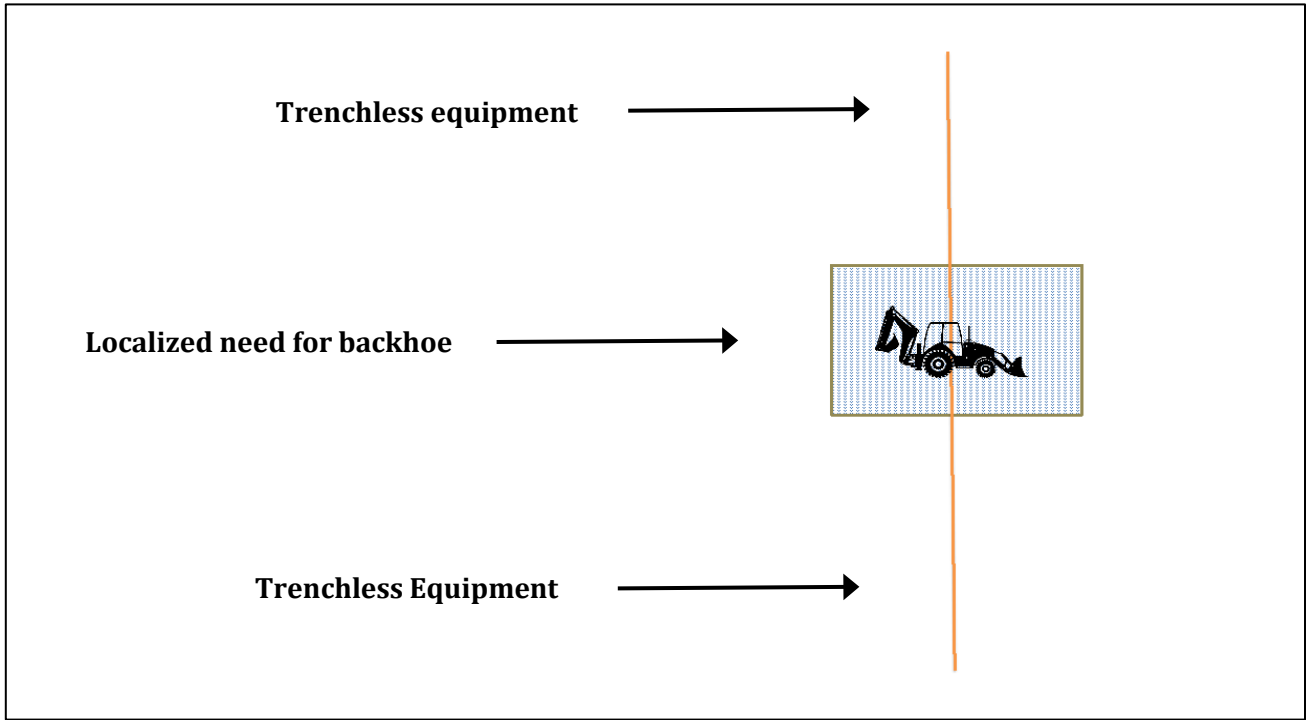


Figure 13. Schematic representation of a localized area shown in the box where a back hoe may be used locally and temporarily after encountering an obstacle along the trenchless equipment pathway. A second consultation is not needed. Follow Best Management Practices for the localized area of disturbance.

MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET

JUNE 9, 2020

AGENDA ITEM: BOARD OF OIL AND GAS CONSERVATION IMPLEMENTATION OF SENATE BILL 299 (2019)

ACTION NEEDED: INFORMATIONAL AS TO WELLS DRILLED OR PERMITTED PRIOR TO SEPTEMBER 8, 2015.

SUMMARY:

§ 76-22-115, MCA, as established by Senate Bill 299, excluded permitted land uses and activities that existed as of September 8, 2015, from management under the sage grouse conservation strategy and required that the permitting agency apply seasonal use restrictions for discretionary activities.

The Board of Oil and Gas Conservation's statutory authority applies to oil, gas, and Class II injection wells located on private (fee) or state mineral ownership. Board Staff, in consultation with the Governor's Office and DNRC, developed guidelines for agency implementation of the new requirements as applied to wells within its jurisdiction that were permitted prior to September 8, 2015.

The Board authorizes drilling permits, injection permits, and well plugging and abandonment procedures. Additional rules require notice to the board of certain activities that change subsurface well construction, either for the purpose of maintaining accurate records of subsurface wellbore configuration or to evaluate potential impacts to the mineral estate. The distinction between discretionary and non-discretionary or maintenance activities chosen is based upon the proposed activities' consistency with the original approved permit.

- Non-discretionary activities are those necessary to keep a well in producing or injecting status as authorized under the original drilling permit, but only if the well has been continuously active and the action cannot be reasonably undertaken outside of a seasonal closure period.

A notice was prepared for the regulated industry which has been in use subsequent to the passage of Senate Bill 299. A copy of the notice is also included in the meeting materials. The primary considerations reflected in the notice are:

- Any proposed permitted activity at an existing well that involves new surface disturbance will require review under the Sage Grouse Program.
- Oil, gas, and injection well operators will be encouraged to avoid any activities in either Core or General sage grouse habitat during the closure periods and to comply with any hourly restrictions or noise limitations set forth in Executive Order 12-2015.



MONTANA BOARD OF OIL AND GAS CONSERVATION

Changes in Application of the Sage Grouse Program as a Result of Senate Bill 299 (2019)

Wells permitted or drilled prior to September 8, 2015

Senate Bill 299 from the last legislative session resulted in changes to the sage grouse program. Wells that were drilled or permitted prior to September 8, 2015 are no longer managed under the stipulations of a sage grouse conservation strategy.

If a well under the jurisdiction of the Board of Oil and Gas Conservation (Board) was permitted or drilled prior to September 8, 2015 **and the proposed activity does not involve new surface disturbance**, sundry notices for well work need only be submitted to the Board. Any permitted activity that requires additional surface disturbance remains subject to sage grouse program oversight.

However, current law does require that seasonal use restrictions be applied by the permitting agency for **discretionary activities** at these existing wells. Timing stipulations for activities generally exclude activity or limit noise during the period from March 1st through July 15th.

Wells permitted after September 8, 2015

Wells permitted after September 8, 2015 are managed under the sage grouse program and Executive Order 12-2005. The first point of contact for proposed activity in general, core, or connectivity sage grouse habitat is the Montana Sage Grouse Habitat Conservation Program. The Board will incorporate stipulations generated through program review in its approval of proposed well work.

The BOGC will propose to the Sage Grouse Oversight Team that the habitat quantification tool only be applied where the proposed activity includes new surface disturbance.

Guidelines for proposed work or activities at wells drilled or permitted prior to September 8, 2015 are:

- Whenever possible, any activities should be avoided in either core or general sage grouse habit during the March 15th to July 15th closure period.
- If sundry notices are submitted for discretionary well work, approval will likely include a stipulation that activities take place outside any applicable closure period. Lek locations will primarily be used to determine if stipulations are required.
- Hourly restrictions will be applied to all permitted activities for the period of March 15th through July 15th in both core and general habitat, and noise limitations at the perimeter of an active lek will be stipulated for the period of March 1st through July 15th.

Discretionary vs. non-discretionary activities

Non-discretionary activities:

- 1) Any actions necessary for well control or containment including a spill, release, fire, or other emergency response.
- 2) Any wellbore modification or stimulation that is found necessary while performing previously notified maintenance work or work that does not require prior notification to the Board.
- 3) Actions undertaken to restore mechanical integrity of an injection well in accordance with ARM 36.22.1414 or mechanical integrity testing as required under ARM 36.22.1416.
- 4) Any maintenance activities necessary to keep a well in producing or injecting status if the well has been continuously active provided that those activities cannot be reasonably undertaken outside of a seasonal closure period.

Discretionary activities:

- 1) Recompletion, deepening, stimulation, or abandonment of a well that has been inactive and when the activities are not covered in non-discretionary activities # 2 or 3 above.
- 2) Conversion of an existing well to injection except in those cases where no well construction work requiring notification to the board is necessary.
- 3) Any activity requiring prior approval at a well which has been inactive for one year (ARM 36.22.1303).

Timing based upon rule or requirements set by Board order:

The Board will consider timing stipulations when setting deadlines for compliance and will grant exceptions to deadlines set by rule to accommodate seasonal restrictions when appropriate.



United States Department of the Interior




BUREAU OF LAND MANAGEMENT
Montana/Dakotas State Office
5001 Southgate Drive
Billings, Montana 59101
<http://www.blm.gov/montana-dakotas>

**Handout: BLM Partner
Report provided to MSGOT**

June 3, 2020

Memorandum

To: Brian St. George, Acting Assistant Director for Resources and Planning (AD-200)
Nick Douglas, Assistant Director for Minerals and Realty (AD-300)
Grant Beebe, Assistant Director for Fire and Aviation (FA-100)

From: John Mehlhoff,
State Director, Montana/Dakotas State Office 

Subject: Status of Greater Sage-Grouse (GRSG) Population and Habitat Adaptive Management Triggers within Montana and South Dakota in 2019.

STATEMENT OF PURPOSE

Inform the Assistant Director for Resources and Planning (AD-200), Minerals and Realty (AD-300) and Fire and Aviation (FA-100) of the status of Montana and South Dakota Greater Sage Grouse (GRSG) habitat and populations with respect to 2019 hard and soft adaptive management triggers described in the adaptive management appendices for the South Dakota, Hi-Line, Billings, and Miles City Resource Management Plan Revisions and the Idaho and Southwestern Montana and Lewistown Greater Sage-Grouse Approved Resource Management Plan Amendments. There are no Adaptive Management actions in North Dakota as noted in the North Dakota Greater Sage-Grouse Approved Resource Management Plan Amendment.

IM 2016-140 instructs the Bureau of Land Management (BLM) State Offices to evaluate GRSG specific hard and soft triggers annually by the end of each calendar year (December 31), consult with federal, state, county or tribal governments (where appropriate) to assess findings, and notify the BLM Washington Office by February 1 of the following year.

BACKGROUND

Montana and South Dakota GRSG populations are monitored annually, and the population information is managed by Montana Fish, Wildlife, and Parks (MFWP) and South Dakota Game, Fish, and Parks (SDGFP). GRSG habitat measures are evaluated by the BLM National Operations Center based on the amount of disturbance that occurs within Biologically Significant Units (BSUs) within identified GRSG populations.

Hard triggers are indicators that management is not achieving desired conservation results. Hard triggers will be considered a catastrophic indicator that the species is not responding to conservation actions, or that a larger-scale impact is having a negative effect. Hard triggers are focused on three metrics: 1) number of active leks, 2) acres of available habitat, and 3) population trends based on annual lek counts.

Within the context of normal population variables, hard triggers shall be determined to take effect when two of the three metrics exceeds 60% of normal variability for the BSU in a single year, or when any of the three metrics exceeds 40% of normal variability for a three year time period within a five-year range of analysis. A minimum of three years is used to determine trends, with a five- year period preferred to allow determination of three actual time periods (Y1-2-3, Y2-3-4, Y3-4-5). Baseline population estimates are established by pre-disturbance surveys, reference surveys and account for regional and statewide trends in population levels. Lek survey protocols determined by MFWP are implemented consistently throughout the state. Counts of individual birds are tracked for each monitored lek.

The BLM Land Use Plans require an assessment of populations rather than an index of the population derived from raw lek counts of male sage-grouse. To achieve robust population estimates Montana FWP worked with Dr. Paul Lukacs, University of Montana, to estimate sage-grouse population numbers based on counts of displaying males at leks using N-mixture models. This modeling approach is a robust analytical method for estimating population size and trend over time for species like sage-grouse that congregate at discrete breeding sites and accounts for numerous sources of error and bias in raw lek counts. Although FWP maintains a database of male counts at leks that date back to 1952, only data from 2002 onward could be used with this modeling approach. The current population estimates provided by Montana FWP provide the population status for the entire state and do not include leks in PHMA in South Dakota. The conclusions in this memo are derived from statewide results combined with actual lek counts in each BSU, including leks in South Dakota. Montana/Dakotas BLM continues to work with MFWP and SDGFP to refine our monitoring, analysis, and reporting of Greater Sage-Grouse to provide a more accurate assessment of population status and trends and we anticipate that by the fall of 2020 we will be able to analyze lek data from 2002 and provide specific yearly population status and trend information for each BSU for past years as well as each subsequent year.

Based on the population estimate information provided by Montana FWP in 2019, no population hard or soft triggers were tripped in the BSUs in Montana/Dakotas BLM. We are continuing to monitor and assess specific portions of the Eastern Montana/South Dakota BSU to assess if there are soft triggers that may be tripped. The population estimate provided by Montana FWP documented a decline across MT in 2019 which was mirrored in South Dakota. However, the decline did not reach the level of the thresholds identified in the plan. The apparent decline in estimated population numbers in 2018 – 2019 is likely a result of natural fluctuations related to the reduction in recruitment and survival due to drought conditions during the summer of 2018.

The number of active leks has remained steady in Montana and South Dakota.

The BLM National Operations Center provides Montana/Dakotas BLM annual information on the amount of disturbance occurring within the BSU each year. The amount of disturbance (which is equated to the amount of habitat lost) was subtracted from the amount of available habitat to determine the loss percentage. The acres of habitat lost in 2019 did not reach the threshold level.

In summary, the 2019 decline is not in concert with any widescale habitat loss or degradation and does not warrant immediate concern.

RESULTS

No habitat or population hard triggers were tripped in 2019 in MT/DK BLM.

Public comment received prior to the MSGOT Webinar

From: cporteen@nemont.net
To: [Sime, Carolyn](#)
Subject: [EXTERNAL] Saving the sage grouse!!
Date: Monday, June 8, 2020 12:22:33 PM

The minerals group need to suck it up !! Save our SG species. Regulation is needed on all public and private lands including those habitats in adjacent States. The laws must be promulgated and implemented. It may be to late!!

Respectfully submitted,
Carlo Porteen
St. Marie, Montana

Sent from my iPhone