

BEFORE THE GOVERNOR'S OFFICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 14.6.101 and 14.6.102 and the) PROPOSED AMENDMENT AND
adoption of New Rules I, II, III, and) ADOPTION
IV, pertaining to implementation of)
the Greater Sage-Grouse)
Stewardship Act)

TO: All Concerned Persons

1. The Sage Grouse Habitat Conservation Program will hold one public hearing at the following date and time to consider the proposed amendment and adoption of the above-stated rules:

November 9, 2018, 2:00 p.m., DNRC Headquarters, Montana Room, 1539 Eleventh Avenue, Helena, MT

2. The Governor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Governor's Office no later than 5:00 p.m. November 1, 2018 to advise us of the nature of the accommodation that you need. Please contact Carolyn Sime, Sage Grouse Habitat Conservation Program Manager, Montana Sage Grouse Oversight Team, c/o Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-0554; fax (406) 444-6721; or email at csime2@mt.gov.

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

14.6.101 DEFINITIONS Unless the context clearly requires otherwise, to aid in the implementation of the Montana Greater Sage-Grouse Stewardship Act and as used in these rules:

(1) and (2) remain the same

(3) "HQT" means Habitat Quantification Tool, a geo-spatial based application designed to implement 76-22-103(9), MCA, as documented in the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse.

(3) remains the same but is renumbered (4).

(5) "Major Version" is a means to track revisions to the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse or Montana Mitigation System Policy Guidance for Greater Sage-Grouse. Major Versions are identified as 1.x, 2.x, 3.x, etc.

(6) "Minor Version" is a means to track routine inputs to the HQT made by the program to the Montana Mitigation System Habitat Quantification Tool Technical

Manual for Greater Sage-Grouse or Montana Mitigation System Policy Guidance for Greater Sage-Grouse. Minor Versions are identified as x.1, x.2, x.3, etc. Examples of routine inputs include updates to Geographic Information System layers used in the HQT and editorial changes.

(7) "Mitigation Hierarchy or Sequence" means taking steps to:

(a) avoid impacts by not taking a certain action or parts of an action;

(b) minimize impacts by limiting the degree or magnitude of the action and its implementation;

(c) rectify impact by repairing, rehabilitating, or restoring the affected environment;

(d) reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action; and

(e) compensate for impact by replacing or providing substitute resources or environments.

(8) "Mitigation System" means implementation of the mitigation hierarchy, as defined by (7) and as directed by (9) the Montana Habitat Quantification Tool Technical Manual for Greater Sage-Grouse and (10) the Montana Mitigation System Policy Guidance for Greater Sage-Grouse.

(9) "Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse" describes the scientific methods used to evaluate vegetation and environmental conditions related to the quality and quantity of sage grouse habitat.

(10) "Montana Mitigation System Policy Guidance for Greater Sage-Grouse" describes the policies, procedures, and methods of the Mitigation System to quantify and calculate the value of credits and debits.

(4) and (5) remain the same but are renumbered (11) and (12).

AUTH: 76-22-104, MCA

IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA

REASONABLE NECESSITY: Compliance with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) requires MSGOT to adopt additional rules regarding compensatory mitigation. Additional definitions are needed to clarify terms in these additional rules. In particular, the terms related to the mitigation system and the documents describing the technical function of the Habitat Quantification tool and policy for application of its outputs and how changes to those are managed through time are new introductions to administrative rules.

14.6.102 GRANTS (1) through (8) remain the same.

(9) MSGOT will give greater priority to applications for conservation activities eligible for funding under 76-22-110, MCA, which would be implemented in core areas. MSGOT may still consider funding conservation activities in general habitat and connectivity areas where high resource values for sage grouse exist and credits could be generated consistent with 76-22-109, MCA.

AUTH: 76-22-104, MCA

IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA

REASONABLE NECCESITY: Compliance with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) required MSGOT to adopt rules to "administer . . . the eligibility and evaluation criteria for grants distributed pursuant to 76-22-110." This amendment provides flexibility for MSGOT by allowing MSGOT to consider funding projects outside of core areas if high resource values for sage grouse can be protected.

4. The rules proposed to be adopted provide as follows:

NEW RULE I HABITAT QUANTIFICATION TOOL DESIGNATION

(1) Designation of major versions of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse shall prompt the initiation of rulemaking to incorporate the new major version by reference.

(2) MSGOT shall review all proposed changes to major versions of its designated Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse after a publicly announced MSGOT meeting and after accepting written and oral public comment.

(3) Minor versions of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse shall be recorded by the program.

(4) Once the current Montana Mitigation System HQT has been applied to calculate the credits of a proposed mitigation site, or the debits of a proposed development site; the program has completed its review; and the project developer obtains the necessary state or federal permits, any subsequent versions of the HQT will not apply to the project except as provided in (b).

(a) Once the HQT has been applied to calculate credits or debits, the number of calculated credits or debits will not be changed without written approval from all affected parties, including, but not limited to:

- (i) MSGOT;
- (ii) the project developer;
- (iii) the credit provider; and
- (iv) any affected third parties.

(b) Permit amendments will be subject to the current version of the HQT to calculate debits resulting from new activities associated with the amendment.

(c) Amendments to credit sites will be subject to the current version of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse at the time of the proposed amendment.

(5) The current version of the MSGOT designated Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse is the version made available to the public on the program's web site. Past versions of HQT will be blocked from further use except as allowed in (4)(a) and preserved in archive by the program.

(6) MSGOT or any other third party must apply the current version of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse to calculate credits and debits as provided on the program's website for the following:

- (a) a conservation bank;
- (b) participation in a habitat credit exchange approved by the U.S. Fish and Wildlife Service (USFWS);
- (c) making a financial contribution to the Sage-Grouse Stewardship Account if sufficient credits are not available;
- (d) implementing stand-alone mitigation actions to offset impacts to sage grouse habitat;
- (e) calculating credits created by funding from the Sage-Grouse Stewardship Account; or
- (f) calculating credits through stand-alone efforts to create mitigation credit sites.

AUTH: 76-22-104, MCA

IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-111, 76-22-112, 76-22-113, 76-22-114, 76-22-118, MCA

REASONABLE NECESSITY: This rule is reasonably necessary for MSGOT to comply with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-104, et seq. MCA) which requires MSGOT to: "adopt rules to administer...the designation of a habitat quantification tool." This rule partially implements the requirements of that bill and describes the ordered process for enumerating major and minor versions and distinguishing routine operational elements of the HQT from changes that trigger rulemaking.

NEW RULE II COMPENSATORY MITIGATION SYSTEM (1) The mitigation sequence is applicable to all activities within sage grouse core areas, general habitat and connectivity habitat subject to agency review, approval, or authorization including temporal impacts that are later rectified through reclamation and restoration activities, unless exempted by MSGOT.

(2) Designation of major versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse shall prompt the initiation of rulemaking to incorporate the new major version by reference.

(3) MSGOT shall review major proposed changes to its designated Montana Mitigation System Policy Guidance for Greater Sage-Grouse after a publicly announced MSGOT meeting, and after accepting written and oral public comment.

(4) Minor versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse shall be recorded by the program.

(5) The current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse is the version made available to the public on the program's website. Past versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse will be archived by the program.

(6) Once the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse has been applied to calculate the credits of a proposed mitigation site, or the debits of a proposed development site; the program has completed its review; and the project developer obtains the necessary state or federal permits, any subsequent versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse will not apply.

(7) Once the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse has been applied to calculate credits or debits:

(a) the number of calculated credits or debits will not be changed without written approval from all affected parties, including, but not limited to:

- (i) MSGOT;
- (ii) the project developer;
- (iii) the credit provider; or
- (iv) any affected third parties; and

(b) Permit amendments will be subject to the current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse to calculate debits resulting from new activities associated with the amendment.

(c) amendments to credit sites will be subject to the current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse at the time of the proposed amendment.

(8) MSGOT or any other third party shall use the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse provided on the program's web site for the following:

- (a) a conservation bank;
- (b) participation in a habitat credit exchange approved by USFWS;
- (c) making a financial contribution to the Sage-Grouse Stewardship Account if sufficient credits are not available;
- (d) implementing stand-alone mitigation actions to offset impacts to sage grouse habitat;
- (e) calculating credits created by funding from the Sage-Grouse Stewardship Account; or
- (f) calculating credits through stand-alone efforts to create mitigation credit sites.

(9) MSGOT will approve compensatory mitigation plans that involve sage grouse habitat restoration, habitat enhancement, or habitat preservation through participation in one or more of the following:

- (a) a conservation bank;
- (b) participation in a habitat credit exchange;
- (c) making a financial contribution to the Sage-Grouse Stewardship Account if sufficient credits are not available; or
- (d) funding stand-alone mitigation actions to offset impacts to sage grouse habitat.

(10) All compensatory mitigation plans involving habitat restoration, enhancement, or preservation, and approved by MSGOT, must:

- (a) meet the applicable standards provided in the Montana Mitigation System Policy Guidance for Greater Sage-Grouse;
- (b) be in consideration of applicable USFWS Greater Sage-Grouse policies; and
- (c) apply the current version of the HQT that implements the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse designated by MSGOT.

(11) Research or education shall not be used to fulfill mitigation sequence obligations.

AUTH: 76-22-104, MCA
IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-111, 76-22-112, 76-22-113,
76-22-114, 76-22-118, MCA

REASONABLE NECESSITY: This rule is reasonably necessary for MSGOT to comply with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) which requires MSGOT to: "adopt rules to administer...methods of compensatory mitigation available..." This rule partially implements the requirements of that bill and describes the ordered process for enumerating major and minor versions and distinguishing routine operational elements from changes that trigger rulemaking.

NEW RULE III METHOD TO TRACK AND MAINTAIN THE NUMBER OF CREDITS AND DEBITS AVAILABLE AND USED (1) MSGOT or its designee shall assign a unique identifier for each credit created through funds disbursed from the Sage-Grouse Stewardship Account.

(2) MSGOT or its designee shall assign a unique identifier for each credit created through conservation activities funded or implemented independently from the Sage-Grouse Stewardship Account.

(3) MSGOT or its designee shall assign a unique identifier for each debit created by a project developer.

(4) MSGOT or its designee shall establish a database and tracking system that contains, but is not limited to:

(a) the number of credits generated by conservation activities funded, at least in part, by funds disbursed from the Sage-Grouse Stewardship Account;

(b) the number of credits generated by conservation activities not funded through the Sage-Grouse Stewardship Account and approved by MSGOT for use as compensatory mitigation by project developers;

(c) the number of debits attributed to a development project;

(d) the location of all credits generated and debits generated; and

(e) credit transactions between parties.

(5) The information within the tracking system will be available to the public on the program's web site.

AUTH: 76-22-104, MCA
IMP: 76-22-104, 76-22-105, 76-22-109, 76-22-110, 76-22-111, 76-22-112,
76-22-118, MCA

REASONABLE NECESSITY: This rule is reasonably necessary for MSGOT to comply with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) which requires MSGOT to: (1) "adopt rules to administer...a method to track and maintain the number of credits attributable to projects funded . . . that are available to a project developer to purchase for compensatory mitigation to offset debits under 67-22-111;" (2) "adopt rules to administer . . . review and monitoring or projects funded pursuant to [Part 1]; (3) "review compensatory mitigation plans proposed under 76-22-111. If the plan includes a financial contribution to the sage grouse stewardship account established

in 76-22-109, MCA, the oversight team will, using the HQT, determine how to secure enough credits with the financial contribution to offset the debits of a project." This rule partially implements the requirements of that bill.

NEW RULE IV METHOD TO ADMINISTER THE REVIEW AND MONITORING OF MSGOT FUNDED PROJECTS (1) MSGOT, through the program, will establish a database and tracking system to review and monitor projects funded by MSGOT using the Sage-Grouse Stewardship Account.

(2) The database and tracking system shall contain information including, but not limited to:

- (a) the name of the Sage-Grouse Stewardship Account grant recipient(s);
- (b) the amount awarded;
- (c) the date the state funds were transferred to the grant recipient(s) if a one-time lump sum grant, or
- (d) the dates state funds were transferred to the grant recipient(s) if the award was a reimbursable grant;
- (e) a description of characteristics of the project including, but not limited to:
 - (i) type of project;
 - (ii) number of acres; and
 - (iii) land ownership;
- (f) the duration of the project;
- (g) any expected conservation benefits of the project;
- (h) the geospatial location where the project was implemented;
- (i) the number of credits generated, and their characteristics;
- (j) the unique identifier assigned to each of those credits;
- (k) transactions of credits created;
- (l) progress and final reports submitted by the grant recipient(s);
- (m) annual monitoring reports;
- (n) sage grouse leks on and in the vicinity of the project area, and trend data on the number of breeding males on those leks; and
- (o) the grant agreement number assigned by the Program and any amendments to the original grant.

AUTH: 76-22-104, MCA

IMP: 76-22-104, 76-22-105, 76-22-109, MCA

REASONABLE NECESSITY: This rule is reasonably necessary for MSGOT to comply with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) which requires MSGOT to: (1) "adopt rules to administer...the review and monitoring of projects funded." This rule partially implements the requirements of that bill.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Carolyn Sime, Sage Grouse Habitat Conservation Program Manager, Montana Sage Grouse Oversight Team, c/o Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-

0554; fax (406) 444-6721; or through the public comment web application located on the MSGOT web page at <https://sagegrouse.mt.gov/msgot.html>. All comments must be received no later than 11:59 p.m., November 19, 2018.

6. Carolyn Sime, Sage Grouse Habitat Conservation Program Manager, Montana Sage Grouse Oversight Team, has been designated to preside over and conduct this hearing.

7. The Governor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail. Such written request may be mailed or delivered to the Natural Resource Policy Advisor, P.O. Box 200801, 1301 East Sixth Avenue, Helena, MT 59620; fax (406) 444-4151; or may be made by completing a request form at any rules hearing held by the Governor's Office.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail and postal mail on October 4, 2018.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and adoption of the above-referenced rules may directly impact small businesses. Documentation of the MSGOT's above-stated determination is available upon request to, Sage Grouse Habitat Conservation Program Manager, Montana Sage Grouse Oversight Team, c/o Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, or to csime2@mt.gov.

/s/ Raphael Graybill
RAPHAEL GRAYBILL
Rule Reviewer

/s/ Patrick Holmes
PATRICK HOLMES
Natural Resource Policy Advisor
Governor's Office

Certified to the Secretary of State October 9, 2018.