

# **MONTANA GREATER SAGE-GROUSE STEWARDSHIP GRANTS**

## **APPLICATION INFORMATION ELIGIBILITY GUIDANCE AND EVALUATION PROCESS**

This document outlines the Stewardship Fund Grant application process and provides information for potential applicants. The document also provides the statutory and regulatory criteria governing Montana Greater Sage-Grouse Stewardship Fund Grants.

This document sometimes paraphrases the governing statutory and regulatory language. However, the specific language of the statutes and rules govern, regardless of the language used in this document. This document does not interpret or modify any statutes or administrative rules governing the Grant Program.

This document also draws upon information contained within the Montana Mitigation System Policy Guidance Document for Greater Sage-Grouse October 2018, v1.0 and the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse October 2018, v1.0.

### **PURPOSE OF STEWARDSHIP FUND GRANTS**

The purpose of Montana Greater Sage-Grouse Stewardship Act (“Act”) grants is to provide competitive grant funding and establish ongoing free-market mechanisms for voluntary, incentive-based conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations on private lands, and public lands as needed, that lie within core areas, general habitat, or connectivity areas. Montana Code Annotated (MCA) § 87-5-902(2).

The majority of the account funds must be awarded to projects that generate credits that Montana Sage Grouse Oversight Team (MSGOT) makes available to developers for compensatory mitigation. MCA § 87-5-909(4).

MSGOT has discretion to determine the amount of each grant award in accordance with the Stewardship Act and may attach conditions to the use of the grant. MCA § 87-5-905(1)(d).

### **APPLICANT ELIGIBILITY**

Grants may be awarded only to “organizations” and agencies that hold and maintain conservation easements or leases or that are directly involved in sage grouse habitat mitigation and enhancement activities approved by the Montana Sage Grouse Oversight Team (MSGOT). MCA § 87-5-910(3). When considering potential conservation projects, private landowners are encouraged to work with an organization or agency which would sponsor the project as the grant applicant and serve as the fiscal agent.

“Organization” means a private entity registered with the Montana Secretary of State authorized to conduct business in the State of Montana. 14.6.101(5), ARM. “Agency” for the purposes of



the Act means a department, agency, or instrumentality of the State of Montana, a political subdivision of the state, or a Tribe and is not a private individual, private entity, or private organization recognized by the laws of the State of Montana. 14.6.101(1), ARM.

Organizations or agencies are only eligible if they hold and maintain conservation easements or leases or if they are directly involved in sage grouse habitat mitigation and enhancement activities approved by MSGOT. MCA § 87-5-910(3).

Grants may not be used to supplement or replace the operating budget of an agency or organization except for budget items that directly relate to the purposes of the grant. MCA § 87-5-910(4).

## PROJECT ELIGIBILITY

### Eligible Projects

A project is only eligible if it is located, at least in part, on land identified as Core Areas, General Habitat, or Connectivity Areas. MCA § 87-5-902(2) (establishing grant funding for sage grouse conservation measures on lands that “lie within core areas, general habitat, or connectivity areas.”). Maps delineating these areas are available on the MSGOT website. See: <https://sagegrouse.mt.gov>.

A project is eligible if it will maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people through voluntary, incentive-based efforts. MCA § 87-5-910(1). Eligible projects conserve, restore, or enhance habitat and may include:

- Reduction of conifer encroachment. MCA § 87-5-910(1)(a).
- Reduction of the spread of invasive weeds that harm sagebrush health or sage grouse habitat. MCA § 87-5-910(1)(b). “Invasive Weed” means a grass, forb, shrub or tree (weed) listed on the Montana Invasive and Noxious Weed list or other weed designated by MSGOT as invasive and that the weed has a known quantifiable negative impact on the quality or quantity of general, core or connective sage grouse habitat or negatively impacts sage grouse populations other than through habitat impacts. 14.6.101(3), ARM.
- Maintenance, restoration, or improvement of sagebrush health or quality. MCA § 87-5-910(1)(c).
- Purchase or acquisition of leases, term conservation leases, or permanent conservation easements that conserve or maintain sage grouse habitat, protect grazing lands, or conserve sage grouse populations. MCA § 87-5-910 (1)(d). Such projects are subject to the further eligibility requirements of MCA § 87-5-912, as discussed below.
- Incentives to reduce the conversion of grazing land to cropland. MCA § 87-5-910(1)(e).
- Restoration of cropland to grazing land. MCA § 87-5-910(1)(f).



- Modification of fire management to conserve sage grouse habitat or populations. MCA § 87-5-910(1)(g).
- Demarcation of fences to reduce sage grouse collisions. MCA § 87-5-910(1)(h).
- Reduction of unnatural perching platforms for raptors. MCA § 87-5-910(1)(i).
- Reduction of unnatural safe havens for predators. MCA § 87-5-910(1)(j).
- Sage grouse habitat enhancement that provides project developers the ability to use improved habitat for compensatory mitigation under MCA § 87-5-911. MCA § 87-5-910(1)(k).
  - Establishment of a habitat exchange to develop and market credits consistent with the purposes of this part. The habitat exchange must be authorized by the United States fish and wildlife service and must use the habitat quantification tool to quantify and calculate the value of credits and debits. Funds may be allocated to a habitat exchange if the funds are used to create and market credits consistent with the habitat quantification tool,
  - for operational purposes including monitoring the effectiveness of projects,
  - for costs associated with establishing the habitat exchange, or
  - for reimbursing the state for the proportionate share of proceeds generated from the sale of credits created under the grant program. MCA § 87-5-910(1)(l).
- Other project proposals that MSGOT determines are consistent with the purposes of the Act. MCA § 87-5-910(1)(m).

### **Ineligible Projects and Additional Considerations**

A project is ineligible if it seeks grant funding:

- For fee simple acquisition of private land. MCA § 87-5-909(5)(a).
- To purchase water rights. MCA § 87-5-909(5)(b).
- To purchase a lease or conservation easement that requires recreational access or prohibits hunting, fishing, or trapping as part of its terms. MCA § 87-5-909(5)(c).
- To allow the release of any species listed under MCA § 87-5-107 or the federal Endangered Species Act, 16 U.S.C. 1531, *et seq.* MCA § 87-5-909(5)(d).
- To fund a habitat exchange that does not meet the requirements of MCA § 87-5-910(1)(l).
- For a project involving land owned by multiple landowners, including state and federal land, in which the majority of the involved acres are not privately owned or the proposed project does not benefit sage grouse across all of the land included in the project. MCA § 87-5-910(2).



- To supplement or replace the operating budget of an agency or organization, except for budget items that directly relate to the purposes of the actual grant. MCA § 87-5-910(4). For example, grant funds cannot be used to obtain office space or increase a wage or salary. If grant funds would be used for supplement or replace operating expenses, applicants should explain how those items directly relate to purposes of the actual grant.
- To reclaim a site that otherwise should have been reclaimed as a condition of a state or federal permit and a regulatory obligation under state or federal laws. Rare exceptions may occur.
- For a lease or conservation easement in which:
  - The state will not be named a third-party beneficiary to the lease or easement with the contingent right to enforce the terms of the lease or easement if the grantee fails to do so.
  - The agreement will not provide that the lease or easement may not be transferred for value, sold, or extinguished without consent of the department.
  - Attempts to preclude the State from taking legal action to enforce the terms of the lease or easement or to recover from the proceeds of the transfer for value, sale, or extinguishment the state's pro rata share of the proceeds based on the funds the state provided pursuant to this Act for the creation of the lease or easement. MCA § 87-5-912.
- To fund a project that does not meet the criteria of MCA § 87-5-910.
- Through a late, incomplete, or improperly submitted application. 14.6.102(1)-(3), ARM.

### **Additional Considerations**

MSGOT cannot disburse the majority of the funds in the Account to projects which do not generate credits that are available for compensatory mitigation. MCA § 87-5-909(4).

Projects proposed by grant applicants may involve land owned by multiple landowners, including state and federal land, provided that the majority of the involved acres are privately held and that the proposed project benefits sage grouse across all of the land included in the project. MCA § 87-5-910(2).

If a grant is awarded to a proposed project that uses matching funds from a source that prohibits the generation of credits for compensatory mitigation, MSGOT, when possible, shall allocate the credits generated by the proposed project on a pro rata basis and make available for compensatory mitigation only those credits attributable to funds from the Stewardship Account and any unrestricted matching funds. MCA § 87-5-910(5).

MSGOT and the Program will apply the current designated habitat quantification tool to any project that is selected for funding. MCA § 87-5-909(4). This will be used to ultimately determine the number of credits available.



## APPLICATION PROCESS OVERVIEW

The application process has many steps. They are briefly summarized below.

### **1. Pre-Application Proposal and a Program Preliminary Review Report.**

Agencies or organizations which are considering applying for Stewardship Account grant funds first submit a Pre-Application as a new conservation project through the sage grouse web application. <https://sagegrouse.mt.gov/>

The applicant will either log-in or create an account. Once logged in the applicant can then create a new project and follow the associated steps. The website application will prompt the applicant to include varying information about the project, such as: requested amount, location, project participants, project size and duration, and type of credit project for which Stewardship Account funds are requested (i.e. Conservation easement, conservation lease, restoration, or habitat enhancement), and other descriptive information.

Along with the **Pre-Application Proposal**, those considering applying for Stewardship Account grants must include geospatial data associated with the project. The applicant can upload geospatial data or use the map tools to draw in the project location. Contact the Program for additional information if needed.

- If the project is a proposed easement or lease, the geospatial data should include a polygon of the lands included within the easement or lease, any building envelopes and any excluded lands.
- If the project is for proposed restoration or enhancement, the geospatial data should include a polygon of the lands that would be restored or enhanced.
- If the project is a combination of easement/lease and restoration or enhancement, submit geospatial information specific to each separately.

Once you have successfully submitted your project through the web application. The Program will conduct a preliminary review of the proposed project by calculating the number of functional acres gained and the number of credits that could potentially be available using the habitat quantification tool and applicable policy guidance. These results are preliminary and subject to future revision in coordination with the grant applicant. The Program will provide a Preliminary Review Report with credit information and ecological or situational metrics about the proposed project. The program will upload the Preliminary Report to your project on the website.

This pre-application phase is intended to provide preliminary HQT results and other objective information to would-be applicants who can then decide, for themselves, whether to prepare and submit a Complete Application.

The purpose of the Pre-Application Proposal phase is to help potential applicants and the Program:

- exchange information about the potential project;
- identify any information gaps or needs early in the process;
- identify any uncertainties and address questions; and



- determine the preliminary number of credits that might be created if the project were to be selected for funding.

## **2. Submission of Complete Applications.**

Would-be applicants review the Program's Preliminary Review Report and decide for themselves whether to complete and submit a Complete Application. If the applicants decide to move forward, the program will return the project to the applicant through the sage grouse website. The applicant will then enter the Complete Application phase and will be prompted to add additional information to the project. The Program will receive the Complete Application once it is resubmitted through the website.

The Complete Application includes greater detail about the proposed project, such as: an itemized budget, implementation timeline and estimated completion date, and additional supporting documentation (e.g. terms and due diligence reports for conservation easements or leases).

Final geospatial data should also be submitted so final HQT results and credit information can be determined.

## **3. Written Public Scoping Comment on Complete Applications and the Program's Preliminary Review Report.**

The Program will publish all Complete Applications received, along with the Program's Preliminary Review Report on the Program's website and invite written public scoping comments.

The purpose of this phase is to: 1. fulfill the public scoping requirements of the Montana Environmental Policy Act; and 2. solicit public comment for MSGOT's consideration before the meeting during which it will select projects for funding.

## **4. Program Review of Complete Applications, Peer Review and the Program's Grant Recommendation Report.**

Upon receipt of a Complete Application has been submitted through the sage grouse website and associated spatial data, the Program will again calculate HQT results, the number of credits expected, and determine other ecologically relevant information about the proposed project and the general area where it would be implemented. The Complete Application will also be considered in light of the degree to which the project will or has the potential to meet credit site requirements identified in the Policy Guidance (see Section 2, pp. 21-45), is consistent with Executive Order 12-2015, is consistent with applicable administrative rules, and satisfies requirements of the Greater Sage Grouse Stewardship Act.

The Program will solicit anonymous peer review to obtain independent evaluations of Complete Applications submitted for MSGOT's consideration. Peer reviewers will be provided with the Complete Application and any materials provided by the applicant, HQT results, other relevant ecological or situational metrics. For each application, peer reviewers will be asked to complete a narrative questionnaire. Peer reviewers will also



be asked to score each Complete Application using a score sheet provided and rank applications in order of priority for funding (high priority to low priority).

The Program will prepare a Grant Recommendation Report. The Grant Recommendation Report will include: recommended grant funding priorities, a ranking of all Complete Applications in consideration of the evaluation criteria and peer review, the proposed grant amount, any proposed conditions which the Program believes are necessary, public scoping comments on the Pre-Application Proposal, peer review, HQT results, and any other information relevant to MSGOT's evaluation and decision. For example, other relevant information could include a requirement to select projects in specific Mitigation Service Areas consistent with prior MSGOT-approved development project mitigation plans.

#### **5. *MSGOT Meeting to Evaluate Complete Applications and Select Projects.***

At a publicly-announced meeting, MSGOT will select projects for funding from the pool of Complete Applications. MSGOT will have reviewed Complete Applications and supporting materials, the Program's Grant Recommendation Report, and written scoping public comments. MSGOT will likely afford grant applications the opportunity to present their projects during the meeting. MSGOT will also accept verbal public comment during the meeting. MSGOT may also elect to extend the public comment opportunity and delay decisions until a future meeting.

The Program will make all application materials, written scoping comments received, and the Program's Grant Recommendation Report available on MSGOT's Meeting webpage before the meeting.

#### **6. *Montana Environmental Policy Act Review: Environmental Assessments and Record of Decision.***

The Program will prepare environmental assessments (EA) for each project MSGOT selects for funding. Public comment will be solicited on each draft EA. The Program will prepare a final EA and proposed record of decision.

Barring significant issues identified by the public on the Draft EA or changed circumstances surrounding the project, the MSGOT Chair will review the final EA and proposed Record of Decision. Exercising authority delegated from MSGOT, the Chair can adopt the proposed decision and give final approval. MSGOT may chose not to delegate final decision authority to the MSGOT Chair and request additional discussion or review during a subsequent public meeting.

#### **7. *Grant Agreement Execution.***

Once the Record of Decision has been approved, successful applicants will enter into a grant agreement with MSGOT and the Program. An applicant is not a grant recipient until the grant agreement has been executed by all necessary parties. Grant agreements will include necessary terms and conditions to insure that grant funds are disbursed and utilized consistent with the purpose of the Act, including the Act's credit provisions.



Grant funds can either be distributed in a lump sum (e.g. easement or lease projects) or as reimbursements (e.g. restoration or enhancement projects). “Up front” funding is generally discouraged, unless specifically addressed in the Complete Application and the grant agreement.

Montana Department of Natural Resources and Conservation, as the Program’s administrative host agency, will provide fiscal, legal, and operational support to finalize grant agreements, transfer funds from the Stewardship Account to grant recipients as appropriate, track disbursements from the Stewardship Account, and provide any other administrative function in partnership with the Program staff.

#### **8. Implementation by the Grant Recipient and the Program.**

The grant recipient implements the project according to provisions of the grant agreement and supporting documents. Grant recipients typically will also provide the site stewardship needed to assure that the habitat is still functional. The Program will work with grant recipients and participating landowners to monitor the site and verify credits. The Program and MSGOT will also work directly with developers who seek to use Stewardship Account credits to offset their project impacts.

## **ADDITIONAL INFORMATION ABOUT THE EVALUATION PROCESS & SELECTION CRITERIA**

### **Independent, Anonymous Peer Review**

Upon receipt of a Complete Application and associated spatial data, the Program will again calculate HQT results, the number of credits expected, and determine other ecologically relevant information about the proposed project and the general area where it would be implemented. This information will be provided to peer reviewers who will be asked to review the Complete Application, supporting materials, HQT results and other ecologically relevant metrics.

Peer reviewers will score applications in the following areas:

- Direct and indirect habitat conservation benefits, including: extent to which project addresses identified threats, provides seasonal habitats, offers potential or additional restoration;
- Direct and indirect population conservation benefits, including the project conserves breeding locations and surrounding nesting habitats or addresses identified threats;
- Landscape attributes, such as proximity or adjacency to other public or private lands with quality habitats for sage grouse that could be managed in common; and
- Other factors such as socio-economic impact on local economies, partnerships formed or supported by the project, or potential to expand conservation efforts.

Peer reviewers will also qualitative, narrative responses to questions, such as:

- Is the proposal consistent with the purposes of the Stewardship Fund in maintaining, enhancing, restoring, expanding, or benefiting sage grouse?





- What are the particular strengths or weaknesses of the proposed project based on your area of expertise and knowledge of the project area? Should MSGOT consider asking the grant applicant to address perceived weaknesses?
- For easements or leases, are the terms and documents settled enough and would the project conserve habitat if so?
- Do you believe MSGOT should fund this project at this time? Why or Why not?
- Should MSGOT award the full amount? Place any conditions on the grant award?

**Projects will also be evaluated by the following criteria:**

- The extent to which the proposed project will maintain, enhance, restore, expand, or benefit sage grouse habitat and populations. MCA § 87-5-904(1).
- Compliance with eligibility requirements. (See above).
- The extent to which the proposed project generates credits that MSGOT can then make available to developers for compensatory mitigation. MCA § 87-5-909. Functional acres gained will be determined using the MSGOT-approved Montana Mitigation System Habitat Quantification Tool, Oct. 2018 v1.0. Total credits created by the project will be determined after any applicable adjustments to the functional acres gained as outlined in the Montana Mitigation System Policy Guidance, Oct. 2018, v1.0.
- The socioeconomic impacts on the local community including the views of interested and affected persons and entities, including local, state, tribal, and federal governmental agencies, and boards, commissions, and other political subdivisions of the state. MCA §§ 87-5-004(1)(a); 905(c).

**Additional Considerations and Evaluation Criteria. Proposed projects meeting these criteria will be given greater priority.**

- MSGOT will give greater priority to applications for conservation activities which would be implemented in Core Areas. MSGOT may also consider funding projects in General Habitat and Connectivity Areas where high resource values for sage grouse exist and credits could be generated consistent with MCA § 87-5-909, 14.6.102, ARM.
- MSGOT will give greater priority to proposed projects that maximize the number of credits generated per dollars of grant funds awarded. MCA § 87-5-904(1)(d); MCA 87-5-909(4).
- MSGOT will give greater priority to proposed projects with partnerships between public and private entities. MCA § 87-5-904(1)(a).
- MSGOT will give greater priority to proposed projects that provide matching funds and the extent to which such matching funds can be used consistent with the Act. MCA §§ 87-5-904(1)(b); 910(5).



## **ADDITIONAL INFORMATION FOR ALL APPLICANTS**

### **Mitigation and Stewardship Account Grants**

Mitigation balances development and conservation. Mitigation is when conservation projects preserve, restore, or enhance sage grouse habitat are used to offset or compensate for impacts of development in sage grouse habitat. Conservation and development should balance out so there is no net loss of sage grouse habitat in Montana.

In Montana, most remaining sage grouse habitat is found on private lands. Private lands are likely to be the source of conservation actions that developers will rely on to fulfill their requirement to offset impacts of their development projects. Participation in mitigation and Stewardship Account grants by private landowners is strictly voluntary. However, mitigation can create a new source of revenue or help pay for something private landowners want to undertake to achieve their stewardship goals.

The 2015 Montana Legislature created the Stewardship Account, which is a source of competitive funding to incentivize private land stewardship to preserve, restore, or enhance sage grouse habitat that can then be used to offset impacts of development elsewhere.

Agencies or organizations sponsor habitat conservation projects in collaboration with interested private landowners. Projects selected for funding by MSGOT become a source of mitigation credits that MSGOT makes available to developers to offset impacts. When Stewardship Account funds are used to create conservation credits, the state owns the credits and will work directly with developers who need credits. Even though private landowners do not own the credits and would not benefit from the direct sale of credits created on their lands, Stewardship Account dollars can be used to pay for implementing a desired conservation project or practice desired by the landowner when other funds are not available.

MSGOT and the Program will determine the number of credits available from projects funded through Stewardship Account grants using a two-step process. Using the spatial data provided by grant applicants, the Program will first apply the current version of the Habitat Quantification Tool (HQT) approved by MSGOT to calculate functional acres gained. MCA § 87-5-904(1)(c). The current, approved version is version made available to the public to the public on the Program's web site. Second, the Program will apply the Policy Guidance Document approved by MSGOT the Raw HQT Score to determine the final number of credits. The current, approved version of the Policy Guidance Document is the version made available to the public on the Program's web site.

Grant recipients and participating landowners are expected to implement the project and the Program and MSGOT will work directly with developers who need credits.

Prior to applying for Stewardship Account funding, would-be applicants should familiarize themselves with the Montana Mitigation System Policy Guidance Document for Greater Sage-Grouse. In particular, see Section 1 *Overview and Roles* (pp. 1-21) and Section 2 *For Credit Providers: Generating Credits for Compensatory Mitigation* (pp. 21-45).

Additional information about conservation credit projects can be found here: <https://sagegrouse.mt.gov/CreditProject>.



## Tips to Identify the Most Competitive Grant Applications

The most competitive grant applications will be those that: (1) preserve habitats that are already highly functional / high quality and already provide a high number of credits per physical acre; or (2) restore or enhance lower quality habitats and increase the number of credits per physical acre above present condition.

The Montana Mitigation HQT Basemap (HQT Basemap) is a useful pre-project planning tool that would-be applicants can use to determine the existing baseline habitat quality in their area of interest. Preservation credit projects preserve the existing baseline habitat quality. Restoration or enhancement projects improve the baseline habitat quality.

The HQT Basemap is available here:

<https://sagegrouse.mt.gov/images/MitigationBasemapForOnline.jpg>. The HQT Basemap can also be viewed in an interactive map viewer here: <https://sagegrouse.mt.gov/ProgramMap>. The map depicts counties, major interstate highways, and major cities to help orient viewers. HQT Basemap values are only computed for areas inside designated habitat. Light gray areas are outside habitat and not eligible for Stewardship Account grants. HQT Basemap values range from low habitat quality (shown in blue) to high habitat quality (shown in red). Low habitat quality areas shown in blue do not produce as many credits as higher quality areas shown in red.

The most competitive preservation project applications will be located in areas where the HQT Basemap trends towards the red colors, and especially areas of dark red. These are areas that will generate the greatest number of credits per physical acre of land conserved. HQT Basemap areas showing red colors will be most competitive for easement or lease projects.

The most competitive restoration or enhancement project applications will be located in areas where the HQT Basemap is trending from darker blue to light blue. Here, restoration or enhancement management inputs can improve the habitat quality above its current condition and turn those blue areas into red areas over time.

Grant applications can combine preservation with restoration or enhancement activities. Each portion of the project will be assessed accordingly using the HQT and Policy Guidance Document.

The most competitive grant applications will also tend to be located in areas with high densities of breeding sage grouse and numerous active leks on or within 12 miles of the project boundaries. These areas will also typically have larger, intact areas of sagebrush, low levels of cultivation, low levels of existing human development, and near other lands managed primarily for their native sagebrush-grassland qualities.

Lastly, the most competitive grant applicants will those that will be given higher priority according to the eligibility criteria and other guidance outlined above.



## MSGOT and Grant Agreements

Successful applicants for projects approved by MSGOT must enter into an agreement with the DNRC and MSGOT prior to disbursement of funds from the Sage Grouse Stewardship Account.

14.6.102(6), ARM. Grant agreements:

- spell out the roles of MSGOT, the Program, DNRC, and the successful applicant;
- describe the scope of the grant with any supporting documents included as attachments;
- identify monitoring and reporting requirements;
- identify stewardship plans and the requirement for any other site management plans;
- identify that generation and maintenance of conservation credits are an indispensable purpose of the grant and that credits generated as a result of the grant agreement will reimburse the Stewardship Account when they are sold;
- include the project budget and indicate whether the grant is a one-time payment (typical for easements or leases) or a reimbursable payment for costs (typical for restoration or enhancement project);
- identify any required conditions or conditions; and
- the term (or duration) of the grant agreement.

Grant agreements can be tailored to specific credit project types accordingly and in collaboration with the successful grant applicant.

## Project Monitoring, Site Stewardship, and Reporting

Monitoring and review of projects will be pursuant to the terms of the grant agreement. MCA §§ 87-5-904(5); 14.6.102(8), ARM. All credit sites should have a monitoring plan. The plan should identify who will conduct the monitoring, what will be monitored and how often it will be monitored.

Grant recipients will be subject to project reporting requirements pursuant to the terms of the agreement. 14.6.102(7), ARM. The state's primary interest is in assuring that the credit site is still providing functional habitat.

All credit sites should have a long-term stewardship plan outlining how the desired outcomes will be maintained for the duration of the project. Restoration or enhancement projects should also have identified performance standards that should be met at pre-determined time intervals.

Grant recipients are also expected retain financial resources sufficient to manage the site and replace the credits in the event of avoidable project failure. The Program can work with grant recipients to determine the type of resources and amount of funds needed based on the location, the project type, and other factors to rectify the situation and/or replace impaired or lost credits. Avoidable credit failure could result if a signatory to the lease or restoration / enhancement site protection agreement intentionally violated terms of the agreement to the extent that habitat functionality was impaired or lost. For example, sodbusting of native sagebrush stands will typically be prohibited by easements and leases. If a participating landowner did so through intentional actions, the grant recipient agency or organization will be expected to restore what was impaired or lost.

Unavoidable impairment or loss of credits (i.e. habitat functionality) due to *force majeure* events such as wildfire are addressed through a reserve account of credits managed by the Program.



The reserve credit account is created and supplemented through required contributions by debit project developers. The reserve account acts as a common insurance pool to replace credits impaired or lost through *Acts of God* type events.

## **GRANT APPLICATION FORMS AND PROCEDURES**

The Montana Sage Grouse Oversight Team Procedure 01-2016 document establishes the process and procedures for the receipt, evaluation, and decision making for implementation of the Stewardship Fund Grant Program by both MSGOT and the Sage Grouse Habitat Conservation Program. Information about the process and procedures has been included in this document for ease of reference by would-be applicants.

The Stewardship Fund Grant Program application templates and related documents will be published on MSGOT's Grants web page.

Please contact the Sage Grouse Habitat Conservation Program with your questions.

## **ADDITIONAL INFORMATION FOR CONSERVATION EASEMENT APPLICANTS**

### **Overview**

The purpose of the easement is to preserve scenic, open space, and natural habitat values. Open space lands maintain the rural, agricultural, and natural scenic qualities of the area and provide opportunities to continue traditional farming and ranching practices. Easements also identify and protect specific conservation values of the lands included within the easement boundary and subject to the easement terms. Easements also provide the legal protection for the habitat values which create credits within the project boundary that are used to offset the impacts of development elsewhere.

An easement can be for a minimum term of 15 years, in perpetuity, or for a specific number of years in between MCA § 76-6-201. For purposes of determining the number of credits available from perpetual easement credit sites, perpetuity is defined as 100 years.

An easement can only be acquired by a qualified private organization. Qualified organizations are those that are competent to own interests in real property, qualify and hold a general tax exemption under the federal Internal Revenue Code 501(c), and whose organizational purposes are designed to further the purposes of Montana's Open-Space Land and Voluntary Conservation Easement Act. MCA §§ 76-6-104, 106. Public bodies can also acquire easements. Public bodies include the state, counties, cities, towns, and other municipalities.

Qualified private organizations and public bodies who are considering the Stewardship Account as a potential source of funding to match with other sources should work directly with willing private landowners who are interested in placing an easement on their private lands and also amenable to the state's requirements (see below). All parties should have an understanding that the state's ultimate interest is captured by the conservation values and terms of the easement which: conserve open space and sage grouse habitat specifically; remove key



causes of habitat loss and fragmentation; and provide a source of credits that MSGOT makes available to developers to offset their project impacts.

The easement is held by the qualifying private organization or the public body. Neither the Program or MSGOT holds the easement. Instead, the Stewardship Account is just a funding source, which, if the project is selected by MSGOT, the qualifying private organization can use to match with other funding sources to purchase and then hold the easement.

The easement document grants certain rights to the easement holder (organization), reserves certain rights to the landowner, and restricts the landowner from doing certain things with the surface habitat. The Montana Sage Grouse Oversight Team owns the credits and will allocate them to offset development, as outlined in the Policy Guidance Document. The landowner is compensated for the market value of the surface rights that are either restricted for the term of the easement or extinguished in perpetuity, respectively.

The mineral rights take precedent over surface rights. Minerals could still be developed subject to applicable Montana laws. Therefore, potential grant applicants and the state should carefully consider the potential for future mineral development. Remoteness Review Reports are commonly used to assess the potential and considered a regular step in the due diligence process.

There are other due diligence steps in the process of negotiating, purchasing, holding, and monitoring conservation easements that are either required or undertaken as a matter of good practice by qualifying private organizations or public bodies. These are compatible with the state's requirements, and the state will not require more. For example, easements monitoring reports are completed every year. These reports will satisfy the state's credit site monitoring requirements.

Ideally, easement terms are mostly settled, and all due diligence steps have been completed by the time a would-be applicant submits a Complete Application for MSGOT's consideration. If not, the applicant will be asked to indicate what is completed and what is still in the process of being completed. This helps MSGOT discern a project's readiness for the particular grant cycle in which an application is being considered compared to other applications in the same applicant pool.

Where substantive easement terms are still being negotiated or where due diligence has not been completed, MSGOT has discretion to determine the amount of each grant award and may attach conditions. These contingencies or conditions are typically placed in the grant agreement prior to execution. Once the conditions are satisfied and the remaining grant agreement requirements are met, the state would transfer funds to the grant recipient to complete the purchase.

Stewardship Account grant amount requests should be informed by a fair market appraisal and the availability of other matching funds. MSGOT does not require a fixed level of matching funds from other sources.

### **Typical Rights Retained by Landowners and Continuation of Certain Uses and Practices**

Landowners reserve to themselves (heirs, successors and assigns), all rights accruing from ownership of the land, including the right to enter and manage it, consistent with the terms of the



easement. Landowners manage the land and permit others to use the land if:

- the right to engage in that activity is not expressly conveyed to the easement holder by the easement's terms;
- the activities are not prohibited or restricted by the easement terms;
- the activities are consistent with the easement purposes; and
- the activities do not harm the conservation values of the land.

Land management activities may not impair the conservation values preserved by the easement's terms or be contrary to its purposes. Land uses and practices that typically can continue and would be allowed are those that will maintain, restore, and conserve sagebrush and other rangelands. Examples of include:

- livestock grazing and production under a management plan (plan desired);
- use of pesticides and agrichemicals, where use is targeted to noxious weeds and implemented in a way to minimize damage to native plants and other biota;
- farming, irrigating, cultivating lands that have *already been* dedicated to such uses;
- recreational uses for hunting, fishing, wildlife viewing, hiking, etc., including commercial guiding and outfitting consistent with state law and the conservation values being protected by the easement;
- maintenance, enhancement and development of water resources for agricultural uses, fish and wildlife, domestic use, irrigation system maintenance, and stock water;
- reservation of limited building envelopes for future residences;
- sand and gravel extraction for non-commercial purposes and use solely on the property, provided the mining is temporary, limited, and does not impact the stated conservation values;
- timber management to remove select trees that present a hazard to persons or property, obtain firewood, posts/poles for non-commercial use, or habitat restoration;
- landscaping around buildings and gardening within building envelopes
- repair, maintenance and construction of fences, including livestock corrals or facilities for temporary livestock management and transport, with due consideration of sensitive sage grouse areas like lek breeding locations;
- repair, maintain, and improve existing roads and bridges on the property; construction of new roads discouraged except for access to new residential building sites if reserved or those in connection with farming, ranching or timber management;
- granting rights-of-way to neighbors or governmental entities over existing roads;
- install utility structures, lines, conduits, cables, wires or pipelines to existing structures, with due consideration of sensitive sage grouse habitat and breeding locations and which do not impair the conservation values of the property;
- develop non-commercial renewable energy production for use on the property, with due consideration of sage grouse habitat and that would not impair the conservation values;
- residence-based businesses so long as the business does not involve regular visits to the property by the public or delivery, and no retail sale of goods produced or manufactured on the property; and
- commercial guest ranching using allowed residential dwelling units, subject to the terms of the easement and which do not impair the conservation values.

### Typical Restrictions on Landowner Activities

Land uses cannot be contrary to or undermine the conservation values and purposes of the easement. Landowners should also refrain from any activity on or use of the land that is



inconsistent or contrary to the expressed terms of the easement. Land uses and practices that would impair the sagebrush, other rangelands on the property, and the conservation values are typically not allowed.

Land uses and practices that would typically be restricted include the following:

- Vegetation removal. Sagebrush eradication and treatment, except in those areas where vegetation has already been removed, where native sagebrush rangelands have already been cultivated, or to restore native species is prohibited.
- Sodbusting. Sodbusting is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including engine powered machinery or livestock-drawn plows or discs.
- Subdivision. Unless the easement provides otherwise, the division, subdivision, or de fact subdivision of the property is prohibited. The parcel may be leased for traditional agricultural purposes according to the other terms of the easement.
- Dumping or disposal of non-compostable refuse, unless otherwise provided.
- Commercial or industrial facilities.
- Construction of new buildings, unless otherwise provided.
- Billboards. Signage may be used only for posting of public access information, property sale, business on the property or notification of an easement.
- Granting of new utility transmission lines or utility right-of-way easements or the expansion of existing utility lines, except in situations of eminent domain by mutual agreement of the landowner, the easement holder, and the state.
- Mineral removal, leasing, or exploration is generally prohibited, except as provided by the easement terms, subject to the dominant mineral estate and consistent with applicable state and federal laws.
- Renewable energy generation for commercial use. Landowners should not engage in, authorize, or contract for development of renewable energy production for commercial purposes.

### **Typical Rights Retained by the State**

Easements funded by the Stewardship Account must establish the state as a third-party beneficiary to the lease, with contingent rights to enforce the agreement if the agency or organization which holds the lease fails to do so. MCA § 87-5-912. The lease must also provide that the lease may not be transferred for value, sold, or extinguished without consent of the state. The state may take legal action to enforce the terms of the lease or to recover its pro rata share of the proceeds of any transfer for value, sale, or extinguishment based on the funds the state provided from the Stewardship Account to create the lease. MCA § 87-5-912.

The state will apply the habitat quantification tool and the appropriate policy tools to determine the number of mitigation credits created by the project. The state will make mitigation credits created through Stewardship Account grants available to developers who chose to offset impacts of their project by making a contribution to the Stewardship Account instead of creating their own credits. The state can sell or trade or dispose of mitigation credits, while the grant recipient and participating landowners benefit from the grant funds themselves and continue to manage the lands consistent with the lease and to conserve habitat.





Successful grant applicants will be expected to monitor the lands included within the lease to assure compliance with the lease terms. The state's interest is making sure that the habitat values and resulting credits are still present and providing adequate offsets of development. The state or its contractors may enter and inspect the property in a reasonable manner and at reasonable times. The easement holder and the private landowner will be contacted, and arrangements will be made in advance.

## **ADDITIONAL INFORMATION FOR CONSERVATION LEASE APPLICANTS**

### **Overview**

The purpose of the conservation lease must be to preserve the soil, water, and other sage grouse habitat values of the parcel subject to the lease. The lease conserves habitat and prevents habitat loss and fragmentation, while at the same time allowing the continuation of the existing traditional agricultural uses. Conservation lease credit sites provide credits for the duration of the lease.

The conservation lease serves as the contractual legal document that protects the habitat values on the parcels of land included in the lease, and, thus, the credits which are being used to offset the impacts of development elsewhere. The minimum number of years for a conservation lease is 15. Leases can be for a longer duration, and compensation is higher for longer duration leases.

The conservation lease will be held by an agency or organization who received the Stewardship Grant. Other signatories include private landowners participating in the project. The agency or organization should either have the capacity or contract necessary services to execute the lease and monitor the site. The lease should identify, preserve, and protect the habitat values of the site by mutual agreement between the agency/organization and the landowner for the duration of the lease. Neither the Program nor MSGOT hold leases but do have a vested interest since public Stewardship Account funds financed the lease. The lease should be filed in the County Clerk and Recorder's Office.

Habitat values should be identified in the lease, along with a map/s of key features on the land. The lease should maintain the rural, agricultural, and natural scenic qualities of the area. The lease may provide opportunities to continue traditional farming and ranching practices. The lease allows certain uses to continue but should also restrict land uses that cause habitat loss and fragmentation such as new cultivation.

The mineral rights take precedent over surface rights. Minerals could still be developed subject to applicable Montana laws. Therefore, potential grant applicants and the state should carefully consider the potential for future mineral development. Remoteness Review Reports are commonly used to assess the potential and considered a regular step in the due diligence process for easements. Such reports are less common for leases, but preparation of such a report may be considered.

The Montana Sage Grouse Oversight Team owns the credits and will allocate them to offset development, as outlined in the Policy Guidance Document. The landowner is compensated according to the terms of the lease and grant award amount approved by MSGOT.



An applicant’s grant request amount should be based on the MSGOT’s expected price structure for credits created by Conservation easements or leases (see table below). Beginning with MSGOT’s price for credits created by perpetual easements defined as 100 years, the expected MSGOT credit price for credits created by Conservation leases is expected to decline 3% for every one-year increment of a conservation lease. Applicants can request amounts other than based on the guidance table below and provide information such as a market appraisal to support that request. Ultimately, MSGOT will decide the final award amount.

MSGOT aspires to take an equitable approach to grant awards for perpetual easements and Conservation leases, while at the same time offering grant opportunities for agencies and organizations working with private landowners who prefer Conservation leases.

Table 1: Par value of credit using 3% depreciation (e.g., Net Present Value). Year 1 basis is \$13/credit. These values are guidelines for MSGOT to use in the evaluation of proposed credit projects involving either conservation leases or perpetual easements. For example, credits costing more than the par value will diminish the corpus of the Stewardship Account when matched with debit/contributions calculated by the same method.

<b>Project Duration (Years)</b>	<b>Par value per Credit with 3% depreciation</b>
15	\$10.65
20	\$9.96
25	\$9.33
30	\$8.75
35	\$8.22
40	\$7.74
45	\$7.30
50	\$6.89
100	\$4.23

### **Typical Rights Retained by Landowners and Continuation of Certain Uses and Practices**

Landowners reserve to themselves all rights accruing from ownership of the land, including the right to enter and manage the lands consistent with the terms of the lease. Management activities may not impair the habitat values the lease is intended to conserve.

Land uses and practices that typically can continue and would be allowed are those that will maintain, restore, and conserve sagebrush and rangelands. Examples include:

- livestock grazing and production under a management plan (plan desired);
- use of pesticides and agrichemicals, where use is targeted to noxious weeds and implemented in a way to minimize damage to native plants and other biota;
- farming, irrigating, cultivating lands that have *already been* dedicated to such uses;
- recreational uses for hunting, fishing, wildlife viewing, hiking, etc., including commercial guiding and outfitting consistent with state law and the habitat values being protected by the lease;
- maintenance, enhancement and development of water resources for agricultural uses,



fish and wildlife, domestic uses, maintenance of irrigation systems, and developing stock water;

- reservation of limited building envelopes for future residences;
- sand and gravel extraction for non-commercial purposes and use solely on the property, provided the mining is temporary, limited, and does not impact the stated conservation values;
- timber management to remove select trees that present a hazard to persons or property, obtain firewood, posts/poles for non-commercial use, or habitat restoration;
- landscaping around buildings and gardening within building envelopes
- repair, maintenance and construction of fences, including livestock corrals or facilities for temporary livestock management and transport, with due consideration of sensitive sage grouse areas like lek breeding locations;
- repair, maintain, and improve existing roads and bridges on the property; construction of new roads discouraged except for access to new residential building sites if reserved or those in connection with farming, ranching or timber management;
- granting rights-of-way to neighbors or governmental entities over existing roads for non-commercial uses;
- install utility structures, lines, conduits, cables, wires or pipelines to existing structures, with due consideration of sensitive sage grouse habitat and breeding locations and which do not impair the habitat conservation values of the property;
- develop non-commercial renewable energy production for use *on the property*, such as solar panels or small wind turbines to power water pumps, with due consideration of sage grouse habitat and that would not impair the conservation values;
- residence-based businesses so long as the business does not involve regular visits to the property by the public or delivery trucks, and no retail sale of goods produced or manufactured on the property; and
- commercial guest ranching using existing and allowed residential dwelling units, which does not impair the conservation values.

### Typical Restrictions on Landowner Activities

Land uses and practices that would impair the sagebrush, other rangelands on the property, and the habitat conservation values protected by the lease are typically not allowed. Land uses cannot be contrary or undermine the purposes of the lease, and landowners should refrain from any activity on or use of the land that is inconsistent or contrary to the lease terms.

Land uses and practices that would typically be restricted by the lease include the following:

- Vegetation removal. Sagebrush eradication and treatment, except in those areas where vegetation has already been removed, where native sagebrush rangelands have already been cultivated, or to restore native species is prohibited.
- Sodbusting. Sodbusting is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including engine powered machinery or livestock-drawn plows or discs.
- Subdivision. Unless the lease provides otherwise, the division, subdivision, or de facto subdivision of the property is prohibited. The parcel may be leased for traditional agricultural purposes to third parties according to the other terms included in the lease.
- Dumping or disposal of non-compostable refuse, unless otherwise provided.
- Commercial or industrial facilities.
- Construction of new buildings, unless otherwise provided.



- Billboards. Signage may be used only for posting of public access information, property sale, business on the property or notification of an easement.
- Granting of new utility transmission lines or utility right-of-way easements or the expansion of existing utility lines, except in situations of eminent domain or by mutual agreement of the landowner, the lease holder, and the state.
- Mineral removal, leasing, or exploration is generally prohibited, except as provided by the easement terms, subject to the dominant mineral estate and consistent with applicable state and federal laws.
- Renewable energy generation for commercial-scale use. Landowners should not engage in, authorize, or contract for development of renewable energy production for commercial purposes.

### **Typical Rights Retained by the State and Included in the Lease**

Leases funded by the Stewardship Account must establish the state as a third-party beneficiary to the lease, with contingent rights to enforce the agreement if the agency or organization which holds the lease fails to do so. MCA § 87-5-912. The lease must also provide that the lease may not be transferred for value, sold, or extinguished without consent of the state. The state may take legal action to enforce the terms of the lease or to recover its pro rata share of the proceeds of any transfer for value, sale, or extinguishment based on the funds the state provided from the Stewardship Account to create the lease. MCA § 87-5-912.

The state will apply the habitat quantification tool and the appropriate policy tools to determine the number of mitigation credits created by the project. The state will make mitigation credits created through Stewardship Account grants available to developers who chose to offset impacts of their project by making a contribution to the Stewardship Account instead of creating their own credits. The state can sell or trade or dispose of mitigation credits, while the grant recipient and participating landowners benefit from the grant funds themselves and continue to manage the lands consistent with the lease and to conserve habitat.

Successful grant applicants will be expected to monitor the lands included within the lease to assure compliance with the lease terms. The state's interest is making sure that the habitat values and resulting credits are still present and providing adequate offsets of development. The state or its contractors may enter and inspect the property in a reasonable manner and at reasonable times. The lease holder and participating landowners will be contacted, and arrangements will be made in advance.

## **ADDITIONAL INFORMATION FOR RESTORATION OR ENHANCEMENT PROJECT APPLICANTS**

### **Overview**

The purpose of a habitat enhancement or restoration credit project is to increase the functional habitat values and thus number of credits within the project area. Enhancement projects improve upon existing conditions and increase habitat functionality where they already generally existed before the project, whereas restoration projects repair a site that has been degraded, damaged, or destroyed and return it to conditions that would have existed prior to the impacts.



The overall goal of enhancement and restoration projects is to increase the quantity and/or quality of functional habitat at a project site.

The minimum number of years for an enhancement or restoration project is 15. A longer duration should be considered and would be preferred since vegetation management such as reseeding sagebrush may require a longer time horizon for success.

Restoration or enhancement projects typically have a project site plan and implementation schedule. The project plan should describe restoration or enhancement activities and who will implement them. Site monitoring protocols, performance goals, and a longer-term stewardship plan are also needed. Stewardship plans describe how the site will be managed for the duration of the project. If the site will be grazed by livestock, for example, the stewardship plan should describe the approach.

Enhancement and restoration credit sites should be protected by a site protection instrument that protects the habitat values and, thus, the credits which are being used to offset the impacts of development elsewhere. A site protection instrument would typically be a lease, deed restriction for the duration of the project, or some form of legal agreement signed by the successful grant applicant and participating landowners. The site protection instrument should be filed in the County Clerk and Recorder's Office.

The lease or agreement should identify, preserve, and protect the habitat values of the site by mutual agreement for the duration of the project. Neither the Program or MSGOT directly implement habitat enhancement or restoration projects and would not be a signatory to the site protection instrument. However, the state does have a vested interest in the project's success and long-term site stewardship since public Stewardship Account funds financed the project.

Habitat values should be identified in the site protection instrument, along with a map/s of key features on the land. The instrument should provide for the maintenance of the rural, agricultural, and natural scenic qualities of the area, including traditional farming and ranching practices. The instrument can allow certain uses to continue but should also restrict land uses that cause habitat loss and fragmentation such as new cultivation, subdivision, or commercial scale surface developments or activities that impede the success of enhancement or restoration efforts. This is because credit sites are relied upon to offset development elsewhere. The instrument provides the legal assurance that the credit site is in fact fulfilling its purpose. See the typical rights and restrictions in the Leases section above for additional insight.

The mineral rights take precedent over surface rights. Minerals could still be developed subject to applicable Montana laws. Therefore, potential grant applicants and the state should carefully consider the potential for future mineral development on restoration or enhancement project areas. Remoteness Review Reports are commonly used to assess the potential and considered a regular step in the due diligence process for easements. Such reports are less common for restoration or enhancement credit projects, but preparation of such a report may be considered.

The Montana Sage Grouse Oversight Team owns the credits and will allocate them to offset development, as outlined in the Policy Guidance Document. The landowner is compensated according to the terms of the project and would typically benefit by having outside funding sources to pay for the enhancement or restoration work.

