

FREQUENTLY ASKED QUESTIONS: GENERAL CONSULTATION INFORMATION

What is the status of greater sage-grouse?

The greater sage-grouse (hereafter, sage-grouse) is an upland game bird native to Montana. Due to habitat loss and fragmentation, the population of sage-grouse has declined across its range in 11 western states. As recently as 2015, the U.S. Fish and Wildlife Service (USFWS) considered it for listing under the federal Endangered Species Act.

On October 2, 2015, USFWS published its decision that listing was not warranted due to the commitments states like Montana made to institute regulatory mechanisms and habitat protection measures. Montana retained its management authority for sage-grouse. Montana's interests are best served by fulfilling its commitments to sage-grouse conservation so that a listing will never be warranted.

The 2015 Montana State Legislature passed the Greater Sage Grouse Stewardship Act (Act) and Executive Orders [12-2015](#) and [21-2015](#) (collectively hereafter, EO) establishing the Montana Sage Grouse Oversight Team and the Stewardship Fund Grant Program. Taken together, the Act and EO establish Montana's Sage Grouse Conservation Strategy (hereafter, Montana's Conservation Strategy) to address population decline and habitat issues proactively and collaboratively.

Montana's goal is to conserve the bird and its habitats so that Montana will maintain authority to manage its own lands, wildlife, and economy.

What is the role of the Sage Grouse Habitat Conservation Program?

The Sage Grouse Habitat Conservation Program (Program) is charged with implementing the Act and the EO across state government, coordinating with federal land management agencies as they implement the sage-grouse conservation provisions in their land use plans, and working with other partners, especially private landowners who conserve the majority of important sage grouse habitat in Montana. The EO applies to all programs and activities of state government, including permitting, grant programs, and technical assistance. Through a consultation process, the Program will work with project proponents to first avoid negative impacts, minimize negative impacts, and restore impacted areas.

The Program has a role of consultation, recommendation, and facilitation, and has no authority to either approve or deny the project. For projects which require a permit, the permitting agency will include the Program's recommendations and stipulations to the permit according to their policies, rules, and statutory authority. The permitting agency

FREQUENTLY ASKED QUESTIONS: GENERAL CONSULTATION INFORMATION

through their authority, may approve or deny the permit. MSGOT will approve or deny projects requesting a grant from the Stewardship Account.

Project proponents should allow sufficient time for Program review prior to submitting their application for a state permit. More complex projects will require more time.

Proponents interested in grant funding from the Stewardship Account should follow the timeline outlined by MSGOT. Grant cycles are announced by MSGOT under the Sage Grouse Stewardship Fund Grant Program.

What is a Core Area, General Habitat and Connectivity Area and why are they important for sage-grouse?

A sage-grouse Core Area is delineated as an area of highest conservation priority. Altogether, habitat delineated as a Core Area contains about 76% of the breeding males in Montana according to 2012 lek counts. Because these sagebrush habitats comprise the best and most important areas to conserve sage-grouse, stipulations and conditions for development are most conservative within a Core Area.

Stipulations and conditions are designed to maintain existing levels of suitable sage-grouse habitat by regulating uses and activities within a Core Area to ensure the future abundance and distribution of sage-grouse in Montana.

General Habitat is also important to sage-grouse and critical to the effort to maintain the abundance and distribution of sage-grouse in Montana. These sagebrush habitats also include leks and nesting habitat, but at a lower density than within a Core Area. Development scenarios in General Habitat are more flexible than in a Core Area but must still be designed and managed to maintain populations, habitats, and essential migration routes. This is because Montana's Conservation Strategy must assure habitat connectivity and movement between populations in a Core Area.

A Connectivity Area provides important linkages among sage-grouse populations, particularly between a Core Area or priority populations in adjacent states and across international borders. As of January 1, 2016, Montana has one designated Connectivity Area in Valley County called the Montana-Saskatchewan Connectivity Area. This area contains vital sagebrush habitats to maintain the ability of sage-grouse to move between Canada, Valley County, and other populations in Montana. This Connectivity Area is subject to the same stipulations as apply in General Habitat.

Who is the website intended for?

The website is for anyone proposing new activities in designated sage-grouse habitat when the new activity requires a permit from a state agency. Individuals or entities

FREQUENTLY ASKED QUESTIONS: GENERAL CONSULTATION INFORMATION

requesting a Stewardship Fund grant or technical assistance from state agencies will also use the website if the activity will occur in designated sage-grouse habitat. Lastly, state agencies undertaking state actions in designated sage-grouse habitat will also use the website.

The website helps the Program implement Montana's Conservation Strategy and guide conservation and development activities by cataloging where proposed projects would occur in designated sage-grouse habitat and facilitating consideration of potential impacts to sage-grouse and their habitats before they occur through a consultation process. The Program provides a flexible approach that allows those engaged in Montana's Greater Sage-Grouse Mitigation System to take creative approaches to either conserving sage-grouse habitat or offsetting impacts to development in service to Montana's Conservation Strategy.

Additionally, the Program and state agencies will implement the EO and its stipulations when reviewing or providing consultation, or technical, financial, or other assistance for non-regulated activities for which a permit is not required.

How does the website work?

The website allows proponents to determine if they are in designated sage-grouse habitat and submit project proposals to the Program. The user can determine whether the proposed activity is in designated sage-grouse habitat using our map application located here <https://sagegrouse.mt.gov/ProgramMap>. To submit a conservation or development project login and click new project on our website located here <https://sagegrouse.mt.gov/>. Project submissions for a development project and/or conservation project follow the same format. A broad description of the project submission process for conservation and/or development projects is shown below.

New Project Submission

Step 1: Instructions

The Instructions Page can be used as a guide throughout the submission process. There are links to helpful guides including the FAQ, What's New, and Information about the Montana Mitigation HQT Basemap.

Step 2: Basics

Proponents will be prompted to give a unique name to their proposed projects; write a project description describing the development or conservation project; and provide additional contact information such as an agency representative assisting with the project. This information is kept secure and will not be shared or disseminated.

Step 3: Spatial data

FREQUENTLY ASKED QUESTIONS: GENERAL CONSULTATION INFORMATION

The proponent will be prompted to enter spatial data for their proposed project. Spatial data can be uploaded or drawn using our map tools. Here, the proponent should give some general information about the footprint of the proposed project.

Step 4: Questionnaire

Once the proposed project is mapped and described, proponents will need to answer specific questions based on their selected project type.

Step 5: Attachments

Supporting documents, photos, or permit applications should be uploaded to provide more information about a project.

Step 6: Review and Submit

Here, Proponents are asked to review their proposed project before submitting for consultation. The application does not need to be completed in one session, as long as each page has been saved. Proponent's work will be saved and the next time they are logged in, they will be able to resume editing the Project.

What happens next?

The user will receive an automated email response with a Project ID to confirm that their project was submitted to the Program. Once the consultation process is completed, the Program will provide documentation to project proponents. Program staff may contact the proponent or even the permitting agency for additional information or to ask questions.

Is my project a development project or a conservation project?

A project is considered a conservation project when it is removing or limiting a threat to sage-grouse habitat through preservation or by improving habitat quantity and/or quality through restoration or enhancement actions.

Conservation projects are described as Preservation, Restoration and/or Enhancement. Preservation projects are established in a manner that supports avoiding future habitat loss or fragmentation by a voluntary, legal removal, or preventative action of identified threats such as land subdivision or land conversion. For example, a conservation easement or term lease. Restoration projects may increase the habitat quality by restoring or substantially improving sage-grouse habitat quality or function. For example, eradication of invasive species or removal of conifer encroachment. Lastly, Enhancement projects increase or improve the quality or value of degraded sage-grouse habitat or increase the quality, value, or extent of existing high-quality habitat over its existing value. For example, improving existing suitable sage-grouse habitat by adding a sagebrush component to non-native plant communities or existing rangelands and/or increasing native forb diversity in mesic areas.

FREQUENTLY ASKED QUESTIONS: GENERAL CONSULTATION INFORMATION

A project is considered a development project if it includes any conversion of formerly suitable sage-grouse habitat to grasslands, croplands, mining, structures, well pads, roads, or other physical disturbance that renders the habitat unusable for sage-grouse. In most instances, a development project creates new surface disturbance on the landscape such as construction of a new homesite, mine, or powerline. However, not all development projects create disturbance. Many projects which do not create physical surface disturbance are still required to receive state permit authorization and must undergo Program consultation. The Program considers these types of projects to be disturbance projects.

The Program has developed user guides which describe the process for submitting a development project and/or a conservation project using the Program's website. Development and conservation user guides as well as other helpful documents can be found here <https://sagegrouse.mt.gov/About>.

If you are unsure if your project is a conservation or development project, please contact the Program at 406-444-6340 and/or sagegrouse@mt.gov.

What if my proposed project is in designated sage-grouse habitat and complies with Executive Order 12-2015?

For projects proposed in designated sage-grouse habitat, the consultation process begins after this initial submission. The Program will review the proposed activity to determine whether it complies with all the stipulations, conditions, and recommended practices outlined in the EO.

If so, the Program will send a letter indicating adherence to the EO. This letter may also include recommendations and best practices to avoid and minimize impacts consistent with the EO.

This letter can then be taken to the permitting agency and submitted along with the permit application. The state agency can then process the application consistent with the results of the consultation process. State agencies can approve, condition, or deny the permit pursuant to their own policies, rules, and legal authority.

What if my proposed activity is in designated sage-grouse habitat and does not comply with Executive Order 12-2015?

The Program will likewise contact proponents of projects that don't adhere to the EO and discuss the proposal. The Program will look for alternatives that would bring the project into compliance and still be economically feasible. The Program meet with the

FREQUENTLY ASKED QUESTIONS: GENERAL CONSULTATION INFORMATION

proponent and even the permitting agency. Through the consultation process, projects may be modified to meet EO stipulations where economically feasible. The Program will then formulate recommendations and mail a letter to the proponent.

This letter can then be taken to the permitting agency and submitted along with the permit application. The state agency can then process the application consistent with the results of the consultation process. State agencies can approve, condition, or deny the permit pursuant to their own policies and legal authority.

What is the Density Disturbance Calculation Tool?

Once spatial data is entered for projects within a Core Area, the Density Disturbance Calculation Tool (DDCT) assessment area is calculated. The Projects are evaluated based on both disturbance and density. The DDCT calculation determines the density of development and the level of disturbance that would result if the project was fully implemented in addition to the existing disturbances. All activities will be evaluated within the context of maximum allowable disturbance (disturbance percentages, location and number of disturbances) of suitable sage-grouse habitat within the area affected by the project. The total density of development and disturbance is then compared to the 5% maximum allowed by the EO. For development projects, If the DDCT calculation is above the 5% disturbance threshold allowed by the EO a site-specific stipulation may be applied to the project.

Is the DDCT required for every project?

No. The DDCT process is only required for activity proposed in a Core Area. Core areas are the “best of the best” sage-grouse habitats in Montana. Therefore, the stipulations and conditions for activities in a Core Area are more conservative than those for other designated sage-grouse habitats. New activities may not exceed the density of development or disturbance threshold caps set forth in the EO.

What is the Habitat Quantification Tool?

The State of Montana and a multi-agency, multi-disciplinary, citizen-based stakeholder group developed the Habitat Quantification Tool (HQT) for purposes of quantifying gains and/or losses of sage-grouse habitat caused by development, and alternatively to estimate conservation benefits resulting from activities which restore, enhance, or preserve sage-grouse habitat. The HQT Technical Manual here: <https://sagegrouse.mt.gov/Team>.

The Montana HQT is a scientific approach for assessing habitat function and conservation outcomes for sage-grouse in Montana. The HQT considers the

FREQUENTLY ASKED QUESTIONS: GENERAL CONSULTATION INFORMATION

biophysical attributes of sage-grouse seasonal habitats to provide a measure of habitat function across multiple spatial and temporal scales. These measures of habitat function expressed as Functional Acres (summed to equate the Raw HQT Score) are used for calculating conservation benefits (i.e., credits) from mitigation projects as well as project impacts (i.e., debits) from development projects. Functional Acres provide a common “habitat currency” that can be used for both credit and debit projects to ensure accurate accounting of habitat gains and losses within designated sage-grouse habitat in Montana.

Are any existing land uses and landowner activities exempt from compliance with Executive Order 12-2015?

Yes. Those uses and activities that exist on January 1, 2016, will not be managed under the stipulations of the EO. Existing land uses and activities (including those authorized by existing permits but not yet conducted) shall be recognized and respected by state agencies.

While existing land uses and activities are typically not subject to the EO, existing operations may not initiate new activities resulting in new surface occupancy within 0.6 miles of an active sage-grouse lek. Any existing disturbance will be counted toward the calculated disturbance cap for a new proposed activity. The level of disturbance, determined by the DDCT, for any existing activities may not exceed 5%.

Examples of existing activities include oil and gas, mining, agriculture, processing facilities, power lines, housing, operations and maintenance activities of existing energy systems within a defined project boundary (i.e. right-of-way). Provided these uses and activities are within a defined project boundary (such as a recognized federal oil and gas unit, drilling and spacing unit, mine plan, subdivision plat, etc.), they may continue within the existing boundary, even if they exceed the stipulations.

Is anything else exempt from Executive Order 12-2015?

Yes, see Attachment F in [Executive Order 12-2015](#).

While exempt, notifying the Program of new activities in designated sage-grouse habitats it is strongly encouraged as some stipulations and recommendations from the EO may still apply.

The following existing land uses, and landowner activities are generally exempt from compliance.

FREQUENTLY ASKED QUESTIONS: GENERAL CONSULTATION INFORMATION

- Existing animal husbandry practices (including branding, docking, herding, trailing, etc.);
- Existing farming practices (excluding conversion of sagebrush/native range to cropland agriculture);
- Existing grazing operations that meet rangeland health standards or utilize recognized rangeland management practices (for example, allotment management plans, Natural Resource and Conservation Service grazing plans, prescribed grazing plans, etc.);
- Construction of agricultural reservoir and aquatic habitat improvements less than ten surface acres and drilling of agriculture and residential water wells (including installation of tanks, water windmills, and solar water pumps) more than 0.6 miles from the perimeter of a lek in a Core Area and more than 0.25 miles from a lek in General Habitat or a Connectivity Area. Within 0.6 miles of a lek in a Core Area and within 0.25 miles of a lek in General Habitat or a Connectivity Area, no review is required if construction does not occur March 15 - July 15 and construction does not occur on the lek. All water tanks shall have bird escape ramps;
- Agricultural and residential electrical distribution lines more than 0.6 miles from a lek in a Core Area and 0.25 miles from a lek in General Habitat or a Connectivity Area. Within 0.6 miles of a lek in a Core Area and within 0.25 miles of a lek in General Habitat or a Connectivity Area, no review is required if construction does not occur between March 15 - July 15 and construction does not occur on the lek. Raptor perching deterrents shall be installed on all poles within 0.6 or 0.25 miles, respectively, from leks, if they are proven to be effective according to Avian Power Line Interaction Committee guidance. Other management practices, such as vegetation screening and anti-collision measures, should be applied to the extent possible. Routine maintenance of existing power lines conducted between July 16 - March 14 is also an exempt activity;
- Pole fences. Wire fences if fitted with visibility markers where high potential for sage-grouse collisions has been documented;
- Irrigation (excluding the conversion of sagebrush/grassland to new irrigated lands);
- Tribal lands under existing and future state water compacts;
- Spring development if the spring is protected with fencing and enough water remains at the site to provide mesic (wet) vegetation;
- Herbicide and pesticide use except for in the control of sagebrush and associated native forbs. Grasshopper/Mormon cricket control following Reduced Agent-Area Treatments (RAATS) protocol;

FREQUENTLY ASKED QUESTIONS: GENERAL CONSULTATION INFORMATION

- County road maintenance;
- Production and maintenance activities associated with existing oil, gas, communication tower, and power line facilities in compliance with approved authorizations;
- Low impact cultural resource surveys; and
- Emergency response.

Are private lands important to sage-grouse in Montana?

Yes. Approximately 64% of sage-grouse habitat in Montana is in private ownership. Montana's private landowners care about the future of sage-grouse and manage their lands productively in this regard. They know their interests will be better served if Montana maintains authority to manage sage-grouse and the bird is not listed under the federal Endangered Species Act.

The Program and state agencies will work collaboratively with private landowners and local governments to maintain and enhance sage-grouse habitats and populations, and to the greatest extent possible shall use non-regulatory measures that reflect unique localized conditions, including soils, vegetation, development type, predation, climate and other local realities.

How is private land treated under Montana's Conservation Strategy?

Montana's private landowners are currently managing their lands in a responsible manner, and it is not coincidence that such a high percentage of productive sage-grouse habitat is found on private land. It is critical that existing land uses, and landowner activities continue to occur in a Core Area, General Habitat, and Connectivity Area particularly agricultural activities on private lands.

Many uses or activities on private lands are not subject to state agency review, approval, or authorization. Only those projects occurring after January 1, 2016, for which state agencies are vested with discretion by state or federal statute to review, approve, or authorize are subject to consistency review with the EO. Montana's conservation strategy in no way creates, adds to or expands the regulatory authority of any state agency.

Before submitting its final recommendations to a state or federal agency and to the project proponent for any use or activity it has reviewed, the Program shall comply with the provisions of the Private Property Assessment Act, Title 2, Chapter 10, Part 1, MCA.