

## **DECISION NOTICE**

### **44 RANCH INC. CONSERVATION EASEMENT**

Montana Sage Grouse Oversight Team  
November 18, 2016

#### **PROPOSAL**

The Montana Sage Grouse Oversight Team (MSGOT) is proposing to utilize Sage Grouse Habitat Stewardship Funds (Fund) to purchase a perpetual conservation easement on 18,033 acres owned by 44 Ranch, Inc., in Fergus and Petroleum Counties. Montana Land Reliance (MLR), an IRS 501(c)(3) non-profit organization, sponsored the application. The authority and direction under which this project is being proposed is provided by the Montana Greater Sage Grouse Stewardship Act (Act), Administrative Rules of Montana 14.6.101 and 102, and MSGOT Grant Procedures 01-2016.

MLR requested \$1,500,000 from the Fund, which would be matched with \$375,000 from a private source, and a \$527,971 donation from the landowner. The estimated value of the easement is \$2,366,831. The property in Fergus County consists of 13 Sections in Township 17 North, Range 23 East, and seven Sections in Township 17 North, Range 24 East. The property in Petroleum County consists of 24 Sections in Township 17 North, Range 24 East.

The proposed easement area has a minimum of five leks within the project area, 30 leks within a four mile buffer of the project area, and at least 53 within 12 miles of the project area. Conversion of native range to cultivated cropland has been identified as a key threat to sage grouse habitat and population persistence by USFWS. It was recently shown that lek density may be reduced by more than 50% in the face of a 10% increase in cropland within 12.4 miles. Importantly, if one parcel of land is converted, lek persistence in a “landscape ten times the size” of the parcel itself could be “strongly” reduced. Therefore, efforts which conserve intact sagebrush landscapes already having little or no existing cropland contribute favorably to sage grouse persistence, particularly where the risk of conversion exists.

Another purpose for the proposed action to enter a grant agreement with MLR is to begin development and implementation of Montana’s mitigation framework. Mitigation addresses direct, indirect, and residual impacts of development. In Montana, implementation of the mitigation hierarchy is called for in Executive Order 12-2015 and by the Greater Sage Grouse Stewardship Act, and this conservation easement agreement will contribute to development of compensatory mitigation credits in the future.

#### **MONTANA ENVIRONMENTAL POLICY ACT (MEPA) REVIEW**

The Montana Environmental Policy Act (MEPA) directs State agencies to assess the impacts of their proposed actions on the human and natural environment. Consistent with

this MEPA requirement, MSGOT described the 44 Ranch, Inc. Conservation Easement proposal and analyzed its potential impacts in an Environmental Assessment (EA) released to the public on October 19, 2016. The EA was open to public comment through November 2, 2016.

## **SUMMARY OF PUBLIC COMMENTS**

Seven written comments were received, five of which supported the proposed action to contribute funds from the Stewardship account for purchase of the 44 Ranch, Inc. conservation easement. Two comments opposed the proposed action.

Themes reflected in the supporting comments are as follows:

1. Protects critical greater sage-grouse habitat.
2. Important value in cost-sharing structure with the State of Montana.
3. Reduces chances of listing under the Endangered Species Act.
4. Will contribute to greater sage-grouse conservation.
5. Is a benefit to the state of Montana.

Themes reflected in the opposing comments are as follows:

1. This conservation easement agreement could reduce habitat minimum standards.
2. The best science is not being used to evaluate this conservation agreement.
3. No copies of the draft Conservation Easement Agreement were provided for review.
4. This agreement is not the most effective use of Habitat Stewardship Funds.

## **RESPONSE TO PUBLIC COMMENTS**

Themes identified in the supporting comments:

*Response: MSGOT and the Program agree that this easement would contribute significantly to habitat protection efforts in the core areas mapped in Fergus and Petroleum counties. Preservation of working, in-tact landscapes through voluntary, collaborative means is a key component of Montana's Conservation Strategy and an absolute requirement for its success. Executive Order 12-2015 recognizes that Montana's private landowners have been good land stewards and that it is not a coincidence that such a high percentage of productive sage grouse habitat is found on private land. Perpetual conservation easements eliminate the threat of cultivation completely. Elimination of threats to habitat reduces the chance that sage grouse.*

*It was envisioned, if not preferred that dollars from the Stewardship Fund would be matched with other sources of funding. Indeed, it is a statutory requirement that proposals be given greater priority during the evaluation process when: (1) the*

*proposal involves partnerships between public and private entities; (2) when the proposal is provided with matching funds; and (3) when matching funds can be used consistent with the Act. Here, the proposal entails a partnership between a non-profit land conservation organization, a willing private landowner, and the state. State dollars are being matched with private sources. The state is grateful that MLR and the 44 Ranch, Inc. have been willing to work with the state to implement the Conservation Strategy in this way. The state agrees this conservation easement would maintain, enhance, restore,*

Themes identified in the opposing comments:

This conservation easement agreement could reduce habitat minimum standards.

*Response: The purpose of the Act is to encourage incentive-based conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations on private lands. This approach promotes habitat conservation and enhancement so that conservation net gain can be achieved through the direct elimination of key threats to sage grouse habitat (e.g. cultivation, energy infrastructure). Habitat conservation efforts and private land stewardship, such as would be accomplished through the 44 Ranch, Inc. conservation easement, will maintain sagebrush cover and important seasonal habitats at the landscape scale and for the sage grouse in the localized area, thereby protecting breeding, nesting, brood-rearing and winter habitats. The requirements set forth in this conservation agreement describe definitions for meeting those habitat standards, and are based on the best available science.*

This agreement will potentially allow structures to be built outside of existing building areas, and oil and gas resources to be developed on this property. We therefore believe that the best science is not being used in this conservation easement agreement, and therefore is not the best use of state funds. Lek buffer distances are not based in science. No copies of the draft conservation agreement were included for public review.

*Response: Implementation of Montana's Conservation Strategy through expenditures from the Fund is an important step in demonstrating Montana's commitment to ameliorate threats and take affirmative actions to conserve important habitats. The conservation easement agreements pursued by the Program, including the 44 Ranch, follow the best available science and are rigorously analyzed to make sure they meet the criteria set forth in the Executive Order, with particular attention given to conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations on private lands that lie within core areas, general habitat, and connectivity areas. The specific actions that are permitted or prohibited, and therefore describe the adherence of the 44 Ranch, Inc. conservation easement agreement to these principles, can be found in Section III: Description of the Proposed Action.*

*The Draft Conservation Agreement reflecting negotiations as of October 19, 2016, was included in the public review document published on the Program's website, identified as*

*Appendix C. Copies of the Draft Grant Agreement were published in Appendix B.*

*Foregoing this voluntary collaborative conservation easement on 18,033 acres of private lands in central Montana core areas would be a missed opportunity. The terms of the easement strike a reasonable balance between the level of flexibility needed to maintain an agricultural working landscape, habitat protection, and the easement's perpetual duration. No more than three new residential dwelling units will be permitted in designated building envelopes. The easement contains many sage grouse related explicit terms such as lek buffer distances and other aspects of surface disturbance, consistent with Executive Order 12-2015 and to the maximum extent of the Program's authority.*

Based on comments received through the public comment period, no substantive changes were made to the draft EA. The final EA contains the final documents, as negotiated and agreed to by the parties.

## **DECISION**

The authority and direction for this proposal is provided by the Montana Greater Sage Grouse Stewardship Act (Act), Administrative Rules of Montana 14.6.101 and 102, and MSGOT Grant Procedures 01-2016. The 2015 Montana Legislature created the grant program when it passed the Greater Sage Grouse Stewardship Act and created a special revenue account. The purpose of the Act 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 that lie within core areas, general habitat, or connectivity areas. Implementation of Montana's Conservation Strategy through expenditures from the Fund is an important step in demonstrating Montana's commitment to ameliorate threats and take affirmative actions to conserve important habitats, thereby meeting the ultimate goal of avoiding the loss of state management authority of greater sage grouse and their habitats due to future federal listing under the Endangered Species Act.

Another important aspect of greater sage grouse habitat conservation entails mitigating for impacts of disturbance due to development in habitats designated for conservation as core areas, general habitat, or connectivity areas. Montana's Conservation Strategy recognizes the mitigation hierarchy of avoidance, minimization, restoration or reclamation, and replacement through compensatory mitigation. The majority of the Fund dollars must be awarded to projects that generate credits that are available for compensatory mitigation. All compensatory mitigation credits created based on the ecosystem services provided to greater sage grouse on the 44 Ranch, Inc. belong to the State. Any proceeds generated from their eventual sale are statutorily required to be deposited back into the Sage Grouse Stewardship Fund for reimbursement.

Despite the delayed availability of credits, the resource values associated with this land parcel for sage grouse) are very significant. The amount of existing disturbance assessed by the Density Disturbance Calculation Tool (DDCT) is 0.9%, which indicates an extremely low

level of existing anthropogenic disturbance even before the easement's restrictive terms. This DDCT result was considered by peer reviewers along with maps independently created by the Program as a surrogate for a habitat quantification tool. Based on the quality of the habitat protected, the range of threats avoided based on the prohibition of future activities, and the comprehensive approach to range management set forth in the easement, MSGOT has determined that this conservation easement agreement will provide net conservation gain for greater sage grouse through perpetual legal habitat protection and maintenance of high standards for land stewardship.

After reviewing the merits of this proposal and the public comments, MSGOT has decided to move forward to contribute dollars from the Stewardship Fund so they can be matched with other sources to enable MLR to purchase the 44 Ranch Inc. Conservation Easement.

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Tim Baker, Chair  
Montana Sage Grouse Oversight Team