

**MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET****FEBRUARY 19, 2016****AGENDA ITEM: PROPOSED STEWARDSHIP FUND GRANT RULE****ACTION NEEDED: FINAL ADOPTION OF PROPOSED RULE****SUMMARY**

The 2015 Montana Legislature passed the Montana Greater Sage Grouse Stewardship Act (Act) and created the Montana Sage Grouse Stewardship Fund. Although the 2015 Montana Legislature provided statutory guidance for the grant program, it directed MSGOT to adopt rules to administer the Sage Grouse Stewardship Fund Grant Program.

The proposed rule was drafted in general terms because the Act provided explicit, detailed statutory direction in most respects. All the statutory details are included in the Eligibility and Evaluation Criteria and Guidance document for ease of reference by the Oversight Team, the Program, and especially for the public.

Public comment on the proposed rule was accepted from December 10, 2015 through January 22, 2016. Three public hearings were held: January 6 in Malta, January 7 in Roundup, and January 11 in Dillon. Thirty seven people signed in at the public hearings. Eleven oral comments were received during the hearings. Seven additional written comments were received.

Public comments generally supported adoption of the rule and the state taking steps to retain authority for sage grouse conservation. No changes from the proposed rule are recommended.

Some commenters stated private citizens should be eligible to receive grant funds independent and separate from partnerships formed with agencies or organizations. Some commenters stated a preference that the Oversight Team establish a flexible, adaptive, and landowner-friendly grant process.

The Act expressly states certain limitations or otherwise provides explicit guidance that would preclude the Oversight Team from modifying the proposed rule in response comment that private citizens should be independently eligible for grant funds. Otherwise, the Act's terms "agency" and "organization" are defined as broadly as possible in the proposed rule.

The proposed rule required submission of completed grant applications through the online WebGrant tool on the Department of Natural Resources and Conservation web page, or by other means which MSGOT approves. The online WebGrant tool will not be available for the first grant cycle anticipated to occur in Spring, 2016. Accordingly, the Program seeks approval to receive applications during the first grant cycle in paper format with delivery via U.S. postal mail (or similar carrier) as the proposed rule do not allow for submission by direct e-mail.

**PROGRAM RECOMMENDATION**

The Program Manager recommends MSGOT adopt the Sage Grouse Stewardship Fund Grant rule as proposed, without changes.

The Program Manager recommends MSGOT approve receipt of grant applications in paper format for the first grant cycle.



BEFORE THE GOVERNOR'S OFFICE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION  
Rules I and II pertaining to )  
implementation of the Sage Grouse )  
Stewardship Act

TO: All Concerned Persons:

1. On December 10, 2015, the Governor's Office published MAR Notice No. 14-3 pertaining to the notice of public hearings on the proposed adoption of the above stated rules at page 2125 of the 2015 Montana Administrative Register, Issue Number 23.
2. The Governor's Office has adopted the above-stated rules as proposed: New Rule I (14.6.101) and II (14.6.102).
3. The Governor's Office has thoroughly considered the comments and testimony received. A summary of the comments received and the Governor's Office responses are as follows:

COMMENT 1:

The Governor's Office received many comments specific to the draft grant application itself although the application is not incorporated into the proposed rule.

RESPONSE 1:

The Governor's Office made the draft application available for public review at the same time as the proposed rule so that the public had the opportunity to review these related draft documents simultaneously. The Governor's Office explained during the public hearings that whereas the application itself was not incorporated into the actual rule proposal, public comment on the application was welcomed and would be considered prior to finalizing the application. The Governor's Office will consider public comments received specific to the application prior to finalizing it.

COMMENT 2:

Grant administration costs should be eligible for reimbursement under this grant program.

RESPONSE 2:

The Governor's Office acknowledges that successful grant recipients would incur costs to administer Sage Grouse Stewardship Fund grants. Montana Code Annotated § 76-22-110(4) states that "[g]rant funds may not be used to supplement or replace the operating budget of an agency or organization except for budget items that directly relate to purposes of the grant." The final rule must be consistent with the statute.

COMMENT 3:

Montana Administrative Register 14-3

Protest of Executive Order No. 1[2]-2015.

RESPONSE 3:

The 2015 Montana Legislature authorized the Montana Sage Grouse Oversight Team to conduct rulemaking pertaining to grant program established in the Montana Greater Sage-Grouse Stewardship Act (Act). Mont. Code Ann. § 76-22-104.

COMMENT 4:

Grants should be offered to private landowners next to U.S. Bureau of Land Management (BLM) lands to increase the indicators discussed in the BLM's Habitat Assessment Framework document, published in June, 2015. Apply the information in this document to assess what is needed on all land for sage grouse survival. The Oversight Team should also consider where leks are located and also use them as indicators.

RESPONSE 4:

The Act sets forth specific eligibility and evaluation criteria by which the Montana Sage Grouse Oversight Team would consider grant applications. The Act directs the Montana Sage Grouse Oversight Team to give greater priority to proposals that maximize the number of credits generated per dollars of grant funds awarded, and which are actually available for compensatory mitigation. Mont. Code Ann. §§ 76-22-104(1)(d), 76-22-109(4). The purpose of the grant program is to maintain, enhance, restore, expand, and benefit sage grouse habitat and populations on private lands and public lands as needed, that lie within core areas, general habitat, or connectivity areas. Mont. Code Ann. §§ 76-22-102(2). The Montana Sage Grouse Oversight Team and the Program will be guided by the Stewardship Act and this final rule.

COMMENT 5:

The Montana Sage Grouse Oversight Team should consider using some funds to purchase land from willing sellers at market value, restore the habitat, place a conservation easement on the property and then sell the land to a conservation buyer, similar to the Duck's Unlimited Revolving Land Program.

RESPONSE 5:

The Act explicitly states that a project is ineligible if it seeks grant funding "for fee simple acquisition of private land." Mont. Code Ann. § 76-22-109(5)(a). (See Response 4).

COMMENT 6:

The grant program should be flexible, adaptive, and landowner friendly.

RESPONSE 6:

The Governor's Office agrees. Stewardship of private lands by Montana landowners has contributed greatly to sage grouse habitat conservation efforts. The purpose of the Act and the grant program is to provide competitive grant funding and establish ongoing free-market mechanisms for voluntary incentive-based conservation

measures on private lands and public lands as needed. Mont. Code Ann. § 76-22-102(2).

COMMENT 7:

Private landowners as individuals should be eligible to apply for funds from the grant program to continue to do the management they are already doing or to make improvements. Landowners should not be required to work with or involve an agency or organization to receive grant funds. The Oversight Team could serve as the agency or organization in partnership with the private landowner so that grant fund dollars could be distributed to private landowners.

RESPONSE 7:

The Act states “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 oversight team.” Mont. Code Ann. § 76-22-110(3). The Governor’s Office acknowledges that private citizens are not directly eligible to receive funds from the Act’s grant program and encourages landowners to consider other sources for funding or technical assistance to accomplish their goals. Otherwise, “agency” and “organization” are defined as broadly as possible, but does require that organizations are both registered and authorized to conduct business in the State of Montana by the Montana Secretary of State.

COMMENT 8:

Predation is the greatest threat to sage grouse.

RESPONSE 8:

The Act allows for an application for a depredation permit to be submitted to the U.S. Fish and Wildlife Service to control common ravens or black-billed magpies to reduce depredation on sage grouse populations, as necessary. A grant application for a project that would reduce unnatural perching platforms for raptors or unnatural safe havens for predators would be eligible for funding. Mont. Code Ann. § 76-22-110(1)(i), (j).

COMMENT 9:

A scoring matrix should be available to applicants and grant reviewers prior to submitting grant applications.

RESPONSE 9:

The Sage Grouse Habitat Conservation Program will endeavor to make a scoring matrix available at the time a grant cycle is announced and applications are made available to the public.

COMMENT 10:

The grant cycle should be quarterly.

RESPONSE 10:

The Governor's Office acknowledges that some potential applicants prefer a more frequent grant cycle than the twice yearly cycle anticipated for spring and fall, 2016. Under the proposed rule, the Montana Sage Grouse Oversight Team has the flexibility to publish grant application deadlines on the Department of Natural Resources and Conservation web site at its discretion. In the future, it may chose the more or less frequent grant cycles, so long as it provides adequate public notice and considers public comment.

COMMENT 11:

The definition of organization should be clarified so as to not limit eligibility unnecessarily. It's unclear whether individuals or sole proprietors who register an assumed business name with the Secretary of State's Office are considered an "organization" as that term is proposed to be defined.

RESPONSE 11:

The proposed definition of "organization" is intended to be broad. Individuals or sole proprietors are not an organization eligible for a grant award under the Act. (See Response 7). Accordingly, the proposed definition of "organization" excludes individuals and sole proprietors, even if such individuals register an assumed business name with the Secretary of State. An individual or sole proprietor is not an entity, nor is the registry of an assumed business name an authorization by the Secretary of State to conduct business in the state of Montana.

COMMENT 12:

Support conservation efforts by the State of Montana through the sage grouse program and particularly this grant program to maintain state management authority for the species.

RESPONSE 12:

The Governor's Office agrees on the importance of conservation efforts to maintain state authority to manage sage grouse and to implement a conservation strategy that precludes the need to list the species under the federal Endangered Species Act.

/s/ Andrew I. Huff  
Andrew I. Huff  
Rule Reviewer

/s/ Tim Baker  
Tim Baker  
Governor's Office  
State of Montana

Certified to the Secretary of State February 22, 2016.

**MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET****FEBRUARY 19, 2016****AGENDA ITEM: DRAFT PROCEDURE 01-2016****ACTION NEEDED: ENDORSEMENT****SUMMARY**

The 2015 Montana Legislature passed the Montana Greater Sage Grouse Stewardship Act (Act) and created the Montana Sage Grouse Stewardship Fund. In some respects, the Act provided explicit, detailed statutory direction for how the Oversight Team and the Sage Grouse Habitat Conservation Program should implement the Stewardship Fund Grant Program (Program). In other respects, the Act is silent.

The Montana Sage Grouse Oversight Team Procedure 01-2016 document sets forth the procedures that will be applied by the Oversight Team and the Program. Some elements incorporated into Procedure 01-2016 arise directly from the statutory language of the Act. Other elements provide explicit directions to the Program, are consistent with the Act.

Procedure 01-2016 establishes consistency in the process and the procedures for receipt, evaluation, and decision making for both MSGOT and the Program. It would be implemented by MSGOT and Program, in conjunction with the Act and the final Stewardship Fund Grant Program administrative rule.

By not incorporating detailed processes and procedures in administrative rule, MSGOT reserves for itself the flexibility to adapt its grant program implementation while simultaneously providing a consistent, transparent process for itself and the public. MSGOT would be free to revise Procedure 01-2016 during a future MSGOT meeting, after it gains more experience implementing the Stewardship Fund Grant Program. Public notice and comment would be required prior to any future amendment to Procedure 01-2016.

The draft Procedure 01-2016 document was made available for public review and comment during the same comment period for the proposed Stewardship Fund administrative rule. One public comment requested MSGOT announce grant application cycles on a quarterly basis, rather than "from time to time," as stated on Page 1 of the draft. Procedure 01-2016, as originally drafted, does not preclude MSGOT from announcing grant cycles on a quarterly basis, in that the Procedure 01-2016 provides MSGOT the flexibility to decide the grant cycle frequency. Further, it requires MSGOT to publically announce deadlines for application submission. Therefore, no changes to the draft are proposed at this time.

**PROGRAM RECOMMENDATION**

The Program Manager recommends MSGOT endorse Procedure 01-2016 as originally proposed.



**MONTANA SAGE GROUSE OVERSIGHT TEAM**

**PROCEDURE 01-2016**

**PROCEDURES FOR THE EVALUATION OF THE GRANT APPLICATIONS UNDER THE MONTANA GREATER SAGE-GROUSE STEWARDSHIP FUND GRANT PROGRAM**

**WHEREAS**, the Montana Greater Sage Grouse Stewardship Act, codified at Sections 76-22-101, et seq., MCA, establishes a grant program (“Grant Program”) for maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations;

**WHEREAS**, the purpose of the Grant Program is to provide competitive grant funding and establish ongoing free-market mechanisms for voluntary, incentive-based conservation measures benefiting sage grouse habitat and populations on private lands, and public lands as needed.

**WHEREAS**, Section 76-22-105, MCA directs the Montana Sage Grouse Oversight Team (“MSGOT”) to evaluate and take public comment on applications submitted to the Grant Program;

**WHEREAS**, MSGOT desires consistency in its process and procedures for the evaluation of applications to the Grant Program.

**THEREFORE, THE MONTANA SAGE GROUSE OVERSIGHT TEAM DETERMINES THAT THE FOLLOWING PROCEDURES WILL APPLY WHEN PROCESSING GRANT APPLICATIONS UNDER THE ACT:**

1. From time to time, MSGOT will announce a deadline for filing Applications to the Grant Program. MSGOT may accept Applications at any time, but MSGOT need not take any action on Applications until after the next application deadline.
2. The Montana Sage Grouse Habitat Conservation Program (“Program”) will review all Applications for completeness.
3. The Program may return any incomplete Application to the Applicant.
4. Completed grant applications will be made available for public review through publication on the Program website.
5. The Program will prepare a report (“Grant Recommendation Report”). The Grant Recommendation Report, at a minimum, shall recommend:
  - (A) grant funding priorities;
  - (B) a ranking of all complete Applications in consideration of the evaluation criteria;

- (C) the proposed grant amount, if any, for each complete Application;
  - (D) any proposed conditions which the Program believes are necessary on the use of any grant funds for each Application, whether recommended for funding or not; and
  - (E) any other information the Program believes is relevant to MSGOT's evaluation of the Applications, including reports or input from independent reviewers knowledgeable in the subject matter.
6. MSGOT will evaluate all complete Applications at a public meeting ("Grant Evaluation Meeting"). MSGOT will solicit written public comments regarding each Application prior to the Grant Evaluation Meeting and accept verbal comments at the meeting. The Grant Evaluation Meeting may be one of MSGOT's regularly scheduled meetings.
  7. At the Grant Evaluation Meeting MSGOT, will consider any public comment, and consider the Grant Recommendation Report in its evaluation of all completed Applications pursuant to the evaluation criteria.
  8. The Program will provide written notice to each Applicant concerning any action taken by MSGOT on the application.
  9. The Program, by and through the Department of Natural Resources and Conservation ("Department") will prepare the agreement between the Department, MSGOT, and a successful Applicant pursuant to 14.6.102, ARM. MSGOT will review, and may approve, such agreement at its next scheduled meeting.

**Dated** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

---

Tim Baker  
Chair, Montana Sage Grouse Oversight Team