

NOTE: The following pages contain the administrative rules pertaining to the Montana Sage Grouse Habitat Conservation Program Stewardship Fund grants, habitat quantification tool, and mitigation. The rules have been formally adopted by the Montana Sage Grouse Oversight Team in accordance with the Montana Administrative Procedures Act. The final adoption notice was published in the Montana Administrative Register on January 11, 2019. The rules took effect on January 12, 2019.

The official copy of the rules will be published as replacement pages later this spring.

DRAFT



MONTANA SAGE GROUSE
Habitat Conservation Program

Subchapter 1

Sage Grouse Stewardship Act

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

(1) "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. "Agency" is not a private individual, private entity, or private organization recognized by the laws of the state of Montana.

(2) "Department" means the Department of Natural Resources and Conservation.

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

(4) "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 which has: a known quantifiable negative impact on the quality or quantity of general, core or connectivity sage grouse habitat; or negatively impacts sage grouse populations other than through habitat impacts.

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

(6) "Minor Version" is a means to track routine inputs to the HQT made by the program to the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse or Montana Mitigation System Policy Guidance for Greater Sage-Grouse. Minor Versions are identified as x.1, x.2, x.3, etc. Examples of routine inputs include updates to Geographic Information System layers used in the HQT and editorial changes.

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

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

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

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

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

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

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

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

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

(11) "MSGOT" means the Montana Sage Grouse Oversight Team.

(12) "Organization" means a private entity registered with the Montana Secretary of State authorized to conduct business in the state of Montana. (History: 76-22-104, MCA; IMP, 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA; NEW, 2016 MAR p. 458, Eff. 3/5/16, AMD, 2019 MAR p. 41, Eff. 1/12/19.)

14.6.102 GRANTS (1) An applicant shall file an application for a grant under Title 76, chapter 22, part 1, MCA, on a form approved by MSGOT. MSGOT shall publish grant application deadlines on the department's web site.

(2) Completed applications must be submitted with any supporting documentation through the online WebGrant tool on the department web page; or, by other means which MSGOT approves and establishes for submission of applications. Applications submitted by e-mail will not be accepted.

(3) Incomplete applications may be returned.

(4) Applications shall be evaluated at a regularly scheduled meeting of MSGOT.

(5) Evaluation of applications by MSGOT shall be in accordance with Title 76, chapter 22, part 1, MCA.

(6) Applicants for projects approved by MSGOT must enter into an agreement with the department and MSGOT prior to disbursement of funds from the Sage Grouse Stewardship Account.

(7) Grant recipients will be subject to project reporting requirements pursuant to the terms of the agreement.

(8) Monitoring and review of projects will be pursuant to the terms of the agreement.

(9) MSGOT will give greater priority to applications for conservation activities eligible for funding under 76-22-110, MCA, which would be implemented in core areas. MSGOT may still consider funding conservation activities in general habitat and connectivity areas where high resource values for sage grouse exist and credits could be generated consistent with 76-22-109, MCA (History: 76-22-104, MCA; IMP, 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA; NEW, 2016 MAR p. 458, Eff. 3/5/16, AMD, 2019 MAR p. 41, Eff. 1/12/19.)

SAGE GROUSE STEWARDSHIP

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14.6.103 HABITAT QUANTIFICATION TOOL DESIGNATION

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

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

(3) Minor versions of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse shall be recorded by the program after a publicly announced meeting of the Montana Sage Grouse Oversight Team and after accepting public comment.

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

(a) Once the HQT has been applied to calculate the number of functional acres gained or lost for a project and MSGOT has approved, the number of calculated functional acres gained or lost will not be changed without written approval from every party to the mitigation transaction for the project, including, but not limited to:

- (i) MSGOT;
- (ii) the project developer; and
- (iii) the credit provider.

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

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

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

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

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- (a) a conservation bank;
- (b) participation in a habitat credit exchange approved by the U.S. Fish and Wildlife Service (USFWS);
- (c) making a financial contribution to the Sage-Grouse Stewardship Account if sufficient credits are not available;
- (d) implementing stand-alone mitigation actions to offset impacts to sage grouse habitat;
- (e) calculating functional acres gained by funding from the Sage-Grouse Stewardship Account; or
- (f) calculating functional acres gained through stand-alone efforts to create mitigation credit sites. History: 76-22-104, MCA; IMP, 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA; NEW, 2016 MAR p. 458, Eff. 3/5/16, AMD, 2019 MAR p. 41, Eff. 1/12/19.

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

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

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

(4) Minor versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse shall be recorded by the program after a publicly announced meeting of the Montana Sage Grouse Oversight Team and after accepting public comment.

(5) The current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse is the version made available to the public on the program's website. Past versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse will be blocked from further use except as allowed in ARM 14.6.103(4)(a) and preserved in an archived by the program.

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

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

(a) the number of calculated credits or debits will not be changed without written approval from every party to the mitigation transaction for the project, including, but not limited to:

- (i) MSGOT;
- (ii) the project developer; and
- (iii) the credit provider.

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

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

(8) MSGOT or any other third party shall use the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse provided on the program's web site and applied by the program to determine the number of debits or credits for the following:

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

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

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

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

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

(11) Research or education shall not be used to fulfill mitigation sequence obligations. History: 76-22-104, MCA; IMP, 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA; NEW, 2016 MAR p. 458, Eff. 3/5/16, AMD, 2019 MAR p. 41, Eff. 1/12/19.

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

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

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

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

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

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

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

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

(e) credit transactions between parties; and

(f) service area of the debits and credits, respectively.

(5) The information within the tracking system will be available to the public on the program's web site. History: 76-22-104, MCA; IMP, 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA; NEW, 2016 MAR p. 458, Eff. 3/5/16, AMD, 2019 MAR p. 41, Eff. 1/12/19.

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

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

(a) the name of the Sage-Grouse Stewardship Account grant recipient(s);

(b) the amount awarded;

(c) the date the state funds were transferred to the grant recipient(s) if a one-time lump sum grant, or

(d) the dates state funds were transferred to the grant recipient(s) if the award was a reimbursable grant;

- (e) a description of characteristics of the project including, but not limited to:
 - (i) type of project;
 - (ii) number of acres; and
 - (iii) land ownership;
- (f) the duration of the project;
- (g) any expected conservation benefits of the project;
- (h) the geospatial location and/or legal description of where the project was implemented;
 - (i) the number of credits generated, and their characteristics;
 - (j) the unique identifier assigned to each of those credits;
 - (k) transactions of credits created;
 - (l) progress and final reports submitted by the grant recipient(s);
 - (m) annual monitoring reports;
 - (n) sage grouse leks on and in the vicinity of the project area, and trend data on the number of breeding males on those leks;
 - (o) the grant agreement number assigned by the Program and any amendments to the original grant; and
 - (p) service area. History: 76-22-104, MCA; IMP, 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA; NEW, 2016 MAR p. 458, Eff. 3/5/16, AMD, 2019 MAR p. 41, Eff. 1/12/19.