[Handout 1]

MONTANA SAGE GROUSE
Habitat Conservation Program

Montana Sage Grouse Oversight Team Meeting

April 19, 2016

The Montana Department of Natural Resources & Conservation

Montana's Conservation Strategy

[Handout 1]

1. Executive Order 12-2015
2. Sage Grouse Stewardship Act, 2015
3. Private Land Stewardship

Photo: Lorelle Berkley

[Handout 1]

Montana's Conservation Strategy Goal:

- ✓ **Maintain viable sage grouse populations and conserve habitat; and**
- ✓ **Maintain flexibility to manage our own lands, our wildlife, and our economy.**

(fulfill commitments so ESA listing never warranted)

Photos: Joel Maes

[Handout 1]

EO Consultation Process: Project Submission and Program Review

Photo: Richard Prodgers

- Project submission on the website
  - Does the EO apply?
  - How to submit information
- Density Disturbance Calculation Tool
  - Determining the DDCT Analysis Area
  - Existing disturbance
  - DDCT result
- Consistency Review
  - Compare to Executive Order
  - Other Examples

[Handout 1]

https://sagegrouse.mt.gov/

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MONTANA.GOV
OFFICIAL STATE WEBSITE

SERVICES AGENCIES LOGIN SEARCH

Montana Sage Grouse
Habitat Conservation Program

SAGE GROUSE LINKS

Governor's Executive Order 12-2015 SGHCP

Sage-grouse Core Areas and General Habitat Map

Sage Grouse Habitat Conservation Program Quick Facts

Sage Grouse Habitat Conservation Strategy Quick Facts

Press release: Sage grouse listing not warranted

Sage Grouse Meeting Archive

NEXT MEETING

Tuesday, April 19, 2016
Montana Wild
2668 Broadwater Ave.
Helena, MT 59602
1:00pm - 5:00pm

Tuesday, May 24, 2016
Room 172, Montana State Capitol

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Montana Sage Grouse Habitat Conservation Program

The Montana Sage Grouse Habitat Conservation Program sets forth Montana's Conservation Strategy for the conservation, regulatory protection, and management of sage grouse. The Conservation Strategy is based on the collaborative work of the Montana Greater Sage Grouse Habitat Conservation Advisory Council, Executive Order 10-2014, the Montana Sage Grouse Stewardship Act passed during the 2015 Legislative Session, and Executive Order 12-2015.

MONTANA SAGE GROUSE OVERSIGHT TEAM

The Montana Sage Grouse Oversight Team (MSGOT) was created by Executive Order 10-2014 and further defined by the 2015 Legislature through Senate Bill 261, the Montana Greater Sage Grouse Stewardship Act, and Executive Order 12-2015. The Team's role is to oversee administration of the Montana Sage Grouse Habitat Conservation Program and implement Montana's Sage Grouse Conservation Strategy. The Team implements the Conservation Strategy through members' respective agencies and programs.

MONTANA SAGE GROUSE STEWARDSHIP FUND GRANT PROGRAM

The Stewardship Fund serves to maintain, enhance, restore, expand or benefit sage grouse habitat and populations. Through competitive funding, the Fund facilitates free-market mechanisms for voluntary, incentive-based conservation efforts.

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STEP 1: FILL OUT YOUR INFORMATION.

FIRST NAME * | LAST NAME * (Last Name)

ADDRESS 1 * (Mailing Address) | ADDRESS 2 (Apt, Unit, Suite)

CITY * (City) | STATE * (Montana)

POSTAL CODE * (XXXXX)

COUNTRY * (United States)

EMAIL ADDRESS * (Email address) | PHONE NUMBER * ((XXX)XXX-XXXX)

PROJECT NAME * (Project Name)

STEP 2: DRAW YOUR PROJECT ON THE MAP OR UPLOAD DATA.

POLYGON | CIRCLE | POLYLINE

If you have a geospatial file to upload, Shape file, KML, or Geodatabase, select "Yes".

No

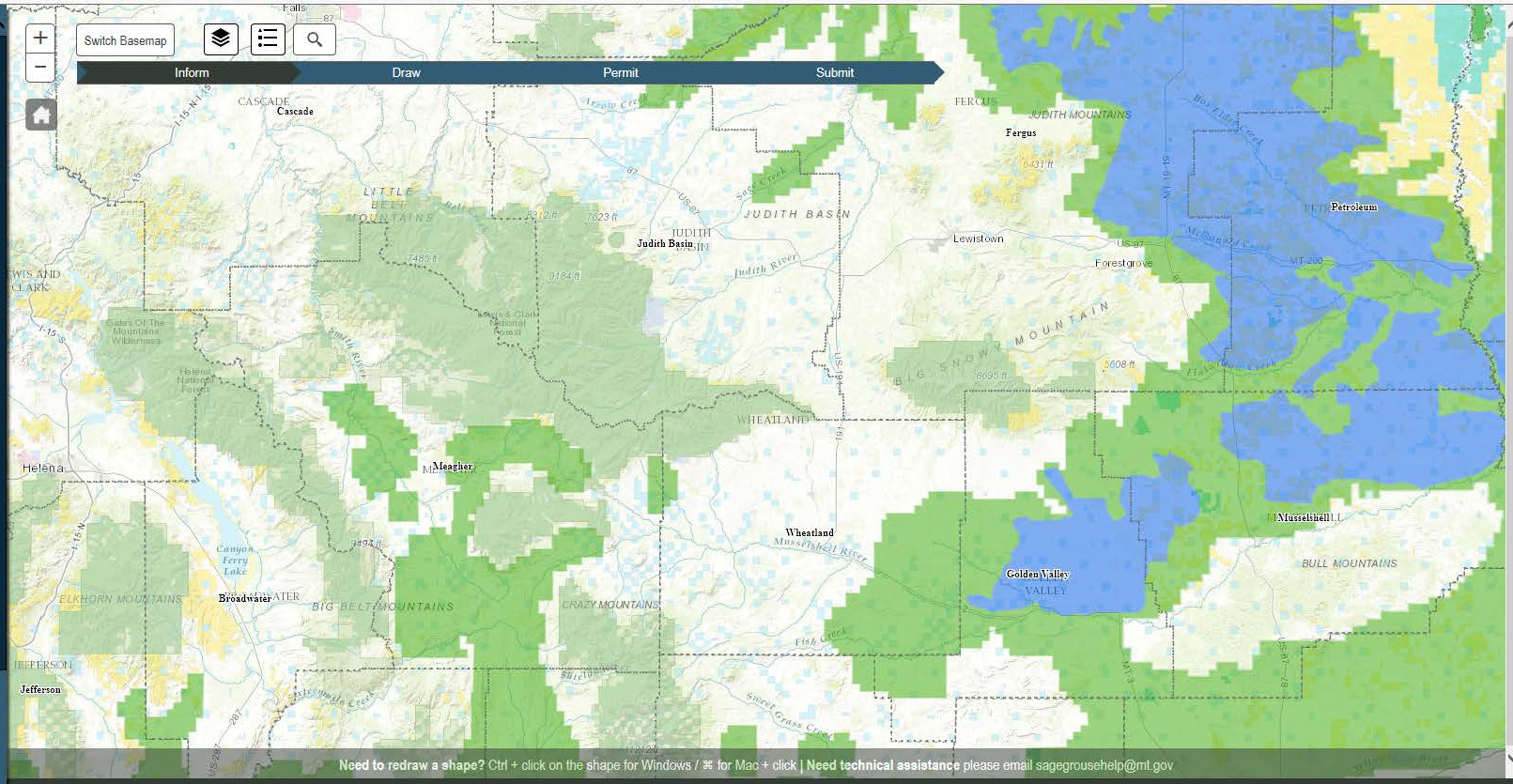
If you have additional information that would be helpful regarding this project, please share it.

Please type additional information

STEP 3: ARE YOU WORKING WITH A PERMITTING AGENCY?

Switch Basemap

Inform | Draw | Permit | Submit



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FREQUENTLY ASKED QUESTIONS

General Application Questions
Disturbance Process Questions
Website and Data Security Questions

CONTACT MSGHCP

Address: 1625 Eleventh Ave.
Helena, MT 59601
Email: sagegrouse@mt.gov
Phone: 406-444-0554
Fax: 406-444-6721

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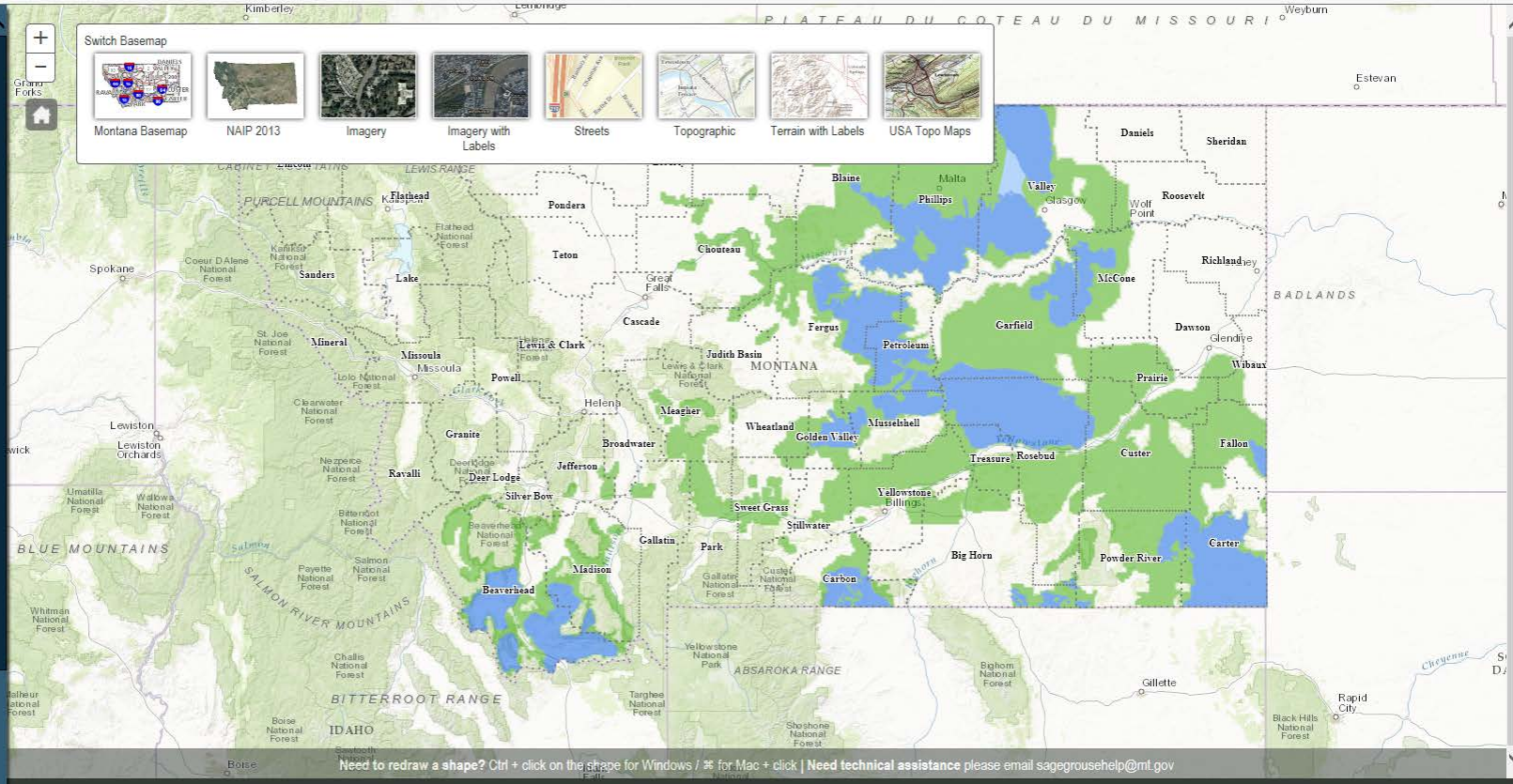

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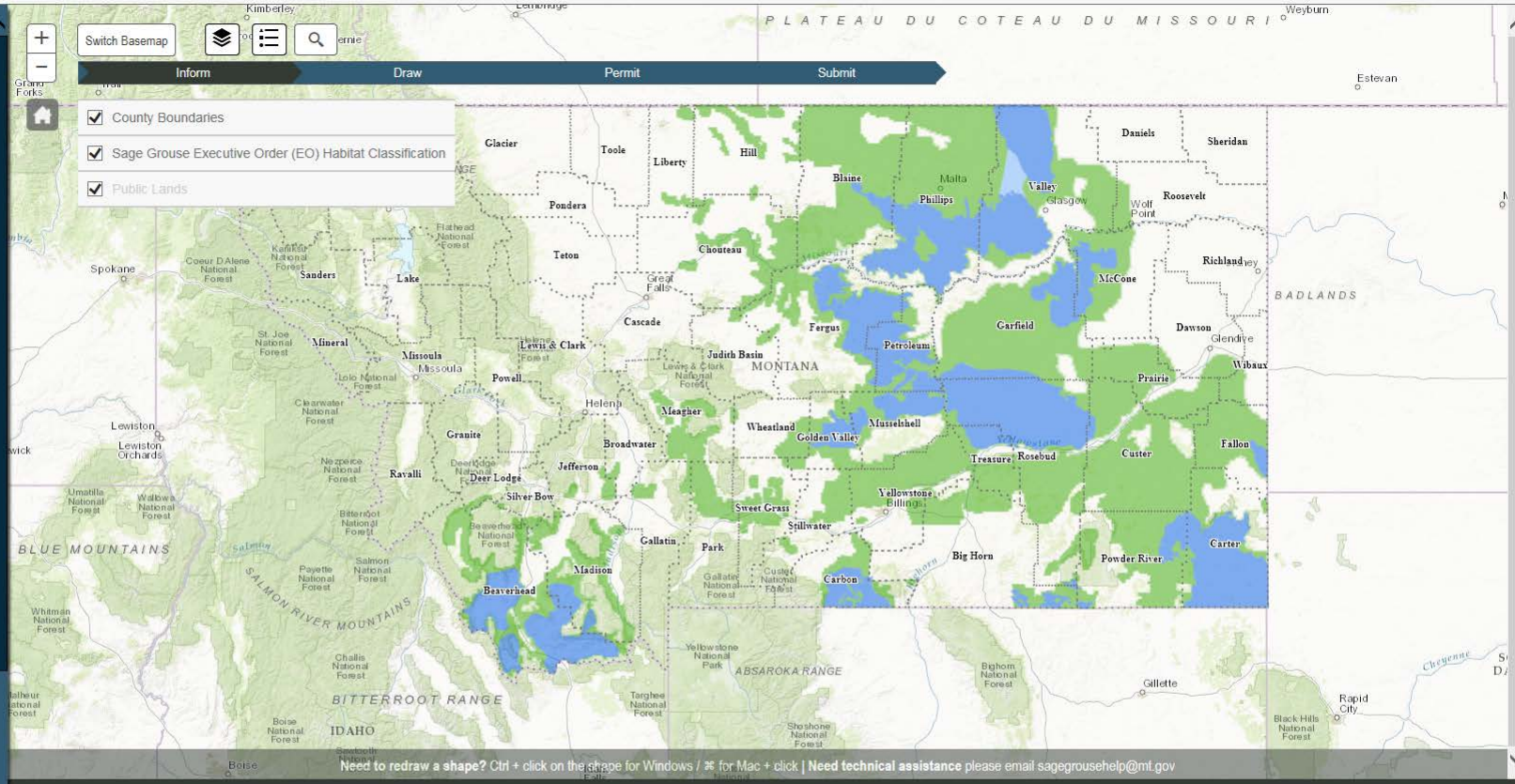
Switch Basemap

Inform Draw Permit Submit

- County Boundaries
- Sage Grouse Executive Order (EO) Habitat Classification
- Public Lands



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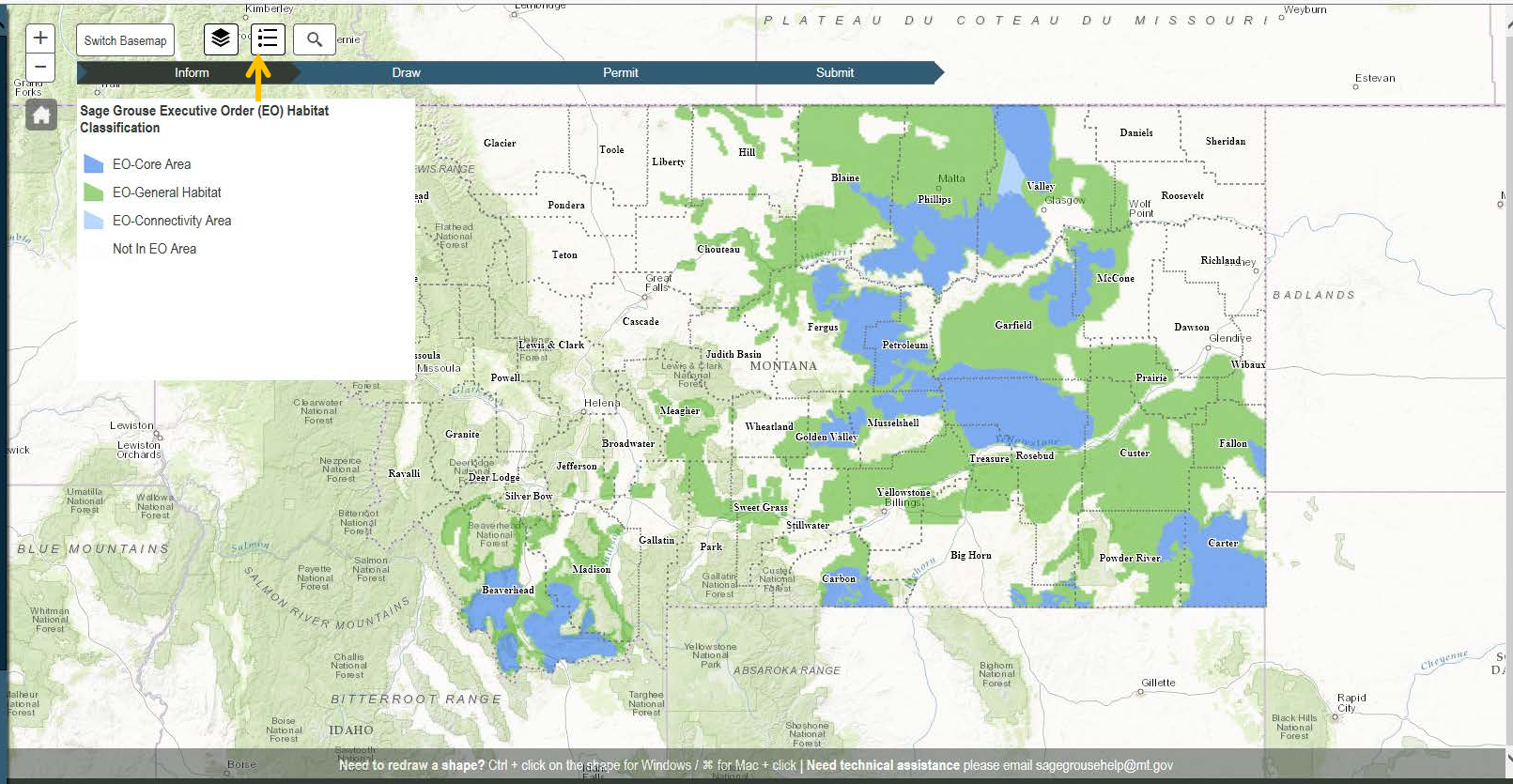
Switch Basemap

Inform Draw Permit Submit

Sage Grouse Executive Order (EO) Habitat Classification

- EO-Core Area
- EO-General Habitat
- EO-Connectivity Area
- Not In EO Area



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STEP 3: ARE YOU WORKING WITH A PERMITTING AGENCY?

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Find address or place

Inform | Permit | Submit

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Township
Parcel ID or Geocode

PLATEAU DU COTEAU DU MISSOURI

MONTANA

BADLANDS

BLUE MOUNTAINS

SALMON RIVER MOUNTAINS

BITTERROOT RANGE

ABSAROKA RANGE

IDAHO

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Switch Basemap

Inform | Draw | Permit | Submit

No need to submit

Need to submit

Need to submit

Lewistown | Hobson | Moore | Forestgrove | Winnett | Petroleum | Biakslee | LITTLE SNOWY MOUNTAINS | Judith Gap

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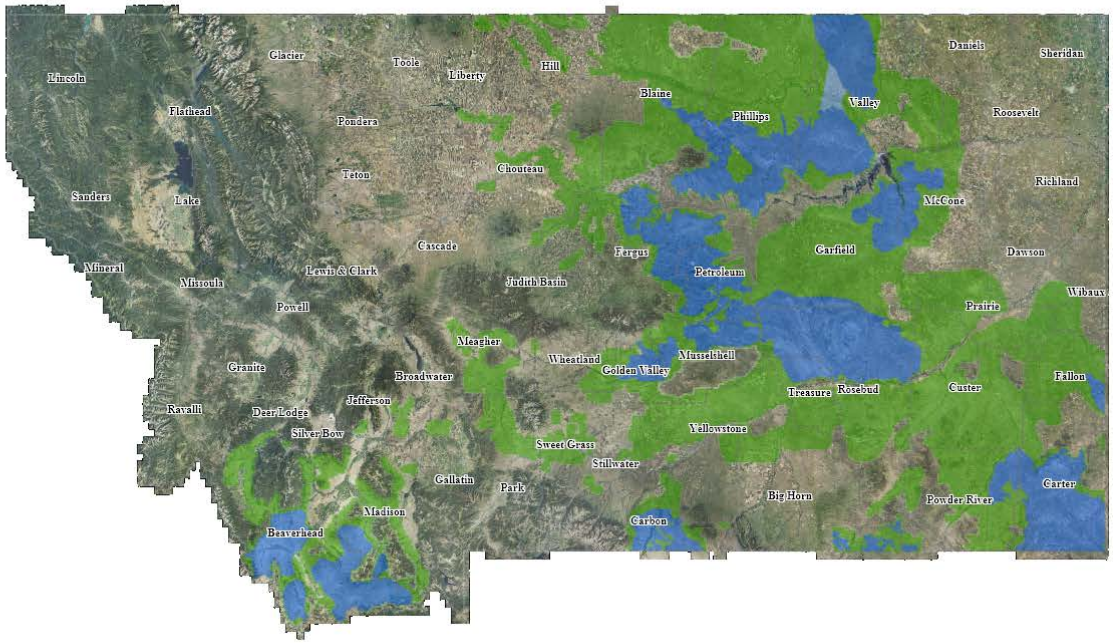

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No

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Please type additional information

STEP 3: ARE YOU WORKING WITH A PERMITTING AGENCY?

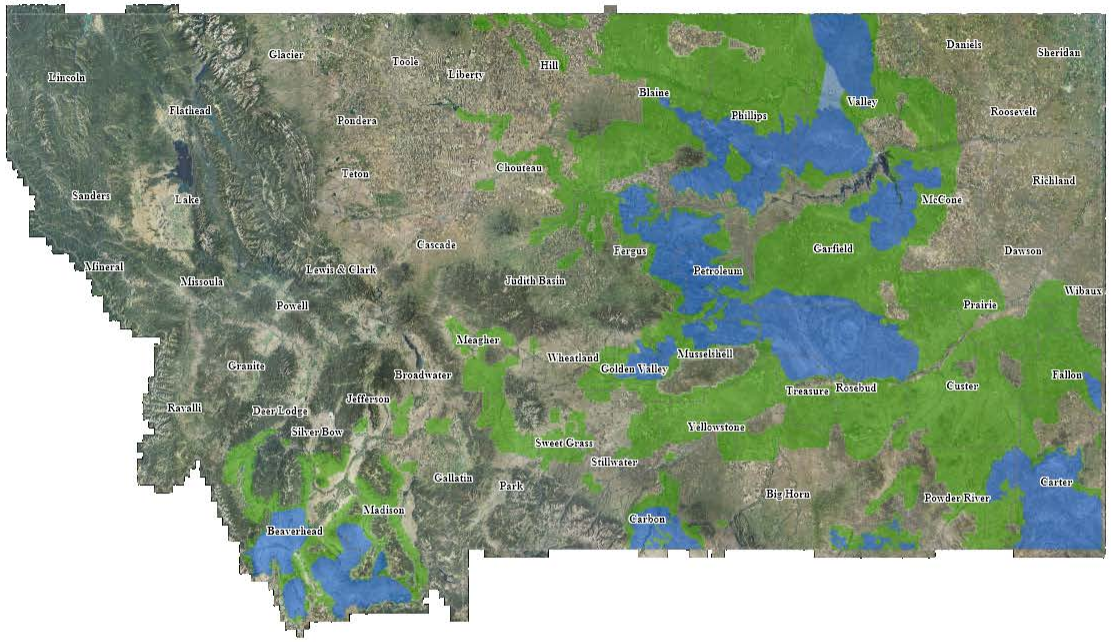
- Department of Administration
- Department of Agriculture
- Department of Commerce
- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Labor and Industry
- Department of Livestock
- Department of Natural Resources and Conservation
- Trust Lands - Department of Natural Resources and Conservation
- Federal Energy Regulatory Commission
- Montana Association of Counties
- Montana Department of Transportation
- Montana Historical Society
- Secretary of State (Montana)
- US Army Corps of Engineers
- US Bureau of Land Management
- US Bureau of Reclamation
- US Department of Agriculture
- US Department of Energy
- US Department of the Interior
- US Fish and Wildlife Service
- US Forest Service
- Other/None of the Above

STEP 4: SUBMIT YOUR PROJECT.

SUBMIT

Switch Basemap

Inform Draw Permit Submit



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Proponent Receives Confirmation Email

SAGE GROUSE PROJECT DISTURBANCE CONFIRMATION NUMBER

Thank you for submitting your proposed project. Your project has been sent to the Sage Grouse Habitat Conservation Team for review.

Your Confirmation number:
1459946796714

If you have have any questions please contact:
Montana Sage Grouse Habitat Conservation Program
1625 Eleventh Ave. Helena, MT 59601
Email: sagegrouse@mt.gov
Phone: 406-444-0554
Fax: 406-444-6721

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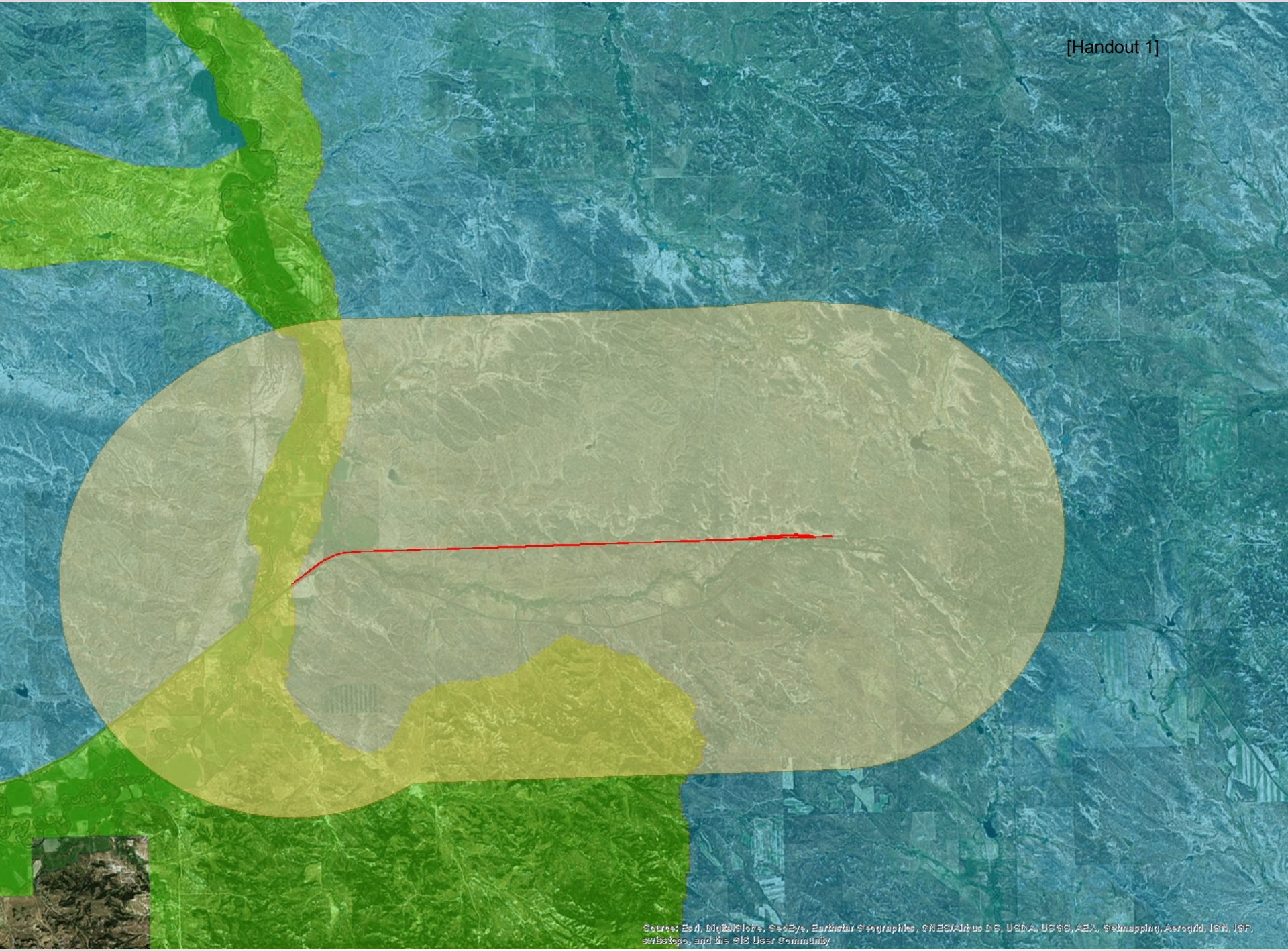
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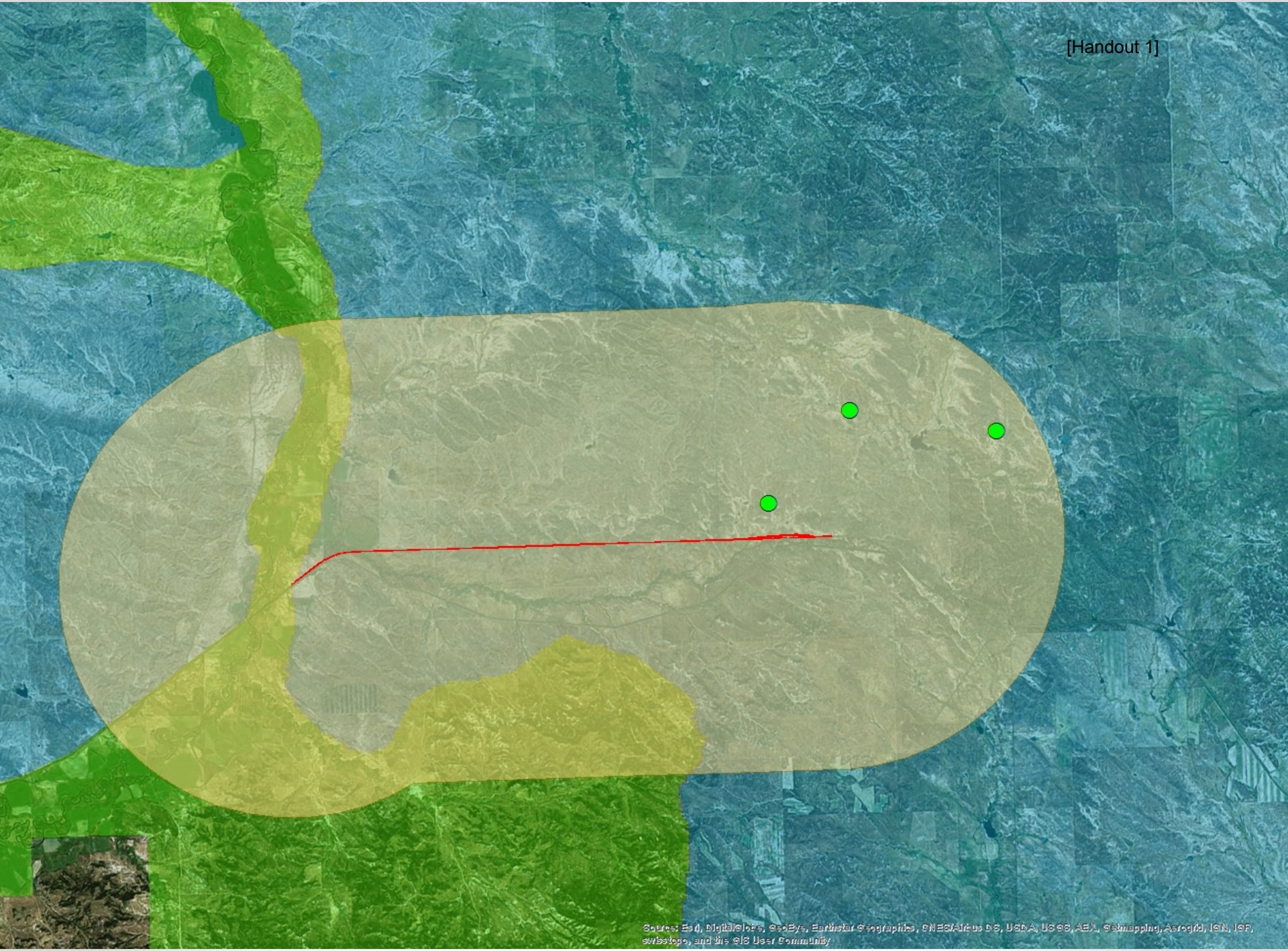
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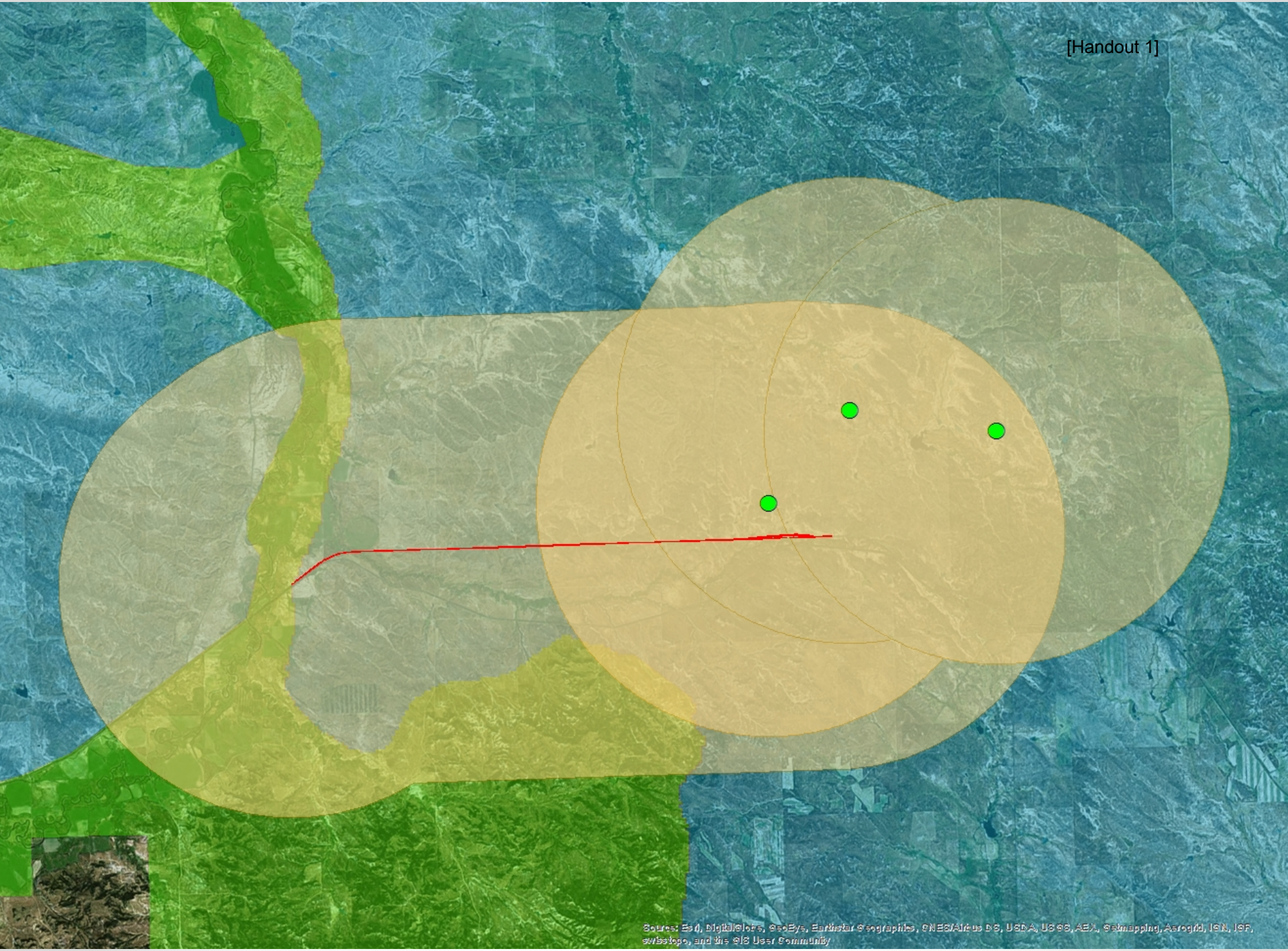
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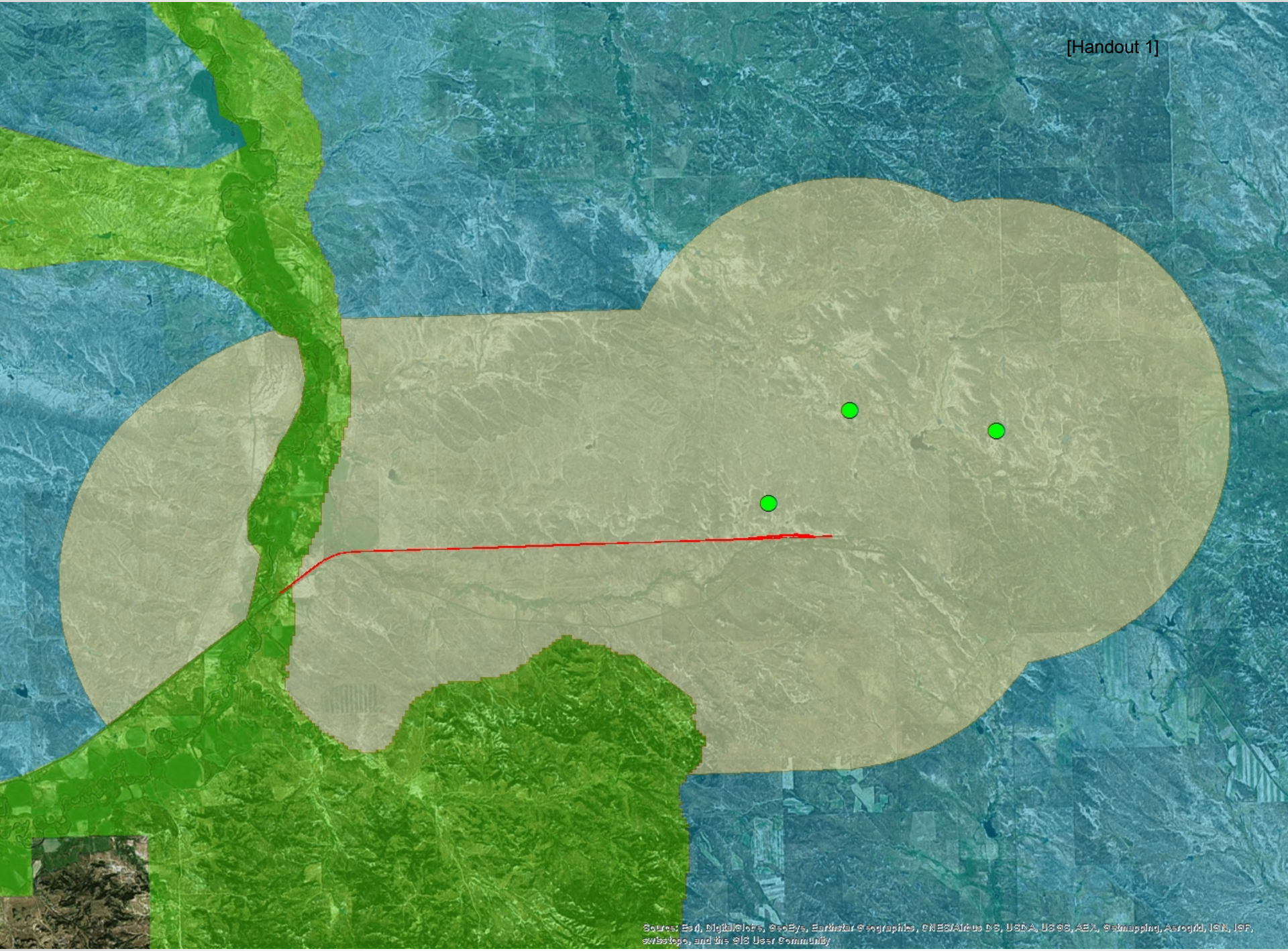
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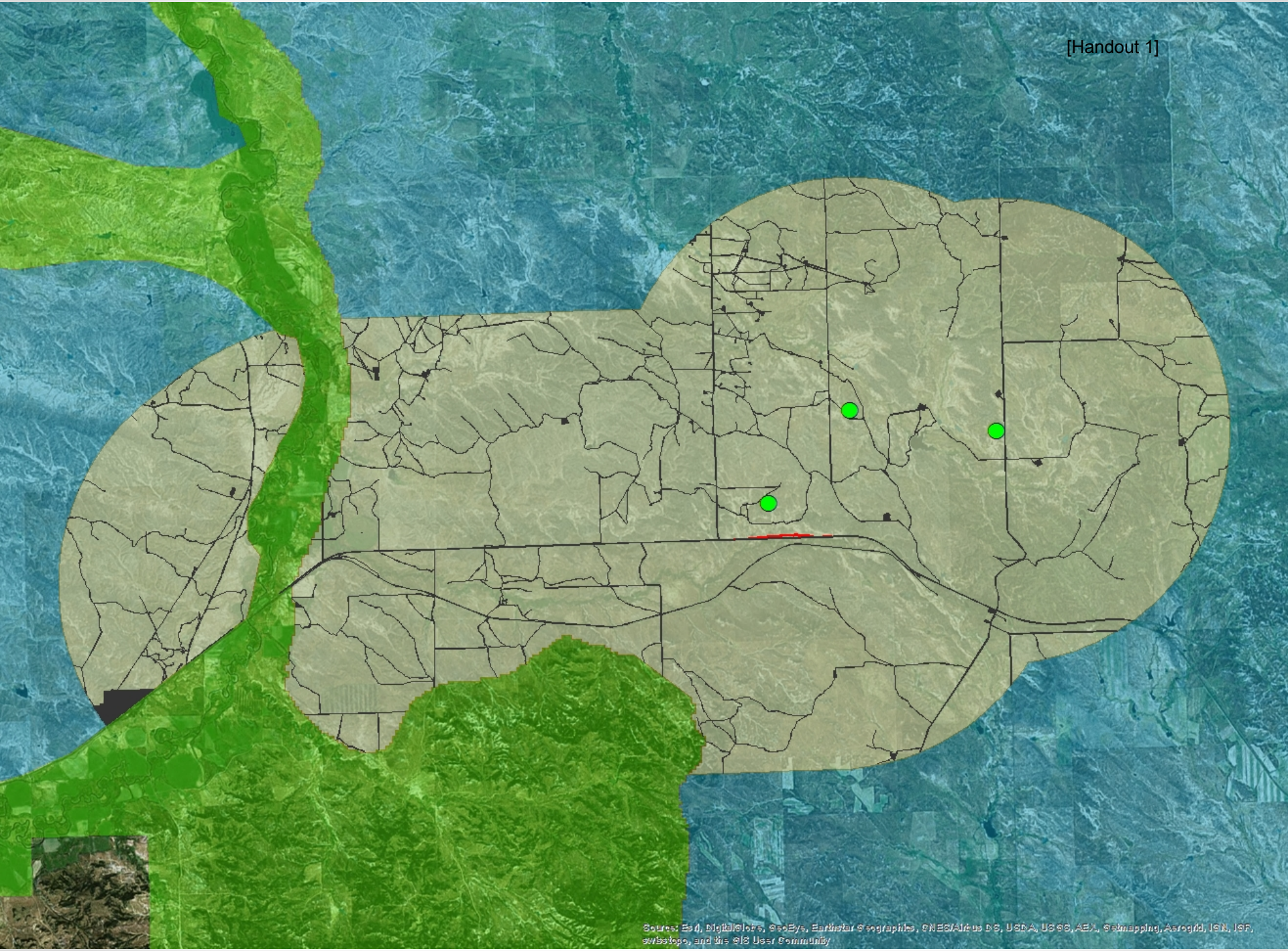
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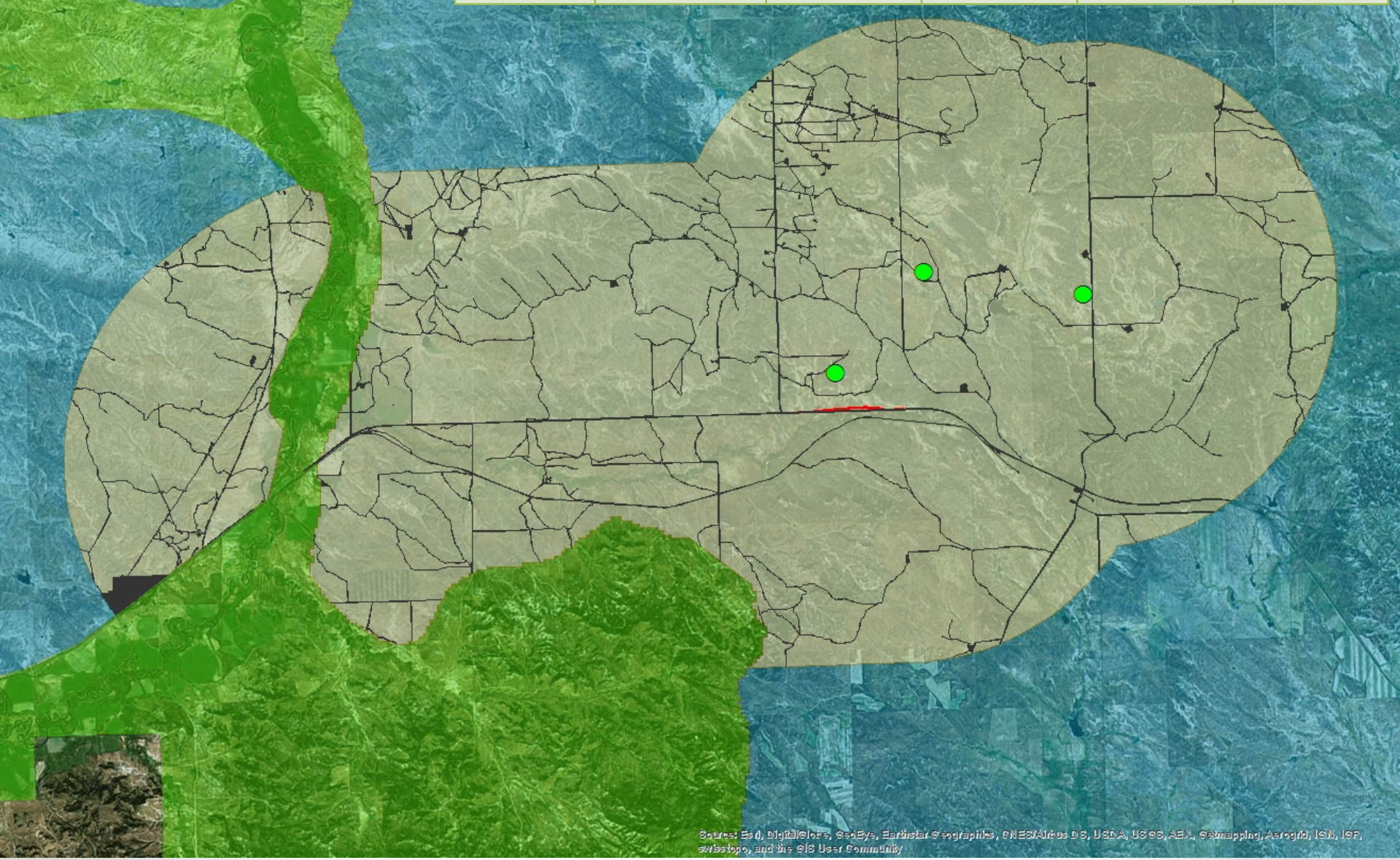
Core project area	Total disturbed acres from project	Newly disturbed acres from project	Total disturbance acres in core project area	DDCT [Handout 1]	Lek Count
86,093.18	92.6	17.27	1407.82	1.635%	3



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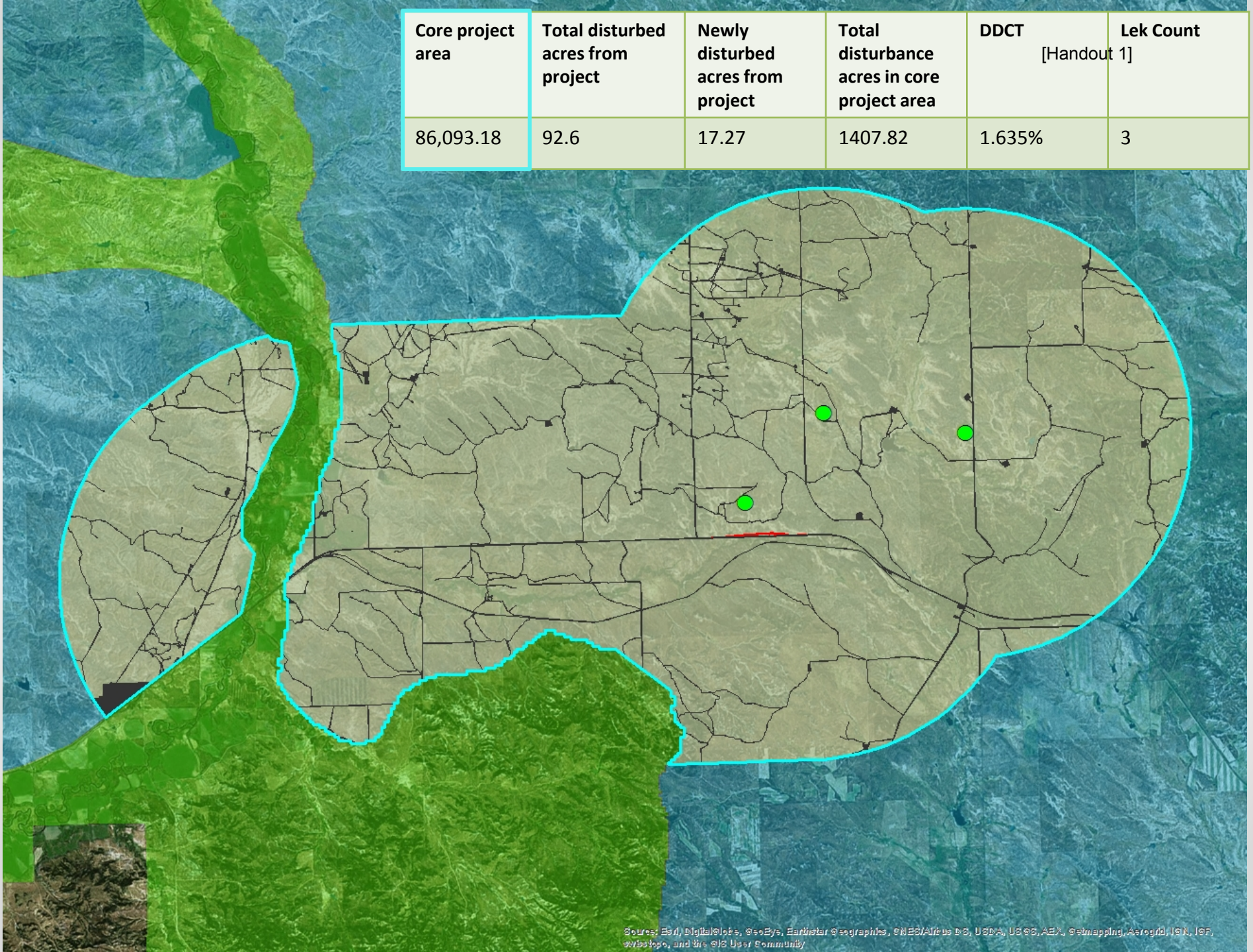

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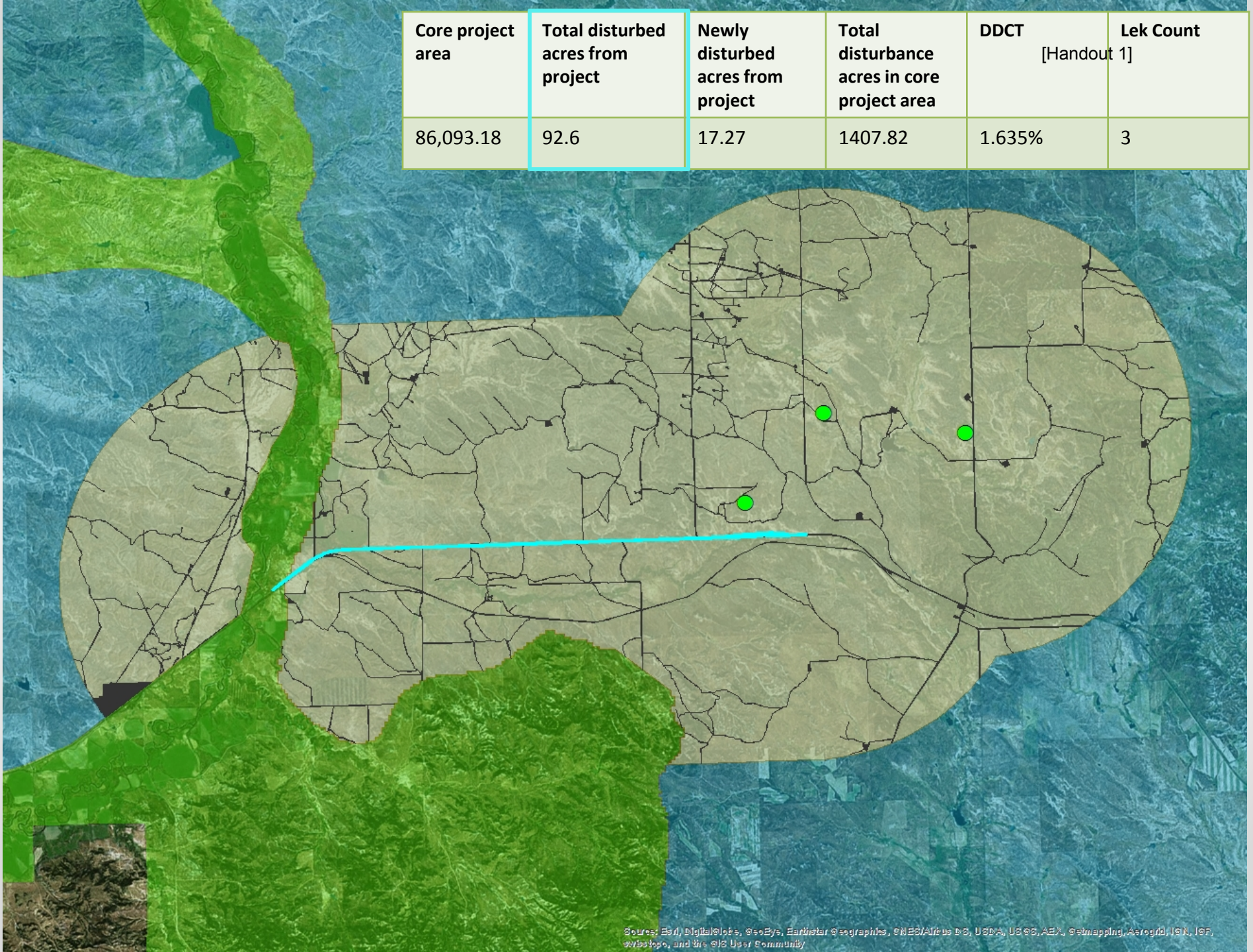

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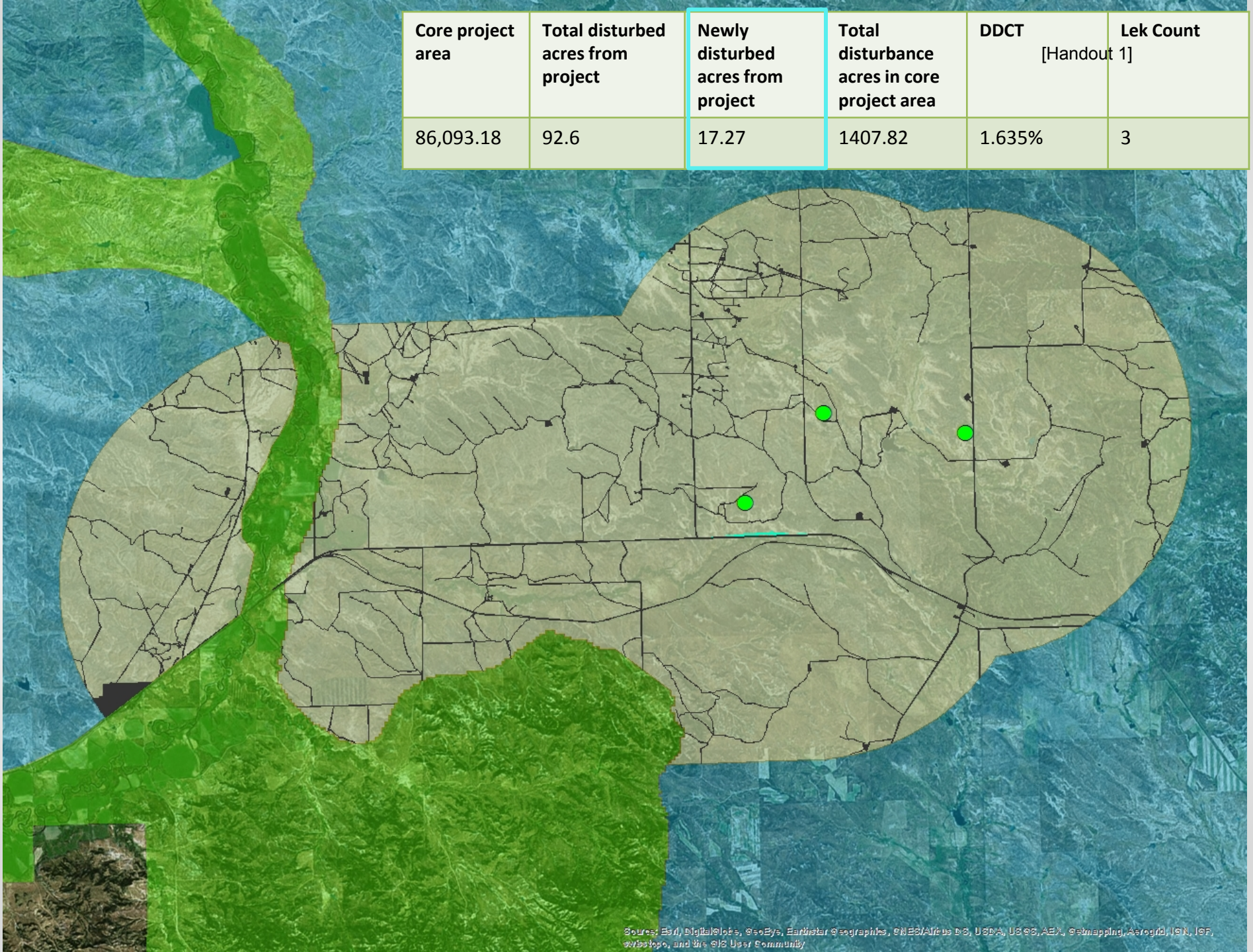

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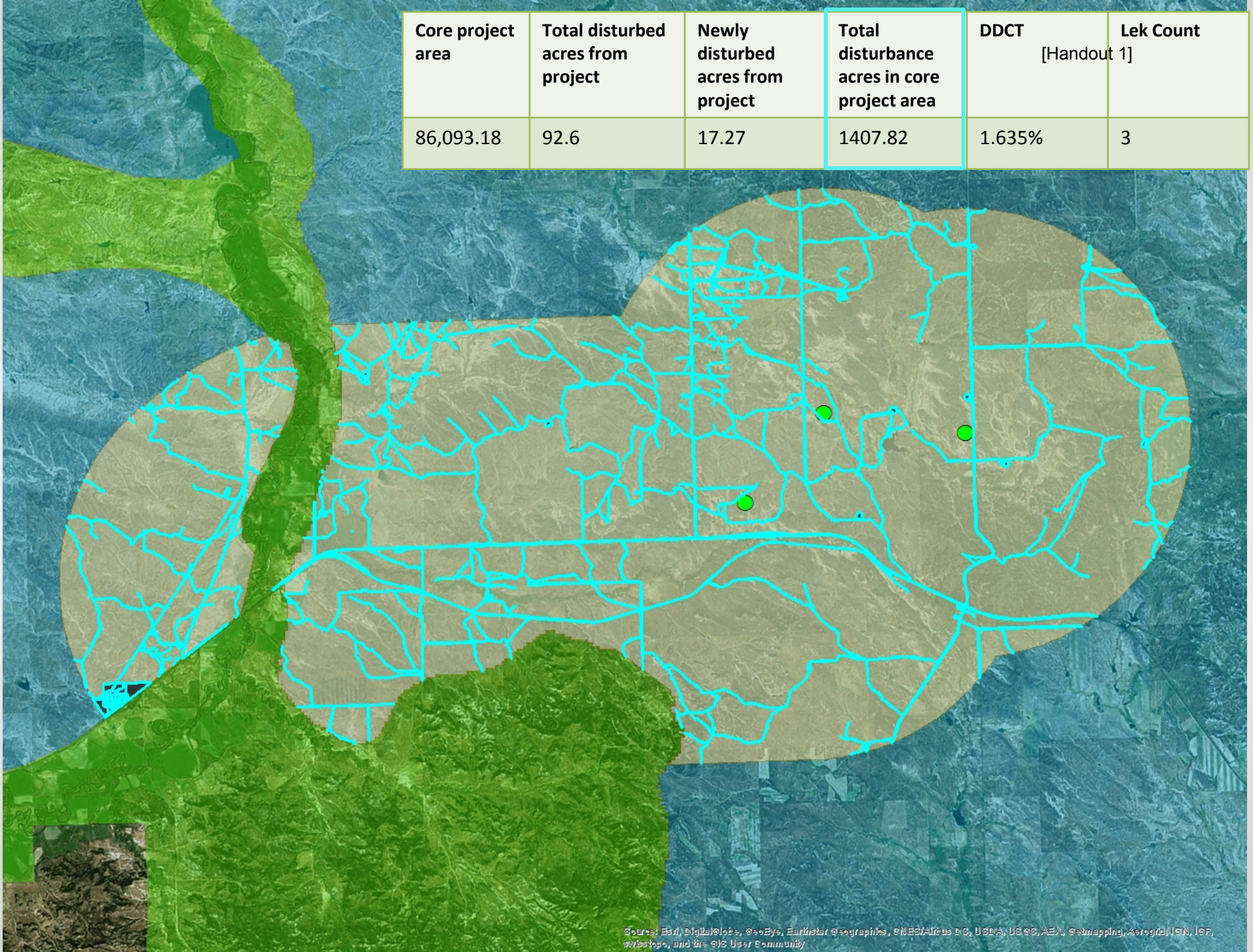
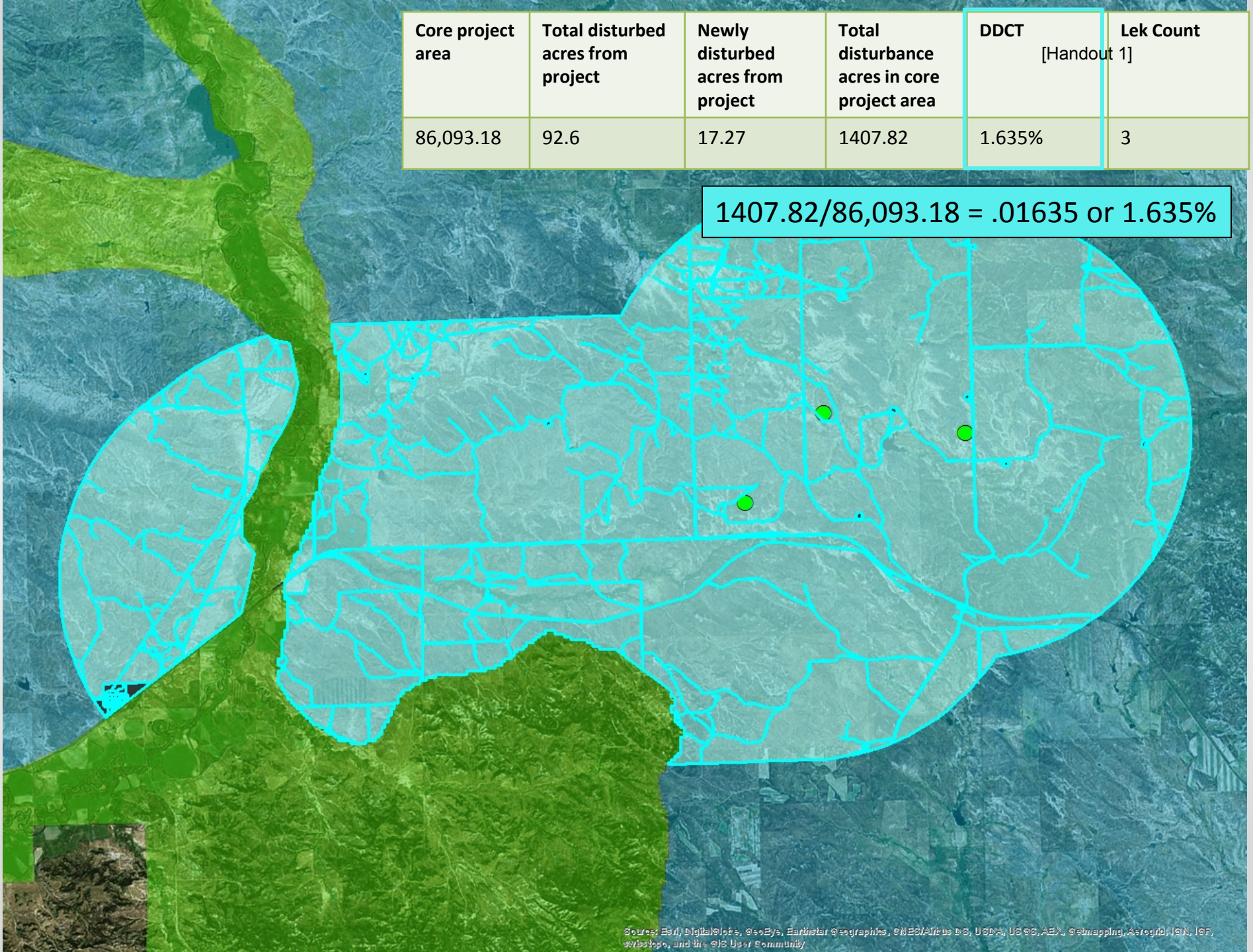
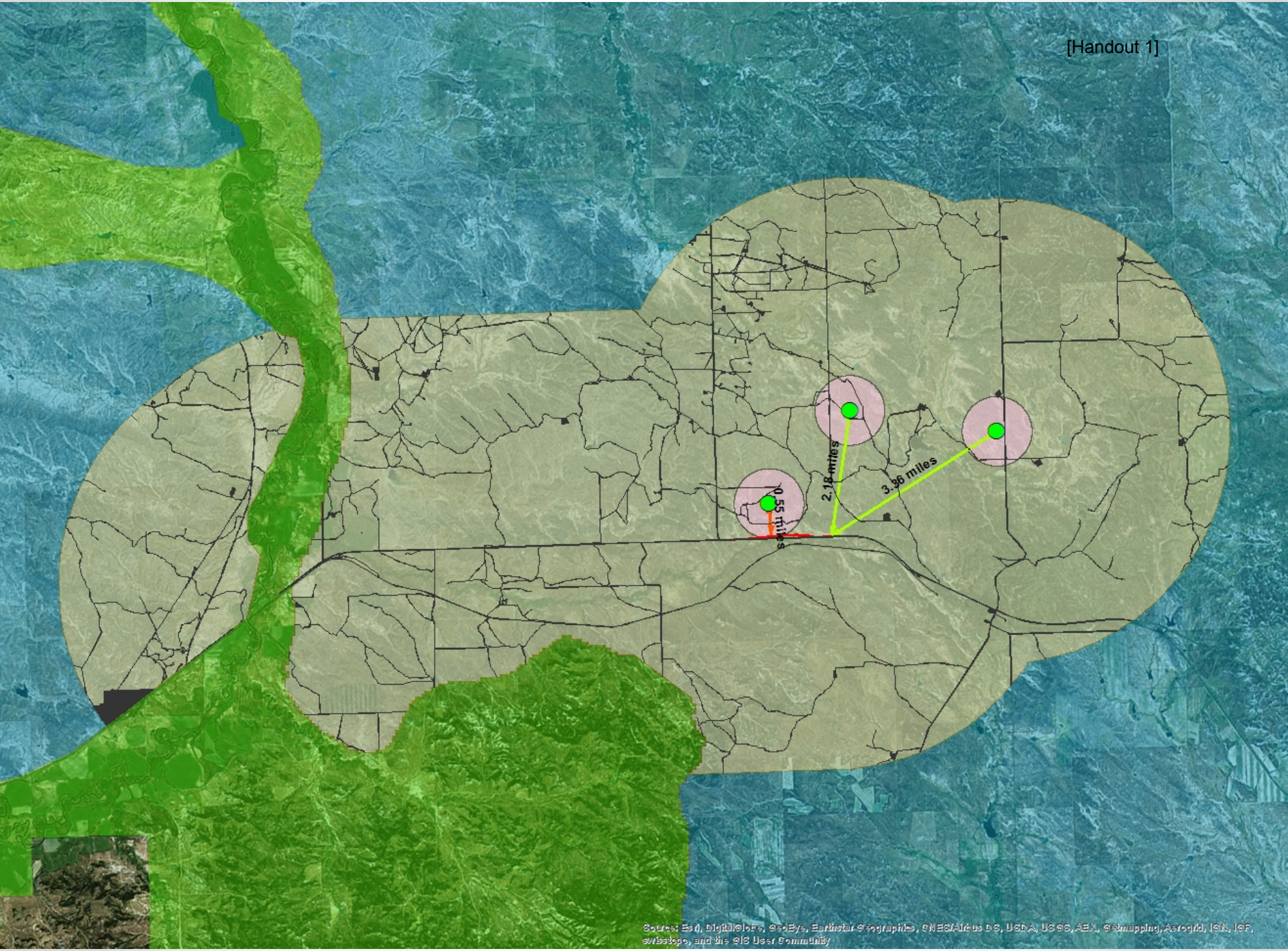


Core project area	Total disturbed acres from project	Newly disturbed acres from project	Total disturbance acres in core project area	DDCT [Handout 1]	Lek Count
86,093.18	92.6	17.27	1407.82	1.635%	3

1407.82/86,093.18 = .01635 or 1.635%



[Handout 1]


0.55 miles
2.18 miles
3.36 miles
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Next Steps for Web Application

- Welcome page
  - concise information regarding program and project submittal (including when a project should be submitted)
- Auto generated email for projects outside of habitat

Project No. **PROJECT ID** [Handout 1]

Project Name: **PROJECT NAME**

Office of the Governor Executive Orders 12-2015 and 21-2015

NAME

ADDRESS

CITY, STATE, ZIP CODE

DATE

Dear **NAME**,

The Montana Sage Grouse Habitat Conservation Program received a request for consultation and review of your project or proposed activity on **SUBMISSION DATE**. The Program has completed its review.

Based on the information you provided, the entirety of your project is located outside of sage grouse habitat designated as a core area, general habitat, or a connectivity area for purposes of conservation. Accordingly, it is not subject to Executive Orders 12-2015 and 21-2015, which set forth Montana's Sage Grouse Conservation Strategy.

Should the location or boundaries of your project change in the future so as to occur within one of these designated habitat areas, please visit https://testsagegrouse.mt.gov/projects/ and submit the new information.

Thanks for your interest in sage grouse and your commitment to taking the steps necessary to ensure Montana's Sage Grouse Conservation Strategy is successful.

Sincerely,

Carolyn Sime

Montana Sage Grouse Habitat Conservation Program Manager

[Handout 1]

Program's Consistency Review

- **Program Reviews Project Proposal**
  - Activity type
  - New surface disturbance or activity?
  - When would it occur?
- **General or Connectivity Habitat**
  - Executive Order Stipulations
    - General Guidelines
    - Industry Specific
- **Core Habitat**
  - Executive Order Stipulations
    - General Guidelines
    - Industry Specific
    - DDCT Results
- **Mitigation?**

Coordinate with Land Management Agencies:

- **BLM**
- **USFS**
- **DNRC State Trust Lands**

[Handout 1]

Consistency Review

- Program Review Complete
- May contact proponent by phone to discuss
- Mail letter to proponent
- Provide necessary information to land management agencies
- Database Maintenance

[Handout 1]

Consistency Review

- Program Review Complete
- May contact proponent by phone to discuss
- Mail letter to proponent
- Provide necessary information to land management agencies
- Database Maintenance

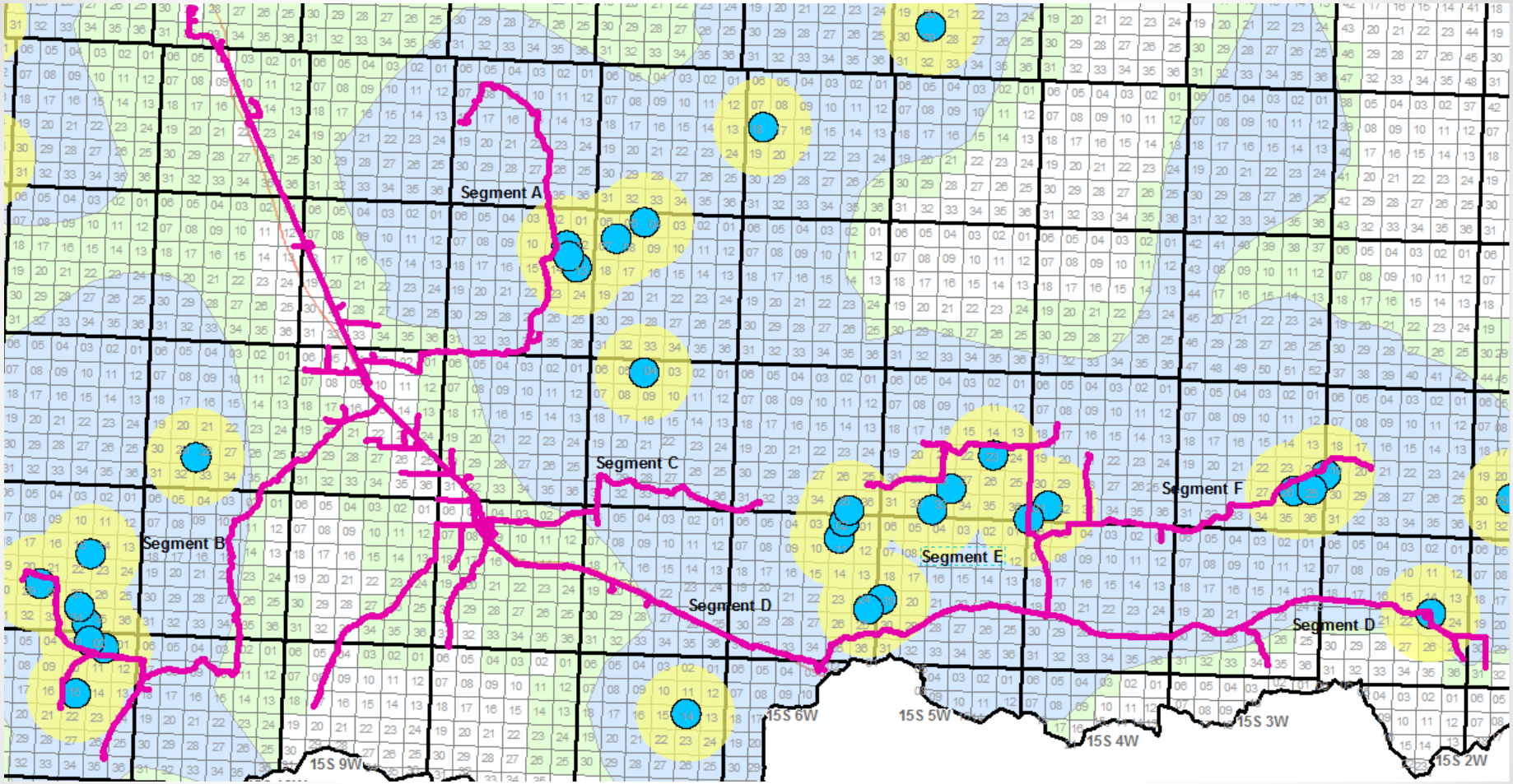
- Proponent takes letter to any permitting agency
- Permitting agencies review Program's letter & processes application/s
- Follow up with land management agencies
- "One Stop Shop"

Examples of Other Projects

[Handout 1]

Fiber Optic Cable Project

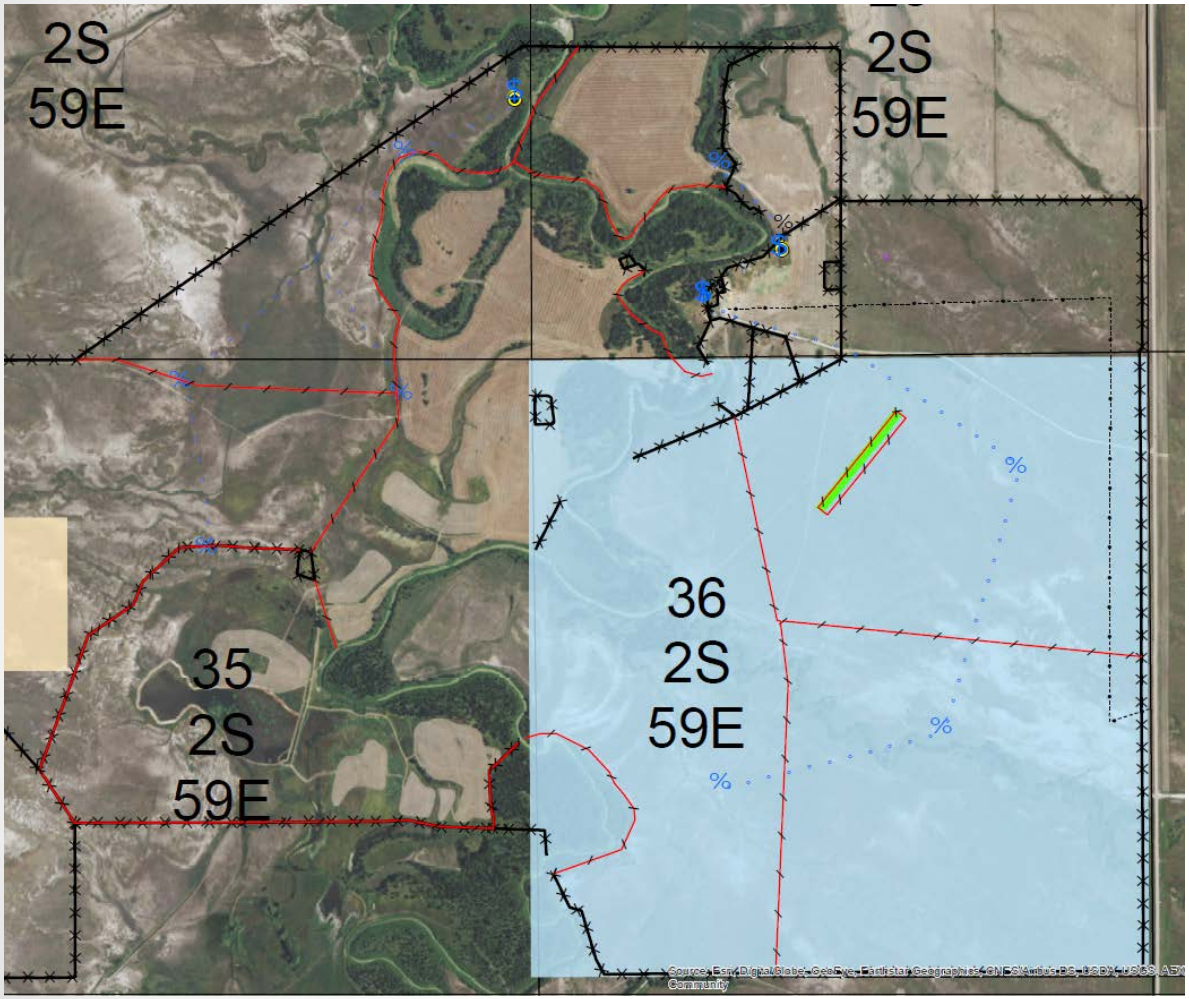
[Handout 1]



	Project Area
	General Habitat Area
	Core Area
	Active Sage Grouse Lek - 2 mile buffer
	No Surface Occupancy 0.6 mile buffer

[Handout 1]

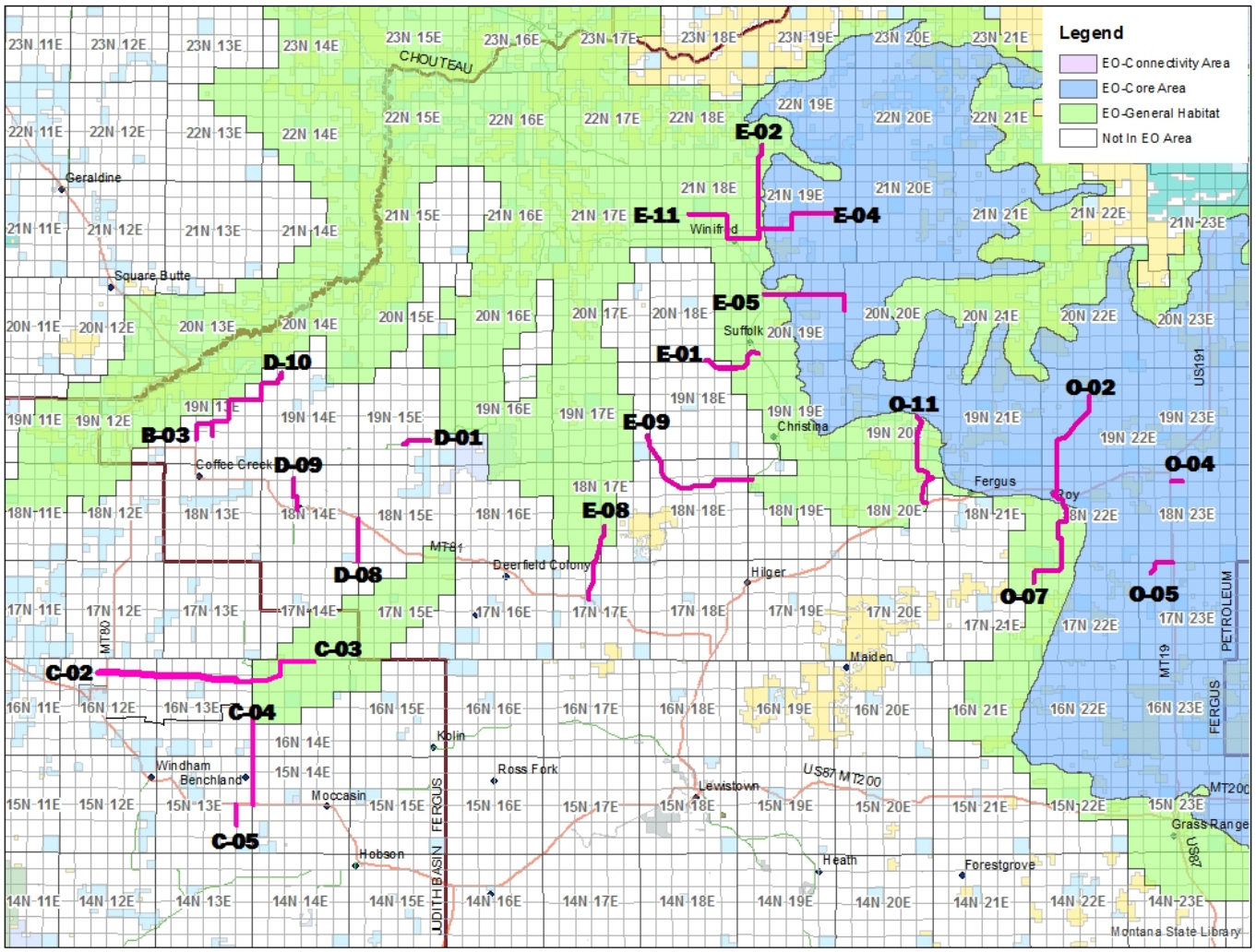
Proposed Shelter Belt / Fence Project



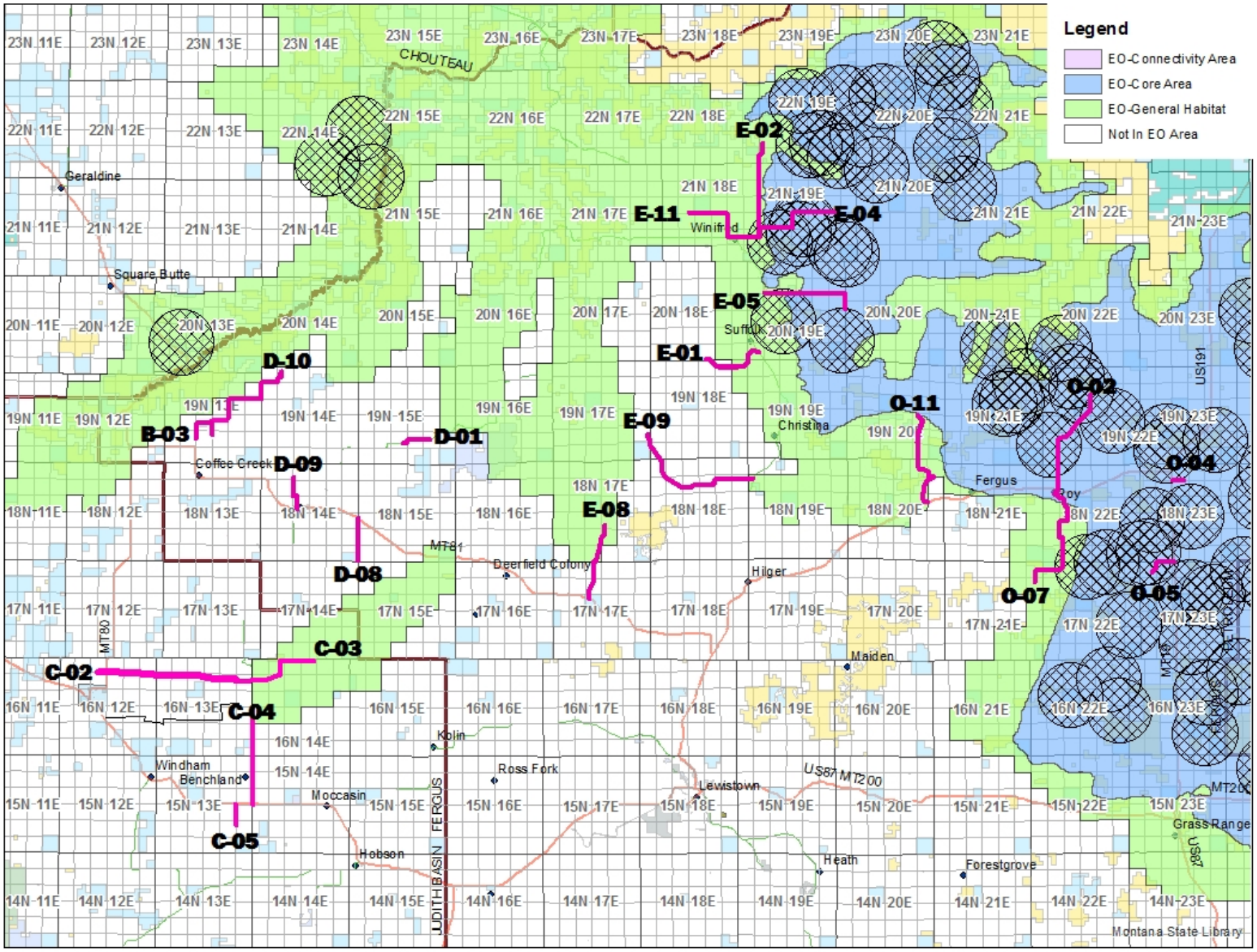
- State Trust Land in Core Area
- Shelterbelt proposed to have Ponderosa Pine trees
- Conversation with proponent
- Shelterbelt changed to panels
- Project moved forward

Malmstrom Air Force Base Road Project [Handout 1]

- **Replacing, repairing, restoring, re-gravelling roads, reconditioning culverts**
- **Staying within existing right-of-way, no new surface disturbance; no DDCT**



Malmstrom Air Force Base Road Project [Handout 1]



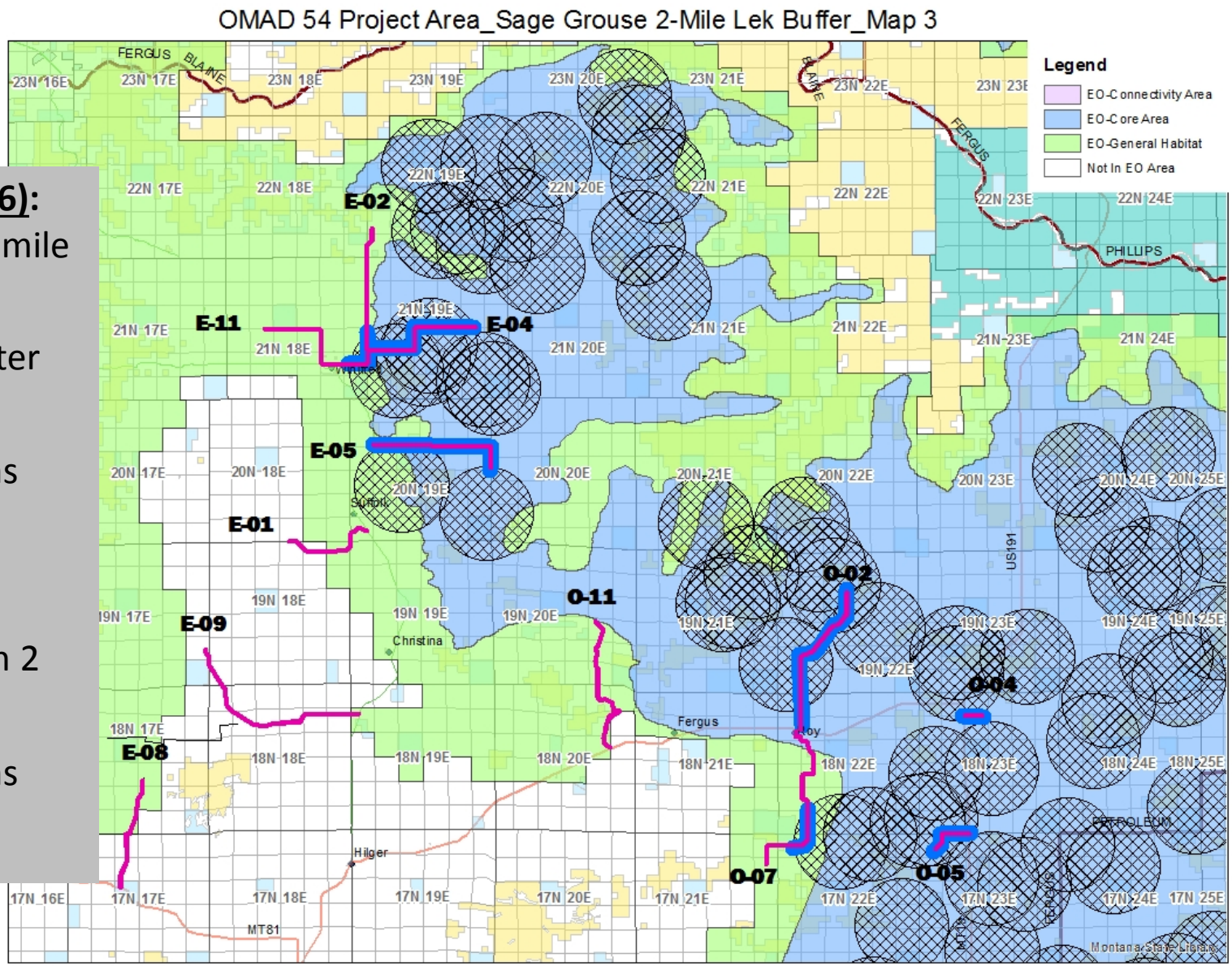
Malmstrom Air Force Base Road Project [Handout 1]

Blue Segments (6):

- Leks within 2 mile buffer
- Delay until after July 15
- No restrictions after July 15

All Others (9):

- No leks within 2 mile buffer
- No restrictions



Questions?

[Handout 1]

Photo: Joel Maes

[Handout 2]

MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET
APRIL 19, 2016

AGENDA ITEM: PROGRAMMATIC EXCEPTION FROM CONSULTATION REQUIREMENT FOR ALL ACTIVITIES WITHIN EXISTING INCORPORATED BOUNDARIES OF CITIES AND TOWNS

ACTION NEEDED: REVIEW AND APPROVAL

SUMMARY:
Exceptions to the requirements for Sage Grouse Program consultation for state permitted activities, state authorizations, state grants, or state technical assistance are approved by the Montana Sage Grouse Oversight Team (MSGOT), not granted by the Sage Grouse Habitat Conservation Program (Program). Executive Order 12-2015 Attachment D sets forth the review process for consultation when a proponent seeks a permit, grant or technical assistance from the State of Montana.

Executive Order 21-2015 designates the sage grouse habitats to which Executive Order 12-2015 applies. From the outset, core area mapping efforts delineated important habitats containing the majority of active sage grouse leks. Delineation of general habitat areas and the connectivity area came later. The goal was to take an ecological landscape approach to address sage grouse habitat conservation needs. One limitation of a broad landscape-scale map, however, is that it does not lend itself to the fine scale implementation of Executive Order 12-2015. Finer scale mapping to carve out incorporated cities and towns was not done.

The Program recommends MSGOT grant a geographically-limited exception to the consultation requirements and stipulations for <u>any</u> activity that would wholly occur within the boundaries of incorporated cities and towns as of March 28, 2016, consistent with the most recent available data. Cities and towns do not provide sagebrush habitat for sage grouse – the land has already been converted to human-related land uses. Loss of habitat and surface disturbance and human activity levels already exceed tolerance thresholds for sage grouse. Not applying Montana's Executive Order 12-2015 regulatory mechanisms to areas within the boundaries of incorporated cities and towns will not exacerbate threats to sage grouse. Likewise, no conceivable sage grouse habitat restoration efforts would ever be undertaken. Applying the regulatory mechanisms would not actually reduce the threats to sage brush habitats.

Exurban areas outside incorporated municipalities would not be granted a programmatic exception because development patterns cannot be uniformly identified, delineated, and predicted in the same programmatic way as the existing boundaries of municipal incorporation. Further, the U.S. Fish and Wildlife has identified exurban development and expansion as a type of habitat loss and fragmentation. Consultation and stipulations would still apply outside incorporated boundaries and projects would be reviewed by the Program. The Program recommends no changes be made to the consultation process for projects proposed in exurban areas based on its experience reviewing many exurban projects to date. Review is not complex or time-consuming. The Program has completed its work and communicated results to proponents within a week of the project being submitted, and even faster in some cases. Lastly, exurban development features are defined and considered as existing disturbance in density disturbance calculations when analyzing projects proposed in core areas. The Program could consider mapping and trying to delineate exurban areas on its own at some point in the future when staff resources allow.

If approved, any activity that would occur within existing incorporated boundaries of Montana cities and towns would be not be required to consult with the Program prior to obtaining a state permit, grant, authorization, or technical assistance as required by Attachment D in Executive Order 12-2015. Stipulations would also not apply to areas within incorporated municipalities. MSGOT eliminate steps that have no conservation value to sage grouse or would ever contribute to restoration or mitigation.

PROGRAM RECOMMENDATION:
The Program Manager recommends MSGOT approve a programmatic exception from Executive Order 12-2015 consultation requirement for state permitted activities, state authorizations, state grants, or state technical assistance that would wholly occur within existing incorporated boundaries of cities and towns.

Sage Grouse Habitat Conservation Program Narrative

Programmatic Exception from Executive Order 12-2015 Consultation Requirements

All Activities within Existing Incorporated Boundaries of Cities and Towns

Introduction: Taken together, Executive Order 12-2015 and the Sage Grouse Stewardship Act (Act) establish Montana's Conservation Strategy. The Strategy is based on a "Core Areas" approach similar to the State of Wyoming. The Act and Executive Order 12-2015 are key to addressing threats identified by the U.S. Fish and Wildlife Service to sage grouse in Montana by establishing the necessary regulatory mechanisms and addressing threats to the sagebrush habitats relied upon by most of sage grouse populations.

Executive Order 12-2015 only applies to specially designated sage grouse habitats, primarily in central and eastern Montana, as reflected by the map contained in Executive Order 21-2015. Habitats for conserving sage brush and sage grouse have been designated as core areas, general habitat, or connectivity areas.

Executive Order 12-2015 applies to all state agencies and took effect January 1, 2016. It pertains to all programs and activities of state government such as: permitting, licenses, authorizations, grants, technical assistance, and the state's own agency programs like highway planning or management of state trust lands.

The Montana Sage Grouse Oversight Team (MSGOT or Team) guides implementation of Executive Orders 12-2015 and 21-2015. MSGOT was formally created in statute by the 2015 Montana Legislature. The Team is chaired by the Governor's Natural Resource Policy Advisor. Other members are the directors of the Departments of Fish, Wildlife & Parks, Natural Resources and Conservation, Transportation, Environmental Quality, the Administrator of the Montana Board of Oil and Gas, a member of the Montana Rangelands Resources Committee, a member of the Montana Senate, and a member of the Montana House of Representatives.

The role of the Sage Grouse Habitat Conservation Program (Program) is to facilitate implementation of Executive Orders 12-2015 and 21-2015 across state government and with federal agency partners. As outlined in Attachment D, the Program consults with permit applicants and project proponents *before* permit applications are submitted to state agencies to help applicants avoid negative impacts of development in designated sage grouse habitats, minimize impacts, and address compensatory mitigation for impacts that can't be avoided or minimized. The Program's role is one of consultation, not regulation. The Program will make recommendations to the applicant and the permitting agency. The Program is administratively attached to the Department of Natural Resources and Conservation, but reports to MSGOT and the Governor's Office.

Process to Create Sage Grouse Executive Order Map: Executive Order 21-2015 sets forth the map showing the habitats designated for sage grouse conservation in Montana's Conservation Strategy. See Figure 1.[1]

Montana Fish, Wildlife & Parks (FWP) first created a map depicting sage grouse habitat distribution in the early 2000s based on requests from the Western Association of Fish and Wildlife Agencies and various research entities. Broad delineations were made commensurate with landscape scale of the occurrence of sagebrush habitats having value to sage grouse and other sagebrush-steppe wildlife species. Smaller scale anthropogenic features such as cities and towns were not carved out because fine scale mapping was not necessary for that purpose. FWP made some refinements to the sage grouse habitat distribution map layer from 2005 – 2009, based on radio telemetry, other geo-spatial data, and the expert opinion of field biologists from state and federal agencies.

By 2008, FWP had delineated core area boundaries. Core areas were based on displaying male densities on leks, peer reviewed literature, expert opinions of field biologists, and modeling efforts using a kernel density estimator. The goal was to identify the highest densities of displaying males based on lek locations and associated nesting and brood rearing habitats, particularly in lek complexes where many leks occurred in relatively close proximity.

The map was refined during deliberations of the Governor-appointed Montana Sage Grouse Advisory Council in 2013-2014.[2] For example, a connectivity area was added in Valley County to connect core areas in Valley and Phillips counties. Additionally, a core area was delineated within Garfield and McCone counties, after considering vegetation characteristics, existing acreage of lands converted to cultivated agriculture, aerial imagery, and expert opinions of field biologists. A map was included in the Council's final recommendations provided to the Governor in January, 2014. This map was created by combining the core areas layer and the sage grouse habitat distribution map. All habitat classes were dissolved to remove any internal boundaries and all of these areas were termed general habitat. The areas of general habitat were overlapped with core and connectivity areas. Where core areas overlapped with general habitat, the area was classified as a core area. Lands not covered by either core areas, general habitat, or connectivity areas were called "not in EO area" (i.e. not in designated habitats for purposes of implementing the Executive Order). This map was included in Executive Order 10-2014, signed by Governor Bullock in September, 2014.

To improve accuracy, FWP undertook further efforts to refine the Executive Order Core Areas Map using similar methods as described above. FWP completed a more thorough review of sage brush habitat suitable for sage grouse occupancy and created a more current and accurate map in 2015. The methodology and total number of acres designated as core habitat did not change from the 2014 to the 2015 map. Some acreage in general habitat was removed due to conversion and or the occurrence of forested areas identified by more detailed mapping efforts and remote imagery. Montana's core areas comprise about 75% of the displaying males in the population.

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[1] See information about the evolution of Figure 1 and the metadata associated with Figure 1 core areas at: http://gis.fwp.mt.gov/arcgis101/rest/directories/arcgisoutput/webResources/metadata/wild/sageGrouseCoreAreas.htm. See also modeling work by the Montana Natural Heritage Program at: http://gis.fwp.mt.gov/arcgis101/rest/directories/arcgisoutput/webResources/metadata/wild/sageGrouseCoreAreas.htm.

[2] See information about the metadata associated with Figure 1 at: http://fwp.mt.gov/gisData/metadata/executiveOrderSageGrouse.htm

Ultimately, Executive Order 21-2015 delineated the final areas for implementing Montana's Conservation Strategy at the statewide scale (see Figure 1). But finer scale mapping to carve out incorporated cities and towns was not undertaken. Thus, incorporated municipalities occur within habitats designated for implementation of Montana's Conservation Strategy. For ease of use and convenience, lines were drawn using section lines, roads, or similar. For example, see Figure 2 (Malta), Figure 3 (Roundup), and Figure 4 (Winnett) below.

Proposed Exception to Consultation Requirements for all activities within existing boundaries of incorporated cities and towns: Executive Order 12-2015 Attachment D sets forth the review process for sage grouse consultation when a proponent seeks a permit, grant, authorization, or technical assistance from the State of Montana. Executive Order 21-2015 designates the sage grouse habitats to which Executive Order 12-2015 applies. Attachment D also sets forth specific stipulations and guidance for minimizing impacts of development on sage grouse and sagebrush habitats. Some stipulations are general and apply to all projects, whereas other stipulations are industry-specific. Different stipulations are applied to either core areas, general habitats, or the connectivity area, respectively.

From the beginning, core area mapping efforts were focused on delineating important habitats which contained the majority of active sage grouse leks. Delineation of general habitat areas followed later. The goal had always been to take an ecological landscape approach, commensurate with the peer reviewed literature, to address the conservation needs of the species. One limitation of a broad landscape scale map, however, is that it does not lend itself to implementation at fine scales for purposes of implementing Executive Order 12-2015's consultation process or specific stipulations. This limitation is illustrated by Figures 2, 3, and 4.

Exceptions to Executive Order 12-2015 requirements for consultation are approved by MSGOT, not the granted by the Program. There are a total 129 mapped incorporated cities and towns in Montana as of March 28, 2016.[3] The Program recommends MSGOT grant a geographically-limited exception to the consultation requirements and stipulations for any activity that would wholly occur within the boundaries of incorporated cities and towns as of March 28, 2016, consistent with the most recent available mapping data (see Footnote 3).

Cities and towns do not provide sagebrush habitat for sage grouse – the land has already been converted to human-related land uses. Loss of habitat and surface disturbance and human activity levels already exceed tolerance thresholds for sage grouse. Not applying Montana's Executive Order 12-2015 regulatory mechanisms to areas within the boundaries of incorporated cities and towns will not exacerbate threats to sage grouse.[4] Furthermore, even if the regulatory mechanisms were to be applied within city limits, overall threats to sagebrush habitats will not be reduced nor will habitats be enhanced through mitigation or restoration efforts.

While the U.S. Fish and Wildlife Service identified exurban development, infrastructure, and other anthropogenic disturbances as important threats alongside sagebrush conversion, increases in

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[3] See Montana State Library Digital Library for metadata and available boundary geospatial mapping data at: http://mslapps.mt.gov/Geographic_Information/Data/DataList/datalist_Details?did={530355CF-C819-4784-877F-C995C4815D41}.

[4] *See* 80 Fed. Reg. 59858 (Oct. 2, 2015) (U.S. Fish and Wildlife Service 12-month finding that listing of the greater sage grouse rangewide is not warranted). *See also* U.S. U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. February 2013 (pp 16, 17, 18, 23).

disturbances within the boundaries of already incorporated cities and towns will not increase surface disturbance or activity levels so as to impact sage grouse. These areas do not provide habitat for sage grouse.

The focus with respect to threats to sage grouse habitat is the expansion of the urban and exurban development into sagebrush habitats. To avoid or minimize additional impacts of urban and exurban development, identification of important habitats at risk of development and implementing policies that conserve habitat is the key, particularly for Montana where almost 70% of Montana's core area habitats are privately owned. Montana's Sage Grouse Stewardship Fund was appropriated by the 2015 Montana Legislature to fund habitat conservation efforts. The Program is required to give higher priority to projects that generate the greatest conservation "credits" for use in a mitigation framework to offset impacts to development. These are likely to be private land areas known to be of high value to sage grouse. Also, Montana's Conservation Strategy already regulates habitat loss due to urbanization and exurban development on state lands and on private lands when authorization from the state is needed.

The proposed exception for areas within city limits would not be extended to exurban areas outside boundaries of incorporated city limits. Once outside city limits, development patterns cannot be uniformly identified, delineated, and predicted in the same consistent programmatic way as the existing boundaries of municipal incorporation. Local zoning varies considerably and is always subject to change. The Program can annually update the map layer for the boundaries of incorporated cities and towns at the same time as other data maintenance activities associated with the Projects On-line Tool.

The Program recommends continuing to review all projects proposed in exurban areas, based on its experience to date. The Program has reviewed many projects proposed in exurban areas. Review is not complex or time-consuming. The Program has been able to complete its work and communicate results to project proponents within a week of project submittal, and even faster in some cases. In this way, Montana can stay apprised of potential increases in development in important habitats at risk.

Lastly, anthropogenic features like buildings, fences, roads, powerlines, and other infrastructure in exurban areas are defined, mapped and considered as existing disturbance in density disturbance calculations (DDCT) when analyzing projects proposed in core areas. These disturbances would count towards the cap of 5% maximum disturbance within a core area DDCT analysis area.

Lastly, the Program could consider mapping each unique exurban area footprint on its own in the future as staff time allows. Once mapped, the Program may recommend that activities within these areas also be granted an exception. A careful balance must be struck to make sure efforts to conserve sagebrush habitats are successful while at the same time not imposing unnecessary burdens.

Sage-grouse Core Areas and General Habitat in Montana

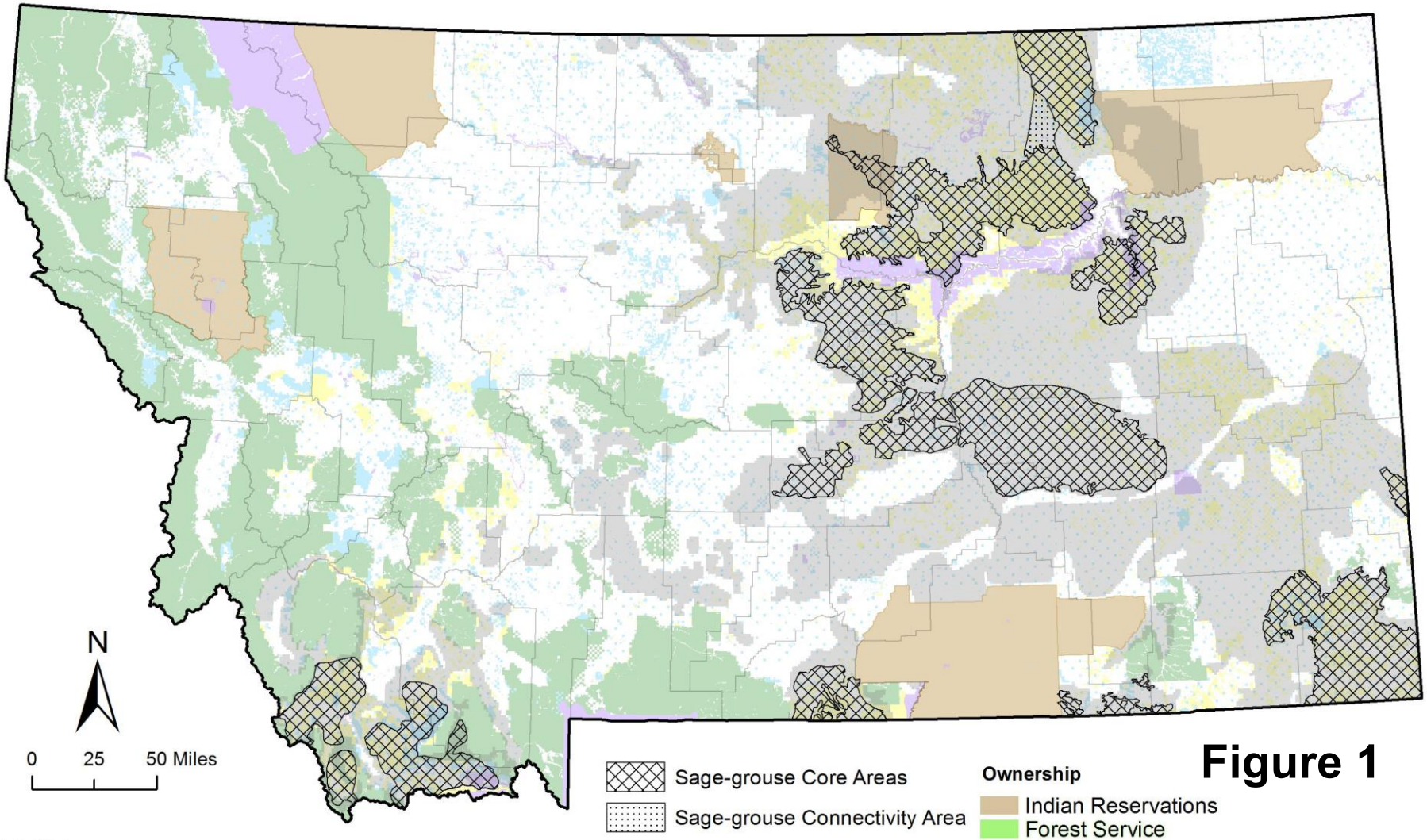


Figure 1

Montana Fish, Wildlife & Parks

\\Wildlife\GameSpp\Birds\SageGrouse\Projects\EO_CoreHabitat\CoreHabWOwner.mxd MAM 9/4/2015

Figure 2. Incorporated city limits of Malta shown by the dashed line. Green shading at the top illustrates area designated as general habitat for purposes of implementing the Executive Order and is shown to overlap the incorporated city limits of Malta in its entirety.

Figure 3. Incorporated city limits of Roundup shown by the dashed line. Green shading at the top illustrates area designated as general habitat for purposes of implementing the Executive Order and is shown to include the northern portion of Roundup. Below the green shading is outside the areas designated in Figure 1 for implementation of Executive Order 12-2015.

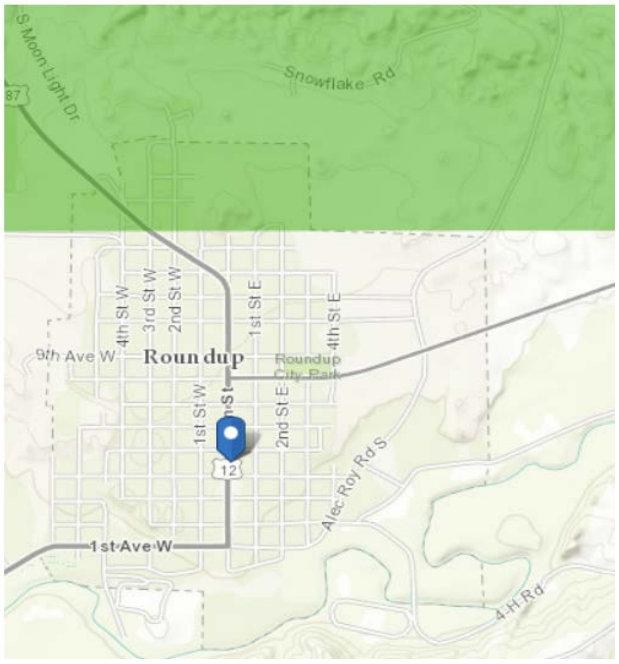
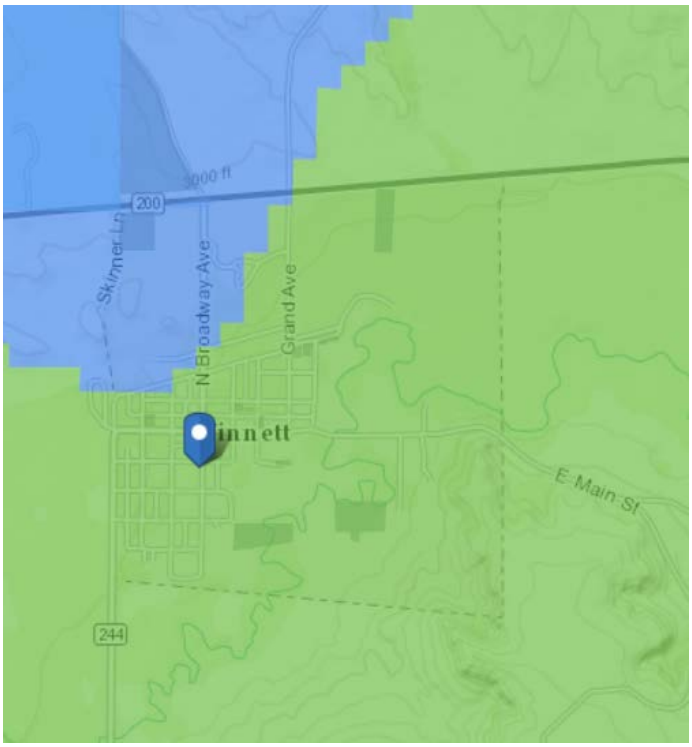


Figure 4. Incorporated city limits of Winnett shown by the dashed line. Green shading illustrates area designated as general habitat and blue shading in the northwest corner of city limits illustrates a core area for purposes of implementing the Executive Order. Without the proposed exception, every proposed activity within the incorporated city limits is subject to the consultation requirement and stipulations of Executive Order 12-2015.



[Handout 3]

MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET
APRIL 19, 2016

AGENDA ITEM: PROGRAMMATIC EXCEPTION FROM CONSULTATION REQUIREMENT FOR MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, WASTE AND UNDERGROUND TANK MANAGEMENT BUREAU RENEWALS OF CERTAIN LICENSES.

ACTION NEEDED: REVIEW AND APPROVAL

SUMMARY:

Exceptions to the requirements for Sage Grouse Program consultation for state permitted activities, state authorizations, state grants, or state technical assistance are approved by MSGOT, not granted by the Sage Grouse Habitat Conservation Program (Program). Executive Order 12-2015 Attachment D sets forth the review process for consultation and stipulations when a proponent seeks a permit, grant authorization or technical assistance from the State of Montana. Executive Order 21-2015 designates the sage grouse habitats to which Executive Order 12-2015 applies.

The Montana Department of Environmental Quality (DEQ) Waste and Underground Tank Management Bureau (Bureau) issues and renews licenses for facilities related to solid waste management (landfills, compost facilities, recycling facilities), septic tank pumpers (dispersing treated sludge to land application sites), and motor vehicle recycling and disposal (vehicle grave / junk / disposal yards). The Bureau authorizes the activity for one year, at which time the permit must be renewed. Each activity is associated with a specific footprint, which is incorporated into the terms of the license.

When DEQ licenses a new facility under any of the three programs, an environmental analysis is completed pursuant to the Montana Environmental Policy Act. If a facility is substantively changing an operation or expanding its footprint from the original licensed area, another environmental analysis is conducted prior to issuing an amended license.

In conjunction with the Bureau, the Program reviewed the following licenses: Solid Waste Management System License, Cesspool Septic Tank and Pit Privy License, and the Motor Vehicle Recycling & Disposal License for consideration of a narrow exception to the consultation requirement when these licenses are renewed. The Program recommends these license renewals be granted a programmatic exception.

Because the solid waste and motor vehicle licenses authorize facilities that occur within existing exurban industrial footprints and do not provide sagebrush habitat, threats to sage grouse would not be exacerbated when licenses are renewed. No new surface disturbance or activity would occur, since the renewal is for identical terms. Likewise, threats would not be exacerbated when septic pumper licenses are renewed because the land application sites are already in cultivated crops and fixed by the terms of the license. The sludge is being used as fertilizer. Not applying the Executive Order 12-2015 regulatory mechanism to the renewal of these licenses will not lead to increased habitat loss, habitat fragmentation or direct mortality. Substantive changes to operations or expansion of the footprint for any of these three licenses would still require consultation, however, and Executive Order 12-2015 stipulations would apply.

If approved by MSGOT, the above licenses would be granted a programmatic exception. Accordingly, proponents would not be required to consult with the Program prior to renewing a license as required by Attachment D in Executive Order 12-2015. This is a specific and narrow exception, applying only to the renewal, not new or amended licenses (to which consultation and stipulations still apply). See narrative.

PROGRAM RECOMMENDATION:

The Program Manager recommends MSGOT approve a narrow programmatic exception from Executive Order 12-2015 limited only to the consultation requirement for the <u>renewal</u> of solid waste management systems, cesspool septic tanks and pit privies, and motor vehicle recycling and disposal licenses.

Sage Grouse Habitat Conservation Program Narrative Montana Department of Environmental Quality Waste and Underground Tank Management Bureau Programmatic Exception from Executive Order 12-2015 Consultation Requirements for Renewal of Certain Licenses

Taken together, Executive Order 12-2015 and the Sage Grouse Stewardship Act (Act) establish Montana's Conservation Strategy. The Strategy is based on a "Core Areas" approach similar to the State of Wyoming. The Act and Executive Order 12-2015 are key to addressing threats identified by the U.S. Fish and Wildlife Service to sage grouse in Montana by establishing the necessary regulatory mechanisms and addressing threats to the sagebrush habitats relied upon by most of sage grouse populations.

Executive Order 12-2015 only applies to specially designated sage grouse habitats, primarily in central and eastern Montana, as reflected by the map contained in Executive Order 21-2015. Habitats for conserving sage brush and sage grouse have been designated as core areas, general habitat, or connectivity areas.

Executive Order 12-2015 applies to all state agencies and took effect January 1, 2016. It pertains to all programs and activities of state government such as: permitting, licenses, authorizations, grants, technical assistance, and the state's own agency programs like highway planning or management of state trust lands.

The Montana Sage Grouse Oversight Team (MSGOT or Team) guides implementation of Executive Orders 12-2015 and 21-2015. MSGOT was formally created in statute by the 2015 Montana Legislature. The Team is chaired by the Governor's Natural Resource Policy Advisor. Other members are the directors of the Departments of Fish, Wildlife & Parks, Natural Resources and Conservation, Transportation, Environmental Quality, the Administrator of the Montana Board of Oil and Gas, a member of the Montana Rangelands Resources Committee, a member of the Montana Senate, and a member of the Montana House of Representatives.

The role of the Sage Grouse Habitat Conservation Program (Program) is to facilitate implementation of Executive Orders 12-2015 and 21-2015 across state government and with federal agency partners. As outlined in Attachment D, the Program consults with permit applicants and project proponents *before* permit applications are submitted to state agencies to help applicants avoid negative impacts of development in designated sage grouse habitats, minimize impacts, and address compensatory mitigation for impacts that can't be avoided or minimized. The Program's role is one of consultation, not regulation. The Program will make recommendations to the applicant and the permitting agency. The Program is administratively attached to the Department of Natural Resources and Conservation, but reports to MSGOT and the Governor's Office.

Montana Department of Environmental Quality has numerous permitting and licensing responsibilities. The Department's ultimate goal is protect public health and to maintain Montana's high quality of life for current and future generations. To that end, it oversees a variety of activities related to waste. In consultation with the Program, the Waste and Underground Management Bureau identified three licensed activities that constitute authorizations by the Department, but that are predictable and consistent in occurring with the same footprint, once licenses are granted. These activities generally occur in areas already developed by people (i.e. urban and exurban areas) and do not provide sage grouse habitat. For the following licensed program areas, the Program

recommends MSGOT approve an exception to the consultation requirement for license renewals. This would streamline the renewal process, while still requiring consultation and application of Executive Order 12-2015 stipulations when applicants seek to amend their licensed activity to expand the footprint or otherwise substantively change their activity and when applicants seek to license the activity for the first time.

Solid Waste Management System License (SWMS): The Waste and Underground Tank Management Bureau (Bureau) within Montana Department of Environmental Quality (DEQ) is responsible for authorizing licenses for solid waste management systems or facilities such as landfills, compost facilities, land farms for treating petroleum-impacted soils, recycling facilities, and resource recovery facilities (MCA § 75-10-221; ARM 17.50.410). Solid waste is considered anything not otherwise listed as a hazardous waste. Treatment of solid waste in a confined facility or footprint is an activity which occurs within existing human development patterns – cities, towns, or exurban areas near the incorporated limits of municipalities. There are approximately 133 currently licensed facilities with known associated industrial footprints.

Prior to authorizing a license for a new facility, the Bureau conducts an environmental review under the Montana Environmental Policy Act (MEPA). Once a facility is licensed, the license must be renewed annually. Expansion of a facility to add additional acreage outside the currently licensed footprint or substantive changes to the operation of a facility are both considered an amendment to the license and would require a new environmental assessment.

In conjunction with the Bureau, the Program reviewed the SWMS license to determine the appropriateness of a narrow programmatic exception from the consultation requirements of Executive Order 12-2015 when SWMS licenses must be renewed. The Program has determined that the renewal of a SWMS license should be granted a narrow exception from the consultation requirement of Executive Order 12-2105 because the licensed activity, even after renewal, will not exacerbate threats to sage grouse.[1]

While the U.S. Fish and Wildlife Service identified exurban development, infrastructure, and other anthropogenic disturbances as important threats alongside sagebrush conversion, renewing a SWMS license to operate a subsequent year under the exact terms of operation and within the same industrial footprint will not exacerbate threats due to development. Here, the facility location is already considered non-suitable habitat for sage grouse and occurs within existing patterns of urban and exurban development or conversion. The key focus with respect to threats to sage grouse habitat is where new SWMS facilities would be sited on the landscape, which itself would still require consultation, review under MEPA, and trigger stipulations under Executive Order 12-2015 in proposed in designated sage grouse habitats reflected on the map in Executive Order 21-2015. Similarly, substantive changes to facility operation or expansion of the footprint would still require consultation and review under MEPA. Not applying the Executive Order 12-2015 regulatory mechanism to the renewal of SWMS licenses will not lead to increased habitat loss and fragmentation or direct mortality. No new surface disturbance would occur and no substantive change in the facility operation would increase activity in a way that would disturb sage grouse.

[1] *See* 80 Fed. Reg. 59858 (Oct. 2, 2015) (U.S. Fish and Wildlife Service 12-month finding that listing of the greater sage grouse range wide is not warranted). *See also* U.S. U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. February 2013 (pp 16, 17, 18, 23).

If approved by MSGOT, renewal of SWMS licenses would be granted a programmatic exception when no changes to the footprint or terms of operation are sought for approval. Accordingly, proponents would not be required to consult with the Program prior to renewing a license from the Bureau as required by Attachment D in Executive Order 12-2015. This is a specific and narrow exception, applying only to the renewal of this license, not facilities seeking licensure for the first time or facilities seeking substantive amendments to the license that would expand the footprint or change how the facility is operated that would cause new surface disturbance or other noise related disturbance. Both the consultation requirement and stipulations would still apply, as those circumstances would be outside the scope of this exception.

Cesspool Septic Tank & Privy License: The (Bureau) is responsible for authorizing licenses for septic tank pumping and application of treated sludge to defined and discrete land applications areas for use as fertilizer (MCA § 75-10-1212; ARM 17.50.804). The land application area is a defined location and is set forth in the terms of the license. There are approximately 150 current licenses, with delineated application areas. Land application areas are typically located in agricultural settings, but certain other restrictions apply. For example, sludge is a source of nitrogen and other soil-renewing nutrients for cultivated crops, but it must be tilled into the soil within six hours of application.

Prior to authorizing a license for a new land application area, the Bureau conducts an environmental review under MEPA. Once a pumper is licensed to apply treated sludge to a particular location, the license must be renewed annually. Expansion of a land application area to add additional acreage outside the currently licensed footprint or substantive changes to the operation or process are both considered an amendment to the license and would require a new environmental assessment.

In conjunction with the Bureau, the Program reviewed the septic pumper license to determine the appropriateness of a narrow programmatic exception from the consultation requirements of Executive Order 12-2015 when pumper licenses must be renewed. The Program has determined that the renewal of a pumper license should be granted a narrow exception from the consultation requirement of Executive Order 12-2105 because the licensed activity, even after renewal, will not exacerbate threats to sage grouse from habitat loss or fragmentation or agricultural conversion.[2]

While the U.S. Fish and Wildlife Service identified exurban development, infrastructure, and other anthropogenic disturbances as important threats alongside conversion, renewing a pumper license to operate a subsequent year under the exact terms of operation and within the same industrial footprint will not exacerbate threats due to development or conversion. Likewise, renewing a pumper license will not lead to increased agricultural conversion because these areas are already under cultivation and the sludge is being used as fertilizer. The key focus with respect to threats to sage grouse habitat would occur if new pumper land application area licenses were sought. But even this would occur after the land was already converted. Nonetheless, new pumper licenses and amended licenses would still require consultation, review under MEPA, and trigger stipulations under Executive Order 12-2015 if proposed in designated sage grouse habitats reflected on the map in Executive Order 21-2015. Not applying the Executive Order 12-2015 regulatory mechanism to

[2] *See* 80 Fed. Reg. 59858 (Oct. 2, 2015) (U.S. Fish and Wildlife Service 12-month finding that listing of the greater sage grouse rangewide is not warranted). *See also* U.S. U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. February 2013 (pp 16, 17, 18, 23).

the renewal of pumper licenses will not lead to increased habitat loss and fragmentation, agricultural conversion or direct mortality. No new surface disturbance through cultivation would occur and no substantive change in the facility operation would increase activity in a way that would disturb sage grouse at the point when licenses are renewed under the exact same terms.

If approved by MSGOT, renewal of pumper licenses would be granted a programmatic exception when no changes to the boundary of the land application area or terms operation are sought for approval. Accordingly, proponents would not be required to consult with the Program prior to renewing a license from the Bureau as required by Attachment D in Executive Order 12-2015. This is a specific and narrow exception, applying only to the renewal of this license, not pumpers seeking to license new land application areas or seeking to enlarge current land application areas through license amendments. Both the consultation requirement and stipulations would still apply, as those circumstances would be outside the scope of this exception.

Motor Vehicle Recycling & Disposal License (MVRD): The Bureau is responsible for authorizing licenses for both private and county sites where motor vehicles are located and stored for disposal, recycling, or sale of parts as a business venture (MCA § 75-10-511; ARM 17.50.205). Facilities must be fenced to shield them from public view and often contain domestic dogs. Therefore, these facility areas are considered non-suitable habitat for sage grouse in the first instance. Facilities are typically located in areas zoned by local governments and occur in exurban areas just outside existing boundaries of incorporated cities and towns, so as to be near the commercial demand for auto parts. There are approximately 150 currently licensed facilities with known associated industrial footprints, about 46 of which are county facilities.

Prior to authorizing a license for a new facility, the Bureau conducts an environmental review under MEPA. Once a facility is licensed, the license must be renewed annually. Expansion of a facility to add additional acreage outside the currently licensed footprint or substantive changes to the operation of a facility are both considered an amendment to the license and would require a new environmental assessment.

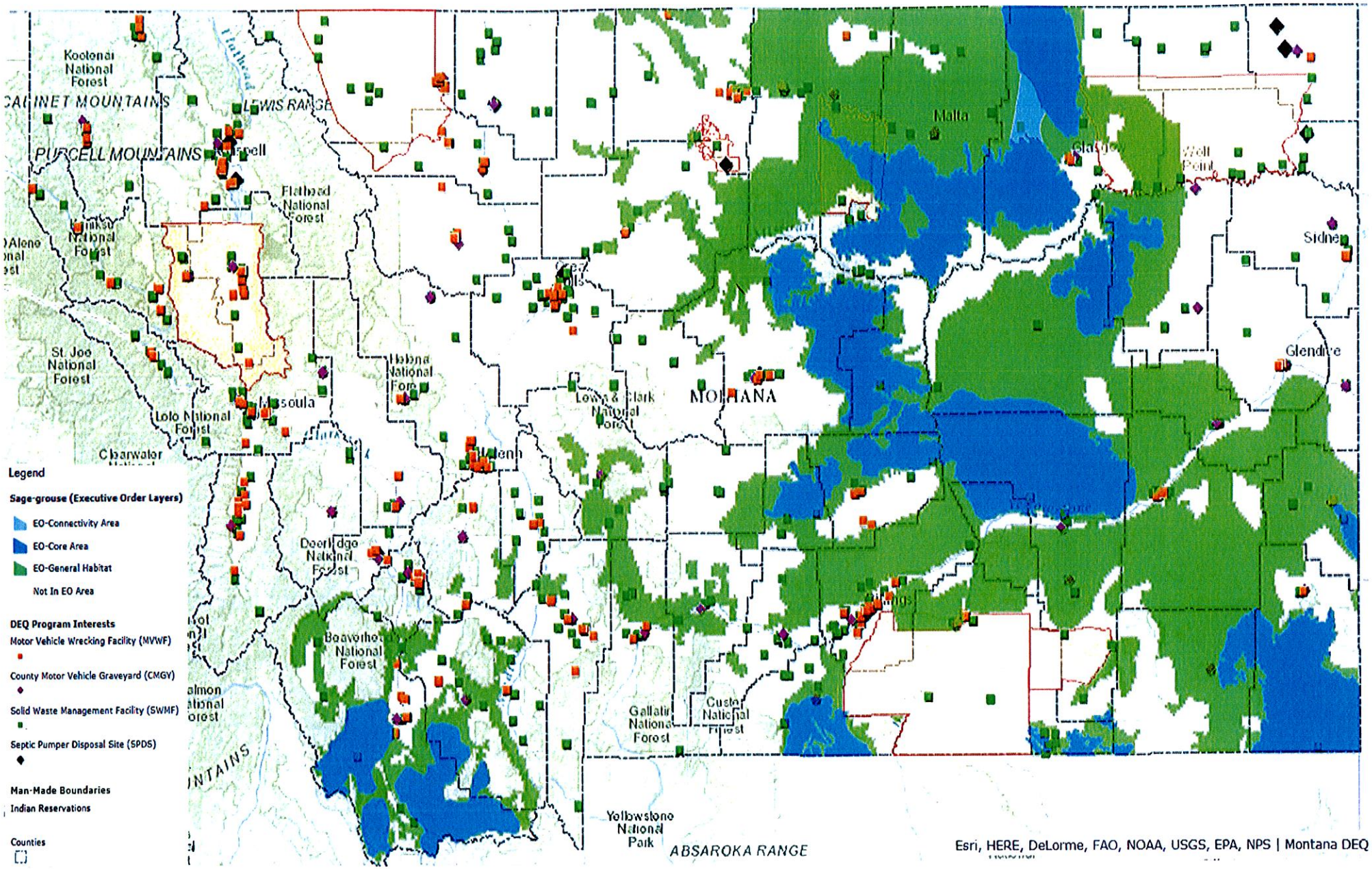
In conjunction with the Bureau, the Program reviewed the MVRD license to determine the appropriateness of a narrow programmatic exception from the consultation requirements of Executive Order 12-2015 when MVRD licenses must be renewed. The Program has determined that the renewal of a MVRD license should be granted a narrow exception from the consultation requirement of Executive Order 12-2105 because the licensed activity, even after renewal, will not exacerbate threats to sage grouse or cause direct mortality.[3] No new surface disturbance would occur and no substantive change in the facility operation would increase activity in a way that would disturb sage grouse.

While the U.S. Fish and Wildlife Service identified exurban development, infrastructure, and other anthropogenic disturbances as important threats alongside sagebrush conversion, renewing a MVRD license to operate another year under the exact terms of operation and within the same industrial footprint will not exacerbate threats due to development or conversion. Here, the facility is already non-suitable habitat for sage grouse and occurs within existing patterns of urban and exurban development. The key focus with respect to threats to sage grouse habitat is where new

[3] *See* 80 Fed. Reg. 59858 (Oct. 2, 2015) (U.S. Fish and Wildlife Service 12-month finding that listing of the greater sage grouse rangewide is not warranted). *See also* U.S. U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. February 2013 (pp 16, 17, 18, 23).

MVRD facilities would be sited on the landscape, which itself would still require consultation, review under MEPA, and trigger stipulations under Executive Order 12-2015 if proposed in designated sage grouse habitats reflected on the map in Executive Order 21-2015. Similarly, substantive changes to facility operation or expansion of the existing footprint would still require consultation and review under MEPA. Not applying the Executive Order 12-2015 regulatory mechanism to the renewal of MVRD licenses will not lead to increased habitat loss and fragmentation or direct mortality. No new surface disturbance would occur and no substantive change in the facility operation would increase activity in a way that would disturb sage grouse at the point when licenses are renewed under the exact same terms.

If approved by MSGOT, renewal of MVRD licenses would be granted a programmatic exception when no changes to the footprint or terms of operation are sought for approval. Accordingly, proponents would not be required to consult with the Program prior to renewing a license from the Bureau as required by Attachment D in Executive Order 12-2015. This is a specific and narrow exception, applying only to the renewal of this license, not facilities seeking licensure for the first time or facilities seeking substantive amendments to the license that would expand the footprint or change how the facility is operated that would cause new surface disturbance or other noise related disturbance. Both the consultation requirement and stipulations would still apply, as those circumstances would be outside the scope of this exception.


Kootenai National Forest
CABINET MOUNTAINS
LEWIS RANGE
PURCELL MOUNTAINS
Kalispell
Flathead National Forest
Lolo National Forest
St Joe National Forest
Clearwater
Missoula
Helena National Forest
Lewis & Clark National Forest
MONTANA
Malta
Glasgow
Wolf Point
Sidney
Glendive
Deerlodge National Forest
Beaverhead National Forest
Gallatin National Forest
Custer National Forest
Yellowstone National Park
ABSAROKA RANGE
Legend
Sage-grouse (Executive Order Layers)
EO-Connectivity Area
EO-Core Area
EO-General Habitat
Not In EO Area
DEQ Program Interests
Motor Vehicle Wrecking Facility (MVWF)
County Motor Vehicle Graveyard (CMGY)
Solid Waste Management Facility (SWMF)
Septic Pumper Disposal Site (SPDS)
Man-Made Boundaries
Indian Reservations
Counties
Esri, HERE, DeLorme, FAO, NOAA, USGS, EPA, NPS | Montana DEQ

[Handout 4]

MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET

APRIL 19, 2016

AGENDA ITEM: PROGRAMMATIC EXCEPTION FROM CONSULTATION REQUIREMENT FOR MONTANA DEPARTMENT OF LABOR AND INDUSTRY, BUILDING CODES BUREAU

ACTION NEEDED: REVIEW AND APPROVAL

SUMMARY:

Exceptions to Executive Order 12-2015 requirements for Sage Grouse Program consultation for state permitted activities, authorizations, grants, or state technical assistance are approved by the Montana Sage Grouse Oversight Team (MSGOT), not granted by the Sage Grouse Habitat Conservation Program (Program). Executive Order 12-2015 Attachment D sets forth the review process for the sage grouse consultation and stipulations when a proponent seeks a permit, grant or technical assistance from the state. Executive Order 21-2015 designates the sage grouse habitats to which Executive Order 12-2015 applies.

The Montana Department of Labor and Industry Building Codes Bureau (Bureau) authorizes a variety of activities related to buildings, cranes, and blasting operations through either a licensing or permitting process. Applicants for licenses or permits must obtain authorization prior to conducting the activity for the first time and must renew the license or permit at regular intervals if the activity will continue.

In conjunction with the Bureau, the Program reviewed licenses and permits for activities related to buildings, cranes, and blasting and concluded the activity would either: (1) require a new permit but occur in conjunction with a separate activity or license that is already reviewed and permitted or (2) require a license or permit renewal for existing activity that occurs within an already existing building. The specific licenses or permits reviewed are: elevator permit, boiler permit, elevator operator and contractor license, boiler operator license, crane operator license, fire protection license, fireworks sale and distribution permits, mechanical permit, plumbing permit, factory built building permit, and a blaster license.

Because these authorizations occur in conjunction with other infrastructure or activity for which consultation is already required or constitute renewal of a license or permit for existing activity which is already associated with human structures or permitted activity, they are ripe for consideration for an exception to the consultation requirement. For example, when the Bureau considers an application for a new elevator permit, it has already reviewed an application for the building itself where the elevator would be installed and authorized the building. Sage grouse consultation would have occurred for the building permit applicant in the first instance, so consultation for the new elevator permit by a different applicant would be redundant. When the Bureau considers an application for renewing an elevator permit or elevator operator and contractor license, the elevator has already been installed within an existing building. Consultation for license or permit renewals would be burdensome since the structure already exists and the structure itself would have already been reviewed for consistency with Executive Order 12-2015 when it was first proposed and authorization to build was sought.

If approved by MSGOT, the above listed permits and licenses would be granted a programmatic exception. Accordingly, proponents would not be required to consult with the Program prior to obtaining a license or permit authorization from the State Building Codes Bureau as required by Attachment D in Executive Order 12-2015. This is a specific and narrow exception, applying only to these authorizations. See narrative.

PROGRAM RECOMMENDATION:

The Program Manager recommends MSGOT approve a narrow programmatic exception from the Executive Order 12-2015 consultation requirement for elevator permits, boiler permits, elevator operator and contractor licenses, boiler operator licenses, crane operator licenses, fire protection licenses, fireworks sale and distribution permits, mechanical permits, plumbing permits, factory built building permits, and blaster licenses authorized and issued by the Building Codes Bureau.

Sage Grouse Habitat Conservation Program Narrative
Montana Department of Labor and Industry, Building Codes Bureau
Programmatic Exception from Executive Order 12-2015 Consultation Requirements for Certain Licenses and Permits

Taken together, Executive Order 12-2015 and the Sage Grouse Stewardship Act (Act) establish Montana's Conservation Strategy. The Strategy is based on a "Core Areas" approach similar to the State of Wyoming. The Act and Executive Order 12-2015 are key to addressing threats identified by the U.S. Fish and Wildlife Service to sage grouse in Montana by establishing the necessary regulatory mechanisms and addressing threats to the sagebrush habitats relied upon by most of sage grouse populations.

Executive Order 12-2015 only applies to specially designated sage grouse habitats, primarily in central and eastern Montana, as reflected by the map contained in Executive Order 21-2015. Habitats for conserving sage brush and sage grouse have been designated as core areas, general habitat, or connectivity areas.

Executive Order 12-2015 applies to all state agencies and took effect January 1, 2016. It pertains to all programs and activities of state government such as: permitting, licenses, authorizations, grants, technical assistance, and the state's own agency programs like highway planning or management of state trust lands.

The Montana Sage Grouse Oversight Team (MSGOT or Team) guides implementation of Executive Orders 12-2015 and 21-2015. MSGOT was formally created in statute by the 2015 Montana Legislature. The Team is chaired by the Governor's Natural Resource Policy Advisor. Other members are the directors of the Departments of Fish, Wildlife & Parks, Natural Resources and Conservation, Transportation, Environmental Quality, the Administrator of the Montana Board of Oil and Gas, a member of the Montana Rangelands Resources Committee, a member of the Montana Senate, and a member of the Montana House of Representatives.

The role of the Sage Grouse Habitat Conservation Program (Program) is to facilitate implementation of Executive Orders 12-2015 and 21-2015 across state government and with federal agency partners. As outlined in Attachment D, the Program consults with permit applicants and project proponents *before* permit applications are submitted to state agencies to help applicants avoid negative impacts of development in designated sage grouse habitats, minimize impacts, and address compensatory mitigation for impacts that can't be avoided or minimized. The Program's role is one of consultation, not regulation. The Program will make recommendations to the applicant and the permitting agency. The Program is administratively attached to the Department of Natural Resources and Conservation, but reports to MSGOT and the Governor's Office.

The Montana Department of Labor and Industry works to promote and protect Montana workers, employers and citizens. The Building Codes Bureau within the Business Standards Division administers building construction standards and protects the health and safety of the public, employees and building owners.

The Building Codes Bureau oversees a variety of licenses and permits related to buildings, utilities and amenities within buildings, sale for fireworks, manufacturing of buildings within buildings, blasting, and operation of cranes and hoists. In consultation with the Program, the Bureau

identified several permitted or licensed activities that constitute authorizations by the Department. These activities are either associated with buildings (which are themselves permitted separately) or are associated with major construction activities that would also have other required permits.

For the following permits and licenses, the Program recommends MSGOT approve an exception to the consultation requirement of Executive Order 12-2015. This would streamline the applicant's process by eliminating the requirement only where the activity would occur within an existing structure which does not provide sagebrush habitat, would occur concurrent with the Bureau's electrical or building permit process which is not being proposed for exception, or would occur in conjunction with major construction projects which would have already been reviewed.

Associated with Buildings: The Building Codes Bureau (Bureau) within the Business Standards Division of the Montana Department of Labor and Industry is responsible for a variety of permits and licenses primarily associated with residential or commercial buildings within its jurisdictional authority, not to include currently Certified Local Government Programs (Locally Approved Jurisdictions). At the threshold level, the Bureau has licensing and permitting processes where it reviews and approves new electrical systems and new buildings. New proposed buildings are typically also reviewed by other state agencies for siting considerations or various other required permits. Thereafter, utilities or amenities which may be incorporated into the design and infrastructure of new buildings are also subject to separate authorizations by the Bureau to obtain a license or permit for the activity.

In conjunction with the Bureau, the Program reviewed the following licenses or permits to determine the appropriateness of a narrow programmatic exception from the consultation requirements of Executive Order 12-2015.

- **Elevator Permit:** Permit to install an elevator inside a new or existing building. (MCA § 50-60-709). (ARM 24.301 Subchapter 6).

- **Boiler Permit:** Permit (certificate) for a boiler. (MCA § 50-74- parts 1-3) (ARM 24.301 Subchapter 7).

- **Elevator Operator and Elevator Contractor License:** License to operate an elevator and license to maintain and repair elevators. Issuance and renewals are based on operator and contractor qualifications, experience, etc. The Bureau issues elevator operator and elevator contractor licenses on approval to conduct the work of the trade. (MCA § 37-73 parts 1 & 2) (ARM 24.142 Subchapters 3, 4, 5, 21, & 24).

- **Boiler Operator License:** License to operator and maintain boilers. License issuance and renewals are based on operator qualifications, experience, etc. The Bureau issues the boiler operator licenses on approval to conduct the work of the trade. (MCA § 50-74- parts 1-3) (ARM 24.122 Subchapters 3, 4, &5).

- **Fire Protection License:** License to install and maintain fire protection systems like sprinkler systems, fire extinguishers, etc. License issuance and renewals are based on the technician qualifications, endorsements, etc. The Bureau issues fire protection licenses on approval to conduct the work of the trade. (MCA § 50-39 Parts 1&2) (ARM 24.144 Subchapters 3, 4, 5, & 21).

- **Mechanical Permit:** Permit to operate and maintain HVAC, heating system, air conditioning system, oxygen system (e.g. hospital setting). (MCA § 50-60-203) (ARM 24.301.172).

- **Plumbing Permit:** Permit to install plumbing. Plumbing permits are typically issued for new or existing buildings inside and up to 2 feet outside the perimeter of the structure. (MCA § 50-60 part 5) (ARM 24.301 Subchapter 3).

Urban and infrastructure development has been identified as a threat to sage grouse due to loss or fragmentation of habitat. Building new buildings (infrastructure) in cities, exurban areas, or rural areas is a permitted activity which falls within the ambit of Executive Order 12-2015 and would require consultation with the Program prior to permit issuance. Any stipulations from Executive Order 12-2015 would grow out of consultation when the permit was first sought and would have been incorporated into the building permit. Once the building is in place, these specific licenses or permits do not create new infrastructure and would not exacerbate the threat of infrastructure-induced habitat loss and fragmentation. The licensed or permitted activity would occur and would be wholly contained within the building (or would occur concomitant with the building being built in the first instance in the case of a blasting license or a crane operator license).

The Program has determined that the above licenses or permits should be granted a narrow exception to the consultation requirement of Executive Order 12-2105 because the permitted or licensed activity will not exacerbate threats to sage grouse.[1] While the U.S. Fish and Wildlife Service identified exurban development, infrastructure, and other anthropogenic disturbances as important threats, these particular licenses and permits are either associated with buildings that existed when Executive Order 12-2105 became effective on January 1, 2016, or would be reviewed by the Program anyway, concurrent with reviewing permit for proposed new buildings.

Issuing these selected licenses or permits in the first instance (i.e. a new permit) or renewing them will not increase exurban development, infrastructure, or other anthropogenic disturbances in and of themselves. The key consultation on sage grouse would actually <u>precede</u> the consultation requirement for these particular licenses or permits – consultation would occur at the time a new building or electrical system is proposed and reviewed through the new building or electrical permitting process for projects proposed within designated habitats reflected on the map in Executive Order 21-2015.

For example, when the Bureau considers an application for a new elevator permit, it has already reviewed an application for the building itself where the elevator would be installed and authorized the building. Alternatively, the Bureau would review a new building permit simultaneously with a new elevator permit. In either circumstance, sage grouse consultation would have occurred for the building permit in the first instance so consultation for the new elevator permit by a different applicant would be redundant. The applicant for a building permit can be a different individual from the applicant for one of the above licenses or permits. When the Bureau considers an application to renew an elevator permit or elevator operator and contractor license, the elevator has already been installed within an existing building. Consultation for license or permit renewals would be burdensome since the structure already exists and the structure itself would have already

[1] *See* 80 Fed. Reg. 59858 (Oct. 2, 2015) (U.S. Fish and Wildlife Service 12-month finding that listing of the greater sage grouse range wide is not warranted). S*ee also* U.S. U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. February 2013 (pp 16, 17, 18, 23).

been review for consistency with Executive Order 12-2015 when it was first proposed and authorization to build was sought.

Not applying the Executive Order 12-2015 regulatory mechanism to the above listed permits will not lead to increased habitat loss and fragmentation because Program review for the building permit itself is a separate process and would not be exempted under this proposal. New buildings would still require consultation and are not proposed for exception from the consultation requirements of Executive Order 12-2015. The listed licenses or permits also will not cause direct mortality of sage grouse. No new surface disturbance would occur and no substantive change would occur in the activity or location of the disturbance that would not have already been reviewed by the Program.

If approved by MSGOT, the above listed permits and licenses would be granted a programmatic exception. Accordingly, proponents would not be required to consult with the Program prior to obtaining a license or permit authorization from the State Building Codes Bureau as required by Attachment D in Executive Order 12-2015. This is a specific and narrow exception, applying only to these authorizations, not applications for new electrical or building permits in the first instance. Building and electrical permits would still require consultation and be subject to stipulations of Executive Order 12-2015.

Associated with Fireworks Retail Sale: The Bureau issues a permit for retail sale and distribution of fireworks. Permits are issued on approval for the right to sell and/or distribute fireworks in Montana for private retail and professional fireworks display purposes. (MCA § 50-37 Part 1) (ARM 24.144 Subchapter 6).

In conjunction with the Bureau, the Program reviewed the fireworks retail sale and distribution permit to determine the appropriateness of a narrow programmatic exception from the consultation requirements of Executive Order 12-2015. As above, retail sale and distribution of fireworks is an activity which occurs within the footprint of existing human development patterns – cities, towns, exurban areas surrounding the incorporated limits of municipalities.

The Program has determined that a permit to sell and distribute fireworks should be granted a narrow exception from the consultation requirement of Executive Order 12-2105 because the permitted activity will not exacerbate threats to sage grouse.[2] The key focus for sage grouse conservation and addressing threats to habitat is not the actual sale or distribution of fireworks within existing human developed areas. The key focus with respect to threats to sage grouse habitat is actually new land development, which would trigger the consultation process through other necessary permits and licenses authorized by other state agencies. Overseeing zoning and land development patters is also an important role of local governments.

While the U.S. Fish and Wildlife Service identified exurban development, infrastructure, and other anthropogenic disturbances as important threats alongside conversion, issuing or renewing a permit to sell and distribute fireworks will not exacerbate threats due to habitat loss and fragmentation. The location where the transaction would occur and the structure itself with

[2] *See* 80 Fed. Reg. 59858 (Oct. 2, 2015) (U.S. Fish and Wildlife Service 12-month finding that listing of the greater sage grouse range wide is not warranted).). *See also* U.S. U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. February 2013 (pp 16, 17, 18, 23).

respect to habitat is important. Here, the structure where fireworks are sold occurs within existing patterns of urban and exurban development. These areas do not provide suitable habitat in the first instance. Not applying the Executive Order 12-2015 regulatory mechanism to the issuance or renewal of fireworks sale permits will not lead to increased habitat loss and fragmentation or direct mortality. The licensure process is meant to authorize retail activity.

If approved by MSGOT, fireworks sale and distribution licenses would be granted a programmatic exception. Accordingly, proponents would not be required to consult with the Program prior to obtaining a license from the State Building Codes Bureau as required by Attachment D in Executive Order 12-2015. This is a specific and narrow exception, applying only to this license, not land development to build new structures (which would require consultation and be subject to stipulations of Executive Order 12-2015).

Factory Built Building Permit and Insignias: The Bureau permits the construction of factory-built buildings (i.e. construction activity occurs within a factory). Factory Built Buildings are not necessarily location dependent as they are typically approved when being built at a factory. Once all inspections are performed and passed by the inspector, the structure is permitted with an Insignia and Insignia Number, at which time the structure is approved and could potentially be shipped anywhere in Montana for use. (MCA § 50-60 part 4) (ARM 24.301 Subchapter 5).

In conjunction with the Bureau, the Program reviewed the factory-built building permit and insignia to determine the appropriateness of a narrow programmatic exception from the consultation requirements of Executive Order 12-2015. Similar to the discussion above, factory-built building permits would be an activity occurring within existing factories, which themselves occur within the footprint of existing human development patterns – cities, towns, exurban areas surrounding the incorporated limits of municipalities.

The Program has determined that factory-built building permit should be granted a narrow exception from the consultation requirement of Executive Order 12-2105 because the permitted activity will not exacerbate threats to sage grouse.[3] The key focus for sage grouse conservation and addressing threats to habitat is not the construction of factory-built buildings within an existing building. The key focus with respect to threats to sage grouse habitat is actually new land development to build the factory, which is outside the scope of this proposed exception. Further, building a new factory or manufacturing facility would trigger the consultation process through other necessary permits and licenses authorized by other state agencies.

While the U.S. Fish and Wildlife Service identified exurban development, infrastructure, and other anthropogenic disturbances as important threats alongside conversion, issuing or renewing a permit to construct buildings within a factory will not exacerbate threats due to development. Here, the factory itself is already within existing patterns of urban and exurban development. The key focus with respect to threats to sage grouse habitat is where the new building would be actually sited on the landscape, which itself triggers consultation through other state agencies and local governments. Not applying the Executive Order 12-2015 regulatory mechanism to the issuance or

[3] *See* 80 Fed. Reg. 59858 (Oct. 2, 2015) (U.S. Fish and Wildlife Service 12-month finding that listing of the greater sage grouse range wide is not warranted). *See also* U.S. U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. February 2013 (pp 16, 17, 18, 23).

renewal of factory-built building permits will not lead to increased habitat loss and fragmentation or direct mortality. No new surface disturbance would occur.

If approved by MSGOT, factory built building permits would be granted a programmatic exception. Accordingly, proponents would not be required to consult with the Program prior to obtaining a permit from the State Building Codes Bureau as required by Attachment D in Executive Order 12-2015. This is a specific and narrow exception, applying only to this permit, not land development where the newly constructed building would be sited.

***Blaster License*:** The Bureau licenses individuals who undertake blasting operations within construction zone settings. (MCA § 37-72 parts 1-2) (ARM 24.131 Subchapter 3, 4, & 5). Examples may include building demolition or removing earth and rock during highway construction projects. The federal government also regulates blasting. The Bureau provides new blaster licenses and renews licenses based on the applicant's qualifications, experience, etc. The Bureau issues applicable blaster licenses on approval to conduct the work of the trade.

In conjunction with the Bureau, the Program reviewed the blaster license to determine the appropriateness of a narrow programmatic exception from the consultation requirements of Executive Order 12-2015. Similar to the discussion above, a blaster license would occur in conjunction with other major activity that would have already undergone sage grouse consultation.

The Program has determined that the blaster license should be granted a narrow exception from the consultation requirement of Executive Order 12-2105 because the licensed activity will not exacerbate threats to sage grouse.[4] The key focus for sage grouse conservation and addressing threats to habitat is not the actual blaster license. The key focus with respect to threats to sage grouse habitat is actually where the blasting would occur and when it would occur. Blasting would occur in association with major construction activity, not as an isolated or stand-alone activity. The scale of construction activity which would require blasting is large enough that the project would have already triggered the sage grouse consultation requirements through other state agencies, including the Department in the case of a new building permit. Furthermore, these project areas are not likely to offer suitable sage grouse habitat in the first instance. Blasting would be reviewed in conjunction with the larger project for which permits are already required. Applicants seeking a blaster license are authorized for blasting only and are different individuals from the primary project developers who are required to obtain permits for the project as a whole.

While the U.S. Fish and Wildlife Service identified exurban development, infrastructure like roads, and other anthropogenic disturbances as important threats alongside conversion, standing alone, the issuance or renewal of a license to blast will not exacerbate threats due to human development. Not applying the Executive Order 12-2015 regulatory mechanism to the issuance or renewal of blaster licenses will not lead to increased habitat loss and fragmentation or direct mortality.

If approved by MSGOT, a blaster license would be granted a programmatic exception. Accordingly, proponents would not be required to consult with the Program prior to obtaining a license from the State Building Codes Bureau as required by Attachment D in Executive Order 12-2015. This is a specific and narrow exception, applying only to this license, not to the construction projects where

[4] *See* 80 Fed. Reg. 59858 (Oct. 2, 2015) (U.S. Fish and Wildlife Service 12-month finding that listing of the greater sage grouse range wide is not warranted). *See also* U.S. U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. February 2013 (pp 16, 17, 18, 23).

blasting would occur (which would require consultation and be subject to stipulations in Executive Order 12-2015).

Crane Operator License: The Bureau licenses individuals to operate crane and hoist equipment used in industrial or construction operations. (MCA § 50-76 Part 1) (ARM 24.135 Subchapters 3, 4, 5 & 21). The Bureau provides new licenses and license renewals based on operator qualifications, experience, etc. The Bureau issues applicable crane operator licenses on approval to conduct the work of the trade.

In conjunction with the Bureau, the Program reviewed the crane operator license to determine the appropriateness of a narrow programmatic exception from the consultation requirements of Executive Order 12-2015. Similar to the blaster license discussion, a crane or hoist operation would occur in conjunction with other major activity that would have already undergone sage grouse consultation.

The Program has determined that the crane operator license should be granted a narrow exception from the consultation requirement of Executive Order 12-2105 because the licensed activity will not exacerbate threats to sage grouse.[5] The key focus for sage grouse conservation and addressing threats to habitat is not the actual crane operation. The key focus with respect to threats to sage grouse habitat is actually where the construction or industrial site is located. Cranes would be operated in association with major construction activity, not as an isolated or stand-alone activity. The scale of construction or industrial activity which would require a crane is large enough that the project would have already triggered the sage grouse consultation requirements through other state agencies. Crane operation would be reviewed in conjunction with the larger activity, for which permits would already be required.

While the U.S. Fish and Wildlife Service identified exurban development, infrastructure like roads, and other anthropogenic disturbances as important threats, standing alone, a license to blast will not exacerbate threats due to human development. Not applying the Executive Order 12-2015 regulatory mechanism to the issuance or renewal of a crane operator license will not lead to increased habitat loss and fragmentation or direct mortality. No new surface disturbance would occur as a result of the operation of a crane itself.

If approved by MSGOT, a crane operator license would be granted a programmatic exception. Accordingly, proponents would not be required to consult with the Program prior to obtaining a license from the State Building Codes Bureau as required by Attachment D in Executive Order 12-2015. This is a specific and narrow exception, applying only to this license, not to the construction projects where cranes and hoists would be operating (which would require consultation and be subject to stipulations of Executive Order 12-2105).

[5] *See* 80 Fed. Reg. 59858 (Oct. 2, 2015) (U.S. Fish and Wildlife Service 12-month finding that listing of the greater sage grouse range wide is not warranted). *See also* U.S. U.S. Fish and Wildlife Service. 2013. Greater Sage-grouse (*Centrocercus urophasianus*) Conservation Objectives: Final Report. U.S. Fish and Wildlife Service, Denver, CO. February 2013 (pp 16, 17, 18, 23).

[Handout 5]

MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET
APRIL 19, 2016

AGENDA ITEM: DEVIATION FROM EXECUTIVE ORDER 12-2105 "NO SURFACE OCCUPANCY" STIPULATION FOR MONTANA DEPARTMENT OF TRANSPORTATION HIGHWAY 12 ROSEBUD COUNTY LINE EAST RECONSTRUCTION

ACTION NEEDED: REVIEW AND AUTHORIZATION

SUMMARY:

Proposals to deviate from Executive Order 12-2015 stipulations are reviewed and authorized by MSGOT, not the Sage Grouse Habitat Conservation Program (Program).

In 1999, Montana Department of Transportation (MDT) began planning efforts to reconstruct a 10.8 mile segment of Highway 12 near the boundary between Rosebud and Musselshell Counties. MDT completed an environmental analysis, and it was approved by the Federal Highway Administration in February, 2005. Funding to move the project forward recently became available.

The reconstruction work will address concerns about the existing road sloughing into Home Creek, the negative impacts to the riparian area and creek, and road encroachment into the floodplain. About 1400 feet of the channel was affected. Restoring Home Creek to its historic channel location, the creation of wetlands, restoration of the riparian area and associated wetlands, and the elimination of two bridges was incorporated into the project design.

The entire length of the project occurs within either a Core Area (the majority) or General Habitat. Of the 9.2 miles occurring in Core habitat, about 0.15 mile of the existing road is within the 0.6 mile no surface occupancy buffer (NSO) of an active lek. Under the proposal, the linear pavement distance within the NSO will increase to about 0.40 miles and affect 5.7 acres within the 0.6 mile NSO buffer. This segment occurs between mile markers 216 and 217.

Between 14.1 and 17 acres of new impact will occur. About 14.5 acres of within-project mitigation will be completed: restoration of native vegetation in the existing roadway obliteration area, restoration of 1400 feet of Home Creek's original channel, and development of about two new acres of wetlands.

The Sage Grouse Program reviewed the entire project, with particular attention paid to the proposed entry into the lek NSO. The Program also applied the density disturbance calculation tool to the portion of the project occurring in the Core Area. The proposed disturbance will not exceed the maximum 5% allowable. The Program has carefully weighed the planning history, the proposed disturbance, landscape attributes, biological factors, and mitigation. The Program also obtained input from Montana Fish, Wildlife & Parks.

The Program concludes the proposed project will not cause a sage grouse decline in this area. The within-project mitigation will offset new surface disturbance caused by the realignment. Further, MDT committed to limiting construction activity and avoid working between 6:00 pm and 8:00 am from March 1 to July 15 for the portion of the project in the Core Area that occurs within the lek NSO between mile markers 216 and 217, pursuant to other Executive Order 12-2015 stipulations.

PROGRAM RECOMMENDATION:

The Program Manager recommends MSGOT authorize a deviation from Executive Order 12-2015 "no surface occupancy" stipulation for Montana Department of Transportation for the Highway 12 Rosebud County Line East project segment between mile markers 216 and 217 so long as MDT implements the planned within-project mitigation measures, restores vegetation cover, and observes seasonal stipulations.

Sage Grouse Habitat Conservation Program Project Consistency Review Summary

Montana Department of Transportation Highway 12 Rosebud County Line East Project

In 1999, Montana Department of Transportation (MDT) began planning efforts to reconstruct a portion of a segment of Highway 12 near the boundary between Rosebud and Musselshell counties (Rosebud County Line East). See Figure 1. The project begins at 0.46 miles southwest of the Musselshell River in Musselshell County at mile marker 206.7 and extends easterly into Rosebud County for 10.8 miles to mile marker 217.5. The location is T10N, R31E, Sections 13, 14, 15, and 21 and T10N, R32E, Sections 7-12.

Between mile marker 206.7 and 208.1, the project occurs on the border between a Core Area and General Habitat and extends into General Habitat. This portion of the project (General Habitat) will be a full reconstruction and replacement of the bridge over the Musselshell River. The remainder of the project from mile marker 208.1 to 217.5 is in a Core Area. See Figure 2.

MDT proposes to completely reconstruct the existing roadway and slightly expand the finished top width from 24 feet to 28 feet. Between mile marker 216.1 (NE ¼ section 12, T10N, R32E) and 217.5 (NW ¼ section 7, T10N, R 33E), the new road surface will be shifted about 250 feet north to avoid and minimize impacts to a wetland area fed by natural springs and Home Creek. This shift to the north also avoids and minimizes impacts to about 1400 feet of the Home Creek stream channel and eliminates the need for two bridges or culverts. It also avoids impacts within the delineated flood plain of Home Creek.

Presently, about 0.15 mile of the existing roadway is within the Core Area 0.6 mile no surface occupancy (NSO) of a lek classified as "active" by Montana Fish, Wildlife & Parks (MFWP). With the new alignment footprint, approximately 0.40 mile of pavement will occur within the NSO. The new construction limit will extend into the southern portion of the NSO about 275 feet, which places the lek within 0.5 miles of the new highway footprint. The new alignment will result in 14.1 acres of new impacts within the construction limit, 5.7 acres of which will be within the NSO.

MDT completed an environmental analysis, and it was approved by the Federal Highway Administration in February, 2005. The reconstruction work will address concerns about the existing road sloughing into Home Creek, the negative impacts to the riparian area and creek, and road encroachment into the floodplain. About 1400 feet of the Home Creek channel was affected. Restoring Home Creek to its historic channel location, the creation of wetlands, restoration of the riparian area and associated wetlands, and the elimination of two culverts was incorporated into the project design from the outset.

About 14.5 acres of total mitigation will be completed within the area south of the alignment shift between mile marker 216.1 and 217.4 in the area corresponding with the existing roadway. See Figure 2. This within-project mitigation effort will: restore native vegetation in the existing roadway obliteration area along with noxious weed control; restore about 1400 feet of Home Creek's original channel; and develop about two acres of wetlands. In addition through time, vegetation will regrow along the restored channel and create a more fully developed riparian area. Wetlands and riparian areas associated with perennial creeks provide valuable seasonal habitats for sage grouse and other wildlife species in sagebrush – grassland habitat types.

Funding to move the project forward recently became available, and the project was submitted to the Sage Grouse Program for review in February 2016. See below for a complete timeline provided by MDT.

The Sage Grouse Program reviewed the entire length of the project for consistency with the stipulations outlined in Executive Order 12-2015. The Program broke the analysis into segments (Core Area and General Habitat). Additional analysis was conducted for the portion in the Core Area, with particular attention to the proposed entry into the lek NSO in the Core Area between mile maker 216.1 and 217.4.

For the portion of the project within General Habitat, there are no active leks within two miles. Based on the Program's review for consistency with Executive Order 12-2015, it is recommended that MDT revegetate any disturbed areas with native species and consult with landowners for the desired seed mix for any portions of the project involving private land. Additionally, the Program recommends that reclamation of disturbed areas also include noxious weed control. Particular attention should be placed on avoiding use of and controlling invasive species, including cheatgrass (*Bromus tectorum*) and Japanese brome grass (*Bromus japonicas*).

For the portion of the project within a Core Area, three active leks were identified. See Figure 3. Three leks are located within 0.44 (the NSO lek), 2.07, and 3.38 miles from the highway, respectively.

The Program applied the density disturbance calculation tool (DDCT) to the segment of the project occurring in the Core Area. The Program estimates the new disturbance would result in about 1.63% new surface disturbance in the DDCT analysis area. The proposed disturbance will not cause the total disturbance in the analysis area to exceed the maximum 5% allowable under Executive Order 12-2015. However, the proposal includes new permanent surface disturbance and occupancy within the NSO of one active lek, which is not consistent with Executive Order 12-2015 (see Core Area Stipulations, Surface Occupancy, paragraph 2, page 13).

Both MDT and the Program consulted with the local MFWP wildlife biologist. U.S. Highway 12 currently sustains significant traffic. The landscape terrain in the localized area of the NSO lek and the lek to the west (and north of mile marker 213) will limit the noise and provide a visual barrier between the pavement, construction activities, and the leks.

In consultation with the Program, MDT has agreed to implement mitigation strategies such as construction timing restrictions for the portion of the Core Area project segment that would occur between mile markers 216 and 217. No construction activity would occur between 6:00 pm and 8:00 am from March 1 to July 15 to minimize noise and visual disturbance at the perimeter of the NSO lek and the lek to the west. Additionally, disturbed areas will be reclaimed and noxious weeds would be controlled similar to the General Habitat segments. Particular attention should be placed on avoiding use of and controlling invasive species, including cheatgrass (*Bromus tectorum*) and Japanese brome grass (*Bromus japonicas*).

Montana's Conservation Strategy requires implementation of the mitigation hierarchy (or sequencing) where proponents should first avoid impacts by avoiding new development in Core Areas when possible and then minimize the impacts that can't be avoided through project design and stipulations. Reclamation and restoration of impacts follows next. Lastly, compensatory mitigation (or offsets) may be required for remaining impacts that were not avoided, minimized, and reclaimed. These principles are embodied and stated in Executive Order 12-2015, the Montana Sage Grouse Stewardship Act (MCA § 76-22-101 *et seq*.), and outlined in greater detail in the U.S. Fish and Wildlife Service Greater Sage Grouse Mitigation Framework (Sept. 2014).

Here, MDT is proposing work on Highway 12 within the existing disturbed footprint right of way for the majority of the length of the project. Based on a recommendation in 2000, MDT incorporated a realignment of the road for the segment between mile marker 216.1 and 217.4 to

address issues with the highway sloughing, Home Creek and incorporate wetland restoration into the project. This shifts the highway footprint about 250 feet to the north of the existing footprint. In doing so, about 0.15 mile of the highway will pass within the lek NSO. Full avoidance is not possible due to the need to address highway safety and issues with Home Creek. MDT proposes to minimize impacts by observing timing restrictions for construction activity. MDT proposes to reclaim and restore the area through its revegetation efforts, and restoring 1400 feet of the Home Creek channel. Additionally, 2 acres of wetlands will be newly created.

The Program has carefully weighed the planning history, the proposed disturbance, landscape attributes, biological factors, and MDT's observance and implementation of the mitigation hierarchy. The Program considered the mitigation measures MDT already incorporated into the project design to restore Home Creek and create 2 acres of wetlands. The Program also considered the fact that the brand new surface disturbance is limited to about a mile of the entire project length, and itself, will continue to be associated with a busy state highway. The length of the portion that would go through the NSO is even shorter.

The Program concludes the proposed project will not cause a sage grouse decline in this area. Within-project mitigation measures will result in long term restoration of the creek bottom and associated wetland and riparian areas. Further, MDT commitments to implement the seasonal timing restrictions and other stipulations from Executive Order 12-2015 should minimize disturbance during the nesting and early brood rearing season, as well as revegetate disturbed soils and control noxious weeds in the future with routine maintenance.

The Program recommends MSGOT authorize a deviation from Executive Order 12-2015 "no surface occupancy" stipulation for Montana Department of Transportation for the Highway 12 Rosebud County Line East project segment between mile markers 216 and 217, so long as MDT implements the planned within-project mitigation measures, seasonal timing stipulation, fully reclaims disturbed soils with appropriate plant species and address noxious weeds and invasive species through time.

Rosebud County Line – East
Control Number: 4060
Project History Prepared and Contributed by Montana Department of Transportation

- March 2, 1999 - Project originally programmed
- March 20, 1999 – Preliminary Field Review Report
    - States the alignment should be shifted to minimize impacts to Home Creek channel.
- March 21, 2000 – Environmental Document (Categorical Exclusion)-draft
    - *"The proposed movement of the new road to a location north of the historic Home Creek channels will enable MDT to restore the creek to the historic channel location. New flow due to the proposed project will potentially increase the functionality of the two wetlands."*
- October 27, 2000 – Alignment and Grade Report
    - *"The new alignment will transition from 20m right to 65m left [Home Creek]…..This will accommodate the restoration of Home Creek to its original channel and eliminate two (2) structures."*
- July 20, 2001 – Scope of Work Report
    - *"The new alignment will transition from 20m right to 65m left [Home Creek] with reverse curves having radii of 3650m. This will accommodate the restoration of Home Creek to its original channel and eliminate two (2) structures." "The existing roadway will be obliterated in this area which will allow for the channel restoration and the development of new wetlands."*
    - *"Larry Sickerson [MDT Glendive District Biologist] indicated alignment adjustments at Sra. 169+65 to Sta. 174+30 [Home Creek Mitigation area] should been more clearly documented as a credit to avoid and minimize the wetland and stream impacts. By way of this memo, consider those credits as part of the SOW memo."*
- March 22, 2002 – Plan-In-Hand Report
    - Shift in alignment to north shown on plans to allow for the channel restoration and the development of new wetlands along Home Creek.
- May 20, 2002 – Environmental Document (Categorical Exclusion)-draft
    - *"The proposed movement of the new road to a location north of the historic Home Creek channels will enable MDT to restore the creek to the historic channel location." "The proposed design will significantly reduce encroachment of the roadway on the Home Creek floodplain relative to the encroachment of the existing roadway to that floodplain."*
- January 7, 2004 – Environmental Document (Categorical Exclusion)-draft
    - *"The proposed movement of the new road to a location north of the historic Home Creek channels will enable MDT to restore the creek to the historic channel location." "The proposed design will significantly reduce encroachment of the roadway on the Home Creek floodplain relative to the encroachment of the existing roadway to that floodplain."*

- February 3, 2005 - Environmental Document (Categorical Exclusion)– final sent to Federal Highway Administration (FHWA)
    - Signed by FHWA on February 7, 2005
- September 21, 2012 – Scope of Work Addendum Report
    - *In 2006, the consultant requested MDT terminate their contract. At that time MDT decided to complete the design in-house.*
    - *A value analysis study was completed in May 2012. The accepted recommendations included moving the Musselshell River Bridge and the roadway alignment to the south side of the PTW. The project design will also be converted from metric to English. These changes were documented in this report. Home Creek mitigation area remained the same.*
- February 9, 2016 – Scope of Work Addendum Report
    - The new paved roadway width is being modified from 30 feet to 28 feet.
    - Home Creek mitigation area remains unchanged.
- February 9, 2016 – Scope of Work Addendum Report Comments/Responses
    - This project was formally submitted to the Montana Sage Grouse Habitat Conservation Program on February 19, 2016 for their review and consideration in accordance with the Governor's executive order on Sage Grouse which went into effect January 1, 2016. This action was undertaken because a majority of this project lies within designated core habitat for the Greater Sage Grouse, including a small portion within a No Surface Occupancy zone [Home Creek mitigation area].

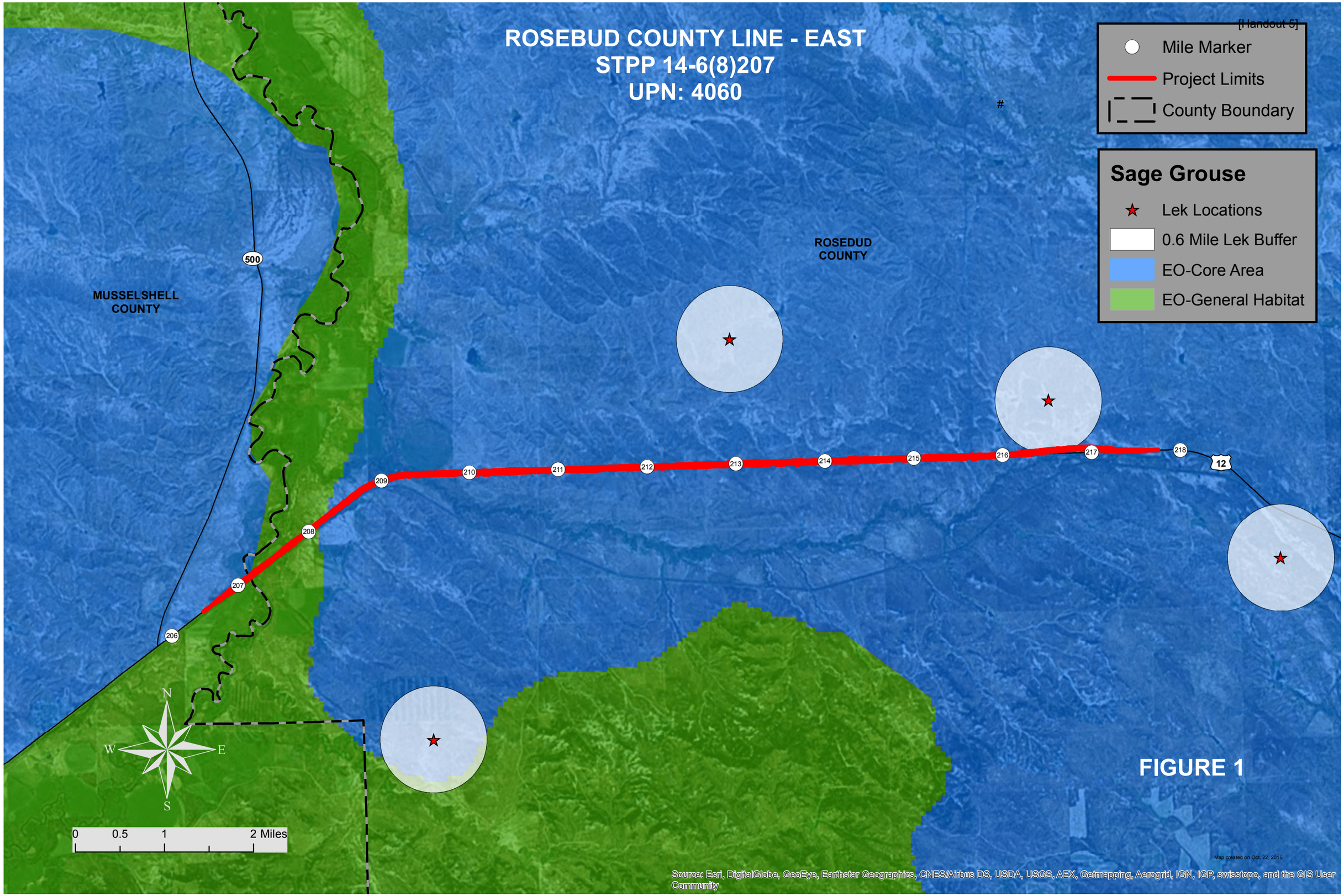
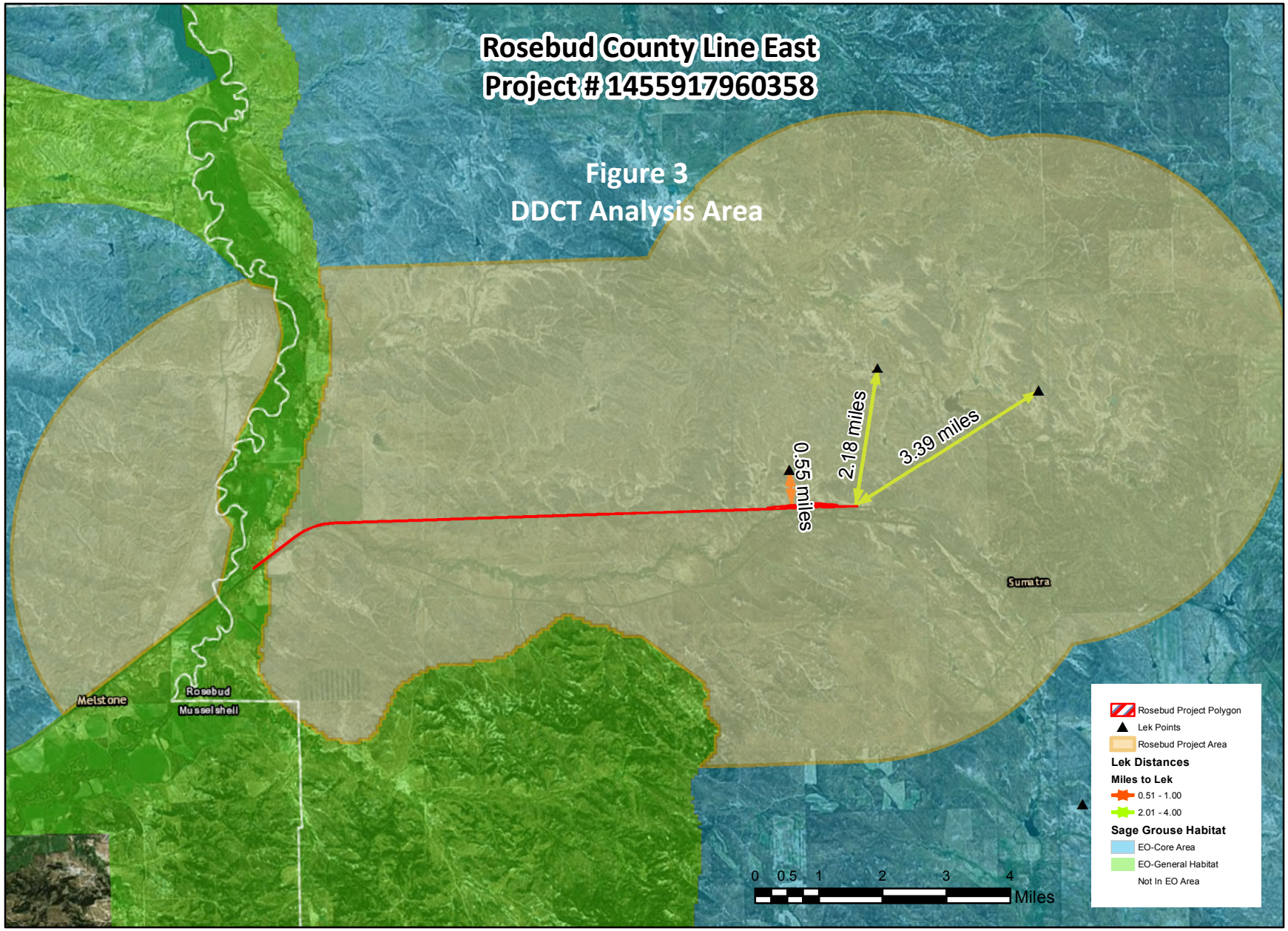
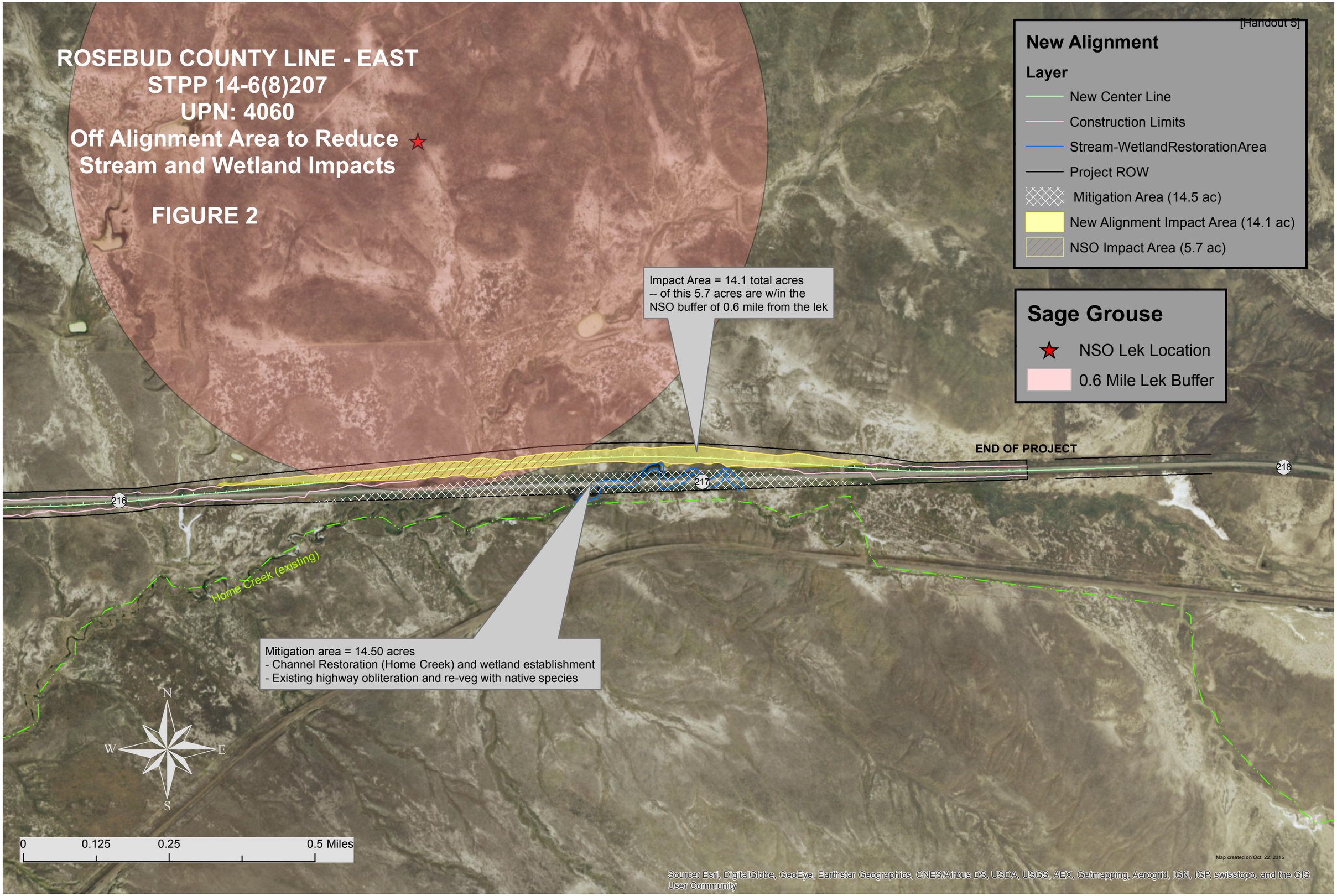

[Handout 5]
ROSEBUD COUNTY LINE - EAST
STPP 14-6(8)207
UPN: 4060
Mile Marker
Project Limits
County Boundary
Sage Grouse
Lek Locations
0.6 Mile Lek Buffer
EO-Core Area
EO-General Habitat
ROSEDUD COUNTY
MUSSELSHELL COUNTY
500
12
206
207
208
209
210
211
212
213
214
215
216
217
218
N
W
E
S
0
0.5
1
2 Miles
Map created on Oct. 22, 2015
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

FIGURE 1


Rosebud County Line East
Project # 1455917960358
Figure 3
DDCT Analysis Area
0.55 miles
2.18 miles
3.39 miles
Melstone
Rosebud
Musselshell
Sumatra
Rosebud Project Polygon
Lek Points
Rosebud Project Area
Lek Distances
Miles to Lek
0.51 - 1.00
2.01 - 4.00
Sage Grouse Habitat
EO-Core Area
EO-General Habitat
Not In EO Area
0 0.5 1 2 3 4
Miles


[Handout 5]
ROSEBUD COUNTY LINE - EAST
STPP 14-6(8)207
UPN: 4060
Off Alignment Area to Reduce
Stream and Wetland Impacts
FIGURE 2
New Alignment
Layer
New Center Line
Construction Limits
Stream-WetlandRestorationArea
Project ROW
Mitigation Area (14.5 ac)
New Alignment Impact Area (14.1 ac)
NSO Impact Area (5.7 ac)
Sage Grouse
NSO Lek Location
0.6 Mile Lek Buffer
Impact Area = 14.1 total acres
-- of this 5.7 acres are w/in the
NSO buffer of 0.6 mile from the lek
END OF PROJECT
216
217
218
Home Creek (existing)
Mitigation area = 14.50 acres
- Channel Restoration (Home Creek) and wetland establishment
- Existing highway obliteration and re-veg with native species
N
W
E
S
0
0.125
0.25
0.5 Miles
Map created on Oct. 22, 2015
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Montana Department of Transportation (MDT)

Rosebud County Line East Project # 1455917960358

Density Disturbance Calculation Tool Explanation and Results

DDCT Analysis Area Acres	Total Preliminary Disturbance Acres	Total Disturbed Acres in DDCT Analysis Area[1]	DDCT Result	New Disturbed Acres[2]	Affected Leks within DDCT Analysis Area
86093	**92**	**1407**	**1.63%**	**17**	**3**

Analysis Process and General Definitions followed by an example using the Rosebud County Line East Project

Existing Disturbances: All surface disturbances existing on the ground prior to any *Proposed Disturbances* that would be created by a new project.

→ All surface disturbances existing on the ground before MDT submitted the Rosebud Project to the Projects On-line Tool.

Preliminary Disturbances: all surface disturbances associated with a project as submitted to the Projects On-line Tool.

→ MDT Rosebud Project is the disturbance footprint of the highway proposed for reconstruction.

Total Preliminary Disturbance Acres: The number of acres contained within the entire polygon(s) delineating the disturbance area of a proponent's project.

→ The total number of acres contained within the polygon MDT provided to the Program (92 acres).

[1] This value may include unsuitable habitat, such as water and cultivated crops. The DDCT analysis area is largely comprised of range land and has small amounts of land in cultivate crops in the western portion.
[2] This result is slightly higher than MDT's prediction of 14.1 acres in Figure 2, based on slight differences in existing disturbance data used by the Program and data provided by MDT. MDT slightly under mapped, and then slightly underestimated the acres of new disturbance. The difference between 14.1 acres and 17 acres does not significantly affect the total percent disturbance.

Previously Proposed Disturbances: All *Preliminary Disturbances* proposed by other people prior to the current *Preliminary Disturbance* being submitted. Once a *Preliminary Disturbance* is finalized, the disturbance becomes an *Existing Disturbance*.

→ Disturbances proposed by other proponents that were submitted for review before MDT submitted the Rosebud Project and that have not been finalized.

DDCT Analysis Area Acres: The number of acres within a polygon created by the following steps:

1. Map the *Preliminary Disturbance* polygon submitted by proponent (MDT).
2. Classify the habitat where MDT's proposed *Preliminary Disturbance* would occur: core area, general habitat, connectivity area, outside the Executive Order (none of the above). May include unsuitable habitat.
3. Buffer MDT's *Preliminary Disturbance/s* that would only occur in core habitat by four miles.
4. Look to see if the 4-mile buffer includes any active leks.
5. If yes, buffer those leks by four miles and add the acres to the polygon.
6. Remove any portion of the polygon that is not classified as core habitat so the DDCT Analysis Area only contains acres in core habitat.
7. Finalize the polygon. This is the DDCT Analysis Area polygon.
8. Calculate the number of acres in the DDCT analysis area polygon.

→ Rosebud Project DDCT Analysis Area is 86,093 acres total, shown as the two tan areas in Figure 3.

Total Disturbed Acres in DDCT Analysis Area: The total number of acres of disturbance within the DDCT Analysis Area polygon: all *Existing Disturbances* + *Previously Proposed Disturbances* + current *Preliminary Disturbance.*

→ Total number of acres of *Existing Disturbance* + acres of disturbance proposed by other people and already submitted to the Projects On-Line Tool (but not yet finalized and incorporated into Existing Disturbance) + MDT Rosebud project disturbance of 92 acres.

DDCT Result: The *Total Disturbed in DDCT Analysis Area* acres divided by the *DDCT Analysis Area* acres x 100 to determine the percent disturbance which is compared to Executive Order 12-2015 5% disturbance threshold for core areas.

→ (1407 / 86,093) x 100 = 1.63%

New Disturbed Acres: the total of new ground disturbance as a result of the project. This is portion of *Preliminary Disturbances* that do not overlap with already *Existing Disturbances* or *Previously Proposed Disturbances*. Acres are calculated from the resulting polygon, which is all new ground disturbance.

→ Implementation of the Rosebud Project would result in 17 acres of new surface disturbance. This closely approximates MDT's prediction of 14.1 acres. The difference is due to the need to resolve MDT's submitted data with the Program's existing disturbance layer. The Program is including the complete footprint of the new road alignment whereas the data submitted by MDT did not map a small sliver of land that will be incorporated into the new road alignment. The difference of 2.9 acres is not significant as the DDCT Result of 1.63% new disturbance is well below the allowable threshold of 5%.

Affected Leks within DDCT Analysis Area: The total number of leks where any portion of the No Surface Occupancy area is within the *DDCT Analysis Area*.

→ Three affected leks occur within MDT's DDCT Analysis Area. See Figure 3.

Lek Distances: The shortest distance between the *Preliminary Disturbance* and any active leks with 4 miles of the *Preliminary Disturbance*.

→ The shortest distance between MDT's Preliminary Disturbance (the highway reconstruction footprint) and the three leks within the DDCT Analysis Area is 0.55, 2.18, and 3.39 miles, respectively. See Figure 3.