



MONTANA ASSOCIATION OF LAND TRUSTS



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Timber Company

Ducks Unlimited

January 22, 2016

Montana Sage Grouse Oversight Team

Comments on Sage Grouse Stewardship Fund Grant Program
Proposed Rule, Proposed Grant Application and Associated Documents

Dear MSGOT,

The members of the Montana Association of Land Trusts (MALT) applaud your efforts to create and implement the Sage Grouse Stewardship Grant Program and advance conservation projects that benefit sage grouse and foster Montana's commitment to maintain management authority of this species.

It has been a long road to get to this point. MALT and its members have been working as part of the Montana Sage Grouse Habitat Conservation Advisory Council since 2013 and we continue to view this ongoing effort as one of the most important wildlife management issues in Montana.

Before we comment directly on the draft sage grouse program rule and grant application, it would be helpful to place these land trust comments and this grant program in context.

Montana is unique among the 11 western states that contain sage grouse in that here in Montana the majority of birds and majority of core sage grouse habitat are found on private land. That fact presents challenges and opportunities. From day one, MALT has strongly advocated that voluntary, incentive-based programs for landowners to engage in private land conservation form the basis of Montana's sage grouse effort, and this grant program is the leading edge of that concept. This grant program is essential to Montana's sage grouse conservation program, vital to our voluntary incentive-based commitment to landowners, and critical to Montana's determination to retain state sage grouse primacy now and far into the future.

It is important to emphasize the overarching goals of Montana's sage grouse conservation efforts – by both the Governor and the Montana Legislature – have always been to “develop policies and actions for a statewide strategy to preclude the need to list sage grouse under the ESA...” now and in the future.

The beauty of the sage grouse statute, the proposed rule and proposed grant program is that they all embrace existing property right law so landowners have the freedom to pick from a range of conservation options and self-determine which option is best for their financial situation, their family, their property and their ranch operation. Or self-determine that no option fits their ranch operation. That freedom of options...and those property rights...are essential components of this grant program and to our goal of sage grouse conservation and continued state authority for sage grouse management.

Keep in mind the US Fish and Wildlife Service recently reached a decision that the sage grouse was not warranted for ESA listing. There were many reasons for that decision, and among them were Montana's intent to adopt an overall sage grouse conservation program and specifically implement this proposed sage grouse grant program.

Finally, as we examine this proposed grant program, we'd like to relay a thought from grant program managers in Wyoming. As you know, Montana ultimately opted to largely follow Wyoming's model of sage grouse conservation, and when we asked Wyoming grant program staffers for advice these three comments were consistent: Make your grant program flexible, make it adaptive, and make it landowner friendly.

The proposed Montana sage grouse grant program rule is obviously very general and essentially says, "read the statute." While the statute is deliberately direct, detailed and comprehensive, we would call your attention to MCA 72-22-110, Part 1(m), which after the list of specifically identified proposals the grant may fund, also states the grant program may fund "other project proposals that the oversight team determines are consistent with the purposes of this part." Within the statute, within this proposed rule, and within the proposed grant program, we hope you see the clear intention of creating a program that is flexible and adaptive.

Overall, we view this proposed draft grant rule and associated grant program documents as a good start. The rule and associated documents do an admirable job of reflecting the Governor's and Legislature's intent of creating a voluntary incentive-based sage grouse grant program to help Montana retain state primacy over sage grouse management. Land trust practitioners – who will actually be filling out the proposed application – may also provide additional comments before Jan. 22.

On page 1 there is a statement that an application does not constitute a consultation with MSGOT. While that statement refers more to permit requirements and other aspects of the state's sage grouse program, it suggests a negative tone within the specific grant application. A repeated refrain in these land trust comments will be to incorporate Wyoming's encouragement to make the program – and thus this application and associated documents – more landowner friendly. On page one we would encourage you to up front invite informal consultation with prospective applicants and to set a tone early in the application process that the grant program encourages applications and program participation. Specifically, this grant program is highly dependent on landowner engagement and active participation. Overall, Montana's full sage grouse conservation program is dependent on landowner engagement and active participation. We encourage you to reflect that reality early and often throughout the application and throughout all other program documents.

On page 2 it states it is anticipated there will be two grant application deadlines, one in the spring and one in the fall. We urge you to have more frequent – perhaps quarterly – deadlines to help facilitate a consistent flow of projects applications, project decisions and project awards.

On pages 1 and 2 the application encourages applicants to read at least six different documents before submitting an application. It would make a lot of sense for all of these documents to be easily found and easily downloaded from the state's grant program website.

We are pleased to see the statute's comprehensive menu of specific eligible proposals to address sage grouse threats is fully identified within the grant application starting on page 5.

We applaud the sage grouse program's commitment to transparency, to public disclosure and regular reporting of program activities and success. Broad public awareness of this program, and broad public participation in this program, should be viewed as program goals and program accomplishments.

We support the application's consistent direct requests to obtain full and precise information about how the application will specifically address identified threats to sage grouse habitat and sage grouse populations together with full identification of the benefits that would result from successful implementation of the proposed project. That clearly makes the application consistent with the statute and the intent of Montana sage grouse conservation priorities.

On the bottom of page 9 the same information is duplicated.

On page 11, in the lease/conservation easement project cost and budget matrix there are categories in (b) and (c) that are not typically costs associated with leases or easements. A typical easement or lease proposal would leave those application sections blank. Another approach may be to create a third category named "lease/conservation easement and restoration/enhancement costs" for those proposed easements that include those or other components.

We support the application's strong attempts to obtain complete funding and budget information within the application. It is essential these valuable grant program dollars are targeted to viable and implementable projects that specifically accomplish the clear priority goals of the program and the state.

Page 13 is the first place the concept of ranking proposals is referenced. We urge MSGOT to develop a ranking tool or matrix that can be used by MSGOT staff and members to rank or score applications. Such a ranking matrix would also help applicants to self-evaluate their applications, which could help them incorporate provisions to strengthen or expand their applications. As page 13 states, projects unlikely to be implemented should clearly be given a lower priority, or even no priority. Conversely, projects that provide a wide range of sage grouse conservation benefits in core areas, that clearly reduce or eliminate identified threats, that provide these benefits or reduce these threats permanently or long-term, that bring strong partnerships and significant matching funds, that bring comprehensive monitoring and enforcement mechanisms, should receive a higher priority, perhaps even the highest priority.

We also believe that any conservation easement funded under this program should have a component that prohibits conversion of native grassland to cropland. Cropland conversion is a major threat to sage grouse habitat and sage grouse populations, and allocating valuable state funding to easements that do not have a provision prohibiting this conversion is shortsighted. This cropland conversion prohibition is essential.

On page 14 the concept of a "pre-application process" is introduced. Some county open land grant programs utilize a pre-application process with success, but its value within this program is dubious. Rather than a formally identified and formatted pre-application process, land trusts advocate an informal and more cordial series of conversations among potential applicants and MSGOT staff.

The Acknowledgement section on page 15 reads almost like a warning. We would encourage you to review the language and tone of this section, together with a review of the entire document, to be more responsive to landowner interests and concerns. The goal of the program is to invite strong applications, generate strong voluntary sage grouse conservation and to ensure the public's funds are strategically targeted to accomplish clear program goals. That can be clearly stated in a less ominous fashion than currently exists within the documents.

We agree the state's third-party enforcement rights must be clearly stated within the terms of any conservation easement funded under this program. There are ways to make the statement "with the contingent right to enforce the terms of the lease or easement if the grantee fails to do so" more descriptive of the word "contingent" and provide the landowner assurance the state is not an adversary and is not actively seeking to take unexpected action to enforce the easement.

Here is recommended third party enforcement language that protects the states rights and interests, and also provide some assurances to the landowner:

Third Party Right of Enforcement Held by State -- If State determines that a violation of the terms of this Conservation Easement has occurred and that Grantee has failed or will fail to enforce the terms of this Conservation Easement, State shall give written notice to Grantor and Grantee [in accordance with the terms of this Conservation Easement] of the specifics of the violation and the necessary corrective action. If Grantor fails to cure the violation or Grantee fails to enforce the terms of this Conservation Easement, within forty-five (45) days after receipt of notice from State, or under circumstances where the violation cannot reasonably be cured within the forty-five (45) day period fails to make good faith efforts to initiate and pursue the requested corrective action within the forty-five (45) day period, State, at its expense, shall have the right to enforce the terms of this Conservation Easement. If State determines that circumstances require immediate action to prevent, terminate or mitigate significant damage to the Conservation Values of the Property, or to prevent, terminate or mitigate a violation of this Conservation Easement, State may pursue

its remedies under this section without prior notice to Grantor and Grantee and without the need of waiting for the period provided for cure to expire.

Outside of the application and the conservation easement itself, the proposed application refers to “other agreements” as stipulations for ultimate application approval. We are unclear what these agreements may contain, but we encourage MSGOT to make these documents landowner friendly, ensure all potential documents are plainly and clearly understood by all parties well before the application is submitted, and make certain that nothing within this application process comes as a surprise to any party after the initial application is submitted.

We understand MSGOT is poised to consider adoption of the proposed grant program rule during a Feb. 19 meeting. We urge MSGOT to consider also adopting the grant application and associated documents as well on Feb. 19 to assist the state get the grant program up and running and producing the beneficial conservation results the program was created to generate.

Again, we encourage MSGOT to advance the grant program, and as it does so to be flexible enough to adjust and adapt its processes and documents as it gains program insights and sophistication.

Finally, it is vitally important that MSGOT and this grant program work cooperatively with the NRCS and its Sage Grouse Initiative and its Agricultural Conservation Easement Programs. The need for these programs to work in harmony is imperative, and enabling these programs to mesh brings significant opportunity for dynamic sage grouse conservation and enhanced incentives for landowners.

Thank you for the opportunity to comment, and MALT and its membership look forward to working with MSGOT, its staff, landowners and project partners to ensure this grant program accomplishes the important goals set forth by the Governor and the Legislature.

Sincerely,

A handwritten signature in blue ink that reads "Glenn Marx". The signature is written in a cursive, slightly slanted style.

Glenn Marx
Montana Association of Land Trusts