



Office of the Governor

STATE OF WYOMING
EXECUTIVE DEPARTMENT
EXECUTIVE ORDER

Order 2018-3

Compensatory Mitigation Credit Provider Approval Process

WHEREAS, the State of Wyoming has management authority over the Greater sage-grouse (*Centrocercus urophasianus*); and

WHEREAS, the State of Wyoming continues to be committed both logistically and financially to conserving the Greater sage-grouse; and

WHEREAS, the United States Fish and Wildlife Service in 2015 determined that the Greater sage-grouse does not warrant protections under the Endangered Species Act due to implementation of effective conservation efforts, including Federal and State plans such as Wyoming's Core Area Strategy embodied in Executive Order 2015-4, Greater Sage-Grouse Core Area Protection; and

WHEREAS, the United States Fish and Wildlife Service's decision recognized that the adoption by federal land management agencies of Wyoming's Core Area Strategy increased the efficacy of Wyoming's Strategy; and

WHEREAS, the United States Fish and Wildlife Service's decision recognized that Wyoming's Core Area Strategy directs projects to areas that will avoid impacts, includes stipulations to minimize indirect effects, and if necessary, requires mitigation to benefit the species; and

WHEREAS, Wyoming's Core Area Strategy, Attachment H, recognized that compensatory mitigation is an essential component of a long-term conservation strategy and can occur "on-site" or "off-site;" and

WHEREAS, Wyoming's Core Area Strategy, Attachment H, recognized that compensatory mitigation occurring off-site should meet the complete life-cycle needs of the species, be secured for an adequate time to assure the replacement of resources that are lost as a result of any negative action impacting the species, be critically evaluated to provide adequate biological

Executive Order 2018-3

Page 1 of 4

assurances that the initial impact, and any associated mitigation will maintain the species and its habitat until the impact has been removed and the species is recovered at the sight of impact, and must provide an adequate ratio of assurance that the conservation of the species will not be compromised due to the failure of compensation measures to adequately protect the species, including management changes, natural disasters, and other impacts; and

WHEREAS, Wyoming's Core Area Strategy, Attachment H, recognized that any compensatory mitigation proposal must include approval from the State of Wyoming to assure the species considered is adequately protected, and that the benefits proposed for a species under the jurisdiction of the State of Wyoming are real, adequate, and fully realized prior to the time of acceptance; and

WHEREAS, the State of Wyoming has developed a Revised Greater Sage-Grouse – Compensatory Mitigation Framework setting the standards that conservation and restoration credit providers must meet before the credits are accepted by the State of Wyoming; and

WHEREAS, the Wyoming Wildlife and Natural Resource Trust Account Board (Board) has authority to receive and evaluate applications for small project grants and may participate with for profit corporations to develop wildlife habitat without diverting financial resources, and

WHEREAS, further direction is necessary to outline the process a potential credit provider must go through before the State of Wyoming will approve a provider's compensatory mitigation proposal.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Laws of the State, I, Matthew H. Mead, Governor of the State of Wyoming, do hereby issue this Executive Order providing as follows:

I. Pre-Screening Review Process

- A. The Wyoming Game and Fish Department (Department) will serve as the initial point of contact for potential conservation and restoration credit providers seeking approval for a compensatory mitigation proposal under the State of Wyoming's Revised Greater Sage-Grouse – Compensatory Mitigation Framework (Framework). The Department will establish necessary forms and checklists with the advice of the Sage-Grouse Implementation Team and the Board, and make the documents and appropriate contact information available on the agency's website.
- B. Potential credit providers will first submit to the Department for review a Credit Provider Pre-Screening Worksheet (Pre-Screening Worksheet). Within 14 days the Department shall review the Pre-Screening Worksheet and provide comments back to the potential credit provider. The Department may consult any State or Federal agency necessary for furthering the review processes outlined in this Executive Order. These reviews are intended to identify potential issues early in the process so that they may be addressed as soon as practicable.

II. Informal Review Process

- A. If the potential credit provider wishes to proceed after reviewing the Pre-Screening Worksheet with the Department, the potential credit provider will submit a draft Prospectus and draft Compensatory Mitigation Project Agreement (Agreement) to the Department to initiate the informal review process. The Agreement, once finalized, is a legal agreement between the potential credit provider, landowner(s) and the Board that identifies the conditions and criteria under which credits will be established and maintained. The Agreement must demonstrate compliance with all components of the Framework and, at a minimum, shall:
1. Contain information on how credits will be established and quantified, the exact legal location of the credits, and the service area to which the credits may be applied;
 2. Outline the potential credit provider's plan for how credits will be managed, monitored, secured, protected, and, in the event of default, replaced;
 3. Identify requirements such as environmental contaminant surveys and appropriate monitoring programs; and
 4. Include a long-term management plan identifying any habitat or other management activities to maintain or enhance the bank, the endowment necessary and financial plan to carry out such management, activities and access allowed to occur on the credit provider property, and monitoring and reporting requirements for the management objectives.
- B. Within 28 days, the Department shall review the draft Prospectus and draft Agreement on the matters within the agency's expertise and provide recommendations and comments to the potential credit provider. The Department will also coordinate as necessary with the Board and other State and Federal agencies possessing expertise on the matters addressed within the draft Prospectus and Agreement and forward any recommendations or comments to the potential credit provider.
- C. Once the Department determines that the draft Prospectus and draft Agreement are technically complete, it will schedule a meeting between the potential credit provider and the Compensatory Mitigation Oversight Group (CMOG). The CMOG shall consist of staff from the Department, Wyoming Governor's Office, the Board, Wyoming Office of State Lands and Investments, Wyoming Oil and Gas Conservation Commission, Wyoming Department of Environmental Quality, Wyoming Department of Agriculture, and pursuant to a Memorandum of Understanding entered between State and Federal agencies, the United States Department of the Interior Bureau of Land Management and Fish and Wildlife Service and the United States Department of Agriculture Forest Service and Agriculture Natural Resources Conservation Service. The CMOG shall have at least 28 days to review the draft Prospectus and draft Agreement before meeting with the potential credit provider. During the review period, the CMOG may request additional information and provide recommendations and comments as appropriate. Within 14 days after meeting with the potential credit provider, the CMOG shall determine whether the draft Prospectus and draft Agreement comply with the Framework and sufficiently

contain the information required in paragraph II(A) above. The CMOG shall then make a written recommendation to the Board for final approval.

III. Formal Review Process

- A. After completing the informal review process outlined above, the potential credit provider shall submit to the Department its final Prospectus and final Agreement. The Department will then forward the final Prospectus and final Agreement, along with the written recommendation of the CMOG, to the Board.
- B. In exercising its authority to participate with for profit corporations to develop wildlife habitat, the Board shall review the final Prospectus and final Agreement along with the written recommendation of the CMOG as a small project application at its next regularly scheduled meeting. A representative from the CMOG shall present the findings of the CMOG to the Board. The potential credit provider may also present information to the Board. Due to the inability of the Board to divert financial resources to a for-profit corporation, any fees and costs incurred by the Board exclusively in the performance of these duties shall not be paid from the proceeds of the Wyoming Wildlife Natural Resources Trust Account, but shall be paid by the potential credit provider.
- C. The Board may approve the final Prospectus and final Agreement if it determines that the documents comply with the Framework. If the Board determines that the documents do not comply with the Framework, the Board shall refer the matter back to the CMOG for further review and resubmission to the Board for final action.

IV. Effect of Final Approval

- A. All State agencies required to review permit applications for compliance with Executive Order 2015-4, Greater Sage-Grouse Core Area Protections, shall accept credits from Greater sage-grouse compensatory mitigation credit providers approved by the U.S. Fish and Wildlife Service before the date of this Executive Order or the credit providers approved by the Board after the date of this Executive Order, should the State permitting agency determine that compensatory mitigation credits are required.

This Executive Order shall become effective upon signing and shall remain effective until amended or revoked.

Given under my hand and the Executive Seal of the State of Wyoming this 23 day of July, 2018.


Matthew H. Mead
Governor