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STATE OF NEVADA
Sagebrush Ecosystem Program

**SAGEBRUSH ECOSYSTEM COUNCIL
STAFF REPORT
MEETING DATE: May 18th, 2018**

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TO: Sagebrush Ecosystem Council Members

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SUBJECT: Treatment of Anthropogenic Disturbances Resulting from Federal Land Management Agencies' Land Use Allocation Exceptions in the CCS

SUMMARY

Land uses not allocated within GHMA or PHMA can potentially be authorized through an exceptions process by Federal Land Management Agencies. The State Plan has a robust Exemption process to "Avoid" anthropogenic disturbances, but does not address Exceptions, in part due to the absence of land authorization authorities on public lands. These unallocated land uses are perceived by the SETT as less likely to occur with frequency, and appear to include less site dependent projects. These attributes may have led to their exclusion from allocated uses by the federal agencies. To increase deterrence, avoidance, and co-location of disturbances in GRSG habitat, one option the SEC may want to consider is a higher debit site management importance factor within the Habitat Quantification Tool (HQT) for impacts in PHMA or GHMA from projects authorized through an Exceptions process. Potential language to address this consideration is included and could be inserted into the State Plan and CCS Manual, if adopted.

BACKGROUND

Land uses not allocated within GHMA or PHMA in the USFS Land Management Plan Amendment and the BLM's Approved Resource Management Plan Amendment (ARMPA) and recent draft amendment may be authorized to move forward by meeting the relevant exception process criteria.

The 2014 Greater Sage-Grouse Conservation Plan (State Plan) is relevant as follows:

The State Plan lacks guidance on "exceptions" but does feature a robust "exemption" process in Section 3.1.2 Conservation Policies – "Avoid, Minimize, Mitigate". However, this policy has not been implemented to date.

Despite offering a strong platform for avoidance that has yet to be implemented, the State Plan did not support the idea of exclusion areas such as the Sage-grouse Focal Areas (SFAs). Instead, the State Plan infers that when the Avoidance procedure is implemented and an Exemption is authorized, mitigation would be conducted through the Conservation Credit System, thereby making exclusion areas unnecessary.

The purpose of this item is to determine if these projects should be treated differently within the CCS when Exceptions are authorized that have direct, indirect, or cumulative impacts to GRS habitat.

Certain land uses were not allocated by the BLM within GHMA or PHMA due to reduced site dependence and the ability to avoid in most cases. (Table 2-1 derived from the RMPA/DEIS page 3; land uses are defined in Appendix 1 on the last page)

These land use allocations are found within Table 2-1 on pages 2-4 in the recent BLM draft amendment. The *No Action Alternative* column represents the current ARMPA and *Management Alignment, Preferred Alternative* column represents the preferred alternative in the draft amendment:

Table 2-1

Comparative Summary of Alternatives		No Action Alternative	Management Alignment, Preferred Alternative*
Comparative Summary of Habitat Management Areas (Acres)			
Priority Habitat Management Area (PHMA) (see Figures 2-1a and 2-1b)		9,309,800 acres (2,797,400 portion of PHMA that is designated as SFA)	9,265,800 acres
General Habitat Management Area (GHMA) (see Figures 2-1a and 2-1b)		5,720,700 acres	5,748,000 acres
Other Habitat Management Area (OHMA) (see Figures 2-1a and 2-1b)		5,876,500 acres	4,868,900 acres
Comparative Summary of Land Use Plan Allocations			
Land Tenure (see Figures 2-12a and 2-12b)	Retain	PHMA, GHMA, OHMA	PHMA, GHMA, OHMA
	Dispose	OHMA	OHMA
Solar (see Figures 2-9a and 2-9b)	Open	-	-
	Avoidance	-	-
	Exclusion	PHMA, GHMA, OHMA	PHMA, GHMA, OHMA
Wind (see Figures 2-8a and 2-8b)	Open	OHMA	OHMA
	Avoidance	GHMA	GHMA
	Exclusion	PHMA	PHMA
Minor ROWs (see Figures 2-11a and 2-11b)	Open	OHMA, GHMA	OHMA, GHMA
	Avoidance	PHMA	PHMA
	Exclusion	-	-
Major ROWs (see Figures 2-10a and 2-10b)	Open	OHMA	OHMA
	Avoidance	PHMA, GHMA	PHMA, GHMA
	Exclusion	-	-
Fluid Minerals (Oil, Gas, and Geothermal) (see Figures 2-4a and 2-4b)	Open with Standard Stipulations	OHMA	OHMA
	Open with Minor Stipulations	GHMA	GHMA
	Open with Major Stipulations	PHMA	PHMA
Locatable Minerals (see Figures 2-5a and 2-5b)	Open	PHMA, GHMA, OHMA	PHMA, GHMA, OHMA
	Recommended for Withdrawal	Portion of PHMA that is SFA is Recommend for Withdrawal	-
Salable Minerals (see Figures 2-6a and 2-6b)	Open	GHMA, OHMA	GHMA, OHMA
	Closed	PHMA	PHMA
Non-Energy Leasable Minerals (see Figures 2-7a and 2-7b)	Open	GHMA, OHMA	GHMA, OHMA
	Closed	PHMA	PHMA
Comprehensive Travel Management (see Figures 2-13a and 2-13b)	Open	OHMA	OHMA
	Limited	PHMA, GHMA	PHMA, GHMA
	Closed	-	-
Livestock Grazing (see Figure 2-3a and 2-3b)	Available	PHMA, GHMA, OHMA	PHMA, GHMA, OHMA
	Not Available	-	-

* Land use allocation categories are also described in more detail on the last page.

The BLM language on exceptions to land use allocations in the draft amendment on pages 2-11 to 2-13 follows:

“In PHMA and GHMA, the State Director may grant an exception to the land use plan allocations and stipulations described in Section 2-5 if one of the following applies (in coordination with NDOW, SETT, and/or CDFW):

- i. The location of the proposed authorization is determined to be unsuitable (by a qualified biologist with GRSG experience using methods based on Stiver et al 2015); lacks the ecological potential to become marginal or suitable habitat; and would not result in direct, indirect, or cumulative impacts on GRSG and its habitat. Management allocation decisions would not apply to those areas determined to be unsuitable because the area lacks the ecological potential to become marginal or suitable habitat;*
- ii. Impacts from the proposed action could be offset through use of the mitigation hierarchy (avoid, minimize, mitigate) to achieve a net conservation gain and demonstrate that the individual and cumulative impacts of the project would not result in habitat fragmentation or other impacts that would cause GRSG populations to decline.*
- iii. The proposed action would be authorized to address public health and safety concerns, specifically as they relate to local, state, and national priorities.*
- iv. Renewals or re-authorizations of existing infrastructure in previously disturbed sites or expansions of existing infrastructure that have de minimis impacts or do not result in direct, indirect, or cumulative impacts on GRSG and its habitat.*
- v. The proposed action would be determined a routine administrative function conducted by State or local governments, including prior existing uses, authorized uses, valid existing rights and existing infrastructure (i.e. rights-of-way for roads) that serve such a public purpose.*
- vi. Exceptions to lands that are identified for retention in Figure 2-12b would be considered for disposal or exchange if they were identified for disposal through previous planning efforts, either as part of the due process of carrying out Congressional Acts (e.g., the respective Lincoln and White Pine County Conservation, Recreation, and Development Acts) and the agency can demonstrate that the disposal, including land exchanges, would have no direct or indirect adverse impact on conservation of the GRSG or can achieve a net conservation gain through the use of compensatory mitigation.”*

Considerations

Land uses not allocated within GHMA or PHMA represent those lacking valid existing rights, and thus, mitigation has in the past been able to be required for these actions. Within the recent BLM draft amendment, potential exceptions may include some actions with unlikely impacts or *de minimis* impacts (*i.* and *iv.*) and others that may or may not pose impacts to GRSG habitat (*iii.*, *v.*, and *vi.*). According to the draft amendment, mitigation resulting in a net conservation gain could allow for exceptions (*ii.* and *v.i.*). This exception is likely to be applied when the other exceptions do not apply to proposed projects in these areas. In addition to allocated land uses causing disturbance, when exceptions to unallocated land uses are made, mitigation through the CCS may not adequately address these potential disturbances..

DISCUSSION

Although many actions likely to impact GRSG habitat were allocated for authorization on BLM and USFS lands, certain land uses were to be closed, excluded, or avoided within GHMA or PHMA. However, the exceptions process drafted by the BLM can potentially allow any project to move forward, provided that mitigation is accomplished. State agency personnel recently met via conference call and discussed the need for further deterrence based on the avoidable and less site dependent nature of these unallocated actions. This may be necessary to ensure they are appropriately avoided at a level equivalent with the intent of the exemptions process within the State Plan. One example that the SEC may want to consider is a 0.1 increase in the debit site management importance factor being applied on impacts from exceptions to PHMA or GHMA. This change would likely support additional avoidance, deterrence, and co-location. Projects that ultimately move forward would do so while accomplishing mitigation that results in a greater net conservation gain. This change may also be viewed as a greater regulatory assurance in future listing decisions. If a policy were to be adopted, it should be considered for implementation regardless of which exceptions process is used by federal land management agencies.

If additional policy were to be adopted, similar language could be added to the State Plan in Section 3.1.2 Conservation Policies – “Avoid, Minimize, Mitigate”:

When the BLM or USFS grant an exception to land use allocations that are generally to be avoided, excluded, or closed that lead to anthropogenic disturbances in GRSG habitat, the Habitat Quantification Tool (HQT) will be used to assess the impacts of actions considered anthropogenic disturbances in the CCS. Routine maintenance will often be considered de minimus within the CCS, but at the least reviewed in consultation with the SETT. Local government projects related to public safety, emergencies, and projects mandated by a regulatory authority may also be deemed as de minimus activities. Federal land use allocations planned for exclusion or avoidance that are authorized through an exceptions process will be calculated with a 0.1 increase in the debit site management importance factor applied to PHMA or GHMA...

If new policy is adopted by the SEC, other significant changes are likely necessary in this section (3.1.2) of the State Plan and may be necessary regardless. As stated, some of the existing policies discussed in this section of the State Plan have yet to be fully implemented as outlined.

If new policy is adopted, the following are examples of changes that could be added to the CCS Manual in Section 2.2.2 Mitigation and Proximity Ratios:

Modifications to Debit Site Management Importance Factors

When the BLM or USFS grant an exception to land use allocations that are generally to be avoided, excluded, or closed that lead to anthropogenic disturbances and impacts to GRSG habitat, impacts will be assessed and quantified with a 0.1 increase in the debit site management importance factor applied on impacts to PHMA and GHMA.

Table 7: Modified Debit Site Management Importance Factor Values
When Exceptions to Land Use Allocations are Granted by Federal Agencies

Category	Factor Value
PHMA	1.35
GHMA	1.25

The language and table will be added to Section 2.2.2 of the CCS Manual under the existing table shown below (current mitigation factor values).

Debit Site Management Importance Factor Values

Category	Factor Value
PHMA	1.25
GHMA	1.15
OHMA	1.05

Appendix 1: Descriptions on Land Use Plan Allocation Categories

Comprehensive Travel Management – A designated route system where all forms of travel are limited to routes that are identified on travel maps and posted as routes on the ground (for recreation or private land or industry access); allows the BLM to manage and maintain resources while allowing for travel.

Fluid Minerals (Oil, Gas, and Geothermal) – Oil, gas, and geothermal infrastructure.

Land tenure – Land ownership.

Locatable Minerals – Mineral Acquisition by the location and maintenance of lode and placer mining claims as are relevant to the Mining Law of 1872, as amended. These mineral deposits include most metallic mineral deposits and certain non-metallic and industrial minerals.

Major ROWs – Authorization to use a specific piece of public land for any high voltage transmission line that is >100 kV, a major pipeline (transporting water and/or natural gas) that is ≥24- inch diameter, or wind energy.

Minor ROWs – Authorization to use a specific piece of public land for any project below the thresholds for Major ROWs.

Non-Energy Leasable Minerals – Most of the minerals leased under this program are used to make fertilizer or feed stock (mineral supplement for livestock) or have a use in other industrial process. Examples include sodium, potash, phosphate, sulfur.

Salable Minerals – Minerals of relatively low value per volume such as sand, gravel, cinders, common building stone, and flagstone.