

R634. Natural Resources, Administration.

R634-3. Compensatory Mitigation Program.

R634-3-1. Authority and Purpose.

(1) Under authority of Utah State Code Section 79-2-501 et. seq., this rule establishes the State of Utah's Compensatory Mitigation Program, including procedures for implementing the program to mitigate for permanent disturbances to greater sage-grouse (hereafter sage-grouse) habitat in Utah.

(2) This rule incorporates the conservation strategies contained in the "Conservation Plan for Greater Sage-grouse in Utah".

(3) Sage-grouse habitat in Utah is naturally fragmented due to topography, encroachment of conifer trees, fire, and invasive weeds such as cheat grass. Human-related activities have also contributed to habitat fragmentation. Research conducted on sage-grouse in Utah has clearly demonstrated that the species is space-limited and responds positively when new habitat is created. This compensatory mitigation program will be used to increase space (i.e., habitat) for greater sage-grouse, connect disjointed habitat by creating corridors, and protect occupied habitat. Acres of habitat lost and created will be the measure used to guide the implementation and track the success of the program in Utah. Other programs in Utah, including the Watershed Restoration Initiative, Sage-grouse Initiative and the Grazing Improvement Program, conduct projects to improve the quality of the habitat. The lessons learned from those programs will guide the implementation of this rule.

R634-3-2. Program Goals.

(1) The Compensatory Mitigation Program seeks to offset the impacts of permanent disturbances to sage-grouse habitat in Utah by

(a) encouraging responsible economic development through avoiding and minimizing permanent disturbance within sage-grouse habitat, when possible, and thereby maintaining the distribution of sagebrush habitats within Sage-grouse Management Areas (SGMAs) in Utah; and

(b) providing Compensatory Mitigation resulting in an increase to or protection of habitat to offset the impacts from Permanent Disturbance in sage-grouse habitats within Utah.

(2) The Program strives to be consistent, where practical, with county plans for Sage-grouse that include a compensatory mitigation strategy.

R634-3-3. Definitions.

(1) "Agreement Fee" means a sum of money set by the Legislature and paid by a Credit Provider upon entering into a Term Mitigation Agreement or Conservation Bank Agreement with the Department to offset the Department's costs in administering the Agreement.

(2) "Application Fee" means a sum of money set by the Legislature and paid by an applicant to the Department to offset the cost of processing a compensatory mitigation application submitted to the Department.

(3) "Area of Permanent Disturbance" means the area within a spatial polygon circumscribing the actual permanently disturbed area directly impacting sage-grouse or its habitat.

(4) "Baseline" means the pre-existing condition of a defined

project area, prior to commencing any Credit Generation Project.

(5) "Bank Manager" means the person(s) or entity responsible for managing the Bank Property and implementing the terms and requirements contained in the Conservation Bank Agreement for the long-term conservation of sage-grouse habitat.

(6) "Bank Property" means permanently protected real property included in or devoted to the development of a Conservation Bank.

(7) "Compensatory Mitigation" means the restoration or establishment of sage-grouse habitat or permanent protection of existing occupied habitat to offset the unavoidable adverse impacts which remain following permanent disturbance to sage grouse habitat.

(8) "Compensatory Mitigation Program" means the sage-grouse habitat mitigation program created by Title 79, Chapter 2, Part 5 of the Utah Code and this Rule.

(9) "Conservation Bank" means a site or suite of sites of at least 640 contiguous acres established under a Conservation Bank Agreement with the Department that provides ecological functions and services for sage-grouse, expressed as Credits that are conserved and managed in perpetuity and used to offset impacts to sage-grouse habitat expressed as Debits, occurring elsewhere.

(10) "Conservation Bank Agreement" means the legal document for the establishment, operation and use of a conservation bank.

(11) "Conservation Easement" means an easement, covenant, restriction, or condition in a deed, will, or other instrument signed by or on behalf of the record owner(s) of the underlying real property and is an interest in land that runs with the land benefited or burdened by the easement for the purpose of preserving and maintaining land as sage-grouse habitat or Corridors. To be valid, a Conservation Easement must comply with the "Land Conservation Easement Act" in Utah State Code, Title 57 Chapter 18, as amended, which terms and requirements are incorporated herein by reference.

(12) "Corridor" means an area of land that facilitates sage-grouse movement between two or more areas of Occupied Habitat containing less than 1% canopy cover in conifers and at least 15% ground cover in perennial grasses, shrubs, and forbs, and is at least 100 acres in size with a width of at least 2000 feet.

(13) "Credit" means an acre of Functional Habitat or Corridor lands created or restored or an acre of Occupied Habitat preserved by a Credit Provider that may be transferred to a Credit Buyer to offset impacts of Permanent Disturbances and which represents the value in Compensatory Mitigation activities.

(14) "Credit Buyer" means any person who purchases Credits to offset the impacts of permanent disturbance to sage-grouse habitat.

(15) "Credit Exchange Service" means a tool created by the Department to track the development, maintenance and transfer of Credits.

(16) "Credit Generation Project" means any planned project implemented by a Credit Provider or a designee within any SGMA to create or restore Functional Habitat or Corridors or preserve Occupied Habitat to generate Credits.

(17) "Credit Maintenance" means the actions required to ensure that Credit acreage continues to operate as Functional Habitat, Corridors or Occupied Habitat for the duration of the disturbance it was intended to offset.

(18) "Credit Provider" means any person or entity that creates or restores Functional Habitat or Corridor(s) or preserves occupied habitat to generate Credits to be transferred utilizing the Credit Exchange Service.

(19) "Credit Transfer Fee" means a sum of money set by the Legislature and paid by a Credit Buyer to the Department when a Credit Provider transfers Credits to a Credit Buyer to offset the Department's costs in administering this Program.

(20) "Debit" means an acre of sage-grouse habitat permanently disturbed in a SGMA for which Compensatory Mitigation is applicable.

(21) "Department" means the Utah Department of Natural Resources, the agency responsible for administering the Compensatory Mitigation Program.

(22) "Durability" means the ability for mitigation measures to remain effective for a period of time that is at least as long as the impacts from the permanent disturbance that the mitigation is designed to offset.

(23) "Functional Habitat" means any sage-grouse habitat, created through a Credit Generation Project, contiguous with existing Occupied Habitat, and which includes a live sagebrush canopy cover of at least 10% and no more than 1% canopy cover of conifer trees over 0.5 meters in height.

(24) "Habitat" means the aggregation of Seasonal Habitats used by sage-grouse during their yearly life-cycle.

(25) "In-lieu Fee" means money provided to the State, at the direction of a regulatory agency, to be used for restoration and enhancement of sage-grouse habitat, with the goal to create or restore Functional Habitat that satisfies Compensatory Mitigation requirements to offset Permanent Disturbance.

(26) "Mitigation Ratio" means the ratio of Credits needed by a Credit Buyer or produced by the State to offset any Permanent Disturbance within sage-grouse habitat. Where a regulatory agency is involved, the agency establishes the mitigation ratio but it is recommended that any person causing Permanent Disturbance to an acre of sage-grouse habitat should provide four acres of Functional Habitat, Protected Habitat, or Corridors as a proper Mitigation Ratio to offset indirect impacts from disturbance and account for differences in habitat quality without conducting a detailed analysis of either factor.

(27) "Occupied Habitat" means any Habitat utilized by Sage-grouse during any portion of their annual lifecycle.

(28) "Permanent Disturbance" means a human caused action that results in a loss of sage-grouse Habitat for a period of five or more years and includes all areas where the direct effects of the action could be expected to disrupt the common activities of sage-grouse for a period of five years or more.

(29) "Plan" means the current Conservation Plan for Greater Sage-grouse in Utah.

(30) "Program Administrator" means the Executive Director of the Department, or their designee, with authority to establish, operate and manage the Compensatory Mitigation Program.

(31) "Project Area" means the geographic boundary of any Credit Generation Project.

(32) "Protected Habitat" means an area of Occupied Habitat that

is preserved from Permanent Disturbance through a Conservation Easement for at least 20 years and is maintained as suitable habitat for the length of the easement.

(33) "Remedial Action" means any corrective measures which a Credit Provider is required to take to ameliorate any injury or adverse impact to Credits or Transferred Credits to ensure long-term Durability.

(34) "Reserve Pool" means a pool of Credits, managed by the Program Administrator or a Bank Manager, intended to cover risks of potential Reversals on any Project Area.

(35) "Reversal" means a Compensatory Mitigation Credit that does not persist for the full duration of the Permanent Disturbance.

(36) "SGMA" means Sage-grouse Management Areas as identified in the Plan.

(37) "Seasonal Habitat" means all habitats utilized by sage-grouse for survival during some portion of its life cycle, including leks, nesting, brood rearing, late brood rearing, transitional corridors, and winter habitat.

(38) "Service Area" means any SGMA within the State of Utah.

(39) "SITLA Lands" means lands owned or managed by the Utah School and Institutional Trust Lands Administration.

(40) "State Lands" means lands owned or managed by any State of Utah agency other than SITLA.

(41) "Term Mitigation Agreement" means an agreement between the Department and any person(s) owning or controlling property within any SGMA, where the landowner conducts a Credit Generation Project for the benefit of sage-grouse, and which actions result in the creation of Credits to be transferred to Credit Buyers to offset Permanent Disturbances to sage-grouse Habitat.

(42) "Transfer" means the conveyance of Credits from one person or entity to another to offset impacts from Permanent Disturbance.

(43) "Transferred Credit" means any Credit transferred within the Department's Credit Exchange Service to offset impacts from Permanent Disturbance.

(44) "Verification" means the process used to confirm that Compensatory Mitigation Program rules have been followed through standardized reporting and monitoring.

(45) "Verifier" means any person or entity that has been accredited by the Department and certifies or monitors Functional Habitat, Corridors or Protected Habitat following Credit Generation Projects utilizing the scientific methods and guidelines approved by the Department.

R634-3-4. State Sponsored Compensatory Mitigation Program.

(1) Compensatory Mitigation for Impacts to Private, SITLA and other State Lands.

(a) To meet the mitigation requirements in the Utah Conservation Plan for Greater Sage-grouse, the Department will:

(i) Generate four acres of Functional Habitat or Corridors in SGMAs for every one acre of Permanent Disturbance on private or SITLA Lands in any SGMA; and

(ii) For every one acre of Permanent Disturbance on State Lands, other than SITLA lands, in any SGMA, the Department will work with other state agencies to generate four acres of Functional Habitat

or Corridors.

(2) Determination of Disturbance.

(a) In consultation with county governments and other state agencies, the Department will determine the number of acres of permanent disturbances within all SGMA on private, SITLA and State Lands every three years, or whenever information becomes available to the Department.

(3) State Credit Generation Projects.

(a) The Department will identify potential Credit Generation Projects within non-functional habitat in any SGMA. Prior to initiation of any Credit Generation Projects on SITLA, State Lands or federal lands, the Department will assess the Project Area to document the Baseline acres of Functional Habitat present within the Project Area before treatment. After conducting any necessary pre-project planning and assessments, the Department will conduct Credit Generation Projects to generate Credits.

(b) The Department will consult with the concerned county government(s) and other appropriate agencies before conducting the project.

(c) The Department will meet annually with federal agencies with jurisdiction over federal lands to identify potential Credit Generation Projects that may be completed on federal lands utilizing non-federal dollars. Credit Generation Projects will only be initiated after compliance with any necessary federal planning and permitting requirements. After conducting any necessary pre-project planning and assessments, the Department will conduct Credit Generation Projects to generate Credits.

(4) Verification and Tracking of Credits.

(a) Upon completion of any Credit Generation Project on SITLA, State Lands or federal lands, the Department will assess the Project Area utilizing a Verifier to certify the number of Credits generated on the Project Area. Once Credits are certified by the Department, it will track the Credits utilizing the Credit Exchange Service as provided in Section 3-7(1).

(b) Credits generated by the Department will offset Permanent Disturbance on private, SITLA and other State Lands. Credits generated by the Department will not be transferred to Credit Buyers except as provided in 3-4(7).

(5) Monitoring and Maintenance.

(a) The Department will monitor the condition of each Credit utilizing the monitoring and assessment guidelines it adopts pursuant to Section 3-7(5).

(b) If results from monitoring and assessment demonstrate that Credits produced by the Department no longer provide Functional Habitat or Corridors, then the Department may conduct habitat maintenance projects to restore the Credits, or it may create additional Credits to replace them.

(6) Duration, Durability and Reversals. State Assurance.

(a) The Department will ensure that any Credits generated by the Department to offset permanent disturbance in any SGMA will be maintained for the duration of any direct impacts from Permanent Disturbance on those lands and tracked using the Credit Exchange Service.

(b) In the event of a Reversal to any Credits generated by the

Department, the Department will apply additional replacement Credits from other Credit Generation Projects in any SGMA throughout the State. Any actions taken under this Section will be tracked in the Credit Exchange Service.

(7) Federal Agency Use of State Generated Credits.

(a) If a federal agency would like to utilize Credits generated by the State to offset Permanent Disturbance on federal lands, the Department may enter into a written agreement with the federal agency outlining the federal agencies' need and use of Credits to offset Permanent Disturbances on federal lands.

(b) Any federal agency may authorize the use of in-lieu payments from a person permanently disturbing habitat to offset the Department's cost to generate, monitor, and maintain the Credits. Upon payment of the in-lieu fee to the Department, the federal agency will provide a written receipt stating that the compensatory mitigation requirements are satisfied and allow a project causing permanent disturbance to habitat to proceed on federal lands.

R634-3-5. Term Mitigation Credit Program.

(1) Application; Minimum Qualifications. Any person desiring to enter into a Term Mitigation Agreement with the Department to create Credits to mitigate the impacts of disturbances to sage-grouse habitat within Utah, must:

(a) Own or control and manage at least 100 contiguous acres adjacent to Occupied Habitat in any SGMA in Utah identified in the Plan that is not Functional Habitat or a Corridor, but with completion of a Credit Generation Project may become Functional Habitat or a Corridor or own, manage and control at least 100 acres of Occupied Habitat that may become Protected Habitat.

(b) File a completed application with the Department, which, at a minimum, shall include:

(i) name of the owner(s) of the surface and mineral rights on the property;

(ii) legal description of the proposed Project Area and the total number of acres owned by the applicant;

(iii) the number of acres on which Credits will be generated and what action is proposed to generate Credits;

(iv) the term of years the person will maintain the Credits on the property, after completing any Credit Generation Project on the property as identified in the Term Mitigation Agreement;

(v) if a habitat protection project, a draft of the conservation easement; and

(vi) the Application Fee.

(c) Upon receiving any completed application, the Department will make a habitat suitability determination identifying whether the proposed Credit Generation Project will likely result in Functional Habitat or Corridor(s) on the property or Protected Habitat and identify the number of potential Credits which may result from the creation of Functional Habitat, Corridors, or Protected Habitat. In the event another person owns the mineral rights on an applicant's property, the Department may request a mineral report for the property.

(d) The Department may deny any application that is incomplete or does not meet the guidelines outlined in this Section.

(e) The Department will consult with the concerned county

government(s) and other appropriate agencies before approving the application.

(2) Establishment of Term Mitigation Agreement.

(a) If the Department determines that an applicant's property is suitable for generating Credits, it may enter into a Term Mitigation Agreement with the property owner, identifying, at a minimum:

(i) the scope of work necessary to create and maintain Credits on the Property;

(ii) the entity or person(s) responsible to perform any Credit Generation Projects;

(iii) a management plan identifying maintenance and verification duties for the landowner or a third-party entity;

(iv) the years duration for the Credits;

(v) an option clause for renewing the agreement for an additional term of years;

(vi) the legal or financial mechanisms utilized by the landowner to provide assurances to the Department that the Credits generated on the landowner's property will be in place for the duration of the agreement; and

(vii) for split-estate properties, the Department may require the owner(s) of a mineral estate to co-sign the Term Mitigation Agreement and provide a written guarantee that the mineral estate will not be developed during the term of the agreement.

(b) In no event shall the term of a Term Mitigation Agreement be less than twenty (20) years, which starts when the credit generation project is verified.

(3) Credit Generation Projects

(a) Prior to initiation of any Credit Generation Project, the Department will assess the Project Area to Verify the number of acres of Functional Habitat, Corridors and Occupied Habitat present on the Project Area before the landowner conducts any Credit Generation Projects.

(b) After conducting any necessary pre-project assessments, a Credit Provider or its designees will complete any Credit Generation Projects as outlined in the Term Mitigation Agreement.

(4) Verification; Tracking of Credits.

(a) Once the Credit Generation Projects are completed, as identified in the Term Mitigation Agreement, a Verifier will inspect the Credit Generation Project area, determine the number of Credits generated on the property, and provide a report to the Department and to the landowner identifying the number of Credits available on the property that may be transferred to a Credit Buyer utilizing the Credit Exchange Service.

(b) Prior to entering the Credits in the Credit Exchange Service, the Department shall collect the Agreement Fee from the Credit Provider to offset any costs of administering the Term Mitigation Agreement and issue a Certificate of Credits to the owner.

(c) Upon certifying the Credits, the Department will track the Credits in the Credit Exchange Service identified in Section 3-7(1).

(5) Assessment and Monitoring of Credits.

(a) Credits generated under this Section will be monitored by the Credit Provider and the Department, as outlined in the Term Mitigation Agreement, to ensure that Credits continue to serve as Functional Habitat, Corridors, or Protected Habitat for sage-grouse

throughout the duration of the Term Mitigation Agreement.

(b) Credits will be monitored using the Department's Monitoring and Credit Maintenance Policies developed under Section 3-7(5). The Program Administrator may utilize monitoring results to amend the Credit maintenance requirements outlined in the Term Mitigation Agreement.

(6) Durability and Assurances.

(a) Prior to the Department listing any Credits on the Credit Exchange Service, the Credit Provider shall provide the Department with financial and/or legal assurances that the Credits developed will be protected for the duration of the Term Mitigation Agreement.

Financial assurances may include Letters of Credit, Performance or Guarantee Bonds, Escrow Agreements, endowments or Causality Insurance coverage to offset any losses or reverses to the Credits on the property. Legal assurances may include permanent or term easements, deed restrictions, and contractual guarantees.

(7) Credit Expiration; Renewal of Exchange Agreements.

(a) All Credits generated or transferred under this Section will automatically expire at the end of the term set out in the Term Mitigation Agreement regardless of whether or not the Credit was transferred. Upon expiration of any Credit, the Department will remove the Credit from the Credit Exchange Service.

(b) The Term Mitigation Agreement can be renewed for an additional term as outlined in the agreement. Prior to reissuing the Credits in the Credit Exchange Service, the Department or a Verifier will confirm that the Credits remain as Functional Habitat or Corridors.

(c) In the event the Department or any person terminates the Term Mitigation Agreement prior to the terms outlined in the agreement, the person providing the Credit Generation Project shall pay the Department its actual costs to obtain or create replacement Credits to complete the remaining years listed in the agreement.

(8) Federal Agency Use of Term Credits.

(a) Any federal regulatory agency that directs Credit Buyers to purchase Term Credits from the Credit Exchange Service is encouraged but not required to utilize the Mitigation Ratios recommended herein, including mitigating at four acres for every one acre of Permanent Disturbance.

(b) Any federal regulatory agency may place additional requirements on a Credit Buyer for maintaining, monitoring, verifying or providing additional assurances for Credits utilized to offset disturbances to sage-grouse habitat on federal land. The federal agency, or a Credit Buyer will be responsible for any additional monitoring or verification requirements developed by a federal agency.

R634-3-6. Conservation Banks.

(1) Jurisdiction.

(a) The Department has jurisdiction over the creation and regulation of Conservation Banks for Sage-grouse in Utah. Any person desiring to operate a Conservation Bank and transfer Credits generated by the Conservation Bank must first receive authorization from the Department.

(2) Application; Minimum Qualifications.

(a) Any person desiring to establish a Conservation Bank in

Utah to create and protect in perpetuity Functional Habitat, Corridors or Protected Habitat to generate Credits to mitigate for the impacts of Permanent Disturbance to sage-grouse habitat within Utah, must:

(i) own, manage and control at least 640 contiguous acres of land that is not Functional Habitat, Corridor(s) or Protected Habitat that can be made into Functional Habitat, Corridors and/or Protected Habitat in any SGMA in Utah;

(ii) file a completed application with the Department, which shall include:

(A) the name and address of property owner(s);

(B) legal description and number of acres included in the proposed Bank Property;

(C) title search of property identifying current owner(s) and title holder(s) and a list of any existing liens on the property;

(D) list of any mineral owners of the property and a mineral title report if a split estate is involved;

(E) name and address of Bank Manager;

(F) a proposed property management plan, including identified Credit Generation Projects and monitoring and maintenance activities to take place on the bank; and

(g) the applicable Application Fee.

(b) The Department may reject any bank application that is incomplete or does not meet the requirements of this Section.

(3) Establishment of Conservation Bank Agreement.

(a) The Department may review any completed application and determine whether the property identified in the application may be eligible to operate as a Conservation Bank.

(b) The Department will consult with the concerned county government(s) and other appropriate agencies before approving the application.

(c) Upon review and preliminary approval of the application, the Department will provide a written notice of contingent bank approval to the applicant and shall identify the total number of Credits potentially available on the property upon completion of any Credit Generation Projects.

(i) No split-estate property shall receive informal approval unless the applicant provides a mineral report and written guarantee from the owner(s) of the mineral estate that mineral owners, or their lessees or assigns, will not occupy or disturb the surface in any way for mineral exploration or development while the Conservation Bank Agreement is in place. Such written guarantee shall be recorded, and shall run with the land and be binding on successors and assigns of the mineral owner for the term of the Agreement.

(d) After the applicant receives the notice of contingent bank approval, the applicant and the Department may enter into a Conservation Bank Agreement which will, at a minimum, identify:

(i) the Bank Manager;

(ii) the legal description of the Bank Property;

(iii) a property management plan identifying any habitat enhancement and maintenance activities to be conducted by Bank Manager to generate Credits on the Bank Property;

(iv) the Bank Manager's monitoring and reporting requirements and schedule;

(v) any Remedial Actions and adaptive management strategies

to be taken in case of a Reversal;

(vi) the amount and type of legal or financial assurances the Bank Manager provides for the conservation and maintenance of the Conservation Bank and Credits;

(vii) a means by which the bank or bank property may be transferred to a third party; and

(e) Prior to executing the Conservation Bank Agreement or transferring Credits on the Credit Exchange Service, the owner of the Conservation Bank shall grant a Conservation Easement, record a deed restriction, or place the property in an irrevocable trust ensuring the perpetual protection of the property for the benefit of sage-grouse and the protection of sage-grouse habitat.

(f) Once the Conservation Bank Agreement is executed, recorded in the county registry and the Agreement Fee is received, the Department will issue a Certificate of Credits to the Bank Manager for the number of acres of Occupied Habitat placed under perpetual protection by the Bank in 3-6(3)(e).

(f) The Conservation Bank Agreement may be implemented in phases, as needed and appropriate, to generate and transfer Credits on a periodic basis, and may be modified or amended by mutual agreement between the Bank and the Department.

(4) Credit Generation Projects.

(a) Prior to initiating any Credit Generation Projects, the Bank Manager or the Department will survey the Project Area to verify the number of acres of existing Functional Habitat or Corridors present and report the survey results to the Department.

(b) Once the Conservation Bank Agreement is fully executed by all parties and the survey results in subsection (1) are reported to the Department, the Bank Manager may begin Credit Generation Projects utilizing the plans and procedures identified in the Conservation Bank Agreement. The Bank Manager shall provide written notification to the Department whenever Credit Generation Projects are completed on the Bank Property.

(5) Verification and Tracking Credits.

(a) Upon completion of any Credit Generation Projects, as identified in the Conservation Bank Agreement, a Verifier will inspect the Credit Generation Project area to determine the number of acres of Functional Habitat or Corridor that exist on the Bank Property using the scientific methods approved or developed by the Department.

When the Verifier determines that Functional Habitat or Corridors exist following Credit Generation Projects, the Verifier will provide a report to the DNR and to the Bank Manager identifying the number of Credits available on the property to be potentially transferred to a Credit Buyer through the Credit Exchange Service.

(b) Upon Verifying the Credits and receiving payment of the Agreement Fee, the Department will issue a Certificate of Credits to the Bank Manager and track the Credits on the Credit Exchange Service as identified in Section 3-7(1).

(6) Management and Monitoring Duties.

(a) The Bank Manager shall manage the Bank Property in accordance with the management plans prescribed in the Conservation Bank Agreement.

(b) The Bank Manager shall be responsible for monitoring and maintaining the condition of the Credits on the Bank Property and

shall collect data as prescribed in the Conservation Bank Agreement, in accordance with the Department's Monitoring and Credit Maintenance policies and procedures.

(c) The Bank Manager or a designee will submit an annual assessment and monitoring report to the Department utilizing the reporting guidelines developed by the Department.

(7) Conservation Bank Agreement Revisions.

(a) The Bank Manager and the Department shall meet and confer upon request of either party to consider revisions to the Conservation Bank Agreement which may be necessary to better conserve the habitat and conservation values of the Bank Property.

(8) Compliance Inspection.

(a) The Department may conduct any necessary assessment, monitoring and verification of the Bank Property to Verify that Credits generated continue to qualify as Functional Habitat, Corridors or Protected Habitat; to recommend Remedial Action, as needed; or for any other purpose determined necessary by the Department to assess compliance with the Conservation Bank Agreement.

(b) In the event the Department or any person terminates the Conservation Bank Agreement prior to the terms outlined in the agreement, the Conservation Bank shall pay the Department its actual costs to obtain or create replacement Credits for any Transferred Credits to complete the remaining years listed in the agreement.

R634-3-7. Administration.

The Compensatory Mitigation Program and associated systems to generate and track Credits shall be administered by the Department.

(1) Credit Exchange Service.

(a) The Department shall monitor and track generated and transferred Credits using the Credit Exchange Service which will include the following information:

(i) Credits. Upon Completion of any Credit Generation Project, the Department will track:

(A) the number of Credits generated under each mitigation system herein;

(B) the dates the Credits were Verified and certified by the Department or a trained Verifier;

(C) the types of Habitat(s) created by the Credit(s), if the information is available;

(D) the name and address of each Credit Provider; and

(E) the duration or term for maintaining a Credit.

(ii) Transferred Credits. The Department will track information relating to each Transferred Credit including:

(A) name of Credit Buyer;

(B) the number of Credits transferred to the Credit Buyer;

(C) date of transfer;

(D) duration and term the Credit expires, if applicable.

(iii) Expiration of Credit. If the term of a Credit expires, the Department will notify the Buyer of the Credit, the Credit Provider and the involved regulatory agency, if applicable, that the Credit has expired and remove the Credit from the tracking system.

(2) Procedure for Transferring Credits.

(a) A Credit Buyer may negotiate the acquisition price for a Credit with any Credit Provider listed on the Credit Exchange Service.

(b) Once an agreement on transfer is finalized between the Credit Provider and Credit Buyer, the Credit Provider shall notify the Department within 7 days.

(c) Once the Department receives notice of the agreement from a Credit Provider, the Department will send the Credit Buyer an invoice identifying the Credit Transfer Fee to be paid by the Credit Buyer to the Department.

(d) The Credit Buyer shall pay the Credit Transfer Fee to the Department within 30 days of the Department sending the invoice. Upon receipt of the Credit Transfer Fee, the Department will transfer the agreed upon Credits to the Credit Buyer.

(e) The Department shall track Credits transferred to any Credit Buyer using the Credit Exchange Service.

(f) Any Credit Buyer may purchase additional Credits to offset future planned development projects anticipated to cause a Permanent Disturbance to sage-grouse habitat.

(g) Once a Credit Buyer acquires a Transferred Credit, the Credit Buyer of the Transferred Credit may not be transfer or sell the Transferred Credit to any other person or entity.

(h) If the term of a Transferred Credit expires and the Credit has not expired, notify the Credit Buyer, the Credit Provider and the involved regulatory agency, if applicable, that the Transferred Credit has expired and the Department will return the Credit to the Credit Provider in the tracking system.

(i) For the purposes of transfer of credits, a Conservation Bank that uses Credits to offset its own Debits will be considered the Credit Buyer.

(3) Fee Schedule.

(a) The Department will annually develop a fee schedule to cover the cost of the Compensatory Mitigation Program and submit to the Legislature, including:

(i) The Application Fee to offset the cost of processing a compensatory mitigation application submitted to the Department from a potential Credit Provider.

(ii) The Agreement Fee to offset the cost of administering Term Mitigation Agreements and Conservation Banking Agreements.

(iii) The Credit Transfer Fee to offset the operation and maintenance costs of the Credit Exchange Service.

(4) Verification and Monitoring Guidelines; Certification.

(a) All Credits must be certified by the Department or by a Verifier prior to being tracked and transferred on the Credit Exchange Service to ensure that Credits are Functional Habitat, Corridors, or Protected Habitat for sage-grouse.

(b) The Department will accredit any person interested in serving as a Verifier. Accreditation will occur after a person attends a verification training provided by the Department, or a designee, and after a person demonstrates proficiency implementing the Department's monitoring and assessment guidelines.

(c) Verifiers will act as a designee to the Program Administrator to certify Credits upon completion of any Credit Generation Projects.

(d) Upon completion of any property verification activities, the Verifier will provide a written Verification report to the Program Administrator identifying a summary of the verification activities

completed, summary of the number of acres of Functional Habitat, Corridors, or Protected Habitat in the Credit Generation Project area and an estimate of the number of Credits available. The Department may add additional criteria to the report needed to carry out this rule.

(5) Monitoring and Assessment Guidelines; Scientific Method.

(a) The Credit Provider, or a designee, is responsible for monitoring and maintaining Credits utilizing the methods identified by the Department throughout the lifetime of the Credit to ensure that each Credit serves as viable Functional Habitat or Corridors for sage-grouse.

(b) The Department, and any trained Verifier, will utilize existing range trend monitoring guidelines or other scientifically approved methods identified by the Department to identify Credit Maintenance activities to be undertaken by a Credit Provider or their designee.

(c) The Department's monitoring and assessment guidelines will be reviewed, at a minimum, every three years to ensure they are consistent with current scientific literature and methods.

(6) Reserve Pool.

(a) All Credits generated by the Department will be maintained on the Credit Exchange Service to serve as a Reserve Pool to off-set losses from Reversals to any Credits generated under this Program.

(7) Adaptive Management.

(a) The DNR will monitor compensatory mitigation efforts and employ new scientific findings into this Compensatory Mitigation Program following adaptive management strategies, as such information becomes available.

KEY: Sage Grouse, mitigation

Date of Enactment or Last Substantive Amendment: March 26, 2018

Authorizing, and Implemented or Interpreted Law: 79-2-501