



# Oregon

Kate Brown, Governor

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July 7, 2016

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director  
Jon Jinings, Community Services Specialist

SUBJECT: **Agenda Item 14, July 21-22, 2016, LCDC Meeting**

## **Executive Order No. 15-18, Adopting the Oregon Sage Grouse Action Plan and Directing State Agencies to Implement the Plan in Full**

### **AGENDA ITEM SUMMARY**

The Land Conversation and Development Commission (commission or LCDC) will receive a briefing by the Department of Land Conservation and Development (department or DLCD) staff on work underway to carry out responsibilities outlined in Executive Order 15-18. No commission action is being requested.

For further information, please contact Jon Jinings, at 541-325-6928 or [jon.jinings@state.or.us](mailto:jon.jinings@state.or.us).

#### **I. BACKGROUND**

Executive Order 15-18 (E.O 15-18) was signed by Governor Brown on September 16, 2015, and served as the primary instrument transmitting Oregon's Sage-Grouse Action Plan, the state's response discouraging a listing of the species, to the United States Fish and Wildlife Service. Oregon's plan was well-received and, on September 22, 2015, Secretary of the Interior Sally Jewell declared that the Greater Sage-Grouse "does not need protection under the Endangered Species Act." Secretary Jewell went on to call the multi-state, regional response "the largest, most complex land conservation [effort] ever in the history of the United States of America, perhaps the world."

In addition to making an important contribution to the decision not to list the species, E.O 15-18 identified state agency responsibilities. Some responsibilities constitute one time work items while others direct ongoing activities. Responsibilities assigned to the department include 3.B., C., D., F., H., and I. and are shown below:

3. Specifically, and without limitation to the foregoing paragraph 2, the following actions shall be taken:
  - B. The Oregon Department of Land Conservation and Development (DLCD) shall maintain a central registry of development on all lands within sage- grouse habitat in coordination with the BLM and county governments that both establishes the baseline level of development within each Priority Area for Conservation (PAC) and that tracks the location and geographic extent of new development in each PAC over time.
  - C. DLCD shall have the responsibility to coordinate the actions of Oregon agencies in implementing the Sage-Grouse Action Plan, under the supervision of my Natural Resources Office (GNRO).
  - D. All state agencies that carry out, fund, or permit actions within sage- grouse habitat-including but not limited to the Oregon Water Resources Department, the Oregon Department of Transportation, the Department of State Lands, the Department of Geology and Mineral Industries, the Oregon Department of Energy (ODOE) and the Energy Facility Siting Council, the Oregon Watershed Enhancement Board (OWEB), the Oregon Department of Agriculture, the Oregon Parks and Recreation Department, and the Department of Environmental Quality- shall adopt or update their state agency coordination plans and agreements with DLCD pursuant to ORS 197.180 and OAR Chapter 660, Division 30 to ensure that such actions comply with the LCDC Sage-Grouse Conservation Rules (OAR 660-023-0115) adopted to implement LCDC Goal 5 (Significant Natural Resources). State agency actions affecting land use also shall be consistent with the ODFW Sage-Grouse Mitigation Rules adopted at OAR 635-0140-0000 thru 635-140-0025. To the extent that an agency's regulatory program needs to be updated to be consistent with the LCDC and ODFW rules, the agency shall complete that updating by no later than July 1, 2016.
  - F. DLCD, in cooperation with ODFW local governments and the counties shall prepare a report on at least a biennial basis beginning on July 1, 2016, providing information regarding the status and trends of work to reduce threats to sage-grouse and sage-grouse habitat, including but not limited to work to reverse the spread of juniper and invasive plant species, work to improve pre- and post-fire resilience, the amount of direct development in each PAC over the preceding two years, the amount and types of compensatory mitigation, the results of surveys of sage-grouse population and habitat condition and trends, areas and/or elements where the Sage-Grouse Action Plan is and is not functioning as intended, and recommendations for improving the efficacy of the Sage-Grouse Action Plan. DLCD also shall include in the report an evaluation of the economic effects of implementation of the Sage-Grouse Action Plan on communities within sage- grouse habitat.

- H. DLCD and ODFW, working with my Natural Resources Office, in cooperation with other participants , shall develop by July 1, 2016 one or more memoranda of agreement between federal agencies, state agencies, local governments, and other partners that establish:
  - i. How the BLM, DLCD and the counties will coordinate their administration of the central registry of large-scale development within sage-grouse habitat...
- I. Every two years beginning in May of 2016, DLCD, ODFW and OWEB shall prepare a proposed budget for the coming biennium that identifies and prioritizes resources required to continue the successful implementation of the Oregon Sage-Grouse Action Plan.

Work on these five items is ongoing. The department continues to closely coordinate with the Governor’s Office, other state agencies and the Institute for Natural Resources (INR). Although the timeframes for some of this work has passed, the department and our multiple partners continue to proceed in good faith. The department has been advised that so long as progress continues the Governor’s Office is content that E.O. 15-18 is being honored.

## **II. CONCLUSION**

This item is an information briefing and discussion opportunity. No commission action is requested.

## **III. ATTACHMENT**

- A. Executive Order 15-18



**EXECUTIVE ORDER NO. 15-18**

**ADOPTING THE OREGON SAGE-GROUSE ACTION PLAN AND  
DIRECTING STATE AGENCIES TO IMPLEMENT THE PLAN IN FULL**

Whereas the U.S. Fish and Wildlife Service (USFWS) determined in 2010 that listing the greater sage-grouse (sage-grouse) under the federal Endangered Species Act (ESA) was “warranted but precluded”;

Whereas the USFWS will make a new listing determination for sage-grouse in 11 western states later this year;

Whereas it is plainly in Oregon’s best interests to ensure that the significant investments that Oregon ranchers, communities, tribes, non-governmental organizations, and others have made in sage-grouse conservation are supported, such that economic prosperity and a healthy environment occur hand-in-hand in Eastern Oregon;

Whereas the principal threats to sage-grouse habitat in Oregon are wildfire, invasive weeds, and the spread of juniper;

Whereas the Harney County Soil and Water Conservation District (Harney SWCD) and other SWCDs, local governments and landowners have developed candidate conservation agreements with assurances (CCAA), which provide for ranching operations on non-federal lands to continue in ways that provide for both long-term economic stability and sage-grouse conservation;

Whereas the Oregon Cattlemen’s Association has developed a candidate conservation agreement (CCA) for grazing allotments on Bureau of Land Management (BLM) lands that supports the CCAAs developed for non-federal lands, and the federal Natural Resources Conservation Service (NRCS) has committed substantial funding for the conservation measures contained in CCAAs including strategic removal of juniper;

Whereas the CCAAs and the CCAs ensure that grazing operations in Oregon will be managed in a way that is consistent with sage-grouse conservation;

Whereas the Oregon Watershed Enhancement Board has committed to investing at least ten million dollars in priority Sage-Grouse conservation measures over the next ten years, including juniper management;

Whereas Oregon has a long-standing system of Rangeland Fire Protection Associations (RFPAs) that are often first responders to rangeland fires, and the



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number, enrollment and geographic extent of RFPAs continues to grow and now covers most sage-grouse habitat;

Whereas the Oregon Legislature has appropriated new funding to improve the capacity and effectiveness of RFPAs, along with other investments that address wildfire in sage-grouse habitat;

Whereas the Oregon Legislature also has appropriated significant new funding to help manage invasive weeds and reduce juniper encroachment in sage-grouse habitat;

Whereas ranching is the major economic base for the area of Oregon occupied by sage-grouse, and mining and renewable energy development present important long-term opportunities for economic development and job creation in this area of Oregon;

Whereas significant outdoor recreation including hunting, wildlife viewing, and hiking occurs in and depends on high-quality habitat in the areas of Oregon occupied by sage-grouse, and these activities provide additional economic, social, and other public benefits to Oregonians;

Whereas a federal ESA listing of the sage-grouse in the absence of a state plan likely would interfere with opportunities for future economic development in Eastern Oregon and could threaten the ranching industry in ways that would have significant adverse economic and social effects on Oregon citizens, businesses, and communities;

Whereas the Oregon Department of Fish and Wildlife has established population and habitat goals for the sage-grouse in Oregon that include:

- A population goal to maintain or enhance sage-grouse abundance and distribution at the 2003 spring breeding population level, approximately 30,000 birds, over the next 50 years; and
- A habitat goal to retain at least 70% of sage-grouse range as sagebrush habitat in advanced structural stages—sagebrush class 3, 4, or 5, with an emphasis on classes 4 and;

Whereas the Oregon Department of Fish and Wildlife adopted an updated conservation strategy for sage-grouse in 2011;



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Whereas the Oregon Fish and Wildlife Commission has adopted supplemental rules to guide sage-grouse conservation and compensatory mitigation for impacts to sage-grouse habitat;

Whereas the Oregon Land Conservation and Development Commission (LCDC), working closely with county governments and others, has adopted new rules designed to steer future development away from important sage-grouse habitat—supplementing Oregon’s already strong land-use system that generally directs most development to urban areas;

Whereas the Oregon Sage-Grouse Action Plan has been developed collaboratively through the work of the SageCon Partnership over the last three years, involving landowners, non-governmental organizations, local governments, and state and federal agencies;

Whereas the State of Oregon has worked closely with the federal Bureau of Land Management (BLM) to align the Oregon Sage-Grouse Action Plan with many elements of the new Resource Management Plans for the five BLM districts within Oregon;

Whereas the Oregon Sage-Grouse Action Plan, the BLM Resource Management Plans, and the CCAAs and CCAs entered into by private landowners effectively align conservation strategies for sage-grouse and management of sagebrush habitats across private and public lands across all sage-grouse habitat in Oregon; and

Whereas, effective implementation of conservation strategies and actions associated with the Oregon Sage-Grouse Action Plan will require engagement, functional alignment, and coordination across state, federal, tribal and private land ownership boundaries among all stakeholders to realize the social, economic and ecological benefits of a comprehensive approach to sage-grouse conservation and rangeland health.

**NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED THAT:**

1. The Oregon Sage-Grouse Action Plan is adopted as the plan for the conservation of sage-grouse in Oregon.
2. All state agencies shall carry out the actions described in the Oregon Sage-Grouse Action Plan to the full extent of their authorities and funding.



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3. Specifically, and without limitation to the foregoing paragraph 2, the following actions shall be taken:

A. The Oregon Department of Forestry (ODF) shall provide technical and financial support to RFPAs to improve their capacity and effectiveness in controlling and limiting the adverse effects of rangeland fire on sage-grouse habitat on both federal and non-federal lands. Working collaboratively with RFPAs and the BLM, ODF shall develop a Memorandum of Agreement to assist in the coordination of rangeland firefighting and to protect the safety of those participating in such efforts.

B. The Oregon Department of Land Conservation and Development (DLCD) shall maintain a central registry of development on all lands within sage-grouse habitat in coordination with the BLM and county governments that both establishes the baseline level of development within each Priority Area for Conservation (PAC) and that tracks the location and geographic extent of new development in each PAC over time.

C. DLCD shall have the responsibility to coordinate the actions of Oregon agencies in implementing the Sage-Grouse Action Plan, under the supervision of my Natural Resources Office (GNRO).

D. All state agencies that carry out, fund, or permit actions within sage-grouse habitat—including but not limited to the Oregon Water Resources Department, the Oregon Department of Transportation, the Department of State Lands, the Department of Geology and Mineral Industries, the Oregon Department of Energy (ODOE) and the Energy Facility Siting Council, the Oregon Watershed Enhancement Board (OWEB), the Oregon Department of Agriculture, the Oregon Parks and Recreation Department, and the Department of Environmental Quality—shall adopt or update their state agency coordination plans and agreements with DLCD pursuant to ORS 197.180 and OAR Chapter 660, Division 30 to ensure that such actions comply with the LCDC Sage-Grouse Conservation Rules (OAR 660-023-0115) adopted to implement LCDC Goal 5 (Significant Natural Resources). State agency actions affecting land use also shall be consistent with the ODFW Sage-Grouse Mitigation Rules adopted at OAR 635-0140-0000 thru 635-140-0025. To the extent that an agency's regulatory program needs to be updated to be consistent with the LCDC and ODFW rules, the agency shall complete that updating by no later than July 1, 2016.



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E. ODFW, working with the BLM and other federal, state, and local entities, shall have the responsibility to coordinate mitigation for impacts to sage-grouse and sage-grouse habitat in a manner consistent with the Sage-Grouse Action Plan and the agency's mitigation rules at OAR 635-140-0000 thru 635-140-0025. ODFW shall also work with ODOE, OWEB, Business Oregon, and other relevant state, federal, local, private and non-governmental entities to evaluate approaches and mechanisms for funding advance mitigation, with the intent of ensuring sage-grouse mitigation credits are available in the State's in-lieu fee program and facilitate responsible economic development in the range of the sage-grouse.

F. DLCD, in cooperation with ODFW local governments and the counties shall prepare a report on at least a biennial basis beginning on July 1, 2016, providing information regarding the status and trends of work to reduce threats to sage-grouse and sage-grouse habitat, including but not limited to work to reverse the spread of juniper and invasive plant species, work to improve pre- and post-fire resilience, the amount of direct development in each PAC over the preceding two years, the amount and types of compensatory mitigation, the results of surveys of sage-grouse population and habitat condition and trends, areas and/or elements where the Sage-Grouse Action Plan is and is not functioning as intended, and recommendations for improving the efficacy of the Sage-Grouse Action Plan. DLCD also shall include in the report an evaluation of the economic effects of implementation of the Sage-Grouse Action Plan on communities within sage-grouse habitat.

G. OWEB shall work with the NRCS, ODFW, and my Natural Resources Office to assure that its funding commitments are directed to supporting actions that reflect the priorities identified in the Sage-Grouse Action Plan, and that monitoring of the effectiveness of these investments is sufficient to evaluate overall Plan effectiveness and adapt the Plan as appropriate.

H. DLCD and ODFW, working with my Natural Resources Office, in cooperation with other participants, shall develop by July 1, 2016 one or more memoranda of agreement between federal agencies, state agencies, local governments, and other partners that establish:

i. How the BLM, DLCD and the counties will coordinate their administration of the central registry of large-scale development within sage-grouse habitat;



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ii. How ODFW will coordinate administration of the landscape-level mitigation program for sage-grouse with the BLM, USFWS, counties, and other partners;

iii. How ODFW will ensure early, efficient and constructive participation of its staff in local permit reviews of projects subject to Oregon Administrative Rules, Chapter 660, Division 30, or other applicable local ordinances where a county has adopted its own land use regulations implementing that rule; and

iv. How state and federal agencies will align their conservation investment priorities and programs for sage-grouse in cooperation with local governments, tribes, landowners, conservation organizations, and other stakeholders.

I. Every two years, beginning in May of 2016, DLCD, ODFW and OWEB shall prepare a proposed budget for the coming biennium that identifies and prioritizes resources required to continue the successful implementation of the Oregon Sage-Grouse Action Plan.

J. In the event of any inter-agency disputes regarding the administration of the Sage-Grouse Action Plan or this executive order, the agencies involved shall first attempt to resolve the dispute at the line staff level. If line staff are unable to resolve the dispute, the matter shall be elevated to the directors of the agencies. If the agency directors are unable to resolve the dispute, the matter shall be elevated to my Natural Resources Policy Advisor for resolution.

K. In the event that the USFWS determines that a listing of sage-grouse as threatened under the ESA is warranted, ODFW, DLCD, and my Natural Resources Office shall work with the USFWS to develop and implement a federal protective regulation under section 4(d) of the ESA (16 U.S.C. § 1533(d)) such that the “take” prohibition of the ESA will not apply to the sage-grouse-related impacts in Oregon from specified activities addressed by the Oregon Sage-Grouse Action Plan so long as Oregon is fully implementing Action Plan provisions specific to those activities.



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This Executive Order shall remain in effect until it is otherwise modified, amended or terminated.

Done at Salem, Oregon, this 16<sup>th</sup> day of September, 2015.

A handwritten signature in black ink that reads "Kate Brown".

Kate Brown  
GOVERNOR

ATTEST:

A handwritten signature in blue ink that reads "Jeanne P. Atkins".

Jeanne P. Atkins  
SECRETARY OF STATE

