

1 **OAR 660-023-0115**
2 **Greater Sage-Grouse**

3
4 (1) Introduction. Greater Sage-Grouse (hereafter “sage-grouse”) habitat is a unique wildlife
5 resource subject to a variety of threats across a broad, multi-state region. Oregon’s sage-grouse
6 habitat is comprised of a combination of public land managed by the federal government and
7 nonfederal land generally in private ownership. Managing private and other nonfederal land for
8 the best possible outcomes requires partnership and cooperation among many stakeholders.
9 Accordingly, private and other nonfederal lands are strongly encouraged to participate in a
10 Candidate Conservation Agreement with Assurances program. Voluntary conservation efforts of
11 this nature are recognized by the state of Oregon as a critical part in recovering the breeding
12 population targeted by Oregon’s Conservation Strategy for Sage-Grouse. Beyond voluntary
13 efforts it remains necessary to provide a regulatory framework that offers fairness,
14 predictability and certainty for all involved parties. Engagement on the part of county
15 government is critical to Oregon’s efforts to address possible impacts from future development.
16

17 (2) Exempt activities. Those activities that do not require governmental approval, including farm
18 use as defined in ORS 215.203(2), are exempt from the provisions of this rule. State agency
19 permits necessary to facilitate a farm use, including granting of new water right permits by the
20 Oregon Water Resources Department, are also exempt from the provisions of this rule.
21

22 (3) Definitions. For purposes of this division, the definitions in OAR 635-140-0010 and in the
23 glossary of the “Greater Sage-Grouse Conservation Assessment and Strategy for Oregon”
24 adopted by the Commission on April 22, 2011 (copies of the plan are available through the
25 Oregon Department of Fish and Wildlife) shall apply. In addition, the following definitions shall
26 apply:

27
28 (a) “Areas of High Population Richness” are mapped areas that represent statistically
29 significant clustering of the most highly attended leks and associated nesting habitat.
30

31 (b) “Candidate Conservation Agreement with Assurances” is a formal agreement
32 between the United States Fish and Wildlife Service and one or more parties to address
33 the conservation needs of proposed or candidate species, or species likely to become
34 candidates, before they become listed as endangered or threatened. Landowners
35 voluntarily commit to conservation actions that will help stabilize or restore the species
36 with the goal that listing under the Federal Endangered Species Act will become
37 unnecessary.
38

39 (c) “Core areas” are mapped sagebrush types or other habitats that support sage-grouse
40 annual life history requirements that are encompassed by areas:

41
42 (A) Of very high, high, and moderate lek density strata;
43

1 (B) Where low lek density strata overlap local connectivity corridors; or
2

3 (C) Where winter habitat use polygons overlap with either low lek density strata,
4 connectivity corridors, or occupied habitat. Core area maps are maintained by
5 ODFW .
6

7 (d) "Development action" means any activity subject to regulation by local, state, or
8 federal agencies that could result in the loss of fish and wildlife habitat. Development
9 actions may include but are not limited to, construction and operational activities of
10 local, state, and federal agencies. Development actions also include subsequent re-
11 permitting for activities with new impacts or continued impacts or continued impacts
12 that have not been mitigated consistent with current standards
13

14 (e) "Direct impact" means an adverse effect of a development action upon fish and
15 wildlife habitat which is proximal to the development action in time and place.
16

17 (f) "Disturbance" is natural and anthropogenic activities that can negatively affect sage-
18 grouse use of habitat either through changing the vegetation type/condition or
19 displacement of sage-grouse use of an area. For purposes of this rule only disturbance
20 from anthropogenic activities, such as direct and indirect impacts, are considered.
21

22 (g) "General habitat" is occupied (seasonal or year-round) sage grouse habitat outside
23 core and low density habitats.
24

25 (h) "Indirect impacts" are effects that are caused by or will ultimately result from an
26 affected development activity. Indirect effects usually occur later in time or are
27 removed in distance compared to direct effects
28

29 (i) "Large-scale development" means uses that are either over 50 feet in height, have a
30 direct impact in excess of five acres, generate more than 50 vehicle trips per day, or
31 create noise levels of at least 70 dB at zero meters for sustained periods of time. Uses
32 that constitute large-scale development also require review by county decision makers
33 and are listed in one of the following categories identified in the table attached to OAR
34 660-033-0120.
35

36 (A) Commercial Uses.
37

38 (B) Mineral, Aggregate, Oil and Gas Uses.
39

40 (C) Transportation Uses.
41

42 (D) Utility/Solid Waste Disposal Facilities.
43

1 (E) Parks/Public/Quasi-Public.
2

3 (j) "Lek" means an area where male sage-grouse display during the breeding season to
4 attract females (also referred to as strutting-ground).
5

6 (k) "Low density areas" are mapped sagebrush types or other habitats that support
7 sage-grouse that are encompassed by areas where:
8

9 (A) Low lek density strata overlapped with seasonal connectivity corridors;
10

11 (B) Local corridors occur outside of all lek density strata;
12

13 (C) Low lek density strata occur outside of connectivity corridors; or d) seasonal
14 connectivity corridors occur outside of all lek density strata. Low density area
15 maps are maintained by ODFW.
16

17 (l) "Mitigation hierarchy" is an approach used by decision makers to consider a large-
18 scale development proposal and is comprised of a three step process:
19

20 (A) "Avoidance" is the first step in the mitigation hierarchy and is accomplished
21 by not taking a certain development action or parts of that action.
22

23 (B) "Minimization" is the second step in the mitigation hierarchy and is
24 accomplished by limiting the degree or magnitude of the development action
25 and its implementation.
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27 (C) "Compensatory mitigation" is the third step in the mitigation hierarchy and
28 means the replacement or enhancement of the function of habitat capable of
29 supporting sage-grouse in greater numbers than predicted to be impacted by a
30 development.
31

32 (m) "Occupied Lek" is a lek that has been regularly visited by ODFW and has had one or
33 more male sage-grouse counted in one or more of the last seven years.
34

35 (n) "Occupied Pending Lek" is a lek that has not been counted regularly by ODFW in the
36 last seven years, but sage-grouse were present at ODFW's last visit.
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38 (o) "Priority Areas for Conservation" (PACs) are key habitats identified by state sage
39 grouse conservation plans or through other sage-grouse conservation efforts (e.g., BLM
40 Planning). In Oregon, core area habitats are PACs.
41

42 (4) Local program development and direct applicability of rule. Local governments may develop
43 a program to achieve consistency with OAR 660-023-0115 by following the standard process in

1 OAR 660-023-0030, OAR 660-023-0040 and 660-023-0050 and submitting the amendment to
2 the Commission in the manner provided for periodic review under ORS 197.628 to 197.650 and
3 OAR 660-025-0175. Until a county amends its comprehensive plan and land use regulations to
4 achieve consistency with OAR 660-023-0115 the provisions of subsections (5) thru (12) shall
5 apply directly to land use decisions affecting significant sage-grouse habitat. When a local
6 program has been acknowledged by LCDL to be in compliance with Goal 5 and equivalent to
7 OAR 660-023-0115 with regard to protecting sage-grouse habitat, that program becomes the
8 controlling county land use document and compliance with this rule is no longer necessary.
9

10 (5) Quality, Quantity and Location. For purposes of this rule, sage-grouse habitat is only present
11 in Baker, Crook, Deschutes, Harney, Lake, Malheur and Union Counties. The location of sage-
12 grouse habitat within these counties shall be determined by following the map produced by
13 ODFW included as Exhibit A.
14

15 (6) Determination of Significance. Significant sage-grouse habitat includes only lands protected
16 under statewide planning goals 3 or 4 as of July 1, 2015 that are identified as:
17

18 (a) Core areas;

19
20 (b) Low density areas; and

21
22 (c) Lands within a general habitat area located within 3.1 miles of an occupied or
23 occupied-pending lek.
24

25 (d) The exact location of sage-grouse habitat may be refined during consideration of
26 specific projects but must be done in consultation with ODFW.
27

28 (7) Conflicting uses. For purposes of protecting significant sage-grouse habitat, conflicting uses
29 are:
30

31 (a) Large-scale development; and

32
33 (b) Other activities, which require review by county decision makers pursuant to OAR
34 660-033-0120 or other applicable provisions of law and are proposed:
35

36 (A) In a core area within 4.0 miles of an occupied or occupied-pending lek;

37
38 (B) In a low density area within 3.1 miles of an occupied or occupied-pending lek;
39 or

40
41 (C) In general habitat within 3.1 miles of an occupied or occupied-pending lek.
42

43 (8) Pre-Application Conference. A county should convene a pre-application conference prior to

1 accepting an application for a conflicting use in significant sage-grouse habitat. The pre-
2 application conference should include, at a minimum, the applicant, county planning staff and
3 local ODFW staff.

4
5 (9) Program to achieve the goal of protecting significant sage grouse habitat in a core area.

6
7 (a) A county may consider a large-scale development in a core area upon applying
8 disturbance thresholds and the mitigation hierarchy as follows:

9
10 (A) A county may consider a large-scale development that does not cause the
11 one-percent metering threshold described in section (16) or the three-percent
12 disturbance threshold described in section (17) to be exceeded.

13
14 (B) Avoidance. Before proceeding with large-scale development activity that
15 impacts a core area, the proponent must demonstrate that reasonable
16 alternatives have been considered and that the activity or other action cannot
17 avoid impacts within core area habitat. If the proposed large-scale development
18 can occur in another location that avoids both direct and indirect impacts within
19 core area habitat, then the proposal must not be allowed unless it can satisfy the
20 following criteria.

21
22 (i) It is not technically feasible to locate the proposed large-scale
23 development outside of a core area based on accepted engineering
24 practices, regulatory standards or some combination thereof. Costs
25 associated with technical feasibility may be considered, but cost alone
26 may not be the only consideration in determining that development must
27 be located such that it will have direct or indirect impacts on significant
28 sage-grouse areas; or

29
30 (ii) The proposed large-scale development is dependent on a unique
31 geographic or other physical feature(s) that cannot be found on other
32 lands; and

33 (iii) If either (9)(b)(B)(i) or (9)(b)(B)(ii) is found to be satisfied the county
34 must also find that the large-scale development will provide important
35 economic opportunity, needed infrastructure, public safety benefits or
36 public health benefits for local citizens or the entire region.

37
38 (C) Minimization. If the proposed use cannot be sited by avoiding a core area
39 altogether, including direct and indirect impacts, it shall be located to minimize
40 the amount of such habitat directly or indirectly disturbed, and to minimize
41 fragmentation of the core area(s) in question by locating the development
42 adjacent to existing development and at the edge of the core area when
43 possible. Uses should minimize impacts through micro-siting, limitations on the

1 timing of construction and/or use, and methods of construction. Minimizing
2 impacts from large-scale development in core habitat shall also ensure direct
3 and indirect impacts do not occur in known areas of high population richness of
4 within a given core area, unless a project proponent demonstrates, by a
5 preponderance of the evidence, that such an approach is not feasible. Costs
6 associated with minimization may be considered, but cost alone may not be the
7 only consideration in determining that location of development cannot further
8 minimize direct or indirect impacts to core areas.

9
10 (D) Compensatory Mitigation. To the extent that a proposed large-scale
11 development will have direct or indirect adverse impacts on a core area after
12 application of the avoidance and minimization standards and criteria, above, the
13 permit must be conditioned to fully offset the direct and indirect adverse effects
14 of the development to any core area. The required compensatory mitigation
15 must comply with OAR Chapter 635, division 140.

16
17 (b) A county may approve a conflicting use as identified at subsection (7)(b) above upon
18 either:

19
20 (A) Receiving confirmation from ODFW that the proposed conflicting use does
21 not pose a threat to significant sage-grouse habitat or the way sage-grouse use
22 that habitat; or

23
24 (B) Conditioning the approval based on ODFW recommendations, including
25 minimization techniques and compensatory mitigation, if necessary, to resolve
26 threats to significant sage-grouse habitat.

27
28 (10) Program to achieve the goal of protecting significant sage grouse habitat in a low density
29 area.

30
31 (a) A county may approve a large-scale development in a low density area upon
32 applying the mitigation hierarchy as follows:

33
34 (A) Avoidance. Before proceeding with large-scale development activity that
35 impacts a low density area, the proponent must demonstrate that reasonable
36 alternatives have been considered and that the activity or other action cannot
37 avoid impacts within a low density area. If the proposed large-scale development
38 can occur in another location that avoids both direct and indirect impacts within
39 a low density area, then the proposal must not be allowed unless it can satisfy
40 the following criteria:

41
42 (i) It is not technically or financially feasible to locate the proposed large-
43 scale development outside of a low density area based on accepted

1 engineering practices, regulatory standards, proximity to necessary
2 infrastructure or some combination thereof; or

3
4 (ii) The proposed large-scale development is dependent on geographic or
5 other physical feature(s) found in low density habitat areas that are less
6 common at other locations, or it is a linear use that must cross significant
7 sage grouse habitat in order to achieve a reasonably direct route.
8

9 (B) Minimization. If the proposed use cannot be sited by avoiding a low density
10 area altogether, including direct and indirect impacts, it shall be located to
11 minimize the amount of such habitat directly or indirectly disturbed, and to
12 minimize fragmentation of the low density area(s) in question by locating the
13 development adjacent to existing development and at the edge of the low
14 density area when possible. Uses should minimize impacts through micro-siting,
15 limitations on the timing of construction and/or use, and methods of
16 construction.
17

18 (C) Compensatory Mitigation. Required consistent with the provisions of
19 subsection (9)(b)(D) above.
20

21 (b) A county may approve a conflicting use as identified at subsection (7)(b) above when
22 found to be consistent with the provisions of subsection (9)(b).
23

24 (11) Program to achieve the goal of protecting significant sage-grouse habitat on general
25 habitat.
26

27 (a) A county may approve a large-scale development on significant sage-grouse habitat
28 in general habitat upon requiring:
29

30 (A) General Habitat Consultation. Minimizing impacts from development actions
31 in general habitat shall include consultation between the development
32 proponent and ODFW that considers and results in recommendations on how to
33 best locate, constructor operate the development action so as to avoid or
34 minimize direct and indirect impacts on significant sage grouse habitat within the
35 area of general habitat. A county shall attach ODFW recommendations as a
36 condition of approval; and
37

38 (B) Compensatory Mitigation. Required consistent with the provisions of
39 subsection (9)(b)(D) above.
40

41 (b) A county may approve a conflicting use identified in subsection (7)(b) above when
42 found to be consistent with the provisions of subsection (9)(b).
43

1 (12) Especially Unique Local Economic Opportunity. A county may approve a large-scale
2 development proposal that does not meet the avoidance test for significant sage-grouse
3 habitat if the county determines that the overall public benefits of the proposal outweigh the
4 damage to significant sage-grouse habitat. Requirements for minimization and compensatory
5 mitigation continue to apply and attempts should be made to avoid areas of high population
6 richness, if possible. The county shall make this balancing determination only when the
7 proposal involves an economic opportunity that will provide a number of permanent, full time
8 jobs, not including construction activities, paying at least 150 percent of average county wages
9 sufficient to increase the amount of total private nonfarm payroll employment by at least 0.5
10 percent over the figure included in the most recent data available from the Oregon Department
11 of Employment rounded down to the nearest whole number. The applicant has the burden to
12 show that the overall public benefits outweigh the damage to the significant sage-grouse
13 habitat. This provision may be exercised by each effected county once during every ten year
14 period beginning on the effective date of these rules. A county is also free not to approve a
15 proposal submitted under this provision.

16
17 (13) A proposal to up-zone lands containing significant sage-grouse habitat to a greater
18 development potential than otherwise allowed under goals 3 and 4 shall follow the ordinary
19 goal 5 process at OAR 660-023-0030 thru 0050. Furthermore, up-zoning lands in a core area
20 shall be considered a direct impact and count towards the three percent disturbance threshold
21 pursuant to Subsection (18) below.

22
23 (14) Landscape-Level Disturbance. The standards in subsections (9), (10) and (11) above, are
24 designed to minimize the amount of future disturbance from anthropogenic sources to
25 significant sage-grouse habitat areas. Consistent with available science concerning the relation
26 between anthropogenic disturbance and sage grouse population levels, the department will
27 monitor direct impacts in core areas in each of the PACs shown in Exhibit B.

28
29 (15) Central Registry. The department will work with affected counties, ODFW, the BLM and
30 USFWS to maintain a central registry, tracking anthropogenic disturbance from existing
31 (baseline) and all new development affecting core areas. In addition to serving as partners in
32 maintaining the central registry, counties must report all development permits for all uses
33 within a core area to the department. The registry will include baseline calculations of direct
34 impacts consistent with the approach identified by the Bureau of Land Management (BLM) .
35 Counties may establish more refined, project specific data to replace the BLM baseline figures
36 so long as all counties utilize a common methodology. Each year the department shall report to
37 the commission the amount of new direct impacts in each PAC. The report shall be coordinated
38 with and made available to all affected counties.

39
40 (16) Metering. These rules are intended to ensure that the area of direct impacts in any PAC
41 does not increase by an amount greater than 1.0 percent of the total area of the PAC in any
42 ten-year period. The initial period shall commence upon the effective date of these rules and
43 continue for ten consecutive years, where upon the process shall be successively repeated. The

1 commission will consider revisions to these rules if the department’s yearly reports required by
2 subsection (15) above indicate that the development trends in any PAC indicate that the 1.0
3 percent direct impact threshold is in jeopardy of being exceeded before the ten-year period has
4 expired. Any proposal to amend these rules undertaken by the department shall be developed
5 in coordination with all affected counties and other stakeholders.
6

7 (17) Disturbance Threshold. These rules are intended to ensure that direct impact levels do not
8 exceed three percent of the total area in any PAC. If this three percent threshold is approached,
9 then the department must report that situation to the commission along with a proposal to
10 amend these rules to adapt the standards and criteria such that the threshold is not exceeded.
11

12 (18) State agency coordination programs. All state agencies that carry out or that permit
13 conflicting uses in core area or in low density habitat, significant general habitat including but
14 not limited to OWRD, ODOT, DSL, DOGAMI, ODOE and the EFSC, and DEQ must report the
15 proposed development to the department, along with an estimate of the direct impact of the
16 development. In addition, to the extent not regulated by a county, such development, other
17 than the issuance of water rights and the expansion of cultivation, must meet the requirements
18 of subsection (9)(a)(D) of this rule.
19

20 (19) Scheduled Review. The department shall commence a review of these rules on or about
21 June 30, 2025 and, if determined to be necessary, recommend revisions to achieve the policy
22 objectives found herein. Furthermore, should the species become listed under the Federal
23 Endangered Species Act the commission may consider whether continued application of this
24 rule is necessary. Should the rule remain applicable and the species is de-listed the commission
25 shall consider whether continued application of this rule is necessary. However, this rule may
26 not be rescinded if its presence and applicability serves as a basis for the federal government to
27 determine that listing the species is not necessary, that Oregon should receive special status
28 under Section 4(d) of the Federal Endangered Species Act or that the species should be de-
29 listed.

Revision Legend-Staff Recommend Changes to Draft Rule

Proposed by DLCD

Proposed by ODFW

Proposed by DLCD in response to Oregon Farm Bureau Comments

Proposed by Idaho Power

Attachment A

Draft Date: June 22, 2015

1 **OAR 660-023-0115**

2 **Greater Sage-Grouse**

3
4 (1) Introduction. Greater Sage-Grouse (hereafter “sage-grouse”) habitat is a unique wildlife
5 resource subject to a variety of threats across a broad, multi-state region. Oregon’s sage-grouse
6 habitat is comprised of a combination of public land managed by the federal government and
7 nonfederal land generally in private ownership. Managing private and other nonfederal land for
8 the best possible outcomes requires partnership and cooperation among many stakeholders.
9 Accordingly, private and other nonfederal lands are strongly encouraged to participate in a
10 Candidate Conservation Agreement with Assurances program. Voluntary conservation efforts of
11 this nature are recognized by the state of Oregon as a critical part in recovering the breeding
12 population targeted by Oregon’s Conservation Strategy for Sage-Grouse. Beyond voluntary
13 efforts it remains necessary to provide a regulatory framework that offers fairness,
14 predictability and certainty for all involved parties. Engagement on the part of county
15 government is critical to Oregon’s efforts to address possible impacts from future development.

16
17 (2) Exempt activities.

18
19 (a) Those activities that do not require governmental approval, including farm use as
20 defined in ORS 215.203(2), are exempt from the provisions of this rule. State agency
21 permits necessary to facilitate a farm use, including granting of new water right permits
22 by the Oregon Water Resources Department, are also exempt from the provisions of
23 this rule.

24
25 (b) Any energy facility that submitted a preliminary application for site certificate
26 pursuant to ORS 469.300 et seq. on or before the effective date of this rule is exempt
27 from the provisions of this rule. OAR 660-023-0115 shall not be directly applicable
28 to any land use decision regarding that facility, notwithstanding ORS 197.646(3),
29 unless the applicant chooses otherwise. Similarly, any changes to a local
30 government’s acknowledged comprehensive plan or land use ordinances developed
31 to achieve consistency with OAR 660-023-0115 shall not constitute “applicable
32 substantive criteria” pursuant to OAR 345-022-0030(3), unless they are in effect on
33 the date the applicant submits a preliminary application for site certificate, unless
34 the applicant chooses otherwise.

35
36 (3) Definitions. For purposes of this division, the definitions in OAR 635-140-0005 ~~10~~ and in the
37 glossary of the “Greater Sage-Grouse Conservation Assessment and Strategy for Oregon”
38 adopted by the Commission on April 22, 2011 (copies of the plan are available through the
39 Oregon Department of Fish and Wildlife) shall apply. In addition, the following definitions shall
40 apply:

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Proposed by ODFW

Proposed by DLCD in response to Oregon Farm Bureau Comments

Proposed by Idaho Power

Attachment A

Draft Date: June 22, 2015

1 (a) "Areas of High Population Richness" are mapped areas **of breeding and nesting**
2 **habitat within core habitat that support the 75th percentile of breeding bird densities**
3 **(i.e. the top 25%). Please see Exhibit A.** ~~that represent statistically significant clustering~~
4 ~~of the most highly attended leks and associated nesting habitat.~~

5
6 (b) "Candidate Conservation Agreement with Assurances" is a formal agreement
7 between the United States Fish and Wildlife Service and one or more parties to address
8 the conservation needs of proposed or candidate species, or species likely to become
9 candidates, before they become listed as endangered or threatened. Landowners
10 voluntarily commit to conservation actions that will help stabilize or restore the species
11 with the goal that listing under the Federal Endangered Species Act will become
12 unnecessary.

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15 annual life history requirements that are encompassed by areas:

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26 federal agencies that could result in the loss of fish and wildlife habitat. Development
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29 permitting for activities with new impacts or continued impacts or continued impacts
30 that have not been mitigated consistent with current standards

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32 (e) "Direct impact" means an adverse effect of a development action upon ~~fish and~~
33 ~~wildlife~~ **significant sage-grouse** habitat which is proximal to the development action in
34 time and place.

35
36 (f) "Disturbance" is **comprised of natural threats to sage-grouse habitat such as:**
37 **wildfire, juniper infestation and the spread of noxious weeds or** anthropogenic
38 activities that can negatively affect sage-grouse use of habitat either through changing
39 the vegetation type/condition or displacement of sage-grouse use of an area. For

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Attachment A

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1 purposes of this rule only disturbance from anthropogenic activities, ~~such as direct and~~
2 ~~indirect impacts~~, are considered.

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5 core and low density habitats.

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27 (E) Parks/Public/Quasi-Public.

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29 (j) "Lek" means an area where male sage-grouse display during the breeding season to
30 attract females (also referred to as strutting-ground).

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32 (k) "Low density areas" are mapped sagebrush types or other habitats that support
33 sage-grouse that are encompassed by areas where:

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35 (A) Low lek density strata overlapped with seasonal connectivity corridors;

36
37 (B) Local corridors occur outside of all lek density strata;

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39 (C) Low lek density strata occur outside of connectivity corridors; or
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Attachment A

Draft Date: June 22, 2015

1 (D) ~~d~~) seasonal connectivity corridors occur outside of all lek density strata. Low
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4 (l) "Mitigation hierarchy" is an approach used by decision makers to consider a ~~large-~~
5 ~~scale-~~ development proposals and, **for purposes of this rule**, is **ordinarily** comprised of a
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Attachment A

Draft Date: June 22, 2015

1 (5) Quality, Quantity and Location. For purposes of this rule, sage-grouse habitat is only present
2 in Baker, Crook, Deschutes, Harney, Lake, Malheur and Union Counties. The location of sage-
3 grouse habitat within these counties shall be determined by following the map produced by
4 ODFW included as Exhibit A.

5
6 (6) Determination of Significance. Significant sage-grouse habitat includes only lands protected
7 under statewide planning goals 3 or 4 as of July 1, 2015 that are identified as:

8
9 (a) Core areas;

10
11 (b) Low density areas; and

12
13 (c) Lands within a general habitat area located within 3.1 miles of an occupied or
14 occupied-pending lek.

15
16 (d) The exact location of sage-grouse habitat may be refined during consideration of
17 specific projects but must be done in consultation with ODFW.

18
19 (7) Conflicting uses. For purposes of protecting significant sage-grouse habitat, conflicting uses
20 are:

21
22 (a) Large-scale development; and

23
24 (b) Other activities, which require review by county decision makers pursuant to OAR
25 660-033-0120 or other applicable provisions of law and are proposed:

26
27 (A) In a core area within 4.0 miles of an occupied or occupied-pending lek;

28
29 (B) In a low density area within 3.1 miles of an occupied or occupied-pending lek;
30 or

31
32 (C) In general habitat within 3.1 miles of an occupied or occupied-pending lek.

33
34 (8) Pre-Application Conference. A county should convene a pre-application conference prior to
35 accepting an application for a conflicting use in significant sage-grouse habitat. The pre-
36 application conference should include, at a minimum, the applicant, county planning staff and
37 local ODFW staff.

38
39 (9) Program to achieve the goal of protecting significant sage grouse habitat in a core area.
40

Revision Legend-Staff Recommend Changes to Draft Rule

Proposed by DLCD

Proposed by ODFW

Proposed by DLCD in response to Oregon Farm Bureau Comments

Proposed by Idaho Power

Attachment A

Draft Date: June 22, 2015

1 (a) A county may consider a large-scale development in a core area upon applying
2 disturbance thresholds and the mitigation hierarchy as follows:

3
4 (A) A county may consider a large-scale development that does not cause the
5 one-percent metering threshold described in section (16) or the three-percent
6 disturbance threshold described in section (17) to be exceeded.

7
8 (B) Avoidance. Before proceeding with large-scale development activity that
9 impacts a core area, the proponent must demonstrate that reasonable
10 alternatives have been considered and that the activity or other action cannot
11 avoid impacts within core area habitat. If the proposed large-scale development
12 can occur in another location that avoids both direct and indirect impacts within
13 core area habitat, then the proposal must not be allowed unless it can satisfy the
14 following criteria.

15
16 (i) It is not technically feasible to locate the proposed large-scale
17 development outside of a core area based on accepted engineering
18 practices, regulatory standards or some combination thereof. Costs
19 associated with technical feasibility may be considered, but cost alone
20 may not be the only consideration in determining that development must
21 be located such that it will have direct or indirect impacts on significant
22 sage-grouse areas; or

23
24 (ii) The proposed large-scale development is dependent on a unique
25 geographic or other physical feature(s) that cannot be found on other
26 lands; and

27
28 (iii) If either (9)(b)(B)(i) or (9)(b)(B)(ii) is found to be satisfied the county
29 must also find that the large-scale development will provide important
30 economic opportunity, needed infrastructure, public safety benefits or
31 public health benefits for local citizens or the entire region.

32
33 (C) Minimization. If the proposed use cannot be sited by avoiding a core area
34 altogether, including direct and indirect impacts, it shall be located to minimize
35 the amount of such habitat directly or indirectly disturbed, and to minimize
36 fragmentation of the core area(s) in question by locating the development
37 adjacent to existing development and at the edge of the core area when
38 possible. Uses should minimize impacts through micro-siting, limitations on the
39 timing of construction and/or use, and methods of construction. Minimizing
40 impacts from large-scale development in core habitat shall also ensure direct

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1 and indirect impacts do not occur in known areas of high population richness of
2 within a given core area, unless a project proponent demonstrates, by a
3 preponderance of the evidence, that such an approach is not feasible. Costs
4 associated with minimization may be considered, but cost alone may not be the
5 only consideration in determining that location of development cannot further
6 minimize direct or indirect impacts to core areas.

7
8 (D) Compensatory Mitigation. To the extent that a proposed large-scale
9 development will have direct or indirect ~~adverse~~ impacts on a core area after
10 application of the avoidance and minimization standards and criteria, above, the
11 permit must be conditioned to fully offset the direct and indirect **impacts**
12 ~~adverse effects~~ of the development to any core area. The required
13 compensatory mitigation must comply with OAR Chapter 635, division 140.

14
15 (b) A county may approve a conflicting use as identified at subsection (7)(b) above upon
16 either:

17
18 (A) Receiving confirmation from ODFW that the proposed conflicting use does
19 not pose a threat to significant sage-grouse habitat or the way sage-grouse use
20 that habitat; or

21
22 (B) Conditioning the approval based on ODFW recommendations, including
23 minimization techniques and compensatory mitigation, if necessary, to resolve
24 threats to significant sage-grouse habitat.

25
26 (10) Program to achieve the goal of protecting significant sage grouse habitat in a low density
27 area.

28
29 (a) A county may approve a large-scale development in a low density area upon
30 applying the mitigation hierarchy as follows:

31
32 (A) Avoidance. Before proceeding with large-scale development activity that
33 impacts a low density area, the proponent must demonstrate that reasonable
34 alternatives have been considered and that the activity or other action cannot
35 avoid impacts within a low density area. If the proposed large-scale development
36 can occur in another location that avoids both direct and indirect impacts within
37 a low density area, then the proposal must not be allowed unless it can satisfy
38 the following criteria:

39
40 (i) It is not technically or financially feasible to locate the proposed large-

Revision Legend-Staff Recommend Changes to Draft Rule

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1 scale development outside of a low density area based on accepted
2 engineering practices, regulatory standards, proximity to necessary
3 infrastructure or some combination thereof; or

4
5 (ii) The proposed large-scale development is dependent on geographic or
6 other physical feature(s) found in low density habitat areas that are less
7 common at other locations, or it is a linear use that must cross significant
8 sage grouse habitat in order to achieve a reasonably direct route.

9
10 (B) Minimization. If the proposed use cannot be sited by avoiding a low density
11 area altogether, including direct and indirect impacts, it shall be located to
12 minimize the amount of such habitat directly or indirectly disturbed, and to
13 minimize fragmentation of the low density area(s) in question by locating the
14 development adjacent to existing development and at the edge of the low
15 density area when possible. Uses should minimize impacts through micro-siting,
16 limitations on the timing of construction and/or use, and methods of
17 construction.

18
19 (C) Compensatory Mitigation. Required consistent with the provisions of
20 subsection ~~(9)(b)(D)~~ **(9)(a)(D)** above.

21
22 (b) A county may approve a conflicting use as identified at subsection (7)(b) above when
23 found to be consistent with the provisions of subsection (9)(b).

24
25 (11) Program to achieve the goal of protecting significant sage-grouse habitat on general
26 habitat.

27
28 (a) A county may approve a large-scale development on significant sage-grouse habitat
29 in general habitat upon requiring:

30
31 (A) General Habitat Consultation. Minimizing impacts from development actions
32 in general habitat shall include consultation between the development
33 proponent and ODFW that considers and results in recommendations on how to
34 best locate, constructor operate the development action so as to avoid or
35 minimize direct and indirect impacts on significant sage grouse habitat within the
36 area of general habitat. A county shall attach ODFW recommendations as a
37 condition of approval; and

38
39 (B) Compensatory Mitigation. Required consistent with the provisions of
40 subsection ~~(9)(b)(D)~~ **(9)(a)(D)** above.

Revision Legend-Staff Recommend Changes to Draft Rule

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Attachment A

Draft Date: June 22, 2015

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(b) A county may approve a conflicting use identified in subsection (7)(b) above when found to be consistent with the provisions of subsection (9)(b).

(12) Especially Unique Local Economic Opportunity. A county may approve a large-scale development proposal that does not meet the avoidance test for significant sage-grouse habitat if the county determines that the overall public benefits of the proposal outweigh the damage to significant sage-grouse habitat. Requirements for minimization and compensatory mitigation continue to apply and attempts should be made to avoid areas of high population richness, if possible. The county shall make this balancing determination only when the proposal involves an economic opportunity that will provide a number of permanent, full time jobs, not including construction activities, paying at least 150 percent of average county wages sufficient to increase the amount of total private nonfarm payroll employment by at least 0.5 percent over the figure included in the most recent data available from the Oregon Department of Employment rounded down to the nearest whole number. The applicant has the burden to show that the overall public benefits outweigh the damage to the significant sage-grouse habitat. This provision may be exercised by each effected county once during every ten year period beginning on the effective date of these rules. A county is also free not to approve a proposal submitted under this provision.

(13) A proposal to up-zone lands containing significant sage-grouse habitat to a greater development potential than otherwise allowed under goals 3 and 4 shall follow the ordinary goal 5 process at OAR 660-023-0030 thru 0050. Furthermore, up-zoning lands in a core area shall be considered a direct impact and count towards the three percent disturbance threshold pursuant to Subsection ~~(18)~~ (17) below.

(14) Landscape-Level **Consideration**. ~~Disturbance~~. The standards in subsections (9), (10) and (11) above, are designed to minimize the amount of future **impacts** ~~disturbance~~ from anthropogenic sources to significant sage-grouse habitat areas. Consistent with available science concerning the relation between anthropogenic **activities** ~~disturbance~~ and sage grouse population levels, the department will monitor direct impacts in core areas in each of the PACs shown in Exhibit **(C) B**.

(15) Central Registry. The department will work with affected counties, ODFW, the BLM and USFWS to maintain a central registry, tracking anthropogenic disturbance from existing (baseline) and all new development affecting core areas. In addition to serving as partners in maintaining the central registry, counties must report all development permits for all uses within a core area to the department. The registry will include baseline calculations of direct impacts consistent with the approach identified by the Bureau of Land Management (BLM). Counties may establish more refined, project specific data to replace the BLM baseline figures

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1 so long as all counties utilize a common methodology. Each year the department shall report to
2 the commission the amount of new direct impacts in each PAC. The report shall be coordinated
3 with and made available to all affected counties.

4
5 (16) Metering. These rules are intended to ensure that the area of direct impacts in any PAC
6 does not increase by an amount greater than 1.0 percent of the total area of the PAC in any
7 ten-year period. The initial period shall commence upon the effective date of these rules and
8 continue for ten consecutive years, where upon the process shall be successively repeated. The
9 commission will consider revisions to these rules if the department's yearly reports required by
10 subsection (15) above indicate that the development trends in any PAC indicate that the 1.0
11 percent direct impact threshold is in jeopardy of being exceeded before the ten-year period has
12 expired. Any proposal to amend these rules undertaken by the department shall be developed
13 in coordination with all affected counties and other stakeholders.

14
15 (17) Disturbance Threshold. These rules are intended to ensure that direct impact levels do not
16 exceed three percent of the total area in any PAC. If this three percent threshold is approached,
17 then the department must report that situation to the commission along with a proposal to
18 amend these rules to adapt the standards and criteria such that the threshold is not exceeded.

19
20 (18) State agency coordination programs. All state agencies that carry out or that permit
21 conflicting uses in core area or in low density habitat, significant general habitat including but
22 not limited to OWRD, ODOT, DSL, DOGAMI, ODOE and the EFSC, and DEQ must report the
23 proposed development to the department, along with an estimate of the direct impact of the
24 development. In addition, to the extent not regulated by a county, such development, other
25 than the issuance of water rights and the expansion of cultivation, must meet the requirements
26 of subsection (9)(a)(D) of this rule.

27
28 (19) Scheduled Review. The department shall commence a review of these rules on or about
29 June 30, 2025 and, if determined to be necessary, recommend revisions to achieve the policy
30 objectives found herein. Furthermore, should the species become listed under the Federal
31 Endangered Species Act the commission may consider whether continued application of this
32 rule is necessary. Should the rule remain applicable and the species is de-listed the commission
33 shall consider whether continued application of this rule is necessary. However, this rule may
34 not be rescinded if its presence and applicability serves as a basis for the federal government to
35 determine that listing the species is not necessary, that Oregon should receive special status
36 under Section 4(d) of the Federal Endangered Species Act or that the species should be de-
37 listed.

Language in **Bold** added 7/23/15
~~**Bold Stricken Thru**~~ deleted 7/23/15
DLCD from previous draft
ODFW from previous draft
OFB from previous draft
IPC from previous draft

1 OAR 660-023-0115
2 **Greater Sage-Grouse**

3
4 (1) Introduction. Greater Sage-Grouse (hereafter “sage-grouse”) habitat is a unique wildlife
5 resource subject to a variety of threats across a broad, multi-state region. Oregon’s sage-grouse
6 habitat is comprised of a combination of public land managed by the federal government and
7 nonfederal land generally in private ownership. Managing private and other nonfederal land for
8 the best possible outcomes requires partnership and cooperation among many stakeholders.
9 Accordingly, private and other nonfederal lands are strongly encouraged to participate in a
10 Candidate Conservation Agreement with Assurances program. Voluntary conservation efforts of
11 this nature are recognized by the state of Oregon as a critical part in recovering the breeding
12 population targeted by Oregon’s Conservation Strategy for Sage-Grouse. Beyond voluntary
13 efforts it remains necessary to provide a regulatory framework that offers fairness,
14 predictability and certainty for all involved parties. Engagement on the part of county
15 government is critical to Oregon’s efforts to address possible impacts from future development.

16
17 (2) Exempt activities.

18
19 **(a)** Those activities that do not require governmental approval, including farm use as
20 defined in ORS 215.203(2), are exempt from the provisions of this rule. State agency
21 permits necessary to facilitate a farm use, including granting of new water right permits
22 by the Oregon Water Resources Department, are also exempt from the provisions of
23 this rule.

24
25 **(b)** Any energy facility that submitted a preliminary application for site certificate
26 pursuant to ORS 469.300 et seq. on or before the effective date of this rule is exempt
27 from the provisions of this rule. OAR 660-023-0115 shall not be directly applicable
28 to any land use decision regarding that facility, notwithstanding ORS 197.646(3),
29 unless the applicant chooses otherwise. Similarly, any changes to a local
30 government’s acknowledged comprehensive plan or land use ordinances developed
31 to achieve consistency with OAR 660-023-0115 shall not constitute “applicable
32 substantive criteria” pursuant to OAR 345-022-0030(3), unless they are in effect on
33 the date the applicant submits a preliminary application for site certificate, unless
34 the applicant chooses otherwise.

35
36 **(c)** Private and other nonfederal lands are strongly encouraged to participate in a
37 Candidate Conservation with Assurances (hereafter “CCAA”) program. Voluntary
38 conservation efforts of this nature are recognized by the state of Oregon as a critical
39 part in recovering the breeding population targeted by Oregon’s Conservation
40 Strategy for Sage-Grouse. Uses identified in individual CCAA agreements are

Language in **Bold** added 7/23/15

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Attachment A-3

July 23, 2015

DLCD from previous draft

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IPC from previous draft

1 **relieved from the provisions of this rule except that conflicting uses will be subject to**
2 **OAR 660-023-0115 (9) thru (11) in all instances regardless of enrollment status.**

3 (3) Definitions. For purposes of this division, the definitions in OAR 635-140-0005 ~~10~~ and in the
4 glossary of the “Greater Sage-Grouse Conservation Assessment and Strategy for Oregon”
5 adopted by the Commission on April 22, 2011 (copies of the plan are available through the
6 Oregon Department of Fish and Wildlife) shall apply. In addition, the following definitions shall
7 apply:
8

9 (a) “Areas of High Population Richness” are mapped areas **of breeding and nesting**
10 **habitat within core habitat that support the 75th percentile of breeding bird**
11 **densities (i.e. the top 25%). Please see Exhibit A.** ~~that represent statistically significant~~
12 ~~clustering of the most highly attended leks and associated nesting habitat.~~
13

14 (b) “Candidate Conservation Agreement with Assurances” is a formal agreement
15 between the United States Fish and Wildlife Service and one or more parties to address
16 the conservation needs of proposed or candidate species, or species likely to become
17 candidates, before they become listed as endangered or threatened. Landowners
18 voluntarily commit to conservation actions that will help stabilize or restore the species
19 with the goal that listing under the Federal Endangered Species Act will become
20 unnecessary.
21

22 (c) “Core areas” are mapped sagebrush types or other habitats that support sage-grouse
23 annual life history requirements that are encompassed by areas:
24

25 (A) Of very high, high, and moderate lek density strata;

26 (B) Where low lek density strata overlap local connectivity corridors; or
27

28 (C) Where winter habitat use polygons overlap with either low lek density strata,
29 connectivity corridors, or occupied habitat. Core area maps are maintained by
30 ODFW .
31

32
33 (d) “Development action” means any anthropogenic activity subject to regulation by
34 local, state, or federal agencies that could result in the loss of **significant sage-grouse**
35 **habitat** ~~fish and wildlife habitat~~. Development actions may include but are not limited
36 to, construction and operational activities of local, state, and federal agencies.
37 Development actions also include subsequent re-permitting **of existing activities**
38 **proposing new impacts beyond current conditions.** ~~for activities with new impacts or~~
39 ~~continued impacts or continued impacts that have not been mitigated consistent with~~
40 ~~current standards~~

Language in **Bold** added 7/23/15
~~**Bold Stricken Thru**~~ deleted 7/23/15
DLCD from previous draft
ODFW from previous draft
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IPC from previous draft

Attachment A-3
July 23, 2015

1
2 (e) "Direct impact" means an adverse effect of a development action upon ~~fish and~~
3 ~~wildlife~~ **significant sage-grouse** habitat which is proximal to the development action in
4 time and place.

5
6 (f) "Disturbance" is **comprised of natural threats to sage-grouse habitat such as:**
7 **wildfire, juniper infestation and the spread of noxious weeds** or anthropogenic
8 activities that can negatively affect sage-grouse use of habitat either through changing
9 the vegetation type/condition or displacement of sage-grouse use of an area. For
10 purposes of this rule only disturbance from anthropogenic activities, ~~such as direct and~~
11 ~~indirect impacts,~~ are considered.

12
13 (g) "General habitat" is occupied (seasonal or year-round) sage grouse habitat outside
14 core and low density habitats.

15
16 (h) "Indirect impacts" are **adverse effects to significant sage-grouse habitat** that are
17 caused by or will ultimately result from an affected development activity. Indirect
18 **impacts effects** usually occur later in time or are removed in distance compared to
19 direct effects

20
21 (i) "Large-scale development" means uses that are either over 50 feet in height, have a
22 direct impact in excess of five acres, generate more than 50 vehicle trips per day, or
23 create noise levels of at least 70 dB at zero meters for sustained periods of time. Uses
24 that constitute large-scale development also require review by county decision makers
25 and are listed in one of the following categories identified in the table attached to OAR
26 660-033-0120.

- 27
28 (A) Commercial Uses.
29
30 (B) Mineral, Aggregate, Oil and Gas Uses.
31
32 (C) Transportation Uses.
33
34 (D) Utility/Solid Waste Disposal Facilities.
35
36 (E) Parks/Public/Quasi-Public.

37
38 (j) "Lek" means an area where male sage-grouse display during the breeding season to
39 attract females (also referred to as strutting-ground).
40

Language in **Bold** added 7/23/15
~~**Bold Stricken Thru**~~ deleted 7/23/15
DLCD from previous draft
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Attachment A-3
July 23, 2015

- 1 (k) “Low density areas” are mapped sagebrush types or other habitats that support
2 sage-grouse that are encompassed by areas where:
3
4 (A) Low lek density strata overlapped with seasonal connectivity corridors;
5
6 (B) Local corridors occur outside of all lek density strata;
7
8 (C) Low lek density strata occur outside of connectivity corridors; or
9
10 **(D)** ~~d)~~ seasonal connectivity corridors occur outside of all lek density strata. Low
11 density area maps are maintained by ODFW.
12
13 (l) “Mitigation hierarchy” is an approach used by decision makers to consider ~~a large-~~
14 ~~scale~~ development proposals and, **for purposes of this rule**, is **ordinarily** comprised of a
15 three step process:
16
17 (A) “Avoidance” is the first step in the mitigation hierarchy and is accomplished
18 by not taking a certain development action or parts of that action.
19
20 (B) “Minimization” is the second step in the mitigation hierarchy and is
21 accomplished by limiting the degree or magnitude of the development action
22 and its implementation.
23
24 (C) “Compensatory mitigation” is the third step in the mitigation hierarchy and
25 means the replacement or enhancement of the function of habitat capable of
26 supporting sage-grouse in greater numbers than predicted to be impacted by a
27 development.
28
29 (m) “Occupied Lek” is a lek that has been regularly visited by ODFW and has had one or
30 more male sage-grouse counted in one or more of the last seven years.
31
32 (n) “Occupied Pending Lek” is a lek that has not been counted regularly by ODFW in the
33 last seven years, but sage-grouse were present at ODFW’s last visit.
34
35 (o) “Priority Areas for Conservation” (PACs) are key habitats identified by state sage
36 grouse conservation plans or through other sage-grouse conservation efforts (e.g., BLM
37 Planning). In Oregon, core area habitats are PACs.
38
39 (4) Local program development and direct applicability of rule. Local governments may develop
40 a program to achieve consistency with OAR 660-023-0115 by following the standard process in

Language in **Bold** added 7/23/15
~~**Bold Stricken Thru**~~ deleted 7/23/15
DLCD from previous draft
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1 OAR 660-023-0030, OAR 660-023-0040 and 660-023-0050 and submitting the amendment to
2 the Commission in the manner provided for periodic review under ORS 197.628 to 197.650 and
3 OAR 660-025-0175. Until a county amends its comprehensive plan and land use regulations to
4 achieve consistency with OAR 660-023-0115 the provisions of subsections (5) thru (12) shall
5 apply directly to land use decisions affecting significant sage-grouse habitat. When a local
6 program has been acknowledged by LCDC to be in compliance with Goal 5 and equivalent to
7 OAR 660-023-0115 with regard to protecting sage-grouse habitat, that program becomes the
8 controlling county land use document and compliance with this rule is no longer necessary.
9

10 (5) Quality, Quantity and Location. For purposes of this rule, sage-grouse habitat is only present
11 in Baker, Crook, Deschutes, Harney, Lake, Malheur and Union Counties. The location of sage-
12 grouse habitat within these counties shall be determined by following the map produced by
13 ODFW included as Exhibit **B A**.
14

15 (6) Determination of Significance. Significant sage-grouse habitat includes only lands protected
16 under statewide planning goals 3 or 4 as of July 1, 2015 that are identified as:
17

18 (a) Core areas;

19
20 (b) Low density areas; and

21
22 (c) Lands within a general habitat area located within 3.1 miles of an occupied or
23 occupied-pending lek.

24
25 (d) The exact location of sage-grouse habitat may be refined during consideration of
26 specific projects but must be done in consultation with ODFW.
27

28 (7) Conflicting uses. For purposes of protecting significant sage-grouse habitat, conflicting uses
29 are:
30

31 (a) Large-scale development; and

32
33 (b) Other activities, which require review by county decision makers pursuant to OAR
34 660-033-0120 ~~or other applicable provisions of law~~ and are proposed:
35

36 (A) In a core area within 4.0 miles of an occupied or occupied-pending lek;

37
38 (B) In a low density area within 3.1 miles of an occupied or occupied-pending lek;
39 or
40

Language in **Bold** added 7/23/15
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Attachment A-3
July 23, 2015

1 (C) In general habitat within 3.1 miles of an occupied or occupied-pending lek.
2

3 (8) Pre-Application Conference. A county should convene a pre-application conference prior to
4 accepting an application for a conflicting use in significant sage-grouse habitat. The pre-
5 application conference should include, at a minimum, the applicant, county planning staff and
6 local ODFW staff.
7

8 (9) Program to achieve the goal of protecting significant sage grouse habitat in a core area.
9

10 (a) A county may consider a large-scale development in a core area upon applying
11 disturbance thresholds and the mitigation hierarchy as follows:
12

13 (A) A county may consider a large-scale development that does not cause the
14 one-percent metering threshold described in section (16) or the three-percent
15 disturbance threshold described in section (17) to be exceeded.
16

17 (B) Avoidance. Before proceeding with large-scale development activity that
18 impacts a core area, the proponent must demonstrate that reasonable
19 alternatives have been considered and that the activity or other action cannot
20 avoid impacts within core area habitat. If the proposed large-scale development
21 can occur in another location that avoids both direct and indirect impacts within
22 core area habitat, then the proposal must not be allowed unless it can satisfy the
23 following criteria.
24

25 (i) It is not technically feasible to locate the proposed large-scale
26 development outside of a core area based on accepted engineering
27 practices, regulatory standards or some combination thereof. Costs
28 associated with technical feasibility may be considered, but cost alone
29 may not be the only consideration in determining that development must
30 be located such that it will have direct or indirect impacts on significant
31 sage-grouse areas; or
32

33 (ii) The proposed large-scale development is dependent on a unique
34 geographic or other physical feature(s) that cannot be found on other
35 lands; and
36

37 (iii) If either (9)(b)(B)(i) or (9)(b)(B)(ii) is found to be satisfied the county
38 must also find that the large-scale development will provide important
39 economic opportunity, needed infrastructure, public safety benefits or
40 public health benefits for local citizens or the entire region.

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Attachment A-3
July 23, 2015

1
2 (C) Minimization. If the proposed use cannot be sited by avoiding a core area
3 altogether, including direct and indirect impacts, it shall be located to minimize
4 the amount of such habitat directly or indirectly disturbed, and to minimize
5 fragmentation of the core area(s) in question by locating the development
6 adjacent to existing development and at the edge of the core area when
7 possible. Uses should minimize impacts through micro-siting, limitations on the
8 timing of construction and/or use, and methods of construction. Minimizing
9 impacts from large-scale development in core habitat shall also ensure direct
10 and indirect impacts do not occur in known areas of high population richness of
11 within a given core area, unless a project proponent demonstrates, by a
12 preponderance of the evidence, that such an approach is not feasible. Costs
13 associated with minimization may be considered, but cost alone may not be the
14 only consideration in determining that location of development cannot further
15 minimize direct or indirect impacts to core areas.

16
17 (D) Compensatory Mitigation. To the extent that a proposed large-scale
18 development will have direct or indirect ~~adverse~~ impacts on a core area after
19 application of the avoidance and minimization standards and criteria, above, the
20 permit must be conditioned to fully offset the direct and indirect **impacts**
21 ~~adverse effects~~ of the development to any core area. The required
22 compensatory mitigation must comply with OAR Chapter 635, division 140.

23
24 (b) A county may approve a conflicting use as identified at subsection (7)(b) above upon
25 either:

26
27 (A) Receiving confirmation from ODFW that the proposed conflicting use does
28 not pose a threat to significant sage-grouse habitat or the way sage-grouse use
29 that habitat; or

30
31 (B) Conditioning the approval based on ODFW recommendations, including
32 minimization techniques and compensatory mitigation, if necessary, to resolve
33 threats to significant sage-grouse habitat.

34
35 (10) Program to achieve the goal of protecting significant sage grouse habitat in a low density
36 area.

37
38 (a) A county may approve a large-scale development in a low density area upon
39 applying the mitigation hierarchy as follows:

40

Language in **Bold** added 7/23/15
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DLCD from previous draft
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IPC from previous draft

Attachment A-3
July 23, 2015

- 1 (A) Avoidance. Before proceeding with large-scale development activity that
2 impacts a low density area, the proponent must demonstrate that reasonable
3 alternatives have been considered and that the activity or other action cannot
4 avoid impacts within a low density area. If the proposed large-scale development
5 can occur in another location that avoids both direct and indirect impacts within
6 a low density area, then the proposal must not be allowed unless it can satisfy
7 the following criteria:
8
9 (i) It is not technically or financially feasible to locate the proposed large-
10 scale development outside of a low density area based on accepted
11 engineering practices, regulatory standards, proximity to necessary
12 infrastructure or some combination thereof; or
13
14 (ii) The proposed large-scale development is dependent on geographic or
15 other physical feature(s) found in low density habitat areas that are less
16 common at other locations, or it is a linear use that must cross significant
17 sage grouse habitat in order to achieve a reasonably direct route.
18
19 (B) Minimization. If the proposed use cannot be sited by avoiding a low density
20 area altogether, including direct and indirect impacts, it shall be located to
21 minimize the amount of such habitat directly or indirectly disturbed, and to
22 minimize fragmentation of the low density area(s) in question by locating the
23 development adjacent to existing development and at the edge of the low
24 density area when possible. Uses should minimize impacts through micro-siting,
25 limitations on the timing of construction and/or use, and methods of
26 construction.
27
28 (C) Compensatory Mitigation. Required consistent with the provisions of
29 subsection ~~(9)(b)(D)~~ **(9)(a)(D)** above.
30
31 (b) A county may approve a conflicting use as identified at subsection (7)(b) above when
32 found to be consistent with the provisions of subsection (9)(b).
33
34 (11) Program to achieve the goal of protecting significant sage-grouse habitat on general
35 habitat.
36
37 (a) A county may approve a large-scale development on significant sage-grouse habitat
38 in general habitat upon requiring:
39

Language in **Bold** added 7/23/15
~~Bold Stricken Thru~~ deleted 7/23/15
DLCD from previous draft
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Attachment A-3
July 23, 2015

1 (A) General Habitat Consultation. Minimizing impacts from development actions
2 in general habitat shall include consultation between the development
3 proponent and ODFW that considers and results in recommendations on how to
4 best locate, constructor operate the development action so as to avoid or
5 minimize direct and indirect impacts on significant sage grouse habitat within the
6 area of general habitat. A county shall attach ODFW recommendations as a
7 condition of approval; and

8
9 (B) Compensatory Mitigation. Required consistent with the provisions of
10 subsection ~~(9)(b)(D)~~ **(9)(a)(D)** above.

11
12 (b) A county may approve a conflicting use identified in subsection (7)(b) above when
13 found to be consistent with the provisions of subsection (9)(b).

14
15 (12) Especially Unique Local Economic Opportunity. A county may approve a large-scale
16 development proposal that does not meet the avoidance test for significant sage-grouse
17 habitat if the county determines that the overall public benefits of the proposal outweigh the
18 damage to significant sage-grouse habitat. Requirements for minimization and compensatory
19 mitigation continue to apply and attempts should be made to avoid areas of high population
20 richness, if possible. The county shall make this balancing determination only when the
21 proposal involves an economic opportunity that will provide a number of permanent, full time
22 jobs, not including construction activities, paying at least 150 percent of average county wages
23 sufficient to increase the amount of total private nonfarm payroll employment by at least 0.5
24 percent over the figure included in the most recent data available from the Oregon Department
25 of Employment rounded down to the nearest whole number. The applicant has the burden to
26 show that the overall public benefits outweigh the damage to the significant sage-grouse
27 habitat. This provision may be exercised by each effected county once during every ten year
28 period beginning on the effective date of these rules. A county is also free not to approve a
29 proposal submitted under this provision.

30
31 (13) A proposal to up-zone lands containing significant sage-grouse habitat to a greater
32 development potential than otherwise allowed under goals 3 and 4 shall follow the ordinary
33 goal 5 process at OAR 660-023-0030 thru 0050. Furthermore, up-zoning lands in a core area
34 shall be considered a direct impact and count towards the three percent disturbance threshold
35 pursuant to Subsection ~~(18)~~ **(17)** below.

36
37 (14) Landscape-Level **Consideration**. ~~Disturbance~~. The standards in subsections (9), (10) and
38 (11) above, are designed to minimize the amount of future **impacts** ~~disturbance~~ from
39 anthropogenic sources to significant sage-grouse habitat areas. Consistent with available
40 science concerning the relation between anthropogenic **activities** ~~disturbance~~ and sage grouse

Language in **Bold** added 7/23/15

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Attachment A-3

July 23, 2015

1 population levels, the department will monitor direct impacts in core areas in each of the PACs
2 shown in Exhibit **(C) B**.

3
4 (15) Central Registry. The department will work with affected counties, ODFW, the BLM and
5 USFWS to maintain a central registry, tracking anthropogenic disturbance from existing
6 (baseline) and all new development affecting core areas. In addition to serving as partners in
7 maintaining the central registry, counties must report all development permits for all uses
8 within a core area to the department. The registry will include baseline calculations of direct
9 impacts **levels** consistent with the approach identified by the Bureau of Land Management
10 (BLM). **The figures included in ~~Please see Exhibit D~~ represent the upper limit of the baseline**
11 **disturbance calculations. The baseline disturbance calculations may be reduced if better**
12 **information is received but they shall not be increased.** Counties may establish more refined,
13 project specific data to replace the ~~BLM~~ baseline figures so long as all counties utilize a
14 common methodology. Each year the department shall report to the commission the amount
15 of new direct impacts in each PAC. The report shall be coordinated with and made available to
16 all affected counties.

17
18 (16) Metering. These rules are intended to ensure that the area of direct impacts **levels** in any
19 PAC does not increase by an amount greater than 1.0 percent of the total area of the PAC in
20 any ten-year period. The initial period shall commence upon the effective date of these rules
21 and continue for ten consecutive years, where upon the process shall be successively repeated.
22 The commission will consider revisions to these rules if the department's yearly reports
23 required by subsection (15) above indicate that the development trends in any PAC indicate
24 that the 1.0 percent direct impact threshold is in jeopardy of being exceeded before the ten-
25 year period has expired. Any proposal to amend these rules undertaken by the department
26 shall be developed in coordination with all affected counties and other stakeholders.

27
28 (17) Disturbance Threshold. These rules are intended to ensure that direct impact levels do not
29 exceed three percent of the total area in any PAC. If this three percent threshold is approached,
30 then the department must report that situation to the commission along with a proposal to
31 amend these rules to adapt the standards and criteria such that the threshold is not exceeded.

32
33 (18) State agency coordination programs. All state agencies that carry out or that permit
34 conflicting uses in core area, ~~or in low density area habitat,~~ or significant general habitat
35 including but not limited to OWRD, ODOT, DSL, DOGAMI, ODOE and the EFSC, and DEQ must
36 report the proposed development to the department, along with an estimate of the direct
37 impact of the development. In addition, to the extent not regulated by a county, such
38 development, other than the issuance of water rights and the expansion of cultivation, must
39 meet the requirements of subsection (9)(a)(D) of this rule.

40

Language in **Bold** added 7/23/15

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Attachment A-3

July 23, 2015

1 (19) Scheduled Review. The department shall commence a review of these rules **no later than**
2 ~~**on or about**~~ June 30, ~~**2025**~~ and, if determined to be necessary, recommend revisions to achieve
3 the policy objectives found herein. Furthermore, should the species become listed under the
4 Federal Endangered Species Act the commission ~~**shall**~~ **may** consider whether continued
5 application of this rule is necessary. Should the rule remain applicable and the species is de-
6 listed the commission shall consider whether continued application of this rule is necessary.
7 ~~**However, this rule may not be rescinded if its presence and applicability serves as a basis for**~~
8 ~~**the federal government to determine that listing the species is not necessary, that Oregon**~~
9 ~~should receive special status under Section 4(d) of the Federal Endangered Species Act or that~~
10 ~~the species should be de-listed.~~