

Item 8  
Exhibit A

Draft Date: June 5, 2015

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

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

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

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

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

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

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

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

34 B) Where low lek density strata overlap local connectivity corridors; or

35 C) Where winter habitat use polygons overlap with either low lek density strata, connectivity corridors,  
36 or occupied habitat. Core area maps are maintained by ODFW .

37 (d) “Development action” means any activity subject to regulation by local, state, or federal agencies  
38 that could result in the loss of fish and wildlife habitat. Development actions may include but are not  
39 limited to, construction and operational activities of local, state, and federal agencies. Development

1 actions also include subsequent re-permitting for activities with new impacts or continued impacts or  
2 continued impacts that have not been mitigated consistent with current standards

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

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

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

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

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

- 19  
20 A. Commercial Uses.  
21  
22 B. Mineral, Aggregate, Oil and Gas Uses.  
23  
24 C. Transportation Uses.  
25  
26 D. Utility/Solid Waste Disposal Facilities.  
27  
28 E. Parks/Public/Quasi-Public.

26 (j) "Lek" means an area where male sage-grouse display during the breeding season to attract females  
27 | ~~also referred~~ also referred to as strutting-ground).  
28

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

- 31 A) Low lek density strata overlapped with seasonal connectivity corridors;  
32 B) Local corridors occur outside of all lek density strata;  
33 C) Low lek density strata occur outside of connectivity corridors; or d) seasonal connectivity corridors  
34 occur outside of all lek density strata. Low density area maps are maintained by ODFW .

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

**Comment [MAN1]:** The inclusion of the word "indirect" here creates an issue for the times when we use the term disturbance below. While in the metering section we talk about "direct impacts", we call it a disturbance threshold in other areas of the document. I think we need to remove the term "indirect impacts" from this definition or not use the term "disturbance" elsewhere in the document.

- 1 (A) "Avoidance" is the first step in the mitigation hierarchy and is accomplished by not taking a certain  
2 development action or parts of that action.
- 3 (B) "Minimization" is the second step in the mitigation hierarchy and is accomplished by limiting the  
4 degree or magnitude of the development action and its implementation.
- 5 (C) "Compensatory mitigation" is the third step in the mitigation hierarchy and means the replacement  
6 or enhancement of the function of habitat capable of supporting sage-grouse in greater numbers than  
7 predicted to be impacted by a development.
- 8 (m) "Occupied Lek" is a lek that has been regularly visited by ODFW and has had one or more male sage-  
9 grouse counted in one or more of the last seven years.
- 10 (n) "Occupied Pending Lek" is a lek that has not been counted regularly by ODFW in the last seven  
11 years, but sage-grouse were present at ODFW's last visit.  
12
- 13 (o) "Priority Areas for Conservation" (PACs) are key habitats identified by state sage grouse conservation  
14 plans or through other sage-grouse conservation efforts (e.g., BLM Planning). In Oregon, core area  
15 habitats are PACs.  
16
- 17 (4) Local program development and direct applicability of rule. Local governments may develop a  
18 program to achieve consistency with OAR 660-023-0115 by following the standard process in OAR 660-  
19 023-0030, OAR 660-023-0040 and 660-023-0050 and submitting the amendment to the Commission in  
20 the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-025-0175. Until a  
21 county amends its comprehensive plan and land use regulations to achieve consistency with OAR 660-  
22 023-0115 the provisions of subsections (5) thru (12) shall apply directly to land use decisions affecting  
23 significant sage-grouse habitat. When a local program has been acknowledged by LCDC to be in  
24 compliance with Goal 5 and equivalent to OAR 660-023-0115 with regard to protecting sage-grouse  
25 habitat, that program becomes the controlling county land use document and compliance with this rule  
26 is no longer necessary.
- 27 (5) Quality, Quantity and Location. For purposes of this rule, sage-grouse habitat is only present in  
28 Baker, Crook, Deschutes, Harney, Lake, Malheur and Union Counties. The location of sage-grouse  
29 habitat within these counties shall be determined by following the map produced by ODFW included as  
30 Exhibit A.
- 31 (6) Determination of Significance. Significant sage-grouse habitat includes only lands protected under  
32 statewide planning goals 3 or 4 as of July 1, 2015 that are identified as:
- 33 (a) Core areas;
- 34 (b) Low density areas; and
- 35 (c) Lands within a general habitat area located within 3.1 miles of an occupied or occupied-pending lek.

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

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

4 (a) Large-scale development; and

5 (b) Other activities, which require review by county decision makers pursuant to OAR 660-033-0120 or  
6 other applicable provisions of law, are note exempt from the provisions of this rule, and are proposed:

Comment [MAN2]: This is to capture farm use related permits (like OWRD)

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

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

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

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

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

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

Comment [MAN3]: See above.

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

Comment [MAN4]: See above.

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

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

30

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

- 1 (iii) If either (9)(b)(B)(i) or (9)(b)(B)(ii) is found to be satisfied the county must also find that the large-  
2 scale development will provide important economic opportunity, needed infrastructure, public safety  
3 benefits or public health benefits for local citizens or the entire region.
- 4 (C) Minimization. If the proposed use cannot be sited by avoiding a core area altogether, including direct  
5 and indirect impacts, it shall be located to minimize the amount of such habitat directly or indirectly  
6 disturbed, and to minimize fragmentation of the core area(s) in question by locating the development  
7 adjacent to existing development and at the edge of the core area when possible. Uses should minimize  
8 impacts through micro-siting, limitations on the timing of construction and/or use, and methods of  
9 construction. Minimizing 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 within a given core area,  
11 unless a project proponent demonstrates, by a preponderance of the evidence, that such an approach is  
12 not feasible. Costs associated with minimization may be considered, but cost alone may not be the only  
13 consideration in determining that location of development cannot further minimize direct or indirect  
14 impacts to core areas.
- 15 (D) Compensatory Mitigation. To the extent that a proposed large-scale development will have direct or  
16 indirect adverse impacts on a core area after application of the avoidance and minimization standards  
17 and criteria, above, the permit must be conditioned to fully offset the direct and indirect adverse effects  
18 of the development to any core area and any . The required compensatory mitigation must comply with  
19 OAR Chapter 635, division 140.
- 20 (b) A county may approve a conflicting use as identified at subsection (7)(b) above upon either:
- 21 (A) Receiving confirmation from ODFW that the proposed conflicting use does not pose a threat to  
22 significant sage-grouse habitat or the way sage-grouse use that habitat; or
- 23 (B) Conditioning the approval based on ODFW recommendations, including minimization techniques and  
24 compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat.
- 25 (10) Program to achieve the goal of protecting significant sage grouse habitat in a low density area.
- 26 (a) A county may approve a large-scale development in a low density area upon applying the mitigation  
27 hierarchy as follows:
- 28 (A) Avoidance. Before proceeding with large-scale development activity that impacts a low density  
29 area, the proponent must demonstrate that reasonable alternatives have been considered and that the  
30 activity or other action cannot avoid impacts within a low density area. If the proposed large-scale  
31 development can occur in another location that avoids both direct and indirect impacts within a low  
32 density area, then the proposal must not be allowed unless it can satisfy the following criteria:
- 33 (i) It is not technically or financially feasible to locate the proposed large-scale development outside of a  
34 low density area based on accepted engineering practices, regulatory standards, proximity to necessary  
35 infrastructure or some combination thereof; or  
36

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

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

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

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

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

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

16 (A) General Habitat Consultation. Minimizing impacts from development actions in general habitat shall  
17 include consultation between the development proponent and ODFW that considers and results in  
18 recommendations on how to best locate, constructor operate the development action so as to avoid or  
19 minimize direct and indirect impacts on significant sage grouse habitat within the area of general  
20 habitat. A county shall attach ODFW recommendations as a condition of approval; and  
21

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

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

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

1 beginning on the effective date of these rules. A county is also free not to approve a proposal submitted  
2 under this provision.

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

Comment [MAN5]: See above.

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

Comment [MAN6]: See above.

Comment [MAN7]: See above.

Comment [MAN8]: See above.

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

Comment [MAN9]: See above.

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

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

Comment [MAN10]: See above.

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

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1 (19) Scheduled Review. The department shall commence a review of these rules on or about June 30,  
2 2025 and, if determined to be necessary, recommend revisions to achieve the policy objectives found  
3 herein. Furthermore, should the species become listed under the Federal Endangered Species Act the  
4 commission may consider whether continued application of this rule is necessary. Should the rule  
5 remain applicable and the species is de-listed the commission shall consider whether continued  
6 application of this rule is necessary. However, this rule may not be rescinded if its presence and  
7 applicability serves as a basis for the federal government to determine that listing the species is not  
8 necessary, that Oregon should receive special status under Section 4(d) of the Federal Endangered  
9 Species Act or that the species should be de-listed.

10