



# Welcome

Land Conservation & Development Commission  
Sage-Grouse Goal 5 Rule  
Public Hearing

Burns, Oregon  
July 23, 2015



# Purpose of LCDC Rule

LCDC's rule is a foundational piece of Oregon's Demonstration that a Federal listing is not necessary.

Written to ensure maximum amount of local authority and self determination.

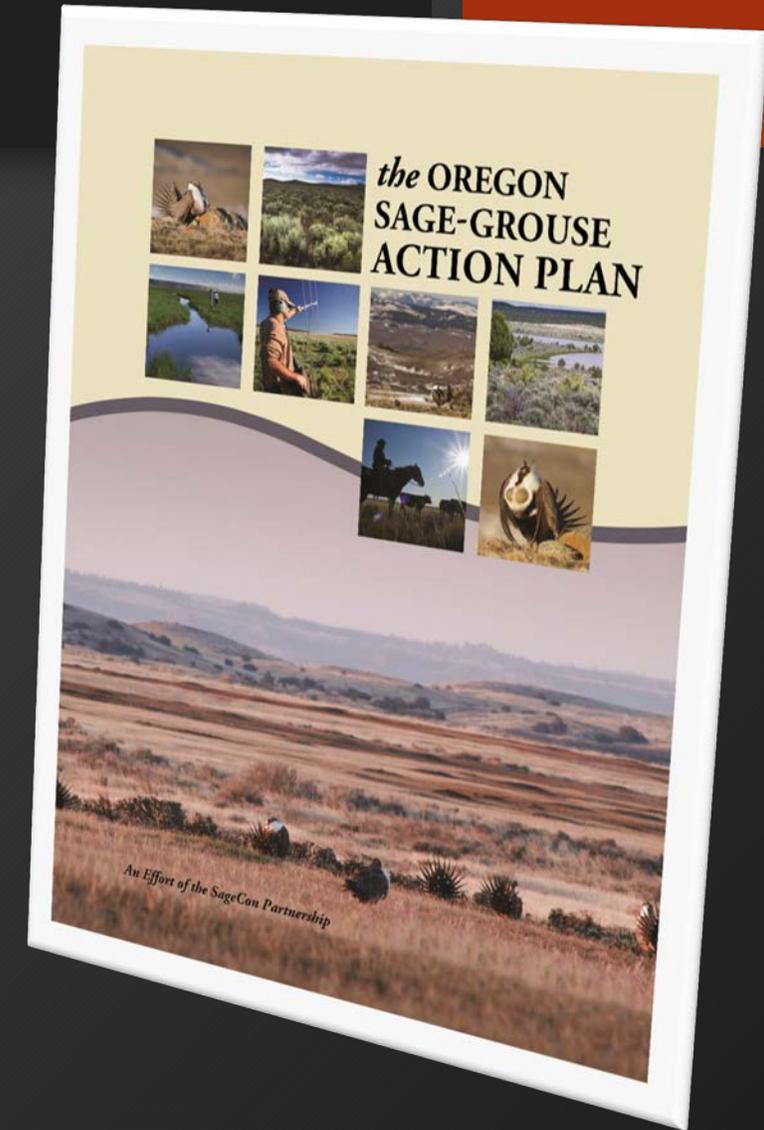


# Background

- 2010 US Fish and Wildlife Service designates Sage Grouse as “Warranted but Precluded” due to threats from:
- Wildfire
  - Invasive Weeds and Juniper
  - Habitat Fragmentation
- 2011 ODFW developed a Sage Grouse Conservation Strategy
- Focused on “Core Areas” with 90% of breeding population
  - Avoid Impacts in Core Areas
- 2012 -
- 2015 Oregon “Sage Grouse Action Plan” developed through SageCon
- The ODFW proposed rule is part of implementing our action plan
- 2015 USFWS must make an endangered species listing determination
- Decision affects 11 western states - largest ESA listing in the nation

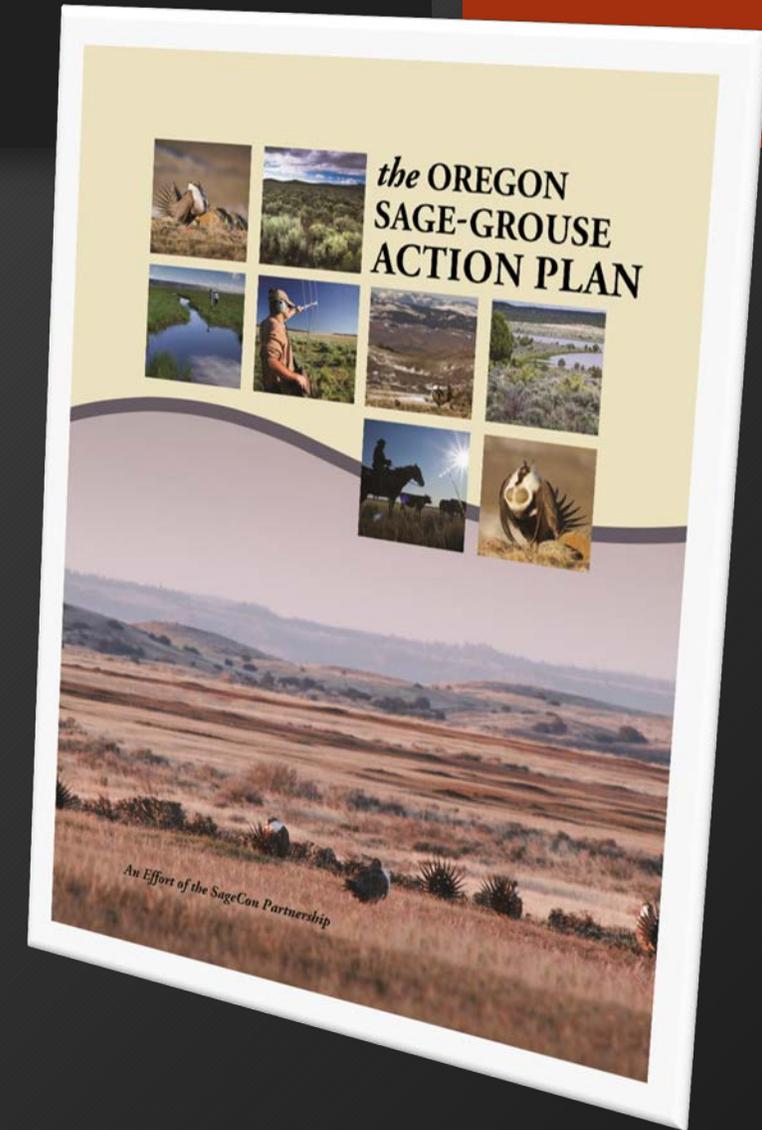
# Why a Statewide Action Plan

- All Lands All Threats – A Coordinated Approach among
  - Federal agencies (BLM/USFWS)
  - State (state agencies)
  - Local Government (Counties, SWCDs)
  - Private land owners (CCAAs)
  - Interest groups (industry; conservation)



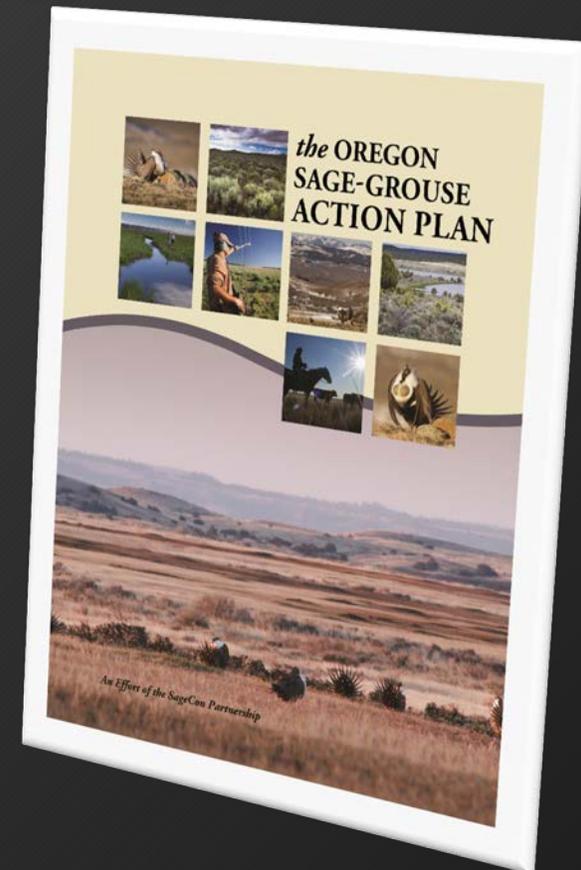
# Purpose of the Plan

- Documents a plan of action to convey to the USFWS that Oregon is taking a serious approach to sage-grouse conservation.
- Creates a framework equivalent to a contractual agreement that we, as a state, will follow through with conservation of sage-grouse.



# The Plan Also:

- Updates the threats to sage-grouse and its habitat
- Lists conservation actions taken since 2010
- Prioritizes future local/statewide actions
- Outlines best management practices
- Provides regulatory certainty if development is in sage-grouse habitat
- Presents a framework for Plan implementation, monitoring, and adaptive management across all levels of government and with nongovernmental entities



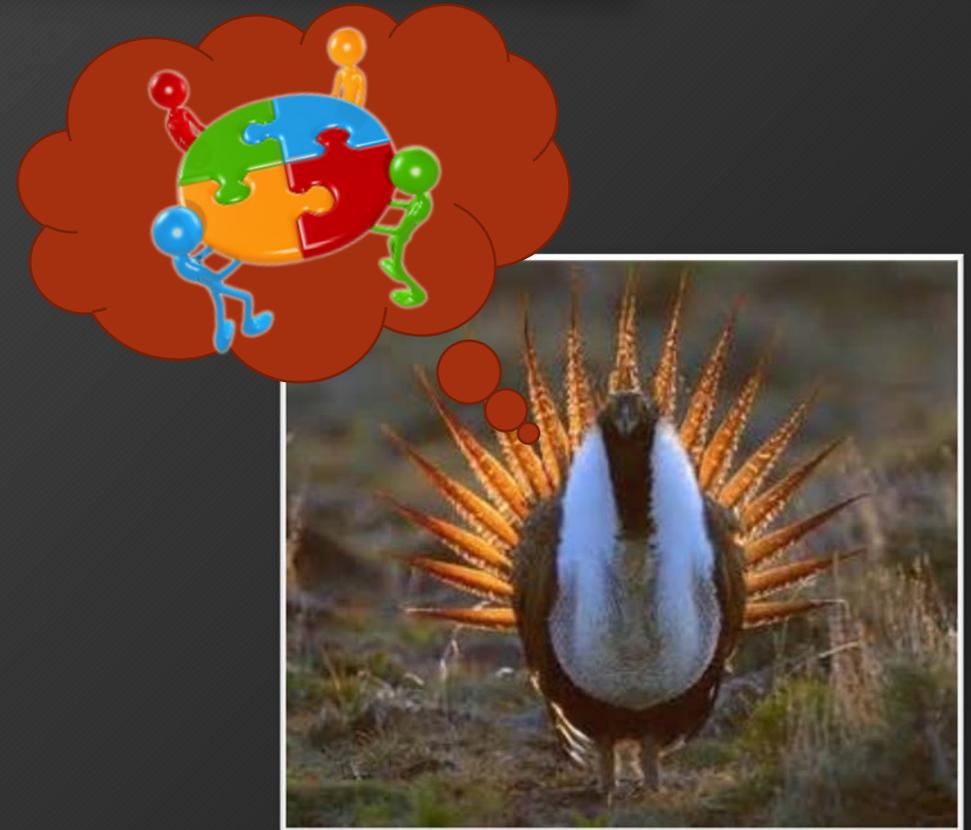
# How do we ensure the plan is implemented?

## Implementation Coordination

- Decision making to address issues and prioritize actions
- Coordinated funding
- MOUs -for working across all levels of government and monitoring

LCDC land use rules

ODFW mitigation rules



# Oregon: Making our Case to USFWS

A strong case for Oregon to the USFWS includes:

- 1) Having a comprehensive, coordinated approach to addressing the major threats in our state - wildfire and invasive species/juniper
- 2) Committing significant resources to address threats and implement conservation actions
- 3) Ensuring regulatory certainty that we will be direct future large commercial development away from sensitive habitat and that if impacts occur, habitat will be replaced and/or restored.

# USFWS – Three Options in September

- 1) Decision to Not List Sage Grouse as an endangered species
- 2) Decision to List Sage Grouse as an endangered species with no exceptions across the range
- 3) Decision to List with 4d exception(s) in some states – given the strength of state plans, funding commitments and regulatory certainty.

# ODFW Rules - OAR 636-140-0000

Existing Rules focus on:

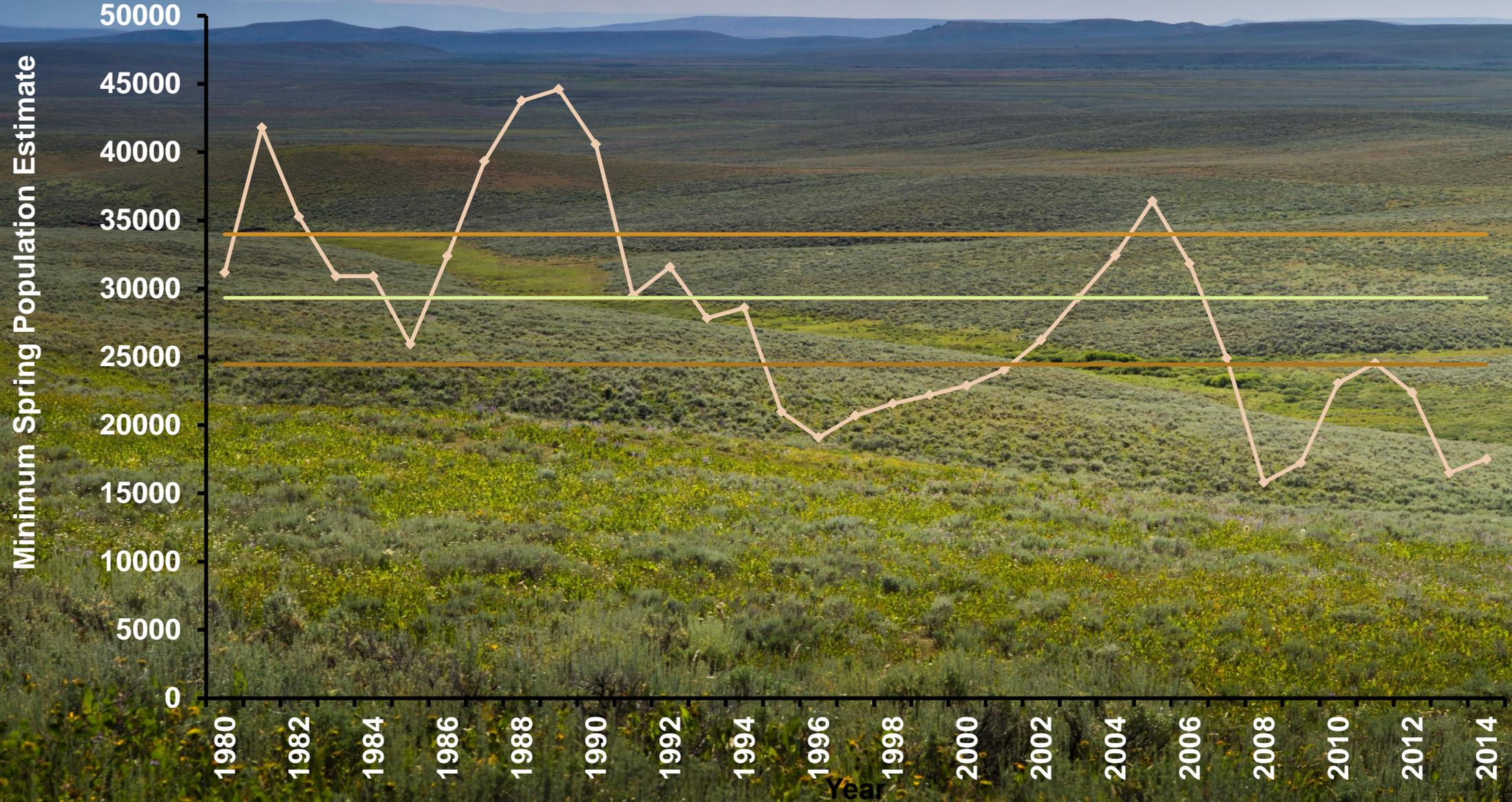
- Population Management (30,000 birds next 50 years)
- Habitat Management (70% in advanced sagebrush)
- Conservation Approach (Map Core to protect 90% of population)

New Rules focus on:

- Mitigation in Sage-Grouse Habitats

*Mitigation means trying to avoid or minimize impact to habitat from development or paying to "offset" the impacts.*

# Sage-Grouse Spring Population



# LCDC Rulemaking

- Requested by the Governor's Office.
- Establishes new section in Goal 5 Rule.
- Serves as a "backstop."



# Rules Advisory Committee

*Committee Members met 5 times between March and June 2015*

## Members of the Committee Included:

- Harney, Crook, Baker, Lake, Union Counties
- Oregon Farm Bureau
- The Nature Conservancy
- Northwest Renewables
- Oregon Natural Desert Association
- Oregon Cattlemen's Association
- a Commissioner from both the FWC and LCDC

## Other participants included:

- State Agencies – ODOT; ODFW; ODOE; DOGAMI; DSL
- USFWS
- Confederated Tribes of Warm Springs and Burns Paiute

# Introduction & Exemptions

*OAR 660-23-0115(1) & (2)*

- Emphasis on coordination and collaboration with recognition for the importance of volunteer efforts and county participation.
- Farm and ranch uses are exempted.
- Energy facilities that have submitted a preliminary application for a site certificate to the Energy Facility Siting Council (EFSC) prior to the effective date of this rule are exempted.

# Definitions

*OAR 660-023-0115(3)*

- Nearly all of the definitions in the rule have been taken from Oregon Department of Fish & Wildlife (ODFW) or borrowed from a federal source.
- How to define the term “large-scale development” (Subsection (3)(i)) received more attention from the RAC than any other item.

# Definitions: Large-Scale Development

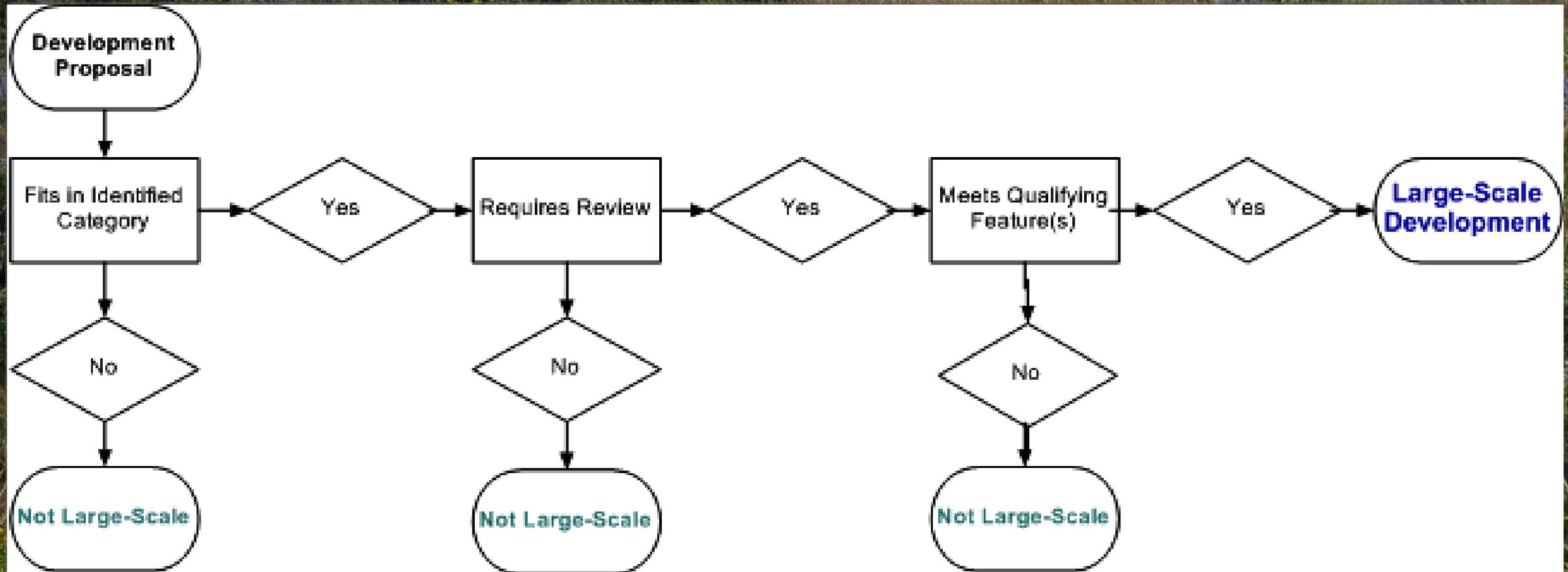
*OAR 660-023-0115(3)(i)*

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

- A. Commercial Uses.
- B. Mineral, Aggregate, Oil and Gas Uses.
- C. Transportation Uses.
- D. Utility/Solid Waste Disposal Facilities.
- E. Parks/Public/Quasi-Public.

# Definitions: Large-Scale Development

*OAR 660-023-0115(3)(i)*



# Direct Applicability, Local Program Development & ODFW Mapping

*OAR 660-023-0115(4) & (5)*

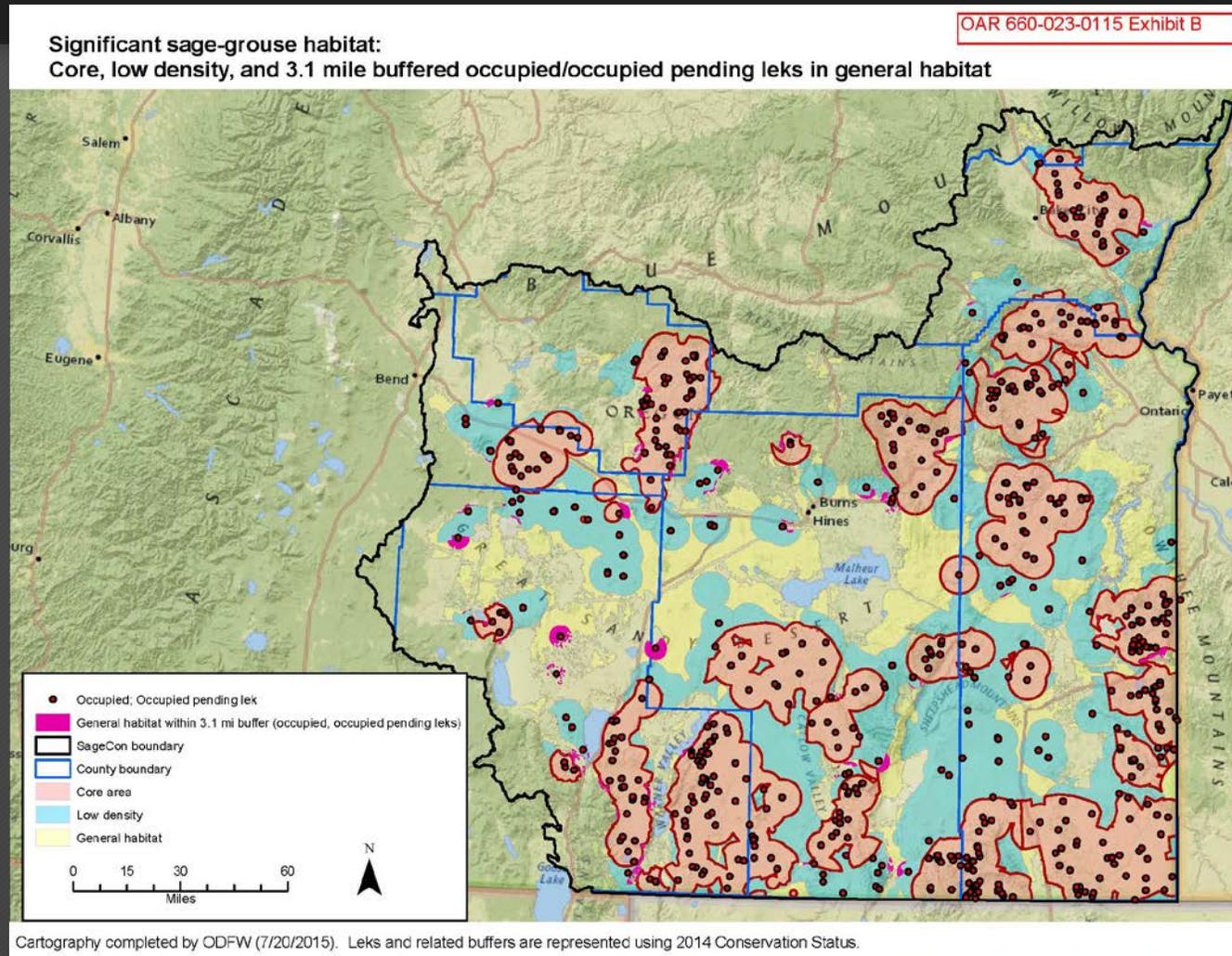
- The rule will be directly applicable upon its effective date.
- Counties are free to adopt the specific provisions of the rule into their local code or develop their own local programs, which would be subject to final approval by the commission.
- ODFW mapping products, as proposed as exhibits to the rule, serve to identify the location of sage-grouse habitat.

# Determination of Significance and Conflicting Uses

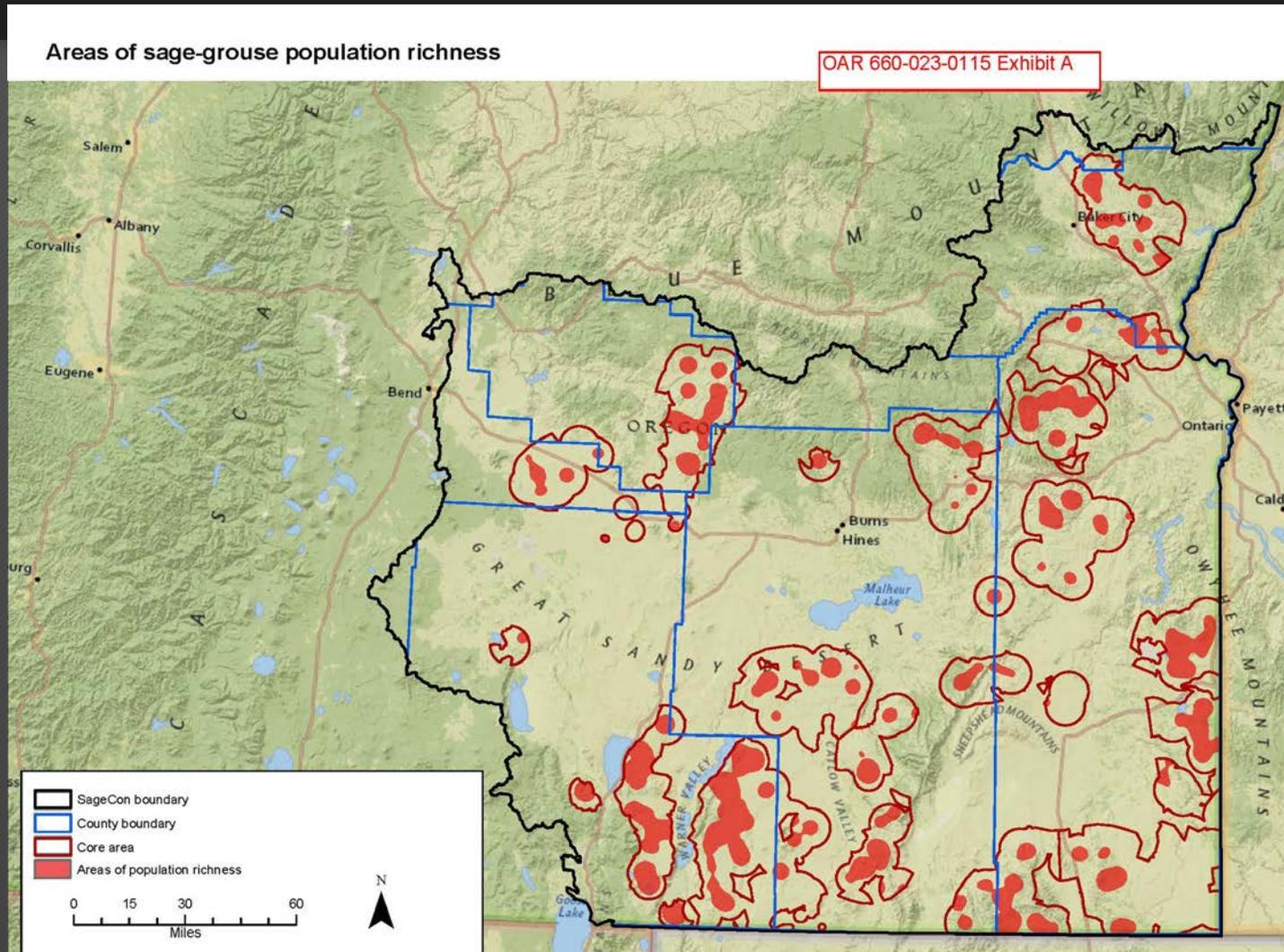
*OAR 660-023-0115(6) & (7)*

- Core areas, low density areas, and general habitat within 3.1 miles of a lek are “significant” habitat when those lands are protected for resource uses under Statewide Planning Goals 3 and 4.
- Large-scale development is considered a conflicting use in all instances. Other activities may also be conflicting uses if located in proximity to a lek.

# Significant Sage-Grouse Habitat



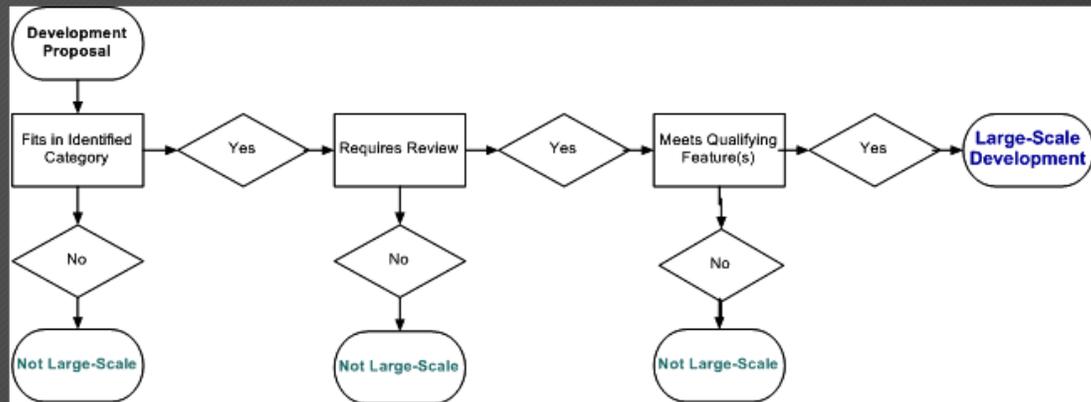
# Significant Sage-Grouse Habitat



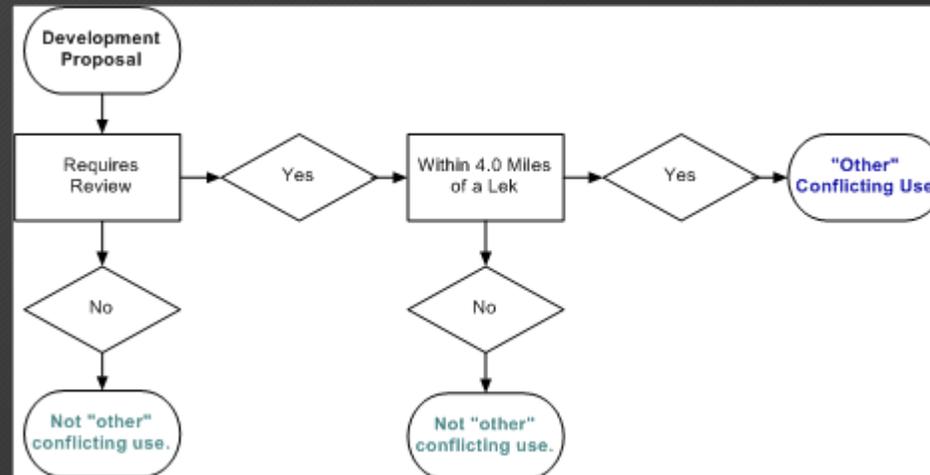


# Conflicting Uses

## Large-Scale Development



## "Other" Conflicting Uses



# Pre-Application Conference

*OAR 660-023-0115(8)*

Expected to occur between an applicant, county staff, and ODFW.

# Core Areas, Low Density Areas & General Habitat

## *OAR 660-023-0115(9) - (11)*

- Subsections (9) through (11) are the rule's regulatory epicenter. These subsections contain direction for considering large-scale development proposals and other conflicting uses on significant sage-grouse habitat. Guidance regarding application of the mitigation hierarchy and coordination with ODFW for the three habitat types are laid out in detail.

# Mitigation Hierarchy by Habitat Type - Large-Scale Development

Core Area	Low Density Area	General Habitat
<p><b><u>Avoid</u></b> - Robust Avoidance test. Must really have to be on Core. Must be a big deal. Can't be based entirely on costs.</p>	<p><u>Avoid</u> - Softer Avoidance test. Will allow greater opportunities. Allows greater consideration of costs.</p>	<p><u>Consultation w/ODFW</u> - Recommendations on how to avoid or minimize direct and indirect impacts on significant sage grouse habitat .</p>
<p><b><u>Minimize</u></b> - Must not impact areas of high population richness. Can't be based entirely on costs.</p>	<p><u>Minimize</u>- Allows greater consideration of costs.</p>	
<p><b><u>Compensatory Mitigation</u></b> - Required to be consistent with ODFW Rule.</p>	<p><u>Compensatory Mitigation</u> - Required to be consistent with ODFW Rule.</p>	<p><u>Compensatory Mitigation</u> - Required to be consistent with ODFW Rule.</p>

# Other Protection by Habitat Type - Non Large-Scale Development

Core Area	Low Density Area	General Habitat
<b>Within 4.0 Miles of an occupied or occupied pending lek.</b>	Within 3.1 Miles of an occupied or occupied pending lek.	Within 3.1 Miles of an occupied or occupied pending lek.
<b>(b) A county may approve a conflicting use as identified at subsection (7)(b) above upon either:</b>  <b>(A) Receiving confirmation from ODFW that the proposed conflicting use does not pose a threat to significant sage-grouse habitat or the way sage-grouse use that habitat; or</b>  <b>(B) Conditioning the approval based on ODFW recommendations, including minimization techniques and compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat.</b>	Same as Core Areas.	Same as Core Areas.

# Especially Unique Local Economic Opportunity

*OAR 660-023-0115(12)*

- Roughly based on EFSC “Balancing” authority.
- One time per county per 10 year increment.
- Wages at 150% of area average.
- Increases total amount of private nonfarm payroll employees by 0.50%.

Total Amount of Nonfarm Payroll Employment		
Jurisdiction	Total Private Nonfarm #'s	½ of 1% (0.5%) of total
Baker County	3,850	19.25 (19)
Crook County	4,300	21.50 (21)
Deschutes County	62,700	312.50 (312)
Harney County	1,090	5.45 (5)
Lake County	1,070	5.35 (5)
Malheur County	8,070	40.35 (40)
Union County	7,370	31.85 (31)

# Upzoning

*OAR 660-023-0115(13)*

Rezoning areas for greater development triggers regular Goal 5 process.

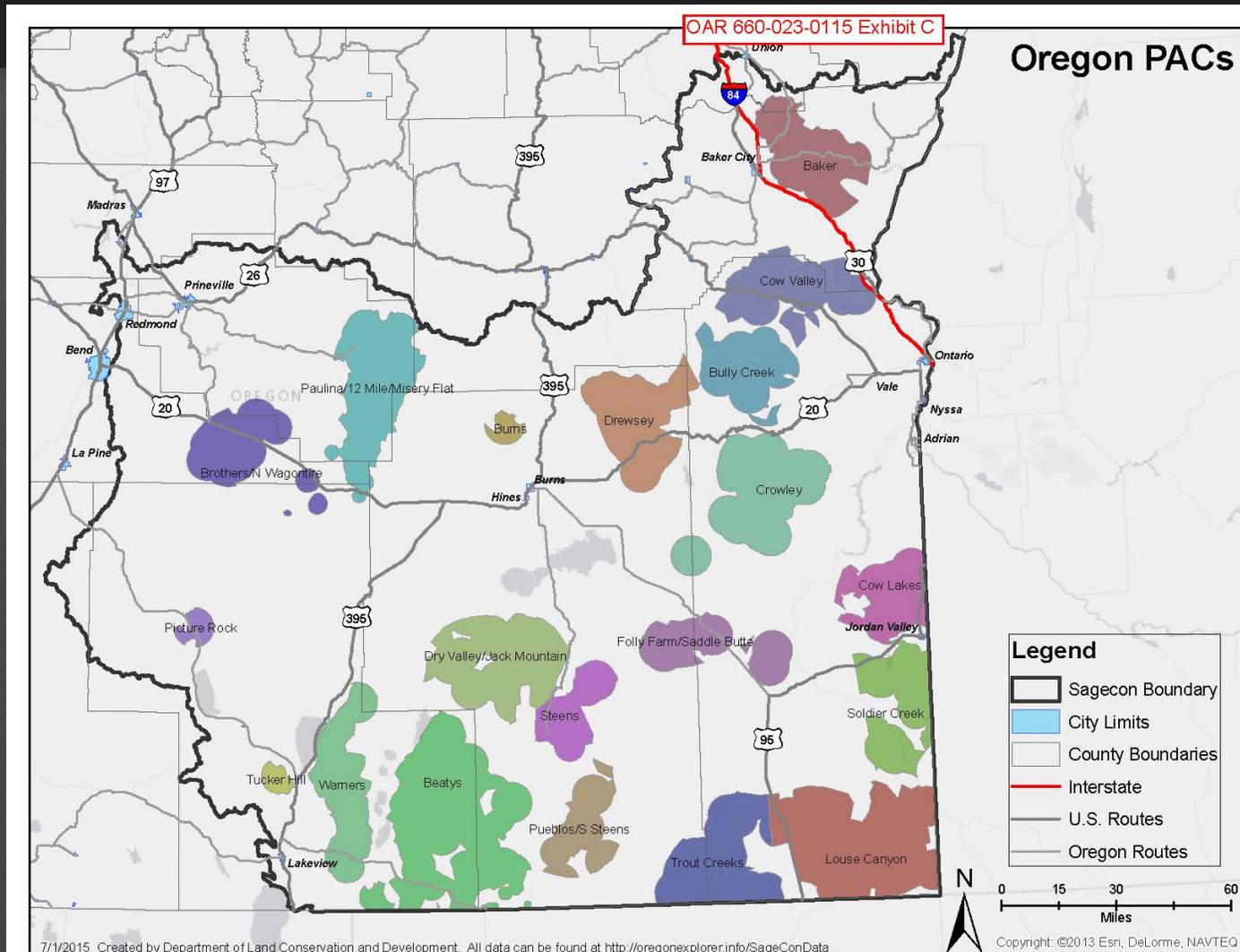
Lands re-zoned count towards three-percent development threshold.

# Landscape-Level Consideration and Central Registry

## OAR 660-023-0115(14) & (15)

- The department will monitor direct disturbance from development in core areas/PACs.
- Counties would be required to report development approvals in a manner similar to the farm and forest reporting obligations under ORS 197.065. The department would provide an annual report to the commission, which would be coordinated with affected local governments.
- The department would also partner with local, state and federal agencies to maintain a central registry.

# Core Areas/PACs



# Metering and Disturbance Threshold

OAR 660-023-0115(16) & (17)

- Metering = No more than one percent of any core area/PAC may be subjected to direct impacts of development actions in any 10 year period.
- Disturbance Threshold = No more that three percent of any core area/PAC may be subjected to direct impacts of development actions.

# Metering and Disturbance Threshold

## OAR 660-023-0115(16) & (17)

Core Area/PAC	County(ies)	PAC Size (acres)	Existing Develop. (acres)	Existing Develop. (percentage)	1% (acres)	3% (acres)	Develop. Potential (acres)
Baker	Baker, Union	336,415	5,760	1.7%	3,360	10,090	4,330
Beatys	Lake, Harney	841,398	5,320	0.63%	8,410	25,240	19,920
Brothers/N Wagontire	Crook, Deschutes, Lake	293,344	3,470	1.18%	2,930	8,800	5,330
Bully Creek	Malheur	279,723	2,070	0.74%	2,800	8,390	6,320
Burns	Harney	35,756	180	0.50%	360	1,070	890
Cow Lakes	Malheur	249,705	1,920	0.77%	2,500	7,490	5,570
Cow Valley	Baker, Malheur	368,442	5,380	1.46%	3,680	11,050	5,670
Crowley	Harney, Malheur	490,890	3,760	0.77%	4,910	14,730	10,970
Drewsey	Harney, Malheur	368,560	3,770	1.02%	3,690	11,060	7,290
Dry Valley/Jack Mountain	Harney	449,423	2,870	0.64%	4,490	13,480	10,610
Folly Farm/Saddle Butte	Harney, Malheur	251,574	1,290	0.51%	2,520	7,550	6,260

# State Agency Coordination

*OAR 660-023-0115(18)*

- Coordination among state agencies is, and will remain, an important feature of Oregon's approach to protecting sage-grouse.
- This area of the draft rule emphasizes that coordination and serves as a sort of catch all in that state agency projects that do not otherwise require local approval will still be reported and remain subject to compensatory mitigation requirements.

# Scheduled Review

*OAR 660-023-0115(19)*

- The department will review the rule in 10 years and, if necessary, recommend improvements for the commission to consider.
- The commission may wish to reconsider the rule based on decisions made by the service.
- Under no circumstances should the rule be rescinded if its presence assists the service in making decisions supported by the state of Oregon, local government, and associated stakeholders.

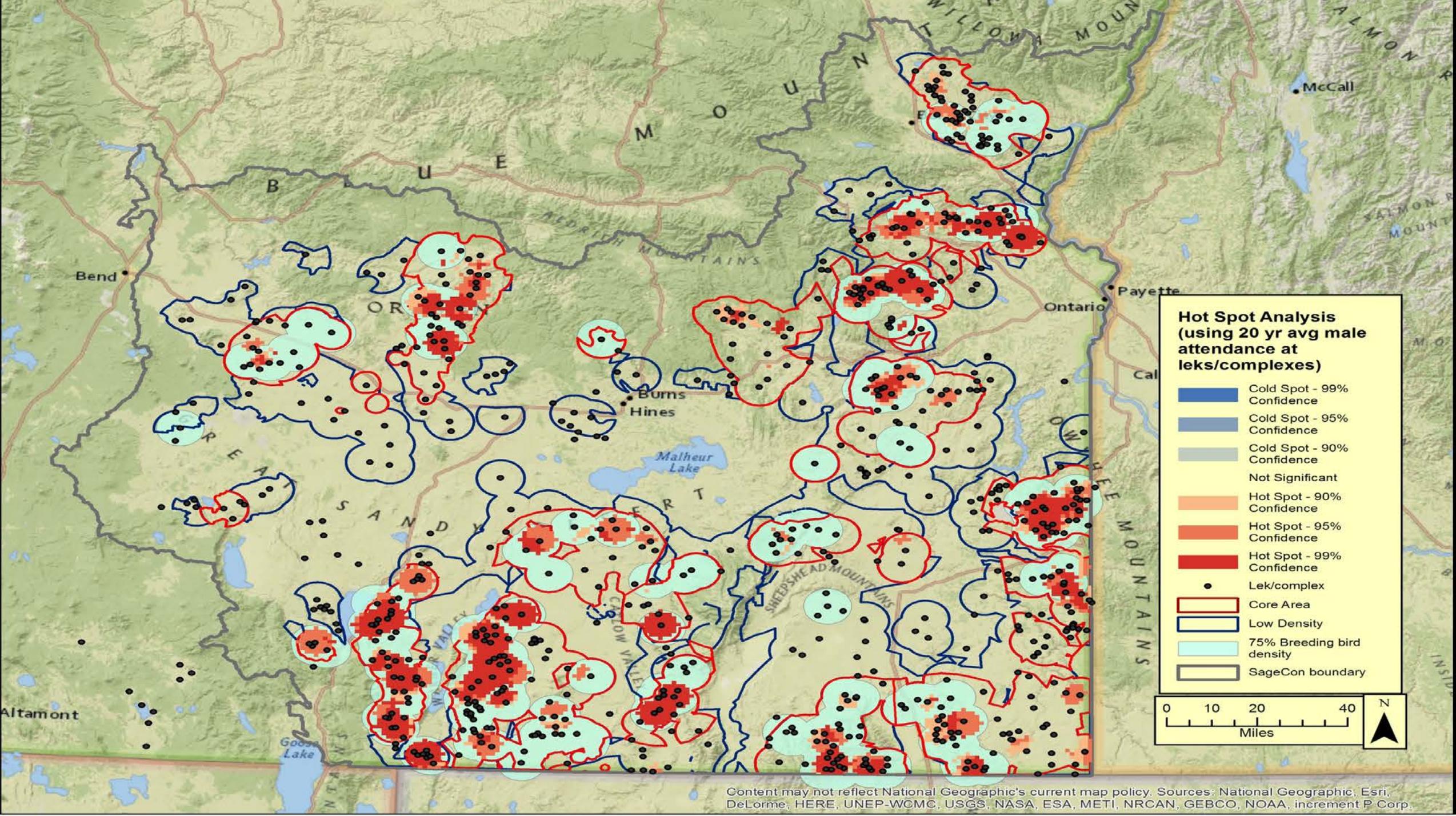
Questions?



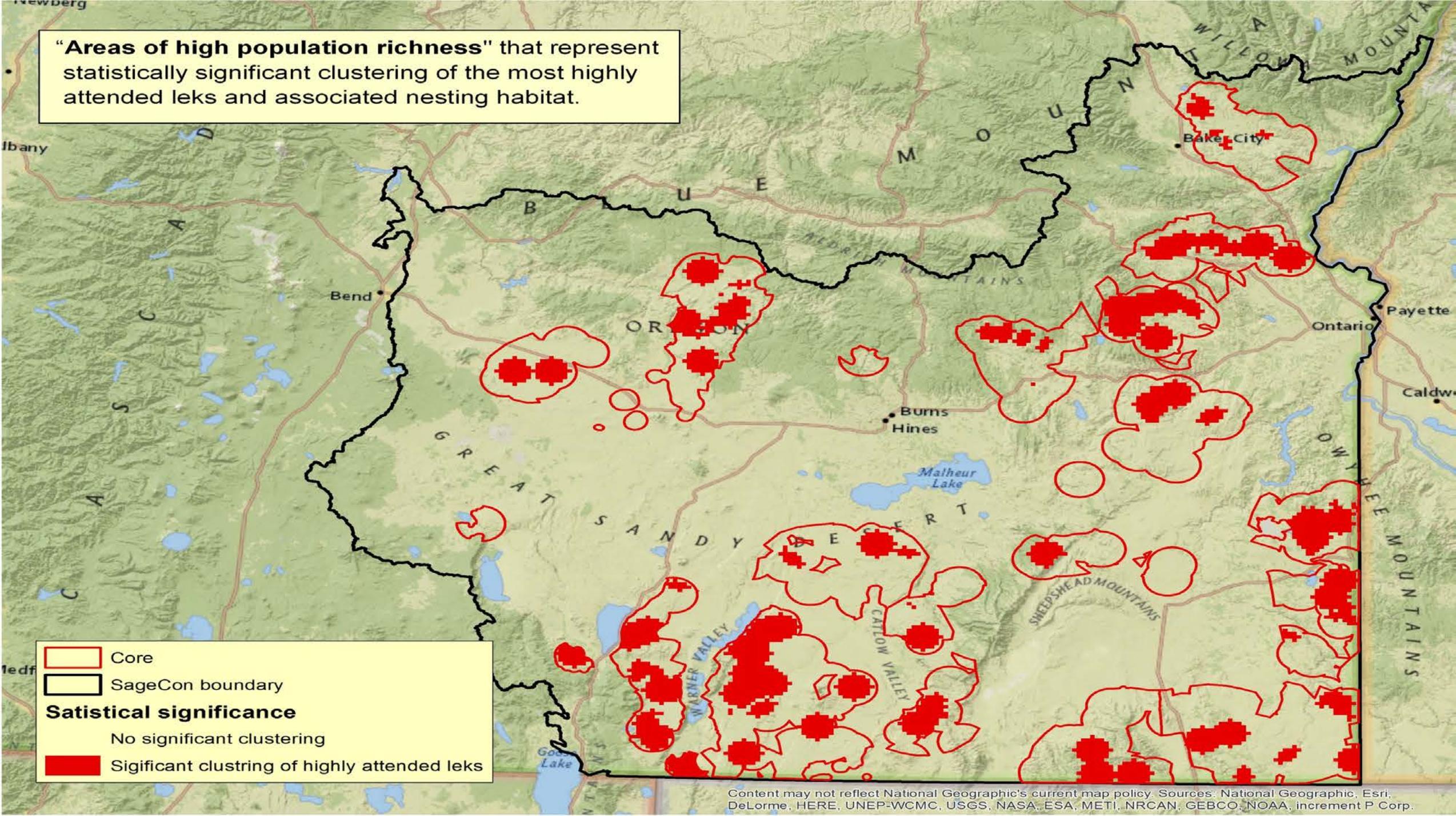








**"Areas of high population richness"** that represent statistically significant clustering of the most highly attended leks and associated nesting habitat.



Core  
SageCon boundary

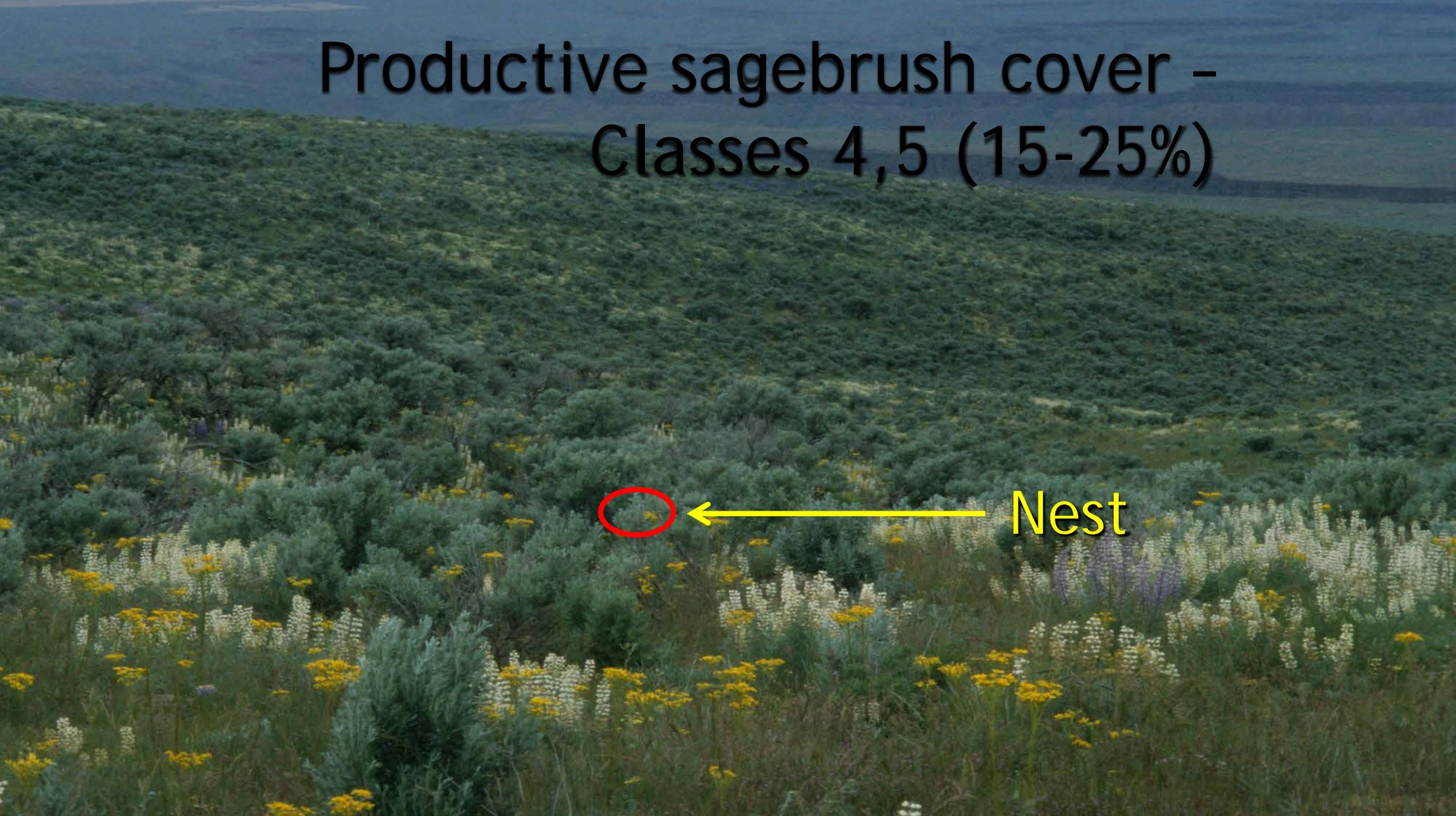
**Statistical significance**

No significant clustering  
Significant clustering of highly attended leks

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# Productive sagebrush cover - Classes 4,5 (15-25%)

 Nest



# Marginal sagebrush cover - Class 3 (10%)



Insufficient sagebrush cover -  
Classes 1,2 (5%)

