

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
- 29 (A) Avoidance. Before proceeding with large-scale development activity that impacts a low density  
30 area, the proponent must demonstrate that reasonable alternatives have been considered and that the  
31 activity or other action cannot avoid impacts within a low density area. If the proposed large-scale  
32 development can occur in another location that avoids both direct and indirect impacts within a low  
33 density area, then the proposal must not be allowed unless it can satisfy the following criteria:
- 34 (i) It is not technically or financially feasible to locate the proposed large-scale development outside of a  
35 low density area based on accepted engineering practices, regulatory standards, proximity to necessary  
36 infrastructure or some combination thereof; or

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.

Draft Date: June 5, 2015

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



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May 29, 2015

*VIA ELECTRONIC MAIL*

Land Conservation and Development Commission  
Sage Grouse Rulemaking Advisory Committee  
c/o Jon Jinings/Casaria Taylor  
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Salem, Oregon 97301  
jon.jinings@state.or.us  
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Re: Comments on Land Conservation and Development Commission Greater Sage-Grouse Rulemaking

Dear Mr. Jinings and Ms. Taylor:

Idaho Power Company is submitting these comments for consideration by the Land Conservation and Development Commission (LCDC) Sage Grouse Rulemaking Advisory Committee (RAC).

**I. Idaho Power and the Boardman to Hemingway Transmission Line Project**

Idaho Power is an investor-owned utility with a service area that covers a 24,000-square-mile area in southern Idaho and eastern Oregon and that has an estimated population of 1,000,000. Idaho Power's service area in Oregon includes greater sage-grouse habitat. Additionally, Idaho Power has an application pending before Oregon's Energy Facility Siting Council (EFSC) for the construction and maintenance of the Boardman to Hemingway 500-kilovolt transmission line project (B2H Project), which crosses approximately 298 miles of eastern Oregon including sage-grouse habitat in Baker and Malheur counties. The B2H Project is intended to relieve existing transmission constraints between the Pacific Northwest and Intermountain West regions, increase opportunities for the exchange of energy between the regions, ensure sufficient capacity for Idaho Power to meet its forecasted customer demand requirements, and help strengthen the reliability of the regional electric grid. For these reasons,

the B2H Project remains a critical piece of Idaho Power's future plans and the company's overall commitment to providing reliable, responsible, and fair-priced energy services. State or county measures enacted to protect sage-grouse habitat may have a direct effect on Idaho Power's ongoing operations in Oregon, and permitting of the B2H Project in particular.

## **II. Comments on LCDC Draft Sage-Grouse Rules Dated May 27, 2015**

Idaho Power reviewed the May 27, 2015 draft of the amendments to OAR 660-023-0115 addressing management of certain sage-grouse habitat in Oregon. Recognizing that the draft rule changes are still under discussion and subject to revision, Idaho Power provides for the RAC's consideration the following comments on the draft rules as well as the additional comments set forth in the attached redline markup of the May 27, 2015 draft amendments. *See* Idaho Power's Red-Line Mark Up of the May 27, 2015 LCDC Draft Sage-Grouse Rule Amendments (attached hereto as Attachment I).

### **Pending EFSC applications**

Idaho Power requests incorporation of a provision providing that a pending energy facility project like the B2H Project will not be subject to the new rule, either as a directly applicable rule regarding statewide planning goal 5 or through a county's implementation, unless the applicant voluntarily chooses to comply with the same. Idaho Power began permitting the B2H Project approximately eight years ago. During this timeframe, various stakeholders and Idaho Power have analyzed numerous routes in, near, and outside of sage-grouse habitat. This analysis involved an extensive scoping, routing, and community involvement process that spanned several years and included nearly 1,000 stakeholders comprised of elected officials, business owners, opposition groups, landowners, environmental groups, and community members. Nearly 50 different routes in 11 different counties were considered during the community advisory process. Idaho Power has invested millions of dollars and many years in developing a project location and design for the B2H Project that avoids impacts to sage-grouse habitat and minimizes unavoidable impacts. Idaho Power requests that Oregon's forthcoming sage-grouse rules provide project proponents with pending applications before EFSC, like the B2H Project, the voluntary option of complying with the state land use and wildlife laws relevant to sage-grouse that were applicable at the time of the initial application submission or that were promulgated pursuant to the RAC's current rulemaking. Idaho Power proposes the following changes to the draft rule:

OAR 660-023-0115(14) Suspended applicability. (A) In any county that has not amended its comprehensive plan and land use regulations to achieve consistency with OAR 660-023-0115, Ssubsections (5) thru (12) of this rule ~~become applicable~~ shall apply directly to any land use decisions affecting significant sage grouse habitat beginning on July 1, 2017, rather than as otherwise specified by OAR 660-023-0250, except as provided in subsection (B) below.

(B) For any energy facility that submitted a preliminary application for site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this rule [OAR 660-023-0115,] subsections (5) through (12) shall not be directly applicable to any land use decision regarding that facility, notwithstanding ORS 197.646(3), unless the applicant chooses otherwise. Similarly, any changes to a local government’s acknowledged comprehensive plan or land use ordinances developed to achieve consistency with OAR 660-023-0115 shall not constitute “applicable substantive criteria” pursuant to OAR 345-022-0030(3), unless they are in effect on the date the applicant submits a preliminary application for site certificate, unless the applicant chooses otherwise.

### **Avoidance Factors**

The draft rules currently provide that, in order to show that core or low density habitat cannot be avoided, there are engineering constraints, regulatory standards, or unique geographic or physical features making it infeasible to locate the project outside of core or low density habitat. However, the draft rules do not recognize that conflicts with significant resource impacts elsewhere may similarly affect the viability of alternative project locations. For example, alternative locations outside of core or low density habitat may encompass Goal 5 resources, irrigated or high value farmland, or other significant resources, providing that core area impacts cannot be avoided and therefore minimization and mitigation are instead appropriate. Further, the draft rules should recognize that core or low density habitat may present unique siting opportunities to consolidate impacts, such as by locating new project adjacent to existing disturbances. Accordingly, Idaho Power requests LCDC to consider the following changes to the factors affecting avoidance:

OAR 660-023-0115(9)(a)(A)(i) It is not ~~technically feasible~~reasonable to locate the proposed large-scale development outside of a core area ~~based on~~due to accepted engineering practices, regulatory standards or ~~some combination thereof~~impacts to other significant resources, including other Goal 5 resources and irrigated or high value farmland. Costs associated with ~~technical feasibility~~locating the project outside core areas may be considered, but cost alone may not be the only consideration in determining that development must be located such that it will have direct or indirect impacts on significant sage-grouse areas; or

(ii) The proposed large-scale development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands, is a linear use that must cross a core area in order to achieve a reasonably direct route, or takes advantage of a unique siting opportunity to consolidate impacts, such as co-location of transmission lines or road infrastructure; and

...

OAR 660-023-0115(10)(a)(A)(i) It is not ~~technically or financially feasible~~reasonable to locate the proposed large-scale development outside of a ~~significant sage-grouse low density~~ area ~~based on~~due to accepted engineering practices, regulatory standards or ~~some combination thereof~~impacts to other significant resources, including other Goal 5 resources and irrigated or high value farmland. Costs associated with locating the project outside low density habitat may be considered; or

(ii) The proposed large-scale development is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations, or is a linear use that must cross ~~significant low density~~ sage grouse habitat in order to achieve a reasonably direct route, or takes advantage of a unique siting opportunity to consolidate impacts, such as co-location of transmission lines or road infrastructure; and

### **Core Area Needed Infrastructure**

The draft rules provide that a county may find that the avoidance provisions of OAR 660-023-0115(9)(a)(A)(iii) are met if the project is considered “needed infrastructure.” The scope of such need is not defined in the draft rules and may be subject to debate in the future—e.g., does it mean needed by the county, the project proponent, or someone or something else? With respect to a utilities project, the need for such project is discussed in the relevant utility’s Integrated Resource Plan. The RAC should consider amending the draft rules to provide that needed infrastructure includes projects recognized in an acknowledged Integrated Resource Plan:

OAR 660-023-0115(9)(a)(A)(iii) If either (9)(a)(A)(i) or (9)(a)(A)(ii) is found to be satisfied the county must also find that the large-scale development will provide important economic opportunity, needed infrastructure, public safety benefits or public health benefits for local citizens or the entire region. For development of utility facilities, this section may be satisfied if the development is included in the utility’s most recent Integrated Resource Plan and acknowledged by the relevant state utility regulatory entity.

### **Balancing**

Idaho Power support’s the RAC’s inclusion of a balancing provision providing that the county may approve a project that is in the public benefit even if the project cannot meet the avoidance test. However, Idaho Power encourages the RAC to provide the county flexibility to exercise its balancing authority if the public benefit arises at a regional or national level and not just a county level. For example, the B2H Project has been recognized as a nationally-important transmission project. In October 2009, nine federal entities, including the Council on Environmental Quality, Department of the Interior, Department of Agriculture, Department of Defense, Environmental Protection Agency, and Advisory Council on Historic Preservation entered into a Memorandum of Understanding committing each signatory to increase their

coordination to expedite and simplify the process for analyzing and permitting transmission line projects on federal lands and recognizing that “[e]xpanding and modernizing the transmission grid by siting proposed electric transmission facilities will help to accommodate additional electrical generation capacity over the next several decades, including renewable generation as well as improve reliability and reduce congestion.” Memorandum of Understanding Regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Land at 2 (Oct. 23, 2009). In October 2011, the President formed the Rapid Response Transmission Team (“RRTT”), comprised of the nine agencies that signed the 2009 Memorandum of Understanding, to prioritize and expedite the development of seven certain transmission projects. The B2H Project was one of those priority projects, which the President has determined would help increase electric reliability, integrate new renewable energy into the grid, and save consumers money. *See* Council on Environmental Quality RRTT website at <https://www.whitehouse.gov/administration/eop/ceq/initiatives/interagency-rapid-response-team-for-transmission>. The counties should have authority to exercise their balancing authority based on a project’s regional or national benefit, as with the B2H Project, in addition to its county-level benefit.

Additionally, for utility projects, the RAC should consider acknowledging the public utility commission’s role in assessing the public benefit of such projects and provide that balancing authority may be exercised for projects recognized in an acknowledged Integrated Resource Plan. With this in mind, Idaho Power proposes the following changes to the balancing authority provision of the draft rule amendments:

OAR 660-023-0115(12) Balancing. A county may approve a large-scale development proposal that does not meet the avoidance test ~~for significant sage-grouse habitat under subsections (9) or (10) of this rule~~ if the county determines that the overall public benefits of the proposal outweigh the damage to significant sage-grouse habitat. The county shall make this balancing determination only ~~whenif~~ (1) the proposal involves an economic opportunity that will provide a number of jobs paying at least 150 percent of average county wages sufficient to increase the amount of private nonfarm employment numbers by at least 1.0 percent over the number included in the most recent data available from the United State Census Bureau; (2) the project will have a significant national or regional impact; or (3) the proposal is for development of utility infrastructure included in the utility’s most recent Integrated Resource Plan and acknowledged by the Public Utility Commission of Oregon. The applicant has the burden to show that the overall public benefits outweigh the damage to the significant sage-grouse habitat, and the burden increases proportionately with the degree of damage to significant sage-grouse habitat.

### **Clarity and Regulatory Certainty**

Idaho Power has included numerous suggestions in the attached markup of the draft rules that serve to clarify definitions of terms used the draft rule, which in turn will have a direct effect on its scope and transparency to the regulated public. In particular, Idaho Power has suggested

additional clarification regarding the location and/or status of sage-grouse core areas, low density areas, and/or PACs, as well as clarification regarding how those categories will be maintained and updated. Transparency regarding this data will be essential to the success of Oregon's implementation of sage-grouse conservation through the statewide planning goals; without it, utilities and renewable energy project developers will have no certain way to evaluate a proposal's potential impacts in sage-grouse habitat. Making protected sage-grouse habitat a constantly moving target will deal a fatal blow to any prospective development that requires multi-year planning and permitting. Please consider the proposed edits and comments in Attachment I.

### **III. Conclusion**

Idaho Power is concerned about, among other things, the practical, on-the-ground implications of the LCDC's proposed conservation measures. Particularly, LCDC should clarify that the measures will recognize the time, effort, and costs that Idaho Power and other EFSC applicants have already expended in pursuing their applications, while developing projects that avoid, minimize, and mitigate impacts to sage-grouse. The proposed rules should allow flexibility for the state agencies and counties to develop conservation measures in cooperation with the regulated community that include a strong but pragmatic mitigation program while simultaneously allowing continued economic development.

Thank you for the opportunity to provide comment on this important program. We look forward to future opportunities to work with the agencies in addressing this issue. Please feel free to contact me if you have any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Todd Adams". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Todd Adams

# **Attachment I**

**Idaho Power's Red-Line Mark Up of the  
May 27, 2015 Draft LCDC Sage-Grouse Rule  
Amendments**

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 shall apply. In addition,  
20 the following definitions shall apply:

21 (a) “Candidate Conservation Agreement with Assurances” is a formal agreement between the United  
22 States Fish and Wildlife Service and one or more parties to address the conservation needs of proposed  
23 or candidate species, or species likely to become candidates, before they become listed as endangered  
24 or threatened. Landowners voluntarily commit to conservation actions that will help stabilize or restore  
25 the species with the goal that listing will become unnecessary.

26 (b) “Core areas” are those core areas identified by ODFW and shown in the maps developed and  
27 maintained by ODFW pursuant to [OAR 635-140-0015(1)(a), which is renumbered as -0020 in the draft  
28 OFWC sage grouse rules].

29 (c) “Development action” means any activity subject to regulation by local, state, or federal agencies  
30 that could result in the loss of fish and wildlife habitat. Development actions may include but are not  
31 limited to, the planning, construction, and operational activities of local, state, and federal agencies.  
32 Development actions also include subsequent re-permitting for activities with new impacts or continued  
33 impacts or continued impacts that have not been mitigated consistent with current standards

34 (d) “Direct impact” means an adverse effect of a development action upon fish and wildlife habitat  
35 which is proximal to the development action in time and place.

36 (e) “Disturbance” is natural and anthropogenic activities that can negatively affect sage-grouse use of  
37 habitat either through changing the vegetation type/condition or displacement of sage-grouse use of an  
38 area. For purposes of this rule only disturbance from anthropogenic activities, such as direct and indirect  
39 impacts, are considered.

**Deleted:** mapped sagebrush types or other habitats that support sage-grouse annual life history requirements that are encompassed by areas: a) of very high, high, and moderate lek density strata; b) where low lek density strata overlap local connectivity corridors; or c) where winter habitat use polygons overlap with either low lek density strata, connectivity corridors, or occupied habitat.” Core area

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**Comment [IPC1]:** If LCDC will rely on ODFW to identify core areas, LCDC should refer to the relevant ODFW rule defining “core area.” Otherwise, by defining the term here, LCDC may create a conflict in definitions unless both LCDC’s and ODFW’s definition is and remains the same.

1 (f) "General habitat" is occupied (seasonal or year-round) sage grouse habitat outside core and low  
2 density habitats.

3 (g) "Indirect impacts" are effects that are caused by or will ultimately result from an affected  
4 development activity. Indirect effects usually occur later in time or are removed in distance compared  
5 to direct effects

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

11 A. Commercial Uses.

12 B. Mineral, Aggregate, Oil and Gas Uses.

13 C. Transportation Uses.

14 D. Utility/Solid Waste Disposal Facilities.

15 E. Parks/Public/Quasi-Public.

16 (i) "Low density areas" are those low density areas identified by ODFW and shown in the maps  
17 developed and maintained by ODFW pursuant to OAR 635-140-0015(1)(a), which is renumbered as -  
18 0020 in the draft OFWC sage grouse rules.

19 (j) "Mitigation hierarchy" is the approach used by decision makers to consider a large-scale  
20 development proposal and is comprised of a three step process:

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

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

30 (k) "Priority Areas for Conservation" (PACs) are key habitats identified by state sage grouse  
31 conservation plans or through other sage-grouse conservation efforts (e.g., BLM Planning). In Oregon,  
32 core area habitats are PACs.

33  
34 (4) Local program development and direct applicability of rule. Local governments may develop a  
35 program to achieve consistency with OAR 660-023-0115 by following the standard process in OAR 660-  
36 023-0030, OAR 660-023-0040 and 660-023-0050 and submitting the amendment to the Commission in

**Comment [IPC2]:** LCDC should consider whether the "General habitat" category is too vague to be meaningfully included here as habitat that the counties must treat as significant sage-grouse habitat for purposes of Goal 5. Rather, LCDC may consider providing that the counties consider designation of general habitat and not require the same.

In any event, LCDC should clarify how often occupation must occur across seasons and years for an area to be considered general habitat. For example, LCDC may provide that occupation need be documented at least once in the last three years, and therefore, an area could not be designated general habitat based on a sighting occurring 5 or 10 years ago.

General habitat maps should be maintained and updated in a transparent manner accessible to the public.

**Deleted:** mapped sagebrush types or other habitats that support sage-grouse that are encompassed by areas where: a) low lek density strata overlapped with seasonal connectivity corridors; b) local corridors occur outside of all lek density strata; c) low lek density strata occur outside of connectivity corridors; or d) seasonal connectivity corridors occur outside of all lek density strata."

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**Comment [IPC3]:** If LCDC will rely on ODFW to identify low density areas, LCDC should refer to the relevant ODFW rule defining "low density area." Otherwise, by defining the term here, LCDC may create a conflict in definitions unless both LCDC's and ODFW's definition is and remains the same.

**Comment [IPC4]:** Because the PACs provide the baseline for the three percent disturbance threshold in subsection (18), LCDC should clearly identify the dataset comprising the PACs and boundaries of each PAC. The dataset should be known and accessible to the public.

1 the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-025-0175. Until a  
2 county amends its comprehensive plan and land use regulations to achieve consistency with OAR 660-  
3 023-0115 the provisions of subsections (5) thru (11) shall apply directly to land use decisions affecting  
4 significant sage-grouse habitat, except as provided in subsection (14). When a local program has been  
5 acknowledged by LCDC to be in compliance with Goal 5 and equivalent to OAR 660-023-0115 with  
6 regard to protecting sage-grouse habitat, that program becomes the controlling county land use  
7 document and compliance with this rule is no longer necessary.

**Comment [IPC5]:** This proposed text refers to the “suspended applicability” provision, as well as an additional exception requested by Idaho Power, as discussed below.

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

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

14 (a) Core areas;

15 (b) Low density areas; and

16 (d) The exact location and categorization of sage-grouse habitat protected as a significant Goal 5  
17 resource may be refined during consideration of specific projects but must be done in consultation with  
18 ODFW.

**Comment [IPC6]:** For project proponents working in counties that do not adopt their own Goal 5 sage-grouse habitat, the location of this habitat category (which is tied to occupation) possibly would change each season as sage-grouse use changes. This category possibly would create a moving and uncertain area of compliance and thus it would be vague and create uncertainty. LCDC should consider omitting this requirement.

19 (7) Conflicting uses. For purposes of protecting significant sage-grouse habitat under Goal 5 conflicting  
20 uses are:

21 (a) Large-scale development; and

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

**Comment [IPC7]:** Ground-truthing is an important aspect of these rule amendments, benefiting sage-grouse conservation and regulated industry alike. LCDC should clarify that the results of such field verifications may affect the location and habitat categorization of the relevant project area.

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

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

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

**Deleted:** (c) Lands within a general habitat area located within 3.1 miles of an occupied or occupied-pending lek

**Deleted:** . ¶

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

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

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

1  
2 (A) Avoidance. Before proceeding with large scale development activity that impacts a core area, the  
3 proponent must demonstrate that reasonable alternatives have been considered and that the activity or  
4 other action cannot avoid impacts within core area habitat. If the proposed large-scale development  
5 can occur in another location that avoids both direct and indirect impacts within core area habitat, then  
6 the proposal must not be allowed unless it can satisfy the following criteria.

7 (i) It is not reasonable to locate the proposed large-scale development outside of a core area due to  
8 accepted engineering practices, regulatory standards or impacts to other significant resources, including  
9 other Goal 5 resources and irrigated or high value farmland. Costs associated with locating the project  
10 outside core areas may be considered, but cost alone may not be the only consideration in determining  
11 that development must be located such that it will have direct or indirect impacts on significant sage-  
12 grouse areas; or

13  
14 (ii) The proposed large-scale development is dependent on a unique geographic or other physical  
15 feature(s) that cannot be found on other lands, is a linear use that must cross a core area in order to  
16 achieve a reasonably direct route, or takes advantage of a unique siting opportunity to consolidate  
17 impacts, such as co-location of transmission lines or road infrastructure; and

18 (iii) If either (9)(a)(A)(i) or (9)(a)(A)(ii) is found to be satisfied the county must also find that the large-  
19 scale development will provide important economic opportunity, needed infrastructure, public safety  
20 benefits or public health benefits for local citizens or the entire region. For development of utility  
21 facilities, this section may be satisfied if the development is included in the utility's most recent  
22 Integrated Resource Plan and acknowledged by the relevant state utility regulatory entity.

23 (B) Minimization. If the proposed use cannot be sited by avoiding a core area altogether, including  
24 direct and indirect impacts, it shall be located to minimize the amount of such habitat directly or  
25 indirectly disturbed, and to minimize fragmentation of the core area(s) in question by locating the  
26 development adjacent to existing development and at the edge of the core area when possible. Uses  
27 should minimize impacts through micro-siting, limitations on the timing of construction and/or use, and  
28 methods of construction. Costs associated with minimization may be considered, but cost alone may  
29 not be the only consideration in determining that location of development cannot further minimize  
30 direct or indirect impacts to core areas.

31 (C) Compensatory Mitigation. To the extent that a proposed large-scale development will have direct or  
32 indirect adverse impacts on a core area or low density habitat after application of the avoidance and  
33 minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and  
34 indirect adverse effects of the development to any core area and any low density habitat. The required  
35 compensatory mitigation must comply with OAR Chapter 635, division 140.

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

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

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

**Comment [IPC8]:** Avoidance determination under this provision includes factors unrelated to technical feasibility—e.g., regulatory standards.

**Deleted:** technically feasible

**Deleted:** based on

**Comment [IPC9]:** LCDC should recognize that conflicts with significant resource impacts elsewhere may similarly affect the viability of alternative project locations. For example, alternative locations outside of core or low density habitat may encompass Goal 5 resources, irrigated or high value farmland, or other significant resources, providing that core area impacts cannot be avoided and minimization and mitigation are appropriate.

**Deleted:** some combination thereof

**Deleted:** technical feasibility

**Comment [IPC10]:** LCDC should consider recognizing that core or low density habitat may present unique siting opportunities to consolidate impacts, such as by locating a new transmission line or natural gas pipe adjacent to an existing transmission line or pipe. For example, ODFW's 2012 Sage-Grouse Mitigation Framework's states that "Co-location of transmission lines is encouraged." 2012 Mitigation Framework at 5.

**Comment [IPC11]:** "Needed infrastructure" is not defined in the draft rules. With respect to a utility project, the need for such project is discussed in the relevant utility's Integrated Resource Plan. LCDC should consider amending the draft rules to provide that needed infrastructure includes projects recognized in an acknowledged Integrated Resource Plan.

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

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

4  
5 (A) Avoidance. Before proceeding with large-scale development activity that impacts a low density  
6 area, the proponent must demonstrate that reasonable alternatives have been considered and that the  
7 activity or other action cannot avoid impacts within a low density area. If the proposed large-scale  
8 development can occur in another location that avoids both direct and indirect impacts within a low  
9 density area, then the proposal must not be allowed unless it can satisfy the following criteria :

10 (i) It is not reasonable to locate the proposed large-scale development outside of low density habitat  
11 due to accepted engineering practices, regulatory standards or impacts to other significant resources,  
12 including other Goal 5 resources and irrigated or high value farmland. Costs associated with locating  
13 the project outside low density habitat may be considered; or

14 (ii) The proposed large-scale development is dependent on geographic or other physical feature(s)  
15 found in low density habitat areas that are less common at other locations, or it is a linear use that must  
16 cross low density sage grouse habitat in order to achieve a reasonably direct route, or takes advantage of  
17 a unique siting opportunity to consolidate impacts, such as co-location of transmission lines or road  
18 infrastructure.

19  
20 (iii) In addition to (i) and (ii) above, a county may find this test satisfied if there is sufficient evidence in  
21 the record to demonstrate that project proponents seriously considered a location on core area habitat  
22 but elected to pursue a site on low density habitat after an evaluation of alternatives showed that a  
23 location on core area habitat was not necessary.

24 (B) Minimization. Required consistent with the provisions of subsection (9)(b) above.

25 (C) Compensatory Mitigation. Required consistent with the provisions of subsection (9)(c) above.

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

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

29 (a) A county may approve a large-scale development on significant sage-grouse habitat on other habitat  
30 within 0.25 miles from an occupied or occupied pending lek upon applying the mitigation hierarchy  
31 consistent with the provisions of subsection (10)(a) above.

32 (b) A county may approve a large-scale development on significant sage-grouse habitat on general habitat  
33 beyond 0.25 miles from an occupied or occupied pending lek when found to be consistent with the  
34 provisions of subsection (10)(b)

35 (c) A county may approve a conflicting use as identified at subsection (7)(b) above when found to be  
36 consistent with the provisions of subsection (10)(b).

**Deleted:** technically or financially feasible

**Deleted:** significant sage-grouse

**Deleted:** based on

**Comment [IPC12]:** LCDC should recognize that conflicts with significant resource impacts elsewhere may similarly affect the viability of alternative project locations. For example, alternative locations outside of core or low density habitat may encompass Goal 5 resources, irrigated or high value farmland, or other significant resources, providing that core area impacts cannot be avoided and minimization and mitigation are appropriate.

**Deleted:** some combination thereof

**Deleted:** significant

**Comment [IPC13]:** LCDC should consider recognizing that core or low density habitat may present unique siting opportunities to consolidate impacts, such as by locating a new transmission line or natural gas pipe adjacent to an existing transmission line or pipe. For example, ODFW's 2012 Sage-Grouse Mitigation Framework's states that "Co-location of transmission lines is encouraged." 2012 Mitigation Framework at 5.

**Comment [IPC14]:** See comment above on "general habitat" definition suggesting that LCDC consider omitting general habitat management prescriptions.

1 ALTERNATIVE

2 (a) A county may approve a large-scale development or other conflicting use identified and subsection  
3 (7)(b) above when found to be consistent with the provisions of subsection (10)(b).

4 (12) Balancing. A county may approve a large-scale development proposal that does not meet the  
5 avoidance test under subsections (9) or (10) of this rule if the county determines that the overall public  
6 benefits of the proposal outweigh the damage to significant sage-grouse habitat. The county shall make  
7 this balancing determination only if (1) the proposal involves an economic opportunity that will provide  
8 a number of jobs paying at least 150 percent of average county wages sufficient to increase the amount  
9 of private nonfarm employment numbers by at least 1.0 percent over the number included in the most  
10 recent data available from the United State Census Bureau; (2) the project will have a significant  
11 national or regional impact; or (3) the proposal is for development of utility infrastructure included in  
12 the utility's most recent Integrated Resource Plan and acknowledged by the Public Utility Commission of  
13 Oregon. The applicant has the burden to show that the overall public benefits outweigh the damage to  
14 the significant sage-grouse habitat, and the burden increases proportionately with the degree of  
15 damage to significant sage-grouse habitat.

Deleted: for significant sage-grouse habitat

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Comment [IPC15]: The LCDC should consider recognizing the public utility commission's role in assessing the public benefit of utility projects and provide that balancing authority may be exercised for projects recognized in an acknowledged Integrated Resource Plan. Further, balancing authority should be available for projects that provide a national or regional public benefit, and not just certain local benefits.

16 (13) Lands including significant sage-grouse habitat that are up-zoned to a greater development  
17 potential than otherwise allowed under goals 3 and 4 after July 1, 2015 shall be considered a direct  
18 impact and count towards the three percent disturbance threshold pursuant to Subsection (18) below.

19 (14) Suspended applicability. (A) In any county that has not amended its comprehensive plan and land  
20 use regulations to achieve consistency with OAR 660-023-0115, subsections (5) thru (12) of this rule  
21 shall apply directly to any land use decisions affecting significant sage grouse habitat beginning on July 1,  
22 2017 rather than as otherwise specified by OAR 660-023-0250, except as provided in subsection (B)  
23 below.

Comment [IPC16]: LCDC should consider a provision providing that a pending energy facility project like the B2H Project will not be subject to the new rule, either as a directly applicable rule regarding statewide planning goal 5 or through a county's implementation, unless the applicant voluntarily chooses to comply with the same. The rules should provide project proponents with pending applications before EFSC the voluntary option of complying with the state land use and wildlife laws relevant to sage-grouse that were applicable at the time of the initial application submission or that were promulgated pursuant to the LCDC's current rulemaking.

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24 (B) For any energy facility that submitted a preliminary application for site certificate pursuant to ORS  
25 469.300 et seq. on or before the effective date of this rule [OAR 660-023-0115,] subsections (5) through  
26 (12) shall not be directly applicable to any land use decision regarding that facility, notwithstanding ORS  
27 197.646(3), unless the applicant chooses otherwise. Similarly, any changes to a local government's  
28 acknowledged comprehensive plan or land use ordinances developed to achieve consistency with OAR  
29 660-023-0115 shall not constitute "applicable substantive criteria" pursuant to OAR 345-022-0030(3),  
30 unless they are in effect on the date the applicant submits a preliminary application for site certificate,  
31 unless the applicant chooses otherwise.

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

37 (16) Central Registry. The department will work with affected counties, ODFW, the BLM and USFWS to  
38 maintain a central registry, tracking anthropogenic disturbance from existing (baseline) and all new  
39 development affecting core areas and low density habitat. Counties must report all development

1 permits for all uses within a core area or within low density habitat to the department. The registry will  
2 include baseline calculations of direct impacts as of the date of the proposed listing of Sage-Grouse, in  
3 2010. Each year the department shall report to the commission the amount of new direct impacts in  
4 each PAC. The report shall be coordinated with and made available to all affected counties.

5 (17) Metering. These rules are intended to ensure that the overall amount of direct impacts in any PAC  
6 does not increase by more than 1.0 percent in any ten-year period following the effective date of these  
7 rules. If this threshold is exceeded, then the department must report that exceedance to the  
8 commission along with a proposal to amend these rules to adapt the standards and criteria such that  
9 the threshold is met. The commission may also consider revisions to these rules if the department's  
10 yearly reports required by subsection (16) above indicate that the development trends in any PAC  
11 indicate that the 1.0 direct impact threshold is in jeopardy of being exceeded before the ten-year period  
12 has expired. Any proposal to amend these rules undertaken by the department shall be developed in  
13 coordination with all affected counties and other stakeholders.

**Comment [IPC17]:** The one-percent-over-ten-years metering threshold may preclude large, important projects that would otherwise satisfy the overall three-percent threshold. LCDC should consider providing for flexibility around the metering threshold that does not require a rule change.

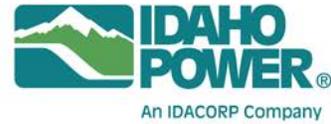
14 (18) Disturbance Threshold. These rules are intended to ensure that direct impact levels do not exceed  
15 three percent in any PAC. If this threshold is exceeded, then the department must report that  
16 exceedance to the commission along with a proposal to amend these rules to adapt the standards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

18 (19) State agency coordination programs. All state agencies that carry out or that permit large-scale  
19 development in core area or in low density habitat, including but not limited to OWRD, ODOT, DSL,  
20 DOGAMI, ODOE and the EFSC, and DEQ must report the proposed development to the department,  
21 along with an estimate of the direct disturbance of the development upon issuance of the permit or site  
22 certificate. In addition, to the extent not regulated by a county, such development, other than the  
23 issuance of water rights and the expansion of cultivation, must meet the requirements of subsection  
24 (9)(a)(A)(iii) of this rule, except as otherwise provided for in subsection (14)(B) of this rule.

**Comment [IPC18]:** Internal reference to proposed change above.

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

34



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July 21, 2015

*VIA ELECTRONIC MAIL*

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jon.jinings@state.or.us  
amie.abbott@state.or.us

Re: Preliminary Comments on Land Conservation and Development Commission  
Proposed Greater Sage-Grouse Rule

Dear Mr. Jinings and Ms. Taylor:

Idaho Power appreciates the Rulemaking Advisory Committee's (RAC) recommendation that the Land Conservation and Development Commission (LCDC) provide an exemption from the proposed sage-grouse rule, OAR 660-023-0115, for 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 the rule, e.g., the Boardman to Hemingway Transmission Line Project. *See* Staff Report, p. 3 (July 9, 2015). We are writing to recommend that the LCDC consider amending the exemption language set forth by the RAC as follows:

OAR 660-023-0115(2) Exempt activities.

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

(b) ~~For a~~Any energy facility that submitted a preliminary application for site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this

rule, subsections (5) through (12) is exempt from the provisions of this rule. OAR 660-023-0115 shall not be directly applicable to any land use decision regarding that facility, notwithstanding ORS 197.646(3), unless the applicant chooses otherwise. Similarly, any changes to a local government's acknowledged comprehensive plan or land use ordinances developed to achieve consistency with OAR 660-023-0115 shall not constitute "applicable substantive criteria" pursuant to OAR 345-022-0030(3), unless they are in effect on the date the applicant submits a preliminary application for site certificate, unless the applicant chooses otherwise.

Idaho Power believes these changes will make the subsection (b) exemption language more consistent with the subsection (a) language and avoid confusion with respect to the intent of the exemption.

Idaho Power may provide additional comments prior to the July 23rd public hearing. In the meantime, however, please feel free to contact me if you have any questions regarding these comments. Thank you for the opportunity to provide comment on this important program.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitch Colburn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mitch Colburn

July 20, 2015

Oregon Department of Land Conservation  
and Development Commission  
635 Capitol St., NE, Suite 150  
Salem, OR 97301-2540



Re: OAR 660-023-0115 "Goal Five"  
Proposed Greater Sage-grouse Rule

VIA E-MAIL [jon.jinings@state.or.us](mailto:jon.jinings@state.or.us)

Commissioners:

Thank you for the opportunity to comment to the above-mentioned item. Tree Top Ranches, LP is the fee owner of several real property tracts in Harney and Malheur Counties in the state of Oregon. We object to the adoption of this Rule for the [minimum] following reasons:

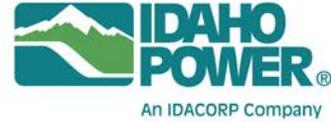
1. The Rule does not comply with its stated basis. It states in part "Managing private land...for the best possible outcomes requires partnership and cooperation among the many stakeholders"; yet there is nothing cooperative or partnered about this Rule. It goes on to say "Engagement on the part of the county government is *critical* [emphasis added]..." yet instead of actually 'engaging' the counties, the Rule **dictates** the minimum regulatory standards the county must adopt.
2. The proposed Rule affects **much** more than "Large Scale Development". Much of the 'Goal Five' discussion implies regulation of only "large scale development". To the contrary, paragraph "(7) Conflicting Uses." at subparagraph (b) includes "Other activities which require review by county decision makers..." Since *most* new uses [except those specifically exempted] can require County review of some type, this could subject nearly all new [non-exempted] uses to the requirements of this proposed Rule.
3. The Rule improperly affects lands specified in (7)(b) (A)-(C). The parameters specified in (A) through (C) encompass very large areas [7.5-12.5 square miles]. Within these areas there can be, and almost always are, potentially large percentages of land that provide **no** beneficial sage-grouse habitat. Nevertheless, these lands would still be subject to the onerous, applicant-burdened regulations of the Rule.
4. The proposed Rule is **harmful** to the Greater Sage-grouse and the protection and enhancement of its habitat. It is widely agreed the greatest threat to the sage grouse in this region is habitat loss due to wildfire and invasive weeds. The proposed Rule does **nothing** to implement reasonable fire management objectives and projects; it does **nothing** to help eradicate invasive weeds that continually encroach onto and destroy sage grouse habitat. While the Rule focuses on compelling local governments to over-regulate minor local impacts, these landscape-wide actual threats persist and grow.

With all due respect, the proposed Rule is disingenuous and fails totally to meet any measure of meaningful sage-grouse protection. It is the very essence of a lose-lose scenario. If the DLCD sincerely desires to accomplish something for the Greater sage-grouse, we politely suggest you get away from the alphabet agencies and special interest groups, and come out and talk with our neighbors who live on and truly care about these lands.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read "William J. Mulder", is written over the typed name.

William J. Mulder  
On behalf of Tree Top Ranches, LP



Todd Adams  
Engineering Project Leader  
Idaho Power Company  
1221 W. Idaho Street  
Boise, Idaho 83702  
TAdams@idahopower.com

July 22, 2015

*VIA ELECTRONIC MAIL*

Land Conservation and Development Commission  
c/o Jon Jinings/Casaria Taylor/Amie Abbott  
635 Capitol St., Ste. 150  
Salem, Oregon 97301  
jon.jinings@state.or.us  
casaria.taylor@state.or.us  
amie.abbott@state.or.us

Re: Supplemental Comments on Land Conservation and Development Commission  
Proposed Greater Sage-Grouse Rule

Dear Commissioners:

Idaho Power respectfully submits these comments for consideration by the Land Conservation and Development Commission (LCDC) on the proposed greater sage-grouse rule, OAR 660-023-0115. These comments update and supplement the comments Idaho Power provided to the Rulemaking Advisory Committee (RAC) on May 29, 2015 and LCDC on July 21, 2015, attached hereto as Attachments I and II.

**I. Overview of Idaho Power and the Boardman to Hemingway Transmission Line Project**

Idaho Power is an investor-owned utility with a service area that covers a 24,000-square-mile area in southern Idaho and eastern Oregon and that has an estimated population of 1,000,000. Idaho Power's service area in Oregon includes greater sage-grouse habitat. Additionally, Idaho Power has an application pending before Oregon's Energy Facility Siting Council (EFSC) for the construction and maintenance of the Boardman to Hemingway 500-kilovolt transmission line project (B2H Project), which crosses approximately 298 miles of eastern Oregon including sage-grouse habitat in Baker and Malheur counties. The B2H Project is intended to relieve existing transmission constraints between the Pacific Northwest and Intermountain West regions, increase opportunities for the exchange of energy between the

regions, ensure sufficient capacity for Idaho Power to meet its forecasted customer demand requirements, and help strengthen the reliability of the regional electric grid. For these reasons, the B2H Project remains a critical piece of Idaho Power's future plans and the company's overall commitment to providing reliable, responsible, and fair-priced energy services. State or county measures enacted to protect sage-grouse habitat may have a direct effect on Idaho Power's ongoing operations in Oregon, and permitting of the B2H Project in particular.

## **II. Comments on LCDC Draft Sage-Grouse Rule Dated June 10, 2015**

Idaho Power reviewed the July 9, 2015 RAC staff report and the draft sage-grouse rule dated June 10, 2015 (June 2015 Draft Rule). Recognizing that many stakeholders have collaborated through the RAC to develop the language included in the June 2015 Draft Rule and that LCDC intends to act at the July 23, 2015 LCDC meeting to formally adopt the proposed rule, Idaho Power has developed comments and proposed revisions that are intended to be narrowly tailored to improve upon the draft language without significantly expanding or revising the rules.

### **Pending Energy Facility Siting Council Applications/Exempt Facilities**

Idaho Power appreciates the LCDC Staff's recommendation that LCDC provide an exemption from the proposed sage-grouse rule for 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 the rule, e.g., the B2H Project. *See* Staff Report, p. 3. Idaho Power began permitting the B2H Project approximately eight years ago. During this timeframe, various stakeholders and Idaho Power have analyzed numerous routes in, near, and outside of sage-grouse habitat. This analysis involved an extensive scoping, routing, and community involvement process that spanned several years and included nearly 1,000 stakeholders comprised of elected officials, business owners, opposition groups, landowners, environmental groups, and community members. Nearly 50 different routes in 11 different counties were considered during the community advisory process. Idaho Power has invested tens of millions of dollars and many years in developing a project location and design for the B2H Project that avoids impacts to sage-grouse habitat and minimizes unavoidable impacts.

In recognition of the lengthy permitting history of the B2H Project, significant stakeholder involvement, and commitment of financial resources in permitting the project, Idaho Power proposed rule language in its May 29, 2015 comments that would have the effect of allowing an applicant with a pending EFSC application at the time the sage-grouse rules become effective, like the B2H Project, the voluntary option of complying with the state land use and wildlife laws relevant to sage-grouse that were applicable at the time of the initial submission of a preliminary application for site certificate, or the rules promulgated pursuant to the current rulemaking. Idaho Power initially proposed that this rule be added to OAR 660-023-0115(14), "Suspended Applicability" of the May 2015 version of the draft rules; however, that section has since been deleted. In the Staff Report, LCDC Staff recommends that Idaho Power's proposed rule language be incorporated in a new section, OAR 660-023-0115(2) "Exempt Activities."

Idaho Power appreciates LCDC Staff's recommendation to incorporate Idaho Power's suggested rule language and concurs with LCDC Staff that the proposed text should be included in the "Exempt Activities" section. Because of the proposed change to include the text in "Exempt Activities" rather than "Suspended Applicability," Idaho Power recommends a few ministerial revisions to the proposed OAR 660-023-0015(2)(b) text to better conform with the language for other exempt activities provided in OAR 660-023-0115(2)(a):

OAR 660-023-0115(2) Exempt activities.

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

(b) ~~For a~~Any energy facility that submitted a preliminary application for site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this rule, ~~subsections (5) through (12) is exempt from the provisions of this rule.~~ OAR 660-023-0115 shall not be directly applicable to any land use decision regarding that facility, notwithstanding ORS 197.646(3), unless the applicant chooses otherwise. Similarly, any changes to a local government's acknowledged comprehensive plan or land use ordinances developed to achieve consistency with OAR 660-023-0115 shall not constitute "applicable substantive criteria" pursuant to OAR 345-022-0030(3), unless they are in effect on the date the applicant submits a preliminary application for site certificate, unless the applicant chooses otherwise.

Idaho Power believes these changes will make the subsection (b) exemption language more consistent with the subsection (a) language and avoid confusion with respect to the intent of the exemption.

### **Avoidance Factors**

In Idaho Power's May 29, 2015 comments, Idaho Power proposed revisions to the avoidance factors for core area and low density habitat. The intent of Idaho Power's proposed revisions to the avoidance factors was provide in the rules recognition of the fact that conflicts with significant resource impacts may affect the viability of alternative project locations outside of core and low density areas, and also to recognize that core or low density habitat may present unique siting opportunities that would minimize impacts to other important resources, such as by locating new project adjacent to existing disturbances. Idaho Power renews the recommendations in its May 29, 2015 letter, and encourages LCDC to consider the following recommended changes:

OAR 660-023-0115(9)(a)(B)(i) It is not ~~technically feasible~~ reasonable to locate the proposed large-scale development outside of a core area ~~based on due to~~ accepted engineering practices, regulatory standards or ~~some combination thereof~~ impacts to other significant resources, including other Goal 5 resources and irrigated or high value farmland. Costs associated with ~~technical feasibility~~ locating the project outside of core area may be considered, but cost alone may not be the only consideration in determining that development must be located such that it will have direct or indirect impacts on significant sage-grouse areas; or

OAR 660-023-0115(9)(a)(B)(ii) The proposed large-scale development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands, is a linear use that must cross a core area in order to achieve a reasonably direct route, or takes advantage of a unique siting opportunity to consolidate impacts, such as co-location of transmission lines or road infrastructure; and

...

OAR 660-023-0115(10)(a)(A)(i) It is not ~~technically or financially feasible~~ reasonable to locate the proposed large-scale development outside of a low density area ~~based on due to~~ accepted engineering practices, regulatory standards, proximity to necessary infrastructure or ~~some combination thereof~~ impacts to other significant resources, including other Goal 5 resources and irrigated or high value farmland. Costs associated with locating the project outside low density habitat may be considered; or

OAR 660-023-0115(10)(a)(A)(ii) The proposed large-scale development is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations, or it is a linear use that must cross significant low density sage grouse habitat in order to achieve a reasonably direct route, or takes advantage of a unique siting opportunity to consolidate impacts, such as co-location of transmission lines or road infrastructure.

### **Development Action**

The term “development action” is defined as “subsequent re-permitting for activities with new impacts or continued impacts that have not been mitigated consistent with current standards.” OAR 660-023-0115(3)(d). While Idaho Power agrees in concept that that renewing permits or seeking additional permitting for existing activities may result in new impacts for which mitigation may be required, Idaho Power is concerned that the proposed language regarding “continued impacts” is both vague and overbroad with respect to the types of activities that may be subsumed within the definition of “development action.” For example, Idaho Power is concerned that it is not clear whether existing infrastructure in sage-grouse habitat, including

facilities that may have been built up to seventy years ago, may be considered to have a “continued impact” and, upon renewal of access permits or authorizations, may require new mitigation for impacts that have long been realized. Idaho Power’s understanding is that existing impacts were intended to be incorporated into the baseline and new conservation measures were not to be placed on such existing activities. Given the extent of Idaho Power’s existing infrastructure in sage-grouse habitat, the ramifications of including the phrase “continued impacts” could be much greater than intended.

To address this issue, Idaho Power proposes eliminating the phrase “continued impacts,” and believes that the definition will still operate largely as intended without requiring substantial mitigation for infrastructure developed many years ago where there is no new impact to sage-grouse habitat. Idaho Power proposes the following revisions:

OAR 660-023-0115(3)(d) “Development action” means any activity subject to regulation by local, state, or federal agencies that could result in the loss of fish and wildlife habitat. Development actions may include but are not limited to, construction and operational activities of local, state, and federal agencies. Development actions also include subsequent ~~re~~-permitting for activities with new impacts ~~or continued impacts~~ that have not been mitigated consistent with current standards.

### **Areas of High Population Richness**

The June 2015 Draft Rules include a new concept in the definition section, “Areas of High Population Richness,” which are “mapped areas that represent statistically significant clustering of the most highly attended leks and associated nesting habitat.” OAR 660-023-0115(3)(a). Additionally, the June 2015 Draft Rules include new language in the core area minimization section essentially requiring avoidance of both direct and indirect impacts in “Areas of High Population Richness.”

While Idaho Power recognizes that there may be discrete areas within core area that are of greater importance than other areas, Idaho Power has concerns with this proposal. First, Idaho Power learned of this proposal only upon reviewing the June 2015 Draft Rules, and has not had an opportunity to review any mapping of “Areas of High Population Richness.” Second, there are no specific criteria or mapping requirements in the LCDC or Oregon Fish and Wildlife Commission rules for identifying “Areas of High Population Richness,” and there is no prescribed process or timeline for reviewing or updating the mapping for these areas. Third, the avoidance requirement for “Areas of High Population Richness” is folded into the impact minimization requirements, rather than the avoidance section. Because the new proposal appears to be an avoidance requirement, and appears to create a higher bar than the general requirements for avoidance in core area, it seems inappropriate to include the new language within the minimization requirements.

To the extent that this proposal would include new and potentially more stringent avoidance requirements in an area that has not been spatially defined, Idaho Power recommends that LCDC decline to adopt the proposed definition of "Areas of High Population Richness" in OAR 660-023-0115(3)(a) and the proposed avoidance requirements in the minimization section, OAR 660-023-0115(9)(a)(C). Idaho Power recommends the following changes:

OAR 660-023-0115(3)(a) ~~"Areas of High Population Richness" are mapped areas that represent statistically significant clustering of the most highly attended leks and associated nesting habitat.~~

OAR 660-023-0115(9)(a)(C) Minimization. If the proposed use cannot be sited by avoiding a core area altogether, including direct and indirect impacts, it shall be located to minimize the amount of such habitat directly or indirectly disturbed, and to minimize fragmentation of the core area(s) in question by locating the development adjacent to existing development and at the edge of the core area when possible. Uses should minimize impacts through micro-siting, limitations on the timing of construction and/or use, and methods of construction.

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

### III. Conclusion

Thank you for the opportunity to provide comment on this important program. We look forward to future opportunities to work with the agencies in addressing this issue. Please feel free to contact me if you have any questions regarding these comments.

Sincerely,



Todd Adams

# **Attachment I**

**Idaho Power's May 29, 2015 Comments on  
Draft Sage-Grouse Rules**

**Todd Adams**  
**Engineering Project Leader**  
**Idaho Power Company**  
**1221 W. Idaho Street**  
**Boise, Idaho 83702**  
**TAdams@idahopower.com**

May 29, 2015

*VIA ELECTRONIC MAIL*

Land Conservation and Development Commission  
Sage Grouse Rulemaking Advisory Committee  
c/o Jon Jinings/Casaria Taylor  
635 Capitol St., Ste. 150  
Salem, Oregon 97301  
jon.jinings@state.or.us  
casaria.taylor@state.or.us

Re: Comments on Land Conservation and Development Commission Greater Sage-Grouse Rulemaking

Dear Mr. Jinings and Ms. Taylor:

Idaho Power Company is submitting these comments for consideration by the Land Conservation and Development Commission (LCDC) Sage Grouse Rulemaking Advisory Committee (RAC).

**I. Idaho Power and the Boardman to Hemingway Transmission Line Project**

Idaho Power is an investor-owned utility with a service area that covers a 24,000-square-mile area in southern Idaho and eastern Oregon and that has an estimated population of 1,000,000. Idaho Power's service area in Oregon includes greater sage-grouse habitat. Additionally, Idaho Power has an application pending before Oregon's Energy Facility Siting Council (EFSC) for the construction and maintenance of the Boardman to Hemingway 500-kilovolt transmission line project (B2H Project), which crosses approximately 298 miles of eastern Oregon including sage-grouse habitat in Baker and Malheur counties. The B2H Project is intended to relieve existing transmission constraints between the Pacific Northwest and Intermountain West regions, increase opportunities for the exchange of energy between the regions, ensure sufficient capacity for Idaho Power to meet its forecasted customer demand requirements, and help strengthen the reliability of the regional electric grid. For these reasons,

the B2H Project remains a critical piece of Idaho Power's future plans and the company's overall commitment to providing reliable, responsible, and fair-priced energy services. State or county measures enacted to protect sage-grouse habitat may have a direct effect on Idaho Power's ongoing operations in Oregon, and permitting of the B2H Project in particular.

## **II. Comments on LCDC Draft Sage-Grouse Rules Dated May 27, 2015**

Idaho Power reviewed the May 27, 2015 draft of the amendments to OAR 660-023-0115 addressing management of certain sage-grouse habitat in Oregon. Recognizing that the draft rule changes are still under discussion and subject to revision, Idaho Power provides for the RAC's consideration the following comments on the draft rules as well as the additional comments set forth in the attached redline markup of the May 27, 2015 draft amendments. *See* Idaho Power's Red-Line Mark Up of the May 27, 2015 LCDC Draft Sage-Grouse Rule Amendments (attached hereto as Attachment I).

### **Pending EFSC applications**

Idaho Power requests incorporation of a provision providing that a pending energy facility project like the B2H Project will not be subject to the new rule, either as a directly applicable rule regarding statewide planning goal 5 or through a county's implementation, unless the applicant voluntarily chooses to comply with the same. Idaho Power began permitting the B2H Project approximately eight years ago. During this timeframe, various stakeholders and Idaho Power have analyzed numerous routes in, near, and outside of sage-grouse habitat. This analysis involved an extensive scoping, routing, and community involvement process that spanned several years and included nearly 1,000 stakeholders comprised of elected officials, business owners, opposition groups, landowners, environmental groups, and community members. Nearly 50 different routes in 11 different counties were considered during the community advisory process. Idaho Power has invested millions of dollars and many years in developing a project location and design for the B2H Project that avoids impacts to sage-grouse habitat and minimizes unavoidable impacts. Idaho Power requests that Oregon's forthcoming sage-grouse rules provide project proponents with pending applications before EFSC, like the B2H Project, the voluntary option of complying with the state land use and wildlife laws relevant to sage-grouse that were applicable at the time of the initial application submission or that were promulgated pursuant to the RAC's current rulemaking. Idaho Power proposes the following changes to the draft rule:

OAR 660-023-0115(14) Suspended applicability. (A) In any county that has not amended its comprehensive plan and land use regulations to achieve consistency with OAR 660-023-0115, Ssubsections (5) thru (12) of this rule ~~become applicable~~ shall apply directly to any land use decisions affecting significant sage grouse habitat beginning on July 1, 2017, rather than as otherwise specified by OAR 660-023-0250, except as provided in subsection (B) below.

(B) For any energy facility that submitted a preliminary application for site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this rule [OAR 660-023-0115,] subsections (5) through (12) shall not be directly applicable to any land use decision regarding that facility, notwithstanding ORS 197.646(3), unless the applicant chooses otherwise. Similarly, any changes to a local government’s acknowledged comprehensive plan or land use ordinances developed to achieve consistency with OAR 660-023-0115 shall not constitute “applicable substantive criteria” pursuant to OAR 345-022-0030(3), unless they are in effect on the date the applicant submits a preliminary application for site certificate, unless the applicant chooses otherwise.

### **Avoidance Factors**

The draft rules currently provide that, in order to show that core or low density habitat cannot be avoided, there are engineering constraints, regulatory standards, or unique geographic or physical features making it infeasible to locate the project outside of core or low density habitat. However, the draft rules do not recognize that conflicts with significant resource impacts elsewhere may similarly affect the viability of alternative project locations. For example, alternative locations outside of core or low density habitat may encompass Goal 5 resources, irrigated or high value farmland, or other significant resources, providing that core area impacts cannot be avoided and therefore minimization and mitigation are instead appropriate. Further, the draft rules should recognize that core or low density habitat may present unique siting opportunities to consolidate impacts, such as by locating new project adjacent to existing disturbances. Accordingly, Idaho Power requests LCDC to consider the following changes to the factors affecting avoidance:

OAR 660-023-0115(9)(a)(A)(i) It is not ~~technically feasible~~reasonable to locate the proposed large-scale development outside of a core area ~~based on~~due to accepted engineering practices, regulatory standards or ~~some combination thereof~~impacts to other significant resources, including other Goal 5 resources and irrigated or high value farmland. Costs associated with ~~technical feasibility~~locating the project outside core areas may be considered, but cost alone may not be the only consideration in determining that development must be located such that it will have direct or indirect impacts on significant sage-grouse areas; or

(ii) The proposed large-scale development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands, is a linear use that must cross a core area in order to achieve a reasonably direct route, or takes advantage of a unique siting opportunity to consolidate impacts, such as co-location of transmission lines or road infrastructure; and

...

OAR 660-023-0115(10)(a)(A)(i) It is not ~~technically or financially feasible~~reasonable to locate the proposed large-scale development outside of a ~~significant sage-grouse low density~~ area ~~based on~~due to accepted engineering practices, regulatory standards or ~~some combination thereof~~impacts to other significant resources, including other Goal 5 resources and irrigated or high value farmland. Costs associated with locating the project outside low density habitat may be considered; or

(ii) The proposed large-scale development is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations, or is a linear use that must cross ~~significant low density~~ sage grouse habitat in order to achieve a reasonably direct route, or takes advantage of a unique siting opportunity to consolidate impacts, such as co-location of transmission lines or road infrastructure; and

### **Core Area Needed Infrastructure**

The draft rules provide that a county may find that the avoidance provisions of OAR 660-023-0115(9)(a)(A)(iii) are met if the project is considered “needed infrastructure.” The scope of such need is not defined in the draft rules and may be subject to debate in the future—e.g., does it mean needed by the county, the project proponent, or someone or something else? With respect to a utilities project, the need for such project is discussed in the relevant utility’s Integrated Resource Plan. The RAC should consider amending the draft rules to provide that needed infrastructure includes projects recognized in an acknowledged Integrated Resource Plan:

OAR 660-023-0115(9)(a)(A)(iii) If either (9)(a)(A)(i) or (9)(a)(A)(ii) is found to be satisfied the county must also find that the large-scale development will provide important economic opportunity, needed infrastructure, public safety benefits or public health benefits for local citizens or the entire region. For development of utility facilities, this section may be satisfied if the development is included in the utility’s most recent Integrated Resource Plan and acknowledged by the relevant state utility regulatory entity.

### **Balancing**

Idaho Power support’s the RAC’s inclusion of a balancing provision providing that the county may approve a project that is in the public benefit even if the project cannot meet the avoidance test. However, Idaho Power encourages the RAC to provide the county flexibility to exercise its balancing authority if the public benefit arises at a regional or national level and not just a county level. For example, the B2H Project has been recognized as a nationally-important transmission project. In October 2009, nine federal entities, including the Council on Environmental Quality, Department of the Interior, Department of Agriculture, Department of Defense, Environmental Protection Agency, and Advisory Council on Historic Preservation entered into a Memorandum of Understanding committing each signatory to increase their

coordination to expedite and simplify the process for analyzing and permitting transmission line projects on federal lands and recognizing that “[e]xpanding and modernizing the transmission grid by siting proposed electric transmission facilities will help to accommodate additional electrical generation capacity over the next several decades, including renewable generation as well as improve reliability and reduce congestion.” Memorandum of Understanding Regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Land at 2 (Oct. 23, 2009). In October 2011, the President formed the Rapid Response Transmission Team (“RRTT”), comprised of the nine agencies that signed the 2009 Memorandum of Understanding, to prioritize and expedite the development of seven certain transmission projects. The B2H Project was one of those priority projects, which the President has determined would help increase electric reliability, integrate new renewable energy into the grid, and save consumers money. *See* Council on Environmental Quality RRTT website at <https://www.whitehouse.gov/administration/eop/ceq/initiatives/interagency-rapid-response-team-for-transmission>. The counties should have authority to exercise their balancing authority based on a project’s regional or national benefit, as with the B2H Project, in addition to its county-level benefit.

Additionally, for utility projects, the RAC should consider acknowledging the public utility commission’s role in assessing the public benefit of such projects and provide that balancing authority may be exercised for projects recognized in an acknowledged Integrated Resource Plan. With this in mind, Idaho Power proposes the following changes to the balancing authority provision of the draft rule amendments:

OAR 660-023-0115(12) Balancing. A county may approve a large-scale development proposal that does not meet the avoidance test ~~for significant sage-grouse habitat under subsections (9) or (10) of this rule~~ if the county determines that the overall public benefits of the proposal outweigh the damage to significant sage-grouse habitat. The county shall make this balancing determination only ~~whenif~~ (1) the proposal involves an economic opportunity that will provide a number of jobs paying at least 150 percent of average county wages sufficient to increase the amount of private nonfarm employment numbers by at least 1.0 percent over the number included in the most recent data available from the United State Census Bureau; (2) the project will have a significant national or regional impact; or (3) the proposal is for development of utility infrastructure included in the utility’s most recent Integrated Resource Plan and acknowledged by the Public Utility Commission of Oregon. The applicant has the burden to show that the overall public benefits outweigh the damage to the significant sage-grouse habitat, and the burden increases proportionately with the degree of damage to significant sage-grouse habitat.

### **Clarity and Regulatory Certainty**

Idaho Power has included numerous suggestions in the attached markup of the draft rules that serve to clarify definitions of terms used the draft rule, which in turn will have a direct effect on its scope and transparency to the regulated public. In particular, Idaho Power has suggested

additional clarification regarding the location and/or status of sage-grouse core areas, low density areas, and/or PACs, as well as clarification regarding how those categories will be maintained and updated. Transparency regarding this data will be essential to the success of Oregon's implementation of sage-grouse conservation through the statewide planning goals; without it, utilities and renewable energy project developers will have no certain way to evaluate a proposal's potential impacts in sage-grouse habitat. Making protected sage-grouse habitat a constantly moving target will deal a fatal blow to any prospective development that requires multi-year planning and permitting. Please consider the proposed edits and comments in Attachment I.

### **III. Conclusion**

Idaho Power is concerned about, among other things, the practical, on-the-ground implications of the LCDC's proposed conservation measures. Particularly, LCDC should clarify that the measures will recognize the time, effort, and costs that Idaho Power and other EFSC applicants have already expended in pursuing their applications, while developing projects that avoid, minimize, and mitigate impacts to sage-grouse. The proposed rules should allow flexibility for the state agencies and counties to develop conservation measures in cooperation with the regulated community that include a strong but pragmatic mitigation program while simultaneously allowing continued economic development.

Thank you for the opportunity to provide comment on this important program. We look forward to future opportunities to work with the agencies in addressing this issue. Please feel free to contact me if you have any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Todd Adams". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Todd Adams

# **Attachment I**

**Idaho Power's Red-Line Mark Up of the  
May 27, 2015 Draft LCDC Sage-Grouse Rule  
Amendments**

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 shall apply. In addition,  
20 the following definitions shall apply:

21 (a) “Candidate Conservation Agreement with Assurances” is a formal agreement between the United  
22 States Fish and Wildlife Service and one or more parties to address the conservation needs of proposed  
23 or candidate species, or species likely to become candidates, before they become listed as endangered  
24 or threatened. Landowners voluntarily commit to conservation actions that will help stabilize or restore  
25 the species with the goal that listing will become unnecessary.

26 (b) “Core areas” are those core areas identified by ODFW and shown in the maps developed and  
27 maintained by ODFW pursuant to [OAR 635-140-0015(1)(a), which is renumbered as -0020 in the draft  
28 OFWC sage grouse rules].

29 (c) “Development action” means any activity subject to regulation by local, state, or federal agencies  
30 that could result in the loss of fish and wildlife habitat. Development actions may include but are not  
31 limited to, the planning, construction, and operational activities of local, state, and federal agencies.  
32 Development actions also include subsequent re-permitting for activities with new impacts or continued  
33 impacts or continued impacts that have not been mitigated consistent with current standards

34 (d) “Direct impact” means an adverse effect of a development action upon fish and wildlife habitat  
35 which is proximal to the development action in time and place.

36 (e) “Disturbance” is natural and anthropogenic activities that can negatively affect sage-grouse use of  
37 habitat either through changing the vegetation type/condition or displacement of sage-grouse use of an  
38 area. For purposes of this rule only disturbance from anthropogenic activities, such as direct and indirect  
39 impacts, are considered.

**Deleted:** mapped sagebrush types or other habitats that support sage-grouse annual life history requirements that are encompassed by areas: a) of very high, high, and moderate lek density strata; b) where low lek density strata overlap local connectivity corridors; or c) where winter habitat use polygons overlap with either low lek density strata, connectivity corridors, or occupied habitat.” Core area

**Deleted:** are

**Comment [IPC1]:** If LCDC will rely on ODFW to identify core areas, LCDC should refer to the relevant ODFW rule defining “core area.” Otherwise, by defining the term here, LCDC may create a conflict in definitions unless both LCDC’s and ODFW’s definition is and remains the same.

1 (f) "General habitat" is occupied (seasonal or year-round) sage grouse habitat outside core and low  
2 density habitats.

3 (g) "Indirect impacts" are effects that are caused by or will ultimately result from an affected  
4 development activity. Indirect effects usually occur later in time or are removed in distance compared  
5 to direct effects

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

11 A. Commercial Uses.

12 B. Mineral, Aggregate, Oil and Gas Uses.

13 C. Transportation Uses.

14 D. Utility/Solid Waste Disposal Facilities.

15 E. Parks/Public/Quasi-Public.

16 (i) "Low density areas" are those low density areas identified by ODFW and shown in the maps  
17 developed and maintained by ODFW pursuant to OAR 635-140-0015(1)(a), which is renumbered as -  
18 0020 in the draft OFWC sage grouse rules.

19 (j) "Mitigation hierarchy" is the approach used by decision makers to consider a large-scale  
20 development proposal and is comprised of a three step process:

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

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

30 (k) "Priority Areas for Conservation" (PACs) are key habitats identified by state sage grouse  
31 conservation plans or through other sage-grouse conservation efforts (e.g., BLM Planning). In Oregon,  
32 core area habitats are PACs.

33  
34 (4) Local program development and direct applicability of rule. Local governments may develop a  
35 program to achieve consistency with OAR 660-023-0115 by following the standard process in OAR 660-  
36 023-0030, OAR 660-023-0040 and 660-023-0050 and submitting the amendment to the Commission in

**Comment [IPC2]:** LCDC should consider whether the "General habitat" category is too vague to be meaningfully included here as habitat that the counties must treat as significant sage-grouse habitat for purposes of Goal 5. Rather, LCDC may consider providing that the counties consider designation of general habitat and not require the same.

In any event, LCDC should clarify how often occupation must occur across seasons and years for an area to be considered general habitat. For example, LCDC may provide that occupation need be documented at least once in the last three years, and therefore, an area could not be designated general habitat based on a sighting occurring 5 or 10 years ago.

General habitat maps should be maintained and updated in a transparent manner accessible to the public.

**Deleted:** mapped sagebrush types or other habitats that support sage-grouse that are encompassed by areas where: a) low lek density strata overlapped with seasonal connectivity corridors; b) local corridors occur outside of all lek density strata; c) low lek density strata occur outside of connectivity corridors; or d) seasonal connectivity corridors occur outside of all lek density strata."

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**Comment [IPC3]:** If LCDC will rely on ODFW to identify low density areas, LCDC should refer to the relevant ODFW rule defining "low density area." Otherwise, by defining the term here, LCDC may create a conflict in definitions unless both LCDC's and ODFW's definition is and remains the same.

**Comment [IPC4]:** Because the PACs provide the baseline for the three percent disturbance threshold in subsection (18), LCDC should clearly identify the dataset comprising the PACs and boundaries of each PAC. The dataset should be known and accessible to the public.

1 the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-025-0175. Until a  
2 county amends its comprehensive plan and land use regulations to achieve consistency with OAR 660-  
3 023-0115 the provisions of subsections (5) thru (11) shall apply directly to land use decisions affecting  
4 significant sage-grouse habitat, except as provided in subsection (14). When a local program has been  
5 acknowledged by LCDC to be in compliance with Goal 5 and equivalent to OAR 660-023-0115 with  
6 regard to protecting sage-grouse habitat, that program becomes the controlling county land use  
7 document and compliance with this rule is no longer necessary.

**Comment [IPC5]:** This proposed text refers to the “suspended applicability” provision, as well as an additional exception requested by Idaho Power, as discussed below.

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

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

14 (a) Core areas;

15 (b) Low density areas; and

16 (d) The exact location and categorization of sage-grouse habitat protected as a significant Goal 5  
17 resource may be refined during consideration of specific projects but must be done in consultation with  
18 ODFW.

**Comment [IPC6]:** For project proponents working in counties that do not adopt their own Goal 5 sage-grouse habitat, the location of this habitat category (which is tied to occupation) possibly would change each season as sage-grouse use changes. This category possibly would create a moving and uncertain area of compliance and thus it would be vague and create uncertainty. LCDC should consider omitting this requirement.

19 (7) Conflicting uses. For purposes of protecting significant sage-grouse habitat under Goal 5 conflicting  
20 uses are:

21 (a) Large-scale development; and

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

**Comment [IPC7]:** Ground-truthing is an important aspect of these rule amendments, benefiting sage-grouse conservation and regulated industry alike. LCDC should clarify that the results of such field verifications may affect the location and habitat categorization of the relevant project area.

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

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

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

**Deleted:** (c) Lands within a general habitat area located within 3.1 miles of an occupied or occupied-pending lek

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

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

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

1  
2 (A) Avoidance. Before proceeding with large scale development activity that impacts a core area, the  
3 proponent must demonstrate that reasonable alternatives have been considered and that the activity or  
4 other action cannot avoid impacts within core area habitat. If the proposed large-scale development  
5 can occur in another location that avoids both direct and indirect impacts within core area habitat, then  
6 the proposal must not be allowed unless it can satisfy the following criteria.

7 (i) It is not reasonable to locate the proposed large-scale development outside of a core area due to  
8 accepted engineering practices, regulatory standards or impacts to other significant resources, including  
9 other Goal 5 resources and irrigated or high value farmland. Costs associated with locating the project  
10 outside core areas may be considered, but cost alone may not be the only consideration in determining  
11 that development must be located such that it will have direct or indirect impacts on significant sage-  
12 grouse areas; or

13  
14 (ii) The proposed large-scale development is dependent on a unique geographic or other physical  
15 feature(s) that cannot be found on other lands, is a linear use that must cross a core area in order to  
16 achieve a reasonably direct route, or takes advantage of a unique siting opportunity to consolidate  
17 impacts, such as co-location of transmission lines or road infrastructure; and

18 (iii) If either (9)(a)(A)(i) or (9)(a)(A)(ii) is found to be satisfied the county must also find that the large-  
19 scale development will provide important economic opportunity, needed infrastructure, public safety  
20 benefits or public health benefits for local citizens or the entire region. For development of utility  
21 facilities, this section may be satisfied if the development is included in the utility's most recent  
22 Integrated Resource Plan and acknowledged by the relevant state utility regulatory entity.

23 (B) Minimization. If the proposed use cannot be sited by avoiding a core area altogether, including  
24 direct and indirect impacts, it shall be located to minimize the amount of such habitat directly or  
25 indirectly disturbed, and to minimize fragmentation of the core area(s) in question by locating the  
26 development adjacent to existing development and at the edge of the core area when possible. Uses  
27 should minimize impacts through micro-siting, limitations on the timing of construction and/or use, and  
28 methods of construction. Costs associated with minimization may be considered, but cost alone may  
29 not be the only consideration in determining that location of development cannot further minimize  
30 direct or indirect impacts to core areas.

31 (C) Compensatory Mitigation. To the extent that a proposed large-scale development will have direct or  
32 indirect adverse impacts on a core area or low density habitat after application of the avoidance and  
33 minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and  
34 indirect adverse effects of the development to any core area and any low density habitat. The required  
35 compensatory mitigation must comply with OAR Chapter 635, division 140.

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

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

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

**Comment [IPC8]:** Avoidance determination under this provision includes factors unrelated to technical feasibility—e.g., regulatory standards.

**Deleted:** technically feasible

**Deleted:** based on

**Comment [IPC9]:** LCDC should recognize that conflicts with significant resource impacts elsewhere may similarly affect the viability of alternative project locations. For example, alternative locations outside of core or low density habitat may encompass Goal 5 resources, irrigated or high value farmland, or other significant resources, providing that core area impacts cannot be avoided and minimization and mitigation are appropriate.

**Deleted:** some combination thereof

**Deleted:** technical feasibility

**Comment [IPC10]:** LCDC should consider recognizing that core or low density habitat may present unique siting opportunities to consolidate impacts, such as by locating a new transmission line or natural gas pipe adjacent to an existing transmission line or pipe. For example, ODFW's 2012 Sage-Grouse Mitigation Framework's states that "Co-location of transmission lines is encouraged." 2012 Mitigation Framework at 5.

**Comment [IPC11]:** "Needed infrastructure" is not defined in the draft rules. With respect to a utility project, the need for such project is discussed in the relevant utility's Integrated Resource Plan. LCDC should consider amending the draft rules to provide that needed infrastructure includes projects recognized in an acknowledged Integrated Resource Plan.

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

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

4

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

10 (i) It is not reasonable to locate the proposed large-scale development outside of low density habitat  
11 due to accepted engineering practices, regulatory standards or impacts to other significant resources,  
12 including other Goal 5 resources and irrigated or high value farmland. Costs associated with locating  
13 the project outside low density habitat may be considered; or

14 (ii) The proposed large-scale development is dependent on geographic or other physical feature(s)  
15 found in low density habitat areas that are less common at other locations, or it is a linear use that must  
16 cross low density sage grouse habitat in order to achieve a reasonably direct route, or takes advantage of  
17 a unique siting opportunity to consolidate impacts, such as co-location of transmission lines or road  
18 infrastructure.

19  
20 (iii) In addition to (i) and (ii) above, a county may find this test satisfied if there is sufficient evidence in  
21 the record to demonstrate that project proponents seriously considered a location on core area habitat  
22 but elected to pursue a site on low density habitat after an evaluation of alternatives showed that a  
23 location on core area habitat was not necessary.

24 (B) Minimization. Required consistent with the provisions of subsection (9)(b) above.

25 (C) Compensatory Mitigation. Required consistent with the provisions of subsection (9)(c) above.

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

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

29 (a) A county may approve a large-scale development on significant sage-grouse habitat on other habitat  
30 within 0.25 miles from an occupied or occupied pending lek upon applying the mitigation hierarchy  
31 consistent with the provisions of subsection (10)(a) above.

32 (b) A county may approve a large-scale development on significant sage-grouse habitat on general habitat  
33 beyond 0.25 miles from an occupied or occupied pending lek when found to be consistent with the  
34 provisions of subsection (10)(b)

35 (c) A county may approve a conflicting use as identified at subsection (7)(b) above when found to be  
36 consistent with the provisions of subsection (10)(b).

**Deleted:** technically or financially feasible

**Deleted:** significant sage-grouse

**Deleted:** based on

**Comment [IPC12]:** LCDC should recognize that conflicts with significant resource impacts elsewhere may similarly affect the viability of alternative project locations. For example, alternative locations outside of core or low density habitat may encompass Goal 5 resources, irrigated or high value farmland, or other significant resources, providing that core area impacts cannot be avoided and minimization and mitigation are appropriate.

**Deleted:** some combination thereof

**Deleted:** significant

**Comment [IPC13]:** LCDC should consider recognizing that core or low density habitat may present unique siting opportunities to consolidate impacts, such as by locating a new transmission line or natural gas pipe adjacent to an existing transmission line or pipe. For example, ODFW's 2012 Sage-Grouse Mitigation Framework's states that "Co-location of transmission lines is encouraged." 2012 Mitigation Framework at 5.

**Comment [IPC14]:** See comment above on "general habitat" definition suggesting that LCDC consider omitting general habitat management prescriptions.

1 ALTERNATIVE

2 (a) A county may approve a large-scale development or other conflicting use identified and subsection  
3 (7)(b) above when found to be consistent with the provisions of subsection (10)(b).

4 (12) Balancing. A county may approve a large-scale development proposal that does not meet the  
5 avoidance test under subsections (9) or (10) of this rule if the county determines that the overall public  
6 benefits of the proposal outweigh the damage to significant sage-grouse habitat. The county shall make  
7 this balancing determination only if (1) the proposal involves an economic opportunity that will provide  
8 a number of jobs paying at least 150 percent of average county wages sufficient to increase the amount  
9 of private nonfarm employment numbers by at least 1.0 percent over the number included in the most  
10 recent data available from the United State Census Bureau; (2) the project will have a significant  
11 national or regional impact; or (3) the proposal is for development of utility infrastructure included in  
12 the utility's most recent Integrated Resource Plan and acknowledged by the Public Utility Commission of  
13 Oregon. The applicant has the burden to show that the overall public benefits outweigh the damage to  
14 the significant sage-grouse habitat, and the burden increases proportionately with the degree of  
15 damage to significant sage-grouse habitat.

Deleted: for significant sage-grouse habitat

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Comment [IPC15]: The LCDC should consider recognizing the public utility commission's role in assessing the public benefit of utility projects and provide that balancing authority may be exercised for projects recognized in an acknowledged Integrated Resource Plan. Further, balancing authority should be available for projects that provide a national or regional public benefit, and not just certain local benefits.

16 (13) Lands including significant sage-grouse habitat that are up-zoned to a greater development  
17 potential than otherwise allowed under goals 3 and 4 after July 1, 2015 shall be considered a direct  
18 impact and count towards the three percent disturbance threshold pursuant to Subsection (18) below.

19 (14) Suspended applicability. (A) In any county that has not amended its comprehensive plan and land  
20 use regulations to achieve consistency with OAR 660-023-0115, subsections (5) thru (12) of this rule  
21 shall apply directly to any land use decisions affecting significant sage grouse habitat beginning on July 1,  
22 2017 rather than as otherwise specified by OAR 660-023-0250, except as provided in subsection (B)  
23 below.

Comment [IPC16]: LCDC should consider a provision providing that a pending energy facility project like the B2H Project will not be subject to the new rule, either as a directly applicable rule regarding statewide planning goal 5 or through a county's implementation, unless the applicant voluntarily chooses to comply with the same. The rules should provide project proponents with pending applications before EFSC the voluntary option of complying with the state land use and wildlife laws relevant to sage-grouse that were applicable at the time of the initial application submission or that were promulgated pursuant to the LCDC's current rulemaking.

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Deleted: become applicable

24 (B) For any energy facility that submitted a preliminary application for site certificate pursuant to ORS  
25 469.300 et seq. on or before the effective date of this rule [OAR 660-023-0115,] subsections (5) through  
26 (12) shall not be directly applicable to any land use decision regarding that facility, notwithstanding ORS  
27 197.646(3), unless the applicant chooses otherwise. Similarly, any changes to a local government's  
28 acknowledged comprehensive plan or land use ordinances developed to achieve consistency with OAR  
29 660-023-0115 shall not constitute "applicable substantive criteria" pursuant to OAR 345-022-0030(3),  
30 unless they are in effect on the date the applicant submits a preliminary application for site certificate,  
31 unless the applicant chooses otherwise.

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

37 (16) Central Registry. The department will work with affected counties, ODFW, the BLM and USFWS to  
38 maintain a central registry, tracking anthropogenic disturbance from existing (baseline) and all new  
39 development affecting core areas and low density habitat. Counties must report all development

1 permits for all uses within a core area or within low density habitat to the department. The registry will  
2 include baseline calculations of direct impacts as of the date of the proposed listing of Sage-Grouse, in  
3 2010. Each year the department shall report to the commission the amount of new direct impacts in  
4 each PAC. The report shall be coordinated with and made available to all affected counties.

5 (17) Metering. These rules are intended to ensure that the overall amount of direct impacts in any PAC  
6 does not increase by more than 1.0 percent in any ten-year period following the effective date of these  
7 rules. If this threshold is exceeded, then the department must report that exceedance to the  
8 commission along with a proposal to amend these rules to adapt the standards and criteria such that  
9 the threshold is met. The commission may also consider revisions to these rules if the department's  
10 yearly reports required by subsection (16) above indicate that the development trends in any PAC  
11 indicate that the 1.0 direct impact threshold is in jeopardy of being exceeded before the ten-year period  
12 has expired. Any proposal to amend these rules undertaken by the department shall be developed in  
13 coordination with all affected counties and other stakeholders.

**Comment [IPC17]:** The one-percent-over-ten-years metering threshold may preclude large, important projects that would otherwise satisfy the overall three-percent threshold. LCDC should consider providing for flexibility around the metering threshold that does not require a rule change.

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

18 (19) State agency coordination programs. All state agencies that carry out or that permit large-scale  
19 development in core area or in low density habitat, including but not limited to OWRD, ODOT, DSL,  
20 DOGAMI, ODOE and the EFSC, and DEQ must report the proposed development to the department,  
21 along with an estimate of the direct disturbance of the development upon issuance of the permit or site  
22 certificate. In addition, to the extent not regulated by a county, such development, other than the  
23 issuance of water rights and the expansion of cultivation, must meet the requirements of subsection  
24 (9)(a)(A)(iii) of this rule, except as otherwise provided for in subsection (14)(B) of this rule.

**Comment [IPC18]:** Internal reference to proposed change above.

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

34

# **Attachment II**

**Idaho Power's July 21, 2015 Preliminary  
Comments on Proposed Sage-Grouse Rules**

Mitch Colburn  
Engineering Project Leader  
Idaho Power Company  
1221 W. Idaho Street  
Boise, Idaho 83702  
MColburn@idahopower.com

July 21, 2015

*VIA ELECTRONIC MAIL*

Land Conservation and Development Commission  
c/o Jon Jinings/Amie Abbott  
635 Capitol St., Ste. 150  
Salem, Oregon 97301  
jon.jinings@state.or.us  
amie.abbott@state.or.us

Re: Preliminary Comments on Land Conservation and Development Commission  
Proposed Greater Sage-Grouse Rule

Dear Mr. Jinings and Ms. Taylor:

Idaho Power appreciates the Rulemaking Advisory Committee's (RAC) recommendation that the Land Conservation and Development Commission (LCDC) provide an exemption from the proposed sage-grouse rule, OAR 660-023-0115, for 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 the rule, e.g., the Boardman to Hemingway Transmission Line Project. *See* Staff Report, p. 3 (July 9, 2015). We are writing to recommend that the LCDC consider amending the exemption language set forth by the RAC as follows:

OAR 660-023-0115(2) Exempt activities.

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

(b) ~~For a~~Any energy facility that submitted a preliminary application for site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this

rule, subsections (5) through (12) is exempt from the provisions of this rule. OAR 660-023-0115 shall not be directly applicable to any land use decision regarding that facility, notwithstanding ORS 197.646(3), unless the applicant chooses otherwise. Similarly, any changes to a local government's acknowledged comprehensive plan or land use ordinances developed to achieve consistency with OAR 660-023-0115 shall not constitute "applicable substantive criteria" pursuant to OAR 345-022-0030(3), unless they are in effect on the date the applicant submits a preliminary application for site certificate, unless the applicant chooses otherwise.

Idaho Power believes these changes will make the subsection (b) exemption language more consistent with the subsection (a) language and avoid confusion with respect to the intent of the exemption.

Idaho Power may provide additional comments prior to the July 23rd public hearing. In the meantime, however, please feel free to contact me if you have any questions regarding these comments. Thank you for the opportunity to provide comment on this important program.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitch Colburn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mitch Colburn



July 22, 2015

Dear Members of the Land Conservation and Development Commission,

Please accept the following comments from the Audubon Society of Portland regarding the rulemaking regarding Oregon's Greater Sage-grouse (Draft Amendments to OAR 660- 023-0115). Audubon Society of Portland has participated in the SageCon Process and also served on the ODFW Sage-grouse RAC.

We appreciate the significant work of both the ODFW and LCDC RACs, the strong support from staff at both agencies and the constructive dialogue that occurred during these processes. We are supportive of the majority of the provisions contained in the proposed rules. However, there remain significant areas where we believe the rules are insufficient to ensure adequate protection for Sage-grouse and to provide the regulatory certainty required to avoid listing under the Endangered Species Act. The following comments are focused on the areas that we believe should be given further consideration by LCDC as it adopts this rule and by the US Fish and Wildlife Service when it makes its listing decision.

- 1) **Local Program Development (Section 4):** The proposed rule allows counties to develop their own Goal 5 Sage-grouse programs to achieve consistency with OAR 660- 023-0115 and submit them to LCDC for approval. It appears that this provision would allow counties to develop different Sage-grouse programs from the one described in the proposed rule so long as they can demonstrate "consistency." It is unclear to what degree counties would be allowed to deviate from the proposed rule or how "consistency" would be determined for a county that did choose to develop its own program. For example, could a county adopt 95% of the proposed rule but drop a few provisions it finds objectionable and still be deemed "consistent"? Could county add a few additional exclusions and still be found "consistent"? Could a county modify the mitigation program and still be found "consistent"? This provision raises very significant concerns---our experience with the Metro Goal 5 program, when all cities in the Metro Region were required to achieve substantial compliance with Metro's Goal 5 program, was that the individual jurisdiction's Goal 5 programs could vary significantly from jurisdiction to jurisdiction and still receive approval by LCDC. In order to achieve the regulatory certainty to meet the requirements of the Endangered Species Act, we believe that the language in Section 4 should be modified to require counties to adopt the rule verbatim and without modification. Anything short of that type of language would subject the Sage-grouse programs to the vagaries of long and complex local Goal 5 processes and the politics of another LCDC approval process and would extend final adoption of the county Sage-grouse programs far beyond the deadline for the US Fish and Wildlife Service listing decision. If this is in fact how the rule

is to be applied, then the Sage-grouse protections outlined in the rule should not be viewed as more than one step in an ongoing but incomplete iterative process to determine what level of protection Oregon will ultimately apply to Sage-grouse. It would thus fail to provide real regulatory certainty at this time.

- 2) **Exclusions for farm and ranch uses:** Audubon does not support exclusions for farm and ranch uses. Conversion of sage-steppe habitat to farm and ranch uses could have a significant impact on the viability of Sage-grouse habitat over time and undermines the certainty that Sage-grouse habitat will truly be protected under this rule. While it may make sense to treat farm and ranch uses differently than other forms of development, we believe that it should still be monitored, mitigated and count towards the thresholds established in the rule. Failure to count conversion of sage-steppe habitat to farm and ranch uses as part of the development threshold analysis will result in a significant underestimation of development over time. This is of even greater concern since these impacts will also go unmitigated.
- 3) **Exclusions for energy facilities that have submitted applications for site certifications to EFSC prior to the effective date of this rule:** It is unfortunate that this exclusion was introduced subsequent to the final RAC meetings. We would urge the commission to remove this exclusion—energy development presents one of the biggest threats to Sage-grouse and it is critical that all new facilities meet the terms of this rule. At bare minimum, an analysis of the potential impact area of potential facilities covered under this exemption should have been provided as part of the supporting materials for this rule so that scope of impacts could be assessed as part of the adoption process. As with farm and ranch uses, failure to account for energy development that are already in process will result both in potentially unmitigated development and a failure to fully account for the amount of development under the development thresholds.
- 4) **Small Scale Development:** We believe that small scale uses should also count towards the 1% and 3% disturbance thresholds. Over time, small scale development can have a significant cumulative impact on the landscape and lead to fragmentation and reduced habitat viability. Failing to include small scale development in core habitat in the metering for the 1% and 3% disturbance thresholds will result in a significant underestimation of the actual level of disturbance over time.
- 5) **Quantifying the impacts of energy developments:** Under the proposed mitigation program, energy developments will only be required to mitigate for their actual physical impact area as opposed to the full acreage of the facility. So for example a wind farm which covers 10,000 acres but whose turbines, buildings and power lines only cover a few hundred acres, will only have to mitigate for a few hundred acres. We strongly oppose this interpretation of the impact area of these facilities and urge ODFW and LCDC to require mitigation for the entire facility. The spider web of roads, lines and structures created by these facilities fragments and undermines the viability of the entire site, not just the direct impact area of the structures themselves.

6) **Especially Unique Local Economic Activity:** We believe that this provision which allows a county to skip the “avoid” step one time per decade if it determines that “the economic benefits of a project outweigh protecting the resource,” is unnecessary and should be removed from the rule. The mitigation hierarchy already allows large scale developments that provide significant economic impact if it is found that it is not technically feasible to locate it elsewhere or that the project is dependent on a unique geographic or physical feature. This specific section, in effect, allows a large-scale development inside core habitat even if there is an alternative site available outside core habitat that would provide the same benefits. We question why a county would ever allow a large development in core habitat if an alternative was available. We urge the Commission to remove this provision entirely.

In summary, while we believe this rule represents significant and substantial work, it remains inadequate to achieve the regulatory certainty required by the Endangered Species Act. Section 4 which appears to allow counties to develop alternative Sage-grouse programs means that this rule should be viewed more as a work in progress than an final product in terms of describing the actual protections that will ultimately be put in place. A series of exclusions including farm and ranch uses, in-process energy developments and small scale uses will result in significant underestimation of the actual development area within Sage-grouse habitat. We urge LCDC to remedy these deficiencies prior to adoption. Alternatively we would urge the US Fish and Wildlife Service to view this rule as a significant, but ultimately insufficient and incomplete step towards the regulatory certainty that is required when deciding whether to list a species under the Endangered Species Act.

We appreciate your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Bob Sallinger". The signature is written in a cursive, slightly slanted style.

Bob Sallinger  
Conservation Director  
Audubon Society of Portland

### Baseline – Existing Disturbance

Core Area/PAC	County(ies)	PAC Size (acres)	Existing Develop. (acres)	Existing Develop. (percentage)	1% (acres)	3% (acres)	Develop. Potential (acres)
<b>Baker</b>	Baker, Union	336,415	5,760	1.7%	3,360	10,090	4,330
<b>Beatys</b>	Lake, Harney	841,398	5,320	0.63%	8,410	25,240	19,920
<b>Brothers/N Wagontire</b>	Crook, Deschutes, Lake	293,344	3,470	1.18%	2,930	8,800	5,330
<b>Bully Creek</b>	Malheur	279,723	2,070	0.74%	2,800	8,390	6,320
<b>Burns</b>	Harney	35,756	180	0.50%	360	1,070	890
<b>Cow Lakes</b>	Malheur	249,705	1,920	0.77%	2,500	7,490	5,570
<b>Cow Valley</b>	Baker, Malheur	368,442	5,380	1.46%	3,680	11,050	5,670
<b>Crowley</b>	Harney, Malheur	490,890	3,760	0.77%	4,910	14,730	10,970
<b>Drewsey</b>	Harney, Malheur	368,560	3,770	1.02%	3,690	11,060	7,290
<b>Dry Valley/Jack Mountain</b>	Harney	449,423	2,870	0.64%	4,490	13,480	10,610
<b>Folly Farm/Saddle Butte</b>	Harney, Malheur	251,574	1,290	0.51%	2,520	7,550	6,260
<b>Louse Canyon</b>	Malheur	672,453	1,810	0.27%	6,730	20,170	18,360
<b>Paulina/12 Mile/Misery Flat</b>	Crook, Deschutes, Harney, Lake	441,745	4,400	1.00%	4,420	13,250	8,850
<b>Picture Rock</b>	Lake	42,588	740	1.74%	430	1,280	540
<b>Pueblos/S Steens</b>	Harney	208,940	1,740	0.83%	2,090	6,270	4,530
<b>Soldier Creek</b>	Malheur	295,486	1,350	0.46%	2,960	8,870	7,520
<b>Steens</b>	Harney	185,773	2,200	1.18%	1,860	5,570	3,370
<b>Trout Creeks</b>	Harney, Malheur	393,822	2,170	0.55%	3,940	11,820	9,650
<b>Tucker Hill</b>	Lake	31,545	310	0.98%	320	950	640
<b>Warners</b>	Harney, Lake	330,249	4,630	1.40%	3,300	9,910	5,280



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**Institute for Natural Resources**

To: Jon Jinings  
From: Theresa Burcsu, Matthew Lee  
cc: Jamie Damon  
Date: July 22, 2015  
Subject: Existing Developed Land Area for Proposed LCDC Rule OAR 660-023-0115

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To assist in the decision making process for addressing development in sage-grouse habitat, the SageCon Partnership has drafted baseline values of developed land area and percentages in Oregon PACs (Priority Conservation Areas) as an exhibit to accompany the proposed LCDC Rule OAR 660-023-0115. Contributors to this analysis were staff from Harney County GIS, The Nature Conservancy, and Institute for Natural Resources.

The baseline values address only direct impacts or “footprints” of development. The calculations were carried out using, as guidance, BLM’s relationship between 18 threats to sage-grouse and habitat disturbance measures for monitoring and disturbance calculations (please see Table 1) and BLM Direct Area of Influence definitions included in Table 6 of the BLM GSG Monitoring Framework (May 30, 2014; please see Table 2). The BLM Direct Area of Influence is a concept that refers to direct impacts or “footprints” of development. The concept does not specifically address the indirect impacts of development. BLM used this concept to identify standards for use in spatial data (GIS) analysis of specific habitat degradation (development) types for broad to mid-spatial scales. The baseline values may be refined if the proposed rule is accepted and goes into effect due to language that provisions refinement of datasets and criteria used to calculate the developed land area in PACs.

Baseline, development direct area of influence or “footprints” were generated in ArcGIS 10.1 using spatial data for the development types listed in Table 6 of the BLM Monitoring Framework (see Table 1). Data sources and direct areas of influence used in the baseline calculations are identified in Table 3. Data sources differed for Harney County as the county performed calculations using its own spatial data sets maintained by the county planning department.

For all PACs except those located in Harney County, baseline calculations were developed using spatial data from a variety of sources and producers. Energy facilities were sourced from Ventyx and verified visually over NAIP imagery. No Ventyx energy facilities were located within any of the current PACs and were not included in the calculations presented here. Mining activities inventoried by Oregon Department of Transportation were captured using aerial imagery interpretation to draw (digitize) areas where vegetation was visibly disturbed or developed at the 1:5,000 viewing scale; adjacent undisturbed areas were excluded. The digitized layer for mining has undergone review and revisions were made based on the comments submitted. Revisions included omitting erroneous polygons and more precisely capturing (digitize) mining activities recorded in the ODOT mining layer.

Developed land area in Harney County PACs was determined using county planning data sets and BLM District data sets (Table 3).



For this memo, only surface mines larger than 3 acres in size and georeferenced with a known ODOT aggregate site point were considered. Where development type footprints overlapped, the data layers were processed so that any land area was only counted once in the calculations. Cultivated agricultural development was not included in these calculations. “Other vertical structures” were included in the analysis per BLM’s recommendations for monitoring and disturbance calculations (please see Table 1).

The results of the calculations and the potential for existing development in each PAC are listed in Table 4. The relative amount of private and unprotected land within each PAC is listed in Table 5. Results in these tables differ moderately from the draft developed land area values distributed to the SageCon Policy Focus Group in December 2014. The main reasons for the differences were: (i) refinements to the mining layer, (ii) differences in the road set used by Harney County, and (iii) omission of digitized polygons incorrectly identified as development in the draft database.

**Table 1. Relationship between the 18 threats and the three habitat disturbance measures for monitoring and disturbance calculations (Table 1-1 in ORGRSG Appendix I. Disturbance Cap Calculation Model (2015))**

<b>USFWS Listing Decision Threat</b>	<b>Sagebrush Availability</b>	<b>Habitat Degradation</b>	<b>Energy and Mining Density</b>
Agriculture	X		
Urbanization	X		
Wildfire	X		
Conifer encroachment	X		
Treatments	X		
Invasive Species	X		
Energy (oil and gas wells and development facilities)		X	X
Energy (coal mines)		X	X
Energy (wind towers)		X	X
Energy (solar fields)		X	X
Energy (geothermal)		X	X
Mining (active locatable, leasable, and saleable developments)		X	X
Infrastructure (roads)		X	
Infrastructure (railroads)		X	
Infrastructure (power lines)		X	
Infrastructure (communication towers)		X	
Infrastructure (other vertical structures)		X	
Other developed rights-of-way		X	



Table 2. BLM included this table as Table 6 in the Final Greater Sage-Grouse Monitoring Framework (2014) to describe geospatial data sources and standards for examining habitat degradation at the broad spatial scale. The “Area Source” column found in the original BLM documentation has been removed to simplify the table.

Degradation Type	Subcategory	Data Source	Direct Area of Influence
<b>Energy (oil &amp; gas)</b>	Wells	IHS; BLM (AFMSS)	5.0 ac (2.0 ha)
	Power Plants (power plants)	Platts	5.0 ac (2.0 ha)
<b>Energy (coal)</b>	Mines	BLM; USFS; Office of Surface Mining Reclamation and Enforcement; USGS Mineral Resources Data System	Polygon area (digitized)
	Power Plants (power plants)	Platts	Polygon area (digitized)
<b>Energy (wind)</b>	Wind Turbines	Federal Aviation Administration	3.0 ac (1.2 ha)
	Power Plants (power plants)	Platts	3.0 ac (1.2 ha)
<b>Energy (solar)</b>	Fields/Power Plants	Platts (power plants)	7.3 ac (3.0 ha) per MW
<b>Energy (geothermal)</b>	Wells	IHS	3.0 ac (1.2 ha)
	Power Plants (power plants)	Platts	Polygon area (digitized)
<b>Mining</b>	Locatable Developments	InfoMine	Polygon area (digitized)
<b>Infrastructure (roads)</b>	Surface Streets (Minor Roads)	Esri StreetMap Premium	40.7 ft (12.4 m)
	Major Roads	Esri StreetMap Premium	84.0 ft (25.6 m)
	Interstate Highways	Esri StreetMap Premium	240.2 ft (73.2 m)
<b>Infrastructure (railroads)</b>	Active Lines	Federal Railroad Administration	30.8 ft (9.4 m)
<b>Infrastructure (power lines)</b>	1-199kV Lines	Platts (transmission lines)	100 ft (30.5 m)
	200-399 kV Lines	Platts (transmission lines)	150 ft (45.7 m)
	400-699kV Lines	Platts (transmission lines)	200 ft (61.0 m)
	700+kV Lines	Platts (transmission lines)	250 ft (76.2 m)
<b>Infrastructure (communication)</b>	Towers	Federal Communications Commission	2.5 ac (1.0 ha)



Table 3. Development types and data sources used to calculate the existing development footprint for the PACs.

Development Type		All PACs except Harney County		Harney County	
Main Type	Subcategory	Data Source	Direct Area of Influence	Data Source	Direct Area of Influence
Energy (oil & gas)	Wells	Not used	5.0 ac (2.0 ha)	None	
	Power plants	Not used	5.0 ac (2.0 ha)	None	
Energy (coal)	Mines	Not used	5.0 ac (2.0 ha)	None	
	Power plants	Ventyx <sup>1,2</sup>	5.0 ac (2.0 ha)	None	
Energy (wind)	Wind turbines	Federal Aviation Administration Wind Turbines <sup>3</sup>	3 ac (1.2 ha)	None	
	Power plants	Ventyx <sup>1,2</sup>	3 ac (1.2 ha)	None	
Energy (solar)	Fields/power plants	Ventyx <sup>1,2</sup>	7.3 ac (3.0 ha) per MW	None	
Energy (geothermal)	Wells	DoGAMI <sup>4</sup>	3 ac (1.2 ha)	None	
	Power plants	Ventyx <sup>1,2</sup>	polygons or 3 ac (1.2 ha) buffered points	None	
Mining	Locatable developments	ODOT Aggregate Sites <sup>5</sup>	polygon	BLM Burns District MMS	Polygon
Infrastructure (roads)	Surface streets	BLM GTRN; TIGER <sup>6</sup>	40.7 ft (12.4 m)	BLM GTRN <sup>7</sup>	40.7 ft
	Major roads	BLM GTRN; TIGER <sup>6</sup>	84 ft (25.6 m)	BLM GTRN <sup>7</sup>	84 ft
	Interstate highways	BLM GTRN; TIGER <sup>6</sup>	240.2 ft (73.2 m)	None	
Infrastructure (railroads)	Active Lines	Federal Railroad Administration <sup>3</sup>	30.8 ft (9.4 m)	None	
Infrastructure (power lines)	1-199kV Lines	Platts 2013 (transmission lines)	100 ft (30.5 m)	(1) IPC Transmission; (2) Harney Electric Transmission; (3) IPC Primary; (4) Harney Electric Primary	100 ft
	200-399kV Lines	Platts 2013 (transmission lines)	150 ft (45.7 m)	PacifiCorp Transmission; Bonneville Transmission	150 ft
	400-699kV Lines	Platts 2013 (transmission lines)	200 ft (61.0 m)	None	



Main Type	Subcategory	Data Source	Direct Area of Influence	Data Source	Direct Area of Influence
	700+kV Lines	Platts 2013 (transmission lines)	250 ft (76.2 m)	None	
	Misc. electric lines of unknown voltage	Oregon Department of Forestry	175 ft <sup>†</sup> (53.3 m)	None	
<b>Infrastructure (communication)</b>	Towers	Federal Communications Commission Communication Towers <sup>3</sup>	2.5 ac (1.0 ha)	Com_Antenna (County dataset)	2.5 ac
<b>Infrastructure (other vertical structures)</b>	Other vertical structures	Federal Aviation Administration Other Vertical Structures <sup>3</sup>	2.5 ac (1.0 ha)	None	

<sup>1</sup> no features in project area  
<sup>2</sup> Ventyx Electric Power Plants EV Energy Layer and Electric Generating Units EV Energy Layer  
<sup>3</sup> buffered by BLM National Operations Center and provided to SageCon  
<sup>4</sup> Mineral Land Regulation and Reclamation Geothermal Information Layer  
<sup>5</sup> ODOT Aggregate Material Sources  
<sup>6</sup> Compiled from BLM OR GTRN PUB Roads Line, BLM OR Oregon and Washington Highways Line (highways arc), and TIGER 2013 road lines. Roads were classified into High, Moderate, and Low. Then 'lightly-used' roads were removed from the Low use (surface) class. Moderate to high-use (major and interstate) roads were identified using the following criteria: (1) road was named, (2) maintenance level >= 3, (3) CartoRoad = 'Intermediate' or 'major', (4) Drivability = '2wdLow', (5) NumLanes = 'DL', 'ML' or 'MD', (6) RoadClass = 'Arterial', 'Collector' and 'Local', and/or (7) Surface = 'Bituminous', 'Concrete', 'Aggregate', 'Pit Run'. Some lines from the original data set were reclassified and omitted from analysis based on local knowledge that the roads are very infrequently used.  
<sup>†</sup> average of all transmission line widths  
<sup>7</sup> Query used: ([SURFACETYPE]<> 'Not Known' AND '[SURFACETYPE]<> 'Natural Unimproved')



**Table 4. Total existing developed land area and total land area potentially available for development under the 3% threshold for each PAC.**

Core Area/PAC	County(ies)	PAC Size (acres)	Existing Develop. (acres)	Existing Develop. (percentage)	1% (acres)	3% (acres)	Develop. Potential (acres)
<b>Baker</b>	Baker, Union	336,415	5,760	1.7%	3,360	10,090	4,330
<b>Beatys</b>	Lake, Harney	841,398	5,320	0.63%	8,410	25,240	19,920
<b>Brothers/N Wagontire</b>	Crook, Deschutes, Lake	293,344	3,470	1.18%	2,930	8,800	5,330
<b>Bully Creek</b>	Malheur	279,723	2,070	0.74%	2,800	8,390	6,320
<b>Burns</b>	Harney	35,756	180	0.50%	360	1,070	890
<b>Cow Lakes</b>	Malheur	249,705	1,920	0.77%	2,500	7,490	5,570
<b>Cow Valley</b>	Baker, Malheur	368,442	5,380	1.46%	3,680	11,050	5,670
<b>Crowley</b>	Harney, Malheur	490,890	3,760	0.77%	4,910	14,730	10,970
<b>Drewsey</b>	Harney, Malheur	368,560	3,770	1.02%	3,690	11,060	7,290
<b>Dry Valley/Jack Mountain</b>	Harney	449,423	2,870	0.64%	4,490	13,480	10,610
<b>Folly Farm/Saddle Butte</b>	Harney, Malheur	251,574	1,290	0.51%	2,520	7,550	6,260
<b>Louse Canyon</b>	Malheur	672,453	1,810	0.27%	6,730	20,170	18,360
<b>Paulina/12 Mile/Misery Flat</b>	Crook, Deschutes, Harney, Lake	441,745	4,400	1.00%	4,420	13,250	8,850
<b>Picture Rock</b>	Lake	42,588	740	1.74%	430	1,280	540
<b>Pueblos/S Steens</b>	Harney	208,940	1,740	0.83%	2,090	6,270	4,530
<b>Soldier Creek</b>	Malheur	295,486	1,350	0.46%	2,960	8,870	7,520
<b>Steens</b>	Harney	185,773	2,200	1.18%	1,860	5,570	3,370
<b>Trout Creeks</b>	Harney, Malheur	393,822	2,170	0.55%	3,940	11,820	9,650
<b>Tucker Hill</b>	Lake	31,545	310	0.98%	320	950	640
<b>Warners</b>	Harney, Lake	330,249	4,630	1.40%	3,300	9,910	5,280



**Table 5. Amount of unprotected, private land within each PAC. Unprotected lands are those without protected land status based on protection status in the Protected Areas Database for the United States. Local protections are not necessarily reflected in Protected Areas Database and this table.**

PAC	County(ies)	Private, unprotected land area	
		Acres	% of PAC
<b>Baker</b>	Baker, Union	219,310	70
<b>Beatys</b>	Lake, Harney	44,350	10
<b>Brothers/N Wagontire</b>	Crook, Deschutes, Lake	74,670	30
<b>Bully Creek</b>	Malheur	70,400	30
<b>Burns</b>	Harney	9,410	30
<b>Cow Lakes</b>	Malheur	60,490	20
<b>Cow Valley</b>	Baker, Malheur	273,530	70
<b>Crowley</b>	Harney, Malheur	80,710	20
<b>Drewsey</b>	Harney, Malheur	138,170	40
<b>Dry Valley/Jack Mountain</b>	Harney	17,420	0
<b>Folly Farm/Saddle Butte</b>	Harney, Malheur	22,010	10
<b>Louse Canyon</b>	Malheur	9,400	0
<b>Paulina/12 Mile/Misery Flat</b>	Crook, Deschutes, Harney, Lake	259,980	60
<b>Picture Rock</b>	Lake	3,740	10
<b>Pueblos/S Steen</b>	Harney	62,090	30
<b>Soldier Creek</b>	Malheur	20,590	10
<b>Steens</b>	Harney	30,780	20
<b>Trout Creeks</b>	Harney, Malheur	29,100	10
<b>Tucker Hill</b>	Lake	14,500	50
<b>Warners</b>	Harney, Lake	71,730	20

July 24, 2015

It is a disappointment beyond words that the State of Oregon has not used any of its resources to challenge the US Fish and Wildlife listing of the Sage Grouse.

It has been stated that Option #1 is NOT TO LIST. Nowhere in this meeting process was it established that any State resources were used to encourage this Option.

Option #2 as stated to be Decision to List with no exceptions across range was largely ignored.

Instead, ALL energies of the State have gone towards Option 3 and establishing RULES that can be argued as complementary to the Listing of Sage Grouse, so the State can join the money streaming from the Federal Government. **ALL of this at the expense of freedom and property rights of the people of Eastern Oregon.**

A response if warranted.

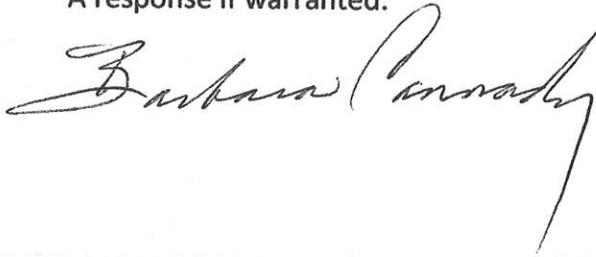


EXHIBIT: I AGENDA ITEM 8  
LAND CONSERVATION & DEVELOPMENT  
COMMISSION  
DATE: 7.24.15 Barbara  
SUBMITTED BY: Cannady

EXHIBIT: J AGENDA ITEM: 8  
LAND CONSERVATION & DEVELOPMENT  
COMMISSION  
DATE: 7.24.15  
SUBMITTED BY: OFB

**From:** Mary Anne Nash [<mailto:maryannenash@oregonfb.org>]  
**Sent:** Friday, July 24, 2015 7:36 AM  
**To:** Jinings, Jon; Abbott, Amie  
**Subject:** Comments on Revised Sage-Grouse Rule

Jon and Amie,

Since I cannot make it to today's meeting, I would like to get the following comments on record regarding the changes to the sage-grouse rule.

For Section 7(b), I think that we should still spell out that allowed uses under OAR 660-033-0120 are not subject to the rule, because some of them do require a review and decision by a county decision maker, despite them not being a conditional use (such as farm dwellings). While I agree with you and the planners that most would not think it was subject to the rule, I have heard confusion on this point among people that I believe know land use law well, so I would prefer that we spell it out if we can.

For Section 18, I think that we should change the final sentence to read "In addition, to the extent not regulated by a county, such development, other than the issuance of water rights, the expansion of cultivation, **and other farm uses under ORS 215.203(2)**, must meet the requirements of subsection (9)(a)(D) of this rule." This would help clarify that the transfer of water rights would also fall under the rule, as well as any other state permits that are associated with farm uses, which I believe is consistent with our intent regarding agriculture.

Thanks,

Mary Anne

Mary Anne Nash | Public Policy Counsel

**Oregon Farm Bureau**

**M:** [541.740.4062](tel:541.740.4062) • **O:** [503.399.1701](tel:503.399.1701) x. 306 • **F:** [503.399.8082](tel:503.399.8082)

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**From:** Cathy Macdonald  
**Sent:** Friday, July 24, 2015 10:02 AM  
**To:** 'Jinings, Jon'  
**Subject:** Comments on OAR 660-023-0115 Greater Sage Grouse

Jon – Here are my comments on the revisions. Please share these with the Commissioners.

Thank you for the opportunity to provide comments on the new revisions to the OAR 660-023-0115 regarding Greater Sage Grouse. I have strong concerns about some of the proposed changes. The Rules Advisory Committee (RAC) spent a great deal of time discussing and agreeing to every word in the rules it developed. I appreciate that some members of the RAC may have had second thoughts following our meetings, but please know that all of the key topics were well discussed at length and I believe the members of the RAC walked away from our final RAC meeting thinking we had consensus on the language.

I urge the Commission to consider and make the following changes to the new revisions to the amendments to OAR 660-023-0115 regarding Greater Sage Grouse.

**(2) (c) Eliminate this addition or modify it.** We discussed the language being proposed for addition to the amendment regarding CCAA's at length at the Rules Advisory Committee. The members of the Rules Advisory Committee agreed that this added potential confusion for landowners and that it didn't provide any real benefits. If you disregard this recommendation, add language to make it clear that any development on lands enrolled in a CCAA would still be included in the central registry and counted toward the 1 percent metering limit and 3 percent overall threshold by modifying the sentence with the text in red and bold below to say:

"Uses identified in individual CCAA agreements are relieved from the provisions of this rule except that conflicting uses will be subject to OAR 660-023-0115 (9) thru (11) and any resulting development **would be included in OAR 660-023-0115 (15) thru (17)** in all instances regardless of enrollment status."

**(15) Central Registry. Eliminate the following proposed addition.** "The baseline disturbance calculations may be reduced if better information is received but they shall not be increased."

The baseline should be determined based on the best available methods and data for mapping. The best method could reduce the numbers for most PAC's but increase the baseline number for one of the PAC's. To artificially set the number for one PAC is not a sound approach to managing the disturbance threshold.

Sage Grouse are in decline in Oregon. While we need to address threats to sage grouse beyond anthropogenic disturbance to turn that trend around – human disturbance is a significant threat to sage grouse where it occurs. The science is very clear. Sage grouse are especially sensitive to human disturbance – including sound, levels of activity, tall structures and loss of habitat. The Knick et al. 2013 paper showed the strong correlation between loss of active leks and percent development. In the Knick's study, ninety-nine percent of active leks were in landscapes with <3% developed – or only 1% of active leks occur where development has exceeded 3%. In addition, it is important to remember that the majority of active sage grouse leks occur in areas with less than 1 percent development. Oregon is taking risks by allowing any further development in Core Habitat or PAC's. I urge you not to weaken any of the provisions regarding limitations on development within Core Habitat. In fact, I would propose that

you add clarifying text in sections 16 and 17 as follows to clarify Oregon's intent to avoid and minimize development in Core Habitat.

(16) Metering. Add the text in bold and red below to the section to clarify the intent of any new rules

"The commission will consider revisions to these rules if the department's yearly reports required by subsection (15) above indicate that the development trends in any PAC indicate that the 1.0 percent direct impact threshold is in jeopardy of being exceeded before the ten-year period has expired. **In no case shall the revisions conflict with intent of the rule to ensure that the area of direct impacts levels in any PAC does not increase by an amount greater than 1.0 percent of the total area of the PAC in any ten-year period.** Any proposal to amend these rules undertaken by the department shall be developed in coordination with all affected counties and other stakeholders."

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

As was presented at yesterday's meeting the rule would allow thousands of acres of additional development where the avoidance test can be met.

(19) Scheduled Review:

**Restore the date of review to 2025.** The edit isn't clear.

**Add this sentence back in – "However, this rule may not be rescinded if its presence and applicability serves as a basis for the federal government to determine that listing the species is not necessary."** The Service has expressed how important this rule making is to providing the regulatory assurances they need to reduce the threat of habitat loss and fragmentation in Oregon. This sentence is a critical to making the case that Oregon has passed and will keep the regulatory assurances the Service needs to make a not warranted finding.

**Stat. Auth.:**

ORS 197.040

**Other Authority:**

Statewide Planning Goal 5

**Stats. Implemented:** ORS 197.040

**Need for the Rule(s):**

This rule is needed to provide state land use policy concerning impacts to sage grouse habitat from actions by local county or state governmental authorities and provide goal 5 implementation direction for local government. USFWS determined in 2010 the Greater Sage Grouse was warranted for an endangered species listing but precluded due to other circumstances. The identified threats to the species were considered range wide and on that basis are quite different in Oregon than many states. This rule will further limit the already extremely rare large scale development in sage grouse habitat in Oregon but will not address the three primary threats to the habitat in Oregon. Those threats are fire, invasive conifers and noxious weeds. However it is Oregon's belief that without further restricting 1/3 of the state of Oregon from development the USFWS will list the Greater Sage Grouse as endangered.

**Documents relied upon, and where they are available:**

Statewide Planning Goal 5, Warranted but precluded decision by USWFS, Candidate Conservation Agreement with Assurances, various economic data available from the Oregon State economist, and employment statistics available from the Oregon Employment Department. Columbia Energy Wind project EIS available from BLM, various studies and financial statements from the Echanis wind project in Harney County. Harney County's Comprehensive Land use plan with emphasis on the Renewal Energy portion.

**Fiscal and Economic Impact:**

Proposed limitations on large scale development and other types of development could have an economic/fiscal impact on State government; private landowners and local governments in affected counties with income growth potential. However, by limiting the scale and location of certain development these beneficial impacts will be reduced or even eliminated. Having to respond to additional regulations can be challenging for business operations, particularly small businesses. Limiting opportunities for economic growth and development is not desirable when one considers sustainability of rural communities in the 1/3 of the state impacted directly by this proposed rule. On the other hand, if this rule is acceptable to federal regulating agencies involved in listing of threatened and endangered species then it may help avoid a greater economic impact due to a federal listing under the Endangered Species Act. The proposed rule is meant to provide certainty and has been drafted to allow local government to participate as a partner with Wildlife management entities in making land use decisions.

Proposed limitations in the rule for development will have significant fiscal impacts to any new developments in the 7 affected counties. This rule may send a message that

development is not desired or even prohibited in SE Oregon, the loss of potential opportunities and their associated fiscal impacts may never be known. . Additionally the regulatory requirements included in this rule will have large economic impacts to private land owners owning and managing lands in the affected areas described in the rule through lost opportunity, lost revenue from a lack of development and reduction in property values are likely results. Local government will be fiscally impacted through the necessity of having additional staff time dedicated to overseeing implementation of this rule and the requirement imposed. If land values are negatively impacted local government, schools and other taxing districts will lose revenue.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

- a. State agencies would be affected by these rules. State agencies that issue permits for activities on state and private lands (e.g., Dept of State Lands) would have to support facilitate and implement the required mitigation for permitted projects. Oregon Department of Fish and Wildlife district staff will be required to review all projects proposed to occur in sage-grouse habitat areas. To date, there have been very few development projects carried out in the seven-county area within the range of the greater sage-grouse covered by this rule. Nearly all activities conducted on or near sage grouse habitat by state agencies will require further review and time commitment on their part, together with ODFW, DLCD, counties and other partners .an example of this is an ODOT project will necessarily need further analysis of highway projects, will need to determine if ODOT will pay for mitigation and will spend staff time in arriving at agreements with ODFW. Time delays are expensive on many state projects, the additional review time may add costs to future projects. It is unknown what this time commitment will amount to and the associated cost but it is important to understand there is a cost.
- b. Units of local government that would be directly affected by this proposed rule are Baker, Crook, Deschutes, Harney, Lake, Malheur and Union counties. The time commitment to this point in simply preparing these rules, participating the rule making process and attempting to analysis the impacts have already consumes 1000's of man-hours of local government staff time. The rule will require those counties to review permit applications at a higher level of detail and enforce development requirements that meets mitigation needs for each projects. The number of project proposals which may emerge after these rules are adopted cannot be determined and thus the magnitude of the impact on local governments cannot be determined at this time. Overall, significant changes from the current levels of local agencies' operations or expenditures are expected to result from these proposed rules, but this will depend on the number of proposed projects and how individual counties manage development.
- c. The public would likely be affected by the adoption of these proposed rules. The rule would allow private land owners or developers the possibility of doing development projects in sage grouse habitat on their lands, if they follow strict guidelines included in the rule, stay under a disturbance cap and absorb the cost of any required mitigation. New development projects would bring economic activity (e.g., jobs) to

nearby portions of the seven-county area., a significant increase in employment would occur during the construction phase with small numbers of long term jobs resulting from most foreseeable developments. While long term jobs may be small in numbers the impacts of even a few jobs in the "frontier " portions of these counties will have large economic impacts to both the economy and social fabrics of those communities.. Also, developers will be required to pay the full cost of direct and indirect impacts through compensatory mitigation and this additional fiscal impact may prevent a project from being financially viable... An example of an already approved project's mitigation costs is Crook County's West Butte wind project. This projects approved mitigation plan includes the payment of \$1,000,000.00 to offset possible impacts. By requiring mitigation for project impacts, the proposed rules may create economic activity for mitigation work in the local area (e.g., jobs to do juniper removal). Ranching activities are exempted from impacts by these proposed rules.

Currently there are recreation activities related to sage-grouse hunting and wildlife viewing in the seven-county area. Travel-generated and local recreation spending related to hunting, fishing, general tourism and wildlife viewing contributes to the local economies. When considered collectively with the Federal Resource Management Plan of the BLM (governing nearly 75% of all the lands in the 7 counties) these rules may limit expansion of recreation facilities and thus limit tourism related economic opportunities to this remote portion of the state. All potential impacts to the public enumerated above will depend on the number of authorized projects and that number is unknown.

This rule may prevent and/or discourage development in 1/3 of the state of Oregon. In addition, given that each county manages economic development and land use differently due to transportation access (freeways, railroads, access to scheduled air service, etc.), the effect of the proposed rules on the marketing for, attraction of and actual development of projects will vary between the counties. Overall, the impacts of these proposed rules on the public are significant but cannot be determined without knowing the number and location of projects.

2. **Cost of compliance effect on small business (ORS 183.336): It is important to note that the compliance considerations below generally speak to this proposed rule only and do not consider the cumulative costs associated with the dozens of other OAR's and Federal requirements that are related and apply. These additional rules may be expanded to meet the requirements of this rule.**
  - a. **Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:** Local contractors (road construction, building/plumbing/electrical contractors, powerline contractors, etc.) and small businesses providing goods and services in the seven-county area (e.g., accommodation businesses, food and beverage services, food stores, general merchandise or other retail stores) will be affected by the rule. Small businesses from across the state and the Pacific NW provide advanced studies and engineering on many of the potential opportunities. Identifying the numbers of businesses is difficult without knowing the types and locations of development that will be subject to this rule. an example is .....An unfinished project in Harney County spent \$23,000,000.00 to this date in the county; engineering, meeting and complying with

existing regulation, road construction, obtaining permits and dealing with local, state and federal planning requirements, all with the assistance of local business and employees. All non agriculture related businesses interested in locating in the 7 counties will be subject to some level of review by this rule and either prevented from locating in the PAC's or required to cover substantial mitigation costs. Today's projection can only identify a handful of large scale development in the area covered by this rule so the actual impact may be small. On the other hand not securing some development in this portion of the state may result in the basic underpinning of a number of small rural communities.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

This rule will result in reporting/recordkeeping costs for project developers. With the proposed in "lieu model", manager of funds would do the reporting. The Department of Land Conservation and Development will track developments in sage grouse areas over time and maintain a record. At this point there is no consideration for cost of compliance it is projected that even a few projects will require the state to hire staff to assure compliance. An example of the reporting, recordkeeping and other administrative costs to a developer is .....The Echanis wind project in Harney County spent \$23,000,000.00 to this date in the county engineering, meeting and complying with existing regulation, road construction, obtaining permits and dealing with local, state and federal planning requirements, all with the assistance of local and regional business and employees.

**c. Equipment, supplies, labor and increased administration required for compliance:**

It is projected that the requirements of these rules will add 10 to 50% additional staff time to meet with the various agencies (ODFW, DLCDC, County, USFWS, BLM, etc.) to understand compliance and to meet the requirements of those compliance needs. Depending on the requirements associated with the Avoid requirements of the rule it may be necessary to conduct all exploration activities and studies related to on the ground impacts for a primary site at several others. These studies and exploration can cost upwards of \$100,000.00 each and have as many as 6 to 10 necessary for each site. The "avoid" portion of this may be able to easily add an additional \$500,000.00 in labor/administrative costs to a single project PRIOR to filing for a land use permit. The "minimize" requirement of the project will add labor and administrative costs to calculate whether a project can be reduced in size and remain financially viable. The Mitigate requirements may add the greatest labor and administration costs however since an mitigation plan must meet the requirement of ODFW and there is no model to work from today those actual costs are unknown today.

Administration cost for compliance will require additional staff to be hired at state agencies. An example is the compliance program at DSL for wetland mitigation, this rule will create at least an equal amount of monitoring and compliance needs for LCDC/ DLCDC and ODFW. Counties are under a timeframe rule to complete land use applications and the only way to complete their work within the time required will be to hire additional staff. A developer may be required to cover this additional labor cost

but not all counties have provisions for recovering this cost. Again this is an unknown until a large scale development is proposed.

**How were small businesses involved in the development of this rule?**

Only ranching businesses were asked to participate in the Rules Advisory committee but the vast array of other affected small businesses were not involved..

**Administrative Rule Advisory Consulted yes.**

**Note that the “documents reviewed” section above lists a number of sources which could have been considered in the writing of this impact statement but none were. They simply are a list of those that could have been.**

Harney County Version

ATTACHMENT "B"

Please note that some comments are continued on the last page of this document

STATEMENT OF NEED AND FISCAL IMPACT WORKSHEET

For internal agency use only. Not a valid filing form.

Department of Land Conservation & Development

660

Agency and Division Name

Administrative Rules Chapter Number

RULE CAPTION

In the Matter of: Amending OAR Chapter 660, division 23 to provide land use protection for the Greater Sage-Grouse

Stat. Auth.:

ORS Chapter 197

Other

Authority: Stats.

Implemented:

ORS Chapter

197

Need for the Rule(s):

These rules are needed to address land use policy specific to impact to sage grouse habitat from actions authorized by local county or other governmental authorities.

Documents Relied Upon, and where they are available:

Draft rules are available from the division's rules coordinator, located at 635 Capitol Street, NE; Salem, Or 97302. Rules are also on the DLCD website at <http://www.lcd.state.or.us>.

Fiscal and Economic Impact:

Limitations on large scale and other types of development could have an economic impact on ranchers and local governments in target counties, by limiting the scale and location of the identified development. Having to respond to additional regulatory hurdles can be challenging for business operations, particularly small businesses. Limiting opportunities for economic growth and development is not desirable. On the other hand, if these rules are found to be an adequate regulatory mechanism sufficient to provide the protection necessary to avoid the listing of the Greater Sage Grouse or a distinct population segment thereof, accepted by federal

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Comment [R1]: Amazing that DLCD did not list Goal 5 or the rules relating to Goal 5. Also amazing is they did not reference the USFWS finding of warranted but precluded - specifically the analysis of risks such as habitat fragmentation .

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Comment [sg2]: This section makes no attempt to list the many opportunities to review associated sources for the fiscal impact, a simple example is ODFW hunting regulation handbook would show the number of Sage Grouse tags issues annually.

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Comment [R3]: Fiscal impact is very general under the statute, but it seems there is data from which the analysis could be done. The says generally to utilize available information - which could mean existing reports or using existing data to do the analysis. I think one could use the Echanis project and the mitigation therein as one example to get a handle on fiscal impacts or use the project's required miles/acres of mitigation to determine cost under new rules.

Comment [R4]: While the rule references a statement of fiscal impact, the definition section references only economic effect.

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Comment [R5]: The key is the adequate regulatory mechanism is only one element for determination of listing. The habitat fragmentation that this rule addresses was not an Oregon issue for the Oregon Greater Sage Grouse. The drivers in Oregon were fire, invasive species and the BLM's failure to provide data as to the effectiveness of their rangeland programs.

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regulating agencies involved in listing of threatened and endangered species, then the rule may help avoid a greater the economic impact that may result from a due to a federal listing under the Endangered Species Act (ESA). These rules have been carefully drafted to preserve the maximum amount of flexibility and self determination for local government.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

a. State agencies would be affected by these rules. State agencies that issue permits for activities on state lands (e.g., Dept of State Lands) would have to ensure that the required mitigation is done for permitted projects. ODFW district staff will be required to review projects proposed to occur in sage-grouse habitat areas. To date, there has been very few development projects carried out in the seven-county area within the range of the greater sage-grouse. It is possible that the proposed rules could increase the number of project proposals for the area. However, the number of proposed projects, and thus the staff time needed to review them, cannot be determined. Overall, no major changes from the current levels of these agencies' operations or expenditures are expected to result from the adoption of these rules.

b. Units of local government would likely be affected by these proposed rules. They will require local governments to review permit applications at a finer detail and to ensure that developers are meeting mitigation requirements for their projects. The number of project proposals which may emerge after these rules are adopted cannot be determined and thus the magnitude of the impact on local governments cannot be determined. Overall, no significant changes from the current levels of any local agencies' operations or expenditures are expected to result from these proposed rules, but that will depend on the number of proposed projects and how individual counties manage development.

c. The public would likely be affected by the adoption of these proposed rules. The rules allow developers the possibility of doing large-scale development projects in sage grouse core habitat on nonfederal lands, which was not always permissible under previous state policy. New development projects would bring some economic activity (e.g., jobs) to the seven-county area. Most work would likely be short-term, though there may be some long-term positions associated with the projects. Also, developers will be required to pay the full cost of direct and indirect impacts through compensatory mitigation. Direct impacts are related to the actual footprint of the development project and indirect impacts relate to the project's effects on the use of habitat by sage-grouse. By requiring mitigation for project impacts, the proposed rules would create economic activity for mitigation work in the eight-county area (e.g., jobs to do juniper removal). Landowners (e.g., farmers, ranchers) may have the opportunity to gain additional income from lease or royalty payment arrangements with developers. Ranching activities are not expected to be impacted by the proposed rules.

There is recreation related to sage-grouse hunting and wildlife viewing in the seven-county area. Travel-generated and local recreation spending related to hunting and wildlife viewing contribute to the local economies, though it is unknown what proportion of the economic contributions are directly or indirectly related to sage-grouse hunting and wildlife viewing. It is not known how potential projects could affect sage-grouse hunting and wildlife viewing activities.

All the potential impacts to the public enumerated above will depend on the number of authorized

**Comment [R6]:** I find it hard to logically track this statement. First, it is here in the economic section which is required by ORS 183.335(2)(E) relative to fiscal impact. Second, to make this statement there should have been some supporting analysis that states what fiscal impact would be without the rule – so we have a comparison. Third, this assumes that the habitat fragmentation that this rule addresses is the final/only hurdle that needs to be addressed in order to preclude listing – which is highly debatable but at a minimum should be discussed in this rule. In other words “but for the adoption of this rule” the species would be listed throughout its range or at least in the distinct population segment.

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**Comment [R7]:** The provisions of ORS 183.335(E) relative to fiscal impact are not limited to cost of compliance rather they provide for a “statement of fiscal impact . . . and estimate of that economic impact on . . . units of local government. They elected to only look at the cost of compliance not the lost opportunity impact. Note there is a disjunct between the use of the phrase “economic effect” in this rule wherein it refers in part to local government, and, the definition of “economic effect” in ORS 183.310 wherein it defines this effect in terms of affected business –not local government. The former statute uses the phrase in a broader context then the definition.

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**Comment [R8]:** Not only review but serv... [1]

**Comment [R9]:** This “Cannot determine” ... [2]

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**Comment [R10]:** Again LCDC/DLCD could ... [3]

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**Comment [R11]:** Was it permissible or to ... [4]

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**Comment [R12]:** This is not the only opt ... [5]

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**Comment [R13]:** This is a classic exampl ... [6]

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**Comment [R14]:** DLCD is looking at one ... [7]

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projects and that number is unknown. In addition, given that each county manages development differently, the effect of the proposed rules on the development of projects will vary across counties. Overall, the impacts of these proposed rules on the public cannot be determined without knowing the number and location of projects.

**Comment [R15]:** I thought the rule was one size fits all.

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**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

Local contractors and small businesses providing goods and services to people living in the seven-county area (e.g., accommodation businesses, food and beverage services, food stores, general merchandise or other retail stores) could be affected by the rule. Given the broad geographic reach of this rule, the number of small businesses affected by the rule cannot be estimated.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

These rules could result in reporting/recordkeeping costs for project developers that would not currently have for a project in the seven-county area. With the in lieu model, manager of funds would do reporting. The Department of Land Conservation and Development will track developments in sage grouse areas over time and maintain a record. Those costs cannot be estimated since specific requirements for projects have not yet been developed.

**c. Equipment, supplies, labor and increased administration required for compliance:**

No additional costs anticipated

**How were small businesses involved in the development of this rule?**

No small businesses were directly involved in the development of these rules but deliberations of proposed rules with county government, livestock producers and renewable energy advocates take into consideration small business interests.

**Administrative Rule Advisory Committee consulted?: Yes  
If not, why?:**

**Please note that some comments are continued on the last page of this document**

**Page 2: [1] Comment [R8] Ron's 7/20/2015 6:32:00 AM**

Not only review but serve in the mitigation analysis, compliance and mapping. Also who is doing the annual updates on the disturbance caps? There has to be a cost there as well. This County pointed out to the BLM the cost to simply operate on the scale they were mapping.

**Page 2: [2] Comment [R9] Ron's 7/16/2015 1:25:00 PM**

This "Cannot determine" sounds good on its face, but in reality no one would ever be able to determine the cost of the rules since no project is defined at the time the rules are developed. Rather, it appears the Legislature intended at least a good faith effort to assess fiscal impact or costs.

**Page 2: [3] Comment [R10] Ron's 7/20/2015 6:33:00 AM**

Again LCDC/DLCD could use Echanis as an example of cost to County in assessing mitigation and permit processing.

**Page 2: [4] Comment [R11] Ron's 7/20/2015 6:38:00 AM**

Was it permissible or totally impermissible? Actually this sentence should note it is from a recommendation of ODFW to NOT build to the restrictive regulatory language in this rule. This rule does not allow even the possibility of a project rather it requires adherence to the Avoid/Minimize/Mitigate hierarchy

**Page 2: [5] Comment [R12] Ron's 7/20/2015 6:39:00 AM**

This is not the only option – compensatory mitigation - there are other options which should be analyzed as well.

**Page 2: [6] Comment [R13] Ron's 7/20/2015 6:40:00 AM**

This is a classic example of no economic impact being considered. How many tags are issued each year. So they could put some numbers around this. While this is a small economic issue, it does illustrate they did not make a good faith effort to assess fiscal impacts.

**Page 2: [7] Comment [R14] Ron's 7/20/2015 6:41:00 AM**

DLCD is looking at one side of this. The cost of the rule on projects but not whether the rule affects sage grouse – such as increased numbers. This is a rule versus project analysis. The definition of economic effect includes both the cost to comply as well as the effect of the rule itself. (See ORS 183.310(3)).

## An Interview with Governor Kate Brown



*Governor Kate Brown*

**In your view, how important is agriculture to Oregon's economy environment, and way of life?**

Agriculture is Oregon's number two industry in terms of economic impact and our farms, nurseries, ranches, dairies and fisheries employ tens of thousands of Oregonians. But it goes way beyond economics. The beauty and bounty of Oregon's agricultural landscapes, and the values and culture they sustain in small communities throughout the state, are central to Oregon's identity. We have to credit the foresight of leaders like Governors Bob Straub and Tom McCall and the father of Oregon's land-use planning legislation, Hector Macpherson (whom we lost in March) for conserving Oregon's legacy of working lands. We owe it to our forbearers and our children to continue to nurture and care for an Oregon where our farm and ranch families can and will succeed.

**In closing, what take home message do you want to convey to the men and women in our state who produce the food and fiber we all enjoy?**

I believe that the governor of Oregon, as governor of the whole state, has a solemn responsibility to bring people and communities together, to be watching for the boats that are not rising, and to reach out to and help those in need – whether that is homeless families in our big cities, or unemployed mill workers in our towns, or farmers who don't invest in their operations because their water supply is too uncertain. As your governor, I want to hear from you about both what is not working, and what is, so that we can recognize and celebrate success at the same time we are fixing what is broken. I am committed to restoring your trust in state government as an institution that solves problems, and that understands that doing so depends on reaching out to our partners so that everyone is part of the solution. Together let's commit ourselves to helping all Oregonians thrive.

Excerpts from an Interview with *The Agriculture Quarterly*, Summer 2015

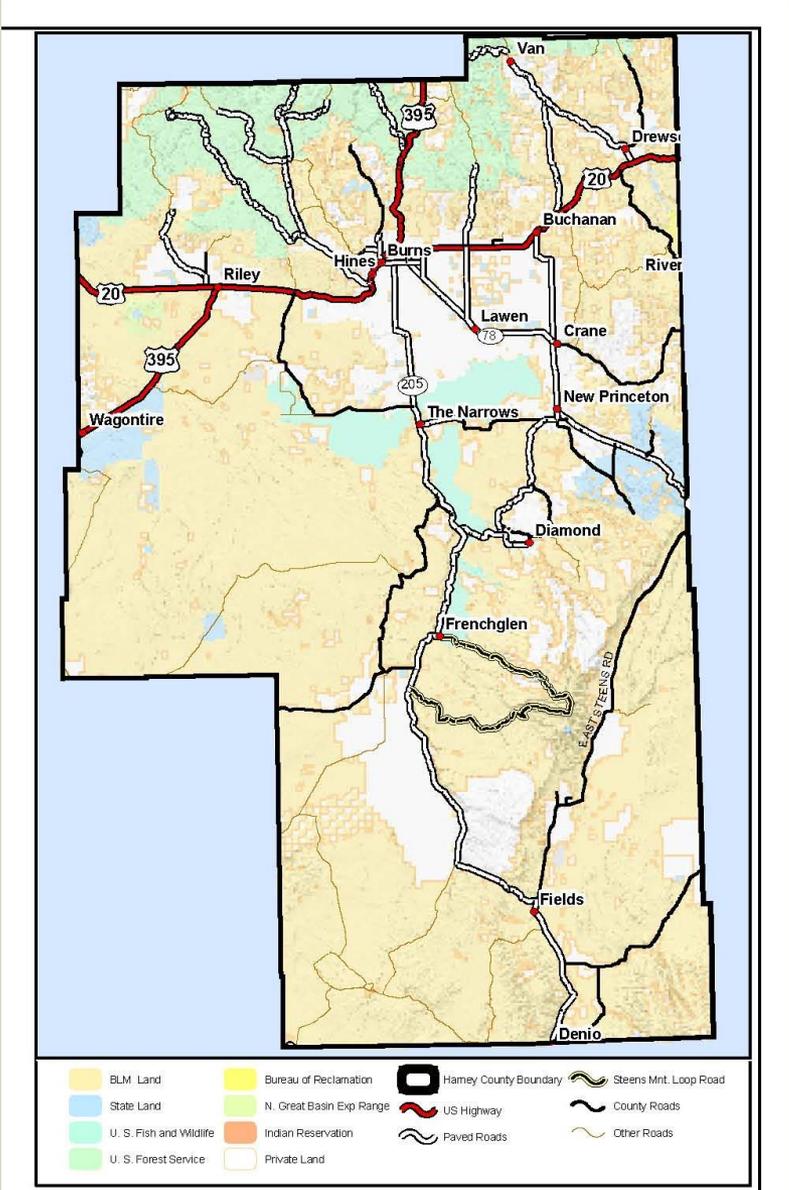
LCDC / ODFW Commission's  
presentation regarding  
administrative rules for Sage  
Grouse habitat on lands  
encompassing 1/3 of the state of  
Oregon.

Harney County  
Judge Steve Grasty

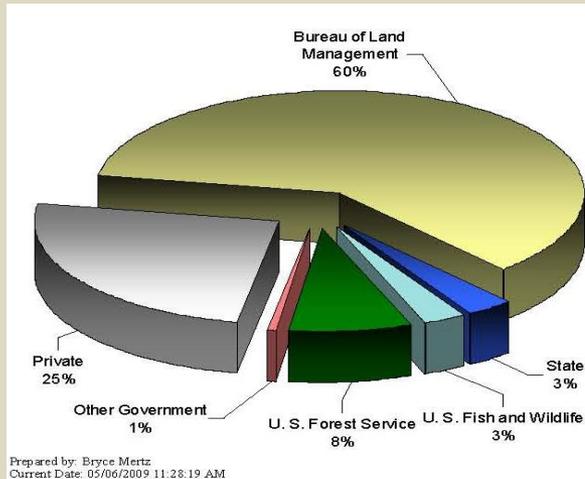
# Protecting Sage Grouse Habitat in Oregon

- From what and from who? USFWS identified “threats” .... Fire, invasives, infrastructure, agriculture, urbanization.
- The Administrative Rule under consideration today applies to (infrastructure and urbanization) development and fragmentation only.
- What development and what fragmentation?
- Lets review the land managers and land owners to see where the problem in Oregon is.
- First who owns/manages the land? I use Harney as the example but similar in all Sage Grouse counties.

# LAND OWNERSHIP IN HARNEY COUNTY, OREGON



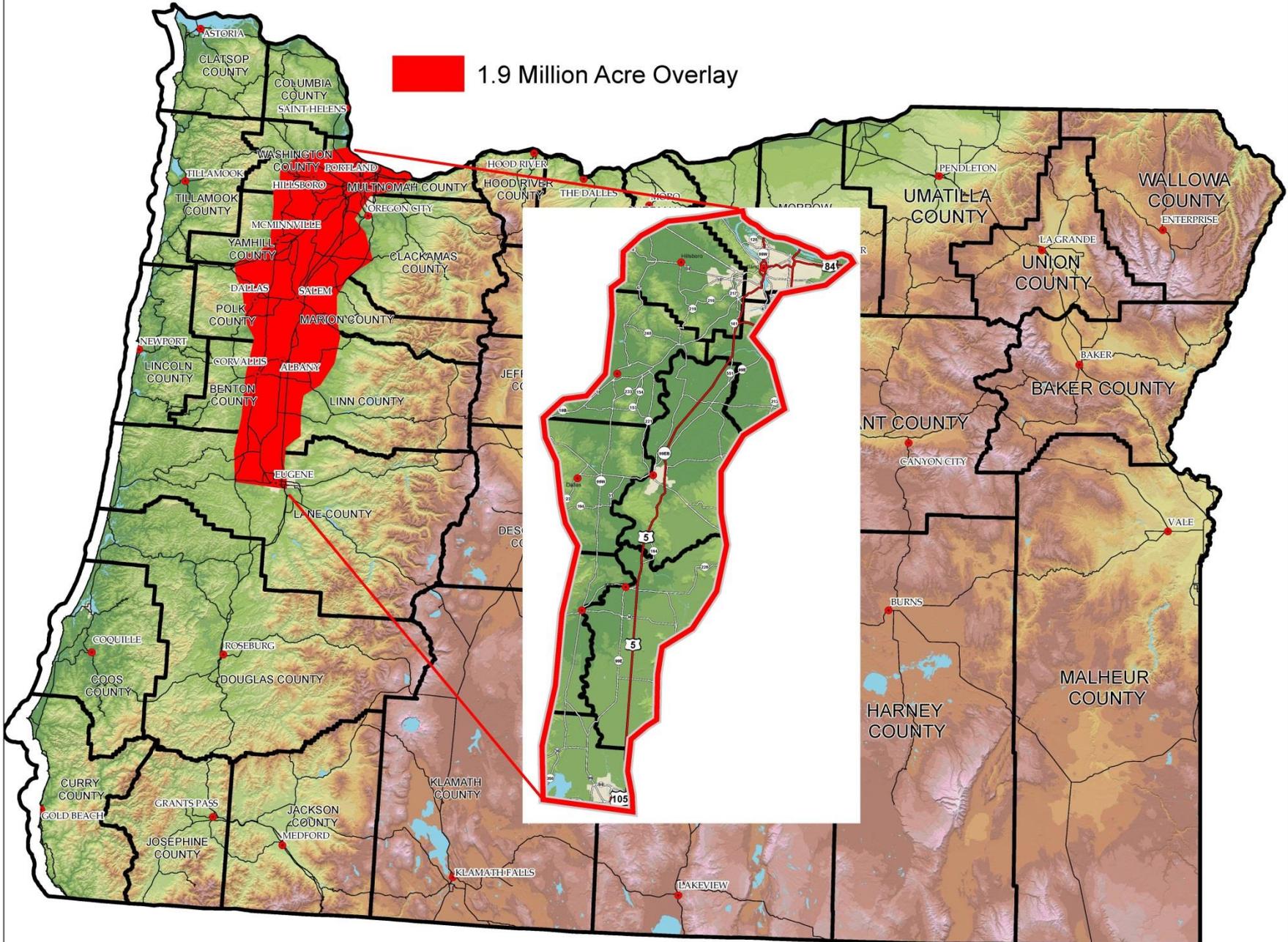
# LAND OWNERSHIP IN HARNEY COUNTY, OREGON



OWNERSHIP	SQ MILES	ACRES	% OWNED
Private	2,548.03	1,630,741.18	24.92%
Bureau of Land Management	6,201.44	3,968,918.55	60.64%
Bureau of Reclamation	6.75	4,320.12	0.07%
Indian Reservation	1.22	781.81	0.01%
Indian Trust Lands	16.17	10,354.48	0.16%
Northern Great Basin Experimental Range	22.47	14,385.59	0.22%
State	308.46	197,417.37	3.02%
U. S. Fish and Wildlife	294.00	188,160.29	2.87%
U. S. Forest Service	817.30	523,071.53	7.99%
Lake/ Unknown	10.41	6,665.42	0.10%
<b>TOTAL PUBLIC</b>	<b>7,678.24</b>	<b>4,914,075.19</b>	<b>75.08%</b>
<b>HARNEY COUNTY GRAND TOTAL</b>	<b>10,226.28</b>	<b>6,544,816.37</b>	<b>100.00%</b>

- Lets assume that the problem is not on BOR, Burns Paiute reservation, Ag Research range, USFWS Refuge, USDA Forest Service.
- This leaves the 3% state Of Oregon, 25% private and 61% BLM. 89% of county. 5.6 million acres.
- Oregon DSL? All their land is dedicated to producing revenue for the Common School fund. Covered by a CCAA.
- BLM? Just completed new Sage Grouse Resource Management Plan. WSA's Wilderness, special designations. Partially covered by CCA's. . Includes a new designation locking up 1.9 million acres in Oregon.

1.9 Million Acre Overlay

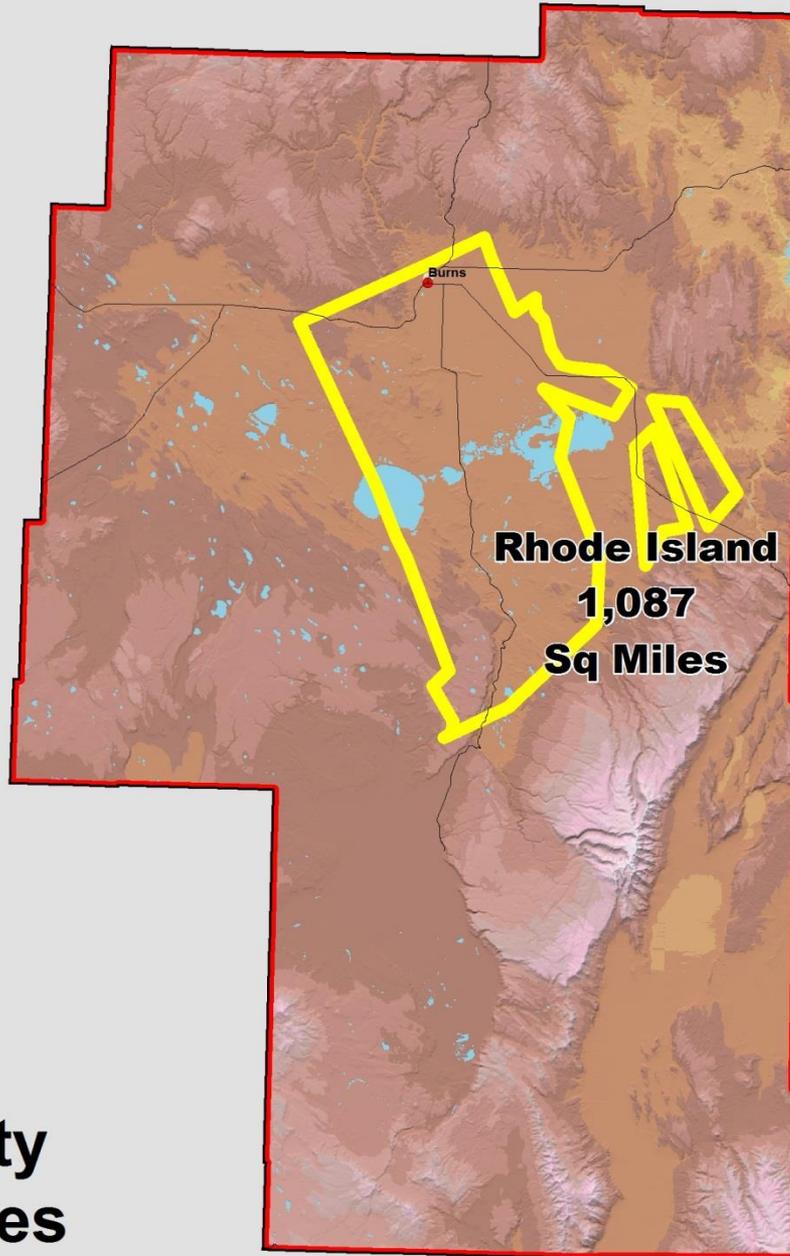


- Private? Must be where the problem is. Today which part of the private land is where the concern is?
- Steens Mtn. Cooperative Management and Protection area. Effectively made islands of all the private land inside the area. Created 100,000 acres wilderness area. Additionally, limited access to minerals and geo-thermal on an additional 500,000 acres. 281,172 acres of private in CMPA and mineral withdrawal.
- Largest ranches? No apparent desire to use their land for anything that meets the definition of “large scale development”. Mostly covered by a CCAA. 418,000+ acres of private.

- Echanis Wind project is the exception. Already permitted, mitigation plan developed, all requirements included in OAR met, new OAR would not apply. Not moving forward today due to litigation from ONDA and Audubon. Approx. 1000 acre project, actual footprint around 200 acres.
- Large block of land between Burns, Crane and Buchanan. By default this area has become the area of rural development and all is outside of Core or General SG habitat. 123,000 acres
- In Harney County alone nearly 500,000 acres of private land has voluntarily committed to CCAA's.
- All lands in Harney County outside of the UGB are either zoned "forest" or EFU under the Harney County Comprehensive Land Use Plan with the except of less than 100 acres of "rural communities"

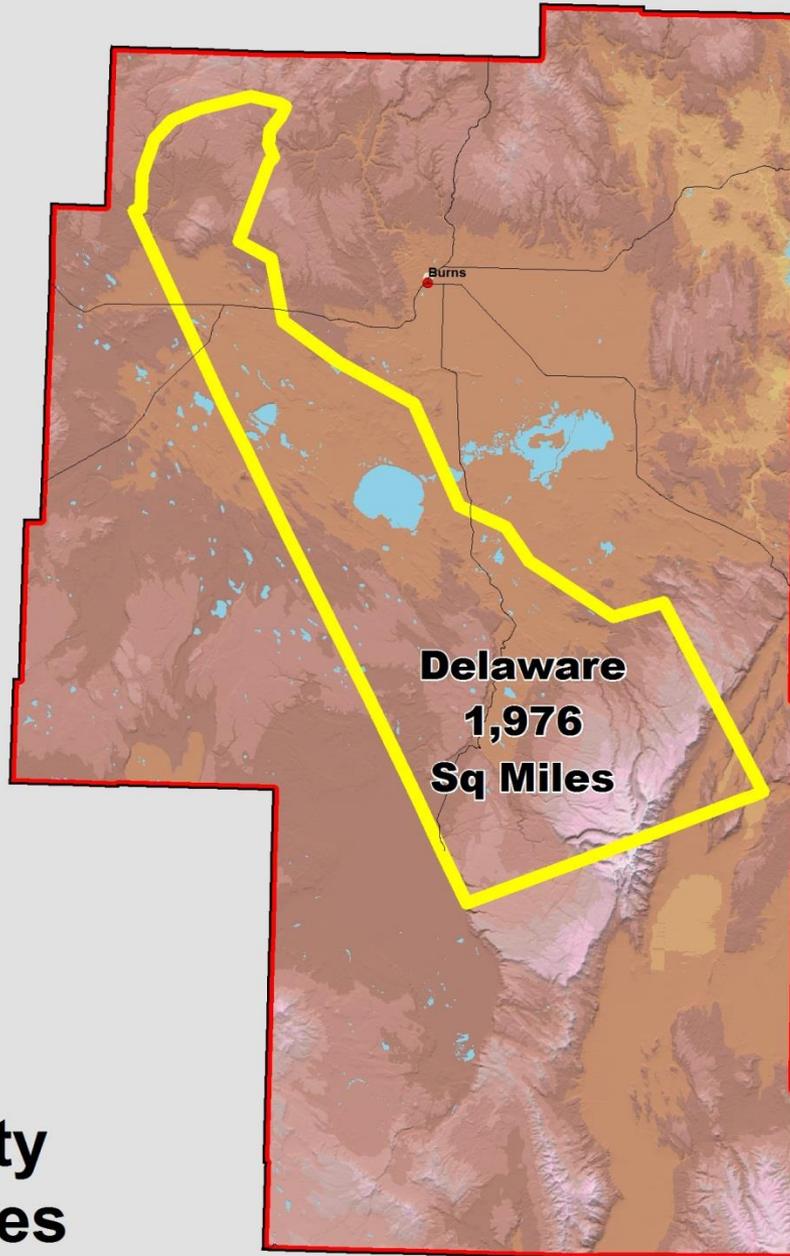
# How **BIG** is the area the OAR impacts?

- 7 counties, Union, Lake, Malheur, Harney, Baker, Crook, Deschutes.
- 40,463 Square miles, 25,896,300+ acres, 41% of the state
- The following slides might help put it into context.

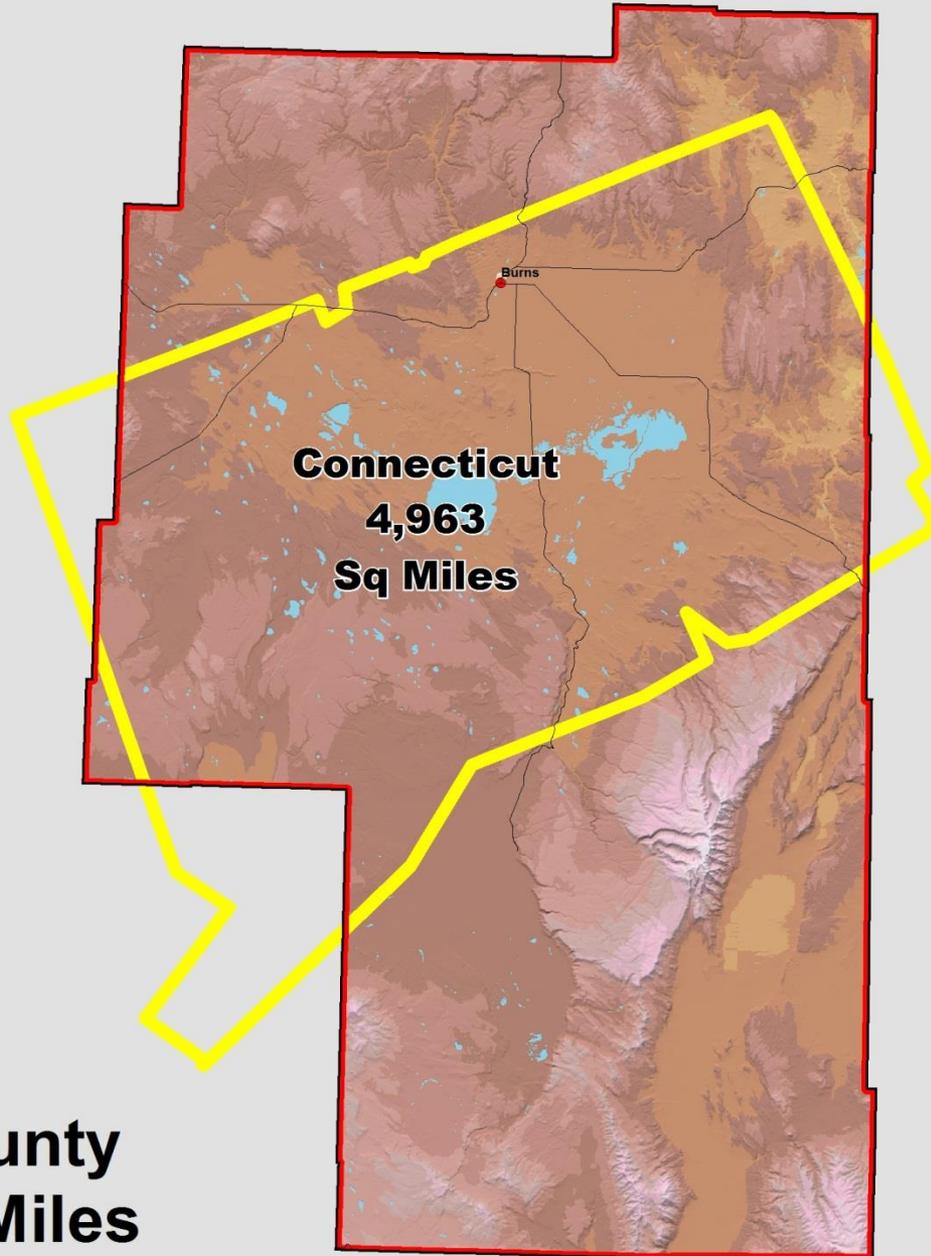


**Rhode Island**  
**1,087**  
**Sq Miles**

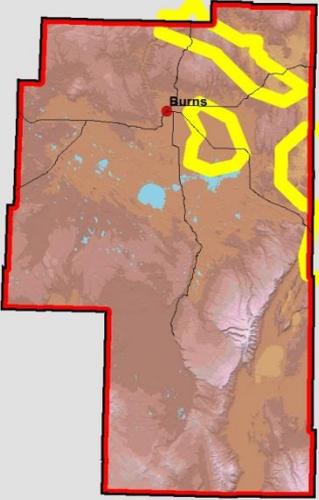
**Harney County**  
**10,226 Sq Miles**



**Harney County**  
**10,226 Sq Miles**

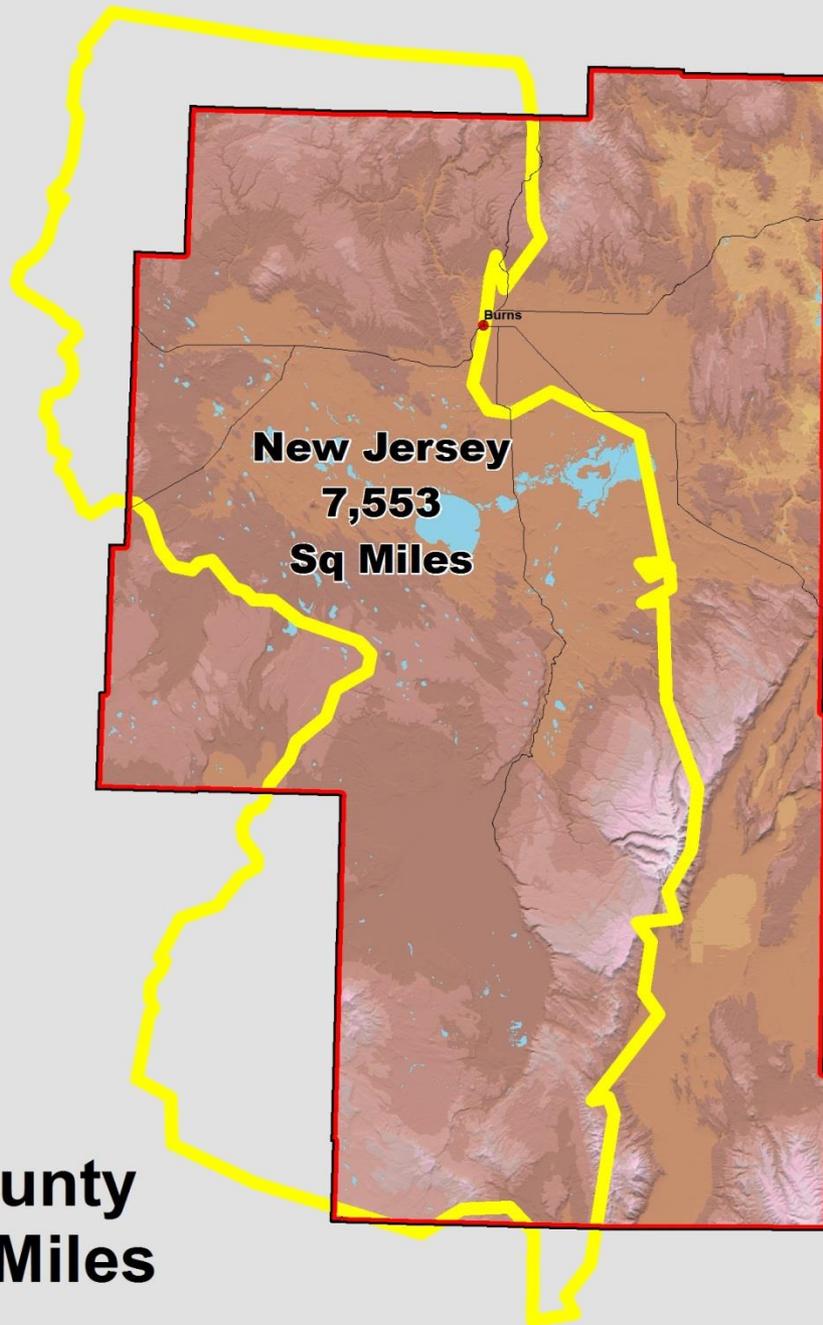


**Harney County**  
**10,226 Sq Miles**



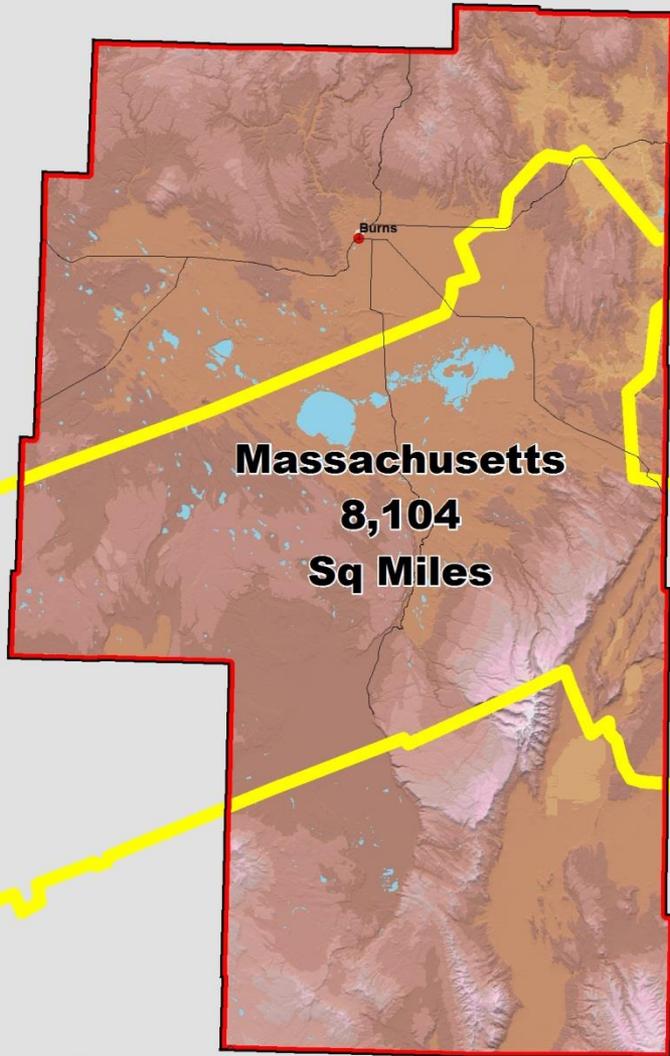
**Harney County**  
**10,226 Sq Miles**

**Hawaii**  
**6,429**  
**Sq Miles**



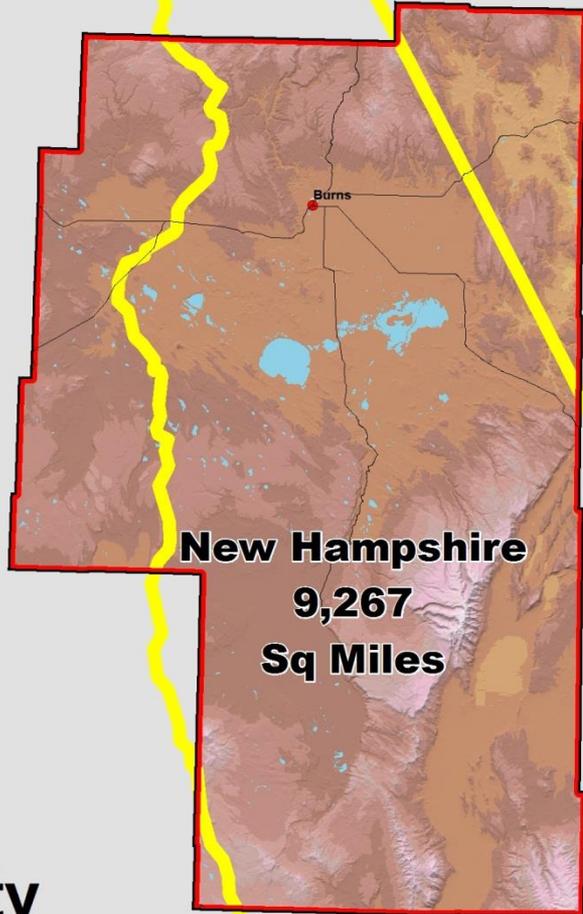
**New Jersey**  
**7,553**  
**Sq Miles**

**Harney County**  
**10,226 Sq Miles**



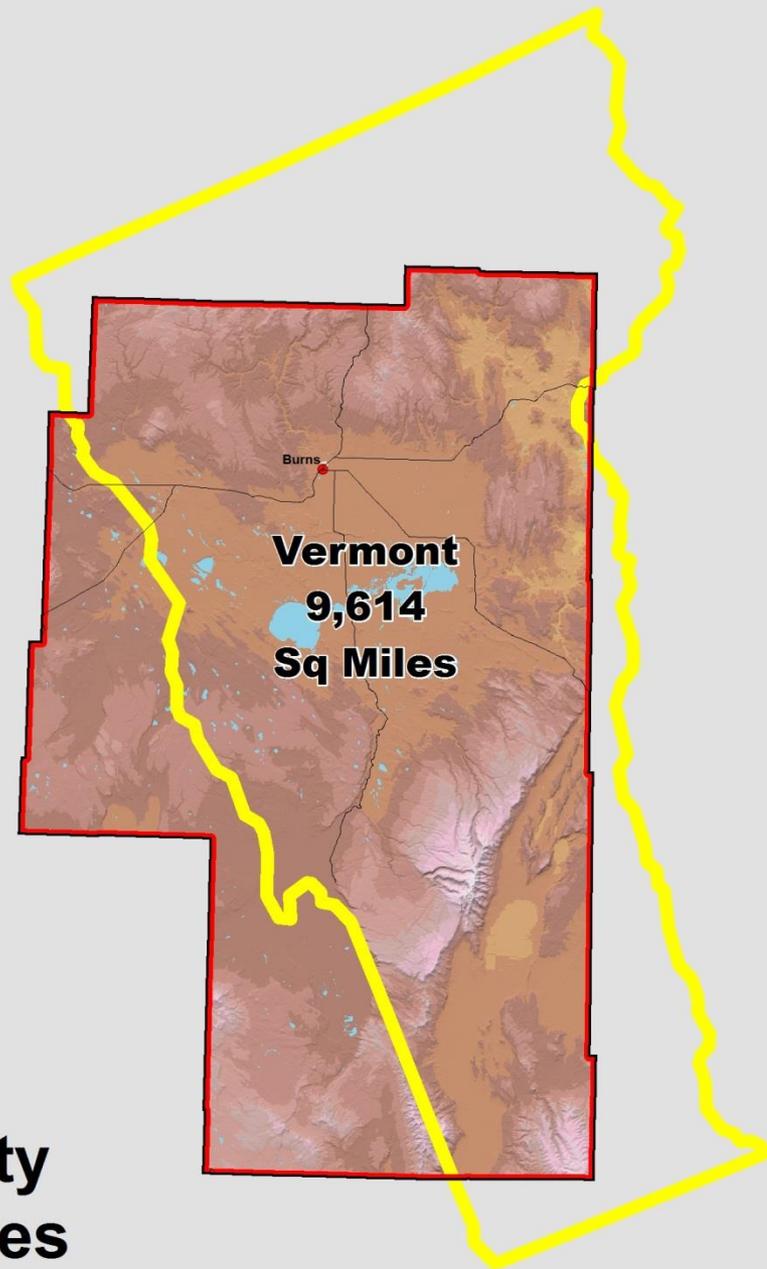
**Massachusetts**  
**8,104**  
**Sq Miles**

**Harney County**  
**10,226 Sq Miles**

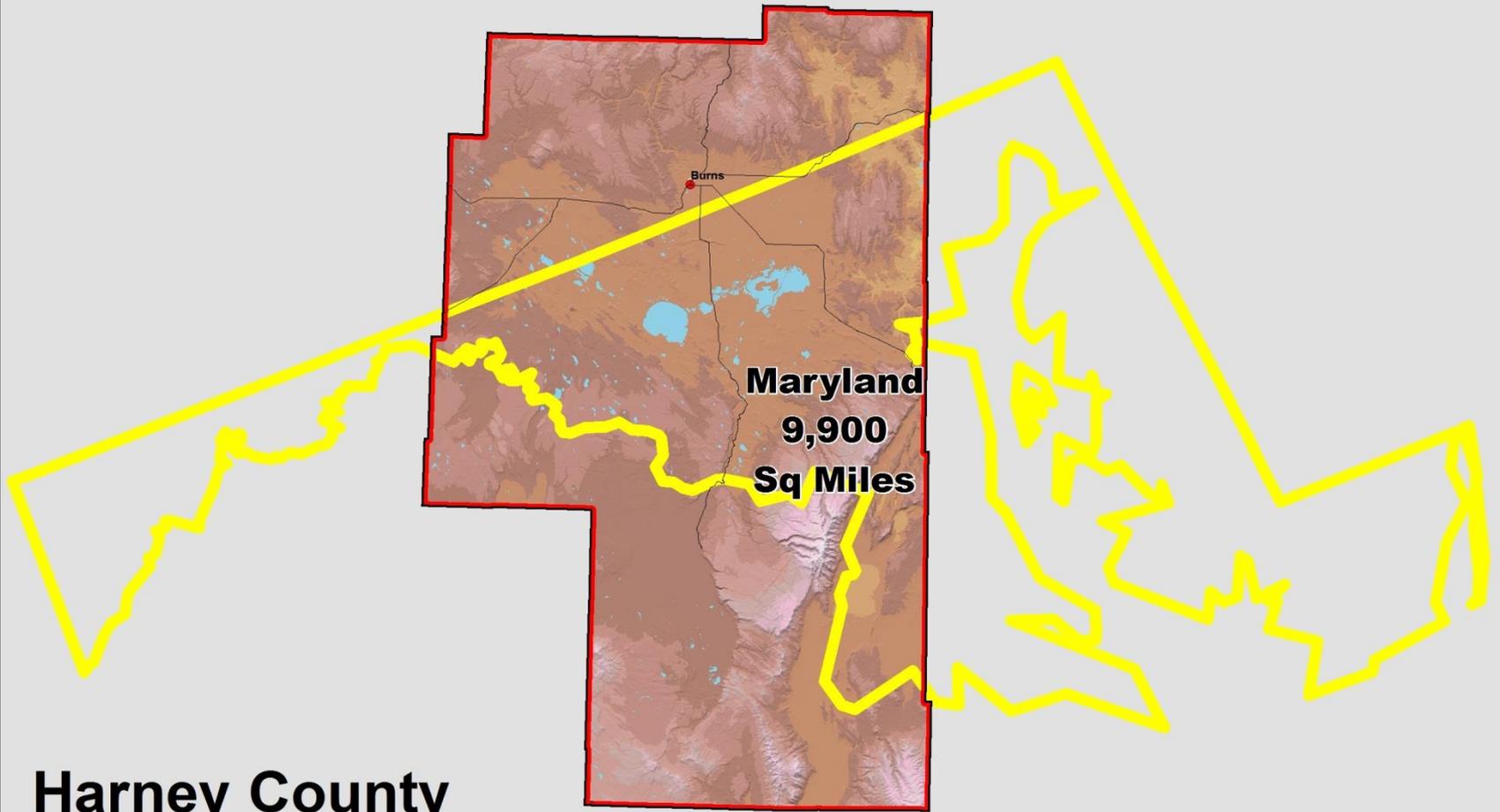


**New Hampshire**  
**9,267**  
**Sq Miles**

**Harney County**  
**10,226 Sq Miles**



**Harney County**  
**10,226 Sq Miles**



**Harney County**  
**10,226 Sq Miles**

**Maryland**  
**9,900**  
**Sq Miles**

# What does the economy look like?

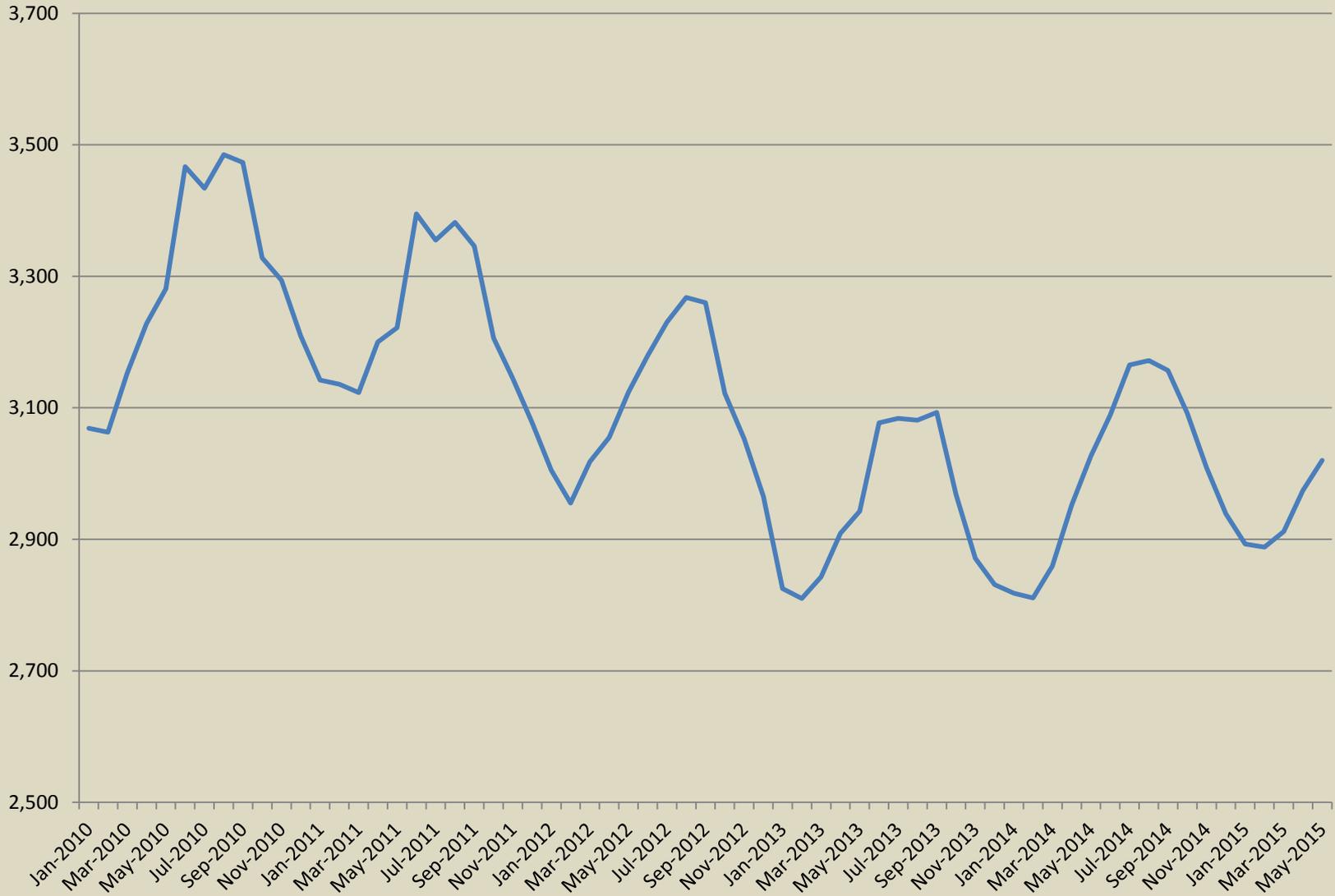
- 8 county region
  - Generally lowest in the state for wages, per capita income.
  - Generally highest for unemployment rate.
  - No consideration on our ag businesses.
  - Counties/cities have strategic economic development plans not considered in the plan.
  - Regions have economic development strategies/plans also not considered in the plan.
  - What does business think of the rule?

# Region Total Number of Employed



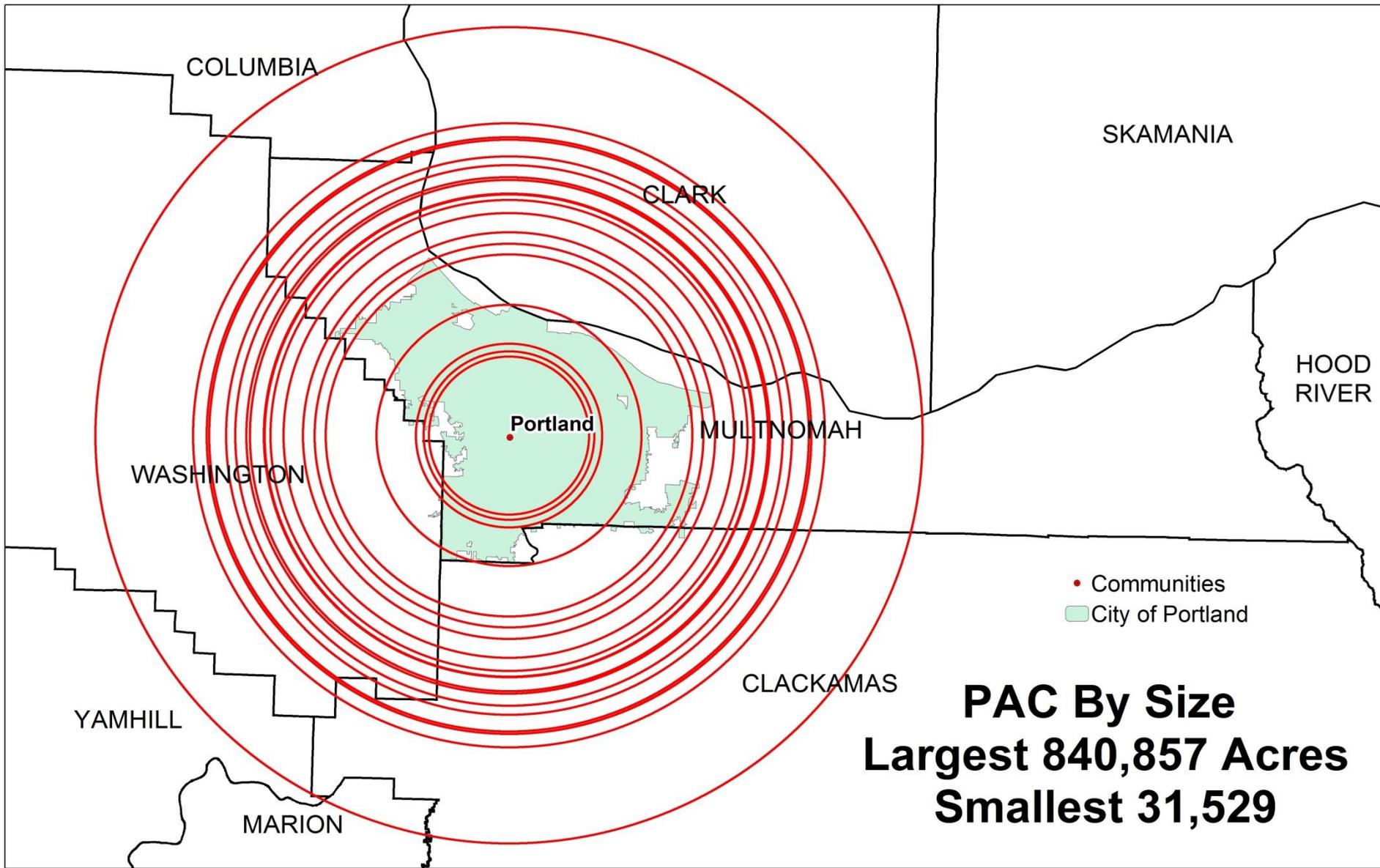
Baker, Grant, Harney, Lake, Malheur, Union

# Harney Number of Employed



# The OAR being considered today attempts to place a one size fits all standard

- PAC's vary greatly in size.
- Economies and uses within PAC's are different
- PAC's cross county lines.
- PAC's run from 31,545 acres to 840,857 acres.
- The 3% cap is from 946 acres to 25,242 acres.
- Oregon Land use allowed a local process to deal with these differences.

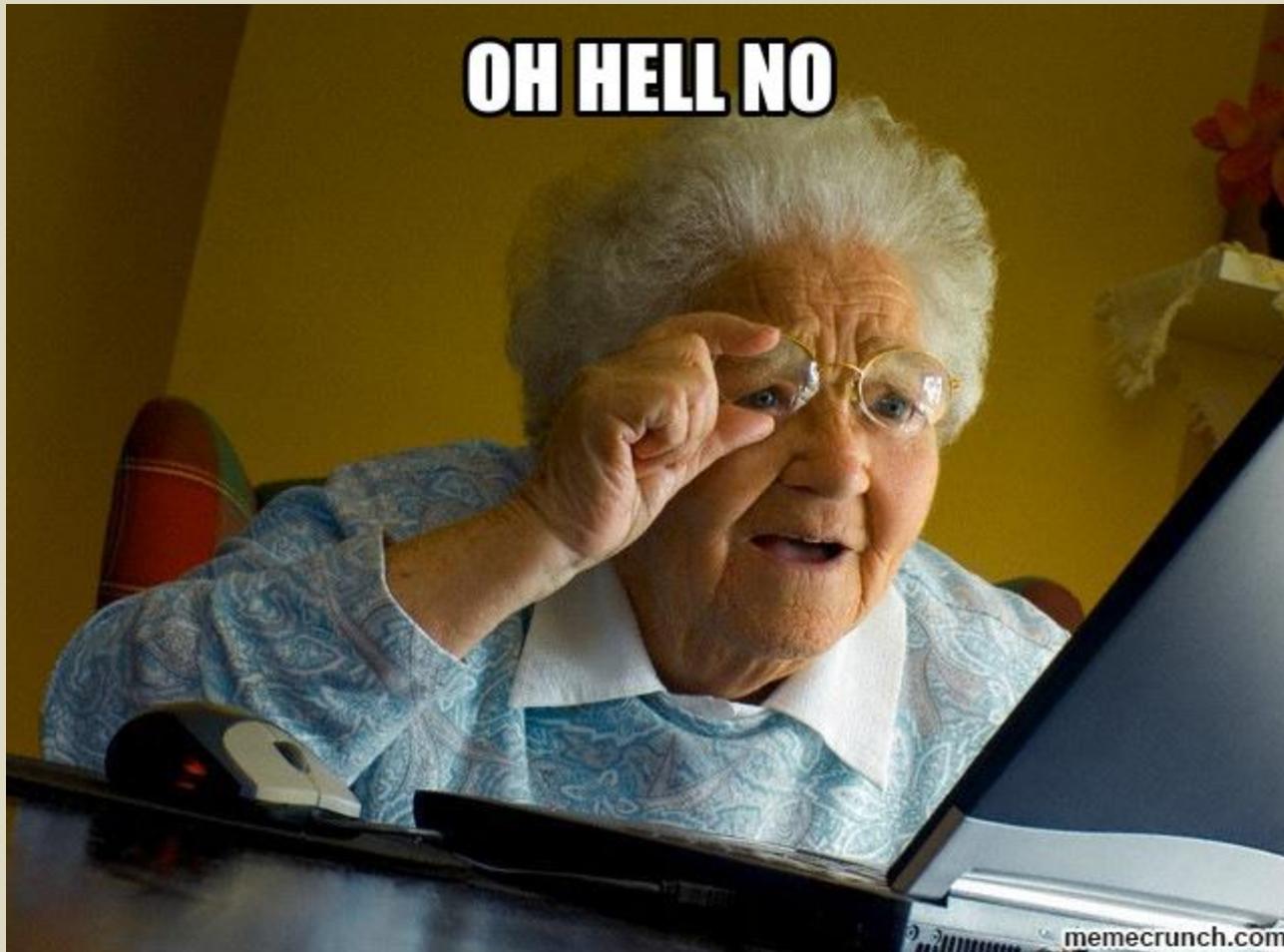


- Communities
- City of Portland

**PAC By Size**  
**Largest 840,857 Acres**  
**Smallest 31,529**

- That is part of our story. Let me give you some real testimony for your consideration today. But before I do, I want to show you two more slides.
- First, I want to show you the local reaction of a lady when I asked her opinion of the rule.
- Second, our rural communities are really feeling the pressure of being under the gun with the threat of a listing, and I have a photo that illustrates that.

**OH HELL NO**



1/3 of the state must comply with the USFWS threat of a listing. This puts a lot of pressure on rural communities

