



Oregon

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July 9, 2015

TO: Land Conservation and Development Commission

FROM: Jon Jinings, Community Services Specialist

SUBJECT: **Agenda Item 8, July 23-24, 2015, LCDC Meeting**

RULEMAKING REGARDING OREGON'S GREATER SAGE-GROUSE POPULATION

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

The Department of Land Conservation and Development (DLCD or department) is asking the Land Conservation and Development Commission (LCDC or commission) to hold a public hearing on draft amendments to Oregon Administrative Rule (OAR) chapter 660, division 23, accept public testimony, and to adopt the proposed amendments (Attachment A).

The proposed rule applies to portions of seven counties in central and eastern Oregon and establishes a procedure for considering development proposals on lands identified as significant Greater Sage-Grouse (hereafter, "sage-grouse") habitat.¹ The rule focuses on lands designated for farm use and will be directly applicable to local decisions on its effective date.

This rulemaking was requested by the Governor and is a key piece in Oregon's strategy to demonstrate why listing the species under the federal endangered species act (ESA) is not necessary. The draft proposal was developed with the assistance of a rules advisory committee (RAC).

B. Staff Contact Information

For additional information about this report, please contact Jon Jinings, Community Services Specialist, at 541-322-2032, or at jon.jinings@state.or.us.

¹ The seven counties are: Baker, Crook, Deschutes, Harney, Lake, Malheur and Union.

II. BACKGROUND

The sage-grouse is a species native to the western United States. Over time, much of the sagebrush ecosystem needed to maintain a healthy population has suffered. Habitat has eroded as a consequence of the introduction of invasive weeds, juniper encroachment, large-scale development, wildland fire, and intensive agriculture. Strong concerns about the future of the species have resulted in the service receiving multiple petitions to list the Greater Sage-Grouse under the ESA.

In April 2010, the U.S. Fish and Wildlife Service (the service) determined that protection of Greater Sage-Grouse under the ESA was warranted. The service did not list sage-grouse at that time in order to address other species facing greater risk of extinction, but stated its intent to revisit its “Warranted but Precluded” decision. The service must still make a determination whether the species should be proposed for ESA listing or be removed from the candidate list, which would result in no further consideration by the end of the 2015 fiscal year.

During its regular January 2015 meeting, the commission initiated rulemaking, at the Governor’s request, to amend OAR chapter 660, division 23, often referred to as the “Goal 5 rule.” The purpose of this amendment is to create a “safe harbor” to ensure the protection of sage-grouse in eastern and central Oregon and preserve the ability of counties to develop local sage-grouse protection programs and describe other duties to be carried out by the department and other state agencies.

The commission also appointed a RAC to assist the department and the commission with this rulemaking project. The RAC met five times between early March and early June. The new rule needs to be adopted at the commission’s July 23–24, 2015, meeting to ensure that it is available for the service to consider when making its final listing decision in September 2015.

III. PROVISIONS OF THE DRAFT RULE

The RAC put a remarkable amount of time and energy into five meetings this spring. Each meeting lasted at least a day and was characterized by thoughtful, often spirited discussion revolving around issues of habitat protection and community resilience. By the end of the fifth meeting, the RAC had come together around provisions of the draft rule. A proposed rule reflecting the outcome of the final RAC meeting is provided in Attachment A, with exhibits (maps) that are proposed to be part of the rule provided in Attachment B. A version of the rule showing the changes to the draft rule that have been made since the draft provided to the commission at its May 2015 meeting is provided in Attachment C.

A. Introduction and Exemptions - Subsections (1) & (2)

The rule begins with an introduction that is intended to set the tone for coordination and collaboration and recognize the importance of volunteer efforts and county participation. This is different from the commission’s standard rule construction. However, the RAC felt that this is not the commission’s standard rule and that a preamble was necessary.

The rule also declares that farm and ranch uses are excluded. This has been a very important issue for many of the participants and has been accepted by the RAC as a whole.

Subsequent to the June RAC meeting, the department received direction from the Governor's Office to offer an exemption to energy facilities that have submitted a preliminary application for a site certificate to the Energy Facility Siting Council (EFSC) prior to the effective date of this rule. A new OAR 660-023-0115(2)(b) would provide this exemption:

(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, 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.

The additional language is specifically directed at Idaho Power's Boardman to Hemingway (B2H) project. Idaho Power is one of three investor-owned utilities serving citizens in Oregon. B2H is a high-voltage transmission line that would run from Boardman, Oregon, to Hemingway, Idaho, traversing portions of Malheur, Baker and Union counties. Planning for B2H has been underway for eight years. The project has been identified as a priority by President Obama's administration and will not be subject to any new BLM provisions.

B. Definitions - Subsection (3)

Nearly all of the definitions in the rule have been taken from Oregon Department of Fish & Wildlife (ODFW) or borrowed from a federal source. This subsection also cross references both the ODFW rule that constitutes its supplemental sage-grouse policy and the "Greater Sage-Grouse Conservation Assessment and Strategy for Oregon" produced by ODFW in April 2011. To the extent that the same terms are used in both agencies rules the definitions are identical.

How to define the term "large-scale development" (Subsection (3)(i)) received more attention from the RAC than any other item. Carefully defining this term is critical to the success of the rule because it will be used to determine whether a use is subject to the full mitigation hierarchy.

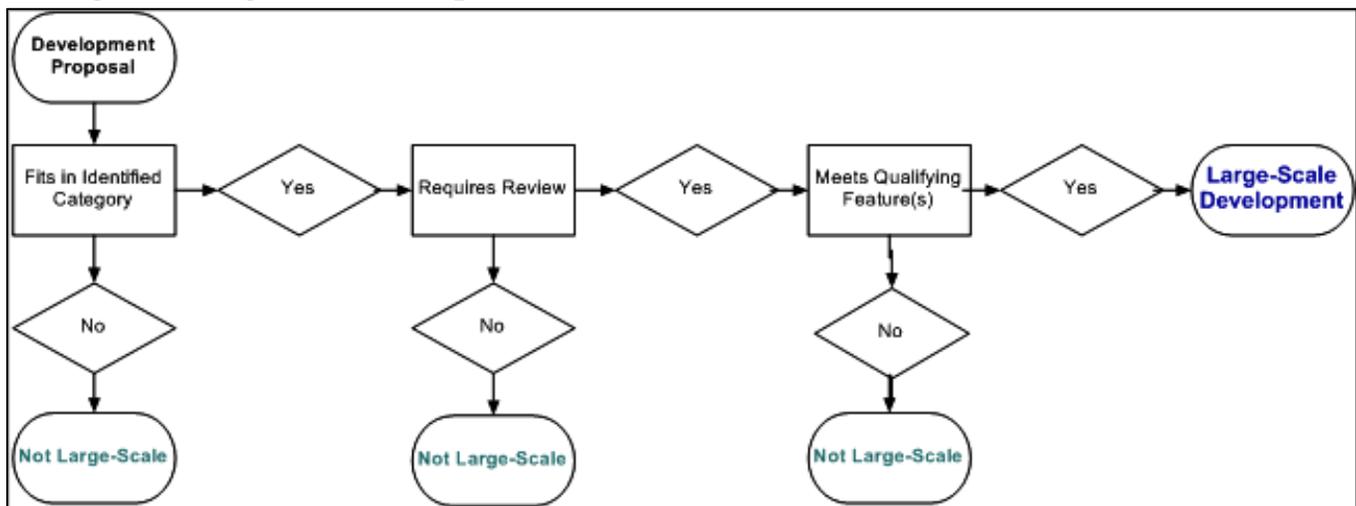
The proposed rule lays out a three-step assessment that describes qualifying features (size, height, noise, traffic generation) and relies on the Goal 3 rule (OAR chapter 660, division 33) to determine categories of uses and whether a review is required.² The Goal 3 rule categories

² OAR chapter 660, division 33 groups uses into the following categories:

- A. Commercial Uses
- B. Mineral, Aggregate, Oil and Gas Uses
- C. Transportation Uses

resemble the degradation categories specified by BLM and the range-wide threats described in the federal Conservation Objectives Team report. For example, a commercial photovoltaic solar project is a candidate to be considered large-scale development because it requires review by local government and is identified in category D – Utility/Solid Waste Disposal Facilities. However, it would only be determined to be a large-scale development if it covers more than five acres. Alternatively, a three-acre aggregate quarry that requires review and is identified in category B – Mineral, Aggregate, Oil and Gas Uses – would likely be considered a large-scale development because of its noise and not because of its size. Figure 1 depicts the criteria and process for determining whether a proposed development is “large-scale.”

Figure 1. Large-Scale Development Decision Flowchart



C. Direct Applicability, Local Program Development and ODFW Mapping – Subsections (4) and (5)

Although previous drafts of the rule had contemplated suspending its applicability for a period of two years, the RAC agreed that there was no need to delay implementation. Therefore, the rule will be directly applicable upon its effective date. Counties are free to adopt the specific provisions of the rule into their local code and implement it in that manner. Counties are also free to develop their own local programs at any time, which would be subject to final approval by the commission.

ODFW mapping products, as proposed as exhibits to the rule, serve to identify the location of sage-grouse habitat. A county that develops a local program (as opposed to simply adopting the rule provisions into its code) may create a different map. However, any differences between ODFW mapping and local mapping must be based on the best available information.

- D. Utility/Solid Waste Disposal Facilities
- E. Parks/Public/Quasi-Public

D. Determination of Significance and Conflicting Uses – Subsections (6) & (7)

The draft rule designates core areas, low density areas, and general habitat within 3.1 miles of a lek³ as “significant” habitat when those lands are protected for resource uses under Statewide Planning Goals 3 and 4. In other words, habitat areas planned and zoned for exclusive farm use or forest are significant sage-grouse habitat. These lands comprise over 98 percent of the nonfederal sage-grouse habitat. Lands that are excluded are generally rural or unincorporated communities such as Brothers (Deschutes County), Brogan (Malheur County), Drewsey (Harney County), Post (Crook County), and the city of Unity (Baker County). These areas have a longstanding development patterns and are planned and zoned to function as communities. No open landscape is intact on these lands.

Large-scale development is considered a conflicting use in all instances. The current draft also attempts to address concerns that smaller levels of development could jeopardize the future of the species by creating additional provisions if a proposal is in close proximity of a lek. In these cases, land uses that do not qualify as large-scale development would still receive consideration pursuant to the rule. However, the mitigation hierarchy may not be fully applied in these instances.

E. Pre-Application Conference – Subsection (8)

The RAC felt that strongly encouraging a pre-application conference between an applicant, county staff, and ODFW was important to establish understanding of the scope of a project, applicable regulatory parameters and expectations regarding compensatory mitigation. The pre-application conference was not made to be mandatory because the RAC did not want it to become an item that could be challenged on procedural grounds. Counties have embraced this concept and everyone fully expects that “pre-apps” will occur in ever necessary instance.

F. Core Areas, Low Density Areas and General Habitat - Subsections (9)–(11)

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

1. Core Areas – Subsection (9)

Simply stated, core areas are the most productive populations and habitats that meet all life history needs necessary to conserve 90 percent of Oregon’s sage-grouse population. Core areas have been delineated by ODFW to emphasize the highest density and important use areas which provide for breeding, wintering and connectivity corridors.

Core areas are also known as Priority Areas for Conservation (PACs). These two terms are synonymous. Core areas/PACs are subject to disturbance thresholds that limit the direct impact of large-scale development to one percent of the total delimited area of a PAC over 10 year

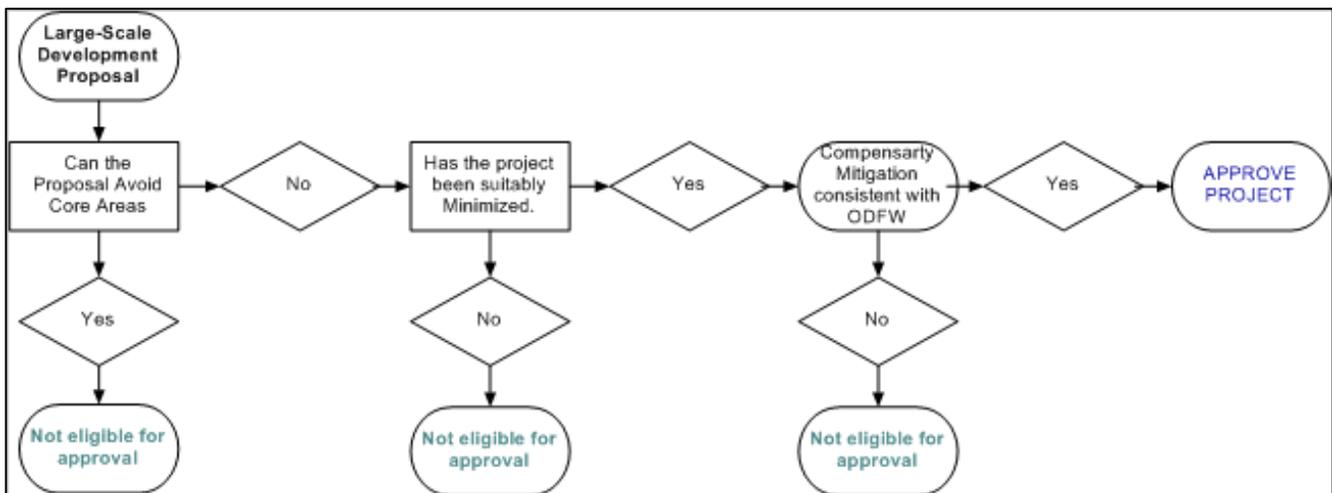
³ A lek is an area where male sage grouse display during the breeding season to attract females (also referred to as strutting-ground).

increments and a maximum total of three percent. These percentages must be taken into account when a county considers a large-scale development proposal. A proposal that would exceed either threshold may not be allowed. For purposes of this rule, natural disturbance such as fire, invasive species or conifer infestation are not counted as part of the thresholds.

In addition to limiting the amount of allowable anthropogenic disturbance in each core area/PAC, a proposal for large-scale development is subject to the full mitigation hierarchy, which includes a rigorous avoidance test, minimization requirements and compensatory mitigation (offsets) responsibility. Figure 2 depicts the mitigation hierarchy as it applies to large-scale development and Figure 3 shows the criteria for other conflicting uses.

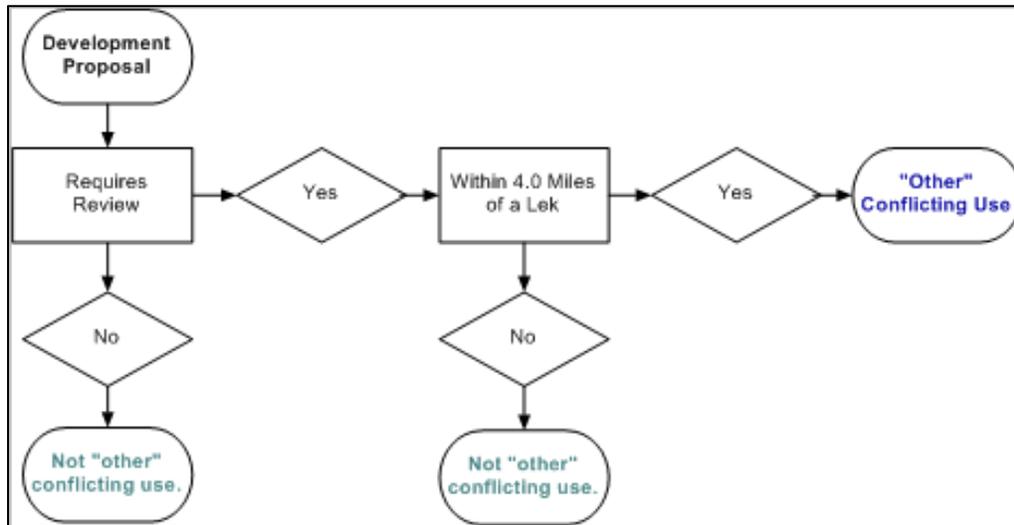
Applying the avoidance test and minimization requirements are the purview of local government. Should any negative impacts to the species remain after these items are satisfied the applicant will be responsible to offset those impacts through compensatory mitigation. Compensatory mitigation must be consistent with ODFW's rule.

Figure 2. Mitigation Hierarchy for Large-Scale Development



Other, non-large-scale development activities may also constitute a conflicting use if proposed within 4.0 miles of a lek. Under these circumstances, a pre-application conference will be followed by a discussion between the applicant and ODFW. Through this discussion, which will likely involve a site visit, the local ODFW biologist will assess the facts and may conclude the given situation does not pose a threat to sage-grouse and no further consideration is needed. The ODFW biologist may also conclude that minimization activities such as sharing a driveway, locating on a specific portion of the property or limiting hours of operation would be necessary. In extreme cases it may be found that compensatory mitigation is needed. ODFW would forward these comments to the county who would then include them in the decision document. This approach is not expected to result in the denial of any proposal. Instead the conversation and requirements will be about how the proposal is carried out.

Figure 3. “Other” Conflicting Uses in Core Areas



2. Low Density Areas – Subsection (10)

Low density areas have also been mapped by ODFW and constitute important habitat that provides breeding, summer, and migratory habitats of the sage-grouse population statewide. The regulatory arrangement for low density areas differs from core areas/PACs in two ways. First, low density areas are not subject to disturbance thresholds such as the one percent over 10 year increments or three percent total that apply to core areas/PACs. Second, while large-scale development proposals in low density areas do require application of the full mitigation hierarchy, a different, somewhat more lenient avoidance test applies to these areas. In other words, it will be easier to site large-scale development in low density areas.

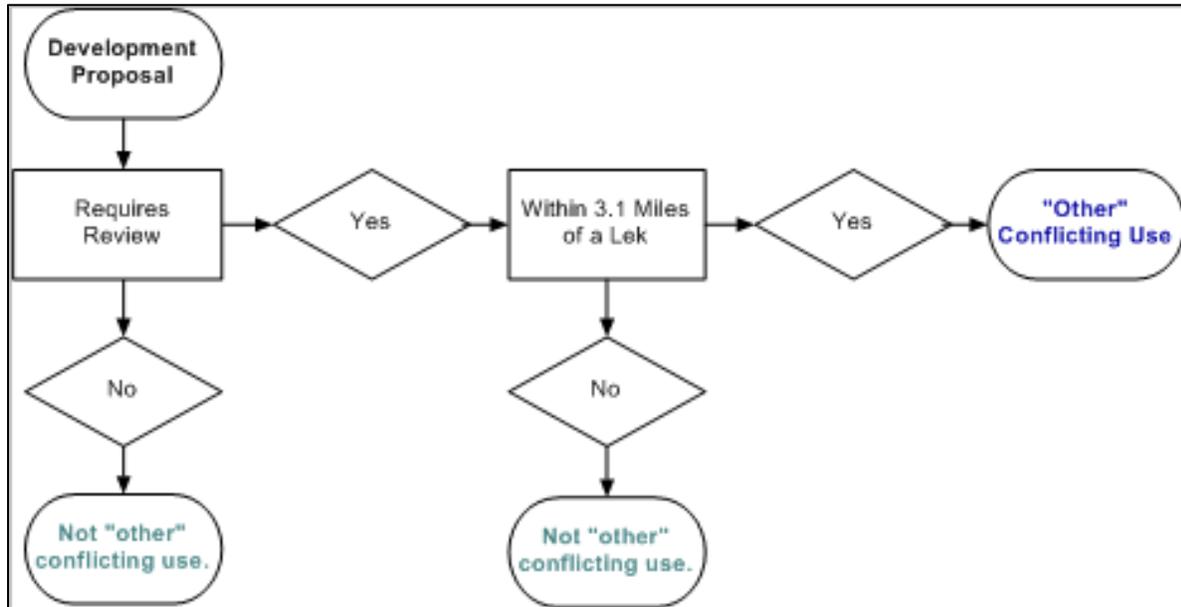
As with core areas/PACs, non-large-scale development activities may constitute a conflicting use in low density areas. However, for low density areas the distance is 3.1 miles from a lek rather than 4.0 miles. (See Figure 4.) The process of consultation following the pre-application conference will be the same as that for the core areas/PACs.

3. General Habitat – Subsection (11)

General habitat, previously referred to as “occupied” habitat, is essentially sagebrush habitat used by sage-grouse that is not included in a core or low density area. In these areas the draft rule would apply *only* to lands within 3.1 miles of a lek. (See Figure 4.)

Rather than directly applying the mitigation hierarchy, large-scale development proposal in general habitat within 3.1 miles of a lek would be subject to a “consultation” with ODFW. This approach is similar to the process identified for other conflicting uses under (9)(b). However, consideration for avoidance, in addition to minimization, is included and the ordinary obligations for compensation mitigation remain intact.

Figure 4. “Other” Conflicting Uses in Low Density Areas and General Habitat



Non-large-scale development may constitute a conflicting use in general habitat within 3.1 miles of a lek. These instances will be treated consistent with the provisions for core and low density areas.

G. Especially Unique Local Economic Activity - Subsection (12)

This provision provides an alternative to the “avoid” step of the mitigation hierarchy. In limited instances, a county may determine that the overall public benefits of a proposal outweigh protecting the resource. This opportunity is tied to economic opportunities that would provide a good number of permanent, high-paying jobs. Counties are not obligated to approve any activity under this provision and it may only be exercised one time per county per 10-year increment.

H. Upzoning - Subsection (13)

The draft rule has been written to apply to lands protected for farm, ranch and forest uses (Goals 3 and 4) as of July 1, 2015. Over 98 percent of Oregon’s nonfederal sage-grouse habitat falls into these areas. This subsection simply identifies that re-zoning areas subject to the draft rule to allow for a greater development potential would trigger the standard Goal 5 process. Lands in core areas that are re-zoned would count towards the three-percent development threshold.

I. Landscape-Level Disturbance and Central Registry - Subsections (14) & (15)

These two subsections establish that the department will monitor development in core areas/PACs. Counties would be required to report development approvals in a manner similar to the farm and forest reporting obligations under ORS 197.065. The department would provide an annual report to the commission, which would be coordinated with affected local governments.

The department would also partner with local, state and federal agencies to maintain a central registry. The central registry would begin with a baseline figure of existing development in each core area/PAC and track new large-scale development into the future. Baseline calculations will initially be based on the same methodology used by the BLM.

J. Metering and Disturbance Threshold - Subsections (16) and (17)

Limiting the total amount of large-scale development in core areas/PACS is a foundational aspect of Oregon's response to the service demonstrating that listing the species is not necessary. The concept of "metering" has been introduced to help ensure that an area's development potential is not realized in the near term or entirely retired through approval of just one or two very large projects. The draft rule has been written to limit large-scale development in each core area/PAC to one percent of its total area in each ten year increment. For example, a core area/PAC is comprised of 100,000 acres would be eligible for 1,000 acres per 10-year increment.

The total amount of acceptable disturbance from large-scale development in a core area/PAC has been set at three percent. Continuing the above example, a core area/PAC of 100,000 acres would be eligible for a total of 3,000 acres of development. Current science shows that sage-grouse populations begin to seriously decline when three percent of their habitat is occupied by anthropogenic development. In other words, developing three percent of each core area/PAC is not a goal. Instead, three percent represents the amount of development hoped to be avoided. Disturbance will initially be measured forward from baseline figures based on BLM's methodology.

The one percent metering and three percent overall development threshold are both included in the BLM draft Resource Management Plan (RMP). The percentages are to be counted across the core areas/PACs regardless of land ownership. Furthermore, these figures are to be based on the direct disturbance or "footprint" of large-scale development projects. Indirect disturbance will be accounted for though minimization and compensatory mitigation requirements. In other words, a new county road may have a direct footprint of 40 feet but its indirect impacts may extend far beyond the project boundaries. For purposes of metering and the disturbance threshold only the width of the road multiplied by its length would be counted (10 miles x 40' = 2,112,000 square feet or 48.5 acres). The amount of area needed to be considered for the mitigation hierarchy could be several times that amount.

K. State Agency Coordination – Subsection (18)

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

L. Scheduled Review – Subsection (19)

This subsection serves two purposes and may possibly deserve a different name. The first purpose is to obligate the department to review the rule in 10 years and, if necessary, recommend improvements for the commission to consider.

The second purpose is to identify instances when the commission may wish to reconsider the rule based on decisions made by the service. For instance, should the species become listed and a (4)(d) rule not be obtained, the presence of both the listing decision and the rule could constitute an unnecessary regulatory burden. In this case the requirements imposed by the federal government on development and land management practices may be more than enough protection for the species. Furthermore, a situation where the species is de-listed, having been listed with the rule remaining intact, could signal a time to reconsider the role of a state rule. However, under no circumstances should the rule be rescinded if its presence assists the service in making decisions supported by the state of Oregon, local government, and associated stakeholders.

IV. OREGON FISH & WILDLIFE COMMISSION RULEMAKING

Oregon Fish & Wildlife Commission (OFWC) has also commenced rulemaking at the request of the Governor's office. This rulemaking will create a supplemental strategy for sage grouse and establish protocols for compensatory mitigation. The commission's rule will obligate counties to use the OFWC rules when requirements for compensatory mitigation are triggered.

A RAC with a membership very similar to the LCDC RAC has been established for the OFWC effort. The OFWC RAC has met four times between April 2 and June 1, 2015. Comments on the OFWC rule may be offered to a hearings officer on July 21 in Lakeview or on July 22 in Burns. The rule is scheduled to be considered and adopted by the OFWC on July 27 in Salem. The most current draft of the rule available at the time of this report is included in Attachment D.

Department and ODFW staffs intend to maintain close coordination throughout the duration of these rulemaking projects.

V. CONCLUSION

The development of Oregon's Action Plan for Sage-Grouse has been a remarkable process that is the culmination of several years of hard work. Many, many stakeholders have dedicated thousands of hours toward demonstrating that a listing is not necessary. This rule fills an important gap in the ordinary land use planning framework on nonfederal lands and serves as the basis for the state's response to the third leading threat to sage-grouse habitat in this portion of the range.

There will be opportunities for improvement of the rule should deficiencies be found or new information obtained. The presence of this rule will help demonstrate Oregon's planning leadership and serve as a model for considering development proposals across the western states.

VI. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends the commission hold a public hearing to accept testimony on the draft amendments to OAR 660-023-0115 as shown in Attachment A with the additional paragraph OAR 660-023-0115(2)(b) related to an exemption for energy facility proposals for which applications have been made. The department recommends that the commission adopt the rule amendments included in that attachment.

Recommended motion: I move the commission adopt the proposed amendments to OAR 660-023-0115 as recommended by the department and explained in the staff report.

Optional motion: I move the commission adopt amendments to OAR 660-023-0115 as recommended by the department with the following changes: [specify section number and language of deviations from staff recommendation].

VII. ATTACHMENTS

- A. Proposed rule amendments
- B. Proposed rule exhibit maps
- C. Marked-up version of the proposed rule, showing changes between May and June drafts
- D. ODFW draft sage-grouse rules

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

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

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

22 (3) Definitions. For purposes of this division, the definitions in OAR 635-140-0010 and in the
23 glossary of the “Greater Sage-Grouse Conservation Assessment and Strategy for Oregon”
24 adopted by the Commission on April 22, 2011 (copies of the plan are available through the
25 Oregon Department of Fish and Wildlife) shall apply. In addition, the following definitions shall
26 apply:
27

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

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

39 (c) “Core areas” are mapped sagebrush types or other habitats that support sage-grouse
40 annual life history requirements that are encompassed by areas:
41

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

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

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

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

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

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

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

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

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

36 (A) Commercial Uses.
37

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

40 (C) Transportation Uses.
41

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

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

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

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

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

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

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

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

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

23 (B) "Minimization" is the second step in the mitigation hierarchy and is
24 accomplished by limiting the degree or magnitude of the development action
25 and its implementation.
26

27 (C) "Compensatory mitigation" is the third step in the mitigation hierarchy and
28 means the replacement or enhancement of the function of habitat capable of
29 supporting sage-grouse in greater numbers than predicted to be impacted by a
30 development.
31

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

35 (n) "Occupied Pending Lek" is a lek that has not been counted regularly by ODFW in the
36 last seven years, but sage-grouse were present at ODFW's last visit.
37

38 (o) "Priority Areas for Conservation" (PACs) are key habitats identified by state sage
39 grouse conservation plans or through other sage-grouse conservation efforts (e.g., BLM
40 Planning). In Oregon, core area habitats are PACs.
41

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

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

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

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

18 (a) Core areas;

19
20 (b) Low density areas; and

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

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

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

31 (a) Large-scale development; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17
18 (C) Compensatory Mitigation. Required consistent with the provisions of
19 subsection (9)(b)(D) above.

20
21 (b) A county may approve a conflicting use as identified at subsection (7)(b) above when
22 found to be consistent with the provisions of subsection (9)(b).

23
24 (11) Program to achieve the goal of protecting significant sage-grouse habitat on general
25 habitat.

26
27 (a) A county may approve a large-scale development on significant sage-grouse habitat
28 in general habitat upon requiring:

29
30 (A) General Habitat Consultation. Minimizing impacts from development actions
31 in general habitat shall include consultation between the development
32 proponent and ODFW that considers and results in recommendations on how to
33 best locate, constructor operate the development action so as to avoid or
34 minimize direct and indirect impacts on significant sage grouse habitat within the
35 area of general habitat. A county shall attach ODFW recommendations as a
36 condition of approval; and

37
38 (B) Compensatory Mitigation. Required consistent with the provisions of
39 subsection (9)(b)(D) above.

40
41 (b) A county may approve a conflicting use identified in subsection (7)(b) above when
42 found to be consistent with the provisions of subsection (9)(b).

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

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

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

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

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

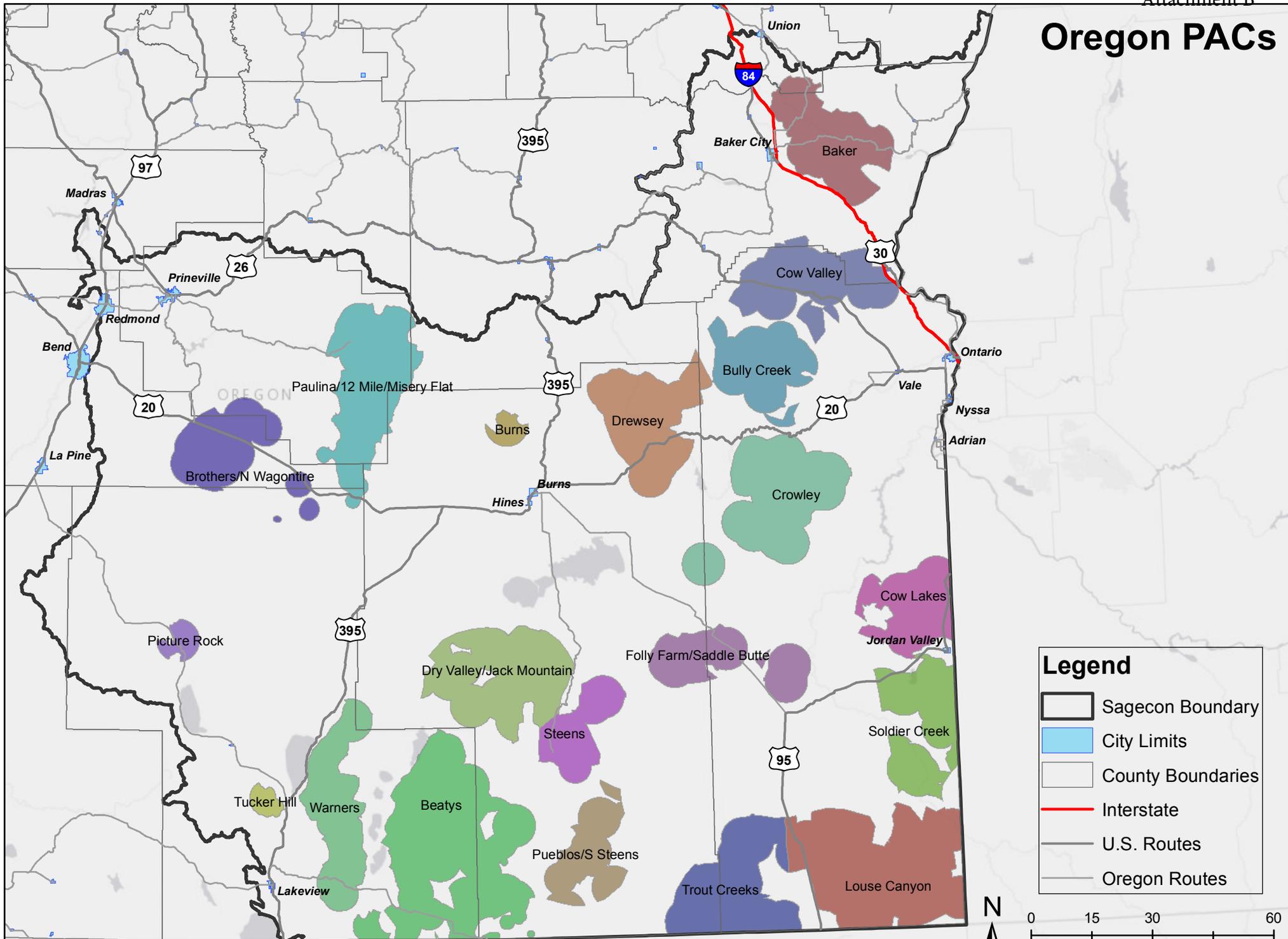
1 commission will consider revisions to these rules if the department’s yearly reports required by
2 subsection (15) above indicate that the development trends in any PAC indicate that the 1.0
3 percent direct impact threshold is in jeopardy of being exceeded before the ten-year period has
4 expired.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

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

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

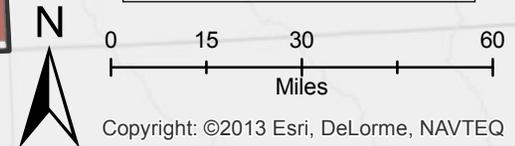
20 (19) Scheduled Review. The department shall commence a review of these rules on or about
21 June 30, 2025 and, if determined to be necessary, recommend revisions to achieve the policy
22 objectives found herein. Furthermore, should the species become listed under the Federal
23 Endangered Species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

Oregon PACs



Legend

- Sagecon Boundary
- City Limits
- County Boundaries
- Interstate
- U.S. Routes
- Oregon Routes



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

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

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

23
 24 (3) ~~(2)~~ Definitions. For purposes of this division, the definitions in OAR 635-140-~~0015~~0010 and in
 25 the glossary of the “Greater Sage-Grouse Conservation Assessment and Strategy for Oregon”
 26 adopted by the Commission on April 22, 2011 (copies of the plan are available through the
 27 Oregon Department of Fish and Wildlife) shall apply. In addition, the following definitions shall
 28 apply:

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

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

40
 41 (c) “Core areas” are mapped sagebrush types or other habitats that support greater
 42 sage-grouse annual life history requirements that are encompassed by areas: ~~a) of~~

43
 44 (A) Of very high, high, and moderate lek density strata; ~~b) where~~

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

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

7
8 ~~(c) "Developments" are anthropogenic disturbances to sage grouse habitats which may~~
9 ~~or may not impact the habitat to support sage grouse.~~

10
11 ~~(d) "Direct impacts" are the removal or conversion of sage grouse habitat to a non-~~
12 ~~useable state or activity which immediately affects sage grouse due to anthropogenic~~
13 ~~activities.~~

14
15 (d) "Development action" means any activity subject to regulation by local, state, or
16 federal agencies that could result in the loss of fish and wildlife habitat. Development
17 actions may include but are not limited to, construction and operational activities of
18 local, state, and federal agencies. Development actions also include subsequent re-
19 permitting for activities with new impacts or continued impacts or continued impacts
20 that have not been mitigated consistent with current standards

21
22 (e) "Direct impact" means an adverse effect of a development action upon fish and
23 wildlife habitat which is proximal to the development action in time and place.

24
25 (f) "Disturbance" is natural and anthropogenic activities that can negatively affect sage-
26 grouse use of habitat either through changing the vegetation type/condition or
27 displacement of sage-grouse use of an area. For purposes of this rule only disturbance
28 from anthropogenic activities, such as direct and indirect impacts, are considered.

29
30 (g) "General habitat" is occupied (seasonal or year-round) sage grouse habitat outside
31 core and low density habitats.

32
33 (h) "Indirect impacts" are effects that are caused by or will ultimately result from
34 anthropogenic disturbances which render otherwise intact habitat un-useable
35 an affected development activity. Indirect effects usually occur later in time or are
36 removed in distance compared to sage-grouse direct effects

37
38 (g) "Large-scale development" means uses that are either over 50 feet in height, have a
39 direct ~~disturbance~~ impact in excess of five acres, generate more than 50 vehicle trips
40 per day, or create noise levels of at least 70 dB at zero meters ~~-for sustained periods of~~
41 time. Uses that constitute large-scale development also require review by county
42 decision makers and are listed in one of the following categories identified in the table
43 attached to OAR 660-033-0120.

- 1 (A) Commercial Uses.
 2
 3 (B) Mineral, Aggregate, Oil and Gas Uses.
 4
 5 (C) Transportation Uses.
 6
 7 (D) Utility/Solid Waste Disposal Facilities.
 8
 9 (E) Parks/Public/Quasi-Public.

10
 11 (h) "Lek" means an area where male sage-grouse display during the breeding season to
 12 attract females (also referred to as strutting-ground).

13
 14 (k) "Low density areas" are mapped sagebrush types or other habitats that support
 15 greater sage-grouse that are encompassed by areas where:

- 16
 17 (A) Low lek density strata overlapped with seasonal connectivity corridors;
 18
 19 (B) Local corridors occur outside of all lek density strata;
 20
 21 (C) Low lek density strata occur outside of connectivity corridors; or d) seasonal
 22 connectivity corridors occur outside of all lek density strata. ~~Low density area~~
 23 maps are maintained by ~~the Department~~ ODFW.

24
 25 (i) "Mitigation hierarchy" is ~~the an~~ approach used by decision makers to consider
 26 ~~whether or not to approve~~ large-scale development proposal and is comprised of a
 27 three step process:

28
 29 (A) "Avoidance" is the first step in the mitigation hierarchy and is accomplished
 30 by not taking a certain development action or parts of that action. ~~If avoidance is~~
 31 ~~not possible the action must demonstrate minimization.~~

32
 33 (B) "Minimization" is the second step in the mitigation hierarchy and is
 34 accomplished by limiting the degree or magnitude of the development action
 35 and its implementation. ~~Any direct or indirect impacts to sage-grouse habitat~~
 36 ~~remaining after minimization are subject to compensatory mitigation~~
 37 ~~requirements.~~

38
 39 (C) "Compensatory mitigation" is the third step in the mitigation hierarchy and
 40 means the replacement or enhancement of the function of habitat ~~to~~
 41 ~~support~~ capable of supporting sage-grouse in greater numbers than ~~was~~
 42 ~~lost~~ predicted to be impacted by a development.
 43

~~(j) "Other habitat" is mapped areas of sage grouse habitats outside areas of core and low density habitats. Other habitat area maps are maintained by the Department.~~

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

~~(n) "Occupied Pending Lek" is a lek that has not been counted regularly by ODFW in the last seven years, but sage-grouse were present at ODFW's last visit.~~

~~(o) "Priority Areas for Conservation" (PACs) are key areashabitats identified by ~~the~~ USFWS and documented in the 2013 Conservation Objectives Team Report that have been determined to be crucial to ensure adequate state sage grouse conservation of sage-grouse. PACs are groupings of core areas equivalent to those identified in the 2011 Greater Sage-grouse Conservation Assessment and Strategy, plans or through Private and other nonfederal lands are strongly encouraged to participate in a Candidate Conservation with Assurances (hereafter "CCAA") program. Voluntary sage-grouse conservation efforts of this nature are recognized by the state of (e.g., BLM Planning). In Oregon as a critical part in recovering the breeding population targeted by Oregon's Conservation Strategy for Sage-Grouse. 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) in all instances regardless of enrollment status, core area habitats are PACs.~~

(4) Local program development and direct applicability of rule. Local governments may develop a program to achieve consistency with OAR 660-023-0115 by following the standard process in OAR 660-023-0030, OAR 660-023-0040 and 660-023-0050 and submitting the amendment to the Commission in the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-025-0175. Until a county amends its comprehensive plan and land use regulations to achieve consistency with OAR 660-023-0115 the provisions of subsections (5) thru ~~(11)~~ shall apply directly to land use decisions affecting significant sage-grouse habitat. When a local program has been acknowledged by LCDC to be in compliance with Goal 5 and equivalent to OAR 660-023-0115 with regard to protecting sage-grouse habitat, that program becomes the controlling county land use document and compliance with this rule is no longer necessary.

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

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

(a) Core ~~habitat~~ areas;

1 | (b) Low density ~~habitat~~ areas; and

2 |
3 | (c) Lands within ~~an occupied~~ general habitat area located within 3.1 miles of an
4 | occupied or occupied-pending lek.

5 |
6 | (d) The exact location of sage-grouse habitat may be refined during consideration of
7 | specific projects but must be done in consultation with ODFW.

8 |
9 | (7) Conflicting uses. For purposes of protecting significant sage-grouse habitat, conflicting uses
10 | are:

11 | (a) Large-scale development; and

12 | (b) Other activities ~~requiring conditional use, which require~~ review ~~that by county~~
13 | decision makers pursuant to OAR 660-033-0120 or other applicable provisions of law
14 | and are proposed ~~in~~;

15 |
16 | (A) In a core area within 4.0 miles of an occupied or occupied-pending lek ~~or~~
17 | ~~proposed on other significant~~;

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

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

21 | ~~(c) Farm use as defined in ORS 215.203(2), including livestock grazing is specifically not~~
22 | ~~considered a conflicting use for purposes of protecting significant sage-grouse habitat~~
23 | ~~and is not subject to the provisions of this rule.~~

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

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

29 | (a) A county may ~~approve~~ consider a large-scale development in a core area upon
30 | applying disturbance thresholds and the mitigation hierarchy as follows:

31 | (A) Avoidance. If the proposed conflicting use can occur in another location
32 | a county may consider a large-scale development that avoids both direct and
33 | indirect impacts within core area habitat, then proposal must does not be
34 | allowed unless it is moved cause the one-percent metering threshold described
35 | in section (16) or the three-percent disturbance threshold described in section

(17) to ~~that other location.~~ be exceeded.

(B) Avoidance. Before proceeding with ~~conflicting use~~ large-scale development activity that impacts a core area ~~habitat~~, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within core area habitat ~~by altering.~~ If the proposed large-scale development can occur in another location based on that avoids both direct and indirect impacts within core area habitat, then the proposal must not be allowed unless it can satisfy the following ~~reasons;~~ criteria.

(i) It is not technically feasible to locate the proposed ~~conflicting use~~ large-scale development outside of a core ~~habitat~~ area based on accepted engineering practices, regulatory standards or some combination thereof. Costs associated with technical feasibility 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 ~~conflicting use~~ large-scale development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands; and

(iii) If ~~the proposal is for a large-scale development and~~ either (9)(a)(Ab)(B)(i) or (9)(a)(Ab)(B)(ii) is found to be satisfied the county must also find that ~~it the large-scale development~~ will provide important economic opportunity, needed infrastructure ~~or,~~ public safety benefits or public health benefits for local citizens or the entire region.

(BC) 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.

(~~CD~~) Compensatory Mitigation. To the extent that a proposed ~~conflicting use~~large-scale development will have direct or indirect adverse impacts on a core area ~~or low density habitat~~ after application of the avoidance and minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and indirect adverse effects of the development to any core area ~~and any low density habitat.~~ The required compensatory mitigation must comply with ~~the supplemental Sage Grouse mitigation policy adopted by the Oregon Fish and Wildlife Commission~~OAR Chapter 635, division 140.

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

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

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

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

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

(A) Avoidance. ~~If the proposed conflicting use can occur in another location that avoids both direct and indirect impacts within core area and low density habitat, then proposal should not be allowed unless it is moved to that other location.~~ Before proceeding with ~~a conflicting use~~large-scale development activity that impacts a low density ~~habitat~~ area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within a low density habitat by altering area. ~~If the proposed large-scale development can occur in another location based on that avoids both direct and indirect impacts within a low density area, then the proposal must not be allowed unless it can satisfy~~ the following ~~reasons~~criteria:

(i) It is not technically or financially feasible to locate the proposed ~~use~~large-scale development outside of ~~significant sage grouse habitat~~a low density area based on accepted engineering practices, regulatory standards, proximity to necessary infrastructure or some combination thereof; or

(ii) The proposed ~~conflicting use~~large-scale development is dependent on

1 geographic or other physical feature(s) found in low density habitat areas
2 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
4 direct route.

5
6 ~~(iii) In addition to (i) and (ii) above, a county may find this test satisfied if~~
7 ~~there is sufficient evidence in the record to demonstrate that project~~
8 ~~proponents seriously considered a location on core area habitat but~~
9 ~~elected to pursue a site on low density habitat after an evaluation of~~
10 ~~alternatives showed that a location on core area habitat was not~~
11 ~~necessary.~~

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

22
23 (C) Compensatory Mitigation. Required consistent with the provisions of
24 subsection (9)(~~eb~~)(D) above.

25
26 ~~(b) A county may approve a conflicting use as identified at subsection (7)(b) above when~~
27 ~~found to be consistent with the provisions of subsection (10)(b).~~

28
29 ~~(11) Program to achieve the goal of protecting significant sage grouse habitat on other habitat.~~
30 ~~Program to achieve the goal of protecting significant sage grouse habitat on general habitat.~~

31
32 (a) A county may approve a large-scale development on significant sage-grouse habitat
33 ~~on other habitat upon applying the mitigation hierarchy consistent with the provisions of~~
34 ~~subsection (10)(a) above. in general habitat upon requiring:~~

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

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

3
 4 (b) A county may approve a conflicting use identified in subsection (7)(b) above when
 5 found to be consistent with the provisions of subsection ~~(409)~~(b).
 6

7 (12) Especially Unique Local Economic Opportunity. A county may approve a large-scale
 8 development proposal that does not meet the avoidance test for significant sage-grouse
 9 habitat if the county determines that the overall public benefits of the proposal outweigh the
 10 damage to significant sage-grouse habitat. Requirements for minimization and compensatory
 11 mitigation continue to apply and attempts should be made to avoid areas of high population
 12 richness, if possible. The county shall make this balancing determination only when the
 13 proposal involves an economic opportunity that will provide a number of permanent, full time
 14 jobs, not including construction activities, paying at least 150 percent of average county wages
 15 sufficient to increase the amount of total private nonfarm payroll employment ~~numbers~~ by at
 16 least ~~1-0.5~~ percent over the ~~number~~figure included in the most recent data available from the
 17 ~~United State Census Bureau~~Oregon Department of Employment rounded down to the nearest
 18 whole number. The applicant has the burden to show that the overall public benefits outweigh
 19 the damage to the significant sage-grouse habitat, ~~and the burden increases proportionately~~
 20 ~~with the degree of damage to significant sage-grouse habitat.~~ This provision may be exercised
 21 by each effected county once during every ten year period beginning on the effective date of
 22 these rules. A county is also free not to approve a proposal submitted under this provision.
 23

24 ~~(13) Lands including~~A proposal to up-zone lands containing significant sage-grouse habitat ~~that~~
 25 ~~are up-zoned~~ to a greater development potential than otherwise allowed under goals 3 and 4
 26 ~~after July 1, 2015~~shall follow the ordinary goal 5 process at OAR 660-023-0030 thru 0050.
 27 Furthermore, up-zoning lands in a core area shall be ~~counted as~~considered a direct impact and
 28 count towards the three percent disturbance threshold pursuant to Subsection ~~(1518)~~ below.
 29

30 ~~(14) Subsections (5) thru (12) of this rule become applicable on July 1, 2017 rather than as~~
 31 ~~otherwise specified by OAR 660-023-0250.~~
 32

33 ~~(15(14))~~ Landscape-Level Disturbance. The standards in subsections (9), (10) and (11) above, are
 34 designed to minimize the amount of future disturbance from anthropogenic sources to
 35 significant sage-grouse habitat areas. Consistent with available science concerning the relation
 36 between ~~human~~anthropogenic disturbance and sage grouse population levels, the department
 37 will monitor direct ~~disturbance~~impacts in core areas in each of the ~~priority areas for~~
 38 ~~conservation (PAC)~~PACs shown in Exhibit B.
 39

40 (15) Central Registry. The department will work with affected counties, ODFW, the BLM and
 41 USFWS to maintain a central registry, tracking anthropogenic disturbance from existing
 42 (baseline) and all new development affecting core areas. In addition to serving as partners in
 43 maintaining the central registry, counties must report all development permits for all uses
 44 within a core area to the department. The registry will include baseline calculations of direct

1 impacts consistent with the approach identified by the Bureau of Land Management (BLM) .
 2 Counties may establish more refined, project specific data to replace the BLM baseline figures
 3 so long as all counties utilize a common methodology. Each year the department shall report to
 4 the commission the amount of new direct impacts in each PAC. The report shall be coordinated
 5 with and made available to all affected counties.

6
 7 (16) Metering. These rules are intended to ensure that ~~disturbance levels do not exceed three~~
 8 ~~percent the area of direct impacts in any priority area, and that the overall amount of direct~~
 9 ~~disturbance in any priority area PAC~~ does not increase by ~~more an amount greater than 1.0-10~~
 10 ~~percent of the total area of the PAC in any ten-year period following.~~ The initial period shall
 11 commence upon the effective date of these rules. ~~If either of these thresholds is exceeded,~~
 12 ~~then the department must report that exceedance to the commission along with a proposal to~~
 13 ~~amend and continue for ten consecutive years, where upon the process shall be successively~~
 14 ~~repeated. The commission will consider revisions to these rules to adapt the standards and~~
 15 ~~criteria such that the thresholds are met if the department's yearly reports required by~~
 16 ~~subsection (15) above indicate that the development trends in any PAC indicate that the 1.0~~
 17 ~~percent direct impact threshold is in jeopardy of being exceeded before the ten-year period has~~
 18 ~~expired.~~ Any proposal to amend these rules undertaken by the department shall be developed
 19 in coordination with all affected counties and other stakeholders.
 20

21 ~~(16) The department will work with ODFW, the BLM and USFWS to maintain a central registry,~~
 22 ~~tracking disturbance from existing (baseline) and all new development affecting core areas and~~
 23 ~~low density habitat. Counties must report all development permits for all uses within a core~~
 24 ~~area or within low density habitat to the department. The registry will include baseline~~
 25 ~~calculations of direct disturbance as of the date of the proposed listing of Sage Grouse, in 2010.~~
 26

27 ~~(17)~~ (17) Disturbance Threshold. These rules are intended to ensure that direct impact levels do
 28 not exceed three percent of the total area in any PAC. If this three percent threshold is
 29 approached, then the department must report that situation to the commission along with a
 30 proposal to amend these rules to adapt the standards and criteria such that the threshold is not
 31 exceeded.
 32

33 (18) State agency coordination programs. All state agencies that carry out or that permit ~~large-~~
 34 ~~scale development conflicting uses~~ in core area or in low density habitat, significant general
 35 habitat including but not limited to OWRD, ODOT, DSL, DOGAMI, ODOE and the EFSC, and DEQ
 36 must report the proposed development to the department, along with an estimate of the direct
 37 ~~disturbance~~ impact of the development. In addition, to the extent not regulated by a county,
 38 such development, other than the issuance of water rights and the expansion of cultivation,
 39 must meet the requirements of subsection ~~(109)~~ (c) of this rule.
 40

41 ~~(18) Scheduled review and update, if necessary, to commence on or before June 30, 2025.~~ (19)
 42 Scheduled Review. The department shall commence a review of these rules on or about June
 43 30, 2025 and, if determined to be necessary, recommend revisions to achieve the policy
 44 objectives found herein. Furthermore, should the species become listed under the Federal

1 Endangered Species Act the commission may consider whether continued application of this
2 rule is necessary. Should the rule remain applicable and the species is de-listed the commission
3 shall consider whether continued application of this rule is necessary. However, this rule may
4 not be rescinded if its presence and applicability serves as a basis for the federal government to
5 determine that listing the species is not necessary, that Oregon should receive special status
6 under Section 4(d) of the Federal Endangered Species Act or that the species should be de-
7 listed.

OREGON ADMINISTRATIVE RULES
OREGON DEPARTMENT OF FISH AND WILDLIFE
DIVISION 140

GREATER SAGE-GROUSE CONSERVATION STRATEGY FOR OREGON

635-140-0000

Purpose

These administrative rules establish the policy of the Department for the protection and enhancement of Greater Sage-Grouse in Oregon. These rules incorporate and supplement portions of the "Greater Sage-Grouse Conservation Assessment and Strategy for Oregon" (2011) ("the Plan") which sets population and habitat management objectives, and defines and governs the Department's core area strategy for conservation of sage-grouse in Oregon. These rules also advance sage grouse population and habitat protection through a mitigation hierarchy and the establishment of a mitigation standard for impacts of development actions in sage-grouse habitat. In the event of a conflict between the "Plan" and these rules, these rules govern.

Statutory Authority: ORS 496.012, 496.138, 496.146, 496.162, 498.500, 498.502

Stats Implemented: ORS 496.012, 496.138, 496.146, 496.162, 498.500, 498.502

635-140-0005

Definitions

For the purposes of OAR 635-140-0000

Technical terms used in these sections are further defined in the glossary of the "Greater Sage-Grouse Conservation Assessment and Strategy for Oregon" adopted by the Commission on April 22, 2011 (copies of the plan are available through the Oregon Department of Fish and Wildlife).

- (1) "Areas of High Population Richness" are mapped areas that represent statistically significant clustering of the most highly attended leks and associated nesting habitat.
- (2) "Core areas" are mapped sagebrush types or other habitats that support greater 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 maps are maintained by the Department.
- (3) "Development action" means any anthropogenic 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.

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

(5) “Functionality” is the ability of habitat to meet sage grouse seasonal and/or year round life history needs (e.g. breeding, early rearing, wintering, migratory) and sustain sage grouse populations.

(6) “Indirect impacts” are effects that are caused by or will ultimately result from an affected development activity. Indirect effects usually occur later in time or are removed in distance compared to direct effects.

(7) “Low density” areas are mapped sagebrush types or other habitats that support greater 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.” Low density area maps are maintained by the Department.

(8) “General habitat” is occupied (seasonal or year-round) sage grouse habitat outside core and low density habitats.

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

635-140-0010

Population Management

In accordance with the Wildlife Policy (ORS 496.012), the Department’s primary population management goal is to restore, maintain and enhance populations of greater sage-grouse such that multiple uses of populations and their habitats can continue. Regional and state population objectives shall be identified based on the best information available

(1) Policy: Manage greater sage-grouse statewide to maintain or enhance their abundance and distribution at the 2003 spring breeding population level, approximately 30,000 birds over the next 50 years.

(2) Objectives: Consistent with the population management policy, achieve the following regional population objectives:

(a) Baker Resource Area BLM: maintain or enhance greater sage-grouse abundance and distribution at the 2003 spring breeding population level, approximately 2,000 birds.

(b) Vale District BLM excluding Baker Resource Area BLM): maintain or enhance greater sage-grouse abundance and distribution at the 2003 spring breeding population level, approximately 11,000 birds.

(c) Burns District BLM: maintain or enhance greater sage-grouse abundance and distribution at the 2003 spring breeding population level, approximately 4,300 birds.

(d) Lakeview District BLM: maintain or enhance greater sage-grouse abundance and distribution at the 2003 spring breeding population level, approximately 9,400 birds.

(e) Prineville District BLM: restore greater sage-grouse abundance and distribution near the 1980 spring breeding population level, approximately 3,000 birds.

Statutory Authority: ORS 496.012, 496.138, 496.146, 496.162

Stats Implemented: ORS 496.012, 496.138, 496.146, 496.162

635-140-0015

Habitat Management

(1) Goals: The Department's habitat goals are to achieve the following, recognizing that such achievement is dependent upon authorities, programs, collaborative partnerships, and other factors beyond those within the Department's authority alone:

(a) Maintain or enhance the distribution of sagebrush habitats within greater sage-grouse range in Oregon;

(b) Manage those habitats in a variety of structural stages to benefit greater sage-grouse while reducing threats and promoting resilience;

(c) Avoid development actions in sage-grouse core, low density, and general habitats which adversely impact sage-grouse habitat or sage-grouse use of those habitats;

(d) Limit the extent, location, and negative impacts of development actions over time within sage-grouse core, low density, and general habitats. In core areas, direct impacts from anthropogenic disturbance will be limited to no more than 3% of any "Priority Area for Conservation" and at a rate of less than 1.0% over a ten year period as described in OAR 660 023 01115;

(e) Require compensatory mitigation for direct and indirect impacts from developments within sage grouse core, low density, and general habitats. Ensure such mitigation provides a net conservation benefit to sage-grouse and their habitat by providing an increase in the functionality of their habitat to support sage-grouse, consistent with OAR 635-140-0025.

(2) Objective: Manage a minimum of 70% of greater sage-grouse range for sagebrush habitat in advanced structural stages, sagebrush class 3, 4 or 5, with an emphasis on classes 4 and 5. The remaining approximately 30% includes areas of juniper encroachment, non-sagebrush shrubland, and grassland and should be managed to increase available habitat within greater sage-grouse range.

(3) Objective: Maintain and enhance existing sagebrush habitats and enhance potential habitats that have been disturbed such that there is no net loss of sagebrush habitat in the following regions:

(a) Baker Resource Area BLM: 82% sagebrush and 18% disturbed habitats.

(b) Vale District BLM (excluding Baker Resource Area): 70% sagebrush and 30% disturbed habitats.

(c) Burns District BLM: 68% sagebrush and 32% disturbed habitats.

(d) Lakeview District BLM: 72% sagebrush and 28% disturbed habitats.

(e) Prineville District BLM: 47% sagebrush and 53% disturbed habitats.

Statutory Authority: ORS 496.012, 496.138, 496.146, 496.162

Stats Implemented: ORS 496.012, 496.138, 496.146, 496.162

635-140-0020

Core Area Approach to Conservation

(1) The purpose of establishing the Department's core area approach is to address greater sage-grouse management from a conservation biology perspective that identifies the most productive populations and habitats associated with meeting all life history needs related to ensuring sage-grouse viability in Oregon.

(a) Policy 1. The Department shall develop and maintain maps that identify core area habitats necessary to conserve 90% of Oregon's greater sage-grouse population, with emphasis on highest density and important use areas which provide for breeding, wintering and connectivity corridors.

(b) Policy 2. The Department shall develop and maintain maps that identify low density habitat which provide breeding, summer, and migratory habitats of the Oregon statewide greater sage-grouse population.

(c) When developing and maintaining the maps referred to in paragraphs (a) and (b) the Department will use:

(A) Local Sage-Grouse Implementation Teams to evaluate the maps and refine exterior boundaries by use of aerial imagery and local knowledge of sage-grouse and sage-grouse habitat;

(B) Best available science to further understanding of greater sage-grouse life history and conservation needs; and

(C) County Governing bodies, or their designees, to provide input regarding changes in local land use to be incorporated in the core area maps.

635-140-0025

Mitigation Hierarchy of Impacts in Sage-grouse Core, Low Density, and General Habitats

Adverse impacts in sage-grouse core, low density, and general habitat from development actions must be mitigated by the developer for both direct and indirect adverse impacts to sage-grouse and their habitats. When ascertaining direct and indirect adverse impacts from development actions, the Department will use the most current and best available science related to sage-grouse biology and habitat conservation, including the Mitigation Framework for Sage-Grouse Habitats (ODFW, March 20, 2012). Mitigation is comprised, in hierarchical order, of avoidance, minimization, and compensatory mitigation.

(1) Policy 1. Mitigation Hierarchy for direct and indirect impacts from development actions will be required where the proposed development action:

(a) Requires a county permit, is a large-scale development as defined in Oregon Land Conservation and Development OAR 660-023-0115, and would impact core or low density habitat,

(b) Requires a county permit, is a large-scale development as defined in Oregon Land Conservation and Development OAR 660-023-0115, and would impact general habitat within 3.1 miles of a lek in a manner that would reduce functional sage-grouse habitat or sage grouse use of their habitat,

(c) Requires a county permit but is not a large scale development as defined in Oregon Land Conservation and Development OAR 660-023-0115. In this case, through consultation with the development action proponent, the Department will determine:

(A) Whether to require mitigation based on the likelihood of adverse impacts from the proposed action in a manner that would reduce functional sage-grouse habitat or sage grouse use of that habitat;

(1) within 4 miles of a lek in core area habitat,

(2) within 3.1 miles of a lek in low density habitat, or

(3) within 3.1 miles of a lek in general habitat

(B) If mitigation is required based on (1)(c)(A) above, the appropriate level of mitigation will be based on the nature of the impact and the resultant risk to sage-grouse.

(d) Is located in or would adversely impact sage grouse habitat on public lands and requires state or federal approval.

(2) Policy 2. The Department may approve or recommend approval of mitigation for impacts from a large-scale development permitted by a county; or any development actions permitted by a state or federal government entity on public land, within sage-grouse core area habitat only after the following mitigation hierarchy has been addressed by the permitting entity with the intent of directing the development action from the most productive habitats (core, low density, and general) to the least productive areas for sage-grouse.

(a) Avoidance in Core Area Habitat. If the proposed development can occur in another location that avoids both direct and indirect impacts within core habitat, then the proposal must not be allowed unless it can satisfy the following criteria:

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

(B) The proposed development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands; and

(C) If the proposal is for a large-scale development as defined in Oregon Land Conservation and Development OAR 660-023-0115 and either (2)(a)(A) or (2)(a)(B) is found to be satisfied, the permitting entity must also find that it will provide important economic opportunity, needed infrastructure or public safety benefits for local citizens or the entire region.

(b) Avoidance in Low Density Habitat. If the proposed development action can occur in another location that avoids both direct and indirect impacts within low density sage grouse habitat, then the proposal should not be allowed unless it can satisfy the following criteria:

(A) It is not technically or financially feasible to locate the proposed use outside of low density sage-grouse habitat based on accepted engineering practices, regulatory standards, proximity to necessary infrastructure or some combination thereof; or

(B) The proposed development action is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations.

(c) Avoidance in General Habitat. If the proposed development activity and its direct and indirect impacts are in general sage grouse habitat (within 3.1 miles of a lek for county permitted actions), then the permitting entity may allow the activity based on satisfaction of the following criteria:

(A) Consultation between the development proponent and the Department that generates recommendations pursuant to the approach identified in minimization subsection (d), and

(B) Incorporation by the project proponent of reasonable changes to the project proposal based on the above consultation with the Department, and/or justification as to why a given recommendation is not feasible.

(d) Minimization. If after exercising the above avoidance tests, the permitting entity finds the proposed development action cannot be moved to non-habitat or into a habitat category that avoids adverse direct and indirect impacts to a habitat category of greater significance (i.e., core or low density), then the next step applied in the mitigation hierarchy will be minimization of the direct and indirect impacts

of the proposed development action. Minimization consists of how to best locate, construct, operate and time (both seasonally and diurnally) the development action so as to avoid or minimize direct and indirect impacts on important sage grouse habitat and sage grouse within the area of general habitat.

(A) Minimizing impacts from development actions in core habitat shall ensure direct and indirect impacts do not occur in known areas of high population richness within a given core area, unless a project proponent demonstrates, by a preponderance of the evidence, that such an approach is not feasible.

(B) Minimizing impacts from development actions in general habitat shall include consultation between the development proponent and the Department that considers and results in recommendations on how to best locate, construct, or operate the development action so as to avoid or minimize direct and indirect impacts on important sage grouse habitat within the area of general habitat.

(e) Compensatory Mitigation. If avoidance and minimization efforts have been exhausted, compensatory mitigation to address both direct and indirect impacts will be required for remaining adverse impacts from the proposed development to sage-grouse habitat, consistent with the mitigation standard in (3) below.

(3) Policy 3. The standard for compensatory mitigation of direct and indirect habitat impacts in sage grouse habitat (core low density, and general areas) is to achieve net conservation benefit for sage-grouse by replacing the lost functionality of the impacted habitat to a level capable of supporting greater sage-grouse numbers than that of the habitat which was impacted. Where mitigation actions occur in existing sage grouse habitat, the increased functionality must be in addition to any existing functionality of the habitat to support sage-grouse. When developing and implementing mitigation measures for impacts to core, low density, and general sage-grouse habitats, the project developers may:

(a) Work directly with the Department to obtain approval to implement a plan, at the responsibility of the developer, for mitigating impacts consistent with the standard in OAR 635 140 0025 (4) or,

(b) Work with an entity approved by the department to implement, at the responsibility of the developer, "in-lieu fee" projects consistent with the standard in OAR 635 140 0025 (4).

(c) Any mitigation undertaken as in (a) or (b) above must have in place measures to ensure the results of the mitigation activity will persist (barring unintended natural events such as fire) for the life of the original impact.

(4) Policy 4. The Department shall follow the Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-0000) when defining habitat categories and providing recommendations to address potential site-level impacts to species other than greater sage-grouse that occur within sage-grouse core area habitat or

sage-grouse low density habitat, except that if there is a resulting conflict between OAR 635-415-0000 and this rule, then this rule shall control.