

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19  
20 A. Commercial Uses.

21  
22 B. Mineral, Aggregate, Oil and Gas Uses.

23 C. Transportation Uses.

24 D. Utility/Solid Waste Disposal Facilities.

25 E. Parks/Public/Quasi-Public.

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

28  
29 (k) "Low density areas" are mapped sagebrush types or other habitats that support sage-grouse that  
30 are encompassed by areas where:

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

32 B) Local corridors occur outside of all lek density strata;

33 C) Low lek density strata occur outside of connectivity corridors; or d) seasonal connectivity corridors  
34 occur outside of all lek density strata. Low density area maps are maintained by ODFW .

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

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

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

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

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

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

12  
13 (o) "Priority Areas for Conservation" (PACs) are key habitats identified by state sage grouse  
14 conservation plans or through other sage-grouse conservation efforts (e.g., BLM Planning). In Oregon,  
15 core area habitats are PACs.

16  
17 (4) Local program development and direct applicability of rule. Local governments may develop a  
18 program to achieve consistency with OAR 660-023-0115 by following the standard process in OAR  
19 660-023-0030, OAR 660-023-0040 and 660-023-0050 and submitting the amendment to the  
20 Commission in the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-  
21 025-0175. Until a county amends its comprehensive plan and land use regulations to achieve  
22 consistency with OAR 660-023-0115 the provisions of subsections (5) thru (12) shall apply directly to  
23 land use decisions affecting significant sage-grouse habitat. When a local program has been  
24 acknowledged by LCDC to be in compliance with Goal 5 and equivalent to OAR 660-023-0115 with  
25 regard to protecting sage-grouse habitat, that program becomes the controlling county land use  
26 document and compliance with this rule is no longer necessary.

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

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

33 (a) Core areas;

34 (b) Low density areas; and

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

- 1 **(d) The exact location of sage-grouse habitat may be refined during consideration of specific projects**  
2 **but must be done in consultation with ODFW.**
- 3 **(7) Conflicting uses. For purposes of protecting significant sage-grouse habitat, conflicting uses are:**
- 4 **(a) Large-scale development; and**
- 5 **(b) Other activities, which require review by county decision makers pursuant to OAR 660-033-0120 or**  
6 **other applicable provisions of law and are proposed:**
- 7 **(A) In a core area within 4.0 miles of an occupied or occupied-pending lek;**
- 8 **(B) In a low density area within 3.1 miles of an occupied or occupied-pending lek; or**
- 9 **(C) In general habitat within 3.1 miles of an occupied or occupied-pending lek.**
- 10 **(8) Pre-Application Conference. A county should convene a pre-application conference prior to**  
11 **accepting an application for a conflicting use in significant sage-grouse habitat. The pre-application**  
12 **conference should include, at a minimum, the applicant, county planning staff and local ODFW staff.**
- 13 **(9) Program to achieve the goal of protecting significant sage grouse habitat in a core area.**
- 14 **(a) A county may consider a large-scale development in a core area upon applying disturbance**  
15 **thresholds and the mitigation hierarchy as follows:**
- 16 **(A) A county may consider a large-scale development that does not cause the one-percent metering**  
17 **threshold described in section (16) or the three-percent disturbance threshold described in section**  
18 **(17) to be exceeded.**
- 19
- 20 **(B) Avoidance. Before proceeding with large scale development activity that impacts a core area, the**  
21 **proponent must demonstrate that reasonable alternatives have been considered and that the activity**  
22 **or other action cannot avoid impacts within core area habitat. If the proposed large-scale**  
23 **development can occur in another location that avoids both direct and indirect impacts within core**  
24 **area habitat, then the proposal must not be allowed unless it can satisfy the following criteria.**
- 25 **(i) It is not technically feasible to locate the proposed large-scale development outside of a core area**  
26 **based on accepted engineering practices, regulatory standards or some combination thereof. Costs**  
27 **associated with technical feasibility may be considered, but cost alone may not be the only**  
28 **consideration in determining that development must be located such that it will have direct or indirect**  
29 **impacts on significant sage-grouse areas; or**
- 30
- 31 **(ii) The proposed large-scale development is dependent on a unique geographic or other physical**  
32 **feature(s) that cannot be found on other lands; and**

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

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

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

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

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

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

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

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

28  
29 (A) Avoidance. Before proceeding with large-scale development activity that impacts a low density  
30 area, the proponent must demonstrate that reasonable alternatives have been considered and that  
31 the activity or other action cannot avoid impacts within a low density area. If the proposed large-  
32 scale development can occur in another location that avoids both direct and indirect impacts within a  
33 low density area, then the proposal must not be allowed unless it can satisfy the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10