



# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

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June 25, 2015

TO: Oregon Legislature  
FROM: Jim Rue, Director  
Department of Land Conservation and Development

SUBJECT: LEGISLATIVE NOTICE OF PROPOSED RULEMAKING: PROVIDING  
LAND USE PROTECTION FOR GREATER SAGE-GROUSE HABITAT

During its January 2015 meeting, the Land Conservation and Development Commission (commission) voted to initiate rulemaking, at the request of the Governor. The rulemaking was seen by Governor Kitzhaber as a key piece in Oregon's strategy to demonstrate why listing the species under the federal endangered species act should not be necessary. The rulemaking will amend OAR chapter 660, division 23, often referred to as the "Goal 5 Rule." The purpose of the amendment is to create a "safe harbor" to ensure the protection of sage grouse and sage grouse habitat in central and eastern Oregon to preserve the ability of counties to develop and enact local sage grouse protection programs, and to describe other duties to be carried out by the department and other state agencies. **The commission will hold a public hearing and take action to adopt the rule at its July 23-24, 2015 meeting in Burns, Oregon.**

The rule would apply to portions of seven (7) counties in central and eastern Oregon and serves to establish an order of operations for considering development proposals on lands identified as significant sage-grouse habitat<sup>1</sup>. The proposed rule (OAR 660-023-0115) focuses on lands designated for resource (typically zoned farm, farm/forest or forest) use, and will be directly applicable to local decisions upon its effective date, currently expected to be late August.

The proposed rule will apply to non-federal lands, including private ownerships, in the seven affected counties. The rule establishes areas of significant habitat, identifies conflicting uses and identifies processes for the affected counties to apply when considering proposals for large-scale development and other land use activities on significant sage-grouse habitat. The rule will apply directly to local governments until a county establishes its own, commission approved program for protecting greater sage grouse habitat.

Key provisions of the proposed rule include:

- Identification of about 12 million acres of sage grouse habitat areas as "core", "low density" or "general", to which land use rules will be applied to direct development away from significant sage grouse habitat.

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

- Definition of terms, nearly all of which have been taken from ODF&W or federal sources to ensure consistency across programs. Examples include definitions of large scale development, habitat types and the mitigation hierarchy.
- Direction to counties considering large scale development proposals and other conflicting uses in identified habitat areas. Guidance regarding application of the mitigation hierarchy and coordination with ODF&W for the three habitat types are detailed.
- Procedures for direct applicability, local program development and ODF&W mapping. 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, or to develop their own local programs at any time, which would be subject to final approval by the commission.

The proposed rules were developed with assistance from a rules advisory committee (RAC) comprised of stakeholder groups and individuals predominantly from, or representing, the affected areas in the seven identified counties. In addition, department staff and the RAC communicated with the Sage Grouse Conservation Partnership (SageCon), a group convened by the governor in 2012, whose purpose is to demonstrate that an ESA listing for sage grouse in Oregon is not necessary.

A public hearing for the proposed rule is scheduled for a commission hearing July 23 in Burns, Oregon. The hearing will begin at 1:00 PM and be held at the Harney County Community Center located at 484 N. Broadway. The department will be submitting the proposed rule and its recommendation at the meeting and anticipates that the commission will adopt the rule after a public hearing. Additional information about the hearing and the proposed rule are available at the department website at <http://www.oregon.gov/LCD/rulemaking.shtml>. If you have questions about the proposed rule or would like additional information, contact Jon Jinings at [jon.jinings@state.or.us](mailto:jon.jinings@state.or.us).

Cc:

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| • Tina Kotek, Speaker of the House of Representatives   | • Peter Courtney, President of the Senate  | • Senator Chris Edwards, Chair Senate Committee on Environment and Natural Resources             |
| • Senator Alan Olsen, Vice-chair Senate Committee on Environment and Natural Resources          | • Representative Brad Witt, Chair House Committee on Agriculture and Natural Resources       | • Representative Susan McLain, Vice-chair House Committee on Agriculture and Natural Resources   |
| • Representative Wayne Krieger, Vice-chair House Committee on Agriculture and Natural Resources | • Representative Jessica Vega Pederson, Chair House Committee on Energy and Environment      | • Representative Jeff Reardon, Vice-chair House Committee on Energy and Environment              |
| • Representative Mark Johnson, Vice-chair House Committee on Energy and Environment             | • Representative Brian Clem, Chair House Committee on Rural Communities, Land Use, and Water | • Representative Bill Post, Vice-chair House Committee on Rural Communities, Land Use, and Water |
| • Representative Ken Helm, Vice-chair House Committee on Rural Communities, Land Use, and Water | • Richard Whitman, Governor's Natural Resource Policy Director                               | • Gabriela Goldfarb, Natural Resource Policy Advisor   |