

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

3 (1) Greater Sage-Grouse (hereafter “sage-grouse”) habitat is a unique wildlife resource because it is
4 subject to a variety of threats across a broad, multi-state region. Nearly all of Oregon’s sage-grouse
5 habitat is located on public land managed by the federal government. Managing private and other
6 non federal land for the best possible outcomes requires partnership and cooperation among many
7 stakeholders. Engagement on the part of county government is critical to Oregon’s efforts to arrest
8 the decline of this species.

Comment [JJ1]: This is an attempt to address some of the county comments. See Judge Gratsy Memo.

9 (2)(1) For purposes of this division, the definitions in OAR 635-140-0015 shall apply. In addition, the
10 following definitions shall apply:

Comment [JJ2]: Sweeps in definitions from the ODFW Rule.

11 (a) “CCAA” means < insert correct definition here> .

Comment [JJ3]: The RAC will need to consider whether or not this term has a place in the LCDC rule.

12 (b) ~~(a)~~ “Core areas habitat” are prioritized habitat based on measures that assess breeding bird density
13 of sage-grouse populations and associated habitats, is the most productive populations and habitats
14 that meet all life history needs necessary to conserve 90% of Oregon’s greater sage-grouse population
15 with emphasis on highest density and important use areas which provide for breeding, wintering and
16 connectivity corridors. Core habitat areas are identified on maps developed and maintained by ODFW
17 as described in OAR 635-140-0015, which show all sagebrush types or other habitats that support
18 greater sage-grouse that are encompassed by areas:

19
20 (A) Of very high, high and moderate lek density strata;

21
22 (B) Where low lek density strata overlap local connectivity corridors;

23
24 (C) Where winter habitat-use polygons overlap with either low lek density strata, connectivity
25 corridors, or occupied habitat.

26 (c) ~~(b)~~ “Disturbance” is natural (~~fire, conifer infestation, noxious weeds, etc...~~) and anthropogenic
27 (human caused) activities than can negatively affect how sage-grouse use their habitat. For purposes of
28 this rule, only anthropogenic disturbances are addressed. In the context of avoidance, minimization
29 and compensatory mitigation per OAR 660-023-0115(6)(a), (b) & (c), disturbance means the area of
30 direct impact (the physical footprint of the development or activity), and the area of indirect impacts
31 that are known to affect essential behavioral aspects of sage-grouse life stages (breeding, foraging,
32 shelter, and migration) as set forth in _____ (supplemental ODFW sage-grouse policy). For indirect
33 impacts, this framework will include specific impact areas for the most common types of indirect
34 impacts: noise and predation.

35 (d) “Direct disturbance” means the actual, physical footprint of large scale development.

36 (e) “Indirect disturbance” means on-site and off-site impacts that extend beyond the actual, physical
37 footprint of large scale development that are known to affect essential behavioral aspects of sage-
38 grouse life stages as set forth in _____ (supplemental ODFW sage-grouse policy).

- 1 **(f) "Mitigation hierarchy" is the approach used to consider whether or not to approve large scale**
2 **development and is comprised of a three step process:**
- 3 **(A) "Avoidance" is the first step in the mitigation hierarchy and is accomplished by not taking a certain**
4 **development action or parts of that action. If avoidance is not possible the action must demonstrate**
5 **minimization.**
- 6 **(B) "Minimization" is the second step in the mitigation hierarchy and is accomplished by limiting the**
7 **degree or magnitude of the development action and its implementation. Any direct or indirect**
8 **impacts to sage-grouse habitat remaining after minimization are subject to compensatory mitigation**
9 **requirements.**
- 10 **(C) "Compensatory mitigation" means the replacement or enhancement of the function of habitat to**
11 **support sage-grouse in greater numbers than was lost.**
- 12 **(g)(c) "Large Scale Development" is anthropogenic activity that requires a land use decision as defined at**
13 **ORS 197.015(10) and _____ . Large-scale development does**
14 **not include the establishment of a residence or the creation of a new area of cultivated agriculture, or**
15 **the irrigation of land for agriculture.**
- 16 **(h) (d) "Low density areas habitat" are habitat that serve in conjunction with core areas to provide a**
17 **complete, biologically important environment necessary for the persistence of the species is habitat**
18 **which provides breeding, summer, and migratory habitats of the Oregon statewide greater sage-**
19 **grouse population. Low density habitat is identified on maps developed and maintained by ODFW as**
20 **described in OAR 635-140-0015, which show all sagebrush types or other habitats that support greater**
21 **sage-grouse that are encompassed by areas where**
- 22 **(A) low lek density overlapped with seasonal connectivity corridors;**
- 23 **(B) local corridors occurred outside of all lek density strata;**
- 24 **(C) low lek density strata occur outside of connectivity corridors; or**
- 25 **(D) seasonal connectivity corridors occur outside of all lek density strata.**
- 26 **(e) "Sage grouse habitat" is a category of wildlife habitat.**
- 27 **(f) "Sage grouse lek" means _____.**
- 28 **(g) "Sage grouse migration corridor" means _____.**
- 29 **(h) "Significant economic activity" means a use that will create at least 100 full time jobs, not including**
30 **construction employees, with wages and benefits that exceed the regional average.**
- 31 **(i) "Structure" means a building or other major improvement that is built, constructed, or installed, not**
32 **including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components**
33 **that are not customarily regulated through zoning ordinances.**

Comment [JJ4]: Worked on with ODFW staff. Still needs ODFW review to make sure I've got this put together right. ODFW has stressed that the language defining "compensatory mitigation" needs to be further fleshed out.

Comment [JJ5]: Tries to make it more clear that we are waiting for the RAC to try and define this term.

Comment [JJ6]: See Comment JJ3 above.

Comment [JJ7]: These terms should be covered by the reference to ODFW's Rule.

Comment [JJ8]: Was never meant to be included in this draft. Let's put it out of my misery.

1 **(3) Private land enrolled in a CCAA is not subject to the provisions of this rule. However, lands which**
2 **withdraw from their CCAA status or are proposed for activities that would cause their CCAA status to**
3 **be withdrawn are subject to the provisions of this rule.**

Comment [JJ9]: The RAC will need to talk about this and think this through. This does not mean to suggest that you get a CCAA and new large scale development that is not subject to this rule. Please don't anyone freak out.

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

Comment [JJ10]: Focuses more directly on being consistent with and equivalent to this rule. Tries to respond to the concern that a county could have its own newly acknowledged program and still be subject to claims that the rule continues to apply.

14 ~~(5)(3)~~ The location of core **habitat areas** and low density **habitat areas** shall be determined by following
15 the final core area maps published by the Oregon Department of Fish and Wildlife (ODFW) **dated August**
16 **24, 2011 included as Exhibit A. Lands removed from the final core area map, as they** it may be updated
17 or amended from time to time, **are no longer required to abide by the provisions of this rule unless**
18 **identified on a different map acknowledged as part of a local comprehensive plan. However, lands**
19 **newly identified as core or low density habitat on an updated version of the ODFW map are not**
20 **subject to the provisions of this rule unless it is amended to require such consideration. The** Exact
21 locations **of core areas and low density areas** may be re~~(5)~~ **defined** during consideration of specific
22 projects but must be done in consultation with ODFW.

Comment [JJ11]: This language, clumsy as it is, attempts to solve the "moving target" concern expressed at the last RAC meeting. It would lock this version of the rule to the August 2011 core area map. Changes rolling back habitat area mapping could be used unless the county has adopting its own map, which presumably would be more accurate. Newly mapped lands would not be subject to the rule unless it was amended by LCDC after a full vetting process.

23 ~~(6)(4)~~ **Significant sage-grouse habitat includes only core habitat areas and low density habitat areas**
24 **protected under statewide planning goals 3 or 4 as of July 1, 2015.** located outside of urban growth
25 boundaries, unincorporated community boundaries established pursuant to OAR Chapter 660, Division
26 22, lands designated as exception areas under OAR Chapter 660, Divisions 4 or 14, or any land otherwise
27 designated for nonresource purposes as of January 1, 2015 are significant sage-grouse habitat.

Comment [JJ12]: Simply attempts to clarify that lands currently designated for development are not subject to this rule.

28 ~~(7)(5)~~ Large scale development is ~~considered to be a~~ **the only** conflicting use for purposes of protecting
29 significant sage-grouse habitat. Farm use as defined in ORS 215.203(1), including livestock grazing is
30 specifically not considered a conflicting use for purposes of protecting significant sage-grouse habitat.

31 ~~(8)(6)~~ **A county may approve** Large scale development ~~may be allowed~~ in a core area upon **applying**
32 **the mitigation hierarchy as follows** finding that:

Comment [JJ13]: This language attempts to provide some cadence with the definitions section above. Using the term "mitigation hierarchy" was ODFW's idea and I think it works. However, I would like them to look at it and see if it lines up right.

33 (a) Avoidance. The proposed large-scale development (including the direct footprint of the use and its
34 indirect impact area) must be locationally dependent and unable to be sited outside of a core area. A
35 large-scale development is locationally dependent if is must be located in a core area based one or more
36 of the following factors:

37 (A) It is dependent on a unique geographic or other physical feature(s) that can not be found on other
38 lands, such as significant energy resources or rare mineral deposits, or it is a linear use that must cross
39 core area in order to achieve a reasonably direct route.

- 1 ~~(B) If the use is an urban use, lack of available urban and nonresource lands;~~
- 2 (C) If the use is a linear use it must use existing rights of way or locate adjacent to them, to the extent
3 possible;
- 4 (D) It is not technically feasible to locate the proposed use outside of a core area based on accepted
5 engineering practices, regulatory standards or some combination thereof.
- 6 (D) Public health and safety; and
- 7 (E) Other requirements of state or federal agencies.
- 8 (F) Costs associated with any of the factors listed above may be considered, but cost alone may not be
9 the only consideration in determining that development must be located such that it will have direct or
10 indirect impacts on core areas.
- 11 (b) Minimization. If the proposed use cannot be sited by avoiding core area sage grouse habitat
12 altogether, including direct and indirect impacts, it shall be located to minimize the amount of such
13 habitat directly or indirectly disturbed, and to minimize fragmentation of the core area(s) in question by
14 locating the development adjacent to existing development and at the edge of the core area when
15 possible. Uses should minimize impacts through micro-siting, limitations on the timing of construction
16 and/or use, and methods of construction. Costs associated with minimization may be considered, but
17 cost alone may not be the only consideration in determining that location of development cannot
18 further minimize direct or indirect impacts to core areas.
- 19 (c) Compensatory Mitigation. To the extent that a proposed large-scale development will have direct or
20 indirect adverse impacts on a core area or low density habitat after application of the avoidance and
21 minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and
22 indirect adverse effects of the development to any core area and any low density habitat. The required
23 mitigation must comply with the supplemental Sage Grouse mitigation policy adopted by the Oregon
24 Fish and Wildlife Commission.¹
- 25 ~~(9)(7) Large scale development may be allowed in a low density area upon finding that the proposed~~
26 ~~development, including direct and indirect disturbance —~~
- 27 ~~[Please See Endnote i. on Page 6].~~
- 28 ~~(8) Significant sage grouse habitat may not be converted from a farm or forest designation protected~~
29 ~~under goals 3 or 4 to a land use designation with greater development potential or mapped as eligible~~
30 ~~for destination resorts under goal 8.~~

Comment [JJ14]: Everyone seemed to get wound up about this so maybe we should just drop it? I think a big next step will be to evaluate this subject and determine how to best write a fair, balanced and robust "avoidance" test.

Comment [JJ15]: I've tried to lay out a few options in the endnote.

¹ The details of compensatory mitigation crediting and debiting are contained in the supplemental ODFW mitigation policy.

1 **(10) Lands including significant sage-grouse habitat that are upzoned to a greater development**
2 **potential than otherwise allowed under goals 3 and 4 after July 1, 2015 shall be counted as**
3 **disturbance pursuant to Subsection (12) below.**

4 **11(9) Subsections (7) thru (9)** The provision of this rule become applicable on July 1, 2017 rather than as
5 otherwise specified by OAR 660-023-0250.

6 **(12)(10) Landscape-Level Disturbance.** The standards in subsection (6) to (8), above, are designed to
7 minimize the amount of future disturbance from anthropogenic sources to core and low density areas.
8 Consistent with available science concerning the relation between human disturbance and sage grouse
9 population levels, the department will monitor direct disturbance in core areas in each of the priority
10 areas **for conservation (PAC)** shown in Exhibit **B**. These rules are intended to ensure that disturbance
11 levels do not exceed three percent in any priority area, and that the overall amount of direct
12 disturbance in any priority area does not increase by more than in any ten-year period following the
13 effective date of these rules. If either of these thresholds is exceeded, then the department must report
14 that exceedance to the commission along with a proposal to amend these rules to adapt the standards
15 and criteria such that the thresholds are met. **Any proposal to amend these rules undertaken by the**
16 **department shall be developed in coordination with all affected counties and other stakeholders.**

17 **(13)(11)** The department will work with ODFW, the BLM and USFWS to maintain a central registry,
18 tracking disturbance from existing (baseline) and all new development affecting core areas and low
19 density habitat. Counties must report all development permits for all uses within a core area or within
20 low density habitat to the department. The registry will include baseline calculations of direct
21 disturbance as of the date of the proposed listing of Sage Grouse, in 2010.

22 **(14)(12)** State agency coordination programs. All state agencies that carry out or that permit large-scale
23 development in core area or in low density habitat, including but not limited to OWRD, ODOT, DSL,
24 DOGAMI, ODOE and the EFSC, and DEQ must report the proposed development to the department,
25 along with an estimate of the direct disturbance of the development. In addition, to the extent not
26 regulated by a county, such development, other than the issuance of water rights and the expansion of
27 cultivation, must meet the requirements of subsection (6)(c) of this rule.

Comment [JJ16]: I've been convinced that prohibiting upzoning is probably a bad idea. However, how should we consider zone changes? This would say that newly zoned lands are coupled towards the 3% threshold but how are the new uses considered? Are they subject to the mitigation hierarchy? What if it's a new rural residential area and residential development is totally excused from this rule? Just some things to think about....

Comment [JJ17]: What I think we want to do is suspend the safe harbor provisions while continuing to ensure any local program development conducted in the interim is subject to this rule.

Comment [JJ18]: We need to be able to explain this section. Given the way "direct disturbance" is currently proposed to be defined I think we are looking at only the physical footprint of "large scale development" is that the intention? We may need guidance from the Governor's Office on this one.

Comment [JJ19]: Harney County has asked how development occurring post 2010 will be accounted for. We should have an answer for this.

Possible LD Options

Alternative	Language Revisions	Comments
A.	<p>Revise (6) as follows:</p> <p>(6) A county may approve large scale development in a core <u>area significant sage-grouse habitat</u> upon applying the mitigation hierarchy as follows:</p> <p>Delete (7)</p>	<p>This alternative would treat core and low density habitat the same.</p>
B.	<p>Revise (6) as follows:</p> <p>(6) A county may approve large scale development may be allowed in a core <u>area significant sage-grouse habitat</u> upon applying the mitigation hierarchy as follows finding that:</p> <p>Revise (6)(a) to include different avoidance tests for Core & LD.</p> <p>Delete (7)</p>	<p>This alternative would treat core and low density very similarly. However, low density would be subject to a different, presumably less onerous, avoidance test.</p>
C.	<p>Leave (6) as written.</p> <p>Revise (7) as follows:</p> <p><u>(7) A county may approve large scale development in a low density habitat area if the provisions of OAR 660-023-0115(6)(b) & (c) are found to be satisfied.</u></p>	<p>This alternative would relieve projects in low density from the avoidance test but still require minimization and compensatory mitigation.</p>

D.	Leave (6) as written. Revise (7) as follows: <u>(7) A county may approve large scale development in a low density habitat area if the provisions of OAR 660-023-0115(6)(c) are found to be satisfied.</u>	This alternative would relieve projects in low density from the avoidance test & minimization requirements but still require compensatory mitigation.
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