

CHAPTER 18.89 GREATER SAGE-GROUSE AREA COMBINING ZONE; GSGA

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18.89.010 Introduction

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

HISTORY

Adopted by Ord. [2015-011](#) §1 on 12/11/2015

18.89.020 Exempt Activities

- A. Those activities that do not require governmental approval, including farm use as defined in ORS 215.203(2), are exempt from the provisions of this chapter.

- B. State agency permits necessary to facilitate a farm use, including granting of new water right permits by the Oregon Water Resources Department (OWRD), are also exempt from the provisions of this chapter.
- C. Any energy facility that submitted a preliminary application for site certificate pursuant to ORS 469.300 et seq. on or before August 13, 2015, is exempt from the provisions of this chapter.
 - 1. Notwithstanding ORS 197.646(3), this chapter shall not be directly applicable to any land use decision regarding that facility unless the applicant chooses otherwise.
 - 2. Similarly, any changes to a local government's acknowledged comprehensive plan or land use ordinances developed to achieve consistency with this chapter 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.
- D. Private and other nonfederal lands are strongly encouraged to participate in a Candidate Conservation Agreement with Assurances (CCAA) program.
 - 1. Voluntary conservation efforts of this nature are recognized by the State of Oregon as a critical part in recovering the breeding population targeted by the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon.
 - 2. Uses identified in CCAA agreements are relieved from the provisions of this chapter except that conflicting uses identified in section DCC 18.89.060 will be subject to sections DCC 18.89.080 thru 18.89.100 in all instances regardless of enrollment status.

HISTORY

Adopted by Ord. [2015-011](#) §1 on 12/11/2015

18.89.030 Definitions

Definitions. For purposes of this chapter, the definitions in OAR 635-140-0002 and in the glossary of the "Greater Sage-Grouse Conservation Assessment and Strategy for Oregon" adopted by the Oregon Fish and Wildlife Commission on April 22, 2011 shall apply. In addition, the following definitions shall apply:

"Areas of High Population Richness" means mapped areas of breeding and nesting habitat within core habitat that support the 75th percentile of breeding bird densities (i.e. the top 25 percent). Please see Exhibit A to OAR 660-023-0115.

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

“Core areas” means mapped sagebrush types or other habitats that support sage-grouse annual life history requirements ~~that are encompassed by areas:~~

~~A.—Of very high, high, and moderate lek density strata;~~

~~B.—Where low lek density strata overlap local connectivity corridors; or~~

~~C.—Where winter habitat use polygons overlap with either low lek density strata, connectivity corridors, or occupied habitat.~~ [The sage-grouse core area habitat map is](#) ~~Core area maps~~ [are](#) maintained by Oregon Department of Fish and Wildlife (ODFW).

“Development action” means any human activity subject to regulation by local, state, or federal agencies that could result in the loss of significant sage-grouse 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 of existing activities proposing new impacts beyond current conditions.

“Direct impact” means an adverse effect of a development action upon significant sage-grouse habitat which is proximal to the development action in time and place.

“Disturbance” includes natural threats to sage-grouse habitat such as: wildfire, juniper infestation and the spread of noxious weeds or human activities that can negatively affect sage-grouse use of habitat either through changing the vegetation type or condition, or displacement of sage-grouse use of an area. For purposes of this chapter only disturbance from human activities are considered.

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

“Indirect impacts” means adverse effects to significant sage-grouse habitat that are caused by or will ultimately result from an affected development activity. Indirect impacts usually occur later in time or are removed in distance compared to direct effects.

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

- A. Commercial Uses.
- B. Mineral, Aggregate, Oil and Gas Uses.
- C. Transportation Uses.
- D. Utility/Solid Waste Disposal Facilities.
- E. Parks/Public/Quasi-Public.

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

“Low density areas” means mapped sagebrush types or other habitats that support sage-grouse populations outside of core areas. ~~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.~~

The sage-grouse low density map is ~~Low density area maps are~~ maintained by ODFW.

“Mitigation hierarchy” means an approach used by decision makers to consider development proposals and is ordinarily comprised of a three step process:

- A. “Avoidance” is the first step in the mitigation hierarchy and is accomplished by not taking a certain development action or parts of that action.
- B. “Minimization” is the second step in the mitigation hierarchy and is accomplished by limiting the degree or magnitude of the development action and its implementation.
- C. “Compensatory mitigation” is the third step in the mitigation hierarchy and means the replacement or enhancement of the function of habitat capable of supporting sage-grouse in greater numbers than predicted to be impacted by a development.

“Occupied Lek” means 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..

“Occupied Pending Lek” means 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.

“Priority Areas for Conservation” (PACs) means 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.

HISTORY

Adopted by Ord. [2015-011](#) §1 on 12/11/2015

18.89.040 Quality, Quantity And Location

The location of sage-grouse habitat within Deschutes County shall be determined by maps produced by ODFW and included as Exhibit B in OAR 660-023-0115.

HISTORY

Adopted by Ord. [2015-011](#) §1 on 12/11/2015

18.89.050 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 areas;

- B. Low density areas; and
- C. Lands within a general habitat area located within 3.1 miles of an occupied or occupied-pending lek.
- D. The exact location of sage-grouse habitat may be refined during consideration of specific projects but

HISTORY

Adopted by Ord. [2015-011 §1](#) on 12/11/2015

18.89.060 Conflicting Uses

For purposes of protecting significant sage-grouse habitat, conflicting uses are:

- A. Large-scale development; and
- B. Other activities, which require review by county decision makers pursuant to OAR 660-033-0120 table and are proposed:
 - 1. In a core area within 4.0 miles of an occupied or occupied-pending lek;
 - 2. In a low density area within 3.1 miles of an occupied or occupied-pending lek; or
 - 3. In general habitat within 3.1 miles of an occupied or occupied-pending lek.

HISTORY

Adopted by Ord. [2015-011 §1](#) on 12/11/2015

18.89.070 Pre-Application Conference

- A. The County Planning Division should convene a pre-application conference with the applicant prior to accepting an application for a conflicting use in significant sage-grouse habitat.
- B. The pre-application conference should include, at a minimum, the applicant, County planning staff and local ODFW staff.

HISTORY

Adopted by Ord. [2015-011 §1](#) on 12/11/2015

18.89.080 Program To Achieve Goal Of Protecting Significant Sage Grouse Habitat In A Core Area

- A. The County may consider a large-scale development in a core area upon applying disturbance thresholds and the mitigation hierarchy as follows:
 - 1. The County may consider a large-scale development that does not cause the one-percent metering threshold described in DCC 18.89.150 or the three-percent disturbance threshold described in DCC 18.89.160 to be exceeded.
 - 2. Avoidance.

- a. Before proceeding with large-scale development activity that impacts a core area, the applicant must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within core area habitat.
 - b. If the proposed large-scale development can occur in another location that avoids both direct and indirect impacts within core area habitat, then the proposal must not be allowed unless it can satisfy the following criteria.
 - 1. It is not technically feasible to locate the proposed large-scale development outside of a core 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
 - 2. The proposed large-scale development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands; and
 - 3. If either DCC 18.89.080(A)(2)(b)(1) or 18.89.080(A)(2)(b)(2) is found to be satisfied the County must also find that the large-scale development will provide important economic opportunity, needed infrastructure, public safety benefits or public health benefits for local citizens or the entire region.
3. Minimization.
- a. 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.
 - b. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction.
 - c. 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 within a given core area, unless a project applicant demonstrates, by a preponderance of the evidence, that such an approach is not feasible.
 - d. 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.

4. Compensatory Mitigation.
 - a. To the extent that a proposed large-scale development will have direct or indirect impacts on a core area after application of the avoidance and minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and indirect impacts of the development to any core area.
 - b. The required compensatory mitigation must comply with OAR chapter 635, division 140.
- B. The County may approve a conflicting use as identified at DCC 18.89.060(B) above upon either:
 1. 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
 2. Conditioning the approval based on ODFW recommendations, including minimization techniques and compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat.

HISTORY

Adopted by Ord. [2015-011](#) §1 on 12/11/2015

18.89.090 Program To Achieve Goal Of Protecting Significant Sage Grouse Habitat In A Low Density Area

- A. The County may approve a large-scale development in a low density area upon applying the mitigation hierarchy as follows:
 1. Avoidance.
 - a. Before proceeding with large-scale development activity that impacts a low density area, the applicant must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within a low density area.
 - b. If the proposed large-scale development can occur in another location 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 criteria:
 1. It is not technically or financially feasible to locate the proposed large-scale development outside of a low density area based on accepted engineering practices, regulatory standards, proximity to necessary infrastructure or some combination thereof; or
 2. The proposed large-scale development is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations, or it is a linear use that must

cross significant sage-grouse habitat in order to achieve a reasonably direct route.

2. Minimization.

- a. If the proposed use cannot be sited by avoiding a low density 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 low density area(s) in question by locating the development adjacent to existing development and at the edge of the low density area when possible.
- b. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction.

3. Compensatory Mitigation. Required consistent with the provisions of DCC 18.89.080(A)(4) above.

- B. The County may approve a conflicting use as identified at DCC 18.89.060(B) above when found to be consistent with the provisions of DCC 18.89.080(B).

HISTORY

Adopted by Ord. [2015-011](#) §1 on 12/11/2015

18.89.100 Program To Achieve Goal Of Protecting Significant Sage Grouse Habitat On General Habitat

- A. The County may approve a large-scale development on significant sage-grouse habitat in general habitat upon requiring:

1. General Habitat Consultation.

- a. If the proposed use cannot be sited by avoiding a general habitat 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 general habitat area(s) in question.
- b. If the proposed use will be located in a general habitat area, the application for the use must include documentation of consultation between the development applicant and ODFW 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 significant sage-grouse habitat within the area of general habitat.
- c. The County shall attach ODFW recommendations as a condition of approval; and

2. Compensatory Mitigation. Required consistent with the provisions of DCC 18.89.080(A)(4) above.

- B. The County may approve a conflicting use identified in DCC 18.89.060(B) above when found to be consistent with the provisions of DCC 18.89.080(B).

HISTORY

Adopted by Ord. [2015-011](#) §1 on 12/11/2015

18.89.110 Especially Unique Local Economic Opportunity

- A. The County may approve a large-scale development proposal that does not meet the avoidance test for significant sage-grouse habitat if the County determines that the overall public benefits of the proposal outweigh the damage to significant sage-grouse habitat.
- B. Requirements for minimization and compensatory mitigation continue to apply and attempts should be made to avoid areas of high population richness, if possible.
- C. The County shall make the balancing determination required by DCC 18.89.110(A) and (B) only when the proposal involves an economic opportunity that will provide a number of permanent, full-time jobs, not including construction activities, paying at least 150 percent of average county wages sufficient to increase the amount of total private nonfarm payroll employment by at least 0.5 percent over the figure included in the most recent data available from the Oregon Department of Employment rounded down to the nearest whole number.
- D. The applicant has the burden to show that the overall public benefits outweigh the damage to the significant sage-grouse habitat.
- E. This section may be exercised by the County once during every ten-year period beginning on August 13, 2015.
- F. The County may deny a proposal submitted under this section.

HISTORY

Adopted by Ord. [2015-011](#) §1 on 12/11/2015

18.89.120 Proposal To Upzone Lands Containing Significant Sage Grouse Habitat

- A. A proposal to up-zone lands containing significant sage-grouse habitat to a greater development potential than otherwise allowed under Goals 3 and 4 shall follow the ordinary Goal 5 process at OAR 660-023-0030 to 660-023-0050.
- B. Up-zoning lands in a core area shall be considered a direct impact and count towards the three percent disturbance threshold pursuant to DCC 18.89.160 below.

HISTORY

Adopted by Ord. [2015-011](#) §1 on 12/11/2015

18.89.130 Landscape; Level Consideration

The standards in DCC 18.89.080, 18.89.090 18.89.100 above, are designed to minimize the amount of future impacts from human sources to significant sage-grouse habitat areas.

HISTORY

Adopted by Ord. [2015-011 §1](#) on 12/11/2015

18.89.140 Central Registry

- A. The County shall cooperate with the Oregon Department of Land Conservation and Development (DLCD), ODFW, the Bureau of Land Management (BLM), and USFWS, Baker, Crook, Harney, Lake, Malheur and Union counties to maintain a central registry, tracking human disturbance from existing (baseline) and all new development affecting core areas.
- B. In addition to assisting in maintaining the central registry, the County shall report all development land use permits for all uses within a core area to DLCD.
- C. The County may establish more refined, project specific data to replace the baseline figures in the DLCD registry so long as all counties listed in DCC 18.89.140(A) utilize a common methodology.

HISTORY

Adopted by Ord. [2015-011 §1](#) on 12/11/2015

18.89.150 Metering

- A. This chapter is intended to ensure that the area of direct impact levels in any PAC, including energy facilities exempted under subsection (2)(b), does not increase by an amount greater than 1.0 percent of the total area of the PAC in any ten-year period.
- B. The initial period shall commence August 13, 2015, the effective date of the Land Conservation and Development Commission (LCDC) sage grouse protection rules, and continue for ten consecutive years, where upon the process shall be successively repeated.

HISTORY

Adopted by Ord. [2015-011 §1](#) on 12/11/2015

18.89.160 Disturbance Threshold

This Chapter is intended to ensure that direct impact level, including energy facilities exempted under DCC 18.89.020(C), does not exceed three percent of the total area in any PAC.

HISTORY

Adopted by Ord. [2015-011 §1](#) on 12/11/2015