



Oregon

Tina Kotek, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD

January 9, 2025

To: Land Conservation and Development Commission
From: Brenda Ortigoza Bateman, Ph.D., Director
Gordon Howard, Community Services Division Manager
Jon Jinings, Community Services Specialist
Sean Carpenter, Senior Editor



Subject: **Agenda Item 3, January 23-24, 2025, LCDC Meeting**

Public Hearing - Sage Grouse Revised Maps and Rule Amendment

I. Agenda Item Summary

Department of Land Conservation and Development (DLCD or the department) staff will discuss updates to Sage-Grouse habitat maps created by the Oregon Department of Fish and Wildlife (ODFW), and minor amendments to the text of Oregon Administrative Rule (OAR) 660-023-0115. [OAR 660-023-0115](#) addresses development in Sage-Grouse habitat in Oregon.

a. Purpose

DLCD staff will be joined by staff from the Oregon Department of Fish and Wildlife (ODFW). ODFW staff will provide a summary of the updated maps. DLCD staff will provide a summary of how the updated map intersects with the Sage-Grouse administrative rules and proposed amendment.

b. Objective

The Land Conservation and Development Commission (LCDC or commission) will adopt the updated maps showing the current location of significant sage-grouse habitat. The commission also will adopt minor text amendments updating definitions of "core areas" and "low density areas" in OAR 660-023-0115(2), adding Grant County to the existing list of local jurisdictions in OAR 660-023-0115(5),¹ and updating the timeframe for the next scheduled review in OAR 660-023-0115(19).

¹ OAR 660-023-0115(5) currently reads as follow: "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 B." The amendment would add Grant County, since a small amount of habitat is located there.

For further information about this report, please contact Jon Jinings, Community Services Specialist at 541-325-6928 or jon.jinings@dlcd.oregon.gov.

II. Background

The commission adopted the original Sage-Grouse rule (OAR 660-023-0115) in August 2015. This work was a foundational part of Oregon's efforts to demonstrate that listing the species under the federal Endangered Species Act was not warranted. In fact, the Sage-Grouse rule does not prohibit development. Instead, the rule steers development away from significant habitat and into appropriate locations. Many interested parties and regulatory agencies believed listing the species would have caused significant economic and social harm to Eastern Oregon's communities and livestock industry. Avoiding such a listing remains a top priority for the state and its partners.

The current maps, adopted by LCDDC in 2015, rely on 2011 data, which is now outdated. To address this, ODFW and its partners updated Oregon's sage-grouse core and low-density habitat map in 2022 and 2023. This project was a key component of Oregon's Greater Sage-Grouse Conservation Assessment and Strategy. The report identified the most productive sage-grouse populations and habitats, known as core areas, and outlined the connectivity habitats between them, referred to as low-density areas.

The 2022-2023 revision used new data collected since 2011. Staff and community members applied the best available science to identify current sage-grouse habitats in Oregon. Along with feedback from cooperating agencies, the team gathered input through 14 meetings with elected county officials, Sage-Grouse Local Implementation Teams, and community members in six counties: Baker, Crook, Deschutes, Harney, Lake, and Malheur. In December 2023, the Oregon Fish and Wildlife Commission reviewed and approved the updated habitat maps.

A very small amount of significant sage-grouse habitat is present in Grant County, which is not new. However, the current rule does not identify Grant as a "Sage-Grouse County" and Grant is not included in the existing list of local jurisdictions located at OAR 660-023-0115(5). The proposed rule amendment would correct this omission. The proposed rule amendment would also refine the definition of "core areas" and "low-density areas." These refinements do not change how significant Sage-Grouse habitat is mapped, nor do they change how the rule is applied.

The original scheduled review called for by OAR 660-023-0115(19) occurred in 2020, five years after OAR 660-023-0115 was adopted. The department coordinated with parties representing the membership of the 2015 Rules Advisory Committee (RAC) and determined that no adjustments were needed at that time. The proposed rule amendment establishes a timeframe for future scheduled reviews.

Staff have included the tracked changes version of the Notice of Rulemaking filed with the Secretary of State on December 30, 2024 as Attachment D. The Department's recommended amendments are shown in the Notice of Rulemaking as tracked changes.

Staff are holding a geographic hearing on this rule on January 21, at 5:30 pm in the Basement Meeting Room of the Harney County Courthouse in Burns Oregon. The courthouse is located at 450 N. Buena Vista Avenue in Burns, Oregon, 97720. Staff plan to host an online option for

that hearing as well and will provide written comments and a summary of testimony received to the commission during this agenda item.

III. Recommended Action

DLCD staff recommend the commission adopt the updated Sage-Grouse maps attached to this report as Attachments A-C.

Staff also recommend that the commission adopt the minor text amendments to refine the definitions of “core areas” and “low-density areas in OAR 660-023-0115(3), include Grant County in OAR 660-023-0115(5), and update the “scheduled review” language in OAR 660-023-0115(19) as attached to this report as Attachment D.

Recommended motion: “I move the commission adopt amendments to Oregon Administrative Rules chapter 660 division 23 to replace the three existing maps regarding the Sage-Grouse as shown in Exhibits A, B, and C, and amend OAR 660-023-0115 as shown in Attachment D.”

Optional motion: “I move the commission not adopt amendments to Oregon Administrative Rules chapter 660 division 23 as recommended by the department for the following reasons:

IV. Attachments

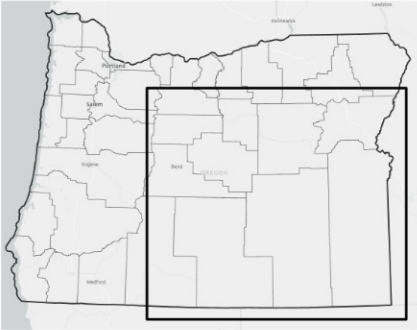
- A.** Areas of Sage-Grouse Population Richness
- B.** Significant Sage-Grouse Habitat, 2023: Core and Low Density
- C.** Sage-Grouse Priority Areas for Conservation, 2023
- D.** Secretary of State Notice for Text Amendments to OAR 660-023-0115

Areas of Sage-Grouse Population Richness, 2023

OAR 660-023-0115 Exhibit A

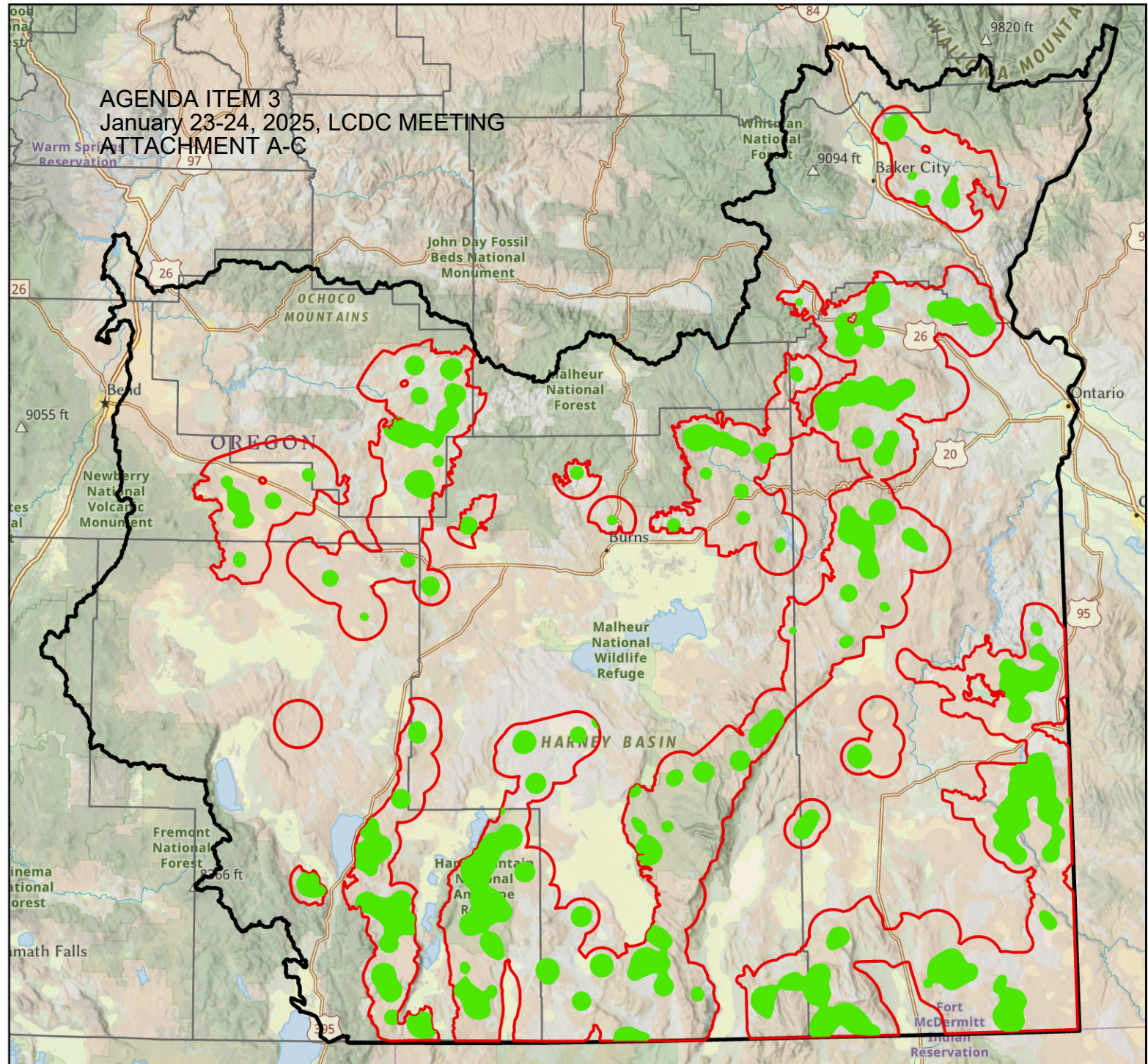
Legend

-  Areas of Population Richness
-  Core Habitat
-  County Boundary
-  SageCon Boundary



The Areas of Population Richness identify sage-grouse breeding and nesting areas within core habitat that support the 75th percentile of breeding sage-grouse densities (i.e. the top 25%), and are based on 2008-2023 average male attendance at known lek complexes. Kernels were clipped to core habitat boundaries. Cartography was completed by ODFW on 8 May 2024.

0 15 30 60 Miles

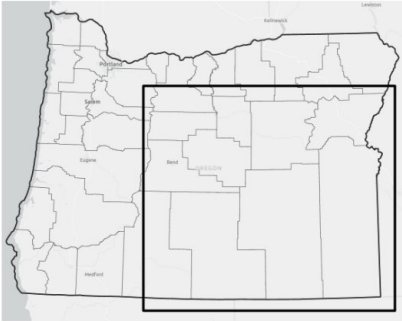


Significant Sage-Grouse Habitat, 2023: Core and Low-Density

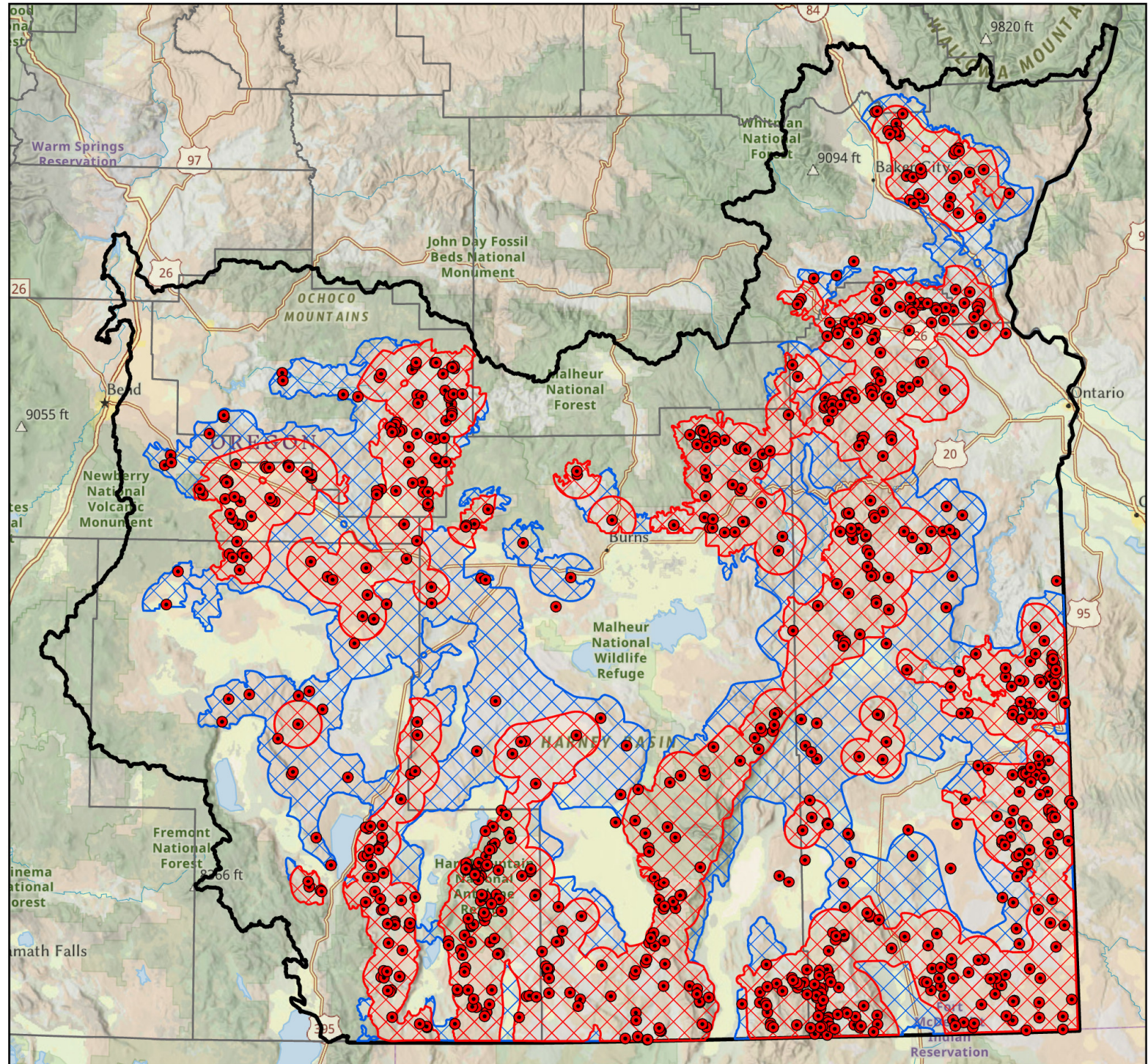
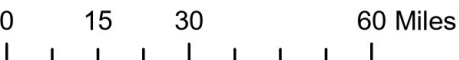
OAR 660-023-0115 Exhibit B

Legend

- Occupied or Occupied-Pending Leks, 2023
- ▨ Core Habitat
- ▨ Low-Density Habitat
- County Boundary
- ▭ SageCon Boundary







The Significant Sage-Grouse Habitat Map [core and low-density habitat] was updated by ODFW in 2023 with the Department's most recent sage-grouse data and the best available science, following the methodology outlined in the ODFW Sage-Grouse Conservation Assessment and Strategy. As part of the update process, the draft map was reviewed by ODFW District Biologists, cooperating agency biologists, conservation partners, and the public to ground-truth and refine the boundaries at a 1:10,000 scale. The final map was adopted by the Oregon Fish and Wildlife Commission on 15 December 2023. Cartography for this map was completed by ODFW on 8 May 2024.

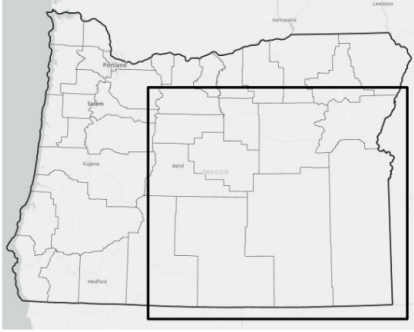


Sage-Grouse Priority Areas for Conservation (PACs), 2023

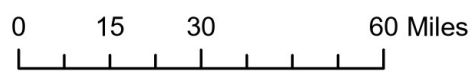
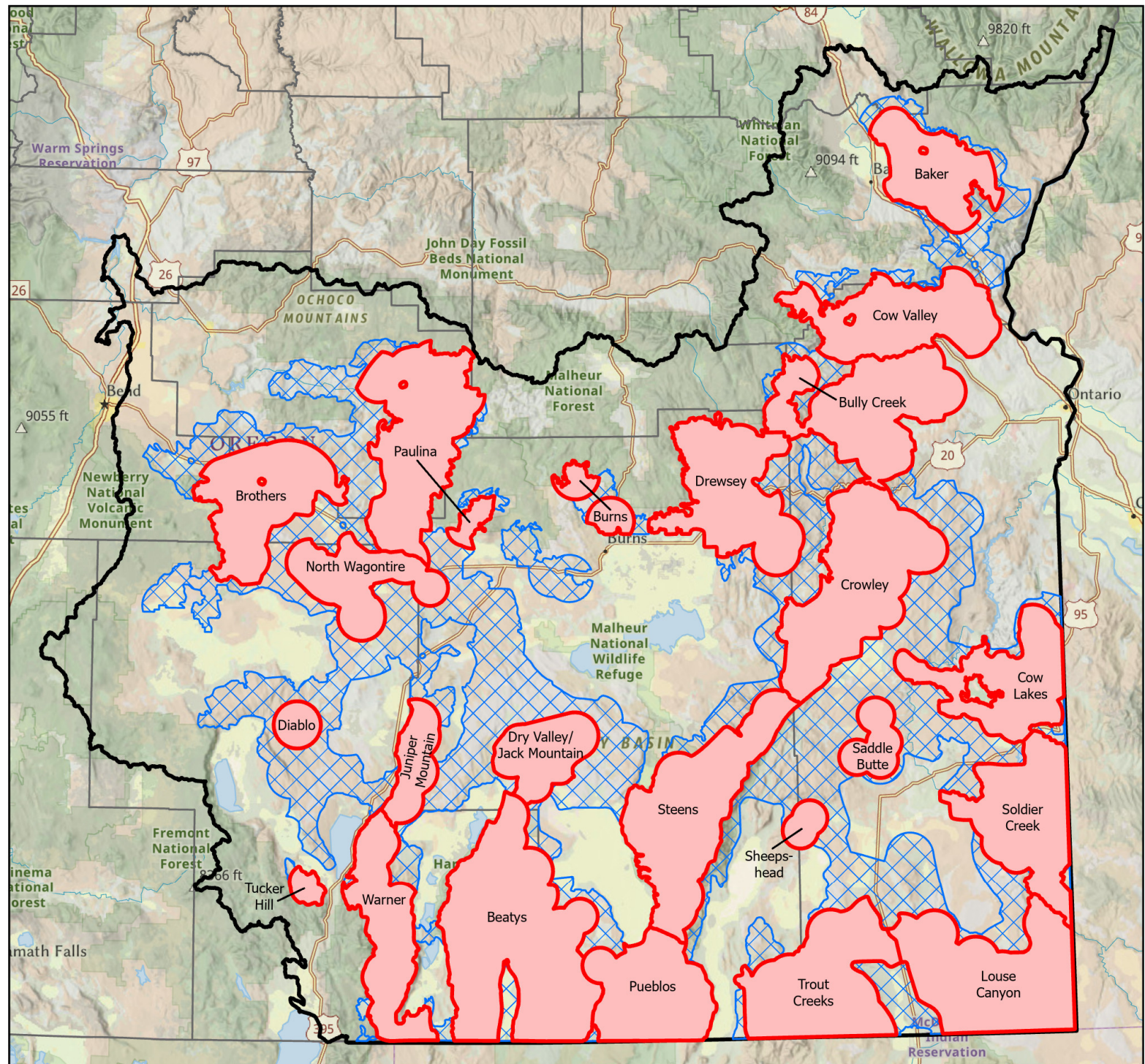
ORAR 660-023-0115 Exhibit C

Legend

-  Sage-Grouse PACs
-  Low-Density Habitat
-  County Boundary
-  SageCon Boundary



The Significant Sage-Grouse Habitat Map [core and low-density habitat] was updated by ODFW in 2023 with the Department's most recent sage-grouse data and the best available science, following the methodology outlined in the ODFW Sage-Grouse Conservation Assessment and Strategy. The final map was adopted by the Oregon Fish and Wildlife Commission on 15 December 2023. Updated sage-grouse Priority Areas for Conservation (PAC) were delineated within the final approved core habitat areas and named as shown on this map. Cartography for this map was completed by ODFW on 8 May 2024.



OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 660
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

FILED
12/30/2024 12:53 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Sage Grouse Significant Habitat Map Amendment

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/23/2025 9:30 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Casaria Taylor
971-600-7699
casaria.taylor@dlcd.oregon.gov

635 Capitol St.
Ste. 150
Salem, OR 97301

Filed By:
Casaria Taylor
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 01/23/2025

TIME: 8:00 AM

OFFICER: LCDC

IN-PERSON HEARING DETAILS

ADDRESS: Agriculture Building, 635 Capitol St., Basement Hearing Room, Salem, OR 97301

SPECIAL INSTRUCTIONS:

Please pre-register to testify online at <https://www.oregon.gov/lcd/Commission/Pages/Public-Comment.aspx>

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-253-205-0468

CONFERENCE ID: 81457612050

SPECIAL INSTRUCTIONS:

Passcode: 226955

Please pre-register to testify online at <https://www.oregon.gov/lcd/Commission/Pages/Public-Comment.aspx>

DATE: 01/21/2025

TIME: 1:00 PM

OFFICER: Jon Jinings

IN-PERSON HEARING DETAILS

ADDRESS: Harney County Courthouse, 450 N. Buena Vista, Basement Meeting Room, Burns, OR 97720

NEED FOR THE RULE(S)

The Land Conservation and Development Commission adopted OAR 660-023-0115 in August of 2015. The “LCDC Sage-Grouse Rule” was a foundational component of Oregon’s demonstration to the United States Fish and Wildlife Service that listing the species under the Federal Endangered Species Act was not warranted. The original adoption included reference to three maps, Exhibits A-C, which displayed data provided by the Oregon Department of Fish and Wildlife (ODFW). Collectively, the three maps identify the location of significant Sage-Grouse habitat based on science available as of 2011. In 2023, after review of extensive field work done since 2015 and substantial public outreach, the Oregon Fish and Wildlife Commission adopted an updated map showing significant Sage-Grouse habitat in Oregon under current conditions and representing the best available science. ODFW staff has provided the department with updated versions of the three maps referenced in OAR 660-023-0115.

As proposed, this rule amendment would replace the 2015 maps of Sage-Grouse habitat with the updated 2023 maps of Sage-Grouse habitat. The maps, particularly Exhibit B, provide the basis in the rule for local government review of proposed development that may impact significant Sage-Grouse habitat. The maps also provides the basis for Department of Land Conservation and Development review and reporting of cumulative impacts of development range wide on significant Sage-Grouse habitat. Minor text amendments refining two definitions in OAR 660-023-0115(3), adding Grant County to the list included at OAR 660-023-0115(5), and updating the scheduled review under OAR 660-023-0115(19) are also necessary.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Data for the revised maps proposed for reference as “Exhibits A-C” in OAR 660-023-0115 is available for review at the Oregon Department of Fish and Wildlife. It is also available for review in an electronic format from the Department of Land Conservation and Development upon request.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The amended rule will have no impact on racial equity in this state. The amended map will require local government review of development activities in an amended rural area of Central and Eastern Oregon consisting of rural and primarily undeveloped areas of eight counties. The rule and associated maps are not applicable to Tribal Trust lands.

FISCAL AND ECONOMIC IMPACT:

The amended maps include new areas that are upgraded to a higher level of required protection for significant Sage-Grouse habitat, and other, different areas that are downgraded to a lower level of required protection for significant Sage-Grouse habitat or removed from the map all together. Limitations on large scale development and other types of conflicting uses in upgraded areas could have an economic impact on ranchers and local communities in affected counties

Areas downgraded to a lower level of required protection or that are removed for the maps all together will see fewer limitations on scale and location of certain development.

Adopting the updated maps and utilizing the best available science will help in discouraging future petitions to list the species under the ESA. Should such a listing occur, it would be expected to have significant social and economic consequences on Oregon’s livestock industry and local communities in the eight identified counties.

No other additional information is available.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

State agencies affected by these rules: State agencies that issue permits for activities on state and private lands (e.g., Dept of State Lands) would have to support and facilitate the required mitigation for permitted projects. Oregon Department of Fish and Wildlife district staff are required to review projects proposed to occur in Greater Sage Grouse habitat areas. To date, there have been very few development projects carried out within significant Sage Grouse habitat. It is possible that the proposed rule amendment, consisting of amended maps in Exhibits A-C of the rule, could increase the number of project proposals for the area, however the amended maps add as well as subtracts areas of significant Sage-Grouse habitat, so the number of project proposals will most likely remain consistent. The number of proposed projects, and thus the staff time needed to review them, cannot be determined. Overall, no major changes from the current levels of these agencies' operations or expenditures are expected to result from the adoption of these rules.

Units of local government affected by these rules: Units of local government that would likely be affected by this proposed rule are Baker, Crook, Deschutes, Grant, Harney, Lake, Malheur, and Union Counties. The rule amendment will continue require those counties to review permit applications. In some instances, the areas for which the counties will be required to review permit applications will be expanded. In other instances, the areas will be reduced. The number of project proposals which may emerge after these rules are adopted cannot be determined and thus the magnitude of the impact on local governments cannot be determined. Overall, no significant changes from the current levels of any local agencies' operations or expenditures are expected to result from these proposed rules.

Affects on public from these rules: The public could be affected by the adoption of these proposed rule amendments. The current rule provides for the possibility of large-scale development projects in significant Sage Grouse habitat on nonfederal lands. New development projects could bring economic activity (e.g., jobs) to the eight-county area. Compensatory mitigation required of project developers to off-set project impacts may also create economic opportunity in the eight-county area by creating a market for restoration activities such as juniper removal and noxious weed treatment, or establishing mitigation banks.

Number and type of small businesses subject to the rule: Local contractors and small businesses providing goods and services to people living in the eight -county area (e.g., accommodation businesses, food and beverage services, food stores, general merchandise or other retail stores) could be affected by the amended rule because of the changes in mapped significant Sage-Grouse habitat. Given the broad geographic reach of this rule, the number of small businesses affected by the rule cannot be estimated.

Small business expected reporting, recordkeeping and administrative activities and cost required to comply with the rule: The only potential small business that would expect any changes in these categories would be 1) a small business proposing land development in an area shown on the map in revised Exhibit B that was not previously identified as significant Sage-Grouse habitat (for which the small business would expect to incur additional costs in complying with the land development review standards for that area); or 2) a small business proposing land development in an area previously but no longer identified as significant Sage-Grouse habitat (for which the small business would expect to occur lesser costs on complying with land development review standards for that area). Because of variations among county standards among the eight counties impacted by the rule and variations on the type of land use application proposed by an individual small business, the magnitude of such expected costs cannot be estimated.

Estimate of the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule: The cost of complying with local government development regulations which implement this rule will vary based upon individual county standards that differ among the eight counties impacted by this rule and the type of land use application proposed by an individual small business, and thus cannot be estimated.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

No small businesses were directly involved in the development of these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The amended rule does not create new policy or consider adjustment to existing policy. Instead, the amended rule represents a technical update to utilize the best available science.

HOUSING IMPACT STATEMENT:

Description of proposed change: The proposed change amends Exhibit B of OAR 660-023-0115 with an updated map of significant Greater sage-grouse habitat areas in Eastern Oregon.

Description of the need for, and objectives of the rule: The Oregon Fish and Wildlife Commission has adopted updated maps showing significant Sage-Grouse habitat in Eastern Oregon. The updated maps are based upon Oregon Department of Fish and Wildlife surveys and research of changing conditions for Sage-Grouse and represent the best available science. Replacement of the maps currently referenced in the LCDC Sage-Grouse rule with the new maps will provide appropriate levels of protection for the Sage-Grouse in Oregon.

List of rules adopted or amended: OAR 660-023-0115, Exhibits A-C

Materials and labor costs increase or savings: None, the rule does not impact areas within urban growth boundaries, which is where a single-story 1,200 square foot house on a 6,000 square foot lot would be located (see ORS 183.534(1)).

Estimated administrative construction or other costs increase or savings: None, the rule does not impact areas within urban growth boundaries, which is where a single-story 1,200 square foot house on a 6,000 square foot lot would be located (see ORS 183.534(1)).

Land costs increase or savings: None, the rule does not impact areas within urban growth boundaries, which is where a single-story 1,200 square foot house on a 6,000 square foot lot would be located (see ORS 183.534(1)).

Other costs increase or savings: None, the rule does not impact areas within urban growth boundaries, which is where a single-story 1,200 square foot house on a 6,000 square foot lot would be located (see ORS 183.534(1)).

AMEND: 660-023-0115

RULE SUMMARY: The rule in OAR 660-023-0115 describes requirements for protection of the Greater Sage Grouse as a significant resource under Statewide Planning Goal 5. The amendment replaces an existing map of Greater Sage Grouse habitat areas, labeled as "Exhibit B," adopted in 2015, with an amendment map of Greater Sage Grouse habitat areas adopted by the Oregon Department of Fish and Wildlife in December 2023.

CHANGES TO RULE:

660-023-0115

Greater Sage-Grouse ¶

(1) 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.¶

(2) 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 rule. 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 rule.¶

(b) 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 is exempt from the provisions of this rule. Notwithstanding ORS 197.646(3), this rule shall not be directly applicable to any land use decision regarding that facility 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 this rule 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.¶

(c) Private and other nonfederal lands are strongly encouraged to participate in a Candidate Conservation Agreement with Assurances (CCAA) 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 the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon. Uses identified in CCAA agreements are relieved from the provisions of this rule except that conflicting uses identified in section (7) will be subject to sections (9) to (11) in all instances regardless of enrollment status.¶

(3) Definitions. For purposes of this rule, 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 (copies of the plan are available through the Oregon Department of Fish and Wildlife (ODFW)) shall apply. In addition, the following definitions shall apply:¶

(a) "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.¶

(b) "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.¶

(c) "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. Core area maps are. The sage-grouse core area habitat map is maintained by ODFW.¶

(d) "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 repermitting of existing activities proposing new impacts beyond current conditions.¶

(e) "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.¶

(f) "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 rule only disturbance from human activities are considered.¶

(g) "General habitat" means occupied (seasonal or year-round) sage-grouse habitat outside core and low density

habitats.¶

(h) "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.¶

(i) "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.¶

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

(k) "Low density areas" means mapped sagebrush types or other habitats that support 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 populations outside of core areas. The sage-grouse low density habitat map is maintained by ODFW.~~¶

(l) "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.¶

(m) "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.¶

(n) "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.¶

(o) "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.¶

(4) Local program development and direct applicability of rule. Local governments may develop a program to achieve consistency with this rule by following the standard process in OAR 660-023-0030, 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 the commission has acknowledged a county amendment to its comprehensive plan and land use regulations to be in compliance with Goal 5 and equivalent to this rule with regard to protecting sage-grouse habitat, sections (5) to (12) shall apply directly to county land use decisions affecting significant sage-grouse habitat. Once the commission has acknowledged a local government program under this section, that program becomes the controlling county land use document and sections (5) to (12) of this rule no longer apply directly.¶

(5) Quality, Quantity and Location. For purposes of this rule, sage-grouse habitat is only present in Baker, Crook, Deschutes, Grant, 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 B.¶

(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 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 must be done in consultation with ODFW.¶

(7) 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:¶
- (A) In a core area within 4.0 miles of an occupied or occupied-pending lek;¶
 - (B) In a low density area within 3.1 miles of an occupied or occupied-pending lek; or¶
 - (C) In general habitat within 3.1 miles of an occupied or occupied-pending lek.¶
- (8) Pre-Application Conference. A county should convene a pre-application conference prior to accepting an application for a conflicting use in significant sage-grouse habitat. The pre-application conference should include, at a minimum, the applicant, county planning staff and local ODFW staff.¶
- (9) Program to achieve the goal of protecting significant sage grouse habitat in a core area.¶
- (a) A county may consider a large-scale development in a core area upon applying disturbance thresholds and the mitigation hierarchy as follows:¶
 - (A) A county may consider a large-scale development that does not cause the one-percent metering threshold described in section (16) or the three-percent disturbance threshold described in section (17) to be exceeded.¶
 - (B) Avoidance. Before proceeding with large-scale development activity that impacts a core area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within core area habitat. 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.¶
 - (i) 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¶
 - (ii) The proposed large-scale development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands; and¶
 - (iii) If either subparagraph (9)(a)(B)(i) or (9)(a)(B)(ii) 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.¶
 - (C) 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 or use, or both, 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 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.¶
 - (D) Compensatory Mitigation. 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. The required compensatory mitigation must comply with 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. Before proceeding with large-scale development activity that impacts a low density 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 area. 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:¶
 - (i) 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¶
 - (ii) 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.¶

(B) Minimization. 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. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction.¶

(C) Compensatory Mitigation. Required consistent with the provisions of paragraph (9)(a)(D) above.¶

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

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

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

(A) General Habitat Consultation. Minimizing impacts from development actions in general habitat shall include consultation between the development proponent 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. A county shall attach ODFW recommendations as a condition of approval; and¶

(B) Compensatory Mitigation. Required consistent with the provisions of paragraph (9)(a)(D) above.¶

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

(12) Especially Unique Local Economic Opportunity. A 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. Requirements for minimization and compensatory mitigation continue to apply and attempts should be made to avoid areas of high population richness, if possible. The county shall make this balancing determination 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. The applicant has the burden to show that the overall public benefits outweigh the damage to the significant sage-grouse habitat. This provision may be exercised by each effected county once during every ten-year period beginning on the effective date of this rule August 13, 2015. A county is also free not to approve a proposal submitted under this section.¶

(13) 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. Furthermore, up-zoning lands in a core area shall be considered a direct impact and count towards the three percent disturbance threshold pursuant to section (17) below.¶

(14) Landscape-Level Consideration. The standards in sections (9), (10) and (11) above, are designed to minimize the amount of future impacts from human sources to significant sage-grouse habitat areas. Consistent with available science concerning the relation between human activities and sage-grouse population levels, the department will monitor direct impacts in core areas in each of the PACs shown in Exhibit (C).¶

(15) Central Registry. The department will work with the counties identified in section (5), ODFW, the Bureau of Land Management (BLM), and USFWS to maintain a central registry, tracking human disturbance from existing (baseline) and all new development affecting core areas. In addition to serving as partners in maintaining the central registry, counties must report all development land use permits for all uses within a core area to the department. The registry will include baseline calculations of direct impact levels consistent with the approach identified by the BLM. The percentage figures included in Exhibit D establish the baseline for human disturbance existing on the effective date of this rule. If better information becomes available, the commission may revise the baseline subject to a rule amendment that is coordinated with the counties identified in section (5) and other interested parties. Counties may establish more refined, project specific data to replace the baseline figures so long as all counties utilize a common methodology. Each year the department shall report to the commission the amount of new direct impacts in each PAC. The report shall be coordinated with and made available to all affected counties.¶

(16) Metering. This rule 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. The initial period shall commence upon the August 13, 2015, the initial effective date of this rule and continue for ten consecutive years, where upon the process shall be successively repeated. The commission will consider revisions to this rule if the department's yearly reports required by section (15) indicate that the development trends in any PAC indicate that the 1.0 percent direct impact threshold

is in jeopardy of being exceeded before the ten-year period has expired. Any proposal to amend this rule undertaken by the department shall be developed in coordination with all affected counties and other stakeholders.¶

(17) Disturbance Threshold. This rule is intended to ensure that direct impact level, including energy facilities exempted under subsection (2)(b), does not exceed three percent of the total area in any PAC. If this three-percent threshold is approached, then the department must report that situation to the commission along with a proposal to amend this rule to adapt the standards and criteria such that the threshold is not exceeded.¶

(18) State agency coordination programs. All state agencies that carry out or that permit conflicting uses in core area, low density area, or significant general habitat including but not limited to OWRD, Oregon Department of Transportation, Department of State Lands, Department of Geology and Mineral Industries, Oregon Department of Energy and the Energy Facility Siting Council, and Department of Environmental Quality must report the proposed development to the department, along with an estimate of the direct impact of the development. In addition, to the extent not regulated by a county, such development, other than the issuance of water rights, the expansion of cultivation, and other farm uses under ORS 215.203(2), must meet the requirements of paragraph (9)(a)(D) of this rule.¶

(19) Scheduled Review. The department shall commence a review of these rules no later than ~~June~~September 30, ~~2020~~2027, and, ~~it~~conduct subsequent reviews at six year intervals. If determined to be necessary, ~~the department~~shall recommend revisions to achieve the policy objectives found herein. Furthermore, should the species become listed under the Federal Endangered Species Act, the commission shall consider whether continued application of this rule is necessary. Should the rule remain applicable and the species is de-listed the commission shall consider whether continued application of this rule is necessary.

Statutory/Other Authority: ORS 197.040

Statutes/Other Implemented: ORS 197.040

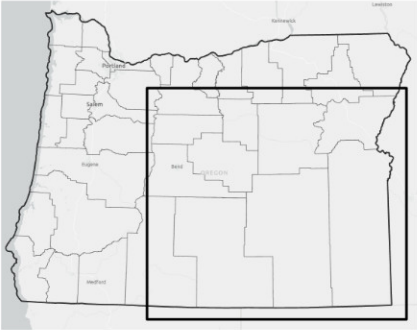
RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Areas of Sage-Grouse Population Richness, 2023

OAR 660-023-0115 Exhibit A

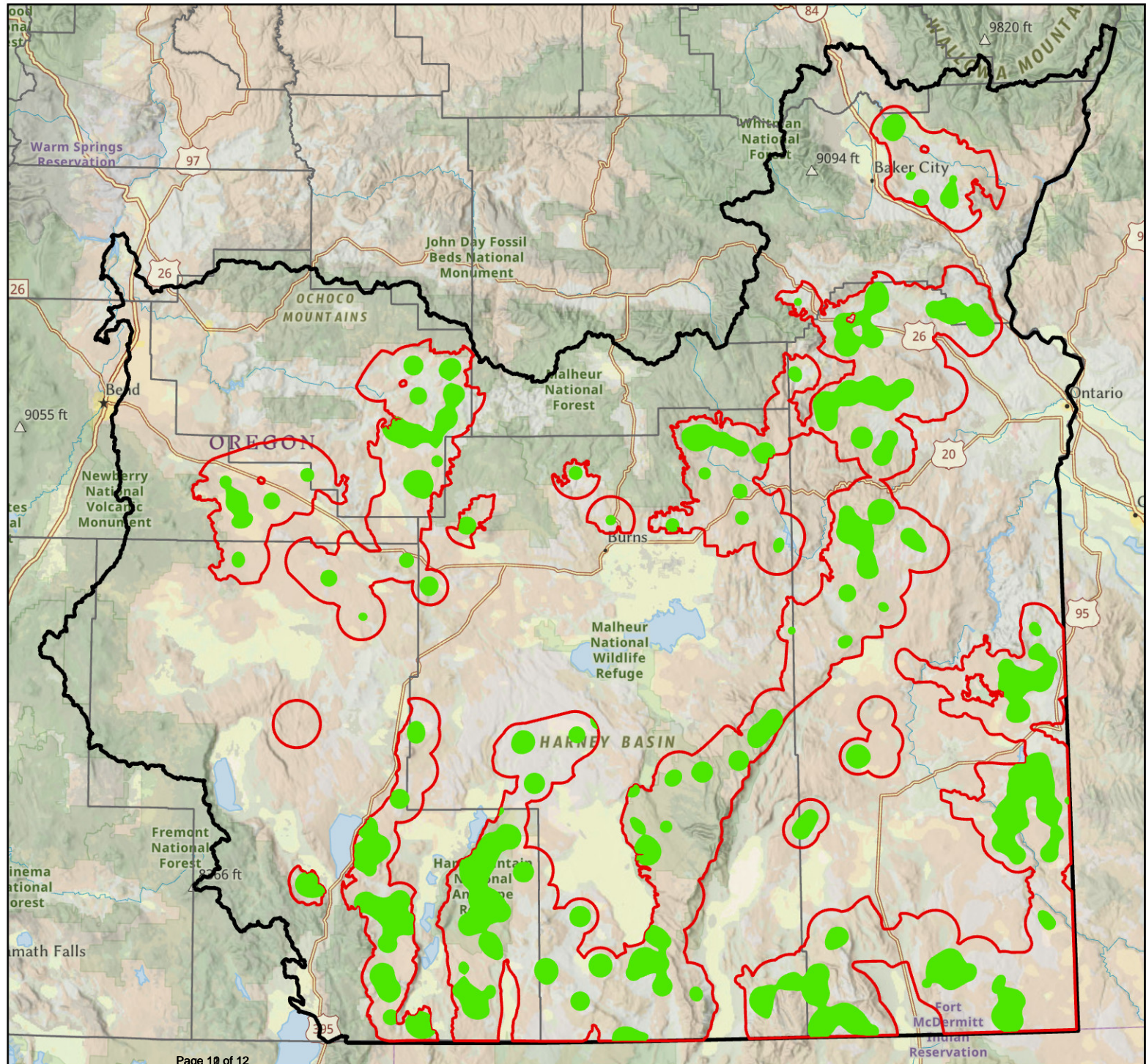
Legend

-  Areas of Population Richness
-  Core Habitat
-  County Boundary
-  SageCon Boundary



The Areas of Population Richness identify sage-grouse breeding and nesting areas within core habitat that support the 75th percentile of breeding sage-grouse densities (i.e. the top 25%), and are based on 2008-2023 average male attendance at known lek complexes. Kernels were clipped to core habitat boundaries. Cartography was completed by ODFW on 8 May 2024.

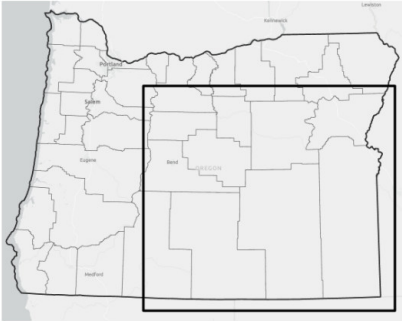
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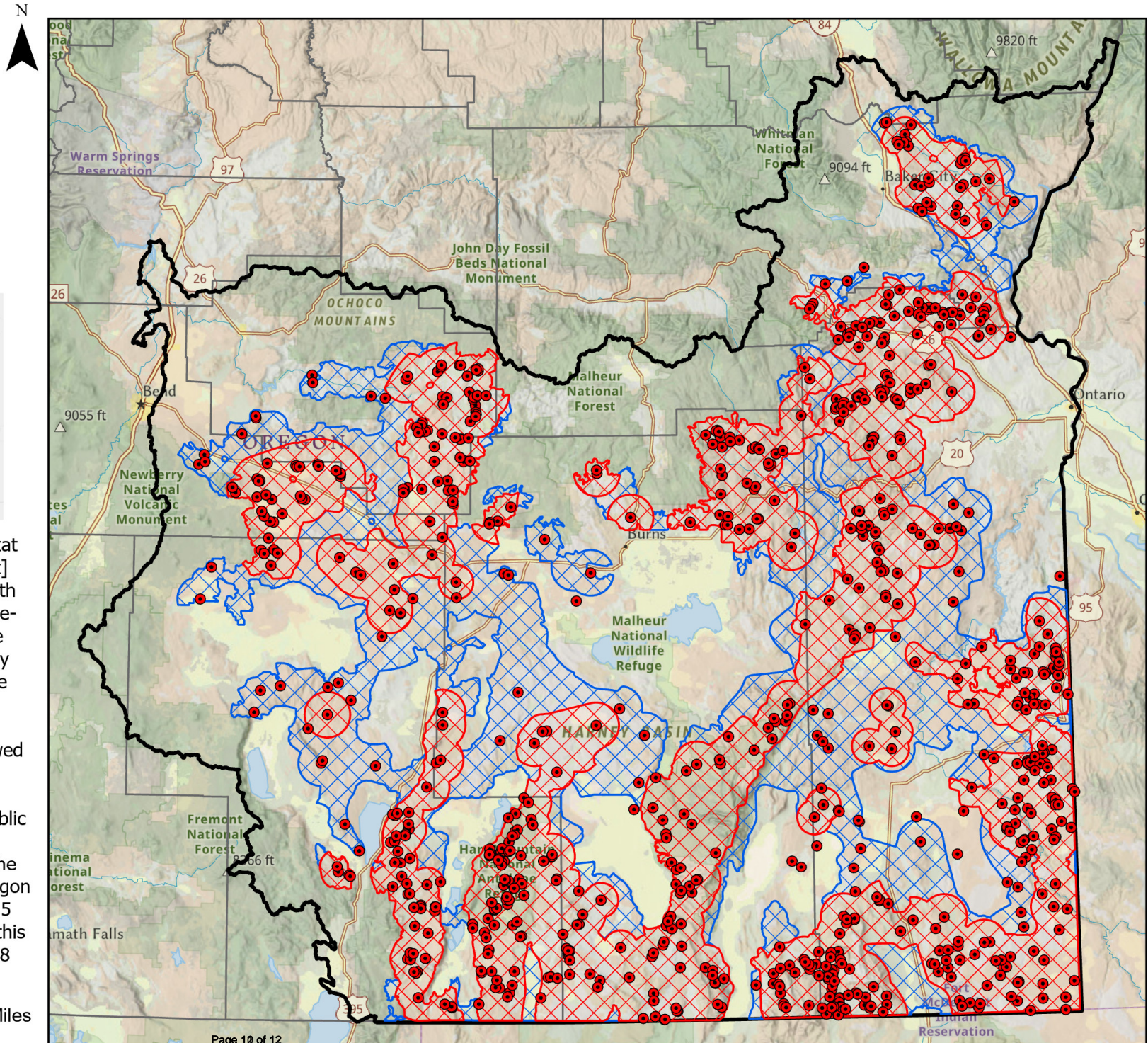
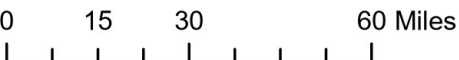
Significant Sage-Grouse Habitat, 2023: Core and Low-Density

Legend

- Occupied or Occupied-Pending Leaks, 2023
- ▨ Core Habitat
- ▨ Low-Density Habitat
- County Boundary
- ▭ SageCon Boundary



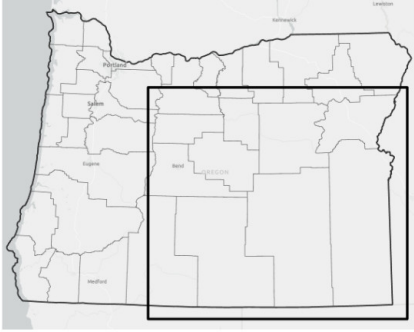
The Significant Sage-Grouse Habitat Map [core and low-density habitat] was updated by ODFW in 2023 with the Department's most recent sage-grouse data and the best available science, following the methodology outlined in the ODFW Sage-Grouse Conservation Assessment and Strategy. As part of the update process, the draft map was reviewed by ODFW District Biologists, cooperating agency biologists, conservation partners, and the public to ground-truth and refine the boundaries at a 1:10,000 scale. The final map was adopted by the Oregon Fish and Wildlife Commission on 15 December 2023. Cartography for this map was completed by ODFW on 8 May 2024.



Sage-Grouse Priority Areas for Conservation (PACs), 2023

Legend

- Sage-Grouse PACs
- Low-Density Habitat
- County Boundary
- SageCon Boundary



The Significant Sage-Grouse Habitat Map [core and low-density habitat] was updated by ODFW in 2023 with the Department's most recent sage-grouse data and the best available science, following the methodology outlined in the ODFW Sage-Grouse Conservation Assessment and Strategy. The final map was adopted by the Oregon Fish and Wildlife Commission on 15 December 2023. Updated sage-grouse Priority Areas for Conservation (PAC) were delineated within the final approved core habitat areas and named as shown on this map. Cartography for this map was completed by ODFW on 8 May 2024.

