



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### MEMORANDUM

**DATE:** August 27, 2015  
**TO:** Deschutes County Planning Commission  
**FROM:** Peter Gutowsky, Planning Manager  
**RE:** Greater Sage-Grouse Amendments / Packet

---

The Deschutes County Planning Commission will hold a work session on September 10, followed by a public hearing on October 8 in Brothers to consider Comprehensive Plan and Zoning amendments. On July 24, 2015, the Oregon Land Conservation and Development Commission (LCDC) adopted rules addressing potential conflicts between “large-scale development” and sage-grouse habitat. Oregon Administrative Rule (OAR) 660-023-0115 became effective on August 13, 2015. State law requires Baker, Crook, Deschutes, Harney, Lake, Malheur and Union counties to implement them.<sup>1</sup>

Listed below is your itemized packet, which is enclosed with this memorandum.

#### Ordinance 2015-010

- Exhibit A: Amendment to Deschutes County Code (DCC) 23.010.010, Introduction;
- Exhibit B: Comprehensive Plan map adopting Oregon Department of Fish and Wildlife’s (ODFW) Greater Sage-Grouse Habitat Area Inventory Map (Core Area, Low Density Area, and General Habitat, including occupied and occupied-pending lek locations);
- Exhibit C: Comprehensive Plan map amendment removing Deschutes County’s 1990 sage-grouse inventory and lek locations from the Sensitive Bird and Mammal Habitat Inventory;
- Exhibit D: Amendment to Comprehensive Plan Chapter 2, Resource Management, Section 2.6 – Wildlife;
- Exhibit E: Amendment to Comprehensive Plan Chapter 5, Supplemental Sections, Section 5.12 – Legislative History; and,
- Exhibit F: Findings.
  - Attachment 1, DLCD Sage-Grouse Rule-Making Report

---

<sup>1</sup> ORS 197.646(3). [https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013ors197.html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors197.html)

- Attachment 2, OAR 660-023-0115
- Attachment 3, OAR 660-033-0120 Table

**Ordinance 2015-011**

- Exhibit A - Zoning code amendment to Deschutes County Code (DCC), adopting Chapter 18.89, Greater Sage-Grouse Area Combining Zone (mirrors Oregon Administrative Rule 660-024-0115); and,
- Exhibit B - Zoning code amendment to DCC 18.90, Sensitive Bird and Mammal Habitat Combining Zone, removing outdated references to sage-grouse and leks.

REVIEWED  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code \*  
Title 23 and the Deschutes County Comprehensive \* ORDINANCE NO. 2015-010  
Plan, and Declaring an Emergency \*

WHEREAS, on July 23, 2015 the Oregon Department of Land Conservation and Development Commission adopted Greater Sage-Grouse habitat inventories and rules establishing a procedure for considering development proposals on lands identified as significant Greater Sage-Grouse Habitat; and

WHEREAS, Deschutes County is one of seven counties with Greater Sage-Grouse Habitat; and

WHEREAS, amendments to the Deschutes County Comprehensive Plan are necessary to comply with ORS 197.646(3) and OAR 660-023-0115(4); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held before the Deschutes County Planning Commission on [date] to consider the revised County Comprehensive Plan; and

WHEREAS, on [date], the Planning Commission forwarded to the Board of County Commissioners (“Board”) a recommendation of approval to adopt changes to the Comprehensive Plan; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on [date] and concluded that the public will benefit from changes to the Comprehensive Plan; and

WHEREAS, the Board finds it in the public interest to adopt the following Comprehensive Plan amendments; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 23.01.010, Introduction, is amended to read as described in Exhibit “A,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 2. ADOPTION. Deschutes County Comprehensive Plan Map, Greater Sage Grouse Habitat Area Inventory Map is adopted to describe properties affected by the designation as shown in Exhibit “B,” attached and incorporated by reference herein.

Section 3. AMENDMENT. Deschutes County Comprehensive Plan Map, Deschutes County Sensitive Bird and Mammal Habitat Inventory Map is amended to describe properties affected by the designation as shown in Exhibit “C,” attached and incorporated by reference herein.

Section 4. AMENDMENT. Deschutes County Comprehensive Plan Chapter 2, Resource Management, is amended to read as described in Exhibit “D,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~striketrough~~.

Section 5. AMENDMENT. Deschutes County Comprehensive Plan Chapter 5, Supplementary Sections, is amended to read as described in Exhibit "E," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strike through~~.

Section 6. FINDINGS. The Board adopts as its findings Exhibit "F," attached and incorporated by reference herein.

Section 7. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2015

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY De BONE, Chair

\_\_\_\_\_  
ALAN UNGER, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
TAMMY BANEY, Commissioner

Date of 1<sup>st</sup> Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Date of 2<sup>nd</sup> Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Commissioner	Record of Adoption Vote:			
	Yes	No	Abstained	Excused
Anthony De Bone	___	___	___	___
Alan Unger	___	___	___	___
Tammy Baney	___	___	___	___

Effective date: \_\_\_\_\_ day of \_\_\_\_\_, 2015.

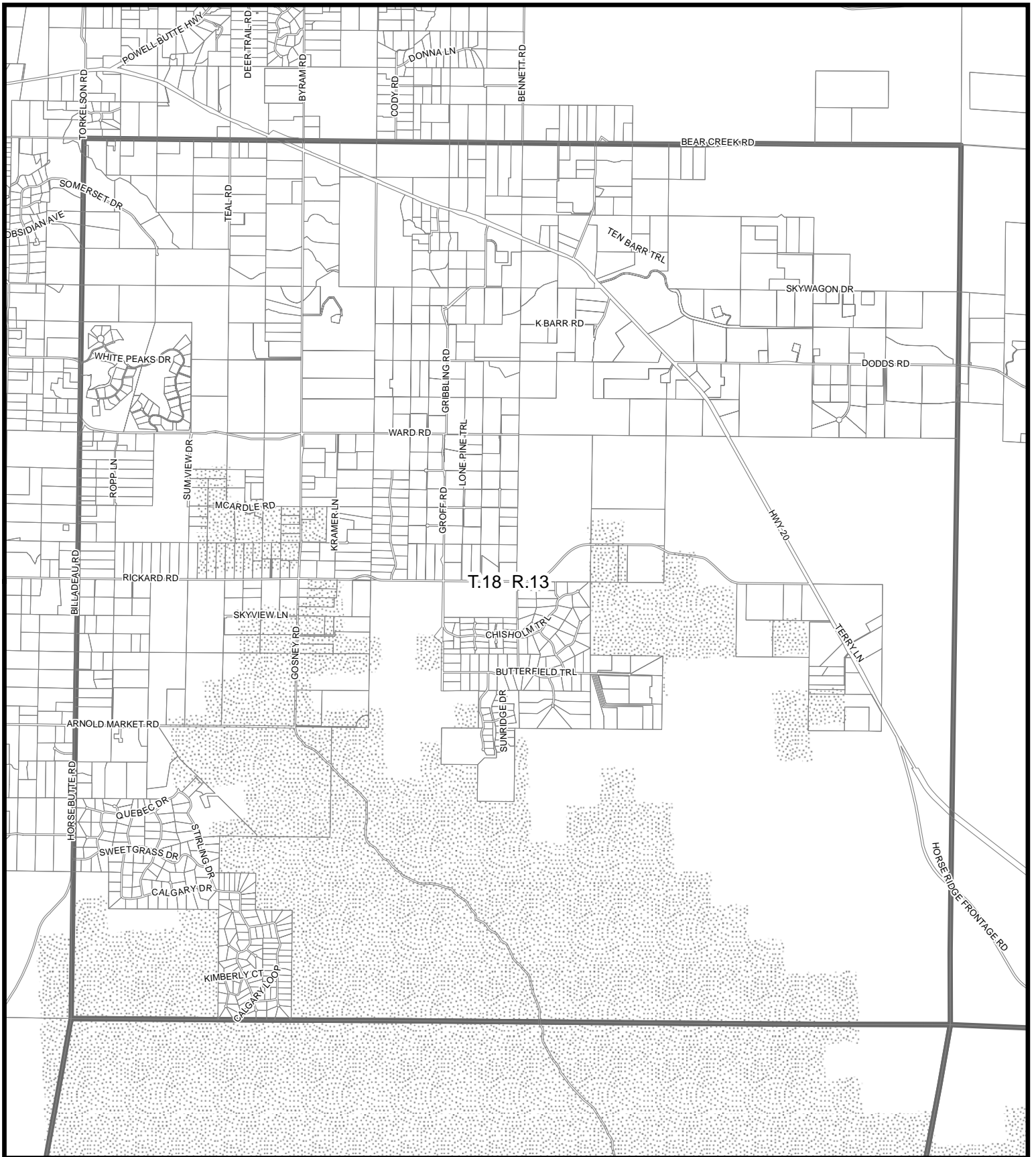
## Chapter 23.01 COMPREHENSIVE PLAN

### 23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.

(Ord. 2015-010 §1, 2015; Ord. 2014-27 §1, 2014; Ord. 2014-121 §1, 2014; Ord. 2014-12 §1, 2014; Ord. 2014-006 §2, 2014; Ord. 2014-005 §2, 2014; Ord. 2013-012 §2, 2013; Ord. 2013-009 §2, 2013; Ord. 2013-007 §1, 2013; Ord. 2013-002 §1, 2013; Ord. 2013-001 §1, 2013; Ord. 2012-016 §1, 2012; Ord. 2012-013 §1, 2012; Ord. 2012-005 §1, 2012; Ord. 2011-027 §1 through 12, 2011; Ord. 2011-017 repealed; Ord.2011-003 §3, 2011)

Click here to be directed to the Comprehensive Plan (<http://www.deschutes.org/compplan>)



# Sage Grouse Greater Habitat Area

Exhibit B - Map 1 of 26  
to Ordinance 2015-010

## Legend

- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
- Core Area
- Low Density
- General Area

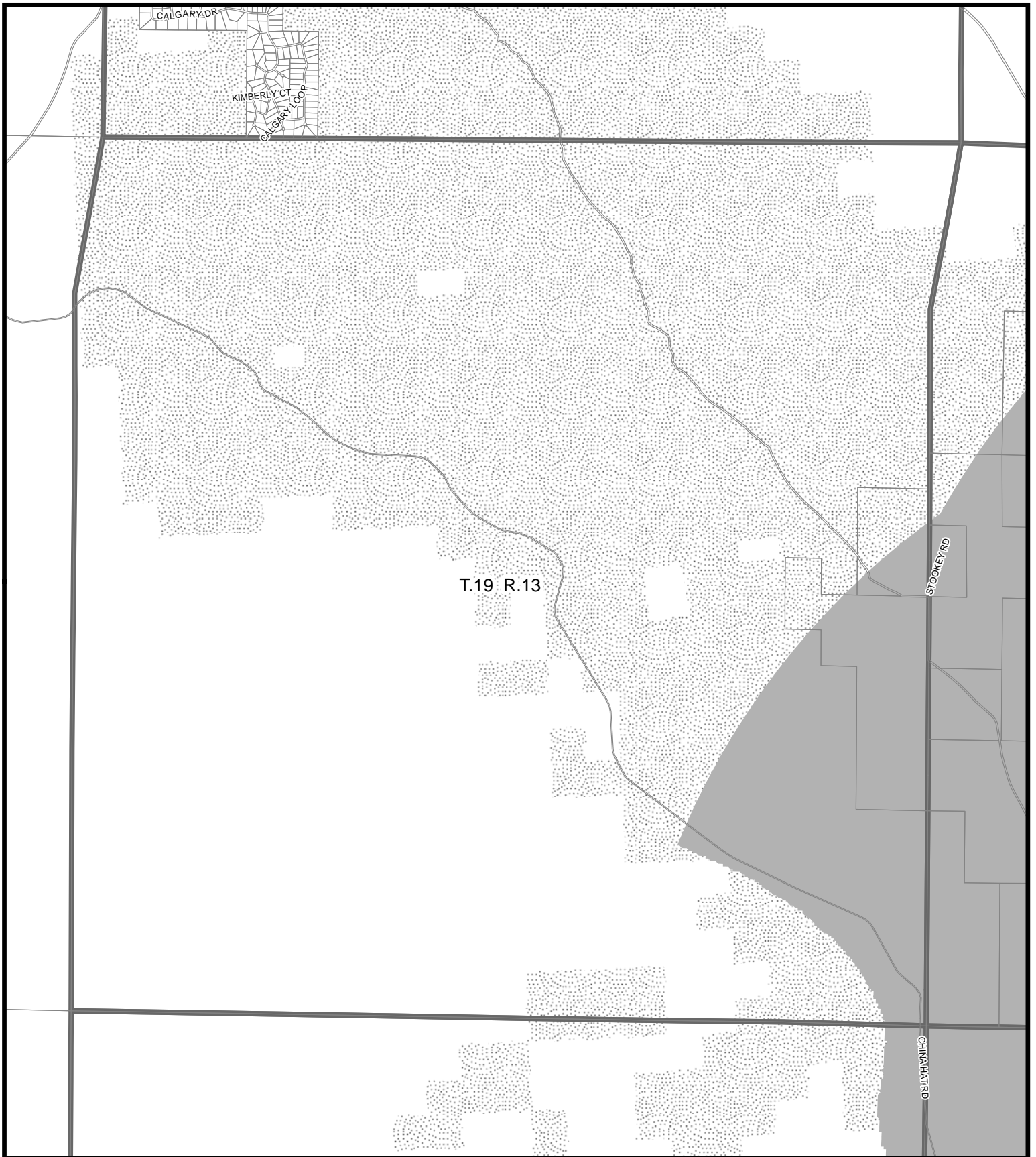


August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.











## Sage Grouse Greater Habitat Area

Exhibit B - Map 2 of 26  
to Ordinance 2015-010

### Legend

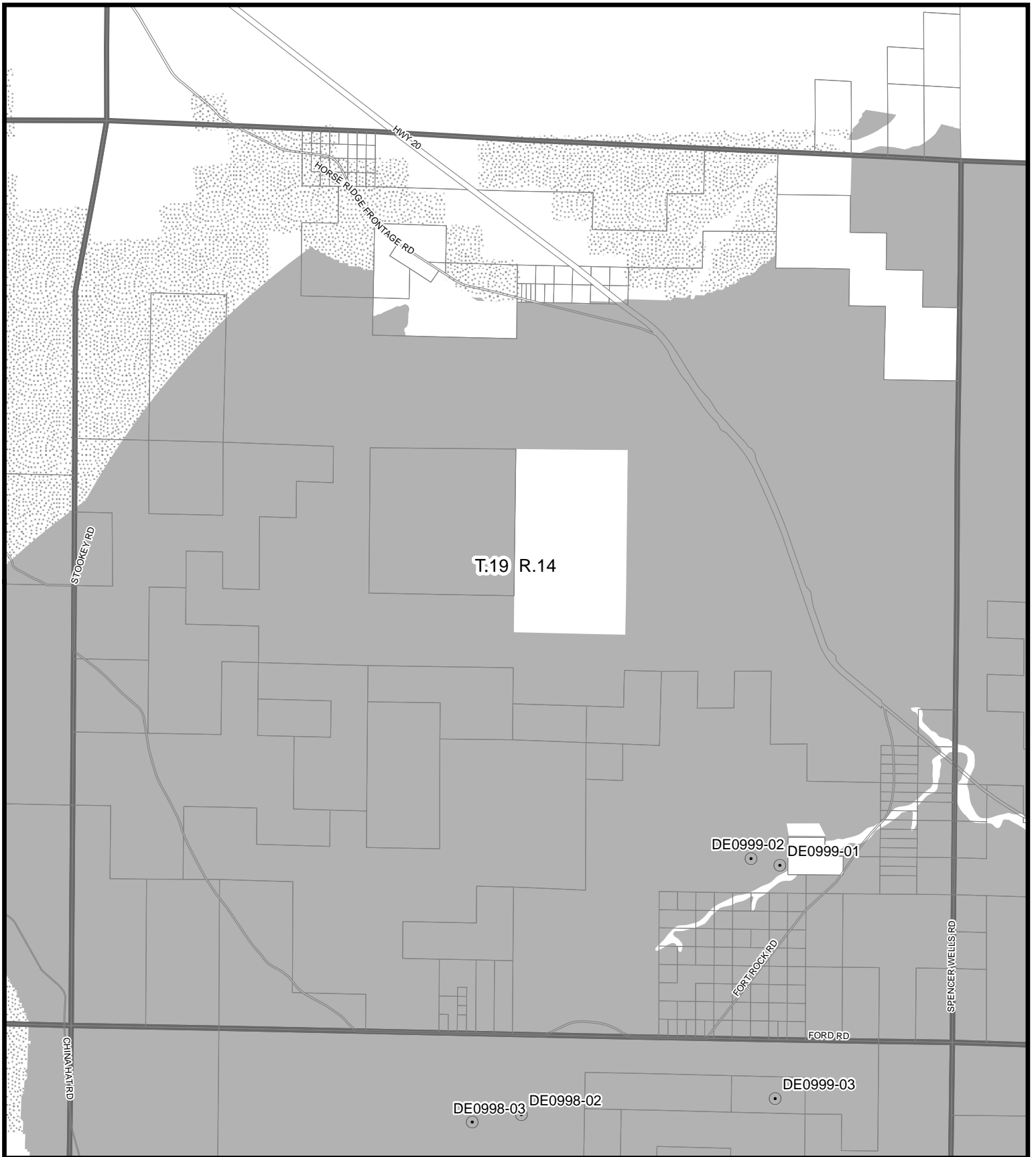
-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
-  Core Area
-  Low Density
-  General Area



August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



## Sage Grouse Greater Habitat Area

Exhibit B - Map 3 of 26  
to Ordinance 2015-010



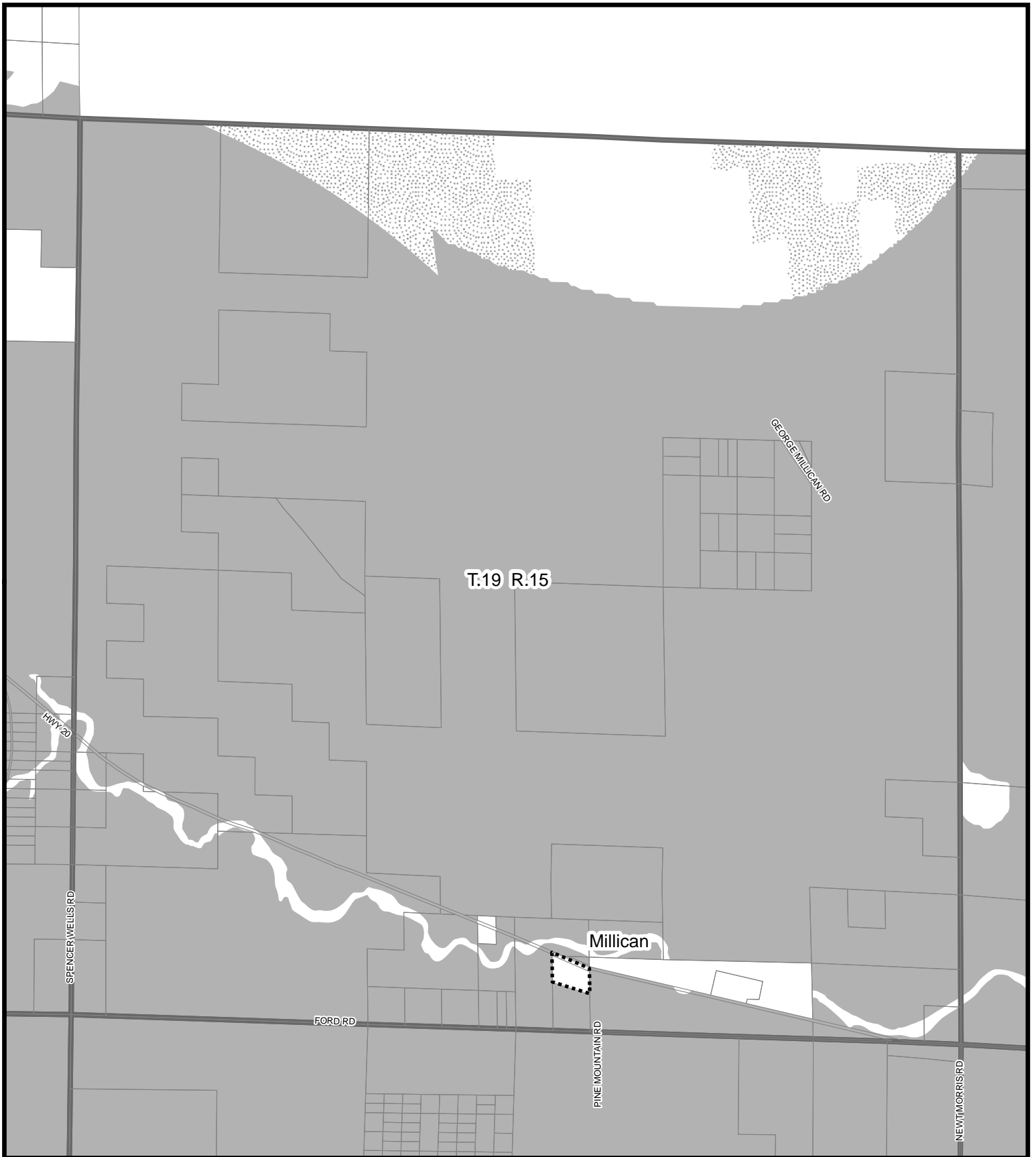
### Legend

- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area

DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

August 21, 2015





# Sage Grouse Greater Habitat Area

Exhibit B - Map 4 of 26  
to Ordinance 2015-010

## Legend

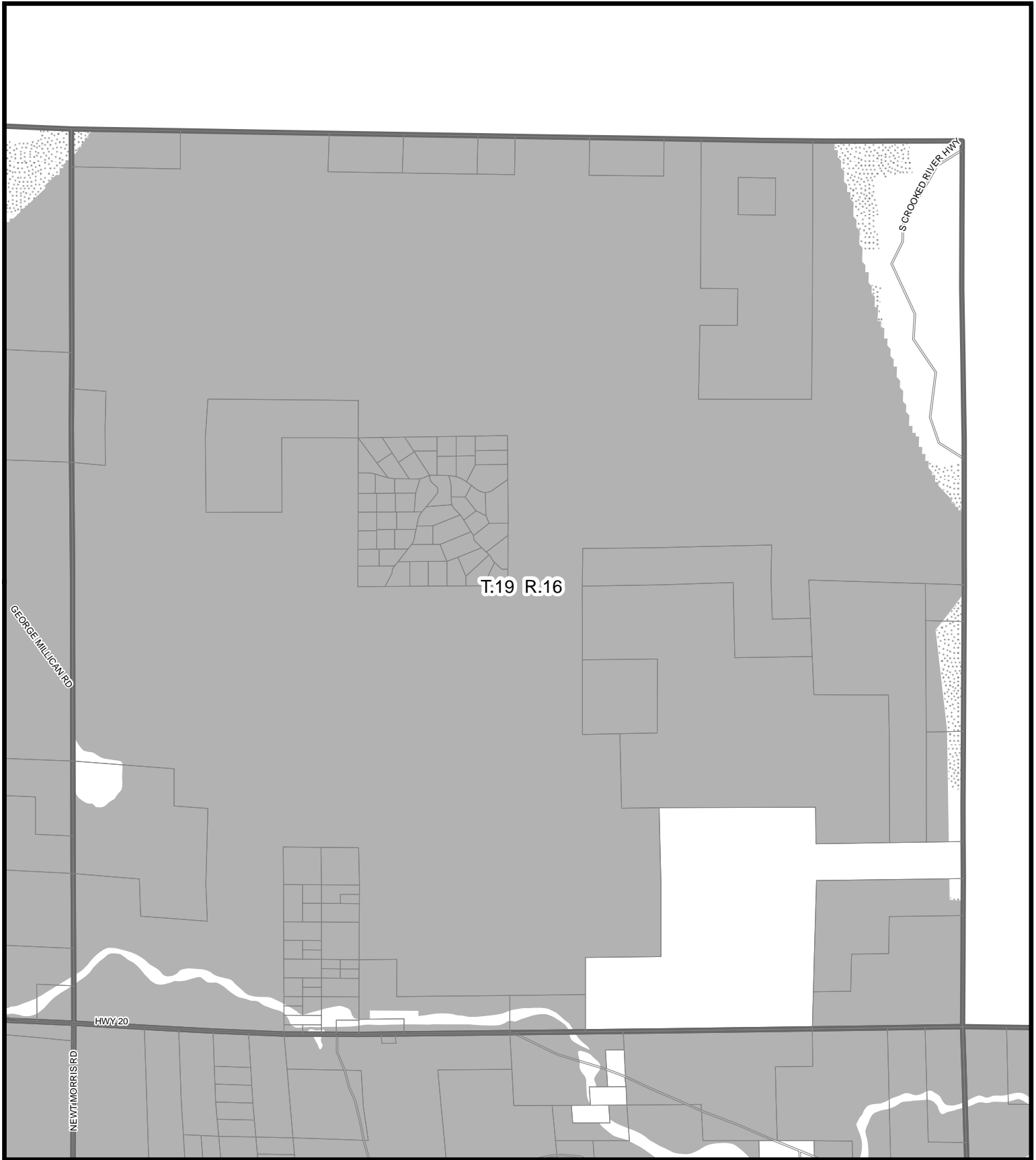
- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area



August 21, 2015









DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



## Sage Grouse Greater Habitat Area

Exhibit B - Map 5 of 26  
to Ordinance 2015-010

### Legend

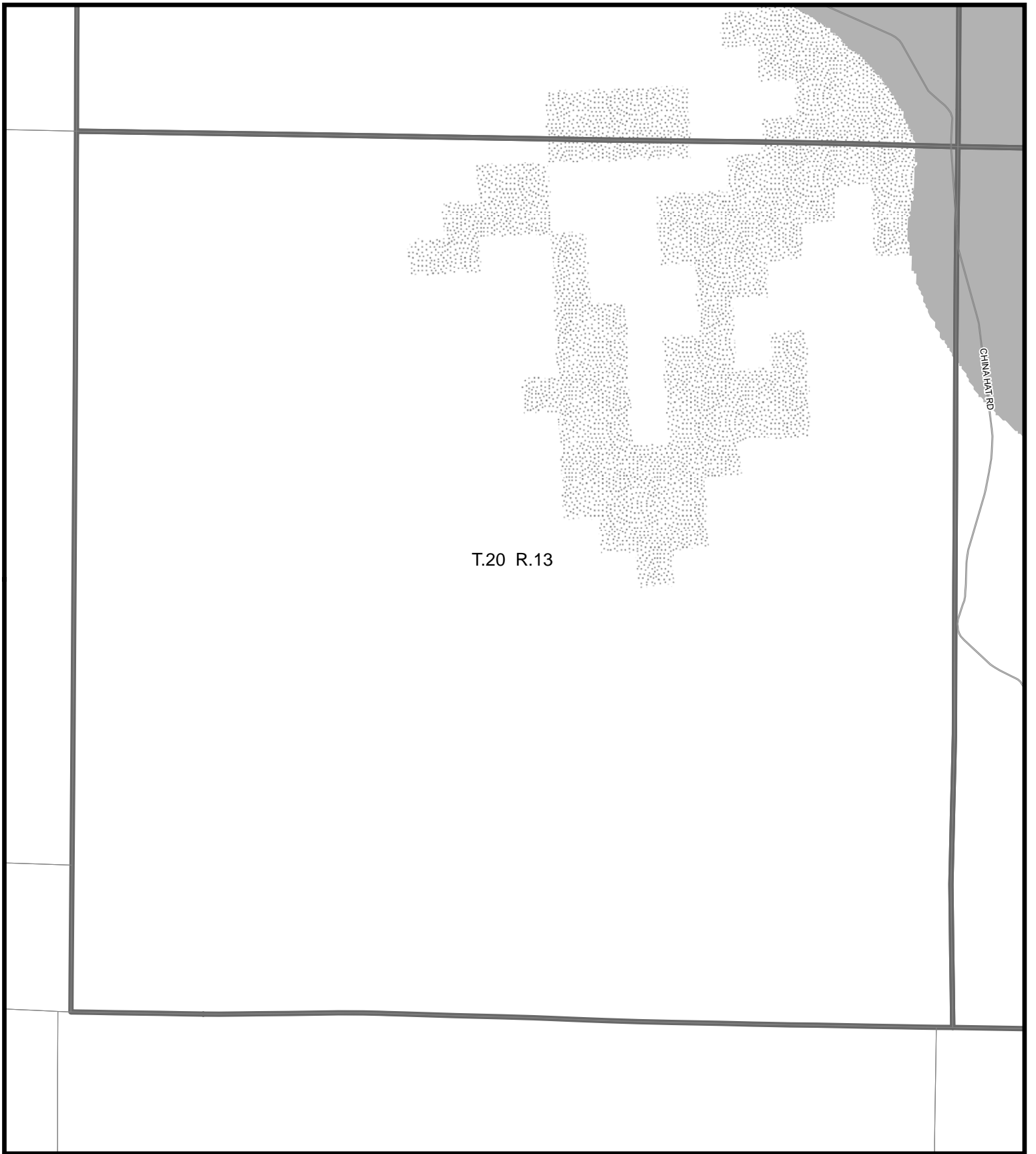
-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
-  Core Area
-  Low Density
-  General Area



August 21, 2015









DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 6 of 26  
to Ordinance 2015-010

## Legend

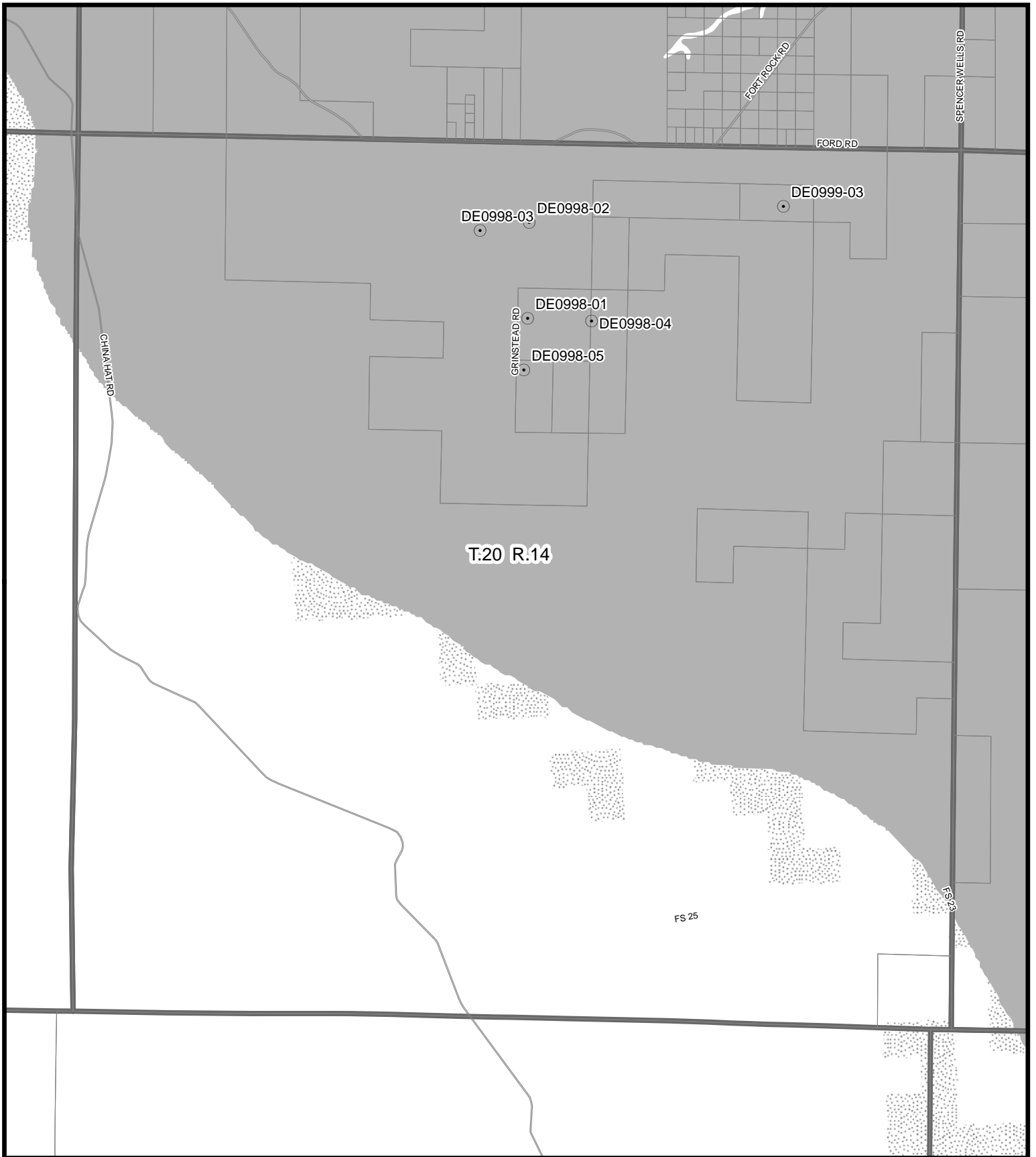
-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
-  Core Area
-  Low Density
-  General Area



August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 7 of 26  
to Ordinance 2015-010



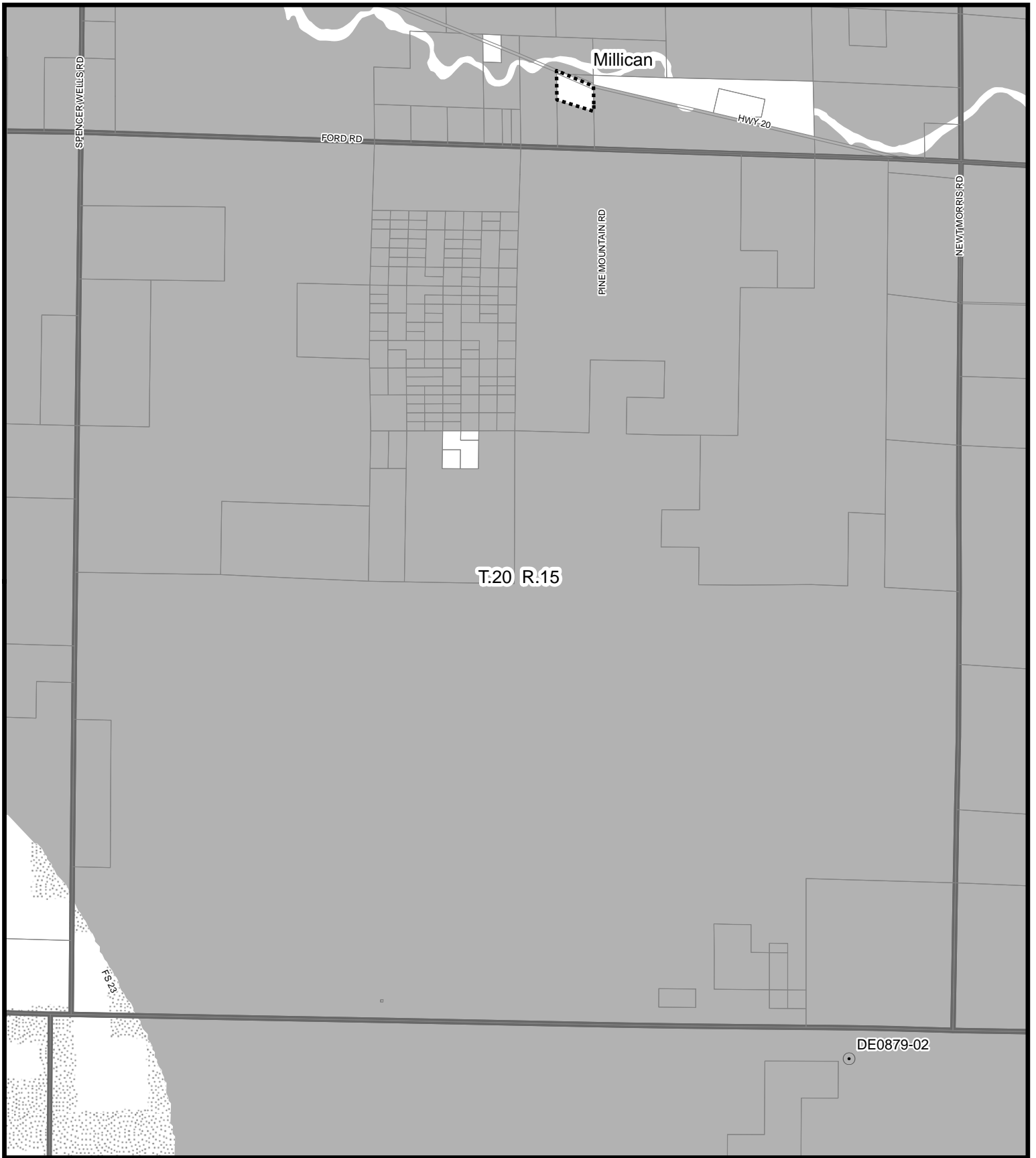
## Legend

- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area



August 21, 2015

DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 8 of 26  
to Ordinance 2015-010

- Legend**
- Sage Grouse Lek Site
  - Unincorporated Community
  - Sage Grouse Map Index
- Sage Grouse Habitat Area**
- Core Area
  - Low Density
  - General Area

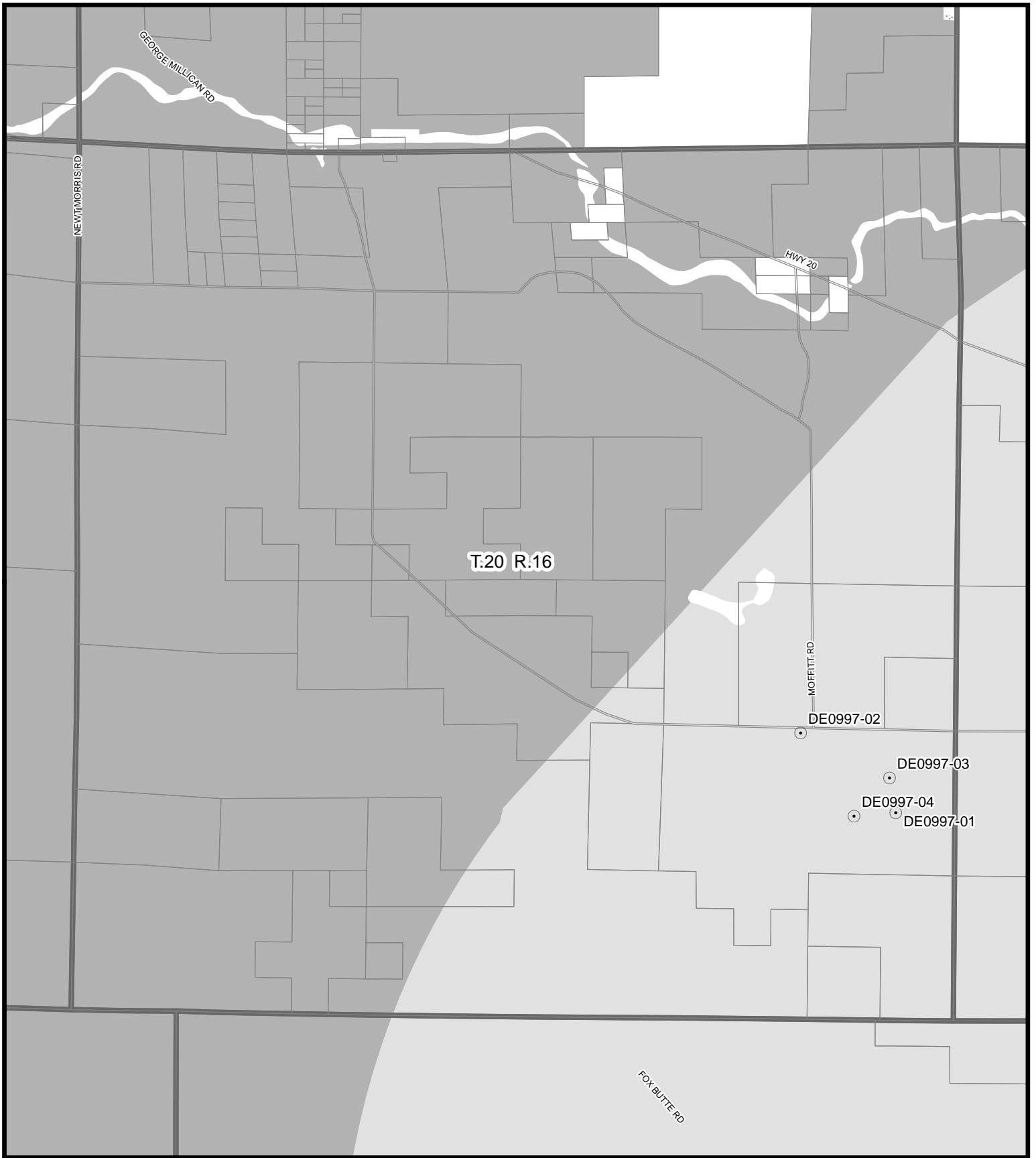


August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.





# Sage Grouse Greater Habitat Area

Exhibit B - Map 9 of 26  
to Ordinance 2015-010



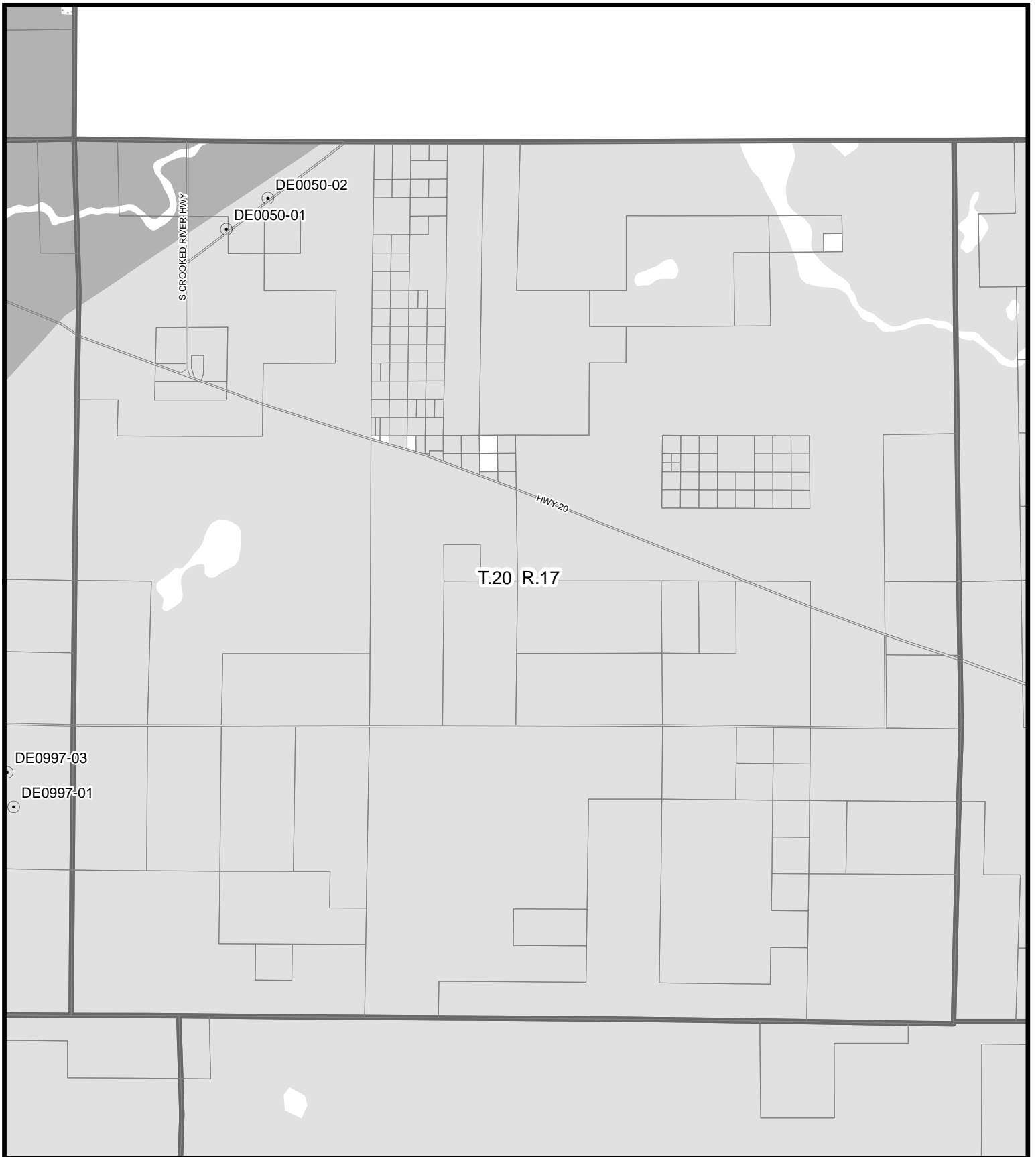
## Legend

- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area



August 21, 2015

DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 10 of 26  
to Ordinance 2015-010

## Legend

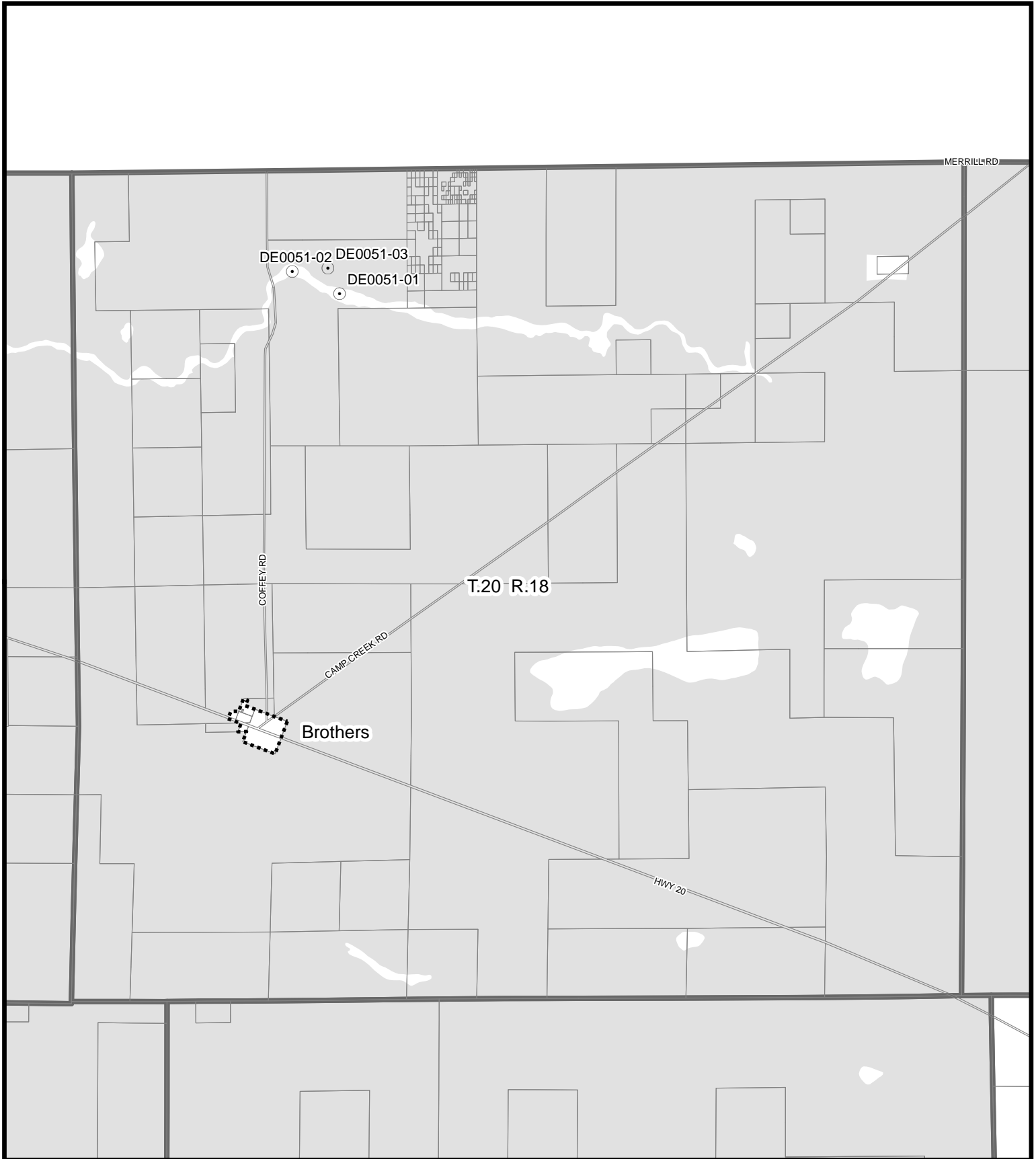
- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area



August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 11 of 26  
to Ordinance 2015-010

## Legend

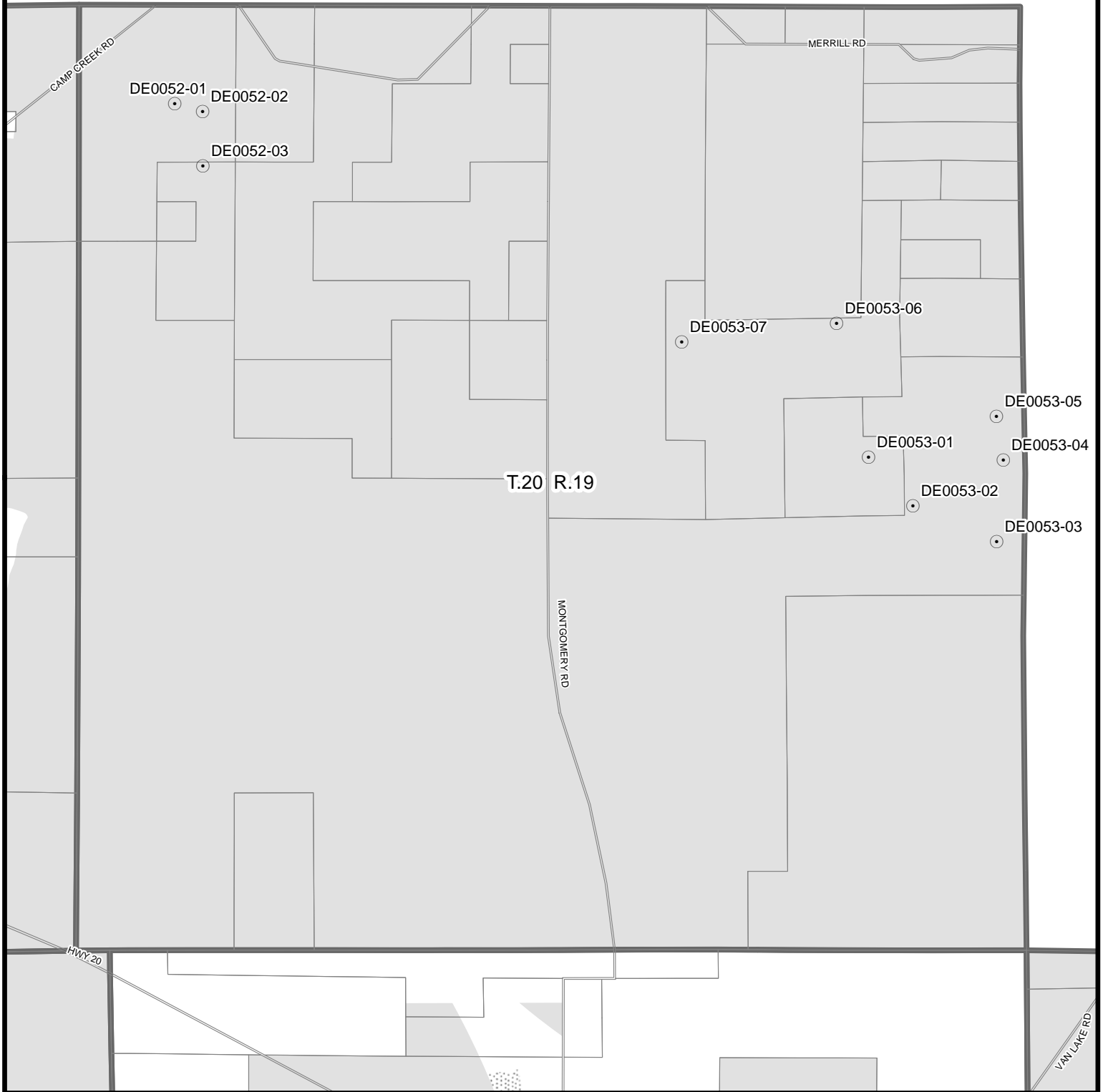
- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area



August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 12 of 26  
to Ordinance 2015-010

## Legend

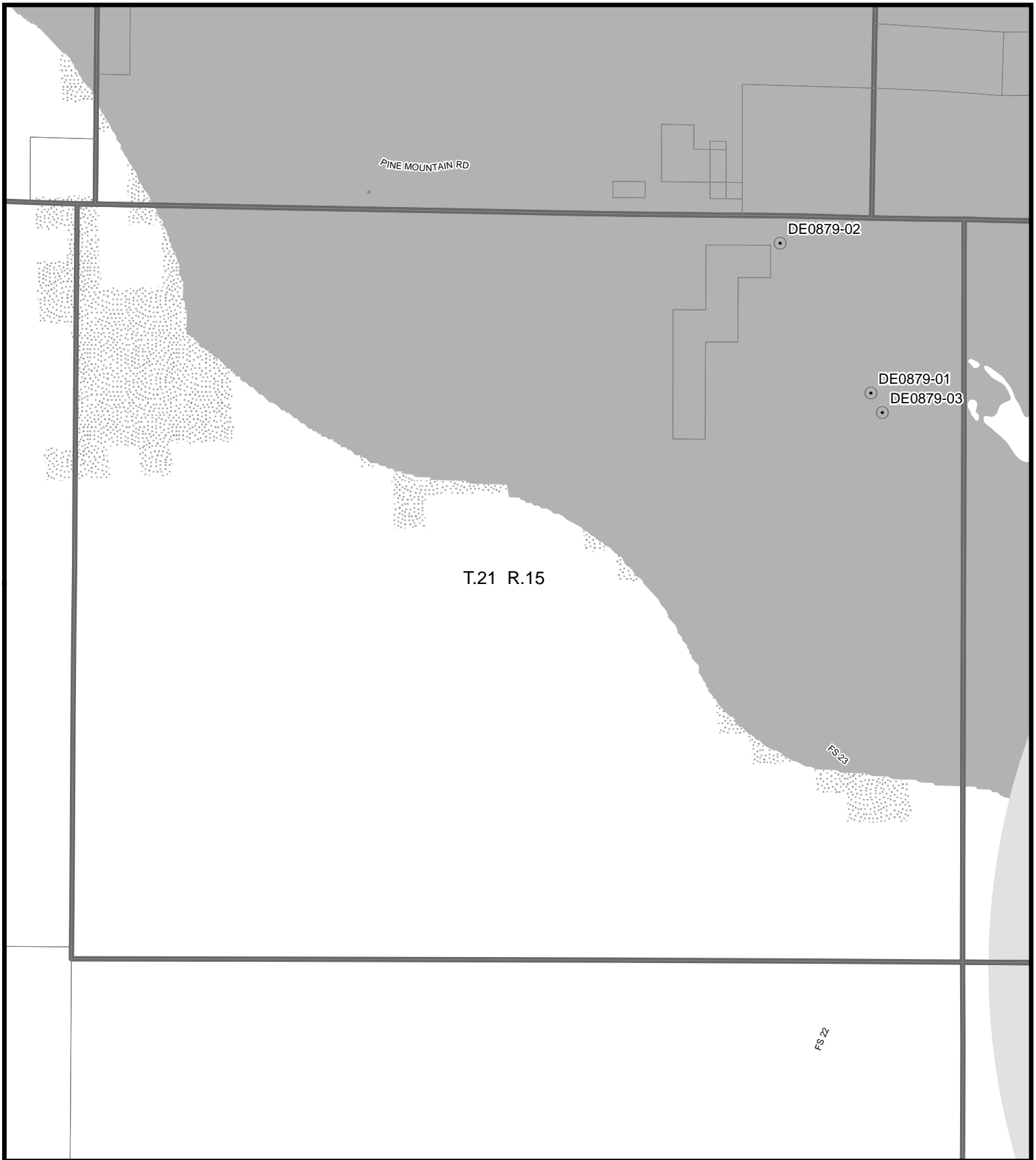
- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area



August 21, 2015









DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



## Sage Grouse Greater Habitat Area

Exhibit B - Map 13 of 26  
to Ordinance 2015-010

### Legend

-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
  -  Core Area
  -  Low Density
  -  General Area

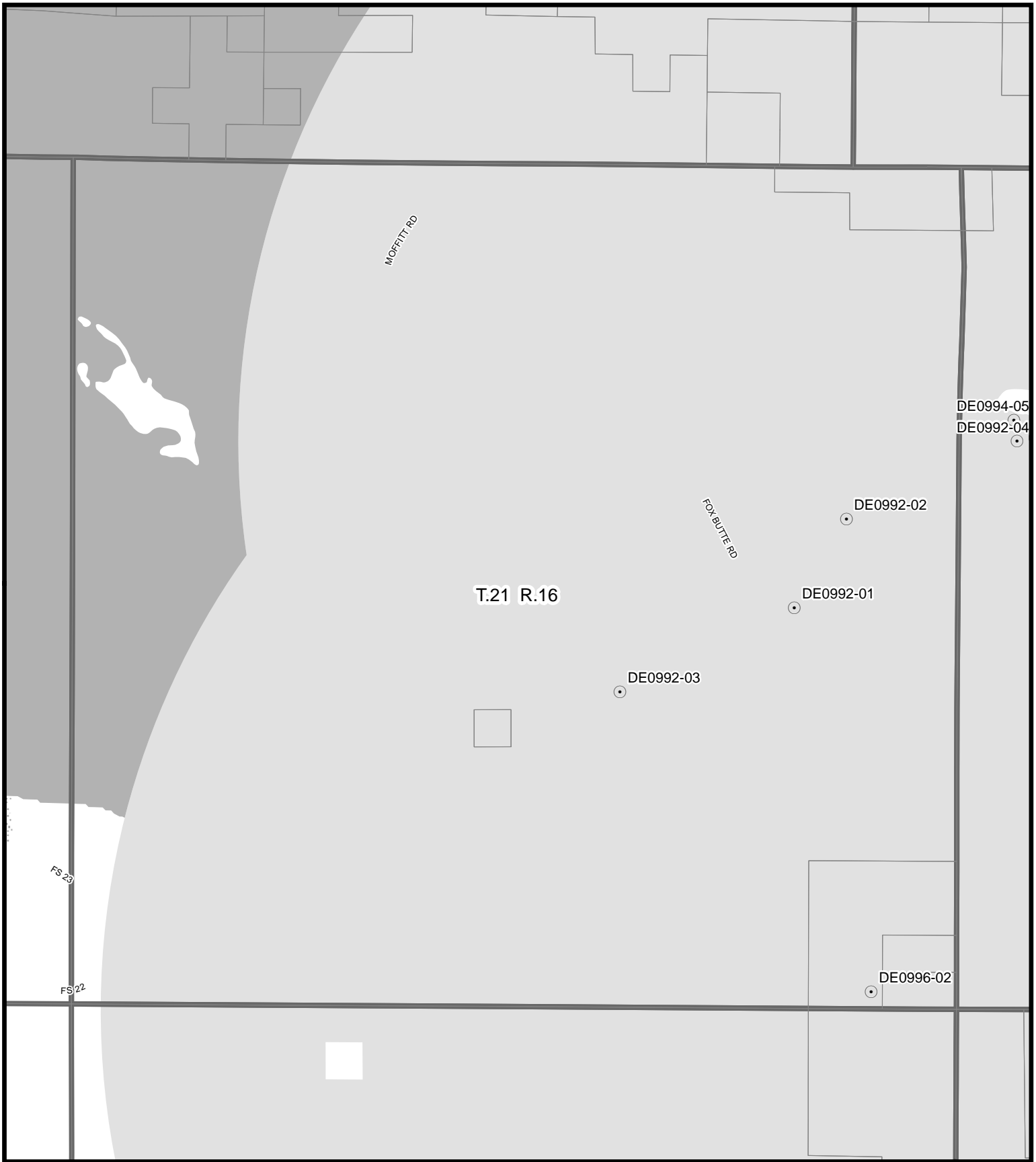


August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.











# Sage Grouse Greater Habitat Area

Exhibit B - Map 14 of 26  
to Ordinance 2015-010

## Legend

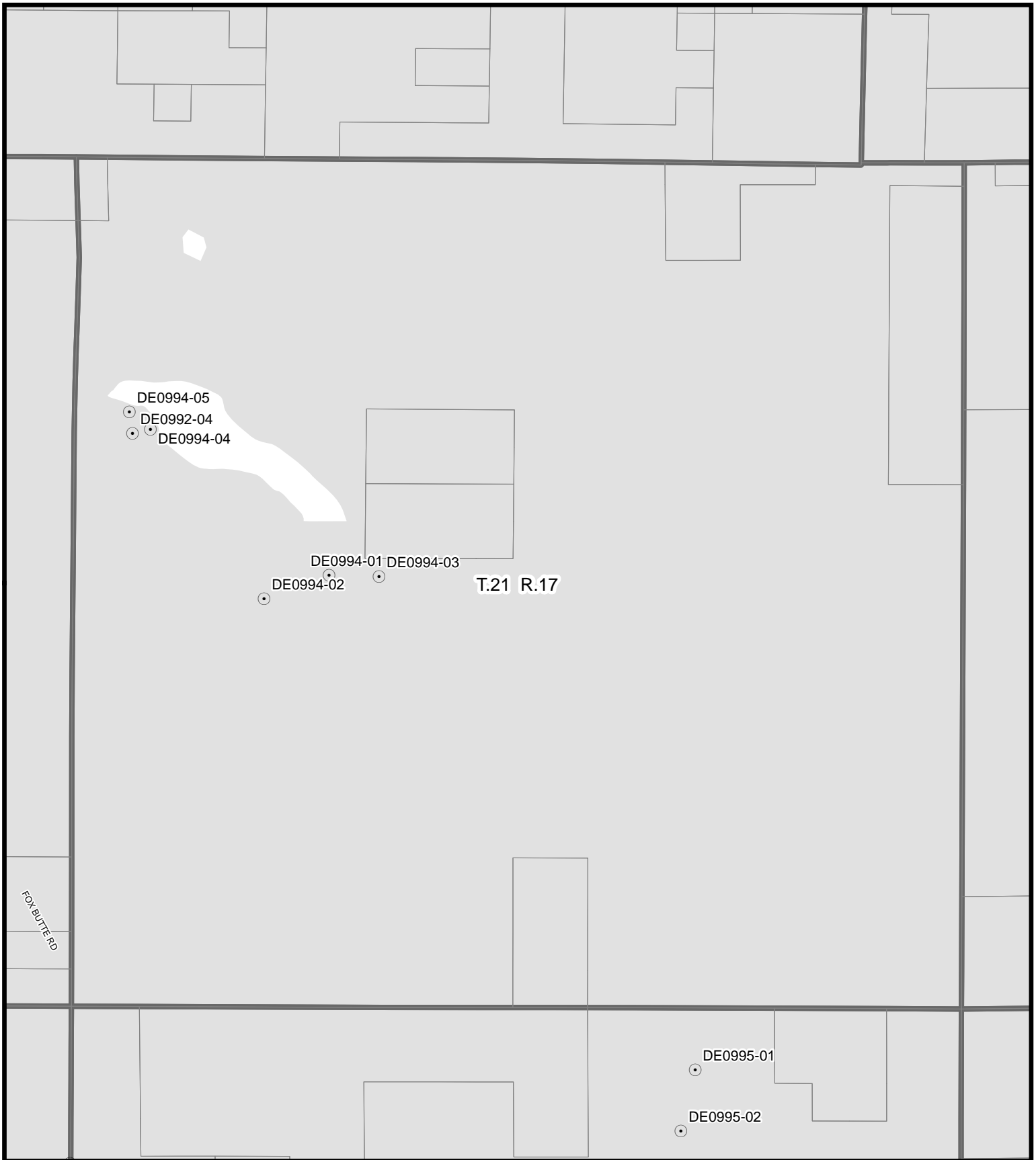
-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
-  Core Area
-  Low Density
-  General Area



August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on DeShautes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". DeShautes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 15 of 26  
to Ordinance 2015-010

## Legend

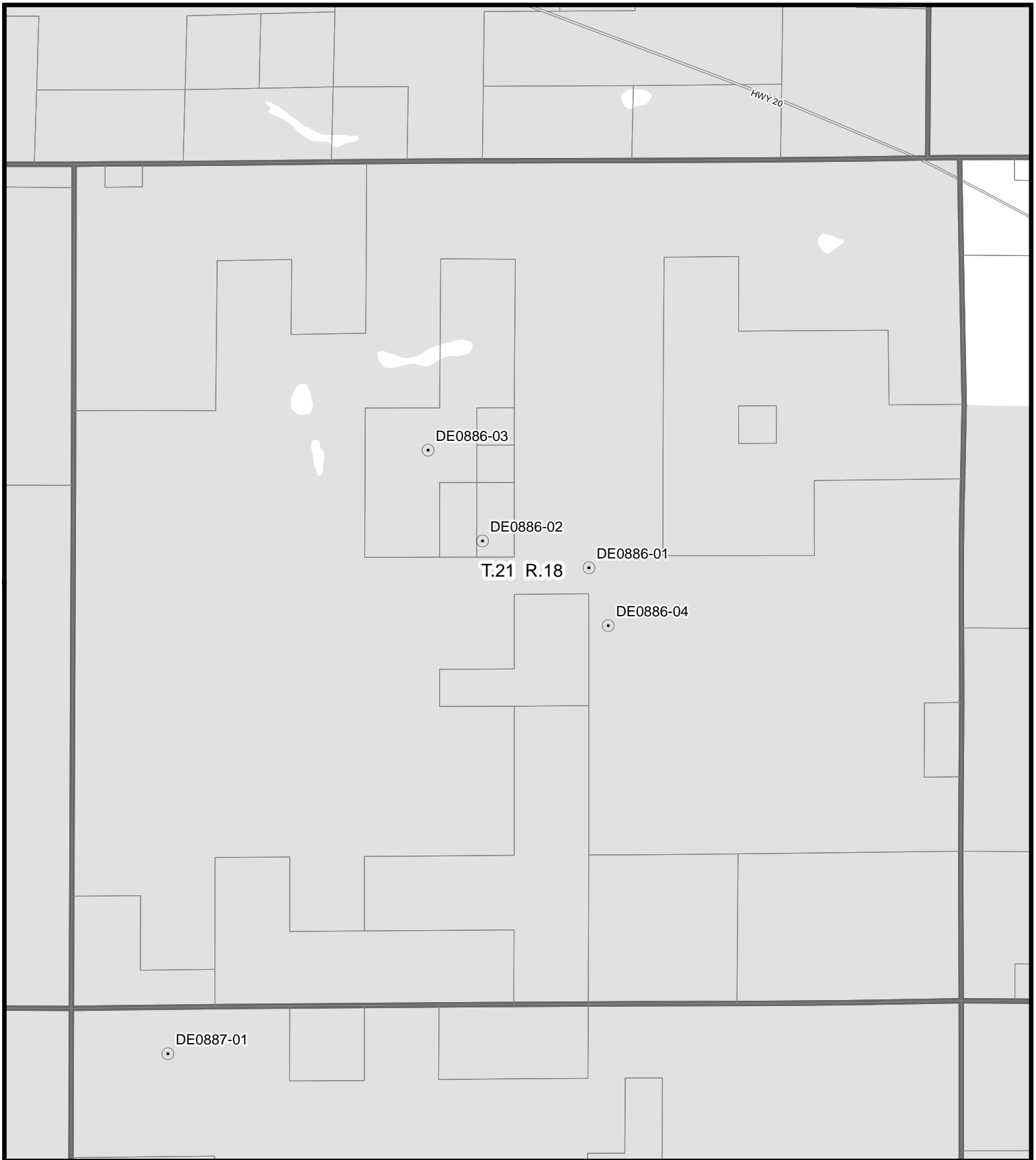
- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area



August 21, 2015









**DISCLAIMER:**  
The information on this map was derived from digital databases on DeShautes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". DeShautes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



## Sage Grouse Greater Habitat Area

Exhibit B - Map 16 of 26  
to Ordinance 2015-010

### Legend

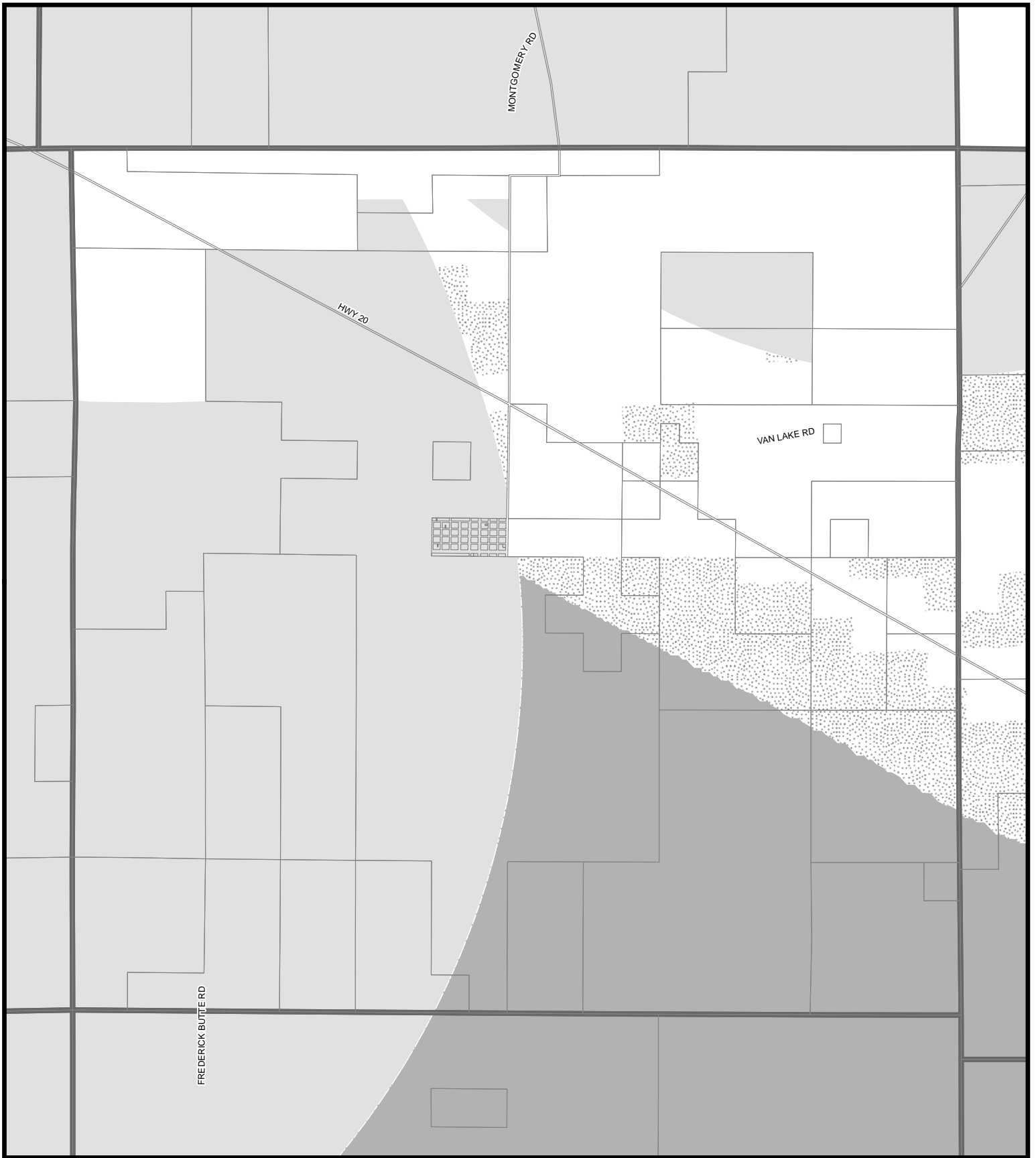
-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
-  Core Area
-  Low Density
-  General Area



August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 17 of 26  
to Ordinance 2015-010

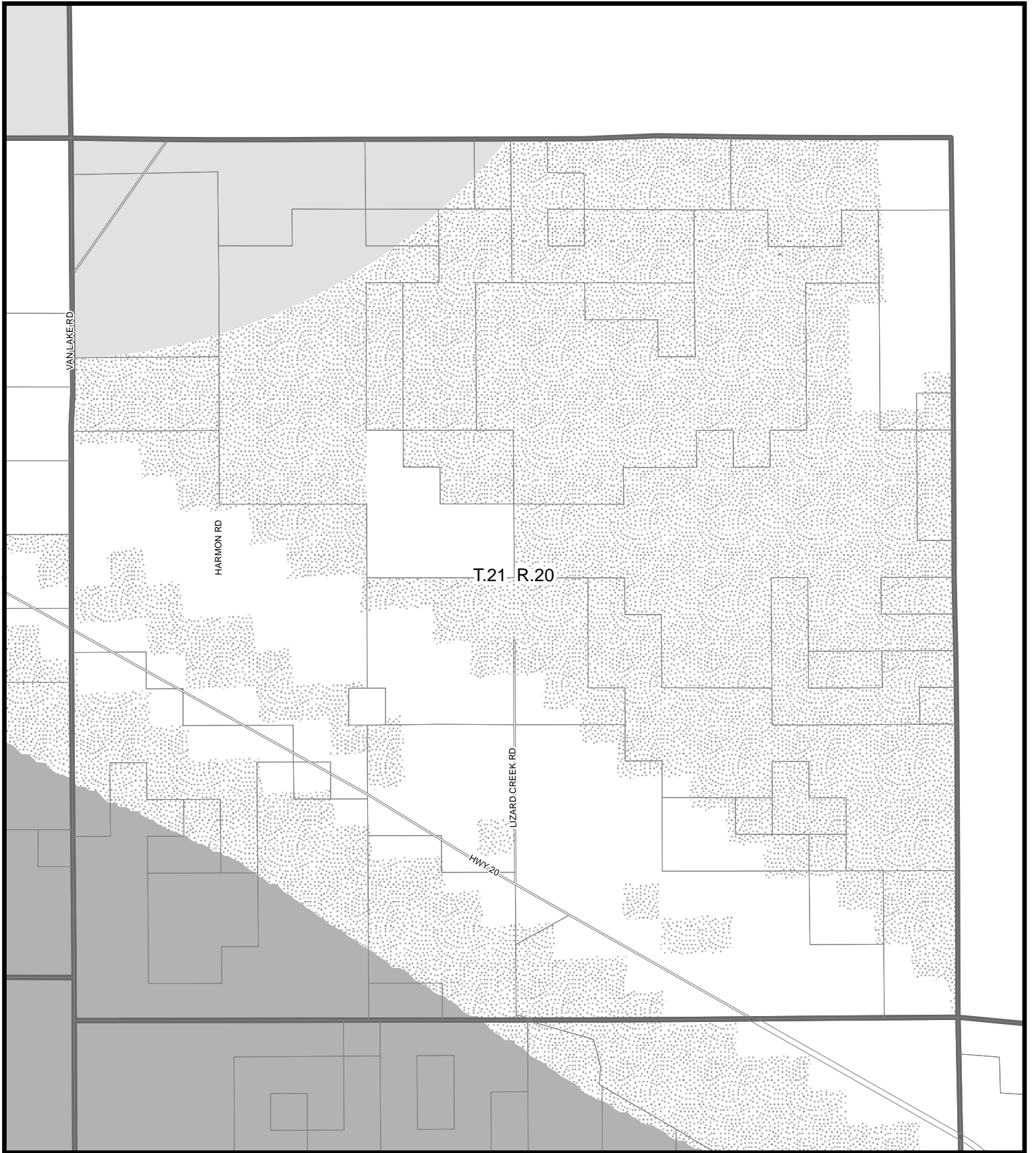
## Legend

- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

August 21, 2015



# Sage Grouse Greater Habitat Area

Exhibit B - Map 18 of 26  
to Ordinance 2015-010

- Legend**
- Sage Grouse Lek Site
  - Unincorporated Community
  - Sage Grouse Map Index
  - Sage Grouse Habitat Area**
    - Core Area
    - Low Density
    - General Area

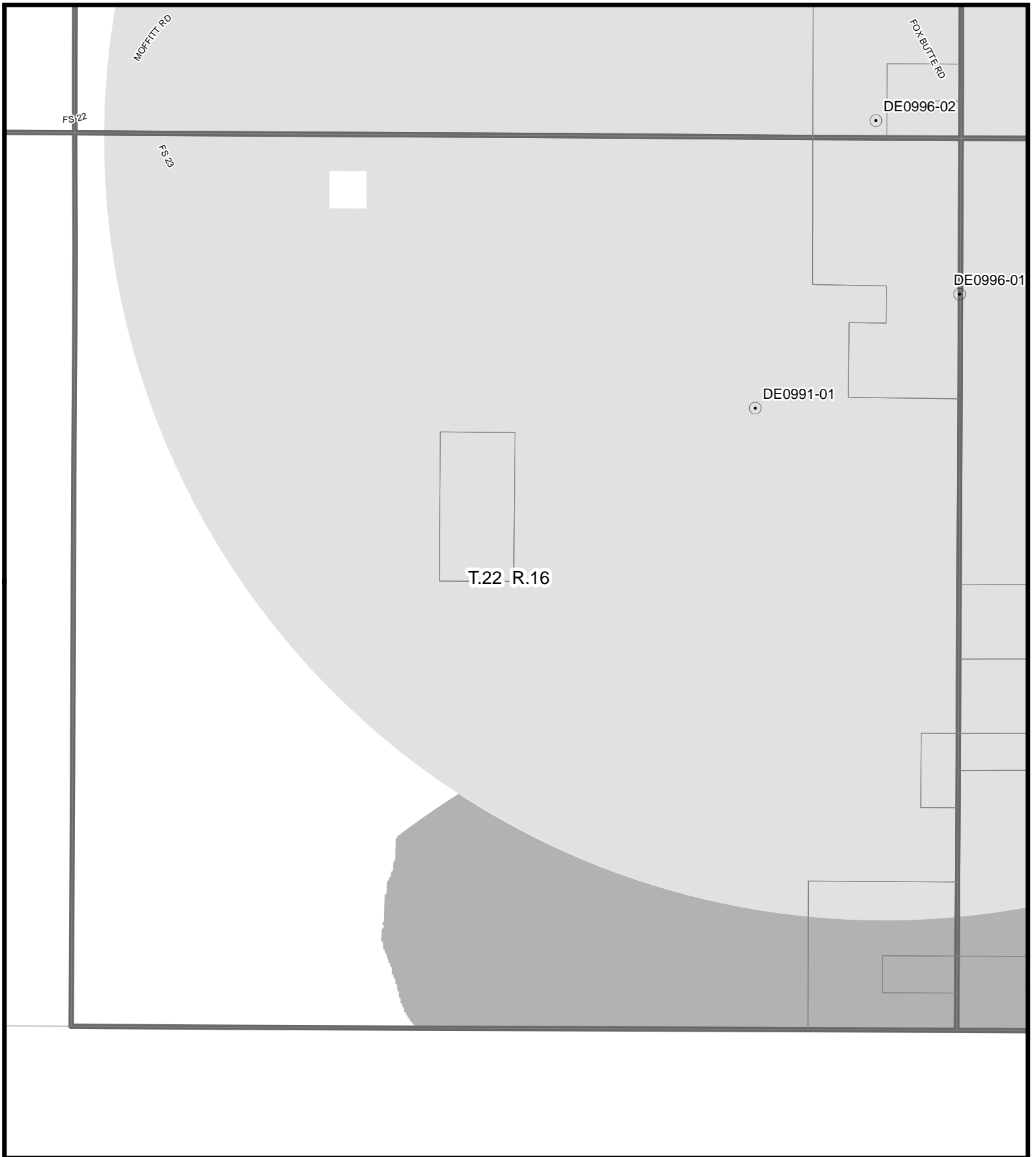


August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.





## Sage Grouse Greater Habitat Area

Exhibit B - Map 19 of 26  
to Ordinance 2015-010

### Legend

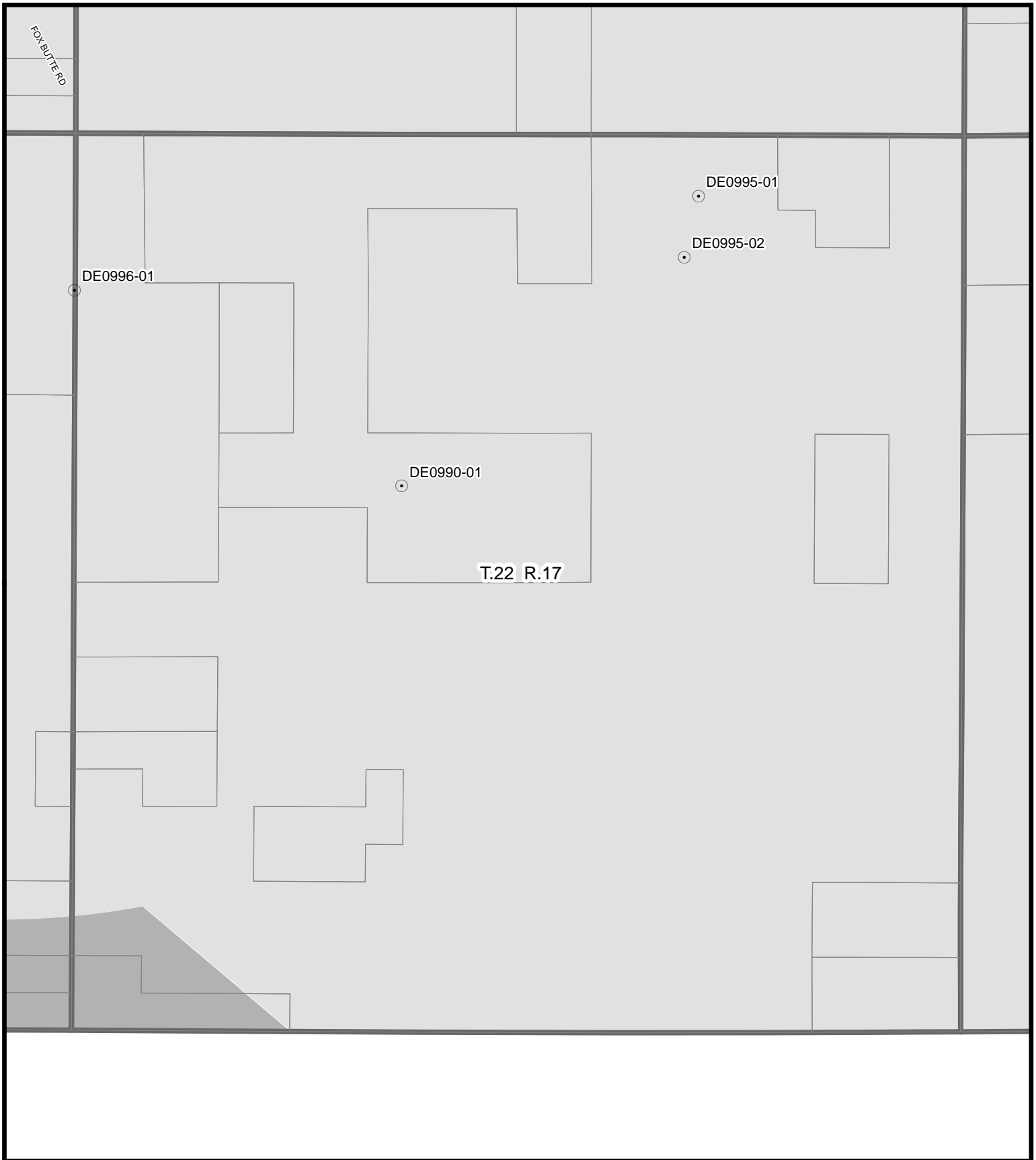
- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area



August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



## Sage Grouse Greater Habitat Area

Exhibit B - Map 20 of 26  
to Ordinance 2015-010

### Legend

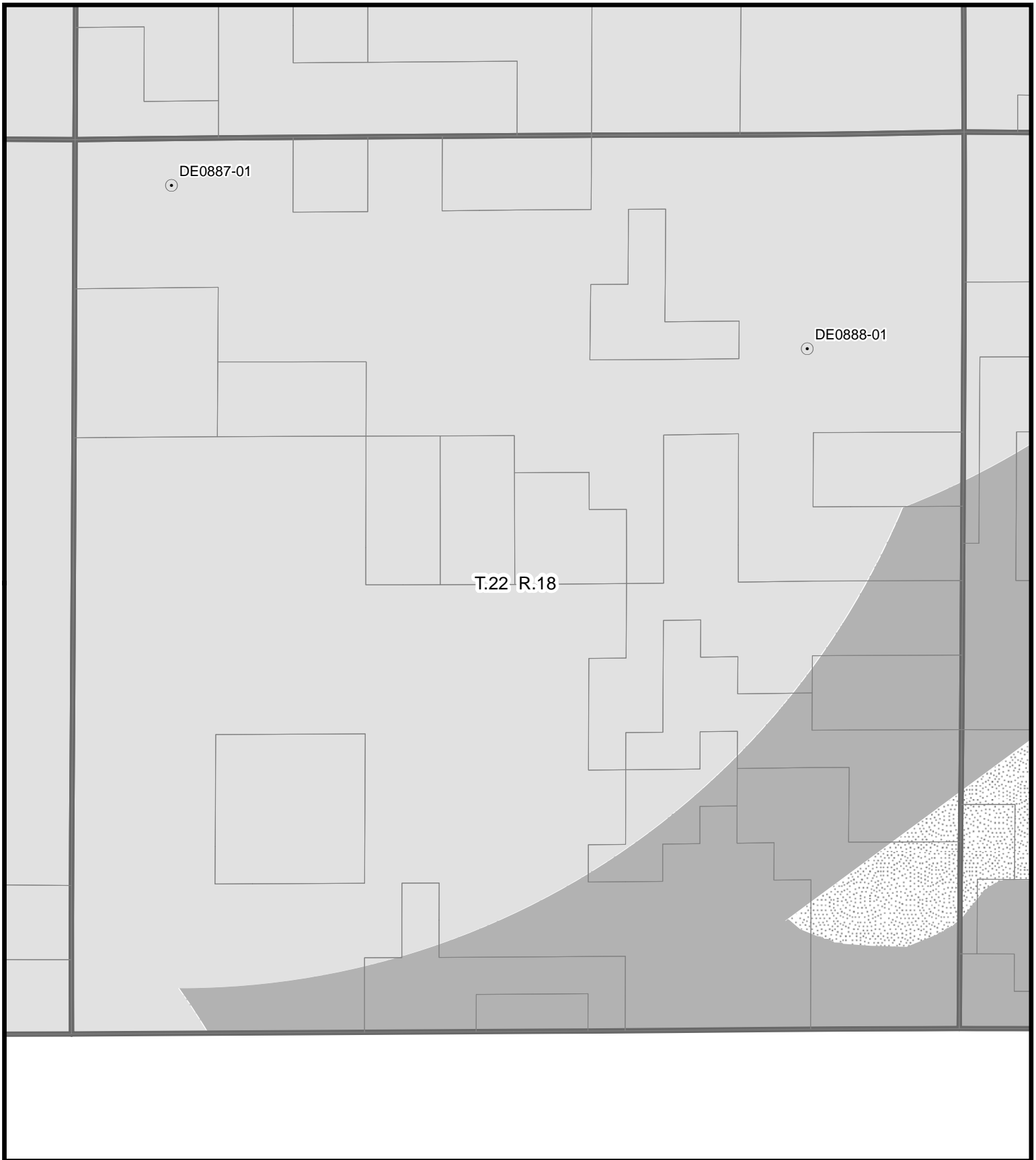
- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area



August 21, 2015









DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 21 of 26  
to Ordinance 2015-010

## Legend

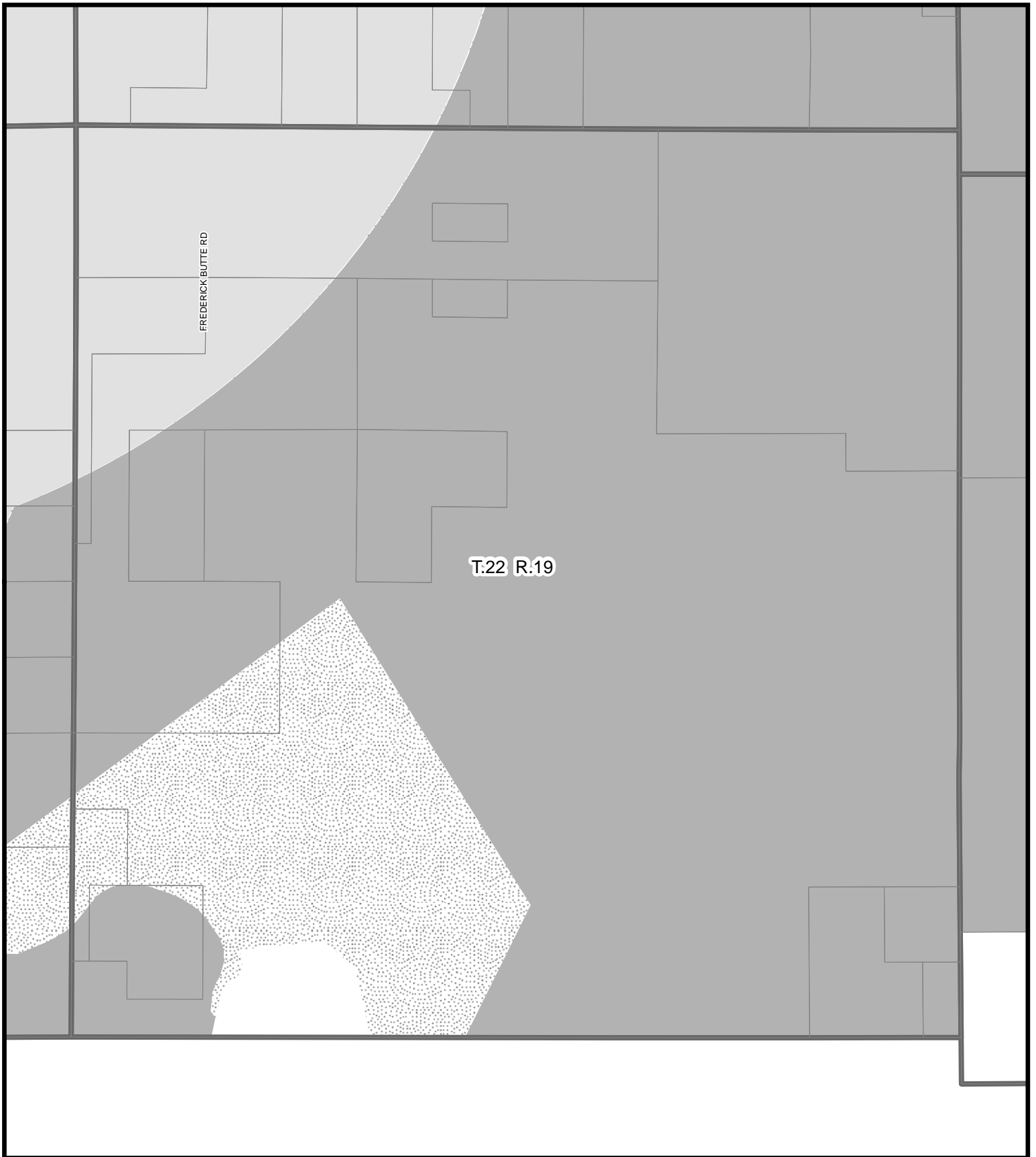
-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
-  Core Area
-  Low Density
-  General Area



August 21, 2015









DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 22 of 26  
to Ordinance 2015-010

## Legend

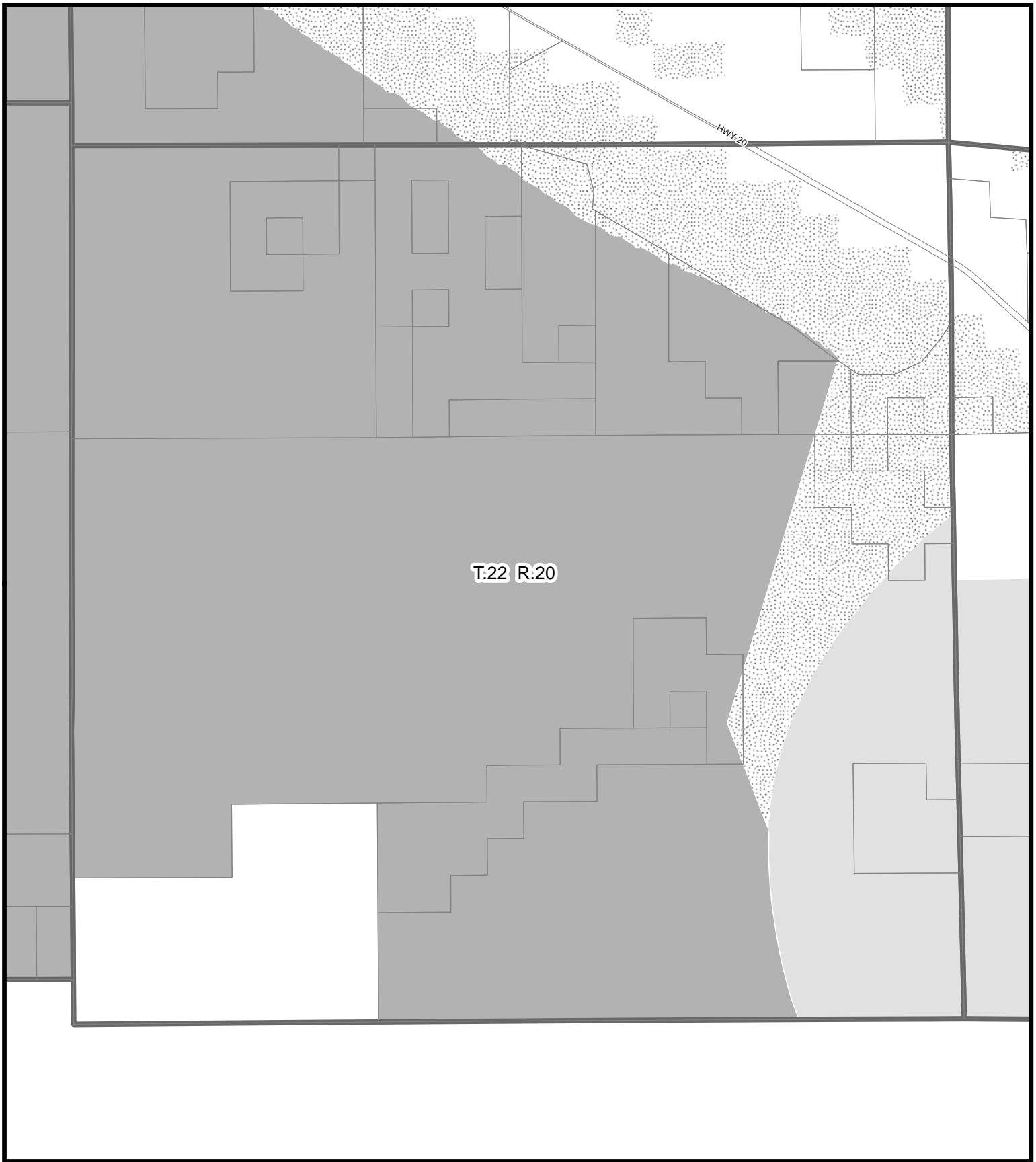
-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
-  Core Area
-  Low Density
-  General Area



August 21, 2015









DISCLAIMER:  
The information on this map was derived from digital databases on Dischutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Dischutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 23 of 26  
to Ordinance 2015-010

## Legend

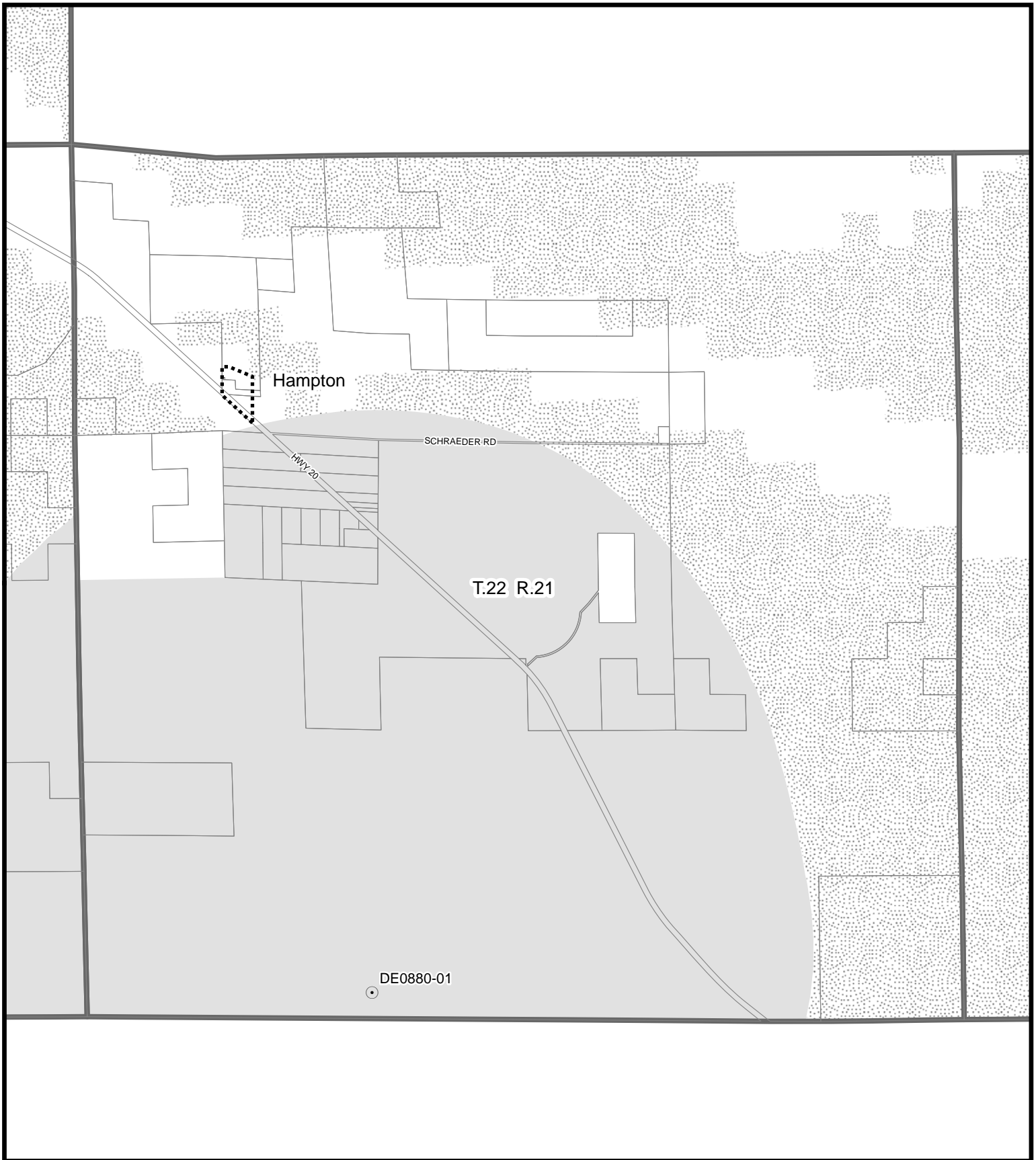
-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
-  Core Area
-  Low Density
-  General Area



August 21, 2015









**DISCLAIMER:**  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 24 of 26  
to Ordinance 2015-010

## Legend

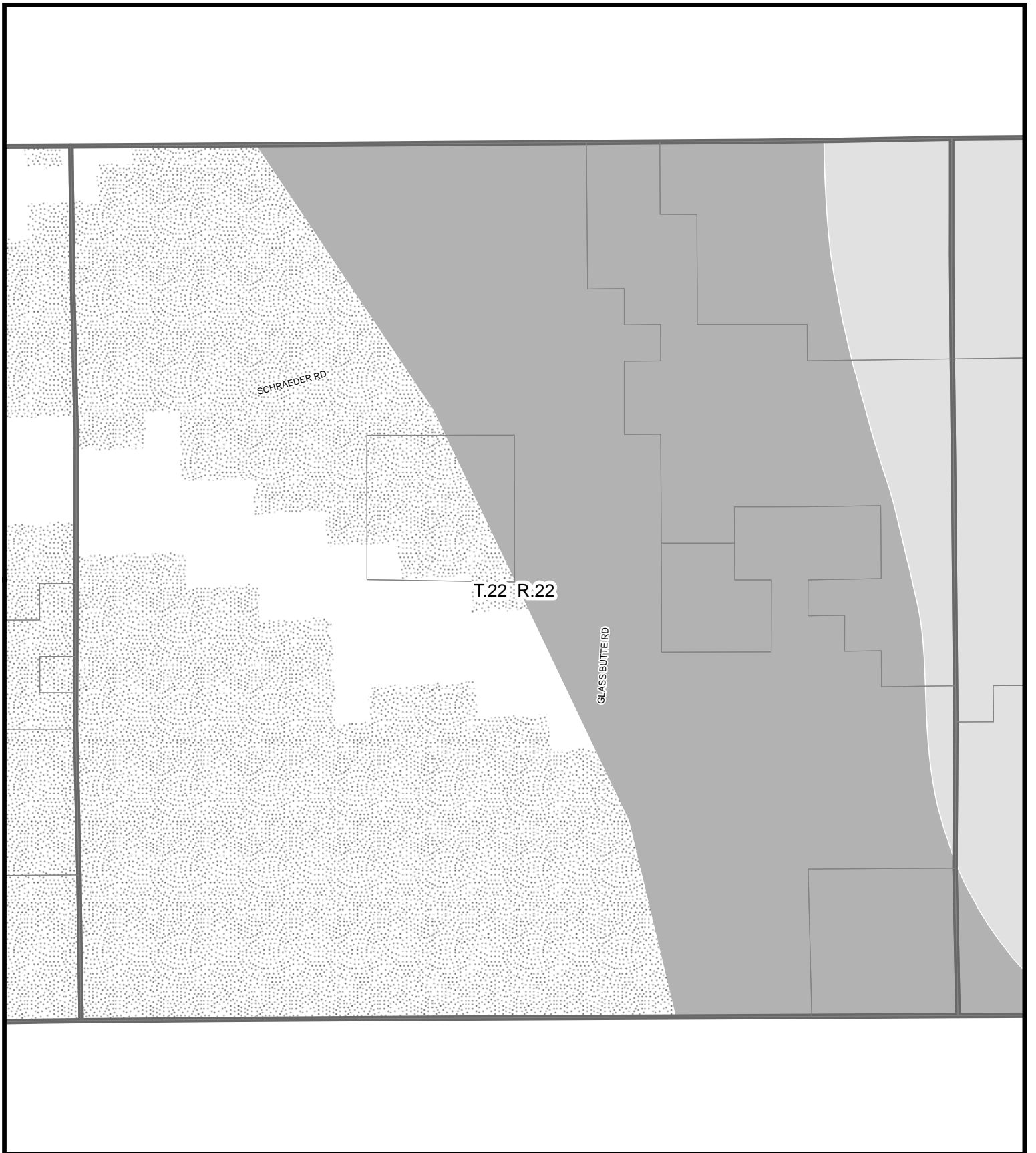
-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
-  Core Area
-  Low Density
-  General Area



August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sage Grouse Greater Habitat Area

Exhibit B - Map 25 of 26  
to Ordinance 2015-010

## Legend

- Sage Grouse Lek Site
- Unincorporated Community
- Sage Grouse Map Index
- Sage Grouse Habitat Area**
  - Core Area
  - Low Density
  - General Area

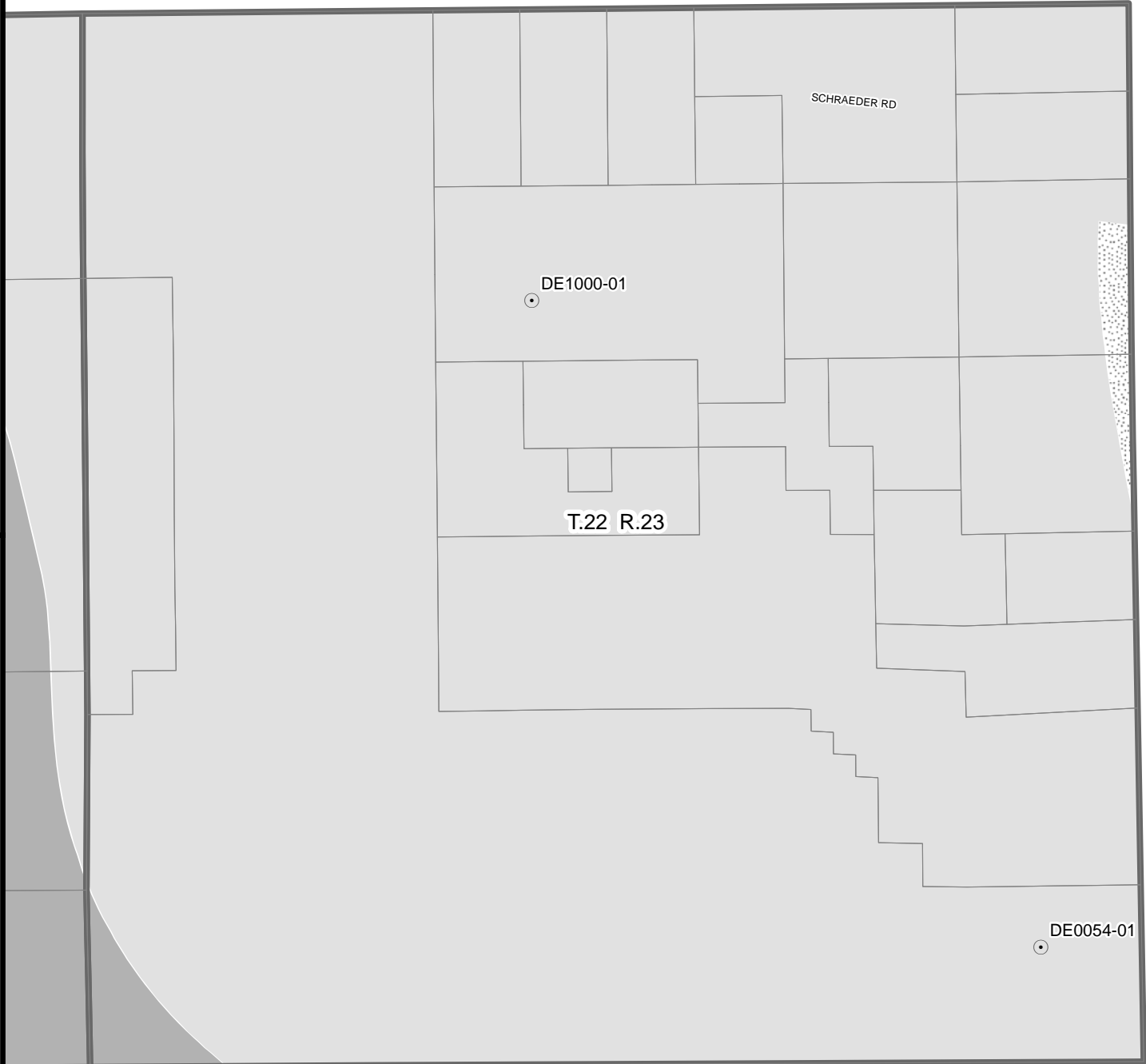


August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.











## Sage Grouse Greater Habitat Area

Exhibit B - Map 26 of 26  
to Ordinance 2015-010

### Legend

-  Sage Grouse Lek Site
-  Unincorporated Community
-  Sage Grouse Map Index
- Sage Grouse Habitat Area**
-  Core Area
-  Low Density
-  General Area

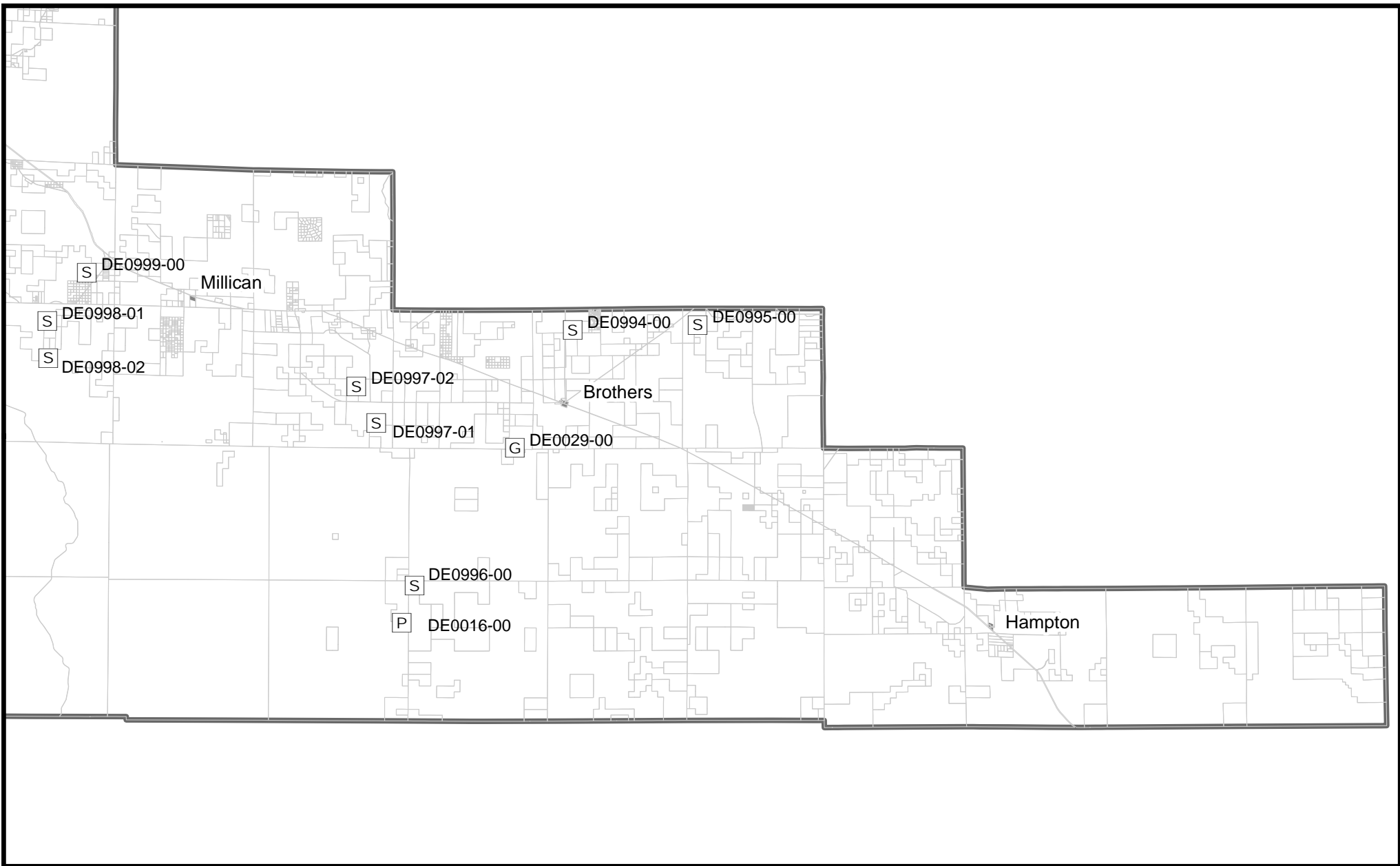


August 21, 2015



DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.





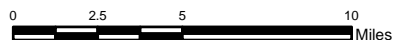
# Sensitive Bird and Mammal Habitat Inventory Amendment

Exhibit C1 to Ordinance 2015-010

**Legend**

- S Sage Grouse Lek
- G Golden Eagle
- P Prairie Falcon

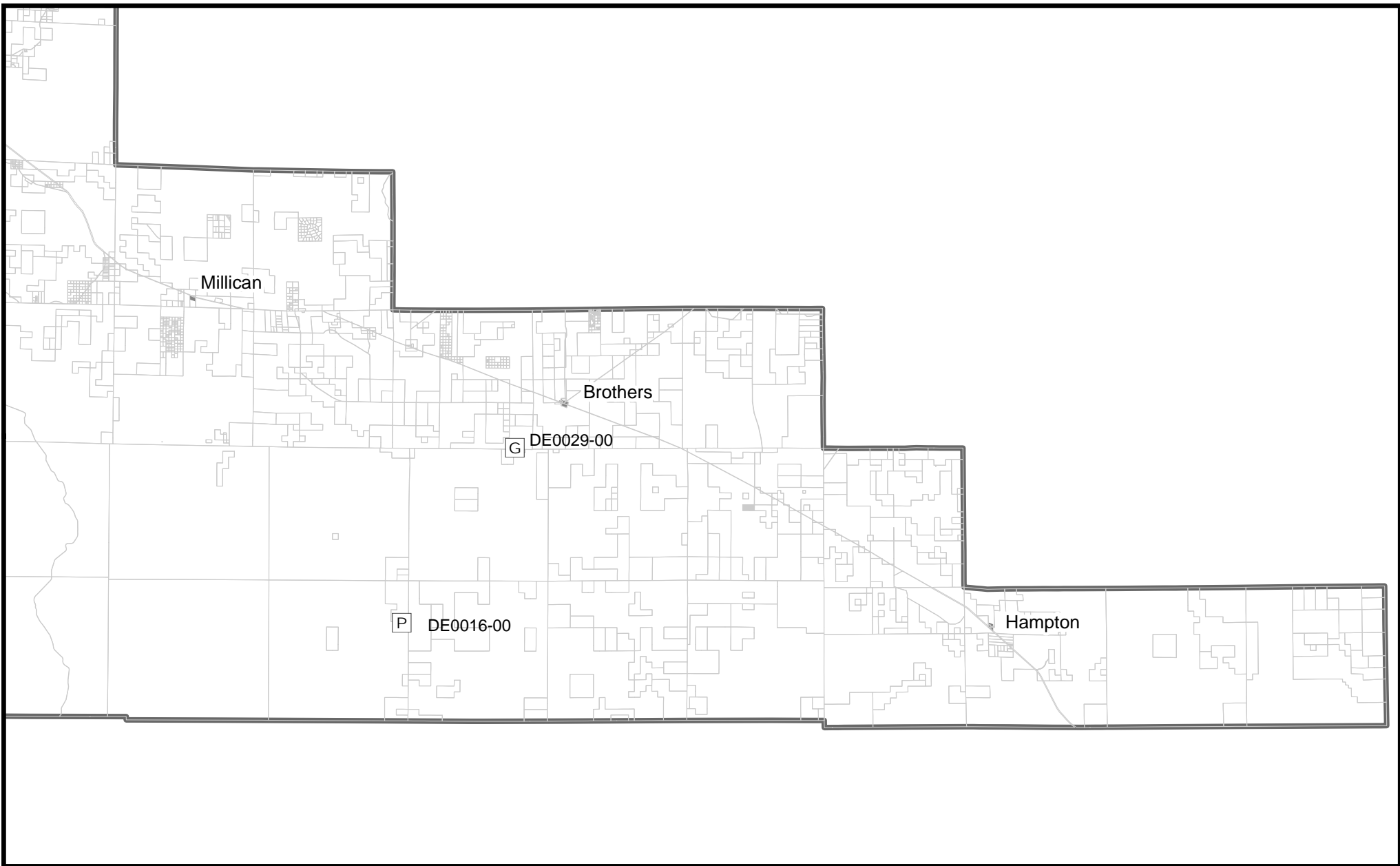
- County Boundary
- Unincorporated Community



August 13, 2015







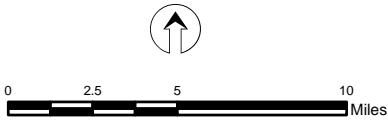
**DISCLAIMER:**  
 The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.



# Sensitive Bird and Mammal Habitat Inventory Amendment

Exhibit C2 to Ordinance 2015-010

- Legend**
-  Golden Eagle
  -  Prairie Falcon
  -  County Boundary
  -  Unincorporated Community



**DISCLAIMER:**  
 The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

# Section 2.6 Wildlife

---

## **Background**

Wildlife diversity is a major attraction of Deschutes County. It was mentioned in many Comprehensive Plan meetings in 2008 and 2009 as important to the community. Healthy wildlife populations are often a sign of a healthy environment for humans as well as other species. The key to protecting wildlife is protecting the habitats each species needs for food, water, shelter and reproduction. Also important is retaining or enhancing connectivity between habitats, in order to protect migration routes and avoid isolated populations.

Wildlife is tied to land use planning because human development impacts habitats in complex ways. Wildlife protections are provided by federal, state and local governments. Oregon land use planning protects wildlife with Statewide Planning Goal 5, Open Spaces, Scenic and Historical Areas and Natural Resources and the associated Oregon Administrative Rule (OAR) 660-023 (this Rule replaced 660-016 in 1996). Statewide Goal 5 includes a list of resources which each local government must inventory, including wildlife habitat.

The process requires local governments to inventory wildlife habitat and determine which items on the inventory are significant. For sites identified as significant, an Economic, Social, Environmental and Energy (ESEE) analysis is required. The analysis leads to one of three choices: preserve the resource, allow proposed uses that conflict with the resource or strike a balance between the resource and the conflicting uses. A program must be provided to protect the resources as determined by the ESEE analysis.

In considering wildlife habitat, counties rely on the expertise of the Oregon Department of Fish and Wildlife (ODFW) and U.S. Fish and Wildlife Service (USFWS). Those agencies provide information for the required wildlife inventory and recommendations on how to protect wildlife habitat on private lands. Note that this section focuses on wildlife, while fish are covered in the Water Resources section of this Plan.

## **Wildlife Designations**

### *Comprehensive Planning for Wildlife*

Plan 2000, the Comprehensive Plan adopted in 1979, included a Fish and Wildlife Chapter with policies aimed at protecting wildlife. That Plan also noted the controversial nature of wildlife protections. To implement the Plan policies, the Wildlife Area Combining Zone was adopted. This overlay zone was intended to protect identified big game habitat through zoning tools such as appropriate lot sizes and setbacks. In 1986 a River Study was completed and adopted into the Resource Element. Goals and policies from that study, including wildlife goals, were added to Plan 2000.

As part of State mandated Periodic Review, the County took another look at wildlife protections to further comply with the requirements of Goal 5 and the then prevailing OAR 660-16. The County worked with the ODFW to obtain the most recent inventory information on fish and wildlife resources in the county and to identify uses conflicting with those resources. This information was used to update the inventories and amend the ESEE analyses.

In addition, ODFW provided information to support zoning ordinance provisions to resolve conflicts between fish and wildlife resource protection and development. The County adopted a Sensitive Bird and Mammal Combining Zone which identified and protected specific bird nests or leks and bat hibernating or nursery sites.

#### *Ordinances for Compliance with Goal 5*

During periodic review in 1992, Deschutes County met the requirements of Goal 5 by:

- The adoption of Goals and Policies in Ordinance 92-040 reflecting Goal 5 requirements, including a Sensitive Bird and Mammal Combining Zone to identify and protect specific bird nests or leks and bat hibernating or nursery sites;
- The adoption of Ordinance 92-041 amended the comprehensive plan to inventory each Goal 5 resource, analyze conflicting uses, and analyze the ESEE consequences of protecting or not protecting inventoried fish and wildlife resources;
- The adoption of zoning ordinance provisions in Ordinance 92-042, as applied to inventoried sites by the map adopted by Ordinance 92-046.

In 2015, the Land Conservation and Development Commission (LCDC) adopted rules to Oregon Administrative Rule (OAR) chapter 660, division 23, to establish procedures for considering development proposals on lands identified as Greater Sage-Grouse Area Habitat. Deschutes County met the requirements by:

- Adopting the 2015 Goal 5 Greater Sage Grouse habitat Area Inventory Map into its Comprehensive Plan and amending the Sensitive Bird and Mammal Habitat Inventory to remove 1990 sage grouse lek and range data by Ordinance 2015-010 (Those maps are incorporated by reference herein); and,
- Adopting sage grouse regulations as a Greater Sage Grouse Area Combining Zone by Ordinance 2015-011.

#### **Wildlife Snapshot 2008-2009**

*Source: County GIS data*

- There are 816,649 acres in Deschutes County's Wildlife Area Combining Zone.
- There are 40 sites protected by the Sensitive Bird and Mammal Habitat Combining Zone.
- 76% of County land is owned and managed by the Federal government through the U.S. Forest Service and Bureau of Land Management.

*Source: Fishing, Hunting, Wildlife Viewing, and Shellfishing in Oregon, 2008 May 2009 Prepared for Oregon Department of Fish and Wildlife by Dean Runyan Associates*

- Nearly \$70 million was spent in Deschutes County on travel generated expenditures on wildlife viewing, fishing and hunting by people from over 50 miles away.
- Over 60% of the \$70 million noted above was spent for wildlife viewing, with fishing second with nearly 30% and nearly 10% on hunting.
- Over \$8 million in revenue from fishing, hunting and wildlife viewing came from people who live in the County or within 50 miles of the County.
- Over 60% of the \$8 million noted above was spent on fishing, over 20% was spent on hunting and under 20% was spent on wildlife viewing.
- All total, over \$78 million was spent in Deschutes County on fishing, hunting and wildlife viewing.

### *Deer Migration Corridor*

The Bend/La Pine migration corridor is approximately 56 miles long and 3 to 4 miles wide and parallels the Deschutes and Little Deschutes Rivers. The corridor is used by deer migrating from summer range in the forest along the east slope of the Cascades to the North Paulina deer winter range. Deschutes County adopted a “Deer Migration Priority Area” based on a 1999 ODFW map submitted to the South County Regional Problem Solving Group. This specific sub-area is precluded from destination resorts.

### *Deer Winter Range*

The ODFW identified the Metolius, Tumalo and North Paulina deer winter ranges during Deschutes County’s initial comprehensive plan. The boundaries of these winter ranges are shown on the Big Game Sensitive Area map in the 1978 Comprehensive Plan and have been zoned with the Wildlife Combining Zone since 1979. The winter ranges support a population of approximately 15,000 deer.

In 1992, ODFW recommended deer winter range in the northeast corner of the county, in the Smith Rock State Park area, be included in the Deschutes County inventory and protected with the same measures applied to other deer winter range. This area was officially included and mapped on the Wildlife Combining Map when Ordinance 92-040 was adopted by the Board of County Commissioners.

### *Elk Habitat*

The Land and Resource Management Plan for the Deschutes National Forest identifies 6 key elk habitat areas in Deschutes County. The ODFW also recognizes these areas as critical elk habitat for calving, winter or summer range. The following areas are mapped on the Big Game Habitat Area map and in the Deschutes National Forest Land and Resource Management Plan:

- Tumalo Mountain
- Kiwa
- Ryan
- Crane Prairie
- Fall River
- Clover Meadow

### *Antelope Habitat*

The Bend and Ochoco District offices of the ODFW provided maps of the antelope range and winter range. The available information is adequate to indicate that the resource is significant. The antelope habitat is mapped on Deschutes County’s Big Game Habitat-Wildlife Area Combining Zone Map.

### *Sensitive Birds*

Nest sites for the northern bald eagle, osprey, golden eagle, prairie falcon, great grey owl, and great blue heron rookeries are inventoried in Ordinance No. 92-041. The area required for each nest site varies between species. The minimum area required for protection of nest sites has been identified by the ODFW in their management guidelines for protecting colony nesting birds, osprey, eagles and raptor nests.

## Federal and State Wildlife Protections

### *Federal Protections*

The primary federal protection for wildlife is the Endangered Species Act (ESA), which sets the preservation of biodiversity as its highest priority. Under ESA, National Oceanic Atmospheric Administration (NOAA) Fisheries or the U.S. Fish and Wildlife Service (USFWS) list species as threatened or endangered. ESA prohibits both federal actions that jeopardize listed species and private actions that result in the “taking” of listed species. Court rulings have explicitly determined that habitat modification can lead to a “taking,” even if the modification does not affect a specific individual member of the species. ESA authorizes civil and criminal suits be brought against entities that violate its substantive or procedural provisions.

There are two fish species and one bird species listed as federally threatened or endangered in Deschutes County. Fish are discussed under the Water Resources section of this chapter and the bird, the Northern Spotted Owl, has not been found on private lands.

### *State Protections*

It is Oregon’s policy “to prevent the serious depletion of any indigenous species” (ORS 496.012). The Oregon Department of Fish and Wildlife maintains a list of fish and wildlife species determined to be either threatened or endangered according to OAR 635. When a species population is seriously depleted, recovery can be difficult and expensive as well as socially and economically divisive. To provide a positive approach to species conservation, a “sensitive” species classification was created under Oregon’s Sensitive Species Rule (OAR 635-100-040). Table 2.7.1 lists species in Deschutes County that are listed by either federal or state wildlife agencies under the above mentioned laws.

Besides the listings of endangered or threatened, species can be federally listed as candidate species or species of concern. State listings include threatened, critical and vulnerable. Each status has a definition specifying different actions.





**Table 2.6.1 - Special Status of Select Mammals, Birds, Amphibians, and Reptiles in Deschutes County 2009**

<i>Species</i>	<i>State Status</i>	<i>Federal Status</i>
<i>Mammals</i>		
California Wolverine	Threatened	Species of Concern
Fisher	Critical	--
Fringed Myotis	Vulnerable	--
Long-eared Myotis	--	Species of Concern
Long-legged Myotis	Vulnerable	Species of Concern
Pallid Bat	Vulnerable	--
Preble's Shrew	--	Species of Concern
Pygmy Rabbit	Vulnerable	Species of Concern
Silver-haired bat	Vulnerable	Species of Concern
Small-footed Myotis	--	Species of Concern
Spotted bat	Vulnerable	--
Townsend's western big-eared bat	Critical	Species of Concern
Yuma Myotis	--	Species of Concern
<i>Birds</i>		
American Peregrine Falcon	Vulnerable	Delisted
Bald Eagle	Threatened	Delisted
Black Tern	--	Species of Concern
Black-backed Woodpecker	Vulnerable	--
Ferruginous Hawk	Vulnerable	Species of Concern
Flammulated Owl	Vulnerable	--
Great Gray Owl	Vulnerable	--
Greater Sage Grouse	Vulnerable	Species of Concern
Lewis' Woodpecker	Critical	Species of Concern
Loggerhead Shrike	Vulnerable	--
Long-billed Curlew	Vulnerable	--
Mountain Quail	Vulnerable	Species of Concern
Northern Goshawk	Vulnerable	Species of Concern
Northern Spotted Owl	Threatened	Threatened
Olive-sided Flycatcher	Vulnerable	Species of Concern
Pileated Woodpecker	Vulnerable	--
Swainson's Hawk	Vulnerable	--
Western Burrowing Owl	Vulnerable*	Species of Concern
White-head Woodpecker	Critical	Species of Concern
Willow Flycatcher	Vulnerable	Species of Concern
Yellow-breasted chat	--	Species of Concern
Yellow-billed cuckoo	Vulnerable	Candidate
<i>Amphibians and Reptiles</i>		
Cascades Frog	Vulnerable	Species of Concern
Coastal tailed frog	Vulnerable	Species of Concern
Northern Sagebrush Lizard	--	Species of Concern
Oregon slender salamander	Vulnerable	Species of Concern
Oregon Spotted Frog	Critical	Candidate
Western Pond Turtle	Critical	--
Western Toad	Vulnerable	--
* listed only for the Basin and Range Ecoregion		

Source: 2009 Interagency Report and ODFW

## **Oregon Department of Fish and Wildlife**

### *Oregon Conservation Strategy*

In 2006 the Oregon Conservation Strategy (OCS) was adopted by Oregon's Fish and Wildlife Commission for the state of Oregon. Wildlife and habitat issues are often crisis-driven and focused on individual species. The OSC is intended to provide a long-term, big-picture look, using the best available science, on how best to maintain and improve Oregon's species, habitats and ecosystems.

This document is not intended to be a set of regulations, but rather it presents issues, opportunities and recommended actions that can serve as the basis for regional collaborative actions. The recommendations within the OCS can be used to address species and habitat conservation needs, to expand existing partnerships and develop new ones, and to provide a context for balancing Oregon's conservation and development priorities. The future of many species will depend on landowners' and land managers' willingness to voluntarily take action on their own to improve fish and wildlife habitat.

The OCS works by defining ecoregions and offering an overview of each region that covers a variety of ecological, land use and economic issues. Parts of Deschutes County fall into three of the ecoregions; East Cascade, Blue Mountains and Northern Basin and Range. For Deschutes County this document offers a wealth of knowledge that can be used to inform fish and wildlife habitat policies and protect and enhance ecosystems.

### *Fish and Wildlife Habitat Mitigation Policy*

The ODFW's Fish and Wildlife Habitat Mitigation Policy provides direction for their staff to review and comment on projects that may impact fish and wildlife habitat. This policy recognizes six distinct categories of wildlife habitat ranging from Category 1 – essential, limited, and irreplaceable habitat, to Category 6 – low value habitat. The policy goal for Category 1 habitat is no loss of habitat quantity or quality through avoidance of impacts by using development action if impacts cannot be avoided. The ODFW recommends avoidance of Category 1 habitats as they are irreplaceable, and thus mitigation is not a viable option. Categories 2-4 are for essential or important, but not irreplaceable habitats. Category 5 habitat is not essential or important, but has high restoration potential.

### **Interagency Report**

In 2009 the USFW, ODFW, U.S. Forest Service and the Bureau of Land Management collaborated to provide a report on Wildlife in Deschutes County, *Updated Wildlife Information and Recommendations for the Deschutes County Comprehensive Plan Update* (Interagency Report). This report provided updated information to be used in revising the County Goal 5 inventory. This update will be done as part of the Goal 5 review as described in Section 2.4 of this Plan. The report also outlined numerous issues that the agencies believe are important for the County to address. The Interagency Report generated debate over how best to protect wildlife while also protecting the rights of property owners. Key issues from the report are touched on below.

*Economic benefits of fish and wildlife:* The report notes the ODFW report by Dean Runyan regarding the economic benefits of fishing, hunting and wildlife viewing, including that Deschutes County generated more freshwater fishing revenue than any other county in Oregon.



*Oregon Conservation Strategy:* The report discusses the Oregon Conservation Strategy described above and recommends that the County use it as a guide and reference for the maintenance and enhancement of wildlife resources.

*Threatened and Endangered Species and Species of Concern:* The report recommends developing and adopting measures to protect federal and state listed threatened and endangered species to limit conflicting use.

*Riparian and wetland areas for wildlife and fish:* The report recommends completing and adopting a Local Wetland Inventory. The current National Wetland Inventory was done at a scale so that wetlands under 5 acres are not identified. Yet, those wetlands provide significant habitat. Deschutes County adopted a Local Wetland Inventory for South County in 2011.

*Oregon Spotted Frog:* The report recommends adding an Oregon Spotted Frog habitat area to the wildlife area combining zone and provides some specific ideas for protecting those areas. The Oregon Spotted Frog can be found in the floodplains and wetlands along the Deschutes River and Little Deschutes River, south of Bend. Riverine oxbows are particularly key habitat. This frog is listed as a Federal Candidate and State Critical Species.

*Shrub-Steppe Habitat:* The report recommends the County consider impacts to wildlife and habitat when development will degrade shrub-steppe habitat. Shrub-steppe habitat provides needed resources for numerous birds and mammals, including 12 Oregon listed sensitive species, and one threatened species. Large blocks of un-fragmented habitat with low human disturbance are needed to support shrub-steppe wildlife. If avoidance of these areas is not possible, providing for “no net loss” and a “net benefit” (restoration) of shrub-steppe habitat should be a vital component of any conservation plan.

*Greater Sage Grouse:* The report provides recommendations for limiting conflicting uses near sage grouse leks and habitat. The population management objective for sage-grouse in this region (Prineville District), which includes portions of Deschutes and Crook counties, is to restore sage grouse numbers and distribution near the 1980 spring breeding population level, approximately 3,000 birds. Many aspects of human development have impacted sage grouse populations and can be considered conflicting uses. Conservation efforts focused on maintaining large expanses of sagebrush habitat, enhancing the quality of existing habitat, and increasing connections between suitable habitat patches would be most beneficial to maintaining healthy sage-grouse populations. Breeding and nesting habitat is particularly important because it is essential, limited and irreplaceable.

*Critical Bird and Mammal Sites:* The report does not recommend additional or modification of existing protections for site specific sensitive bird and mammal sites, except for additional protections for sage grouse. The report does provide a new inventory and site specific recommendations that will be used to update the list of Goal 5 wildlife resources.

*Game Species:* The report does not recommend changes to the existing big game winter range or migration corridor maps. It does recommend that the County revise the uses allowed in those areas to prohibit the following uses that generate activity, noise and habitat alteration:

- Guest ranch
- Outdoor commercial events (i.e. Wedding Venues, Farmers Market)
- OHV course
- Paintball course

- Shooting range
- Model airplane park
- BMX course

*Sensitive Species:* Table 2.7.2 shows species considered sensitive to human disturbance. Mule deer are the only species in decline.

**Table 2.7.2 - Big Game Population Estimates, Deschutes County (2009)**

<b>Species</b>	<b>Population</b>
Mule Deer	9,337*
Elk	1,500
Pronghorn	1,000
Cougar	~150
Black Bear	~150
Silver Grey Squirrel	~800

\* The management objective for the Paulina and Upper Deschutes Wildlife Management Units, primarily in Deschutes County, is an April adult population of 18,7000 mule deer.

Source: Interagency Report

*Fish and Wildlife Habitat Mitigation Policy:* The Interagency Report includes one recommendation that is only from the ODFW. They recommend that the County require impact avoidance for development that will impact Category I habitat and require a wildlife mitigation plan for development that will impact habitat Categories 2-5, to limit conflicting uses.

The Interagency Report recommendations will be considered more closely when the Goal 5 review is undertaken.

## **Future of Wildlife and Habitat in Deschutes County**

### *Coordination*

Much of the wildlife habitat in Deschutes County is located on public lands. Federal lands make up 76% of County lands with another 3% State or County owned. Federal lands are not subject to County regulation but as noted in the Forest section of this Plan, they are important economic generators that also contribute to the community’s quality of life, providing ample opportunities for wildlife viewing, fishing and hunting. It should be noted that not all federal lands are managed for wildlife habitat.

Regarding public lands the County’s role is to coordinate with the land management agencies to ensure development approved by the County does not impact wildlife.

Another area for coordination is with the Trust for Public Lands (TPL). In 2009 this non-profit group initiated a Greenprint effort that will identify specific areas needing protection, including wildlife habitat. A survey done by this organization identified protecting wildlife habitat as important to County residents.

### *Rural Development*

The loss of wildlife species and habitat may lead to declining recreational opportunities, tourist dollars and quality of life. Yet, many species are sensitive to human development, with some species benefiting and some harmed by land disturbance. New structures or infrastructure can fragment habitats. Barriers such as roads, dams or housing can interfere with migration routes and connectivity leading to isolated and unhealthy populations. Development can also increase

non-native and invasive species. Most Deschutes County residents consider the local wildlife as one of the benefits of living in this region. With careful planning, many of the impacts to wildlife habitat can be mitigated.

## Section 2.6 Wildlife Policies

---

### Goals and Policies

#### **Goal 1 Maintain and enhance a diversity of wildlife and habitats.**

- Policy 2.6.1 Goal 5 wildlife inventories, ESEEs and programs are retained and not repealed.
- Policy 2.6.2 Promote stewardship of wildlife habitats and corridors, particularly those with significant biological, ecological, aesthetic and recreational value.
- Policy 2.6.3 Ensure Goal 5 wildlife inventories and habitat protection programs are up-to-date through public processes and expert sources, such as the 2009 Interagency Report.
- Policy 2.6.4 Support incentives for restoring and/or preserving significant wildlife habitat by traditional means such as zoning or innovative means, including land swaps, conservation easements, transfer of development rights, tax incentives or purchase by public or non-profit agencies.
- Policy 2.6.5 Assist in providing information and education on wildlife and habitat protection.
- Policy 2.6.6 Review the Oregon Conservation Strategy when amending the Wildlife section of this Plan.
- Policy 2.6.7 Use a combination of incentives, regulations and education to promote stewardship of wildlife habitat and address the impacts of development.
- Policy 2.6.8 Balance protection of wildlife with wildland fire mitigation on private lands in the designated Wildland Urban Interface.

#### **Goal 2 Promote the economic and recreational benefits of wildlife and habitat.**

- Policy 2.6.9 Encourage wildlife related tourism.
- Policy 2.6.10 Coordinate with stakeholders to ensure access to significant wildlife and riparian habitat through public or non-profit ownership.

#### **Goal 3 Support retaining populations of Federal and State protected endangered species.**

- Policy 2.6.11 Develop local approaches, in coordination with Federal and State agencies, for protecting Federal or State Threatened or Endangered Species or Species of Concern.

Policy 2.6.12 Address potential conflicts between large-scale development and sage grouse habitat using Ordinances Nos. 2010-010 and 2010-011, which are consistent with OAR 660-023-0115.

# Section 5.12 Legislative History

## Background

This section contains the legislative history of this Comprehensive Plan.

**Table 5.11.1 Comprehensive Plan Ordinance History**

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County

<b>Ordinance</b>	<b>Date Adopted/ Effective</b>	<b>Chapter/Section</b>	<b>Amendment</b>
2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-010	x-x-15/x-x-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories

## FINDINGS

The Deschutes County Planning Commission will hold a public hearing on October 8, 2015 to consider legislative plan amendments and to Deschutes County Comprehensive Plan and legislative amendments to Deschutes County Code (DCC) Title 18.<sup>1</sup>

The Planning Commission closed the hearing on **TBD**, 2015 and forwarded a recommendation of adoption to the Board of County Commissioners (Board). The Board held hearings on TBD, 2015. The written record was left open until 5:00 p.m. on **TBD**.

### I. BACKGROUND

The Greater Sage Grouse is a species common to the western United States. Over time, much of the sagebrush ecosystem needed to maintain a healthy population has suffered. Habitat has eroded as a consequence of the introduction of invasive weeds, juniper encroachment, large-scale development, wildland fire, and intensive agriculture. Strong concerns about the future of the species have resulted in the United States Fish and Wildlife Service (USFWS) receiving multiple petitions to list the Greater Sage Grouse under the federal Endangered Species Act (ESA).

In April 2010, the USFWS determined that protection of Greater Sage Grouse under the ESA was warranted. The USFWS did not list sage grouse at that time in order to address other species facing greater risk of extinction, but stated its intent to revisit its “Warranted but Precluded” decision. The USFWS must still make a determination whether the species should be proposed for ESA listing or be removed from the candidate list, which would result in no further consideration by this fall.

Sage grouse habitat in Oregon includes about 11 million acres distributed across five Bureau of Land Management (BLM) management districts in seven central and eastern Oregon counties (Baker, Crook, Deschutes, Harney, Lake, Malheur and Union). Private lands account for about 21 percent of this total while BLM controls about 70 percent. The remaining lands are made up of other public agencies including the Oregon Department of State Lands.

Last January, Governor Kitzhaber requested the Oregon Land Conservation and Development Commission (LCDC) initiate a rulemaking to address potential conflicts between “large-scale development” and sage grouse habitat. The purpose is to address a potential federal listing of the Greater Sage Grouse under the ESA. The Governor’s request follows the work of an interagency group called “SageCon,” begun in 2012. SageCon’s goal is to demonstrate that Oregon can put together a plan of action that will demonstrate that the federal listing for sage grouse in Oregon is unnecessary.

LCDC agreed and appointed a Sage Grouse Rules Advisory Committee (Committee) in March to assist the Oregon Department of Land Conservation and Development (DLCD) in drafting proposed rules. The Committee met four times. The rulemaking amends Oregon Administrative Rule (OAR) chapter 660, division 23, often referred to as the “Goal Five rule.” The rule applies to non-federal lands in eastern Oregon that constitute approximately 30 percent of sage grouse habitat. LCDC held a public hearing on July 23

---

<sup>1</sup> A public notice will be published in the *Bulletin* on September 20, 2015.

and 24 in Burns, OR and after closing the hearing on the 24<sup>th</sup>, adopted the rules (OAR 660-024-0115).<sup>2</sup> They became effective on August 13, 2015. State law, ORS 197.646(3) requires the seven eastern Oregon counties, including Deschutes, to implement them.<sup>3</sup>

As a result, staff is initiating two ordinances. Ordinance 2015-010 contains the following amendments:

- Exhibit A: Amendment to DCC 23.010.010, Introduction;
- Exhibit B: Comprehensive Plan map adopting Oregon Department of Fish and Wildlife's (ODFW) Greater Sage-grouse Habitat Area Inventory Map (Core Area, Low Density Area, and General Habitat, including occupied and occupied-pending lek locations);
- Exhibit C: Comprehensive Plan map amendment removing Deschutes County's 1990 sage-grouse inventory and lek locations from the Sensitive Bird and Mammal Habitat Inventory;
- Exhibit D: Amendment to Comprehensive Plan Chapter 2, Resource Management, Section 2.6 – Wildlife;
- Exhibit E: Amendment to Comprehensive Plan Chapter 5, Supplemental Sections, Section 5.12 – Legislative History; and,
- Exhibit F: Findings.

Ordinance 2015-011 contains the following amendments:

- Exhibit A: Zoning code amendment to Deschutes County Code (DCC), adopting Chapter 18.89, Greater Sage-Grouse Area Combining Zone (mirrors Oregon Administrative Rule 660-024-0115); and,
- Exhibit B: Zoning code amendment to DCC 18.90, Sensitive Bird and Mammal Habitat Combining Zone, removing outdated references to sage-grouse and leks.

## II. REVIEW CRITERIA

ORS 197.646(3) requires Deschutes County to implement OAR 660-023-0115. Subsection 4 of the rule underscores this requirement as well:

“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*

---

<sup>2</sup> <http://www.oregon.gov/LCD/Pages/SageGrouseRulemaking.aspx>

<sup>3</sup> ORS 197.646(3). [https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013ors197.html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors197.html)



*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” [emphasis added].*

The changes to the Comprehensive Plan and new regulations in DCC Chapter 18.89 mirror the state rules. Therefore, the new chapter and the revisions to DCC 18.90 are consistent with the County’s Comprehensive Plan

## **II. SUMMARY**

To supplement the overview below, attached with the findings are also a DLCD rule-making summary and the rules themselves, OAR 660-023-0115 (Attachments 1 and 2).

### **A. New Sage Grouse Inventories**

Deschutes County is now designating core areas, low density areas, and general habitat within 3.1 miles of a lek as significant sage grouse habitat. These designations under OAR 660-023-0115(6) only apply to lands protected under Statewide Planning Goals 3 and 4, which in Deschutes County’s case are located in the Alfalfa, Horse Ridge East, and Bend-Tumalo-Redmond, Exclusive Farm Use (EFU) subzones and Forest Use Zone (F-1). All of the non-federal properties, except one, which is split zoned, are located in EFU.

### **B. Regulatory Thresholds**

There are two types of development that require County review to determine if it creates a conflicting use to sage-grouse.

1. Large-scale development in core areas, low density areas, and lands within a general habitat area located within 3.1 miles of an occupied or occupied-pending lek.<sup>4</sup> Large-scale development goes through a two-part analysis:
  - First, is it a use listed in the OAR 660-033-0120 table (Attachment 3) that requires review? If yes, then,
  - Does the use meet qualifying feature(s)? Is the use 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? If yes, it is subject to review.

---

<sup>4</sup> “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.

Examples:

A commercial photovoltaic solar project is a candidate to be considered large-scale development because it requires review by local government and is identified in category D – Utility/Solid Waste Disposal Facilities. However, it would only be determined to be a large-scale development if it covers more than five acres.

Alternatively, a three-acre aggregate quarry that requires review and is identified in category B – Mineral, Aggregate, Oil and Gas Uses – would likely be considered a large-scale development because of its noise and not because of its size.

2. Smaller levels of development may jeopardize the future of the species if a proposal is in close proximity of a lek. Land uses that do not qualify as “large-scale development” would still be evaluated if they require review pursuant to the OAR 660-033-0120 table and are proposed in:
  - a. Core area within 4.0 miles of an occupied or occupied-pending lek;
  - b. Low density area within 3.1 miles of an occupied or occupied-pending lek; or
  - c. General habitat within 3.1 miles of an occupied or occupied-pending lek.

Examples:

Farm use and other buildings provided in conjunction with farm use are exempt since they do not require review.

Alternatively, a two-acre guest ranch proposed in any of the areas referenced in subsection 2 above, would require confirmation from ODFW. The agency would determine if the use poses a threat to sage-grouse habitat or the way sage-grouse use that habitat. They could also condition the approval based on certain recommendations, including minimization techniques and compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat (See DCC 18.89.080(B), 18.89.090(B), 18.89.100 (B)).

**C. Large Scale Development Regulation / Mitigation**

*Core Area*

Core areas are also known as Priority Areas for Conservation (PACs). These two terms are synonymous. Core areas/PACs are subject to disturbance thresholds that limit the direct impact of large-scale development to one percent of the total delimited area of a PAC over 10 year increments and a maximum total of three percent. These percentages must be taken into account when a county considers a large-scale development proposal. A proposal that would exceed either threshold may not be allowed.

In addition to limiting the amount of allowable anthropogenic disturbance in each core area/PAC, a proposal for large-scale development is subject to the full mitigation hierarchy, which includes a rigorous avoidance test, minimization

requirements and compensatory mitigation (offsets) responsibility. Applying the avoidance test and minimization requirements are the purview of local government. Should any negative impacts to the species remain after these items are satisfied the applicant will be responsible to offset those impacts through compensatory mitigation. Compensatory mitigation must be consistent with ODFW's rule.

#### *Low Density Areas*

The regulatory arrangement for low density areas differs from core areas/PACs in two ways. First, low density areas are not subject to disturbance thresholds such as the one percent over 10 year increments or three percent total that apply to core areas/PACs. Second, while large-scale development proposals in low density areas do require application of the full mitigation hierarchy, a different, somewhat more lenient avoidance test applies to these areas. In other words, it will be easier to site large-scale development in low density areas.

#### *General Habitat*

General habitat is essentially sagebrush habitat used by sage-grouse that is not included in a core or low density area. In these areas the rules apply only to lands within 3.1 miles of a lek. Rather than directly applying the mitigation hierarchy, large-scale development proposal in general habitat within 3.1 miles of a lek would be subject to a "consultation" with ODFW. However, consideration for avoidance, in addition to minimization, is included and the ordinary obligations for compensation mitigation remain intact.

### **D. Non-Large Scale Development Regulation / Mitigation**

#### *Core Area*

Non-large-scale development activities may also constitute a conflicting use if proposed within 4.0 miles of a lek in a core area. Under these circumstances, a pre-application conference will be followed by a discussion between the applicant and ODFW. Through this discussion, which will likely involve a site visit, the local ODFW biologist will assess the facts and may conclude the given situation does not pose a threat to sage-grouse and no further consideration is needed. The ODFW biologist may also conclude that minimization activities such as sharing a driveway, locating on a specific portion of the property or limiting hours of operation would be necessary. In extreme cases it may be found that compensatory mitigation is needed. ODFW would forward these comments to the county who would then include them in the decision document. This approach is not expected to result in the denial of any proposal. Instead the conversation and requirements will be about how the proposal is carried out.

#### *Low Density Areas*

As with core areas/PACs, non-large-scale development activities may constitute a conflicting use in low density areas. However, for low density areas the distance is 3.1 miles from a lek rather than 4.0 miles.

*General Habitat*

Non-large-scale development may constitute a conflicting use in general habitat within 3.1 miles of a lek. These instances will be treated consistent with the provisions for core and low density areas.

Attachments:

1. DLCD Sage-Grouse Rule-making Report
2. OAR 660-023-0115
3. OAR 660-033-0120 Table

# Attachment 1



# Oregon

Kate Brown, 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](http://www.oregon.gov/LCD)



July 9, 2015

TO: Land Conservation and Development Commission  
FROM: Jon Jinings, Community Services Specialist  
SUBJECT: **Agenda Item 8, July 23-24, 2015, LCDC Meeting**

## **RULEMAKING REGARDING OREGON'S GREATER SAGE-GROUSE POPULATION**

### **I. AGENDA ITEM SUMMARY**

#### **A. Type of Action and Commission Role**

The Department of Land Conservation and Development (DLCD or department) is asking the Land Conservation and Development Commission (LCDC or commission) to hold a public hearing on draft amendments to Oregon Administrative Rule (OAR) chapter 660, division 23, accept public testimony, and to adopt the proposed amendments (Attachment A).

The proposed rule applies to portions of seven counties in central and eastern Oregon and establishes a procedure for considering development proposals on lands identified as significant Greater Sage-Grouse (hereafter, "sage-grouse") habitat.<sup>1</sup> The rule focuses on lands designated for farm use and will be directly applicable to local decisions on its effective date.

This rulemaking was requested by the Governor and is a key piece in Oregon's strategy to demonstrate why listing the species under the federal endangered species act (ESA) is not necessary. The draft proposal was developed with the assistance of a rules advisory committee (RAC).

#### **B. Staff Contact Information**

For additional information about this report, please contact Jon Jinings, Community Services Specialist, at 541-322-2032, or at [jon.jinings@state.or.us](mailto:jon.jinings@state.or.us).

---

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

## **II. BACKGROUND**

The sage-grouse is a species native to the western United States. Over time, much of the sagebrush ecosystem needed to maintain a healthy population has suffered. Habitat has eroded as a consequence of the introduction of invasive weeds, juniper encroachment, large-scale development, wildland fire, and intensive agriculture. Strong concerns about the future of the species have resulted in the service receiving multiple petitions to list the Greater Sage-Grouse under the ESA.

In April 2010, the U.S. Fish and Wildlife Service (the service) determined that protection of Greater Sage-Grouse under the ESA was warranted. The service did not list sage-grouse at that time in order to address other species facing greater risk of extinction, but stated its intent to revisit its “Warranted but Precluded” decision. The service must still make a determination whether the species should be proposed for ESA listing or be removed from the candidate list, which would result in no further consideration by the end of the 2015 fiscal year.

During its regular January 2015 meeting, the commission initiated rulemaking, at the Governor’s request, to amend OAR chapter 660, division 23, often referred to as the “Goal 5 rule.” The purpose of this amendment is to create a “safe harbor” to ensure the protection of sage-grouse in eastern and central Oregon and preserve the ability of counties to develop local sage-grouse protection programs and describe other duties to be carried out by the department and other state agencies.

The commission also appointed a RAC to assist the department and the commission with this rulemaking project. The RAC met five times between early March and early June. The new rule needs to be adopted at the commission’s July 23–24, 2015, meeting to ensure that it is available for the service to consider when making its final listing decision in September 2015.

## **III. PROVISIONS OF THE DRAFT RULE**

The RAC put a remarkable amount of time and energy into five meetings this spring. Each meeting lasted at least a day and was characterized by thoughtful, often spirited discussion revolving around issues of habitat protection and community resilience. By the end of the fifth meeting, the RAC had come together around provisions of the draft rule. A proposed rule reflecting the outcome of the final RAC meeting is provided in Attachment A, with exhibits (maps) that are proposed to be part of the rule provided in Attachment B. A version of the rule showing the changes to the draft rule that have been made since the draft provided to the commission at its May 2015 meeting is provided in Attachment C.

### **A. Introduction and Exemptions - Subsections (1) & (2)**

The rule begins with an introduction that is intended to set the tone for coordination and collaboration and recognize the importance of volunteer efforts and county participation. This is different from the commission’s standard rule construction. However, the RAC felt that this is not the commission’s standard rule and that a preamble was necessary.

The rule also declares that farm and ranch uses are excluded. This has been a very important issue for many of the participants and has been accepted by the RAC as a whole.

Subsequent to the June RAC meeting, the department received direction from the Governor's Office to offer an exemption to energy facilities that have submitted a preliminary application for a site certificate to the Energy Facility Siting Council (EFSC) prior to the effective date of this rule. A new OAR 660-023-0115(2)(b) would provide this exemption:

(b) For 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, subsections (5) through (12) shall not be directly applicable to any land use decision regarding that facility, notwithstanding ORS 197.646(3), 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 OAR 660-023-0115 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.

The additional language is specifically directed at Idaho Power's Boardman to Hemingway (B2H) project. Idaho Power is one of three investor-owned utilities serving citizens in Oregon. B2H is a high-voltage transmission line that would run from Boardman, Oregon, to Hemingway, Idaho, traversing portions of Malheur, Baker and Union counties. Planning for B2H has been underway for eight years. The project has been identified as a priority by President Obama's administration and will not be subject to any new BLM provisions.

### **B. Definitions - Subsection (3)**

Nearly all of the definitions in the rule have been taken from Oregon Department of Fish & Wildlife (ODFW) or borrowed from a federal source. This subsection also cross references both the ODFW rule that constitutes its supplemental sage-grouse policy and the "Greater Sage-Grouse Conservation Assessment and Strategy for Oregon" produced by ODFW in April 2011. To the extent that the same terms are used in both agencies rules the definitions are identical.

How to define the term "large-scale development" (Subsection (3)(i)) received more attention from the RAC than any other item. Carefully defining this term is critical to the success of the rule because it will be used to determine whether a use is subject to the full mitigation hierarchy.

The proposed rule lays out a three-step assessment that describes qualifying features (size, height, noise, traffic generation) and relies on the Goal 3 rule (OAR chapter 660, division 33) to determine categories of uses and whether a review is required.<sup>2</sup> The Goal 3 rule categories

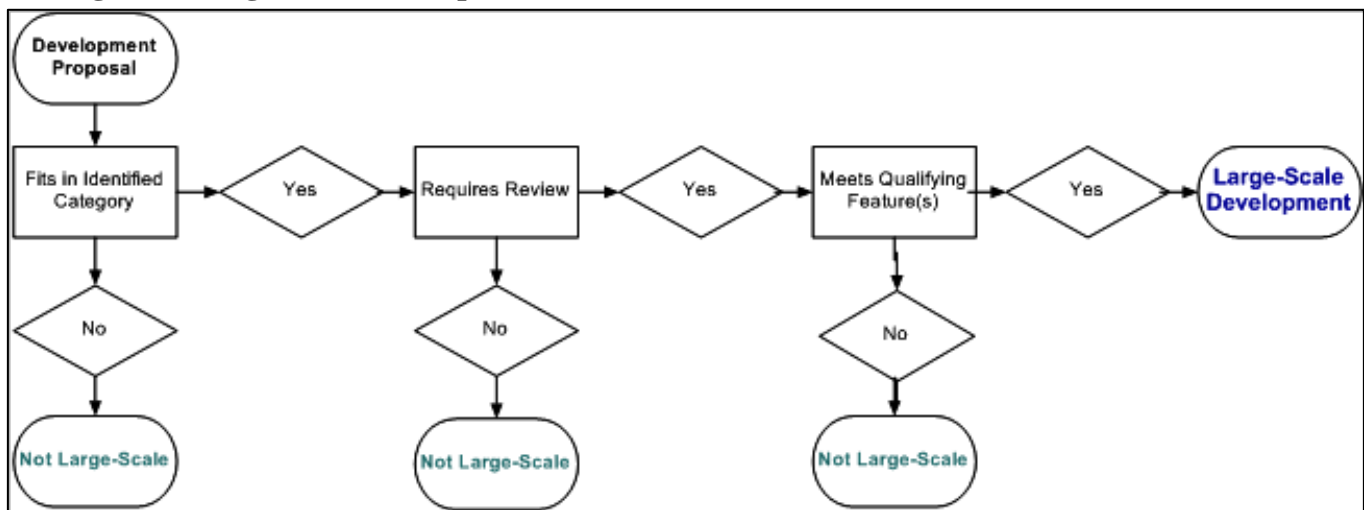
---

<sup>2</sup> OAR chapter 660, division 33 groups uses into the following categories:

- A. Commercial Uses
- B. Mineral, Aggregate, Oil and Gas Uses
- C. Transportation Uses

resemble the degradation categories specified by BLM and the range-wide threats described in the federal Conservation Objectives Team report. For example, a commercial photovoltaic solar project is a candidate to be considered large-scale development because it requires review by local government and is identified in category D – Utility/Solid Waste Disposal Facilities. However, it would only be determined to be a large-scale development if it covers more than five acres. Alternatively, a three-acre aggregate quarry that requires review and is identified in category B – Mineral, Aggregate, Oil and Gas Uses – would likely be considered a large-scale development because of its noise and not because of its size. Figure 1 depicts the criteria and process for determining whether a proposed development is “large-scale.”

**Figure 1. Large-Scale Development Decision Flowchart**



**C. Direct Applicability, Local Program Development and ODFW Mapping – Subsections (4) and (5)**

Although previous drafts of the rule had contemplated suspending its applicability for a period of two years, the RAC agreed that there was no need to delay implementation. Therefore, the rule will be directly applicable upon its effective date. Counties are free to adopt the specific provisions of the rule into their local code and implement it in that manner. Counties are also free to develop their own local programs at any time, which would be subject to final approval by the commission.

ODFW mapping products, as proposed as exhibits to the rule, serve to identify the location of sage-grouse habitat. A county that develops a local program (as opposed to simply adopting the rule provisions into its code) may create a different map. However, any differences between ODFW mapping and local mapping must be based on the best available information.

- 
- D. Utility/Solid Waste Disposal Facilities
  - E. Parks/Public/Quasi-Public



**D. Determination of Significance and Conflicting Uses – Subsections (6) & (7)**

The draft rule designates core areas, low density areas, and general habitat within 3.1 miles of a lek<sup>3</sup> as “significant” habitat when those lands are protected for resource uses under Statewide Planning Goals 3 and 4. In other words, habitat areas planned and zoned for exclusive farm use or forest are significant sage-grouse habitat. These lands comprise over 98 percent of the nonfederal sage-grouse habitat. Lands that are excluded are generally rural or unincorporated communities such as Brothers (Deschutes County), Brogan (Malheur County), Drewsey (Harney County), Post (Crook County), and the city of Unity (Baker County). These areas have a longstanding development patterns and are planned and zoned to function as communities. No open landscape is intact on these lands.

Large-scale development is considered a conflicting use in all instances. The current draft also attempts to address concerns that smaller levels of development could jeopardize the future of the species by creating additional provisions if a proposal is in close proximity of a lek. In these cases, land uses that do not qualify as large-scale development would still receive consideration pursuant to the rule. However, the mitigation hierarchy may not be fully applied in these instances.

**E. Pre-Application Conference – Subsection (8)**

The RAC felt that strongly encouraging a pre-application conference between an applicant, county staff, and ODFW was important to establish understanding of the scope of a project, applicable regulatory parameters and expectations regarding compensatory mitigation. The pre-application conference was not made to be mandatory because the RAC did not want it to become an item that could be challenged on procedural grounds. Counties have embraced this concept and everyone fully expects that “pre-apps” will occur in ever necessary instance.

**F. Core Areas, Low Density Areas and General Habitat - Subsections (9)–(11)**

Subsections (9) through (11) are the rule’s regulatory epicenter. These subsections contain direction for considering large-scale development proposals and other conflicting uses on significant sage-grouse habitat. Guidance regarding application of the mitigation hierarchy and coordination with ODFW for the three habitat types are laid out in detail.

***1. Core Areas – Subsection (9)***

Simply stated, core areas are the most productive populations and habitats that meet all life history needs necessary to conserve 90 percent of Oregon’s sage-grouse population. Core areas have been delineated by ODFW to emphasize the highest density and important use areas which provide for breeding, wintering and connectivity corridors.

Core areas are also known as Priority Areas for Conservation (PACs). These two terms are synonymous. Core areas/PACs are subject to disturbance thresholds that limit the direct impact of large-scale development to one percent of the total delimited area of a PAC over 10 year

---

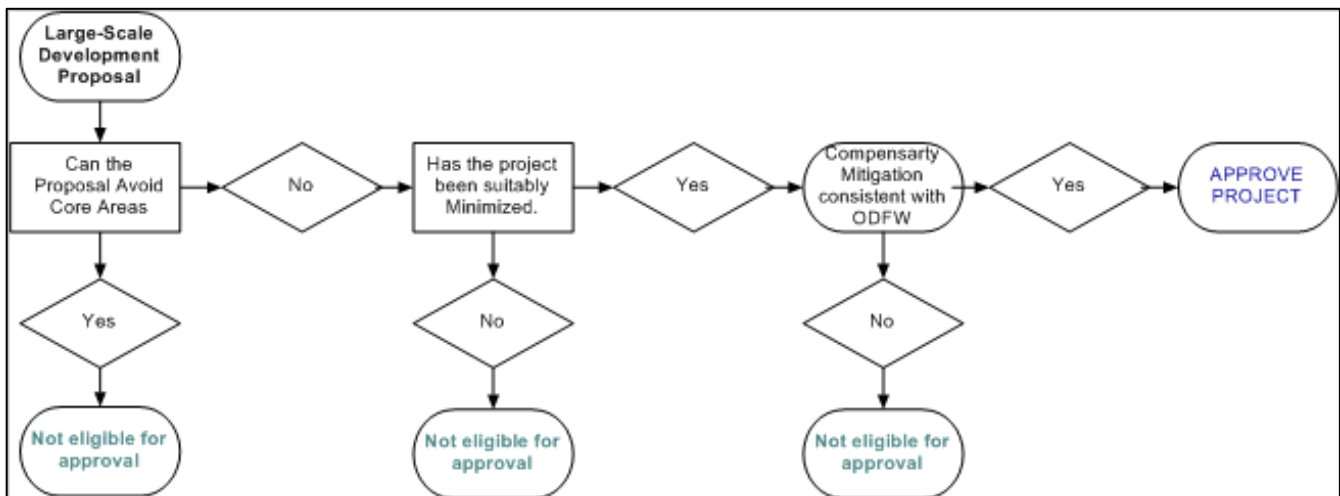
<sup>3</sup> A lek is an area where male sage grouse display during the breeding season to attract females (also referred to as strutting-ground).

increments and a maximum total of three percent. These percentages must be taken into account when a county considers a large-scale development proposal. A proposal that would exceed either threshold may not be allowed. For purposes of this rule, natural disturbance such as fire, invasive species or conifer infestation are not counted as part of the thresholds.

In addition to limiting the amount of allowable anthropogenic disturbance in each core area/PAC, a proposal for large-scale development is subject to the full mitigation hierarchy, which includes a rigorous avoidance test, minimization requirements and compensatory mitigation (offsets) responsibility. Figure 2 depicts the mitigation hierarchy as it applies to large-scale development and Figure 3 shows the criteria for other conflicting uses.

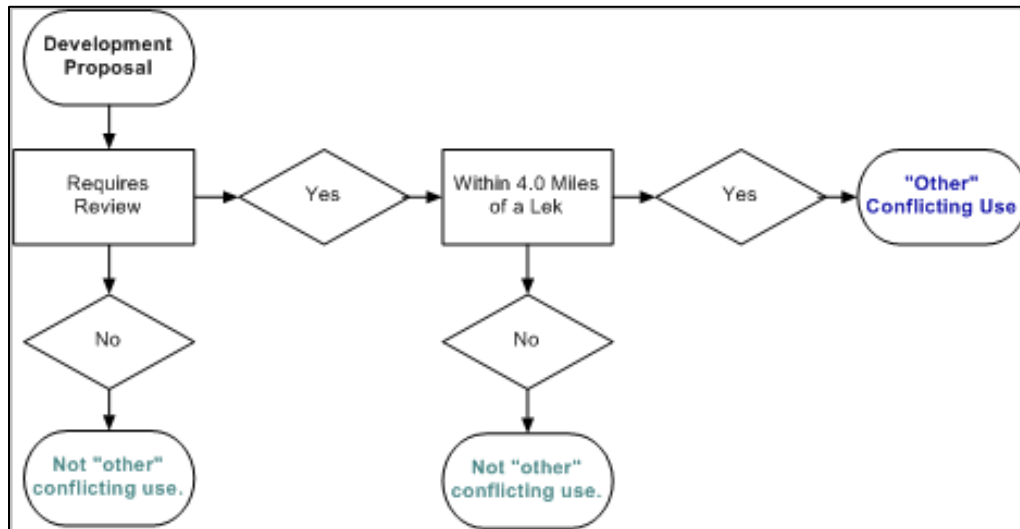
Applying the avoidance test and minimization requirements are the purview of local government. Should any negative impacts to the species remain after these items are satisfied the applicant will be responsible to offset those impacts through compensatory mitigation. Compensatory mitigation must be consistent with ODFW’s rule.

**Figure 2. Mitigation Hierarchy for Large-Scale Development**



Other, non-large-scale development activities may also constitute a conflicting use if proposed within 4.0 miles of a lek. Under these circumstances, a pre-application conference will be followed by a discussion between the applicant and ODFW. Through this discussion, which will likely involve a site visit, the local ODFW biologist will assess the facts and may conclude the given situation does not pose a threat to sage-grouse and no further consideration is needed. The ODFW biologist may also conclude that minimization activities such as sharing a driveway, locating on a specific portion of the property or limiting hours of operation would be necessary. In extreme cases it may be found that compensatory mitigation is needed. ODFW would forward these comments to the county who would then include them in the decision document. This approach is not expected to result in the denial of any proposal. Instead the conversation and requirements will be about how the proposal is carried out.

**Figure 3. “Other” Conflicting Uses in Core Areas**



**2. Low Density Areas – Subsection (10)**

Low density areas have also been mapped by ODFW and constitute important habitat that provides breeding, summer, and migratory habitats of the sage-grouse population statewide. The regulatory arrangement for low density areas differs from core areas/PACs in two ways. First, low density areas are not subject to disturbance thresholds such as the one percent over 10 year increments or three percent total that apply to core areas/PACs. Second, while large-scale development proposals in low density areas do require application of the full mitigation hierarchy, a different, somewhat more lenient avoidance test applies to these areas. In other words, it will be easier to site large-scale development in low density areas.

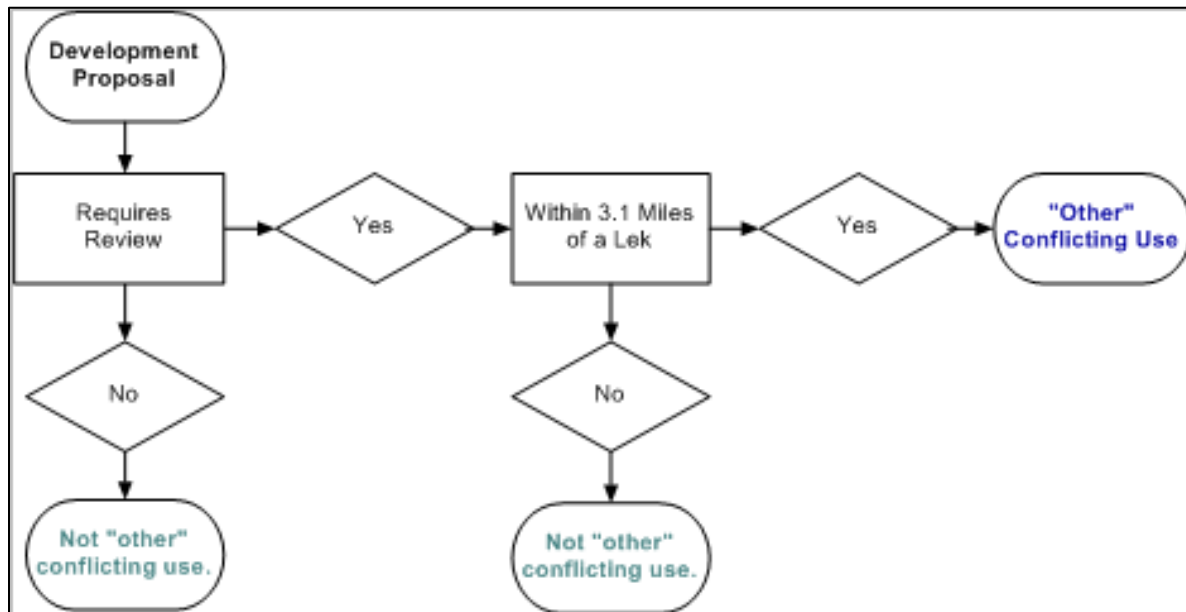
As with core areas/PACs, non-large-scale development activities may constitute a conflicting use in low density areas. However, for low density areas the distance is 3.1 miles from a lek rather than 4.0 miles. (See Figure 4.) The process of consultation following the pre-application conference will be the same as that for the core areas/PACs.

**3. General Habitat – Subsection (11)**

General habitat, previously referred to as “occupied” habitat, is essentially sagebrush habitat used by sage-grouse that is not included in a core or low density area. In these areas the draft rule would apply *only* to lands within 3.1 miles of a lek. (See Figure 4.)

Rather than directly applying the mitigation hierarchy, large-scale development proposal in general habitat within 3.1 miles of a lek would be subject to a “consultation” with ODFW. This approach is similar to the process identified for other conflicting uses under (9)(b). However, consideration for avoidance, in addition to minimization, is included and the ordinary obligations for compensation mitigation remain intact.

**Figure 4. “Other” Conflicting Uses in Low Density Areas and General Habitat**



Non-large-scale development may constitute a conflicting use in general habitat within 3.1 miles of a lek. These instances will be treated consistent with the provisions for core and low density areas.

**G. Especially Unique Local Economic Activity - Subsection (12)**

This provision provides an alternative to the “avoid” step of the mitigation hierarchy. In limited instances, a county may determine that the overall public benefits of a proposal outweigh protecting the resource. This opportunity is tied to economic opportunities that would provide a good number of permanent, high-paying jobs. Counties are not obligated to approve any activity under this provision and it may only be exercised one time per county per 10-year increment.

**H. Upzoning - Subsection (13)**

The draft rule has been written to apply to lands protected for farm, ranch and forest uses (Goals 3 and 4) as of July 1, 2015. Over 98 percent of Oregon’s nonfederal sage-grouse habitat falls into these areas. This subsection simply identifies that re-zoning areas subject to the draft rule to allow for a greater development potential would trigger the standard Goal 5 process. Lands in core areas that are re-zoned would count towards the three-percent development threshold.

**I. Landscape-Level Disturbance and Central Registry - Subsections (14) & (15)**

These two subsections establish that the department will monitor development in core areas/PACs. Counties would be required to report development approvals in a manner similar to the farm and forest reporting obligations under ORS 197.065. The department would provide an annual report to the commission, which would be coordinated with affected local governments.

The department would also partner with local, state and federal agencies to maintain a central registry. The central registry would begin with a baseline figure of existing development in each core area/PAC and track new large-scale development into the future. Baseline calculations will initially be based on the same methodology used by the BLM.

**J. Metering and Disturbance Threshold - Subsections (16) and (17)**

Limiting the total amount of large-scale development in core areas/PACS is a foundational aspect of Oregon's response to the service demonstrating that listing the species is not necessary. The concept of "metering" has been introduced to help ensure that an area's development potential is not realized in the near term or entirely retired through approval of just one or two very large projects. The draft rule has been written to limit large-scale development in each core area/PAC to one percent of its total area in each ten year increment. For example, a core area/PAC is comprised of 100,000 acres would be eligible for 1,000 acres per 10-year increment.

The total amount of acceptable disturbance from large-scale development in a core area/PAC has been set at three percent. Continuing the above example, a core area/PAC of 100,000 acres would be eligible for a total of 3,000 acres of development. Current science shows that sage-grouse populations begin to seriously decline when three percent of their habitat is occupied by anthropogenic development. In other words, developing three percent of each core area/PAC is not a goal. Instead, three percent represents the amount of development hoped to be avoided. Disturbance will initially be measured forward from baseline figures based on BLM's methodology.

The one percent metering and three percent overall development threshold are both included in the BLM draft Resource Management Plan (RMP). The percentages are to be counted across the core areas/PACs regardless of land ownership. Furthermore, these figures are to be based on the direct disturbance or "footprint" of large-scale development projects. Indirect disturbance will be accounted for though minimization and compensatory mitigation requirements. In other words, a new county road may have a direct footprint of 40 feet but its indirect impacts may extend far beyond the project boundaries. For purposes of metering and the disturbance threshold only the width of the road multiplied by its length would be counted (10 miles x 40' = 2,112,000 square feet or 48.5 acres). The amount of area needed to be considered for the mitigation hierarchy could be several times that amount.

**K. State Agency Coordination – Subsection (18)**

Coordination among state agencies is, and will remain, an important feature of Oregon's approach to protecting sage-grouse. This area of the draft rule emphasizes that coordination and serves as a sort of catch all in that state agency projects that do not otherwise require local approval will still be reported and remain subject to compensatory mitigation requirements.

**L. Scheduled Review – Subsection (19)**

This subsection serves two purposes and may possibly deserve a different name. The first purpose is to obligate the department to review the rule in 10 years and, if necessary, recommend improvements for the commission to consider.

The second purpose is to identify instances when the commission may wish to reconsider the rule based on decisions made by the service. For instance, should the species become listed and a (4)(d) rule not be obtained, the presence of both the listing decision and the rule could constitute an unnecessary regulatory burden. In this case the requirements imposed by the federal government on development and land management practices may be more than enough protection for the species. Furthermore, a situation where the species is de-listed, having been listed with the rule remaining intact, could signal a time to reconsider the role of a state rule. However, under no circumstances should the rule be rescinded if its presence assists the service in making decisions supported by the state of Oregon, local government, and associated stakeholders.

#### **IV. OREGON FISH & WILDLIFE COMMISSION RULEMAKING**

Oregon Fish & Wildlife Commission (OFWC) has also commenced rulemaking at the request of the Governor's office. This rulemaking will create a supplemental strategy for sage grouse and establish protocols for compensatory mitigation. The commission's rule will obligate counties to use the OFWC rules when requirements for compensatory mitigation are triggered.

A RAC with a membership very similar to the LCDC RAC has been established for the OFWC effort. The OFWC RAC has met four times between April 2 and June 1, 2015. Comments on the OFWC rule may be offered to a hearings officer on July 21 in Lakeview or on July 22 in Burns. The rule is scheduled to be considered and adopted by the OFWC on July 27 in Salem. The most current draft of the rule available at the time of this report is included in Attachment D.

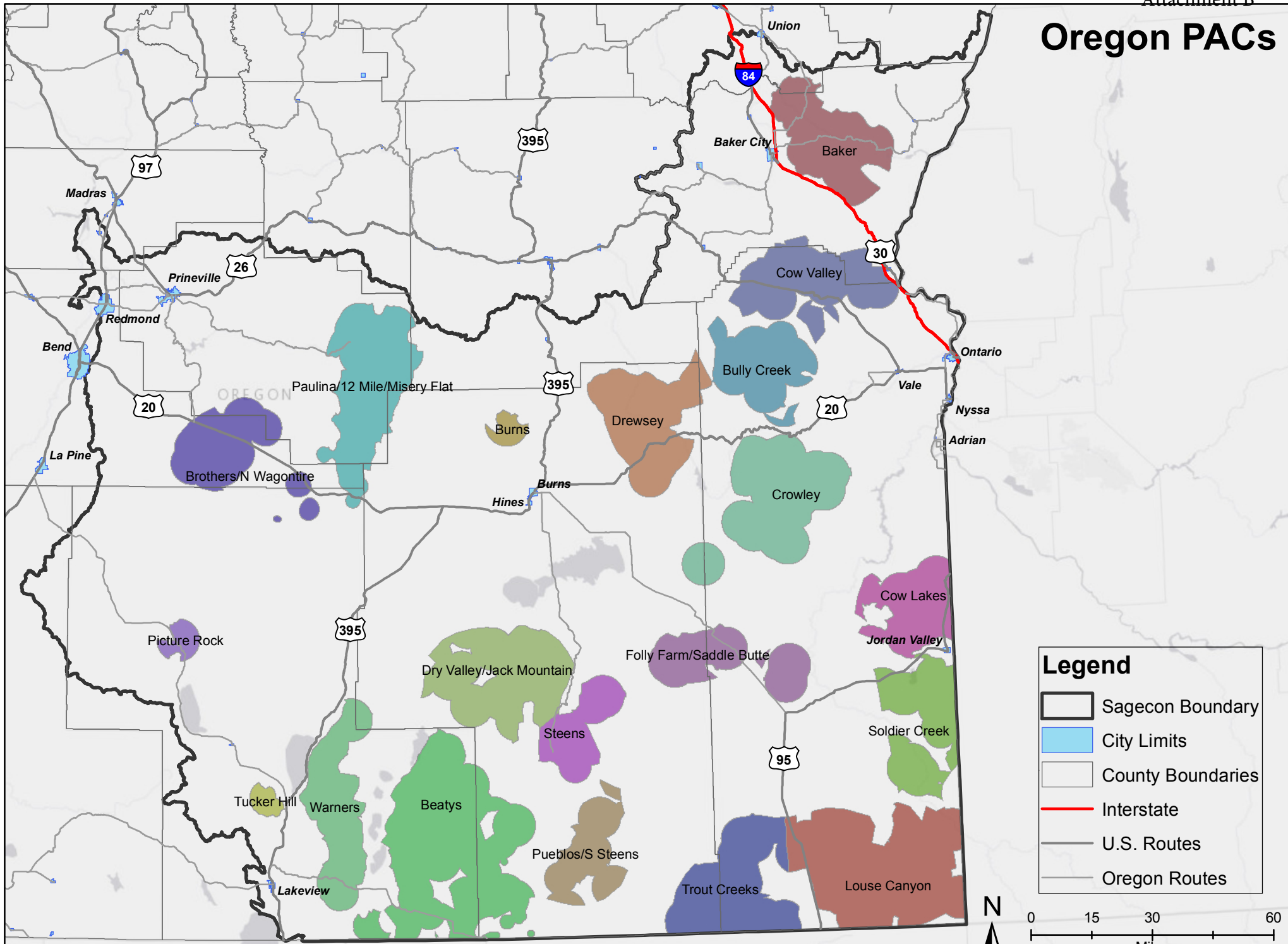
Department and ODFW staffs intend to maintain close coordination throughout the duration of these rulemaking projects.

#### **V. CONCLUSION**

The development of Oregon's Action Plan for Sage-Grouse has been a remarkable process that is the culmination of several years of hard work. Many, many stakeholders have dedicated thousands of hours toward demonstrating that a listing is not necessary. This rule fills an important gap in the ordinary land use planning framework on nonfederal lands and serves as the basis for the state's response to the third leading threat to sage-grouse habitat in this portion of the range.

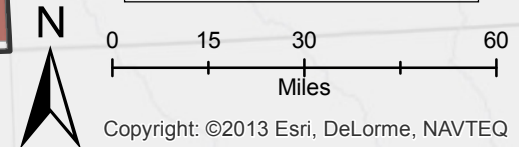
There will be opportunities for improvement of the rule should deficiencies be found or new information obtained. The presence of this rule will help demonstrate Oregon's planning leadership and serve as a model for considering development proposals across the western states.

# Oregon PACs



**Legend**

- Sagecon Boundary
- City Limits
- County Boundaries
- Interstate
- U.S. Routes
- Oregon Routes



**OREGON ADMINISTRATIVE RULES**  
**OREGON DEPARTMENT OF FISH AND WILDLIFE**  
**DIVISION 140**

GREATER SAGE-GROUSE CONSERVATION STRATEGY FOR OREGON

635-140-0000

**Purpose**

These administrative rules establish the policy of the Department for the protection and enhancement of Greater Sage-Grouse in Oregon. These rules incorporate and supplement portions of the "Greater Sage-Grouse Conservation Assessment and Strategy for Oregon" (2011) ("the Plan") which sets population and habitat management objectives, and defines and governs the Department's core area strategy for conservation of sage-grouse in Oregon. These rules also advance sage grouse population and habitat protection through a mitigation hierarchy and the establishment of a mitigation standard for impacts of development actions in sage-grouse habitat. In the event of a conflict between the "Plan" and these rules, these rules govern.

Statutory Authority: ORS 496.012, 496.138, 496.146, 496.162, 498.500, 498.502

Stats Implemented: ORS 496.012, 496.138, 496.146, 496.162, 498.500, 498.502

635-140-0005

**Definitions**

For the purposes of OAR 635-140-0000

Technical terms used in these sections are further defined in the glossary of the "Greater Sage-Grouse Conservation Assessment and Strategy for Oregon" adopted by the Commission on April 22, 2011 (copies of the plan are available through the Oregon Department of Fish and Wildlife).

- (1) "Areas of High Population Richness" are mapped areas that represent statistically significant clustering of the most highly attended leks and associated nesting habitat.
- (2) "Core areas" are mapped sagebrush types or other habitats that support greater 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 maintained by the Department.
- (3) "Development action" means any anthropogenic activity subject to regulation by local, state, or federal agencies that could result in the loss of fish and wildlife 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 for activities with new impacts or continued impacts that have not been mitigated consistent with current standards.

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

**(5) “Functionality” is the ability of habitat to meet sage grouse seasonal and/or year round life history needs (e.g. breeding, early rearing, wintering, migratory) and sustain sage grouse populations.**

(6) “Indirect impacts” are effects that are caused by or will ultimately result from an affected development activity. Indirect effects usually occur later in time or are removed in distance compared to direct effects.

(7) “Low density” areas are mapped sagebrush types or other habitats that support greater 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 maintained by the Department.

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

(9) “Priority Areas for Conservation (PACs)” are 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.

635-140-0010

## Population Management

In accordance with the Wildlife Policy (ORS 496.012), the Department’s primary population management goal is to restore, maintain and enhance populations of greater sage-grouse such that multiple uses of populations and their habitats can continue. Regional and state population objectives shall be identified based on the best information available

(1) Policy: Manage greater sage-grouse statewide to maintain or enhance their abundance and distribution at the 2003 spring breeding population level, approximately 30,000 birds over the next 50 years.

(2) Objectives: Consistent with the population management policy, achieve the following regional population objectives:

(a) Baker Resource Area BLM: maintain or enhance greater sage-grouse abundance and distribution at the 2003 spring breeding population level, approximately 2,000 birds.

(b) Vale District BLM excluding Baker Resource Area BLM): maintain or enhance greater sage-grouse abundance and distribution at the 2003 spring breeding population level, approximately 11,000 birds.

(c) Burns District BLM: maintain or enhance greater sage-grouse abundance and distribution at the 2003 spring breeding population level, approximately 4,300 birds.

(d) Lakeview District BLM: maintain or enhance greater sage-grouse abundance and distribution at the 2003 spring breeding population level, approximately 9,400 birds.

(e) Prineville District BLM: restore greater sage-grouse abundance and distribution near the 1980 spring breeding population level, approximately 3,000 birds.

Statutory Authority: ORS 496.012, 496.138, 496.146, 496.162

Stats Implemented: ORS 496.012, 496.138, 496.146, 496.162

635-140-0015

#### Habitat Management

(1) Goals: The Department's habitat goals are to achieve the following, recognizing that such achievement is dependent upon authorities, programs, collaborative partnerships, and other factors beyond those within the Department's authority alone:

(a) Maintain or enhance the distribution of sagebrush habitats within greater sage-grouse range in Oregon;

(b) Manage those habitats in a variety of structural stages to benefit greater sage-grouse while reducing threats and promoting resilience;

(c) Avoid development actions in sage-grouse core, low density, and general habitats which adversely impact sage-grouse habitat or sage-grouse use of those habitats;

(d) Limit the extent, location, and negative impacts of development actions over time within sage-grouse core, low density, and general habitats. In core areas, direct impacts from anthropogenic disturbance will be limited to no more than 3% of any "Priority Area for Conservation" and at a rate of less than 1.0% over a ten year period as described in OAR 660 023 01115;

(e) Require compensatory mitigation for direct and indirect impacts from developments within sage grouse core, low density, and general habitats. Ensure such mitigation provides a net conservation benefit to sage-grouse and their habitat by providing an increase in the functionality of their habitat to support sage-grouse, consistent with OAR 635-140-0025.

(2) Objective: Manage a minimum of 70% of greater sage-grouse range for sagebrush habitat in advanced structural stages, sagebrush class 3, 4 or 5, with an emphasis on classes 4 and 5. The remaining approximately 30% includes areas of juniper encroachment, non-sagebrush shrubland, and grassland and should be managed to increase available habitat within greater sage-grouse range.

(3) Objective: Maintain and enhance existing sagebrush habitats and enhance potential habitats that have been disturbed such that there is no net loss of sagebrush habitat in the following regions:

(a) Baker Resource Area BLM: 82% sagebrush and 18% disturbed habitats.

(b) Vale District BLM (excluding Baker Resource Area): 70% sagebrush and 30% disturbed habitats.

(c) Burns District BLM: 68% sagebrush and 32% disturbed habitats.

(d) Lakeview District BLM: 72% sagebrush and 28% disturbed habitats.

(e) Prineville District BLM: 47% sagebrush and 53% disturbed habitats.

Statutory Authority: ORS 496.012, 496.138, 496.146, 496.162

Stats Implemented: ORS 496.012, 496.138, 496.146, 496.162

635-140-0020

#### Core Area Approach to Conservation

(1) The purpose of establishing the Department's core area approach is to address greater sage-grouse management from a conservation biology perspective that identifies the most productive populations and habitats associated with meeting all life history needs related to ensuring sage-grouse viability in Oregon.

(a) Policy 1. The Department shall develop and maintain maps that identify core area habitats necessary to conserve 90% of Oregon's greater sage-grouse population, with emphasis on highest density and important use areas which provide for breeding, wintering and connectivity corridors.

(b) Policy 2. The Department shall develop and maintain maps that identify low density habitat which provide breeding, summer, and migratory habitats of the Oregon statewide greater sage-grouse population.

(c) When developing and maintaining the maps referred to in paragraphs (a) and (b) the Department will use:

(A) Local Sage-Grouse Implementation Teams to evaluate the maps and refine exterior boundaries by use of aerial imagery and local knowledge of sage-grouse and sage-grouse habitat;

(B) Best available science to further understanding of greater sage-grouse life history and conservation needs; and

(C) County Governing bodies, or their designees, to provide input regarding changes in local land use to be incorporated in the core area maps.

635-140-0025

#### Mitigation Hierarchy of Impacts in Sage-grouse Core, Low Density, and General Habitats

Adverse impacts in sage-grouse core, low density, and general habitat from development actions must be mitigated by the developer for both direct and indirect adverse impacts to sage-grouse and their habitats. When ascertaining direct and indirect adverse impacts from development actions, the Department will use the most current and best available science related to sage-grouse biology and habitat conservation, including the Mitigation Framework for Sage-Grouse Habitats (ODFW, March 20, 2012). Mitigation is comprised, in hierarchical order, of avoidance, minimization, and compensatory mitigation.

(1) Policy 1. Mitigation Hierarchy for direct and indirect impacts from development actions will be required where the proposed development action:

(a) Requires a county permit, is a large-scale development as defined in Oregon Land Conservation and Development OAR 660-023-0115, and would impact core or low density habitat,

(b) Requires a county permit, is a large-scale development as defined in Oregon Land Conservation and Development OAR 660-023-0115, and would impact general habitat within 3.1 miles of a lek in a manner that would reduce functional sage-grouse habitat or sage grouse use of their habitat,

(c) Requires a county permit but is not a large scale development as defined in Oregon Land Conservation and Development OAR 660-023-0115. In this case, through consultation with the development action proponent, the Department will determine:

(A) Whether to require mitigation based on the likelihood of adverse impacts from the proposed action in a manner that would reduce functional sage-grouse habitat or sage grouse use of that habitat;

(1) within 4 miles of a lek in core area habitat,

(2) within 3.1 miles of a lek in low density habitat, or

(3) within 3.1 miles of a lek in general habitat

(B) If mitigation is required based on (1)(c)(A) above, the appropriate level of mitigation will be based on the nature of the impact and the resultant risk to sage-grouse.

(d) Is located in or would adversely impact sage grouse habitat on public lands and requires state or federal approval.

(2) Policy 2. The Department may approve or recommend approval of mitigation for impacts from a large-scale development permitted by a county; or any development actions permitted by a state or federal government entity on public land, within sage-grouse core area habitat only after the following mitigation hierarchy has been addressed by the permitting entity with the intent of directing the development action from the most productive habitats (core, low density, and general) to the least productive areas for sage-grouse.

(a) Avoidance in Core Area Habitat. If the proposed development can occur in another location that avoids both direct and indirect impacts within core habitat, then the proposal must not be allowed unless it can satisfy the following criteria:

(A) It is not technically feasible to locate the proposed development activity or its impacts outside of a core habitat 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 the development must be located such that it will have direct or indirect impacts on sage-grouse core area habitat; or

(B) The proposed development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands; and

(C) If the proposal is for a large-scale development as defined in Oregon Land Conservation and Development OAR 660-023-0115 and either (2)(a)(A) or (2)(a)(B) is found to be satisfied, the permitting entity must also find that it will provide important economic opportunity, needed infrastructure or public safety benefits for local citizens or the entire region.

(b) Avoidance in Low Density Habitat. If the proposed development action can occur in another location that avoids both direct and indirect impacts within low density sage grouse habitat, then the proposal should not be allowed unless it can satisfy the following criteria:

(A) It is not technically or financially feasible to locate the proposed use outside of low density sage-grouse habitat based on accepted engineering practices, regulatory standards, proximity to necessary infrastructure or some combination thereof; or

(B) The proposed development action is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations.

(c) Avoidance in General Habitat. If the proposed development activity and its direct and indirect impacts are in general sage grouse habitat (within 3.1 miles of a lek for county permitted actions), then the permitting entity may allow the activity based on satisfaction of the following criteria:

(A) Consultation between the development proponent and the Department that generates recommendations pursuant to the approach identified in minimization subsection (d), and

(B) Incorporation by the project proponent of reasonable changes to the project proposal based on the above consultation with the Department, and/or justification as to why a given recommendation is not feasible.

(d) Minimization. If after exercising the above avoidance tests, the permitting entity finds the proposed development action cannot be moved to non-habitat or into a habitat category that avoids adverse direct and indirect impacts to a habitat category of greater significance (i.e., core or low density), then the next step applied in the mitigation hierarchy will be minimization of the direct and indirect impacts

of the proposed development action. Minimization consists of how to best locate, construct, operate and time (both seasonally and diurnally) the development action so as to avoid or minimize direct and indirect impacts on important sage grouse habitat and sage grouse within the area of general habitat.

(A) Minimizing impacts from development actions in core habitat shall 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.

(B) Minimizing impacts from development actions in general habitat shall include consultation between the development proponent and the Department 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 important sage grouse habitat within the area of general habitat.

(e) Compensatory Mitigation. If avoidance and minimization efforts have been exhausted, compensatory mitigation to address both direct and indirect impacts will be required for remaining adverse impacts from the proposed development to sage-grouse habitat, consistent with the mitigation standard in (3) below.

(3) Policy 3. The standard for compensatory mitigation of direct and indirect habitat impacts in sage grouse habitat (core low density, and general areas) is to achieve net conservation benefit for sage-grouse by replacing the lost functionality of the impacted habitat to a level capable of supporting greater sage-grouse numbers than that of the habitat which was impacted. Where mitigation actions occur in existing sage grouse habitat, the increased functionality must be in addition to any existing functionality of the habitat to support sage-grouse. When developing and implementing mitigation measures for impacts to core, low density, and general sage-grouse habitats, the project developers may:

(a) Work directly with the Department to obtain approval to implement a plan, at the responsibility of the developer, for mitigating impacts consistent with the standard in OAR 635 140 0025 (4) or,

(b) Work with an entity approved by the department to implement, at the responsibility of the developer, "in-lieu fee" projects consistent with the standard in OAR 635 140 0025 (4).

(c) Any mitigation undertaken as in (a) or (b) above must have in place measures to ensure the results of the mitigation activity will persist (barring unintended natural events such as fire) for the life of the original impact.

(4) Policy 4. The Department shall follow the Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-0000) when defining habitat categories and providing recommendations to address potential site-level impacts to species other than greater sage-grouse that occur within sage-grouse core area habitat or

sage-grouse low density habitat, except that if there is a resulting conflict between OAR 635-415-0000 and this rule, then this rule shall control.

# Attachment 2

Revised: March 15, 2015

## Land Conservation and Development Department

### Oregon Administrative Rules

#### Chapter 660, Division 033, Rule 0120, Table

---

##### Uses Authorized on Agricultural Lands

**OAR 660-033-0120** The specific development and uses listed in the following table are allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the table shall have the following meanings:

**A** Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.

**R** Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.

\* Use not allowed.

# Numerical references for specific uses shown on the table refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the table, this rule does not establish criteria for the use.

<b>HV</b>	<b>All</b>	
<u>Farmland</u>	<u>Other</u>	<u>USES</u>
		<b>Farm/Forest Resource</b>
A	A	Farm use as defined in ORS 215.203.
A	A	Other buildings customarily provided in conjunction with farm use.
A	A	Propagation or harvesting of a forest product.



R6	R6	A facility for the primary processing of forest products.
R28	R28	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141 or an establishment for the slaughter or processing of poultry pursuant to ORS 603.038.

### **Natural Resource**

A	A	Creation of, restoration of, or enhancement of wetlands.
R5,27	R5,27	The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species.

### **Residential**

A1,30	A1,30	Dwelling customarily provided in conjunction with farm use.
R9,30	R9,30	A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, child, brother, sister, sibling, step-sibling, niece, nephew, or first cousin of either, if the farm operator does, or will, require the assistance of the relative in the management of the farm use.
A24,30	A24,30	Accessory Farm Dwellings for year-round and seasonal farm workers.
A3,30	A3,30	One single-family dwelling on a lawfully created lot or parcel.
R5,10,30	R5,10,30	One manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.
R4,30	R4,30	Single-family residential dwelling, not provided in conjunction with farm use.
R5,30	R5,30	Residential home or facility as defined in ORS 197.660, in existing dwellings.
R5,30	R5,30	Room and board arrangements for a maximum of five unrelated persons in existing residences.
R12,30	R12,30	Replacement dwelling to be used in conjunction with farm use if the

existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

A8,30	A8,30	Alteration, restoration, or replacement of a lawfully established dwelling.
<b>Commercial Uses</b>		
R5	R5	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(L) or ORS 215.213(1)(u) and 215.283(1)(r).
R5,14	R5,14	Home occupations as provided in ORS 215.448.
A39	A39	Dog training classes or testing trials.
R5	R5	Commercial dog boarding kennels or dog training classes or testing trials that cannot be established under ORS 215.213(1)(z) or 215.283(1)(x).
R5,35	R5,35	An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possess a wholesaler's permit to sell or provide fireworks.
*18(a)	R5	Destination resort which is approved consistent with the requirements of Goal 8.
A	A	A winery as described in ORS 215.452 or 215.453, and 215.237.
R5	R5	A restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year.
R or R5	R or R5	Agri-tourism and other commercial events or activities that are related to and supportive of agriculture, as described in ORS 215.213(11) or 215.283(4).
A23	A23	Farm stands.
R5	R5	A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes

		farm use.
R or R5	R or R5	Agri-tourism and other commercial events or activities that are related to and supportive of agriculture, as described in ORS 215.213(11) or 215.283(4).
A23	A23	Farm Stands.
R5	R5	A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
R	R	Guest ranch in eastern Oregon as provided in Chapter 84 Oregon Laws 2010.
A	A	Log truck parking as provided in ORS 215.311.
		<b>Mineral, Aggregate, Oil, and Gas Uses</b>
A	A	Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.
A	A	Operations for the exploration for minerals as defined by ORS 517.750.
R5	R5	Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under this rule.
R5	R5	Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.
R5,15	R5,15	Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.
R5	R5	Processing of other mineral resources and other subsurface resources.

### **Transportation**

R5,7	R5,7	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.
A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.
R5	R5	Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.
A	A	Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way but not resulting in the creation of new land parcels.
R5	R5	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
A	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
A	A	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.
R5	R5	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
R13	R13	Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule.
R	R	Transportation improvements on rural lands allowed by OAR 660-012-0065
<b>Utility/Solid Waste Disposal Facilities</b>		
R,16(a) or (b)	R,16(a) or (b)	Utility facilities necessary for public service, including associated transmission lines as defined in ORS 469.300 and wetland waste treatment systems but not including commercial facilities for the

purpose of generating electrical power for public use by sale or transmission towers over 200 feet high.

R5	R5	Transmission towers over 200 feet in height.
A	A	Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.
A32	A32	Utility facility service lines.
R5,17	R5,22	Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power generation facilities or photovoltaic solar power generation facilities.
R5,37	R5,37	Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
R5,38	R5,38	Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
*18(a)	R5	A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.
18(a),29(a)	A or R5,29(b)	Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-093-0050 and 340-096-0060.

#### **Parks/Public/Quasi-Public**

18	R5,40	Youth camps in Eastern Oregon on land that is composed predominantly of class VI, VII or VIII soils.
2, *18(a) or R2,18(b-c)	R2,5,18(b- c)	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.
2, *18(a)	R2	Churches and cemeteries in conjunction with churches consistent with ORS 215.441.
2, *18(a)	R2,5,19	Private parks, playgrounds, hunting and fishing preserves, and campgrounds.

R2,5,31	R2,5,31	Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.
A	A	Fire service facilities providing rural fire protection services.
R2,5,36	R2,5,36	Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.
R2,*18(a)	R2,5,20	Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.
R2,5,21	R2,5,21	Living history museum
R2	R2	Firearms training facility as provided in ORS 197.770.
R2,25	R2,25	Armed forces reserve center as provided for in ORS 215.213(1)(s).
A	A	Onsite filming and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306.
R5	R5	Onsite filing and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.
A26	A26	A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary
R5	R5	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.
R5	R5	Operations for the extraction of bottling water.
A11	A11	Land application of reclaimed water, agricultural or industrial process water or biosolids.
R5	R5	A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(1).
<b>Outdoor Gatherings</b>		
A33	A33	An outdoor mass gathering or other gathering described in ORS 197.015(10)(d).

R34	R34	Any outdoor gathering subject to review of a county planning commission under ORS 433.763.
-----	-----	--

(The numbers in the table above refer to the section numbers in OAR 660-033-0130)

## Attachment 3

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

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

17  
18 (2) Exempt activities.

19  
20 (a) Those activities that do not require governmental approval, including farm use as  
21 defined in ORS 215.203(2), are exempt from the provisions of this rule. State agency  
22 permits necessary to facilitate a farm use, including granting of new water right permits  
23 by the Oregon Water Resources Department (OWRD), are also exempt from the  
24 provisions of this rule.

25  
26 (b) Any energy facility that submitted a preliminary application for site certificate  
27 pursuant to ORS 469.300 *et seq.* on or before the effective date of this rule is exempt  
28 from the provisions of this rule. Notwithstanding ORS 197.646(3), this rule shall not be  
29 directly applicable to any land use decision regarding that facility unless the applicant  
30 chooses otherwise. Similarly, any changes to a local government’s acknowledged  
31 comprehensive plan or land use ordinances developed to achieve consistency with this  
32 rule shall not constitute “applicable substantive criteria” pursuant to OAR 345-022-  
33 0030(3), unless they are in effect on the date the applicant submits a preliminary  
34 application for site certificate, unless the applicant chooses otherwise.

35  
36 (c) Private and other nonfederal lands are strongly encouraged to participate in a  
37 Candidate Conservation Agreement with Assurances (CCAA) program. Voluntary  
38 conservation efforts of this nature are recognized by the State of Oregon as a critical  
39 part in recovering the breeding population targeted by the Greater Sage-Grouse  
40 Conservation Assessment and Strategy for Oregon. Uses identified in CCAA agreements  
41 are relieved from the provisions of this rule except that conflicting uses identified in  
42 section (7) will be subject to sections (9) to (11) in all instances regardless of enrollment  
43 status.



## Attachment 3

1 | (3) Definitions. For purposes of this rule, the definitions in OAR 635-140-0002 and in the  
2 | glossary of the “Greater Sage-Grouse Conservation Assessment and Strategy for Oregon”  
3 | adopted by the Oregon Fish and Wildlife Commission on April 22, 2011 (copies of the plan are  
4 | available through the Oregon Department of Fish and Wildlife (ODFW)) shall apply. In addition,  
5 | the following definitions shall apply:  
6 |

7 | (a) “Areas of High Population Richness” means mapped areas of breeding and nesting  
8 | habitat within core habitat that support the 75th percentile of breeding bird densities  
9 | (*i.e.* the top 25 percent). Please see Exhibit A.  
10 |

11 | (b) “Candidate Conservation Agreement with Assurances” means a formal agreement  
12 | between the United States Fish and Wildlife Service (USFWS) and one or more parties to  
13 | address the conservation needs of proposed or candidate species, or species likely to  
14 | become candidates, before they become listed as endangered or threatened.  
15 | Landowners voluntarily commit to conservation actions that will help stabilize or restore  
16 | the species with the goal that listing under the Federal Endangered Species Act will  
17 | become unnecessary.  
18 |

19 | (c) “Core areas” means mapped sagebrush types or other habitats that support sage-  
20 | grouse annual life history requirements that are encompassed by areas:  
21 |

22 | (A) Of very high, high, and moderate lek density strata;  
23 |

24 | (B) Where low lek density strata overlap local connectivity corridors; or  
25 |

26 | (C) Where winter habitat use polygons overlap with either low lek density strata,  
27 | connectivity corridors, or occupied habitat. Core area maps are maintained by  
28 | ODFW.  
29 |

30 | (d) “Development action” means any human activity subject to regulation by local,  
31 | state, or federal agencies that could result in the loss of significant sage-grouse habitat.  
32 | Development actions may include but are not limited to, construction and operational  
33 | activities of local, state, and federal agencies. Development actions also include  
34 | subsequent repermitting of existing activities proposing new impacts beyond current  
35 | conditions.  
36 |

37 | (e) “Direct impact” means an adverse effect of a development action upon significant  
38 | sage-grouse habitat which is proximal to the development action in time and place.  
39 |

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

## Attachment 3

1  
2 (g) "General habitat" means occupied (seasonal or year-round) sage-grouse habitat  
3 outside core and low density habitats.  
4

5 (h) "Indirect impacts" means adverse effects to significant sage-grouse habitat that are  
6 caused by or will ultimately result from an affected development activity. Indirect  
7 impacts usually occur later in time or are removed in distance compared to direct  
8 effects.  
9

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

17 (A) Commercial Uses.

18 (B) Mineral, Aggregate, Oil and Gas Uses.

19 (C) Transportation Uses.

20 (D) Utility/Solid Waste Disposal Facilities.

21 (E) Parks/Public/Quasi-Public.  
22

23 (j) "Lek" means an area where male sage-grouse display during the breeding season to  
24 attract females (also referred to as strutting-ground).  
25

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

29 (A) Low lek density strata overlapped with seasonal connectivity corridors;  
30

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

33 (C) Low lek density strata occur outside of connectivity corridors; or  
34

35 (D) Seasonal connectivity corridors occur outside of all lek density strata.  
36

37 Low density area maps are maintained by ODFW.  
38

39 (L) "Mitigation hierarchy" means an approach used by decision makers to consider  
40 development proposals and is ordinarily comprised of a three step process:  
41  
42  
43  
44

## Attachment 3

1  
2 (A) "Avoidance" is the first step in the mitigation hierarchy and is accomplished  
3 by not taking a certain development action or parts of that action.  
4

5 (B) "Minimization" is the second step in the mitigation hierarchy and is  
6 accomplished by limiting the degree or magnitude of the development action  
7 and its implementation.  
8

9 (C) "Compensatory mitigation" is the third step in the mitigation hierarchy and  
10 means the replacement or enhancement of the function of habitat capable of  
11 supporting sage-grouse in greater numbers than predicted to be impacted by a  
12 development.  
13

14 (m) "Occupied Lek" means a lek that has been regularly visited by ODFW and has had  
15 one or more male sage-grouse counted in one or more of the last seven years.  
16

17 (n) "Occupied Pending Lek" means a lek that has not been counted regularly by ODFW in  
18 the last seven years, but sage-grouse were present at ODFW's last visit.  
19

20 (o) "Priority Areas for Conservation" (PACs) means key habitats identified by state sage-  
21 grouse conservation plans or through other sage-grouse conservation efforts (*e.g.*, BLM  
22 Planning). In Oregon, core area habitats are PACs.  
23

24 (4) Local program development and direct applicability of rule. Local governments may develop  
25 a program to achieve consistency with this rule by following the standard process in OAR 660-  
26 023-0030, 660-023-0040 and 660-023-0050 and submitting the amendment to the commission  
27 in the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-025-  
28 0175. Until the commission has acknowledged a county amendment to its comprehensive plan  
29 and land use regulations to be in compliance with Goal 5 and equivalent to this rule with regard  
30 to protecting sage-grouse habitat, sections (5) to (12) shall apply directly to county land use  
31 decisions affecting significant sage-grouse habitat. Once the commission has acknowledged a  
32 local government program under this section, that program becomes the controlling county  
33 land use document and sections (5) to (12) of this rule no longer apply directly.  
34

35 (5) Quality, Quantity and Location. For purposes of this rule, sage-grouse habitat is only present  
36 in Baker, Crook, Deschutes, Harney, Lake, Malheur and Union Counties. The location of sage-  
37 grouse habitat within these counties shall be determined by following the map produced by  
38 ODFW included as Exhibit B.  
39

40 (6) Determination of Significance. Significant sage-grouse habitat includes only lands protected  
41 under Statewide Planning Goals 3 or 4 as of July 1, 2015 that are identified as:  
42

43 (a) Core areas;  
44

## Attachment 3

1 (b) Low density areas; and

2  
3 (c) Lands within a general habitat area located within 3.1 miles of an occupied or  
4 occupied-pending lek.

5  
6 (d) The exact location of sage-grouse habitat may be refined during consideration of  
7 specific projects but must be done in consultation with ODFW.

8  
9 (7) Conflicting uses. For purposes of protecting significant sage-grouse habitat, conflicting uses  
10 are:

11  
12 (a) Large-scale development; and

13  
14 (b) Other activities, which require review by county decision makers pursuant to OAR  
15 660-033-0120 table and are proposed:

16  
17 (A) In a core area within 4.0 miles of an occupied or occupied-pending lek;

18  
19 (B) In a low density area within 3.1 miles of an occupied or occupied-pending lek;  
20 or

21  
22 (C) In general habitat within 3.1 miles of an occupied or occupied-pending lek.

23  
24 (8) Pre-Application Conference. A county should convene a pre-application conference prior to  
25 accepting an application for a conflicting use in significant sage-grouse habitat. The pre-  
26 application conference should include, at a minimum, the applicant, county planning staff and  
27 local ODFW staff.

28  
29 (9) Program to achieve the goal of protecting significant sage grouse habitat in a core area.

30  
31 (a) A county may consider a large-scale development in a core area upon applying  
32 disturbance thresholds and the mitigation hierarchy as follows:

33  
34 (A) A county may consider a large-scale development that does not cause the  
35 one-percent metering threshold described in section (16) or the three-percent  
36 disturbance threshold described in section (17) to be exceeded.

37  
38 (B) Avoidance. Before proceeding with large-scale development activity that  
39 impacts a core area, the proponent must demonstrate that reasonable  
40 alternatives have been considered and that the activity or other action cannot  
41 avoid impacts within core area habitat. If the proposed large-scale development  
42 can occur in another location that avoids both direct and indirect impacts within  
43 core area habitat, then the proposal must not be allowed unless it can satisfy the  
44 following criteria.

### Attachment 3

1  
2 (i) It is not technically feasible to locate the proposed large-scale  
3 development outside of a core area based on accepted engineering  
4 practices, regulatory standards or some combination thereof. Costs  
5 associated with technical feasibility may be considered, but cost alone  
6 may not be the only consideration in determining that development must  
7 be located such that it will have direct or indirect impacts on significant  
8 sage-grouse areas; or

9  
10 (ii) The proposed large-scale development is dependent on a unique  
11 geographic or other physical feature(s) that cannot be found on other  
12 lands; and

13  
14 (iii) If either subparagraph (9)(a)(B)(i) or (9)(a)(B)(ii) is found to be  
15 satisfied the county must also find that the large-scale development will  
16 provide important economic opportunity, needed infrastructure, public  
17 safety benefits or public health benefits for local citizens or the entire  
18 region.

19  
20 (C) Minimization. If the proposed use cannot be sited by avoiding a core area  
21 altogether, including direct and indirect impacts, it shall be located to minimize  
22 the amount of such habitat directly or indirectly disturbed, and to minimize  
23 fragmentation of the core area(s) in question by locating the development  
24 adjacent to existing development and at the edge of the core area when  
25 possible. Uses should minimize impacts through micro-siting, limitations on the  
26 timing of construction or use, or both, and methods of construction. Minimizing  
27 impacts from large-scale development in core habitat shall also ensure direct  
28 and indirect impacts do not occur in known areas of high population richness  
29 within a given core area, unless a project proponent demonstrates, by a  
30 preponderance of the evidence, that such an approach is not feasible. Costs  
31 associated with minimization may be considered, but cost alone may not be the  
32 only consideration in determining that location of development cannot further  
33 minimize direct or indirect impacts to core areas.

34  
35 (D) Compensatory Mitigation. To the extent that a proposed large-scale  
36 development will have direct or indirect impacts on a core area after application  
37 of the avoidance and minimization standards and criteria, above, the permit  
38 must be conditioned to fully offset the direct and indirect impacts of the  
39 development to any core area. The required compensatory mitigation must  
40 comply with OAR chapter 635, division 140.

41  
42 (b) A county may approve a conflicting use as identified at subsection (7)(b) above upon  
43 either:  
44

### Attachment 3

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

4  
5 (B) Conditioning the approval based on ODFW recommendations, including  
6 minimization techniques and compensatory mitigation, if necessary, to resolve  
7 threats to significant sage-grouse habitat.

8  
9 (10) Program to achieve the goal of protecting significant sage-grouse habitat in a low density  
10 area.

11  
12 (a) A county may approve a large-scale development in a low density area upon  
13 applying the mitigation hierarchy as follows:

14  
15 (A) Avoidance. Before proceeding with large-scale development activity that  
16 impacts a low density area, the proponent must demonstrate that reasonable  
17 alternatives have been considered and that the activity or other action cannot  
18 avoid impacts within a low density area. If the proposed large-scale  
19 development can occur in another location that avoids both direct and indirect  
20 impacts within a low density area, then the proposal must not be allowed unless  
21 it can satisfy the following criteria:

22  
23 (i) It is not technically or financially feasible to locate the proposed large-  
24 scale development outside of a low density area based on accepted  
25 engineering practices, regulatory standards, proximity to necessary  
26 infrastructure or some combination thereof; or

27  
28 (ii) The proposed large-scale development is dependent on geographic or  
29 other physical feature(s) found in low density habitat areas that are less  
30 common at other locations, or it is a linear use that must cross significant  
31 sage-grouse habitat in order to achieve a reasonably direct route.

32  
33 (B) Minimization. If the proposed use cannot be sited by avoiding a low density  
34 area altogether, including direct and indirect impacts, it shall be located to  
35 minimize the amount of such habitat directly or indirectly disturbed, and to  
36 minimize fragmentation of the low density area(s) in question by locating the  
37 development adjacent to existing development and at the edge of the low  
38 density area when possible. Uses should minimize impacts through micro-siting,  
39 limitations on the timing of construction or use, or both, and methods of  
40 construction.

41  
42 (C) Compensatory Mitigation. Required consistent with the provisions of  
43 paragraph (9)(a)(D)above.

## Attachment 3

1 (b) A county may approve a conflicting use as identified at subsection (7)(b) above when  
2 found to be consistent with the provisions of subsection (9)(b).  
3

4 (11) Program to achieve the goal of protecting significant sage-grouse habitat on general  
5 habitat.  
6

7 (a) A county may approve a large-scale development on significant sage-grouse habitat  
8 in general habitat upon requiring:  
9

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

18 (B) Compensatory Mitigation. Required consistent with the provisions of  
19 paragraph (9)(a)(D)above.  
20

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

24 (12) Especially Unique Local Economic Opportunity. A county may approve a large-scale  
25 development proposal that does not meet the avoidance test for significant sage-grouse  
26 habitat if the county determines that the overall public benefits of the proposal outweigh the  
27 damage to significant sage-grouse habitat. Requirements for minimization and compensatory  
28 mitigation continue to apply and attempts should be made to avoid areas of high population  
29 richness, if possible. The county shall make this balancing determination only when the  
30 proposal involves an economic opportunity that will provide a number of permanent, full-time  
31 jobs, not including construction activities, paying at least 150 percent of average county wages  
32 sufficient to increase the amount of total private nonfarm payroll employment by at least 0.5  
33 percent over the figure included in the most recent data available from the Oregon Department  
34 of Employment rounded down to the nearest whole number. The applicant has the burden to  
35 show that the overall public benefits outweigh the damage to the significant sage-grouse  
36 habitat. This provision may be exercised by each effected county once during every ten-year  
37 period beginning on the effective date of this rule. A county is also free not to approve a  
38 proposal submitted under this section.  
39

40 (13) A proposal to up-zone lands containing significant sage-grouse habitat to a greater  
41 development potential than otherwise allowed under Goals 3 and 4 shall follow the ordinary  
42 Goal 5 process at OAR 660-023-0030 to 660-023-0050. Furthermore, up-zoning lands in a core  
43 area shall be considered a direct impact and count towards the three percent disturbance  
44 threshold pursuant to section (17) below.

## Attachment 3

1  
2 (14) Landscape-Level Consideration. The standards in sections (9), (10) and (11) above, are  
3 designed to minimize the amount of future impacts from human sources to significant sage-  
4 grouse habitat areas. Consistent with available science concerning the relation between human  
5 activities and sage-grouse population levels, the department will monitor direct impacts in core  
6 areas in each of the PACs shown in Exhibit (C).  
7

8 (15) Central Registry. The department will work with the counties identified in section (5),  
9 ODFW, the Bureau of Land Management (BLM), and USFWS to maintain a central registry,  
10 tracking human disturbance from existing (baseline) and all new development affecting core  
11 areas. In addition to serving as partners in maintaining the central registry, counties must  
12 report all development land use permits for all uses within a core area to the department. The  
13 registry will include baseline calculations of direct impact levels consistent with the approach  
14 identified by the BLM. Counties may establish more refined, project specific data to replace the  
15 baseline figures so long as all counties utilize a common methodology. Each year the  
16 department shall report to the commission the amount of new direct impacts in each PAC. The  
17 report shall be coordinated with and made available to all affected counties.  
18

19 (16) Metering. This rule is intended to ensure that the area of direct impact levels in any PAC,  
20 including energy facilities exempted under subsection (2)(b), does not increase by an amount  
21 greater than 1.0 percent of the total area of the PAC in any ten-year period. The initial period  
22 shall commence upon the effective date of this rule and continue for ten consecutive years,  
23 where upon the process shall be successively repeated. The commission will consider revisions  
24 to this rule if the department's yearly reports required by section (15) indicate that the  
25 development trends in any PAC indicate that the 1.0 percent direct impact threshold is in  
26 jeopardy of being exceeded before the ten-year period has expired. Any proposal to amend  
27 this rule undertaken by the department shall be developed in coordination with all affected  
28 counties and other stakeholders.  
29

30 (17) Disturbance Threshold. This rule is intended to ensure that direct impact level, including  
31 energy facilities exempted under subsection (2)(b), does not exceed three percent of the total  
32 area in any PAC. If this three-percent threshold is approached, then the department must  
33 report that situation to the commission along with a proposal to amend this rule to adapt the  
34 standards and criteria such that the threshold is not exceeded.  
35

36 (18) State agency coordination programs. All state agencies that carry out or that permit  
37 conflicting uses in core area, low density area, or significant general habitat including but not  
38 limited to OWRD, Oregon Department of Transportation, Department of State Lands,  
39 Department of Geology and Mineral Industries, Oregon Department of Energy and the Energy  
40 Facility Siting Council, and Department of Environmental Quality must report the proposed  
41 development to the department, along with an estimate of the direct impact of the  
42 development. In addition, to the extent not regulated by a county, such development, other  
43 than the issuance of water rights, the expansion of cultivation, and other farm uses under ORS  
44 215.203(2), must meet the requirements of paragraph (9)(a)(D) of this rule.



## Attachment 3

1  
2 (19) Scheduled Review. The department shall commence a review of these rules no later than  
3 June 30, 2020 and, if determined to be necessary, recommend revisions to achieve the policy  
4 objectives found herein. Furthermore, should the species become listed under the Federal  
5 Endangered Species Act, the commission shall consider whether continued application of this  
6 rule is necessary. Should the rule remain applicable and the species is de-listed the commission  
7 shall consider whether continued application of this rule is necessary.

REVIEWED  
\_\_\_\_\_  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code           \*  
Title 18, and Declaring an Emergency.                   \*                   ORDINANCE NO. 2015-011

WHEREAS, on July 23, 2015 the Oregon Department of Land Conservation and Development Commission adopted Greater Sage-Grouse habitat inventories and rules establishing a procedure for considering development proposals on lands identified as significant Greater Sage-Grouse Habitat.

WHEREAS, Deschutes County is one of seven counties with Greater Sage-Grouse Habitat; and

WHEREAS, amendments to the Deschutes County Code Title 18 are necessary to comply with ORS 197.646(3) and OAR 660-023-0115(4); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held before the Deschutes County Planning Commission on [date] to consider the revised County Code; and

WHEREAS, on [date], the Planning Commission forwarded to the Board of County Commissioners (“Board”) a recommendation of approval to adopt changes to the County Code; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on [date] and concluded that the public will benefit from changes to the County Code; and

WHEREAS, the Board finds it in the public interest to adopt the following County Code amendments; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. ADDING. DCC Chapter 18.89, Greater Sage-Grouse Area Combining Zone, is hereby added to read as described in Exhibit “A,” attached hereto and by this reference incorporated herein.

Section 2. AMENDMENT. DCC Chapter 18.90, Sensitive Bird and Mammal Habitat Combining Zone, is amended to read as described in Exhibit “B,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 3. FINDINGS. The Board adopts as its findings Exhibit “F” of Ordinance 2015-010 and incorporated by reference herein.

///

Section 4. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2015

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY De BONE, Chair

\_\_\_\_\_  
ALAN UNGER, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
TAMMY BANEY, Commissioner

Date of 1<sup>st</sup> Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Date of 2<sup>nd</sup> Reading: \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony De Bone	___	___	___	___
Alan Unger	___	___	___	___
Tammy Baney	___	___	___	___

Effective date: \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**Chapter 18.89. GREATER SAGE-GROUSE AREA COMBINING ZONE - GSGA**

- 18.89.010. Introduction.**
- 18.89.020. Exempt Activities.**
- 18.89.030. Definitions.**
- 18.89.040. Quality, Quantity and Location.**
- 18.89.050. Determination of Significance.**
- 18.89.060. Conflicting Uses.**
- 18.89.070. Pre-Application Conference.**
- 18.89.080. Program to Achieve Goal of Protecting Significant Sage Grouse Habitat in a Core Area.**
- 18.89.090. Program to Achieve Goal of Protecting Significant Sage Grouse Habitat in a Low Density Area.**
- 18.89.100. Program to Achieve Goal of Protecting Significant Sage Grouse Habitat on General Habitat.**
- 18.89.110. Especially Unique Local Economic Opportunity.**
- 18.89.120. Proposal to Upzone Lands Containing Significant Sage Grouse Habitat.**
- 18.89.130. Landscape-Level Consideration.**
- 18.89.140. Central Registry.**
- 18.89.150. Metering.**
- 18.89.160. Disturbance Threshold.**

**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.

(Ord. 2015-011 §1, 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.

(Ord. 2015-011 §1, 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. 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 repermitting 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 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 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.

(Ord. 2015-011 §1, 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.

(Ord. 2015-011 §1, 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

(Ord. 2015-011 §1, 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.

(Ord. 2015-011 §1, 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.

(Ord. 2015-011 §1, 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.
      - 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 DCC 18.89.080(A)(2)(b)(i) or 18.89.080(A)(2)(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.
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.
- (Ord. 2015-011 §1, 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).  
(Ord. 2015-011 §1, 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).  
(Ord. 2015-011 §1, 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.  
(Ord. 2015-011 §1, 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.  
(Ord. 2015-011 §1, 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.  
(Ord. 2015-011 §1, 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.  
(Ord. 2015-011 §1, 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.  
(Ord. 2015-011 §1, 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. (Ord. 2015-011 §1, 2015)

## **Chapter 18.90. SENSITIVE BIRD AND MAMMAL HABITAT COMBINING ZONE - SBMH**

### **18.90.010. Purpose.**

### **18.90.020. Definition of Sensitive Habitat Area.**

### **18.90.030. Limitations and Uses Permitted.**

### **18.90.040. Applicability.**

### **18.90.050. Site Plan Review Requirement.**

### **18.90.060. Site Plan Review Criteria.**

### **18.90.010. Purpose.**

The purpose of the Sensitive Bird and Mammal Combining Zone is to insure that sensitive habitat areas identified in the County's Goal 5 sensitive bird and mammal inventory as critical for the survival of the northern bald eagle, great blue heron, golden eagle, prairie falcon, osprey, great grey owl, ~~sage-grouse~~, and the Townsend's big-eared bat are protected from the effects of conflicting uses or activities which are not subject to the Forest Practices Act. This objective shall be achieved by implementation of the decision resulting from the economic, social, environmental and energy analysis (ESEE) for each inventoried sensitive habitat area.

([Ord. 2015-011 §2, 2015](#); Ord. 94-005 §1, 1994; Ord. 92-042 §2, 1992)

### **18.90.020. Definition of Sensitive Habitat Area.**

A. The sensitive habitat area is the area identified in the Deschutes County Comprehensive Plan Resource Element inventory and site specific ESEE for each sensitive bird or mammal site. The sensitive habitat area to be protected by the provisions of DCC 18.90 is defined as the area:

1. Within a radius of 1,320 feet of a golden eagle, bald eagle, prairie falcon nest, ~~sage-grouse lek~~, or a Townsend's big-eared bat hibernating or nursery site.
2. Within a radius of 300 feet of a great blue heron rookery or osprey nest.
3. Within a radius of 900 feet of a great grey owl nest site.

B. Inventoried sensitive bird or mammal sites located on federal land are not subject to the provisions of DCC 18.90 unless the sensitive habitat area identified in DCC 18.90.020(A)(1) extends onto nonfederal land.

([Ord. 2015-011 §2, 2015](#); Ord. 94-005 §1, 1994; Ord. 93-043 §14, 1993; Ord. 92-042 §2, 1992)

### **18.90.030. Limitations and Uses Permitted.**

A. Uses permitted in the underlying zone(s) are permitted or conditionally permitted in the Sensitive Bird and Mammal Combining Zone subject to the additional procedure and requirements of DCC 18.90.040 and the provisions of the ESEE decision. The Sensitive Bird and Mammal Habitat Combining Zone does not regulate or prohibit forest practices subject to ORS 527.610 to 527.770 and the rules adopted pursuant thereto; or to farm practices as defined by ORS 30.930(2).

B. When there is a conflict between the site specific ESEE analysis and the provisions of DCC Title 18, the site-specific ESEE analysis shall control.

(Ord. 94-005 §1, 1994; Ord. 92-042 §2, 1992)

### **18.90.040. Applicability.**

Review under DCC 18.90 shall be triggered by the following proposals occurring within a sensitive habitat area, as defined in DCC 18.90.020:

- A. An application for a building permit for a new structure or addition to an existing structure;

- B. Land divisions creating new lots or parcels within the sensitive habitat area;
  - C. An application for a conditional use permit; or
  - D. An application for site plan approval.
- (Ord. 94-005 §1, 1994; Ord. 92-042 §2, 1992)

**18.90.050. Site Plan Review Requirement.**

- A. For those proposals identified in DCC 18.90.040 to be sited within an inventoried sensitive habitat area, as defined under DCC 18.90.020, a site plan shall be prepared in accordance with the requirements of DCC 18.90.050. The site plan shall be approved prior to issuance of a building permit, land division, conditional use permit or site plan identified in DCC 18.90.040.
  - B. The site plan application shall provide the following information:
    - 1. A plot plan showing the location of all development including existing and proposed roads, driveways and structures.
    - 2. Description of operating characteristics of the proposed use including times when activity within the sensitive habitat area would generate noise, dust, vibration, lights, traffic or be visible from the nest, ~~lek~~, rookery or hibernation site.
    - 3. Timing of construction activities including grading or filling land, hauling materials and building.
    - 4. Description of existing vegetation and vegetation to be removed for the proposed development.
  - C. The County shall submit a copy of the site plan to the Oregon Department of Fish and Wildlife for comment. ODFW shall have 20 days from the date the site plan is mailed to submit written comments to the County.
  - D. Based upon the record, and evaluation of the proposal based on the criteria in DCC 18.90.060, and conformance with the ESEE analysis for the site contained in the Resource Element of the Comprehensive Plan, the County shall approve or reject the site plan. In lieu of rejection of the site plan, the County may allow the applicant to revise the site plan if the applicant has not met the standards for approval. Applicant shall waive the 120-day time limit if it chooses to revise the site plan.
  - E. Approval of a site plan under DCC 18.90.050 shall be conditioned upon applicant's implementation of the plan.
- (Ord. 2015-011 §2, 2015; Ord. 95-075 §1, 1995; Ord. 94-005 §1, 1994; Ord. 93-043 §14B, 1993; Ord. 92-042 §2, 1992)

**18.90.060. Site Plan Review Criteria.**

Approval of site plan shall be based on the following criteria:

- A. The site plan shall consider the biology of the identified sensitive species, nesting trees, critical nesting periods, roosting sites and buffer areas. Based on the biology of the species and the characteristics of the site, the site plan shall provide protection that will prevent destruction of the subject nesting site, ~~lek~~, hibernation site or rookery and will, to a reasonable certainty, avoid causing the site to be abandoned.
- B. Development activities, including grading and fill, mining, construction, or activities generating noise or dust within the sensitive habitat area shall be prohibited during the nesting, strutting or hibernation season identified in the site specific ESEE analysis and decision for each habitat site. An exception to this standard may be made if the Oregon Department of Fish and Wildlife determines in writing that the nest, ~~lek~~ or rookery is not active and will not become active during the proposed construction period or if the sensitive birds have fledged. Construction activities within an enclosed structure may be conducted during the nesting, strutting or hibernation season. Construction activities necessary to repair an existing septic system or to replace or repair a structure destroyed or damaged by fire or other natural causes may be conducted during the nesting, strutting or hibernation season.
- C. New roads, driveways or public trails shall be located at the greatest distance possible from the nest, ~~lek~~, rookery or hibernation site unless topographic or vegetation or structural features will provide greater visual and/or noise buffer from the nest, ~~lek~~, rookery or hibernation site.

- D. Existing vegetation or other landscape features which are located on the subject property and which obscure the view of the nest, rookery, ~~lek~~ or hibernation site from the proposed development, shall be preserved and maintained. A restrictive covenant to preserve and maintain vegetation shall be required when specified in the ESEE for the site.
- E. No partitions or subdivisions shall be permitted which would force location of a dwelling or other structure, not otherwise permitted by the site specific ESEE, within the designated sensitive habitat area.
- F. All exterior lighting, including security lighting shall be sited and shielded so that the light is directed downward and does not shine on the subject nest, rookery, ~~lek~~ or hibernation site.
- G. The site plan shall conform with the requirements of the ESEE decision for the subject sensitive bird or mammal site contained in the Resource Element of the Deschutes County Comprehensive plan.  
([Ord. 2015-011 §2, 2015](#); Ord. 94-005 §1, 1994)