

STAFF REPORT

Planning Department File No. 2019-02-006

ADDENDUM for Sage-Grouse Rule Permit

Planning Commission Meeting Date: March 28, 2019

- 1. OWNER OF RECORD:** **Harry Stoddart**
5475 Iron Mountain Road
Jordan Valley, OR 97910
- 2. APPLICANT:** **Eco-Site, Inc.**
240 Leigh Farm Road
Durham, NC 27707
- 3. PROPOSED ACTION:** Applicants request a sage-grouse rule permit pursuant to OAR 660-023-0115.
- 4. PROPERTY IDENTIFICATION:** Tax Lot 200, T30, R38E, Sec. 2, Map 30S38E, Malheur County Reference Number 11754. Aka 5475 Iron Mountain Road, Jordan Valley, OR
- 5. PROPERTY LOCATION AND DIRECTIONS:** From Burns Junction, head north on the Steens Highway after approximately 2.5 miles, turn right (east) on Iron Mountain Road. The proposed site is on the right in approximately 3.25 miles.
- 6. ZONING:** Exclusive Range Use (C-A2).
- 7. PARCEL SIZE:** 355.87 acres.
- 8. PARCEL USE:** The parcel has an existing single-family dwelling and is exclusively used as rangeland.
- 9. SURROUNDING USE:** The surrounding area is exclusively used as rangeland.
- 10. ACCESS:** Iron Mountain Road provides access to the proposed site.
- 11. SANITATION REQUIREMENTS:** No sanitation is required.
- 12. FIRE PROTECTION:** The proposed Wireless Telecommunication Facility is not within a fire district.

13. NATURAL HAZARDS: None known.

14. WATER RIGHTS: N/A.

15. ZONING HISTORY: In 2015 a zoning permit for a replacement dwelling was issued.

IV. SAGE-GROUSE RULE PERMIT CRITERIA (OAR 660-023-0115)

9. Program to achieve the goal of protecting significant sage grouse habitat in core area.
 - a) A county may consider a large-scale development in a core area upon applying disturbance thresholds and the mitigation hierarchy as follows:
 - A) A county may consider a large-scale development that does not cause the one-percent metering threshold described in section (16) or the three-percent disturbance threshold described in section (17) to be exceeded.
 - B) Avoidance. Before proceeding with large-scale development activity that impacts a core area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within core area habitat. If the proposed large-scale development can occur in another location that avoids both direct and indirect impacts within core area habitat, then the proposal must not be allowed unless it can satisfy the following criteria.
 - (i) It is not technically feasible to locate the proposed large-scale development outside of a core area based on accepted engineering practices, regulatory standards or some combination thereof. Costs associated with technical feasibility may be considered, but cost alone may not be the only consideration in determining that development must be located such that it will have direct or indirect impacts on significant sage-grouse areas; or
 - (ii) The proposed large-scale development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands; and
 - (iii) If either subparagraph (9)(a)(B)(i) or (9)(a)(B)(ii) is found to be satisfied the county must also find that the large-scale development will provide important economic opportunity, needed infrastructure, public safety benefits or public health benefits for local citizens or the entire region.

Proposed Finding: This large scale development is not located within a core area habitat, rather is located within a low density habitat. Although, OAR 660-023-0115(9)(a)(B)(iii) does not directly affect the development, it is important to note that the development will provide needed infrastructure, public safety benefits, AND public health benefits for the local citizens AND the entire region.

- C) Minimization. If the proposed use cannot be sited by avoiding a core area altogether, including direct and indirect impacts, it shall be located to

minimize the amount of such habitat directly or indirectly disturbed, and to minimize fragmentation of the core area(s) in question by locating the development adjacent to existing development and at the edge of the core area when possible. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction. Minimizing impacts from large-scale development in core habitat shall also ensure direct and indirect impacts do not occur in known areas of high population richness within given core area, unless a project proponent demonstrates, by a preponderance of the evidence, that such an approach is not feasible. Costs associated with minimization may be considered, but cost alone may not be the only consideration in determining that location of development cannot further minimize direct or indirect impacts to core areas.

- D) Compensatory Mitigation. To the extent that a proposed large-scale development will have direct or indirect impacts on a core area after application of the avoidance and minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and indirect impacts of the development to any core area, the required compensatory mitigation must comply with OAR chapter 635, division 140.
 - b) A county may approve conflicting uses as identified at subsection (7)(b) above upon either:
 - A) Receiving confirmation from ODFW that the proposed conflicting use does not pose a threat to significant sage-grouse habitat or the way sage-grouse use that habitat; or
 - B) Conditioning the approval based on ODFW recommendations, including minimization techniques and compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat.
10. Program to achieve the goal of protecting significant sage-grouse habitat in low density area.
- a) A county may approve a large-scale development in low density area upon applying the mitigation hierarchy as follows:
 - A) Avoidance. Before proceeding with large-scale development activity that impacts a low density area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within a low density area. If the proposed large-scale development can occur in another location that avoids both direct and indirect impacts within a low density area, then the proposal must not be allowed unless it can satisfy the following criteria:
 - (i) It is not technically or financially feasible to locate the proposed large-scale development outside of a low density area based on accepted engineering practices, regulatory standards, proximity to necessary infrastructure or some combination thereof; or

Proposed Finding: The vast majority of land in this area of Malheur County is owned by the Federal Government. It is the practice of the

Federal Government to steer applicants to private property use prior to engaging an application for use of Federal land. In the course of identifying the Stoddart Property, a property unique in the area due to both its ownership characteristics and the fact that the property is developed and inhabited, the applicant has found the best property to keep the development away from the most productive sage-grouse habitat. Given the technical siting limitations for the coverage objectives (extent of Hwy 78 from the Harney County border to Burns Junction), the primary mitigation level of avoidance could not be achieved while satisfying the technical needs of Eco-Site's tenants.

- (ii) The proposed large-scale development is dependent on geographic or other physical features(s) found in low density habitat areas that are less common at other locations, or it is a linear use that must cross significant sage-grouse habitat in order to achieve a reasonably direct route.
- B) Minimization. If the proposed use cannot be sited by avoiding a low density area altogether, including direct and indirect impacts, it shall be located to minimize the amount of such habitat directly or indirectly disturbed, and to minimize fragmentation of the low density area(s) in question by locating the development adjacent to existing development and at the edge of the low density area when impossible. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction.

Proposed Finding: 1. The proposed tower will be located on a property that is both developed and inhabited. Currently there is no land in the area that meets both of those requirements. 2. Although the tower meets the requirements to be sited on a core area habitat (see OAR 660-023-0115(9)(a)(B)(iii) above), the applicant has chosen a property located in low-density habitat. Therefore, siting the tower on a property that is currently developed and inhabited and siting the tower on a less significant habitat area will minimize the direct and indirect impacts on sage-grouse.

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

Proposed Finding: This is the first permit that has been processed under this OAR, and the compensatory mitigation procedures have not been entirely completed. Therefore the following proposed Condition will replace the proposed Condition 2 of the Staff Report:

“Condition 2: In order to comply with Oregon Revised Statute 660-023-0115(10)(a)(C), the applicant must develop a compensatory mitigation plan to address the threats to significant sage-grouse habitat.”

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

[...]

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

Proposed Finding: The proposed site is located within the low-density habitat area of the Folly Farm/Saddle Butte PAC. As this is the first proposed large-scale development, the 1.0 percent impact cannot be jeopardized.

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

Proposed Finding: The proposed site is located within the low-density habitat area of the Folly Farm/Saddle Butte PAC. As this is the first proposed large-scale development, the 3.0 percent threshold cannot be jeopardized.