Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 2, 2015

Please see directions for completing this document on the next page.

DATE: November 17, 2015

FROM: Peter Gutowsky Community Development Department 385-1709

TITLE OF AGENDA ITEM:
A public hearing on and consideration of First and Second Reading by title only of Ordinance Nos. 2015-010 and 2015-011, amending Title 23 and Title 18, to adopt sage-grouse inventories and regulations.

PUBLIC HEARING ON THIS DATE? Yes.

BACKGROUND AND POLICY IMPLICATIONS:
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. The Community Development Department initiated plan and zoning amendments to comply with state law. They mirror OAR 660-023-0115.

FISCAL IMPLICATIONS:
None

RECOMMENDATION & ACTION REQUESTED:
Hold the public hearing.

Motion 1) First and second reading by Title only of Ordinance Nos. 2015-010 and 2015-011 and declaring an emergency

Motion 2) Adopt Ordinance Nos. 2015-010 and 2015-011

ATTENDANCE: Peter Gutowsky

DISTRIBUTION OF DOCUMENTS:
Peter Gutowsky, CDD.

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: November 16, 2015

TO: Deschutes County Planning Commission

FROM: Peter Gutowsky, Planning Manager

RE: Greater Sage Grouse Amendments / 247-15-000445-PA / Work Session and Hearing Packet

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The Deschutes County Board of Commissioners (Board) will hold a work session on November 30, followed by a public hearing on December 2 to consider Comprehensive Plan and Zoning amendments addressing sage-grouse conservation (File No. 247-15-000445-PA).

I. BACKGROUND

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.[1] The Community Development Department initiated the amendments to comply with state law.

On September 22, 2015, the U.S. Fish and Wildlife Service determined federal land management plans and partnerships with states, ranchers, and NGOs avert an endangered species listing. On the same day, the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) issued Records of Decisions finalizing land use plans that will conserve key sagebrush habitat and address identified threats to the greater sage-grouse on federal land.

II. PLANNING COMMISSION RECOMMENDATION

After holding a hearing in Brothers, the Planning Commission recommended approval on November 12, with one addition. They also recommended the Board consider adding an amendment to County Code requiring for renewable energy facilities:

> *A bond or other financial mechanism acceptable to the county is established to cover the cost of dismantling of uncompleted construction and/or decommissioning of the facility, and site rehabilitation*.

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[1] ORS 197.646(3). https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors197.html

Staff Comment

Recently, a Hearings Officer (HO) conditioned two separate, 80-acre solar photovoltaic array proposals (includes arrays, fencing, roads, etc.) by relying on OAR 660-033-0130(38)(j), which states:

> "Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility."

The HO, as a condition of approval, required both applicants to meet the following:

> *Prior to commencement of commercial electricity sales, a performance bond in favor of Deschutes County for removal and restoration, or cash, in the amount of $1,000,000. The bond shall be redeemable by the County if the applicant fails to remove the facility in its entirety, including above-ground and buried facilities, no later than 18 months after ceasing commercial electrical generation, (defined as one continuous year with no commercial electrical sales) or 18 months after termination of the site lease, whichever first occurs. Concrete foundations shall be removed to a depth of four (4) feet below grade. Any voids left from the removal material shall be backfilled with surrounding subsoil and topsoil and fine graded to ensure suitable drainage and reclamation of natural grades. Crushed rock surfacing shall be removed. Fuel containers, if any remain, shall be disposed of properly according to requirements for the handling and disposal of such materials. Any other materials which may be deemed hazardous shall be removed from the site and disposed of according to the hazardous materials handling requirements pertaining to the site.*
>
> *Further, unless the property has been annexed to the City of Bend, the site shall be re-contoured using standard grading equipment to return the land to match the surrounding grade and natural drainage patterns. Grading activities shall be limited to previously disturbed areas that may require re-contouring. The site re-contoured to avoid features that would create ponding. Disturbed areas shall be re-seeded with native plant seed.*

This is precedent setting. A solar voltaic array "compound" on 80-acres requires a $1 million dollar bond, in addition to reclaiming the property. Any subsequent solar voltaic array proposal will have to abide by a similar condition of approval. If it is larger in size, the bonding amount will exceed $1 million dollars. Likewise, if it is smaller, one can expect a lower bonding requirement.

III. PLAN AND ZONING AMENDMENTS

Deschutes County's plan and zoning amendments mirror OAR 660-023-0115. Listed below is the itemized packet.

Work Session and Hearing PowerPoint Handout

- Summarizes amendments.

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 outdate references to 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
    - 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 OAR 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.

Greater Sage-Grouse Area Text Amendments

Applicant: Deschutes County

Board of County Commissioners Public Hearing

December 2, 2015

Opening Statement for Legislative Hearing

This is a public hearing on amendment (247-15-000445-PA). The proposal implements OAR 660-023-0115, Greater Sage Grouse rules adopted by the Oregon Land Conservation and Development Commission

The Board's recommendation on this application will be based upon the record, the staff report, and the testimony and evidence presented at this hearing

The hearing will be conducted in the following order:

- Staff will provide a brief report.
- Applicant will present testimony and evidence.
- Opponents and proponents will testify and present evidence.
- Other interested persons will then present testimony or evidence.
- Applicant presents rebuttal testimony.
- Staff will be afforded an opportunity to make any closing remarks

Opening Statement for Legislative Hearing

Questions to and from the Chair may be entertained at any time at the Chair's discretion.

Prior to the commencement of the hearing any party may challenge the qualifications of any Commissioner for conflict of interest. This challenge must be documented with specific reasons supported by facts.

At this time, do any members of the Commission need to set forth any information that may be perceived as a conflict of interest?

If hearing none, the public hearing is open.

Overview

- Background
- LCDC Rulemaking
- Comprehensive Plan and Zoning amendments (247-15-000445-PA)

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Background

- U.S. Fish and Wildlife Service in 2010 determined protection of greater sage-grouse under federal Endangered Species Act was warranted. Sage-grouse became a candidate species for listing
- Sage grouse habitat in Oregon includes 11 million acres distributed across five Bureau of Land Management (BLM) management districts in seven central and eastern Oregon counties
- Last January, Governor Kitzhaber requested LCDC initiate rulemaking to address potential conflicts between "large-scale development" and sage grouse habitat

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Background

- Goal is to demonstrate that Oregon can implement a plan of action that will demonstrate federal listing for sage-grouse in Oregon is unnecessary
- LCDC on July 24 adopted rules (OAR 660-023-0115) applying to non-federal lands in eastern Oregon. They became effective on August 13
- State law, ORS 197.646(3) requires seven eastern Oregon counties, including Deschutes, to implement them

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Comprehensive Plan Amendments

- Amending DCC 23.010.010, Introduction
- Adopting new ODFW Greater Sage Grouse Habitat Inventories
- Removing outdated 1990 sage grouse inventory and lek locations from Sensitive Bird and Mammal Habitat Inventory
- Amending Chapter 2, Resource Management, Section 2.6 – Wildlife, describing new inventories and adding a policy
- Amending Chapter 5, Supplemental Sections, Section 5.12 – Legislative History

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Zoning Code Amendments

- Adopting new zone:
  - DCC Chapter 18.89, Greater Sage-Grouse Area Combining Zone (mirrors Oregon Administrative Rule 660-023-0115)
- Removing outdated references to sage grouse and lek locations from DCC 18.90, Sensitive Bird and Mammal Habitat Combining Zone

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Greater Sage-Grouse Area Combining Zone

What does it accomplish?

- Establishes three sage-habitat areas in Exclusive Farm Use and Forest Use zones: core area, low density and general habitat within 3.1 miles of a lek
- Determines when development subject to land use regulation and mitigation
- Establishes disturbance threshold, limiting large scale development in each core area to 1% of total area for every ten year increment, not to exceed 3% overall

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Regulatory Thresholds

Two Types of Development Require Review

1. Large-scale development in core areas, low density, and lands within general habitat located within 3.1 miles of occupied or occupied-pending lek
2. Land uses that do not qualify as "large-scale development" require review if proposed in:
   - Core area within 4.0 miles of an occupied or occupied-pending lek;
   - Low density within 3.1 miles of an occupied or occupied-pending lek; or
   - General habitat within 3.1 miles of an occupied or occupied-pending lek

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Regulatory Thresholds

Large-scale Development

- Two part analysis:
  - Part 1 - Is it a regulated use (OAR 660-033-120 table)?
  - Part 2 -
    - 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 to Part 1 and any Part 2 questions, land use subject to review

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Large-Scale Development

Core Area

- Large-scale development subject to the full mitigation hierarchy, which includes rigorous avoidance test, minimization requirements and compensatory mitigation responsibility
- Also subject to disturbance thresholds: 1% of core area over ten year increments with maximum 3% cap

Low Density

- Large-scale development also subject to the full mitigation hierarchy, but more lenient avoidance test applies to allow development in low density areas
- Not subject to disturbance cap

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Large-Scale Development

General Habitat

- Only applies to lands within 3.1 miles of a lek
- Development subject to consultation with ODFW
- Includes consideration for avoidance, in addition to minimization of activities and ordinary obligations for compensation mitigation
- Not subject to disturbance cap

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Regulatory Thresholds

Other Development

- Two part analysis:
  - Part 1 - Is it a regulated use (OAR 660-033-120 table)?
  - Part 2 – Is it located in:
    - Core area and within 4.0 miles of an occupied or occupied-pending lek?
    - Low density area and within 3.1 miles of an occupied or occupied-pending lek? or
    - General habitat and within 3.1 miles of an occupied or occupied-pending lek?
- If yes to Part 1 and any Part 2 questions, land use subject to review

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Other Development

Core Area

- If development proposed within 4 miles of lek:
  - Pre-application conference required with ODFW to determine if minimization of activities or mitigation is required
  - It should not result in denial of any proposal

Low Density / General Habitat

- If development proposed within 3.1 miles of lek:
  - Same as above

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Review Criteria

- ORS 197.646(3) requires Deschutes County to implement OAR 660-023-0115
- Changes to Comprehensive Plan and new regulations in DCC Chapter 18.89 mirror State rules
- Therefore, DCC Chapters 18.89 and revisions to DCC Chapter 18.90 are consistent with Comprehensive Plan

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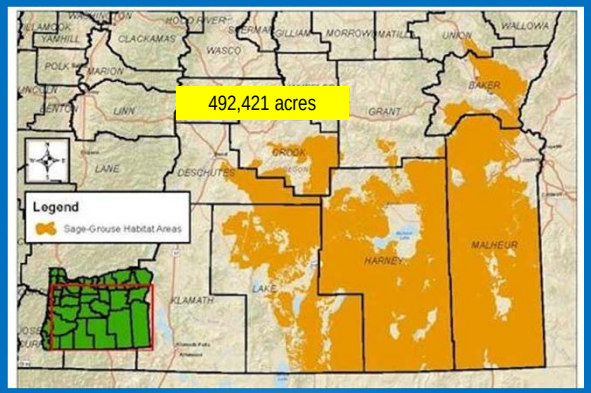
Hearing Procedure

At the conclusion of testimony the Board can:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date Certain; or
- Close the hearing, commence deliberations, and consider recommendation to Board of County Commissioners

Deschutes County



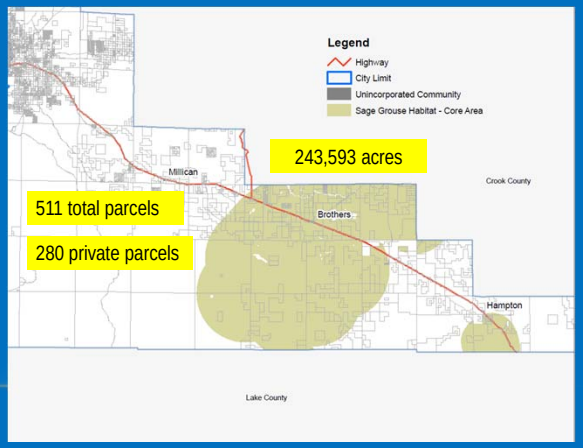
Deschutes County

Historic Conservation Campaign Protects Greater Sage-Grouse

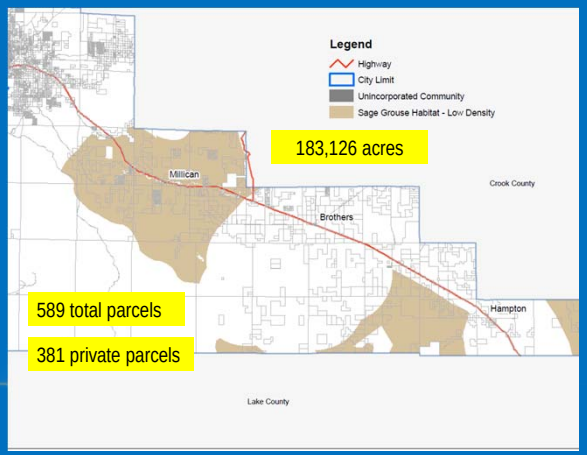
U.S. Fish and Wildlife Service determines federal land management plans and partnerships with states, ranchers, and NGOs avert ESA listing by conserving America's "Sagebrush Sea"

9/22/2015

Greater Sage Grouse Area Habitat Inventory



Greater Sage Grouse Area Habitat Inventory

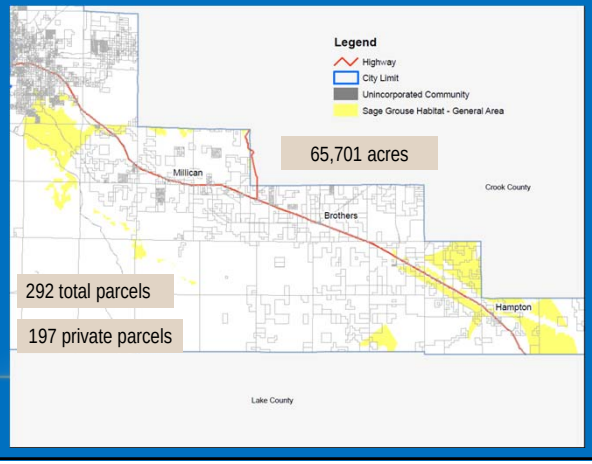


183,126 acres

589 total parcels

381 private parcels

Greater Sage Grouse Area Habitat Inventory



65,701 acres

292 total parcels

197 private parcels

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 Plan, and Declaring an Emergency	* * *	ORDINANCE NO. 2015-010

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 October 8, 2015 to consider the revised County Comprehensive Plan; and

WHEREAS, on November 12, 2015 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 December 2 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 ~~strikethrough~~.

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 ~~strikethrough~~.

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 ~~strikethrough~~.

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 1st Reading: _____ day of _____, 2015.

Date of 2nd 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 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.

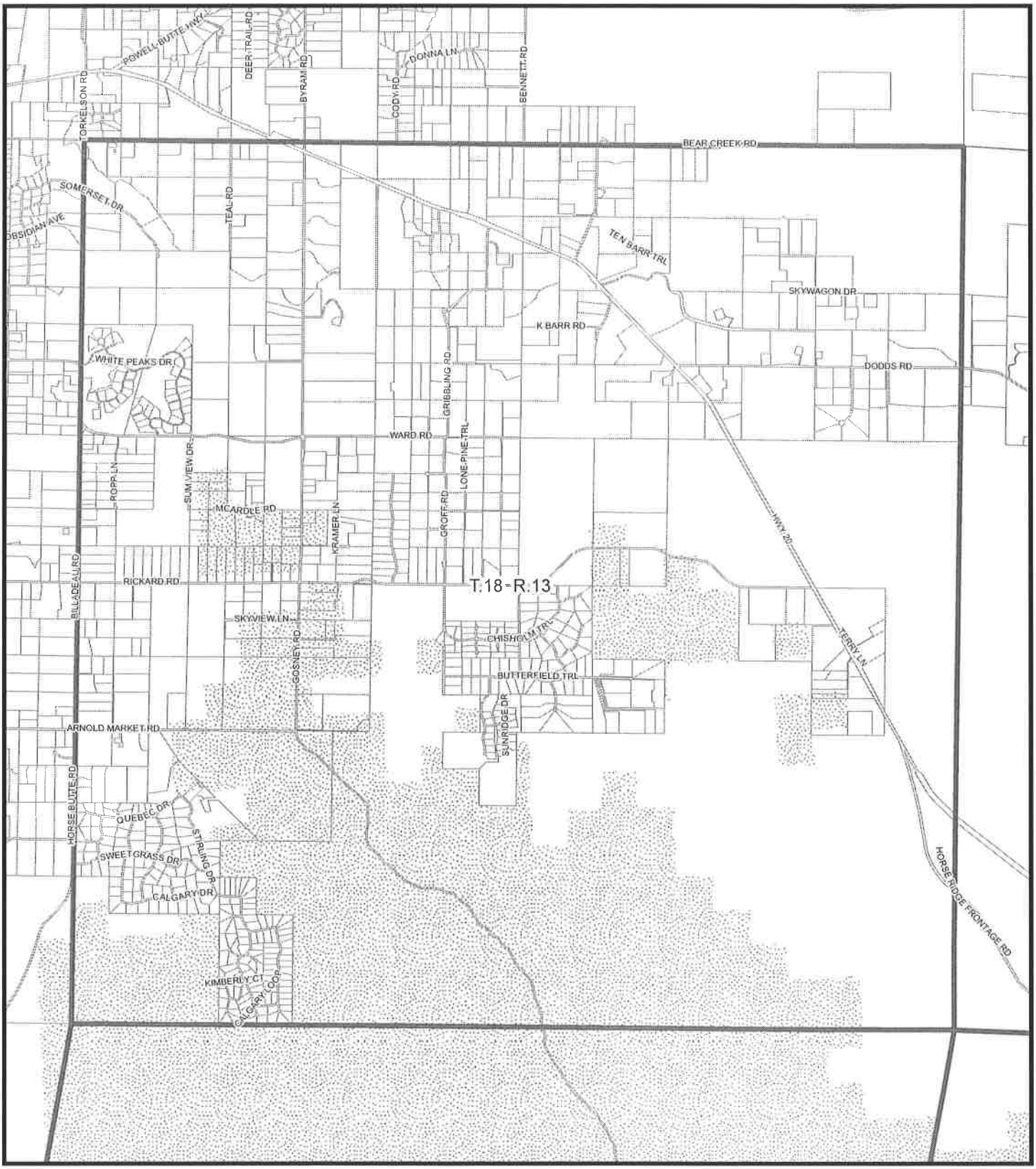
M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.

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

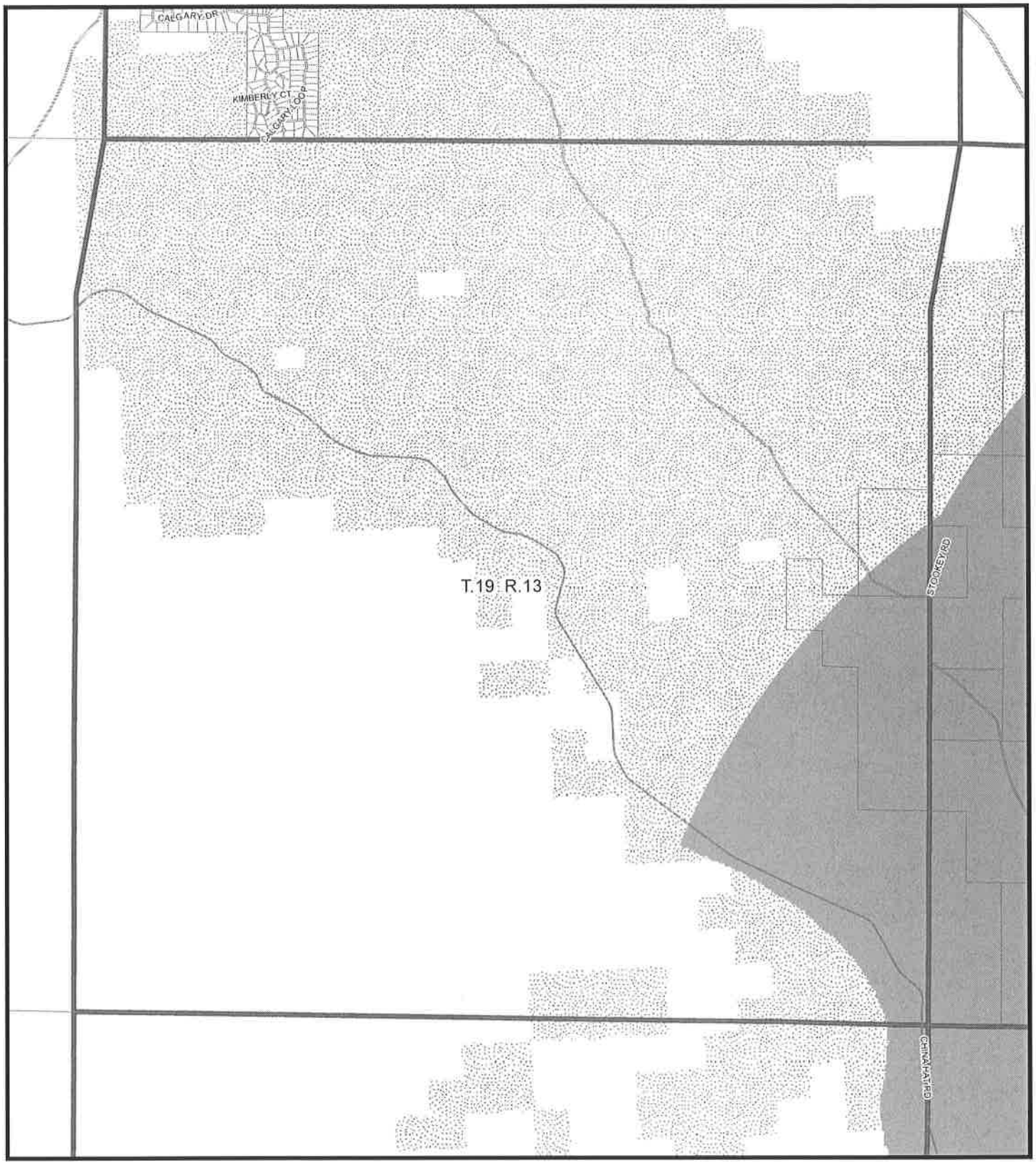
Sage Grouse Habitat Area

- Core Area
- Low Density
- General Area

0 0.25 0.5 1 1.5 Miles

August 21, 2015

DISCLAIMER
The information on this map was derived from digital databases on Deschutes County's GIS. 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 error 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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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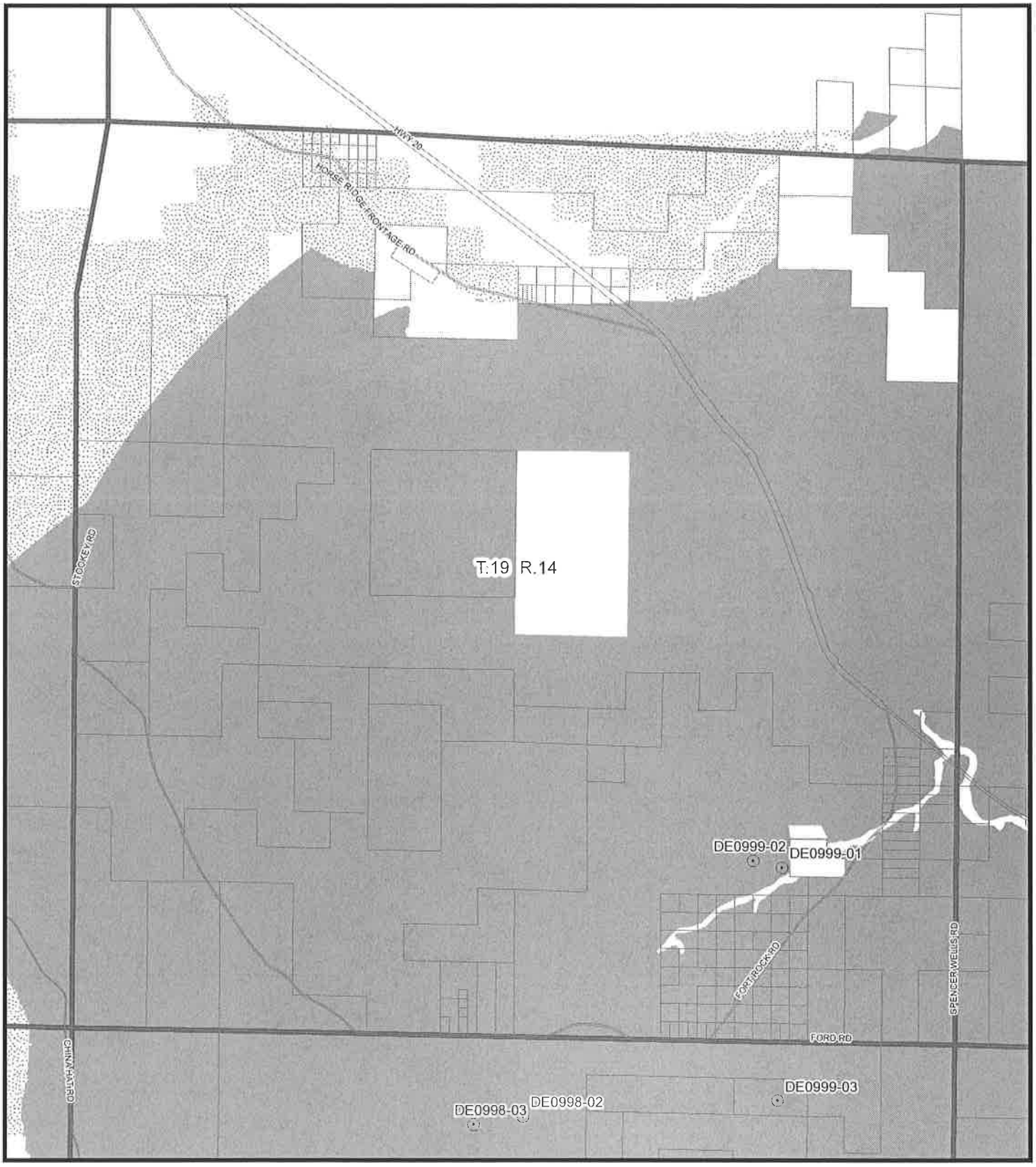

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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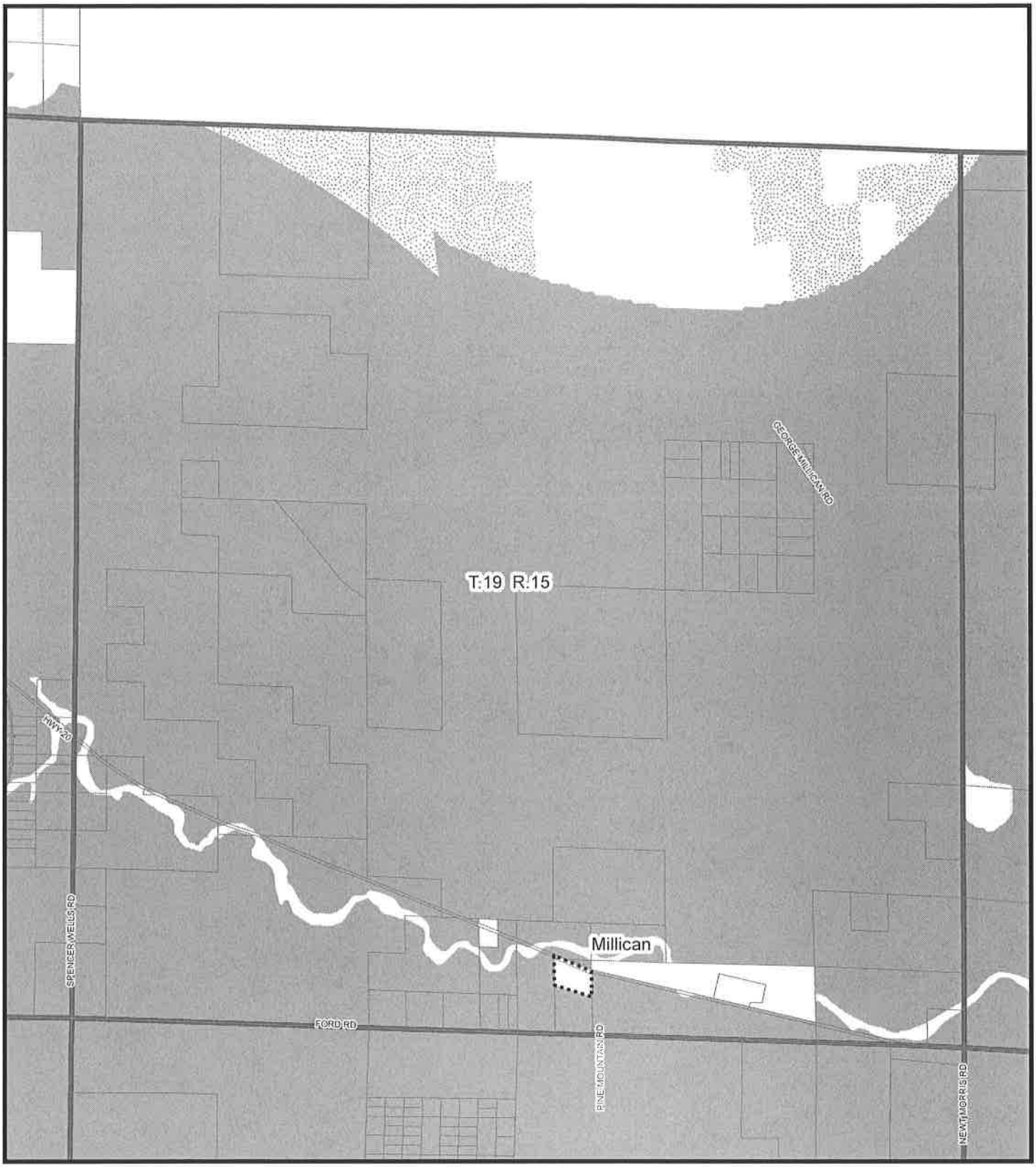

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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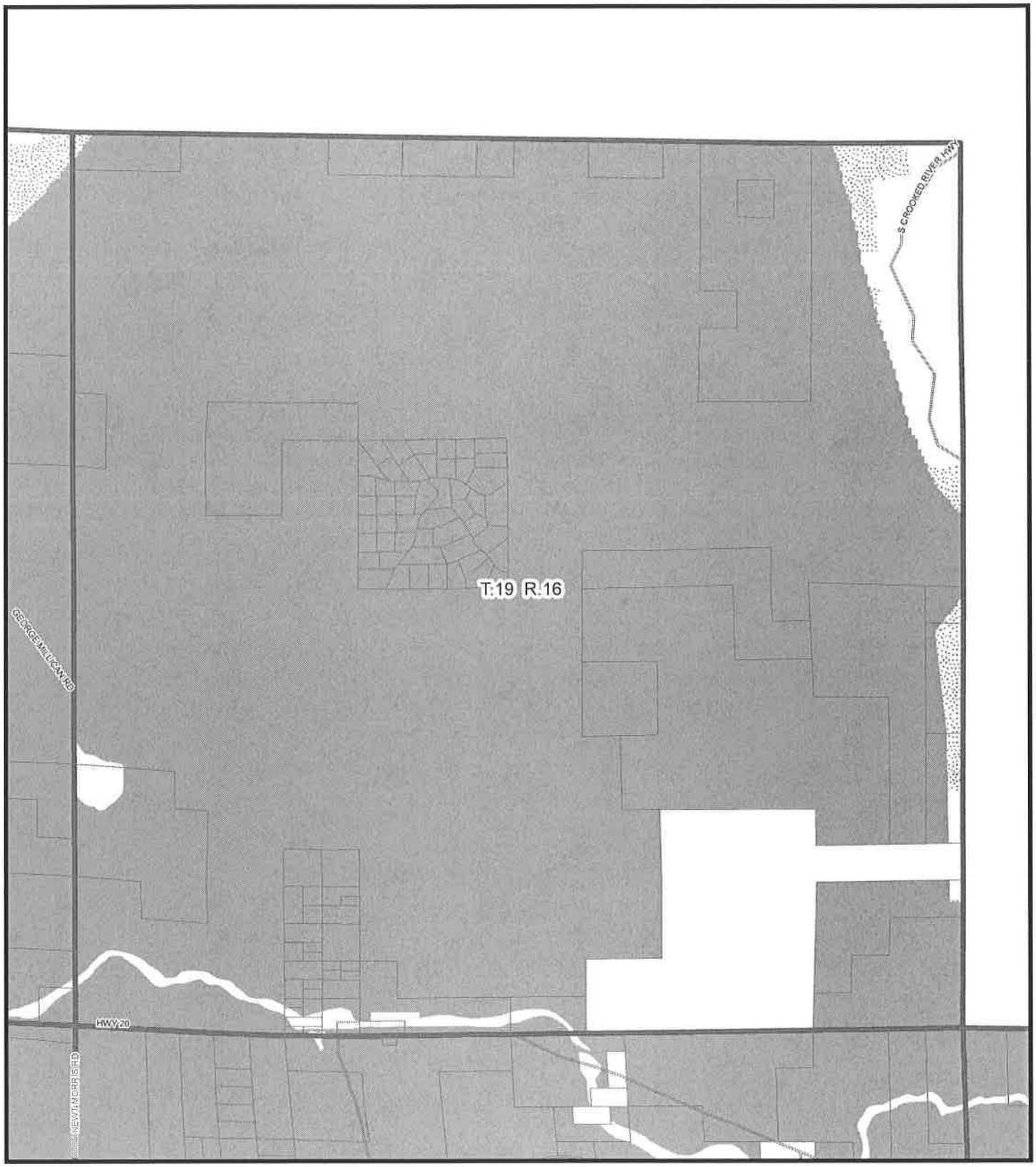

Sage Grouse Greater Habitat Area

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

0 0.25 0.3 1 1.5 Miles

August 21, 2015

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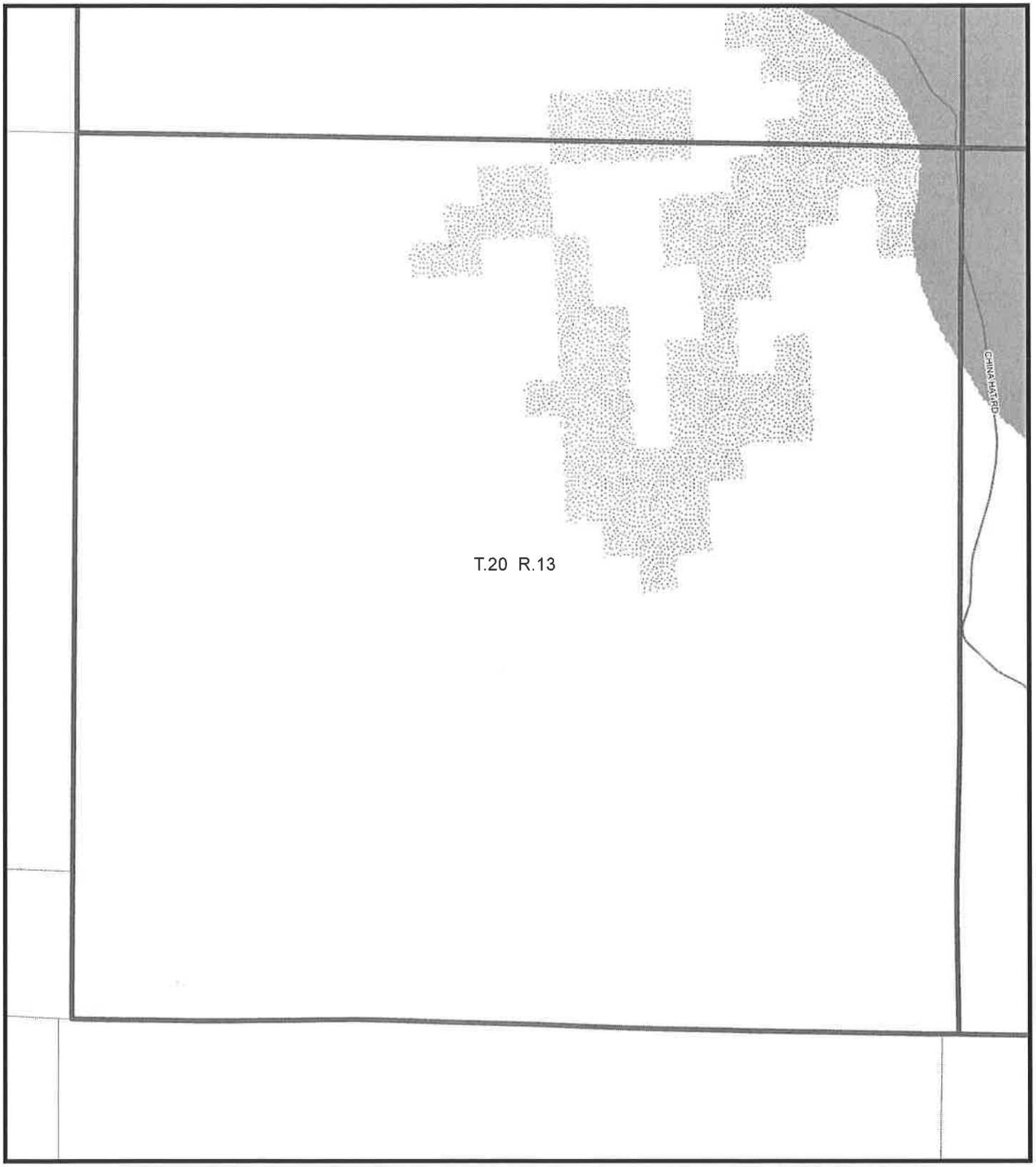

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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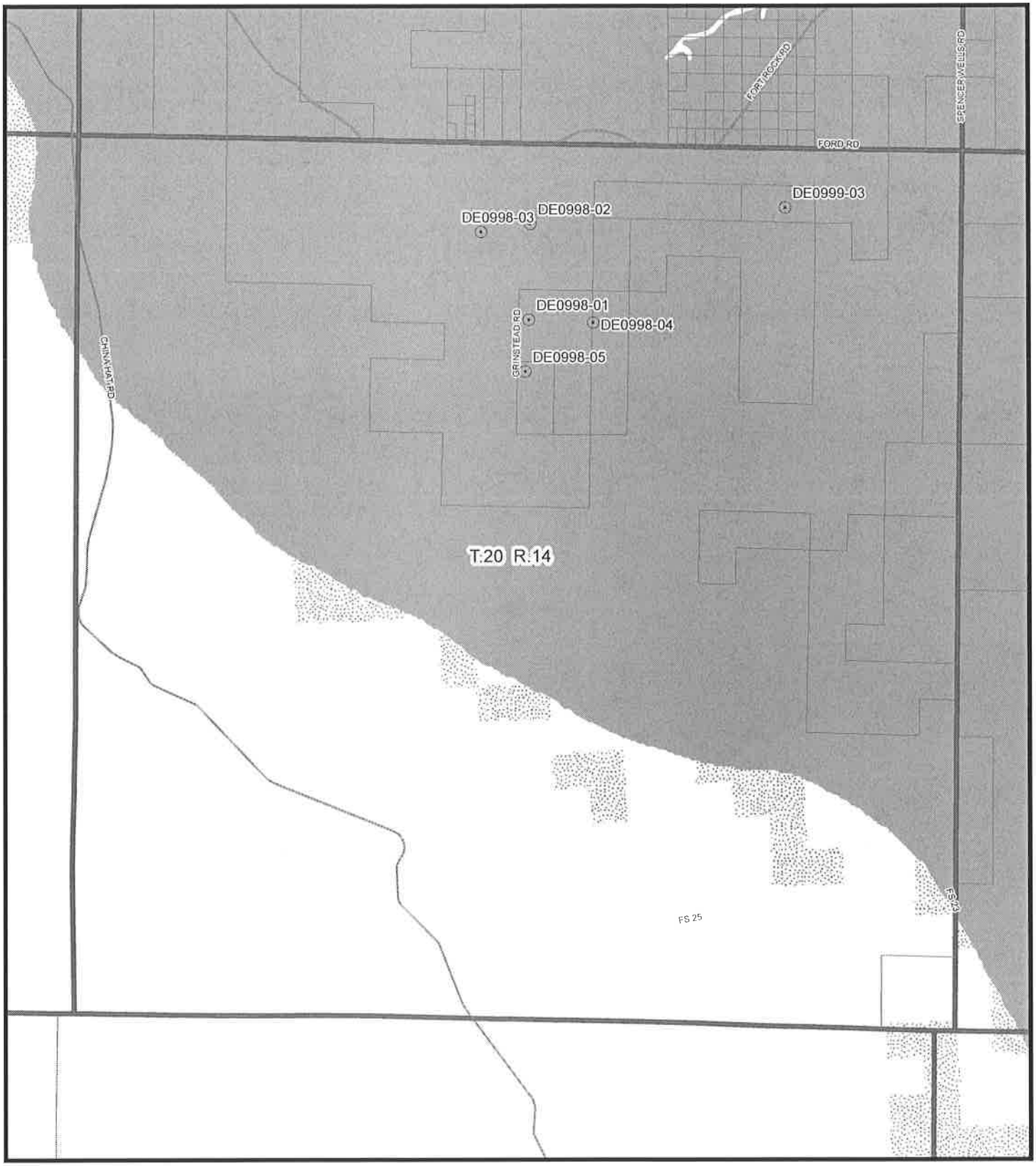

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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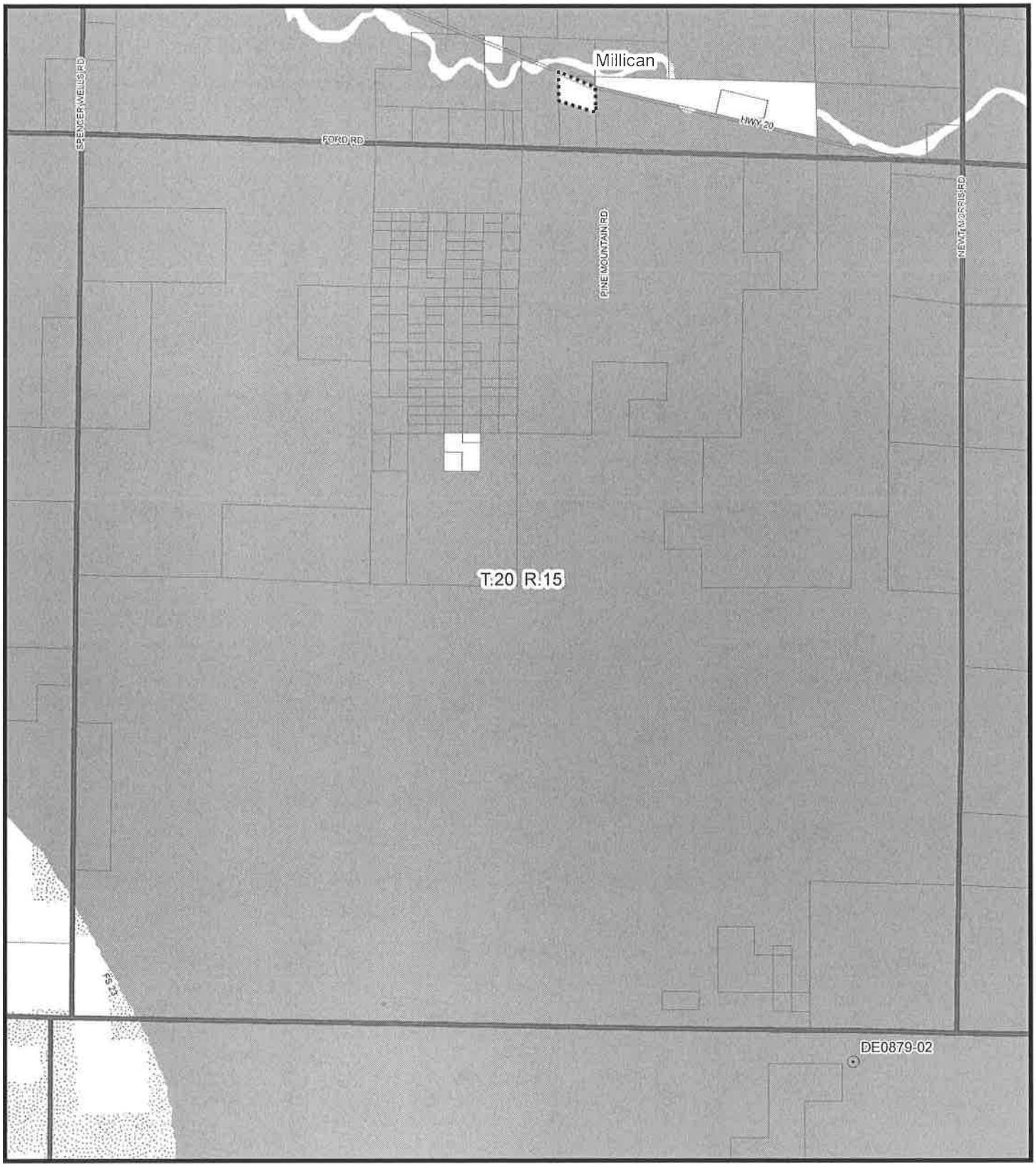

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

DISCLAIMER
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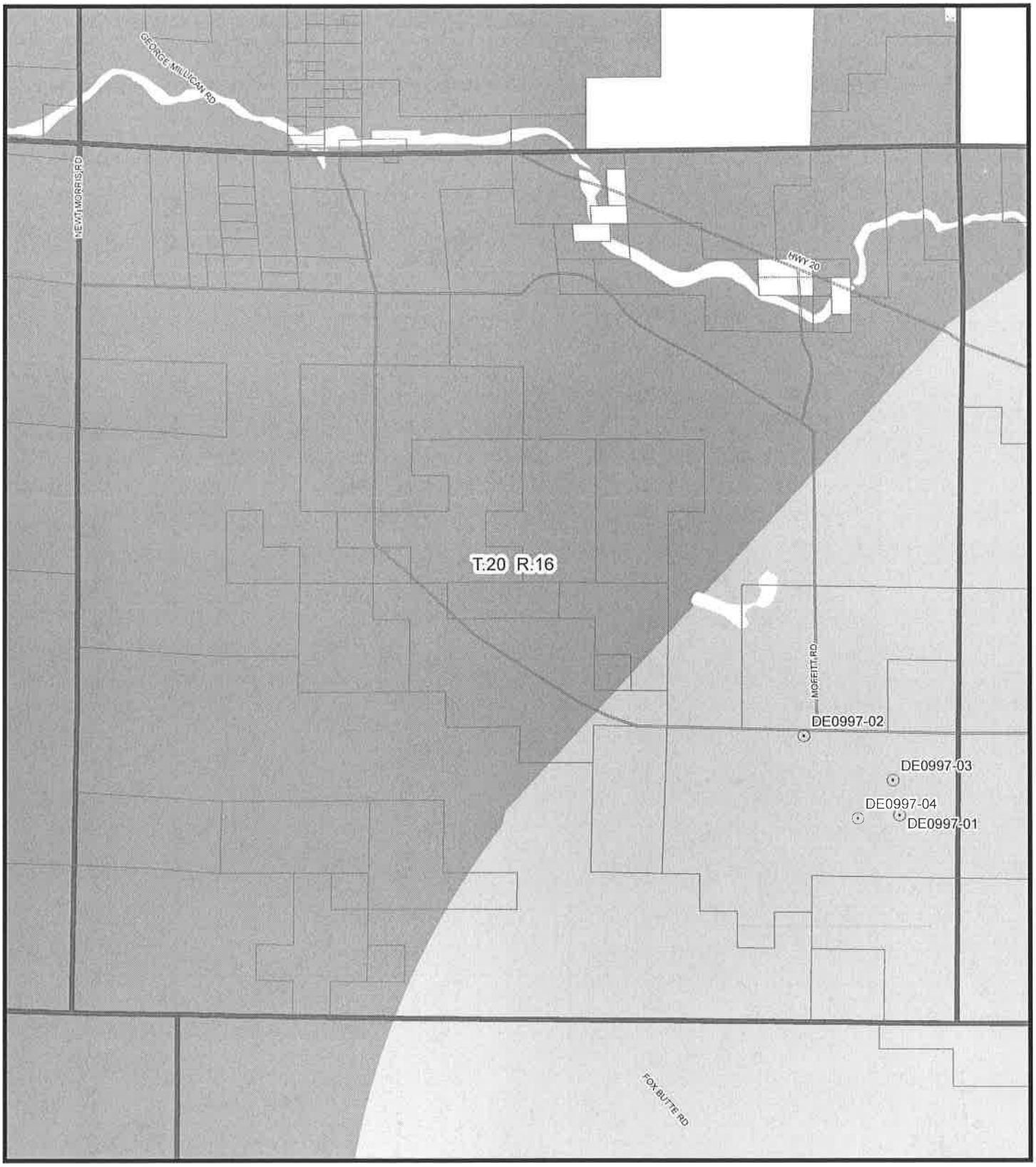

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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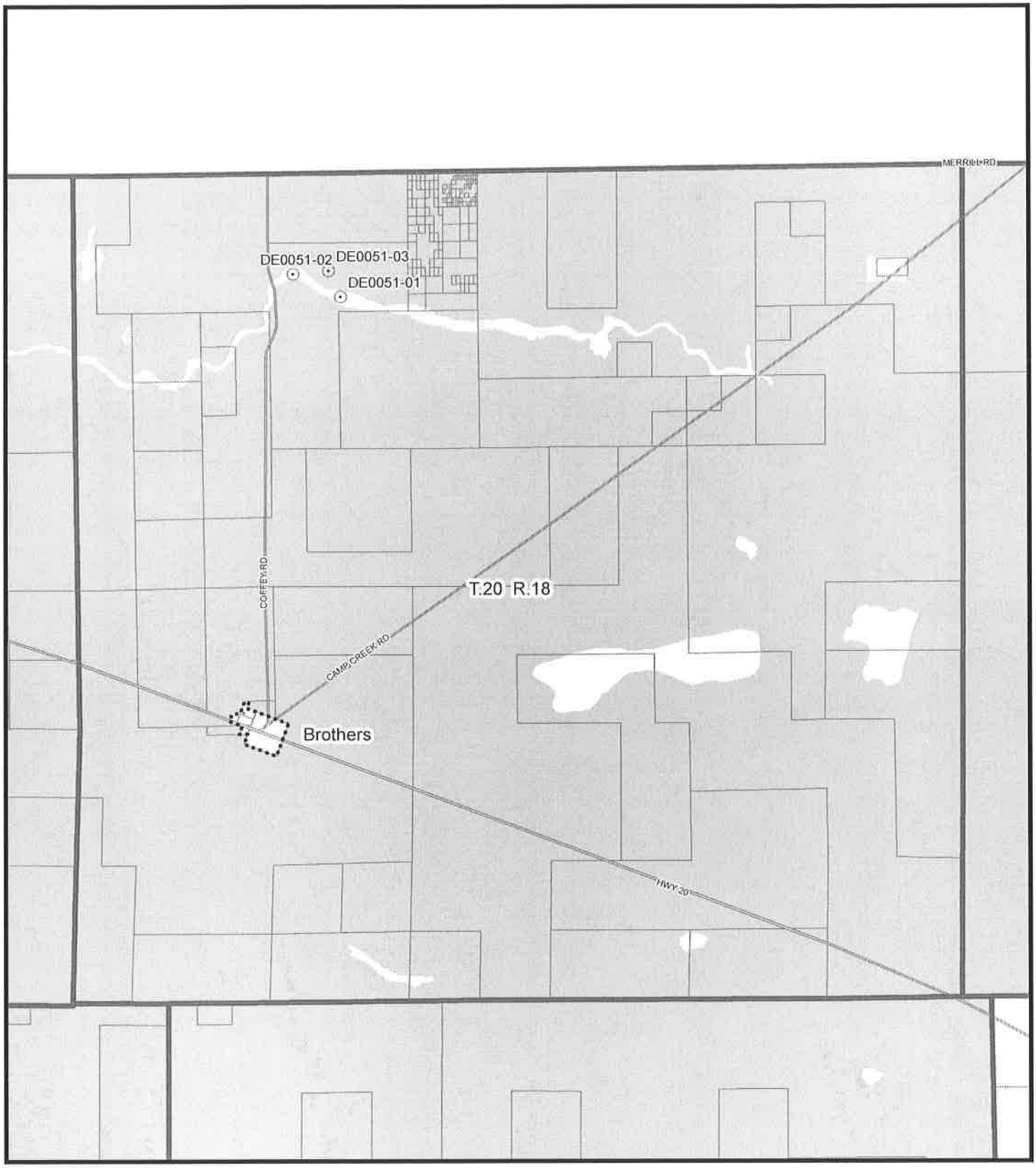

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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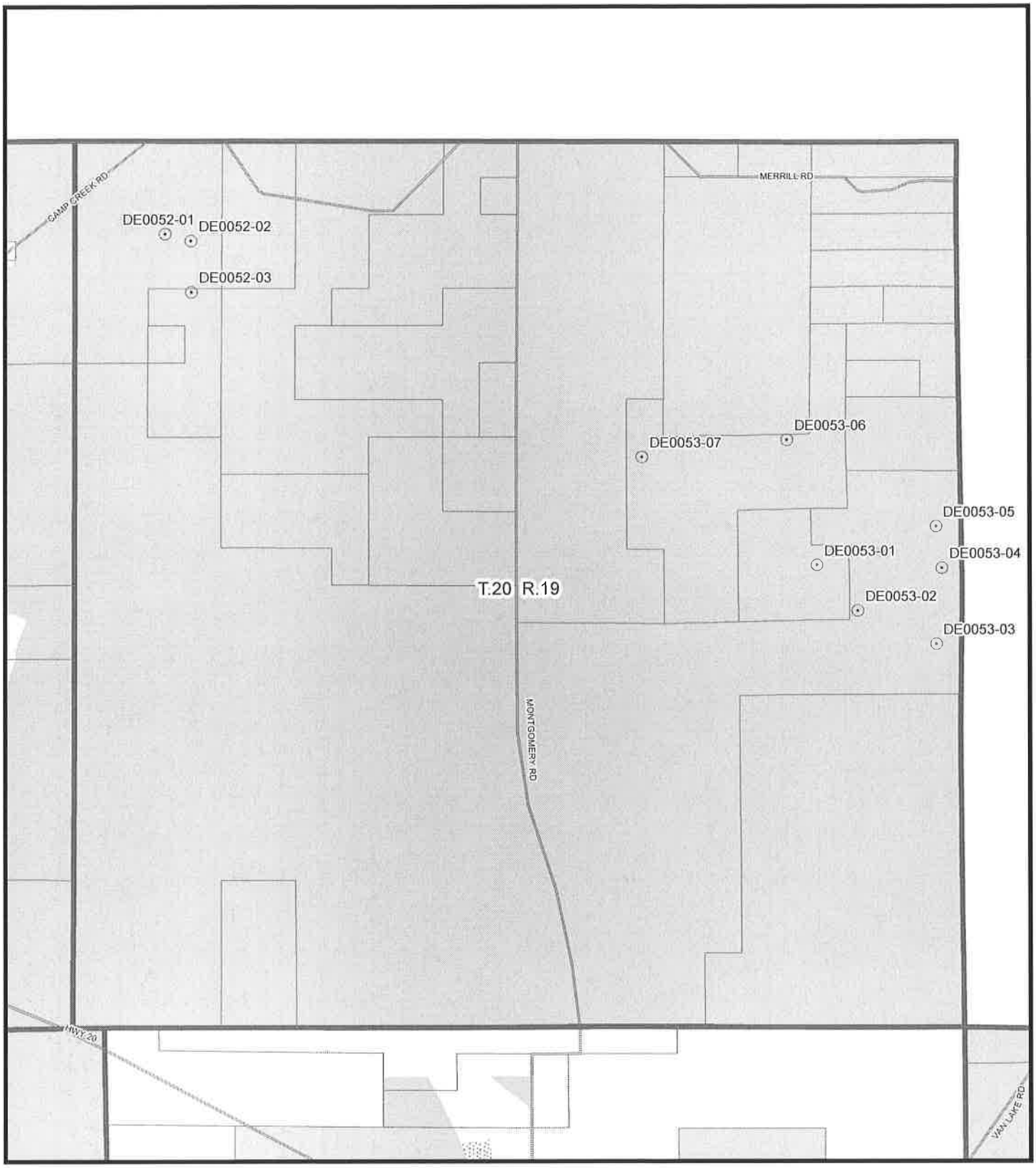

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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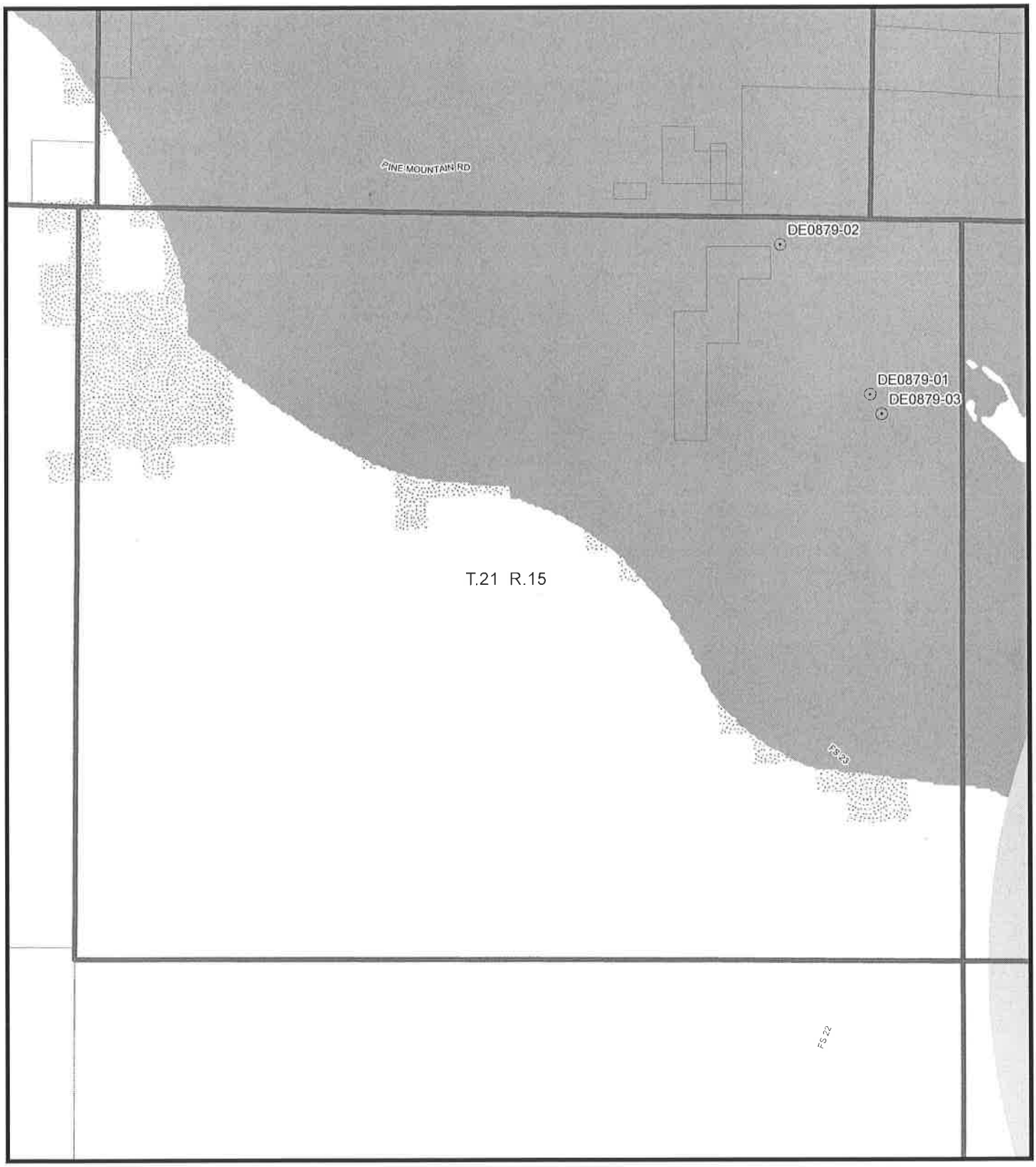

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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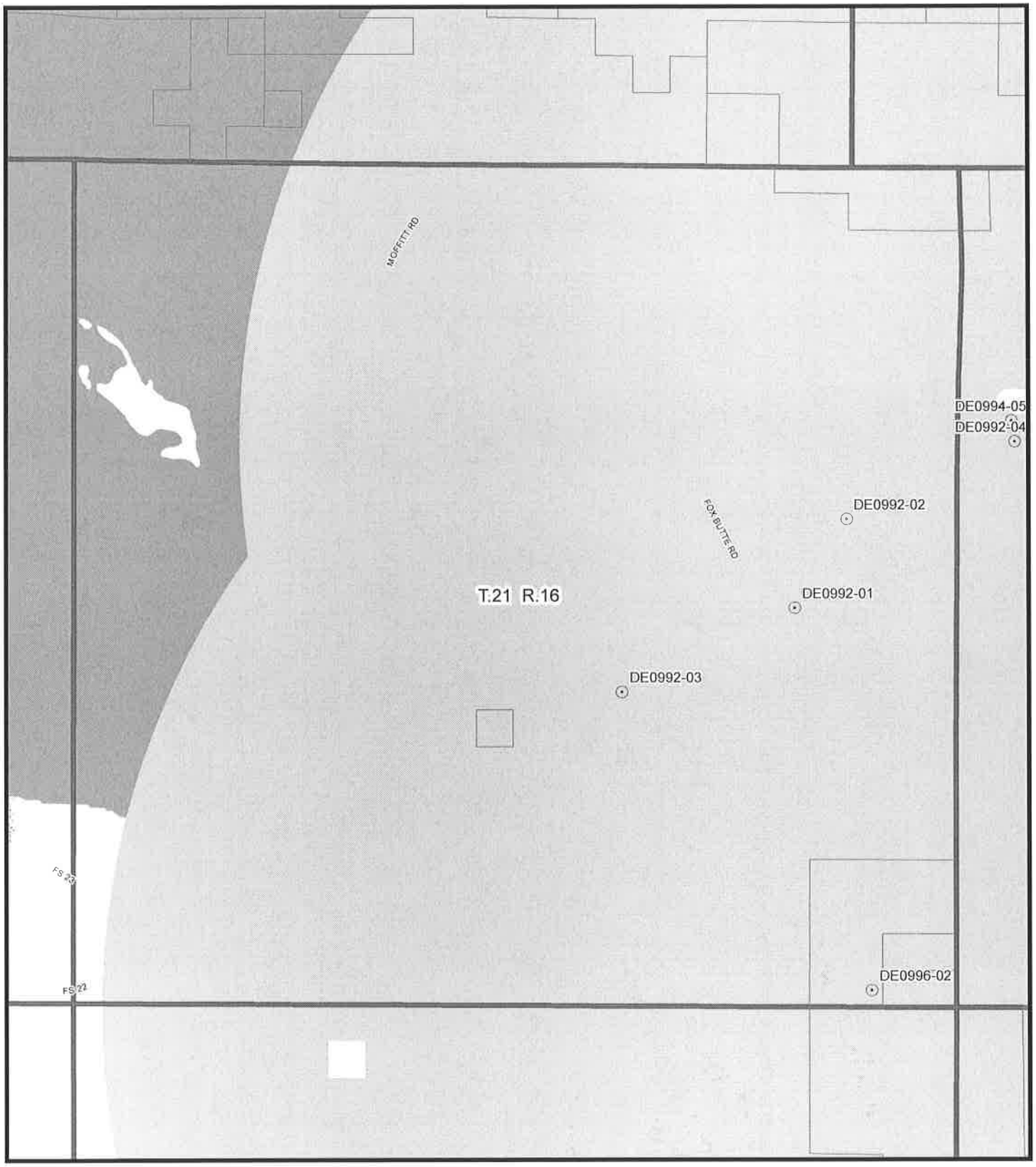

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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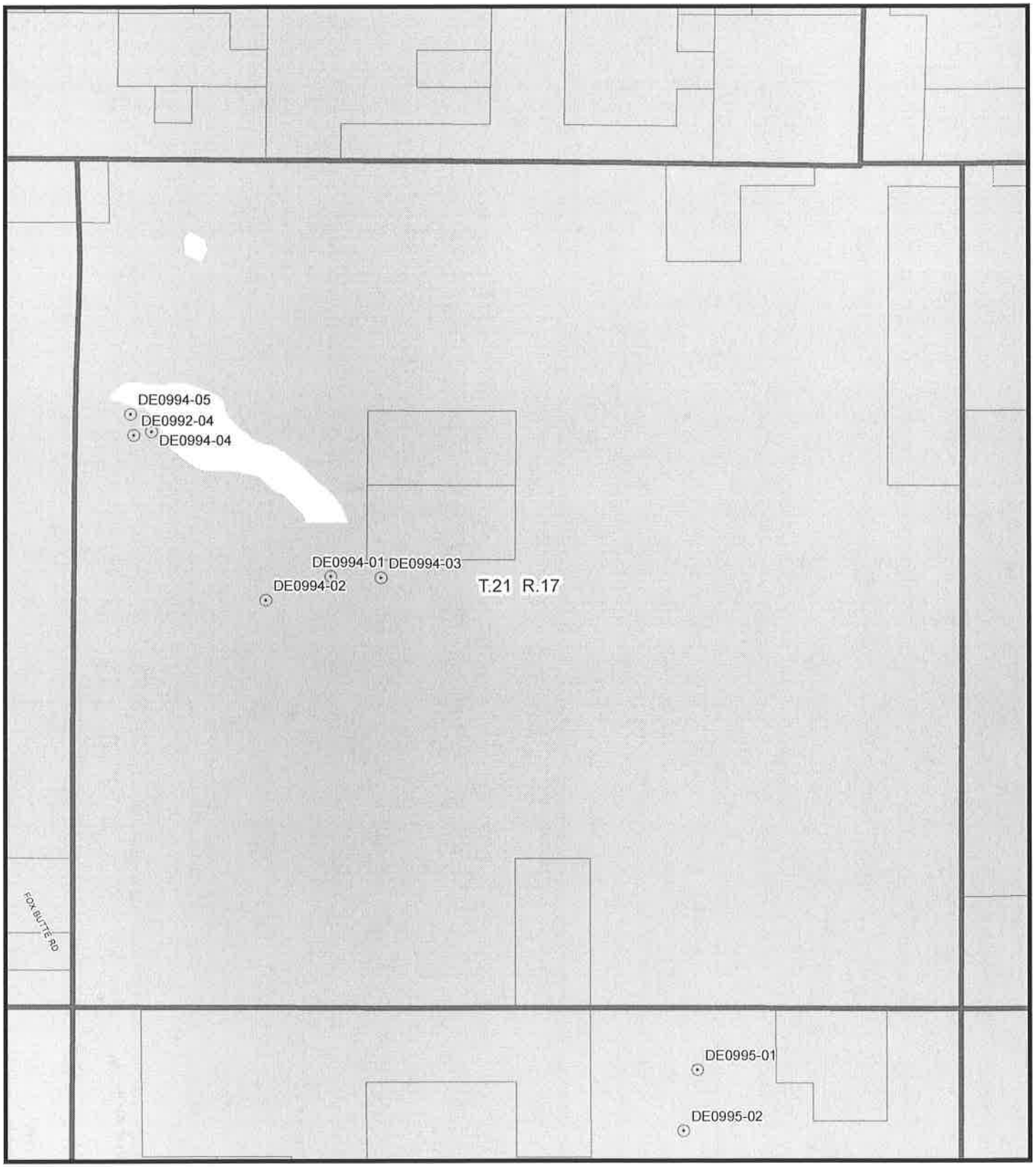

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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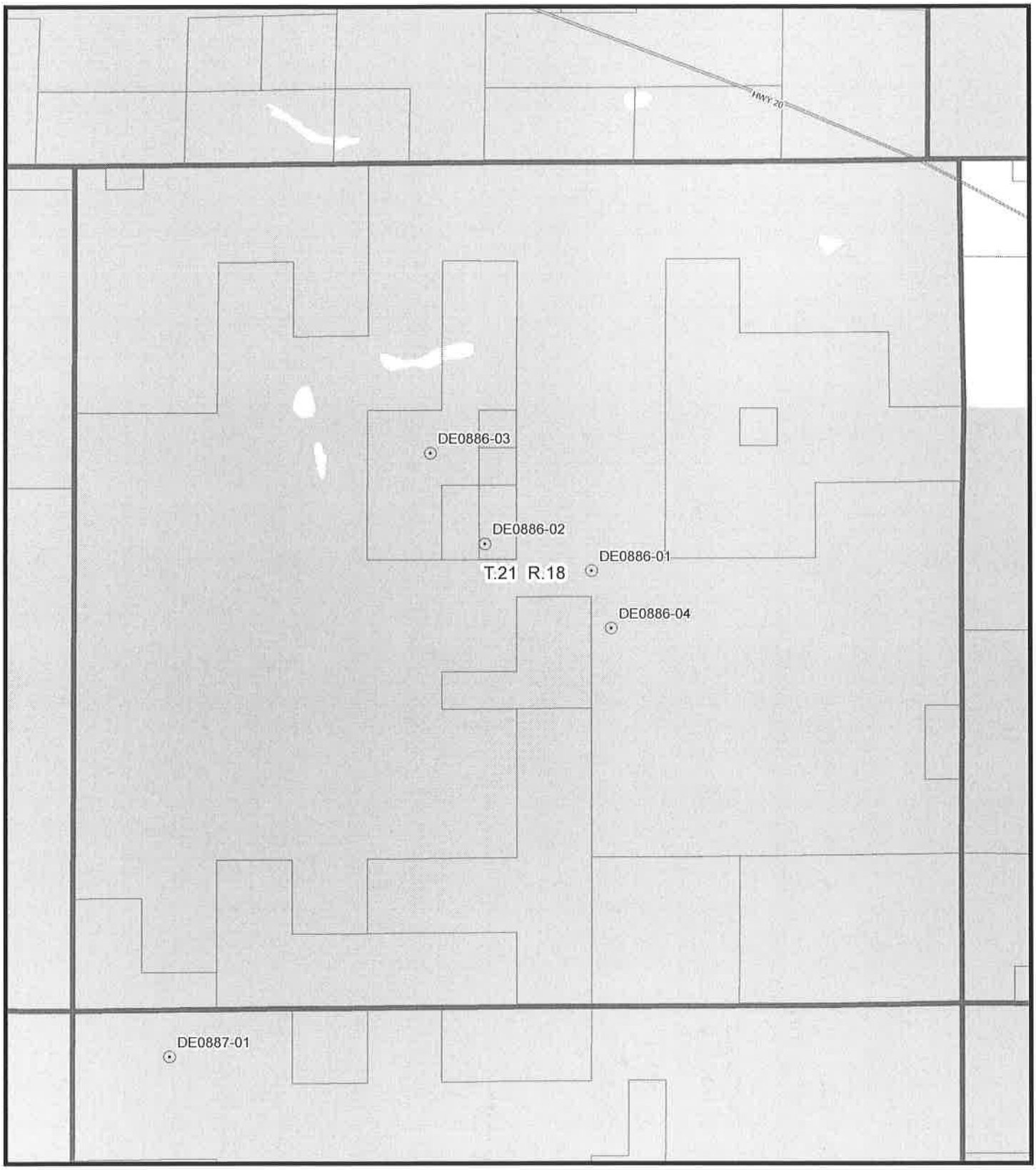

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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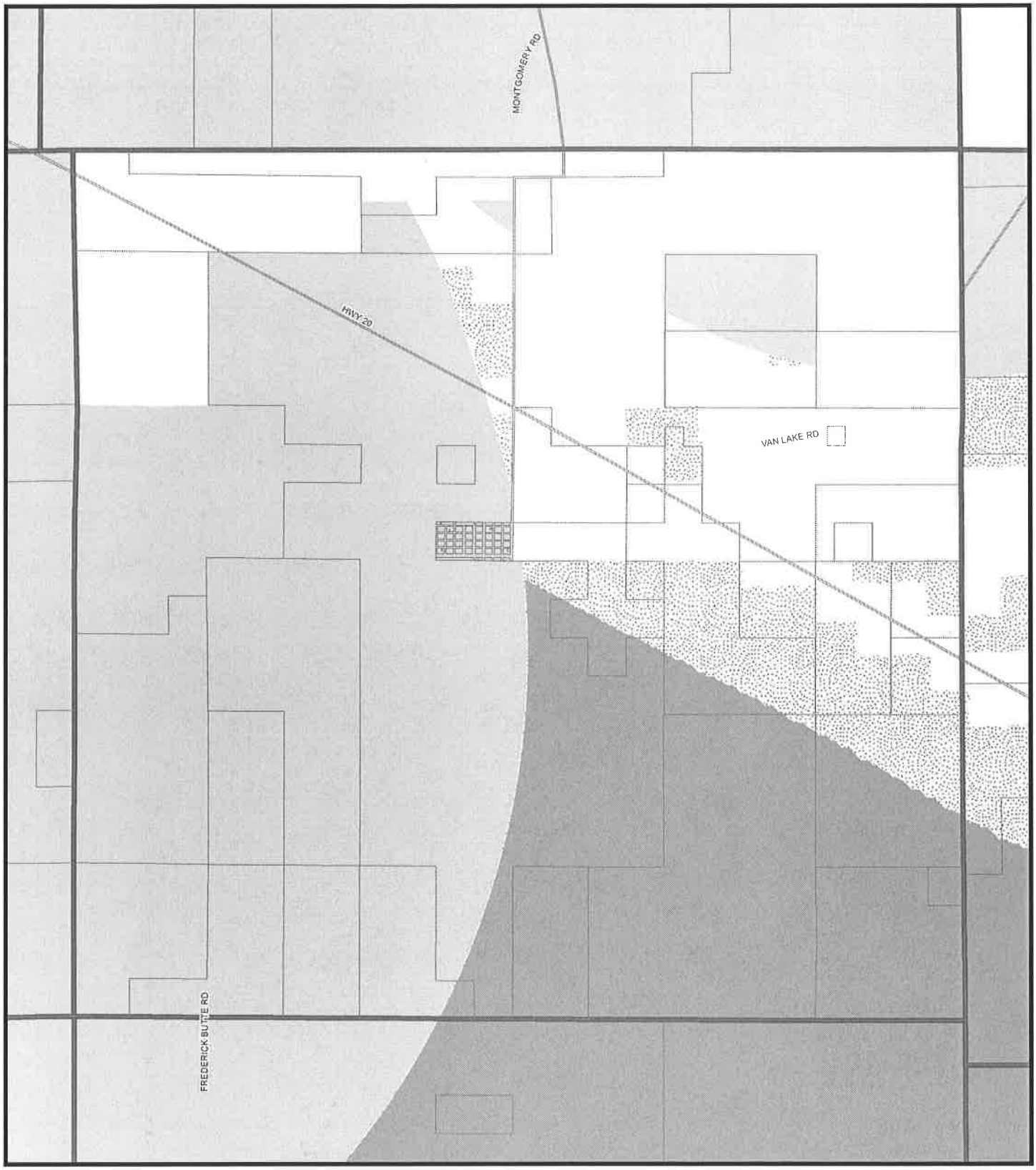

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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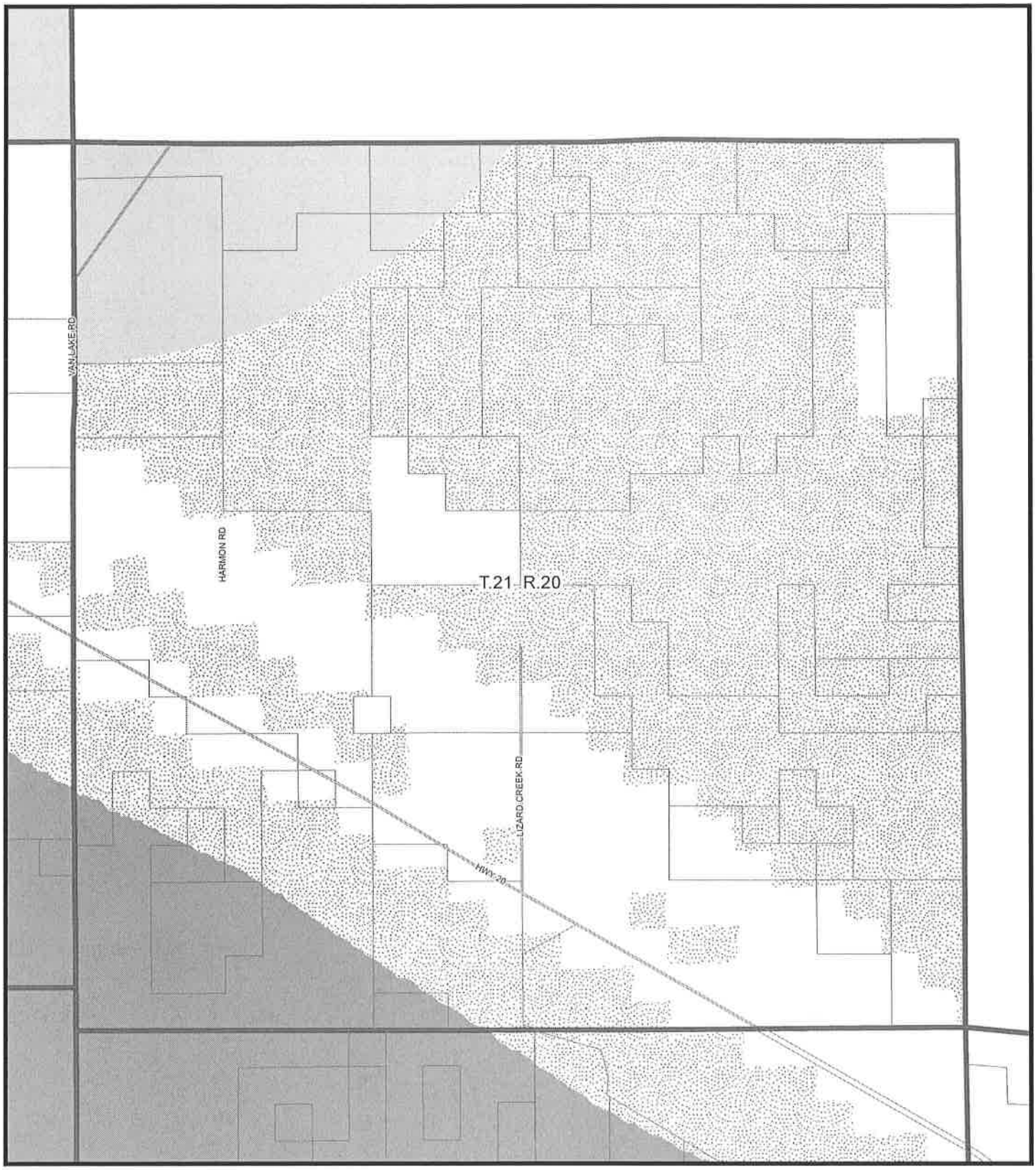

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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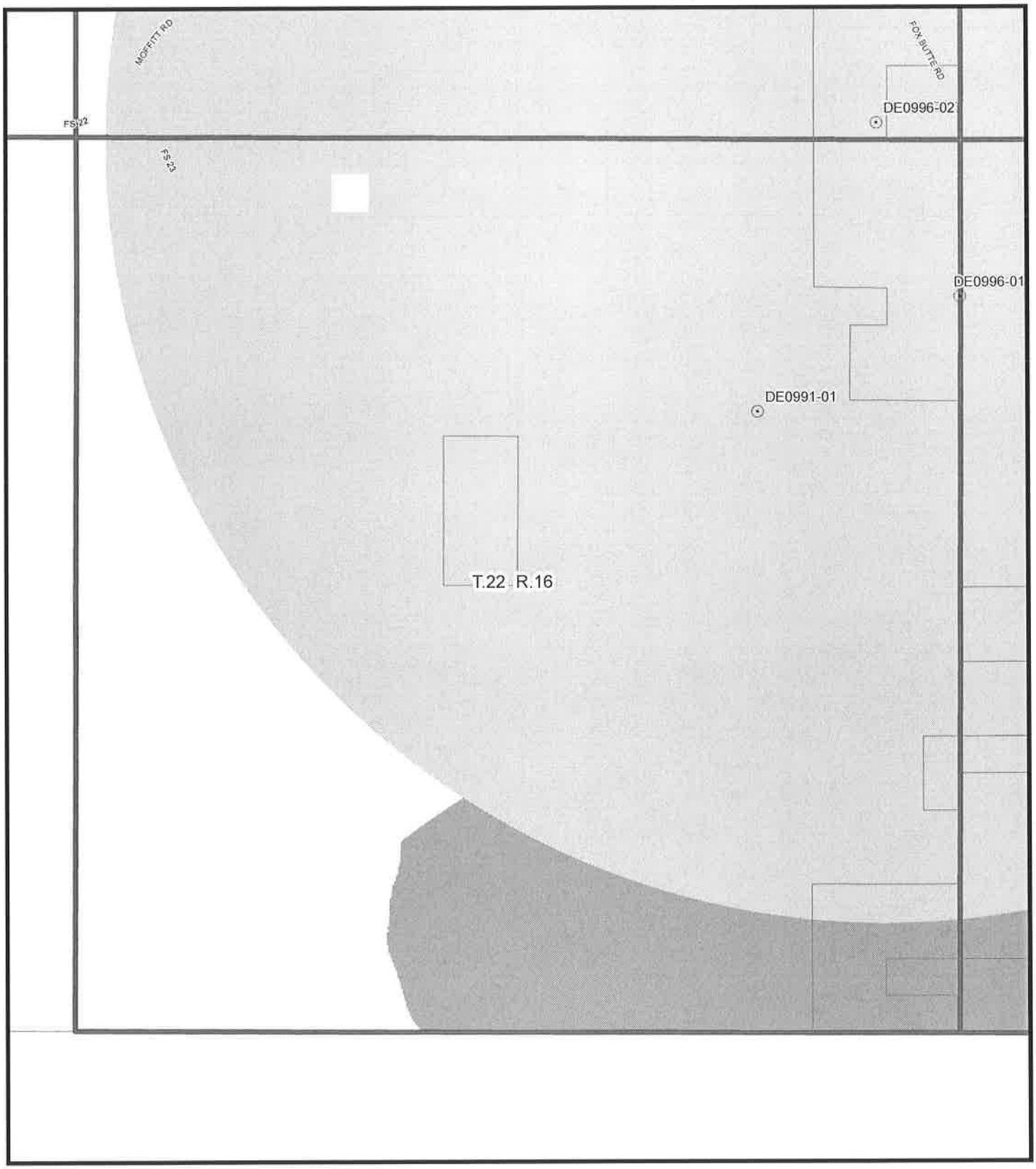

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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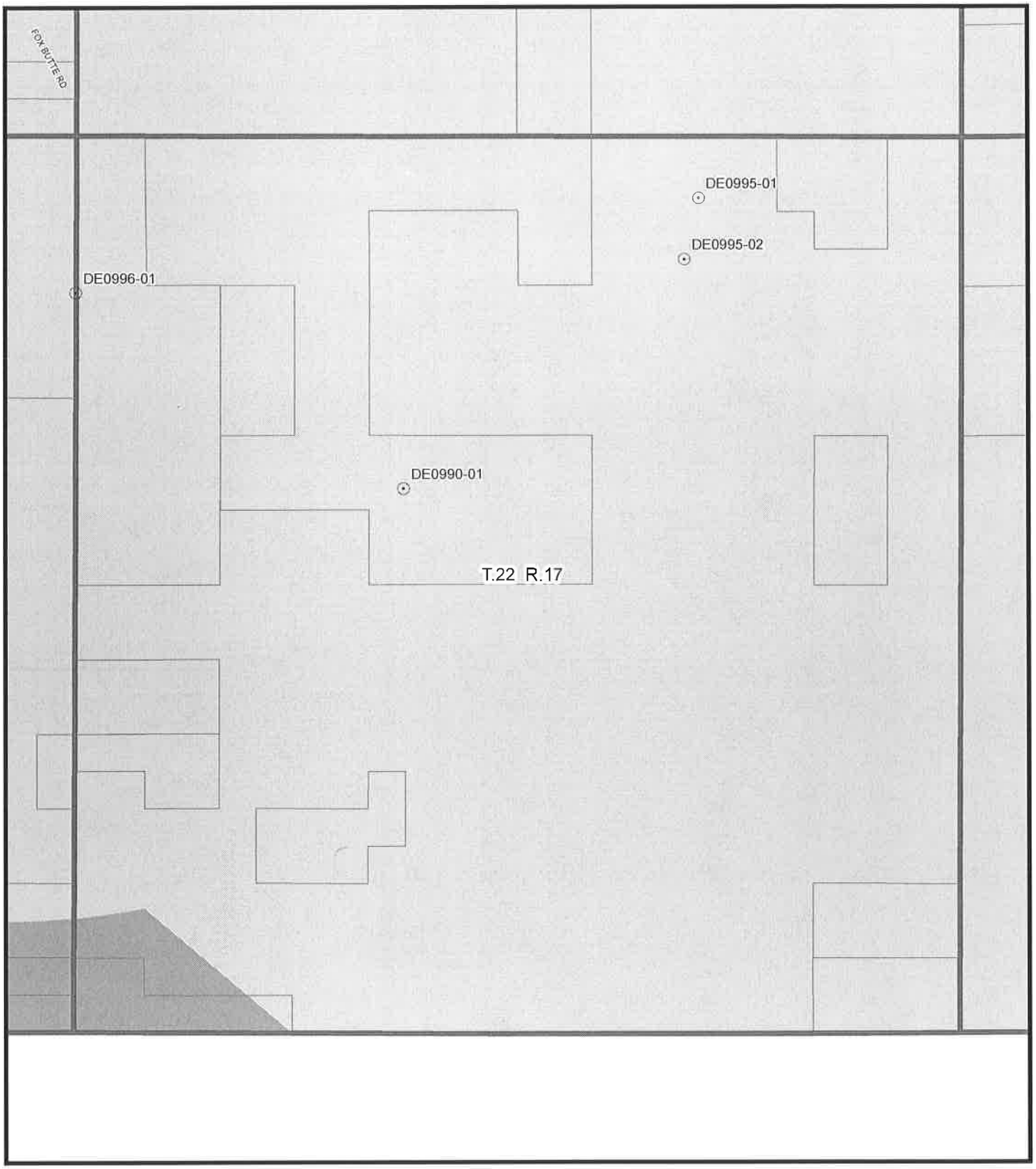

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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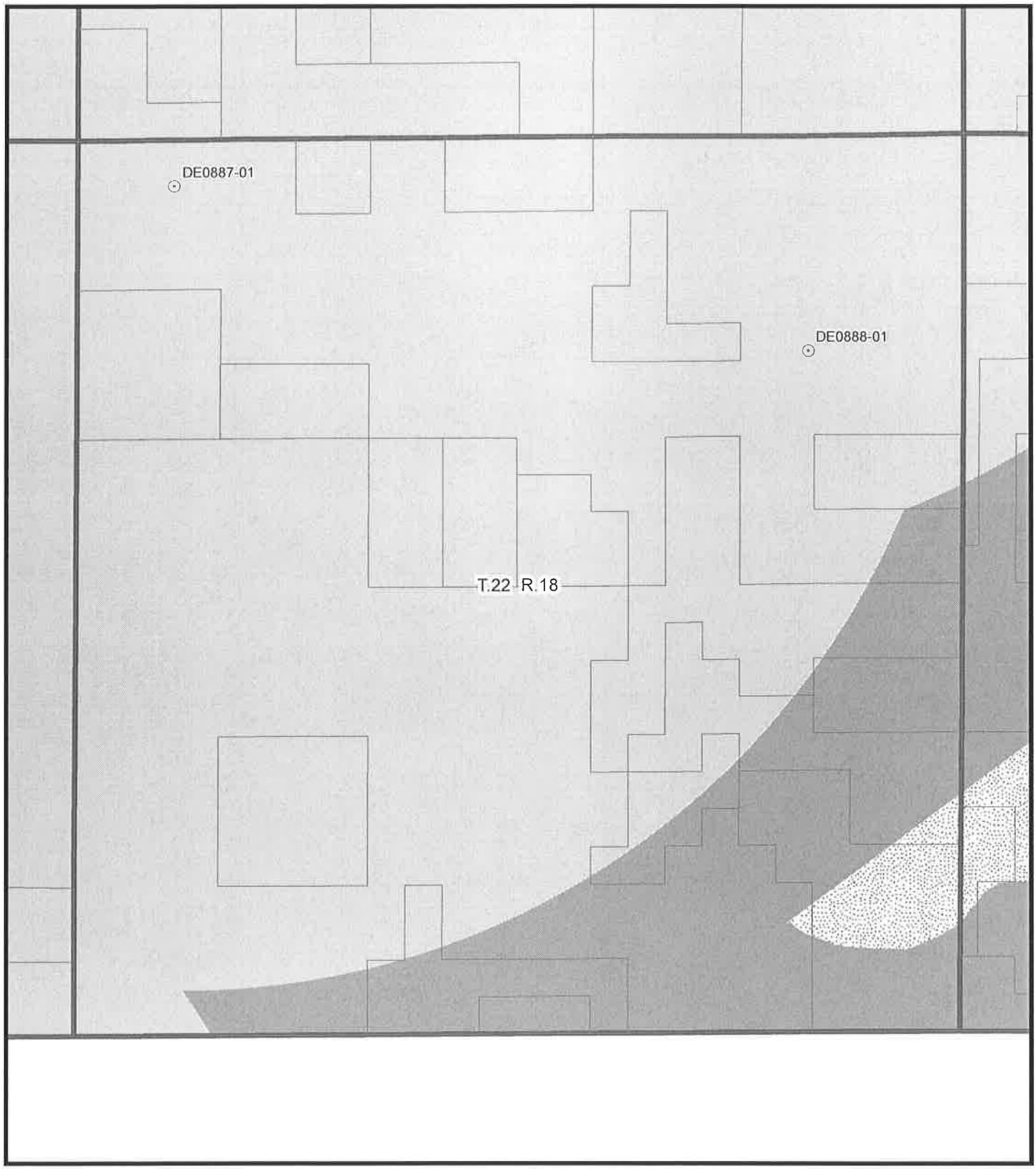

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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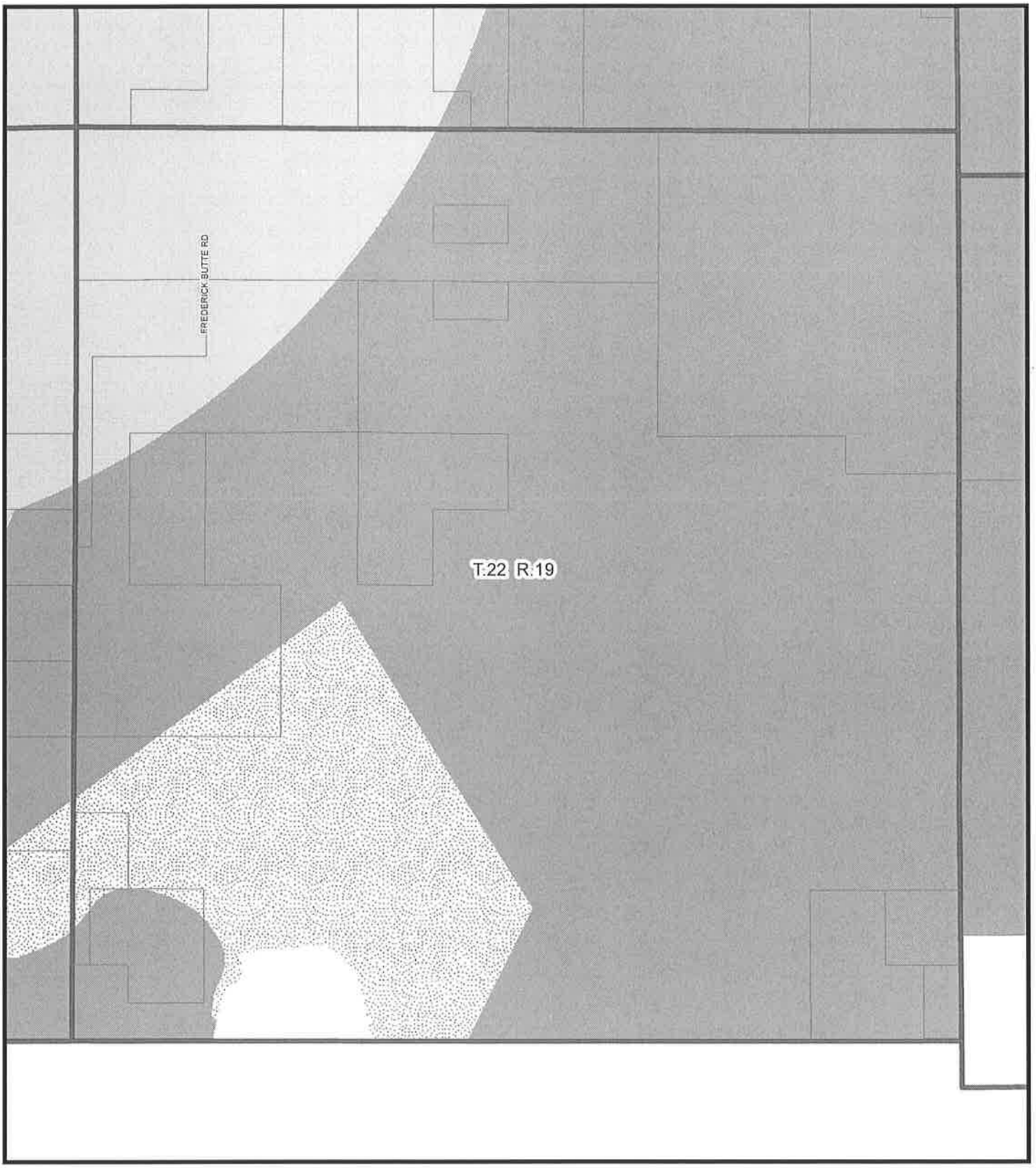

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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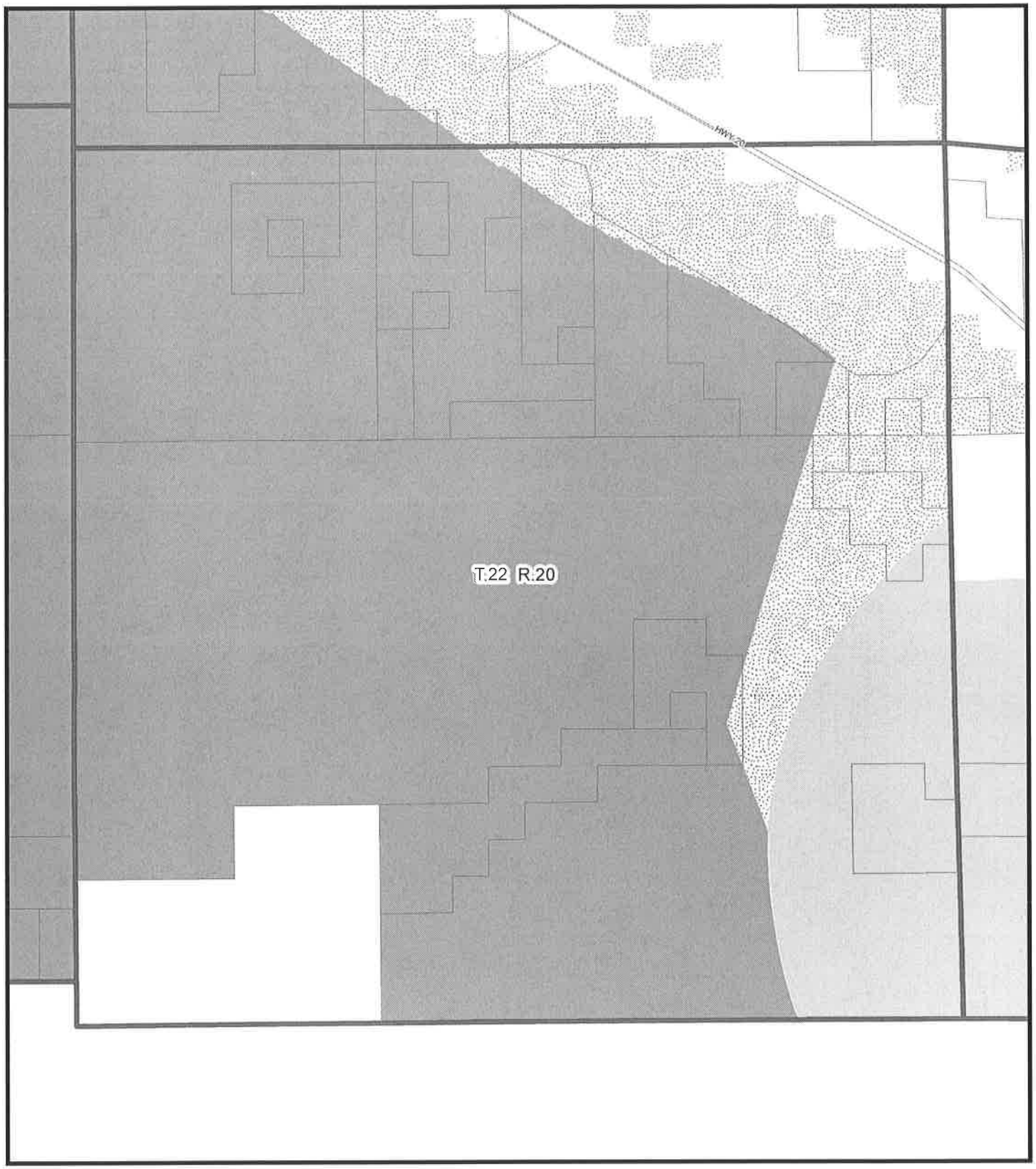

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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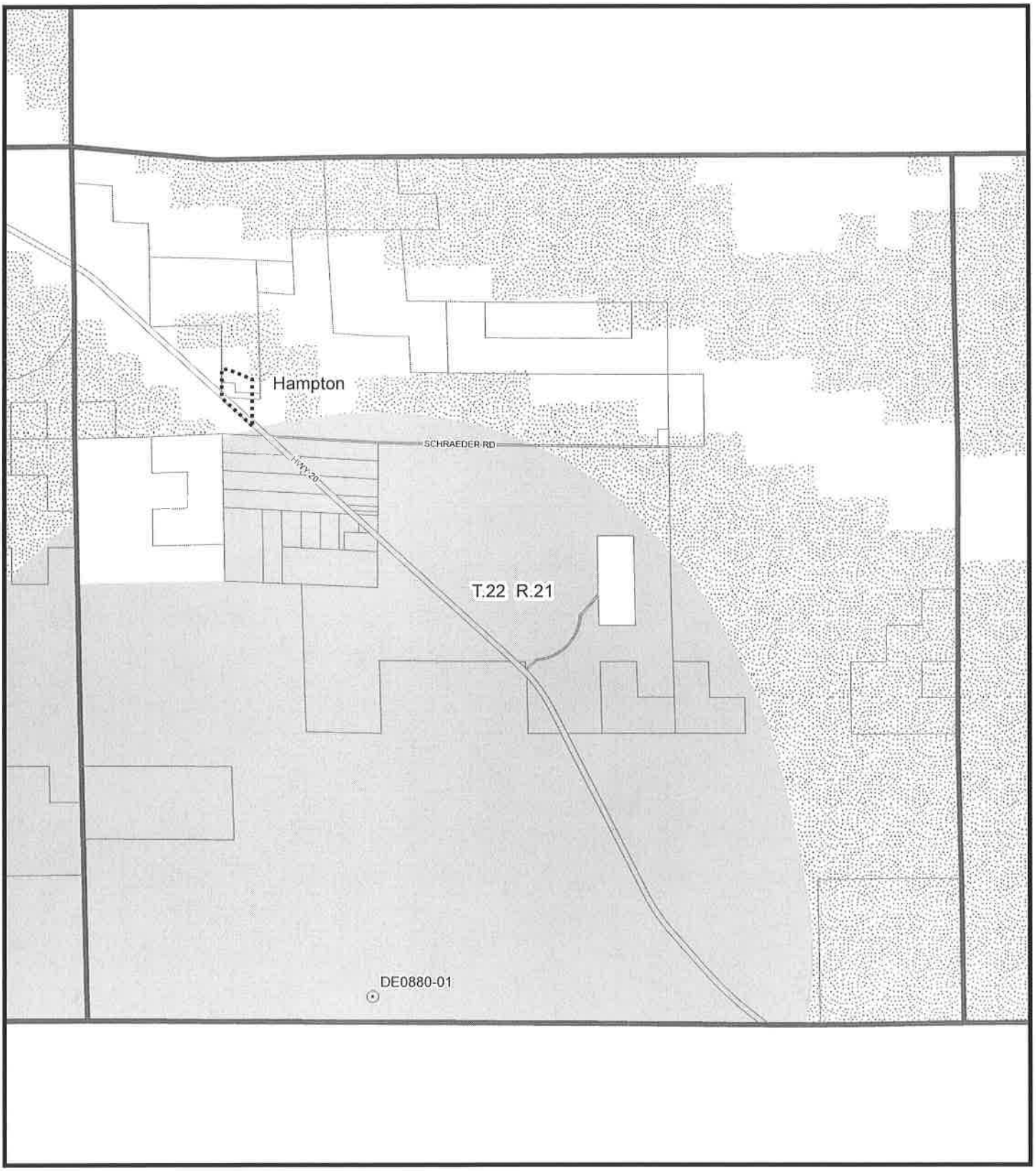

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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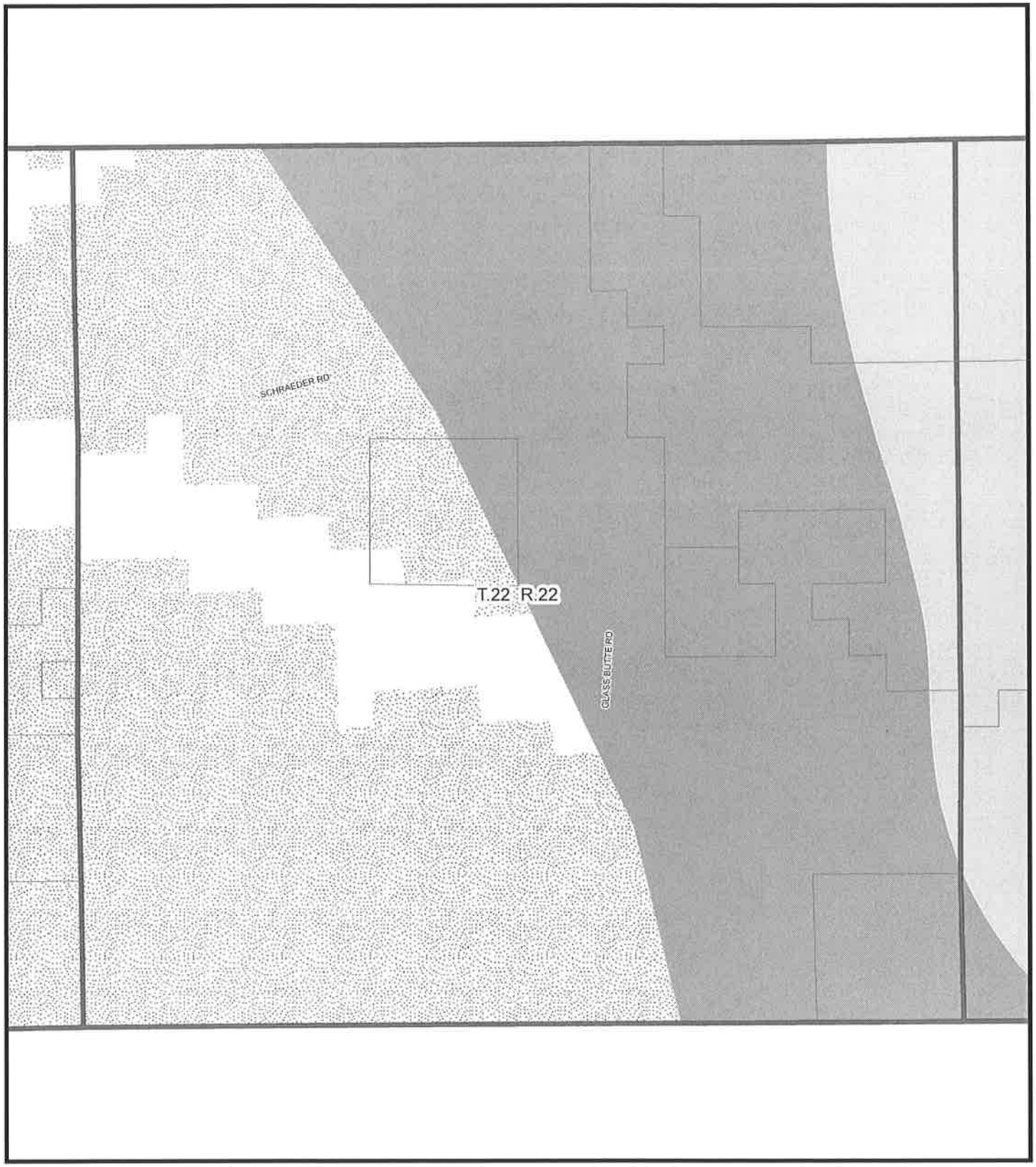

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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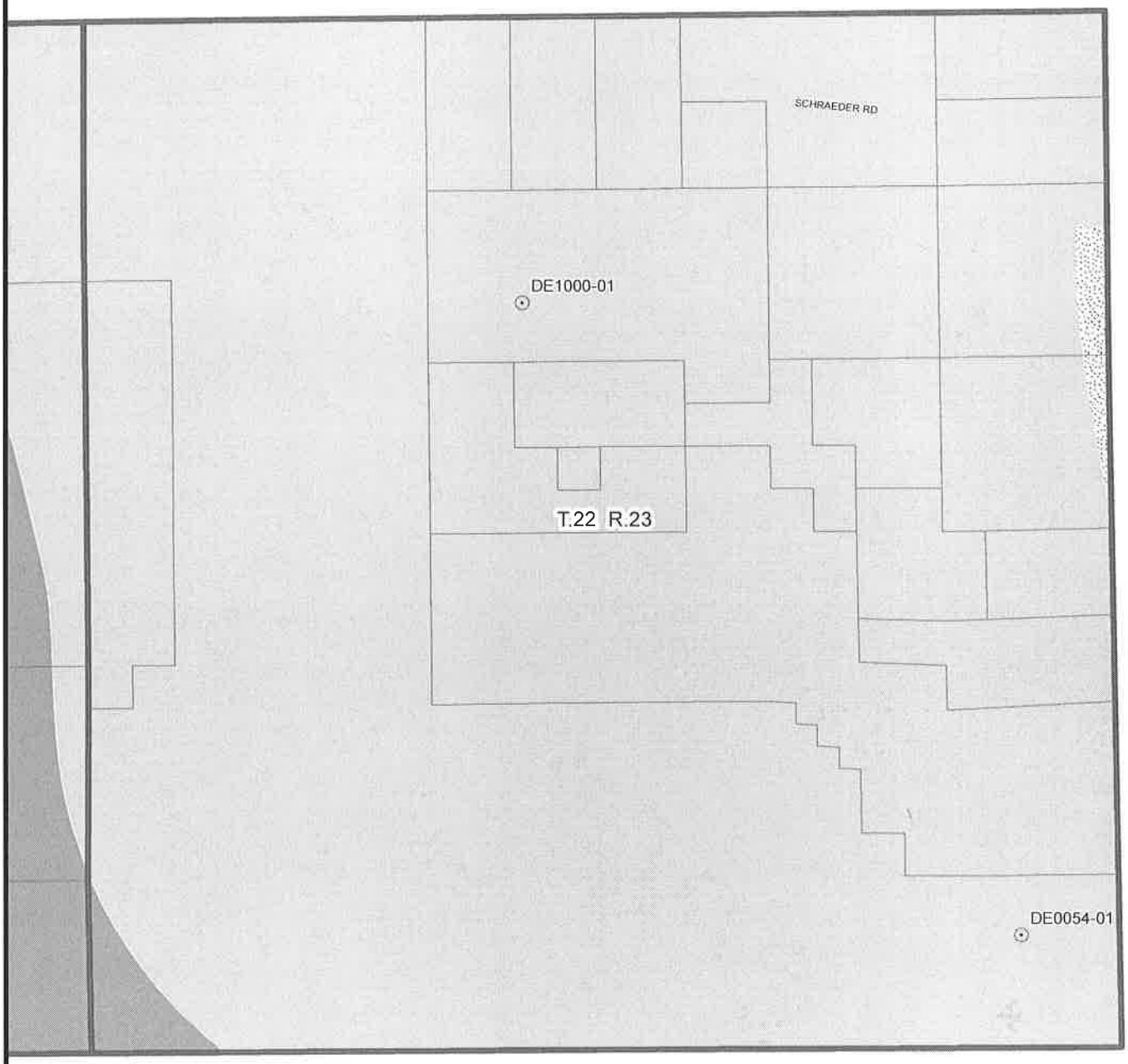

Sage Grouse Greater Habitat Area

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

0 0.25 0.5 1 1.5 Miles

August 21, 2015

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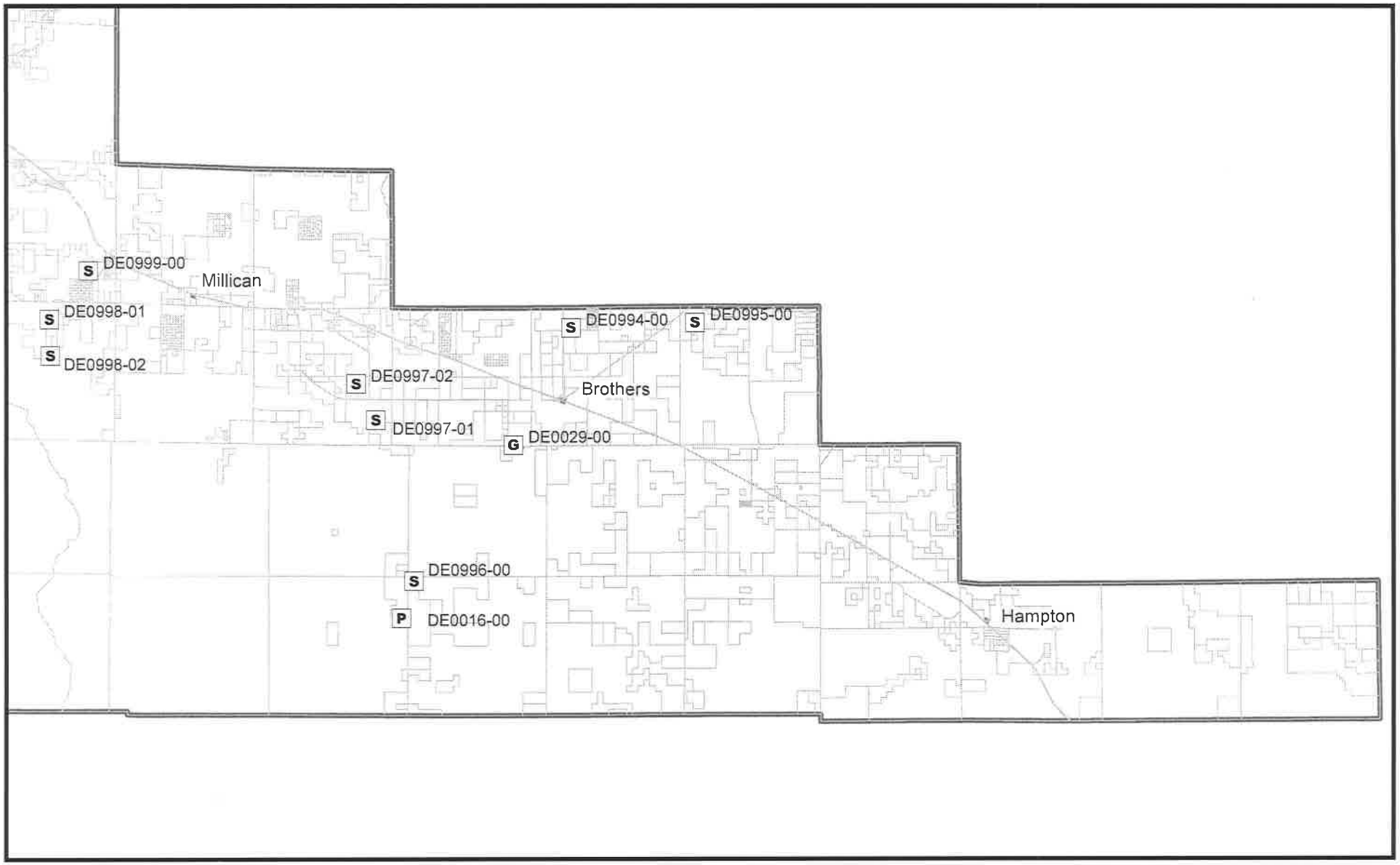

Sensitive Bird and Mammal Habitat Inventory Amendment

Exhibit C1 to Ordinance 2015-010

Legend

- S Sage Grouse Lek
- G Golden Eagle
- P Prairie Falcon
- County Boundary
- Unincorporated Community

0 2.5 5 10 Miles

August 13, 2015

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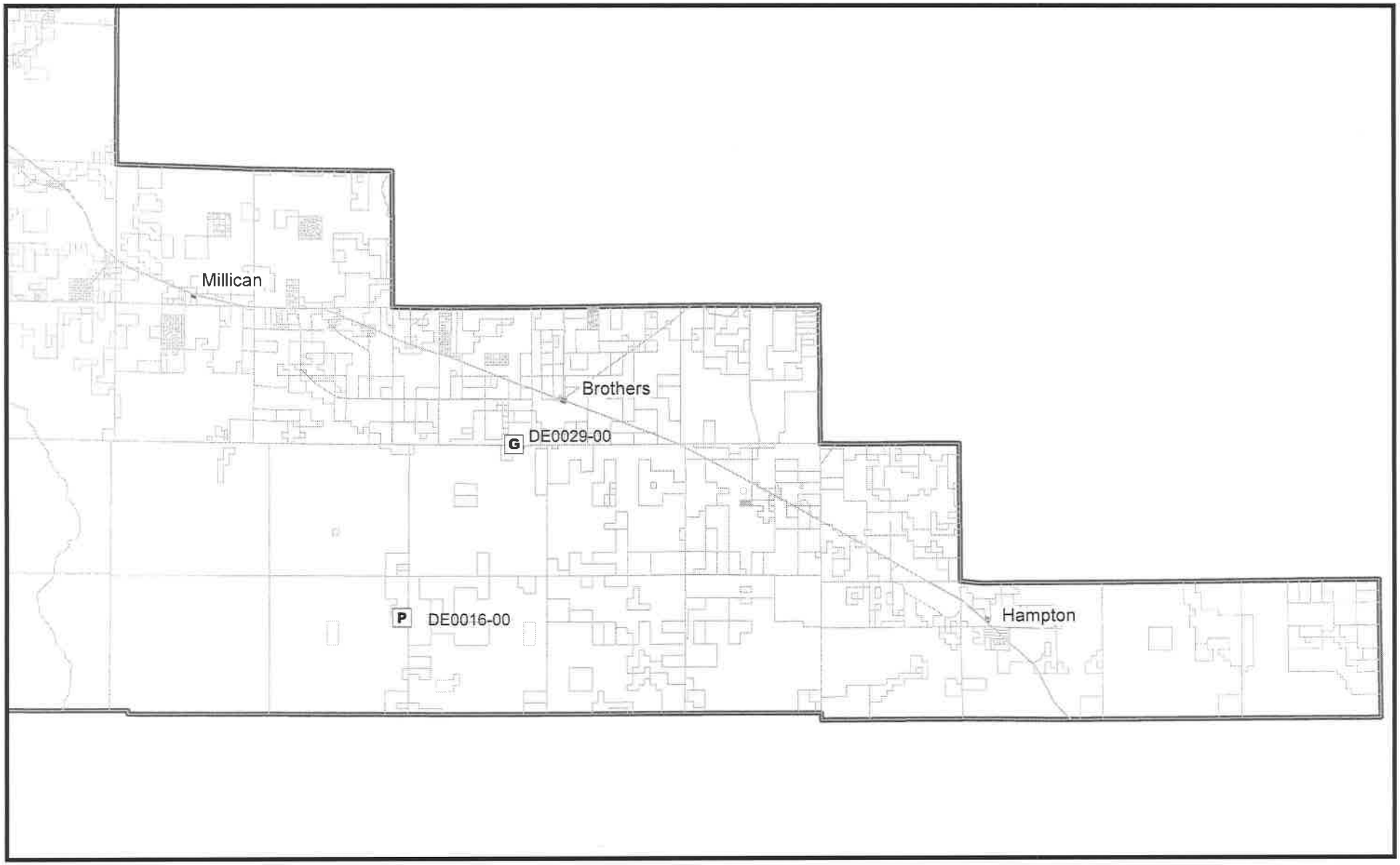

Sensitive Bird and Mammal Habitat Inventory Amendment

Exhibit C2 to Ordinance 2015-010

Legend

- G Golden Eagle
- P Prairie Falcon
- County Boundary
- Unincorporated Community

0 2.5 5 10 Miles

August 13, 2015

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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 Specie 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.

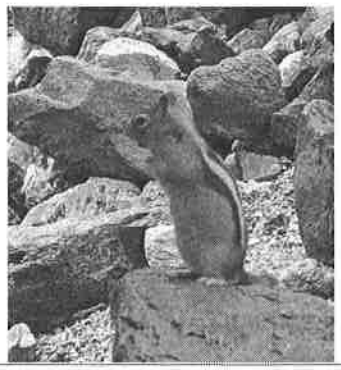

Table2.6.1- Special Status of Select Mammals, Birds, Amphibians, and Reptiles in Deschutes County 2009

Species	*State Status*	*Federal Status*
Mammals		
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-haried bat	Vulnerable	Species of Concern
Small-footed Myotis	--	Species of Concern
Spotted bat	Vulnerable	--
Townsends western big-eared bat	Critical	Species of Concern
Yuma Myotis	--	Species of Concern
Birds		
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
Amphibians and Reptiles		
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)

Species	*Population*
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 1 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

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
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	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories

FINDINGS

The Deschutes County Planning Commission held a public hearing on October 8, 2015 in Brothers to consider legislative plan amendments and to Deschutes County Comprehensive Plan and legislative amendments to Deschutes County Code (DCC) Title 18.[1] The Planning Commission closed the hearing but left the written record open until October 23, 2015. On November 12, they forwarded a recommendation of adoption to the Board of County Commissioners (Board). They also asked the Board to consider adding an amendment to County Code requiring bonding and reclamation for renewable energy facilities.

The Board held a hearing on December 2, 2015.

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.

[1] A public notice will be published in the *Bulletin* on September 20, 2015.

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

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:

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[2] http://www.oregon.gov/LCD/Pages/SageGrouseRulemaking.aspx

[3] ORS 197.646(3). https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors197.html

> "Local governments may develop a program to achieve consistency with this rule by following the standard process in OAR 660-023-0030, 660-023-0040 and 660-023-0050 and submitting the amendment to the commission in the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-025-0175. *Until the commission has acknowledged a county amendment to its comprehensive plan and land use regulations to be in compliance with Goal 5 and equivalent to this rule with regard to protecting sage-grouse habitat, sections (5) to (12) shall apply directly to county land use decisions affecting significant sage-grouse habitat"* [*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.[4] 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, than,

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[4] "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.

- 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.

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 it 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 delimitated 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

REVIEWED
rdm
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 October 8, 2015 to consider the revised County Code; and

WHEREAS, on November 12, 2015 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 December 2, 2015 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 Chapter18.89, 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 1st Reading: _____ day of _____, 2015.

Date of 2nd 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)