

INTRODUCTION

Under the Oregon system of comprehensive land use planning, the county governments are to develop local comprehensive plans to (a) ensure the highest possible level of livability; and, (b) implement the overarching statewide guidance that serves to provide a healthy environment, sustains a prosperous economy, ensures a desirable quality of life; and equitably allocates the benefits and burdens of land use planning. The Federal land component of the Harney County Comprehensive Plan expresses the land use policies of Harney County relative to the public lands¹ within Harney County.

Harney County's quality of life, economy and environment are dependent upon, and have evolved in close association with, the Federal lands. While the public lands serve national interest, the public lands must also serve local needs. Consideration must be given to the dependence of local communities social and economic health upon public lands and land policies.

Federal land use decision affect a wide variety of local land use activities on both the federal as well as private lands within Harney County. As a result, land use planning provides for effective coordination between Federal and local governments before land use decisions are made. As the Public Land Law Review Commission noted Federal land managers should consult with the local government at the earliest practicable stage in project planning and that such activities be consistent and compatible with local plans and programs. While federal land managers should not allow uses on public lands which are incompatible with the local comprehensive plan, there are circumstances when the federal agency is authorized to allow such a use, but only when the federal agency makes a finding that overriding national interest requires the use. If the action is discretionary then it is expected that Federal agency will act consistent with the plans and policies herein.²

¹ As used herein the phrase "public lands" is used to collectively represent the public domain, the reserved land, federally acquired lands, and/or other lands that are owned or managed by the Federal government.

² Current Forest Service regulations implementing the National Forest Management Act provide that: **(b) Coordination with other public planning efforts.**

(1) The **responsible official** shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.

(2) For plan development or revision, the **responsible official** shall review the planning and land use policies of federally recognized **Indian Tribes** (**43 U.S.C. 1712(b)**), Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to the **plan area**. The results of this review shall be displayed in the **environmental impact statement (EIS)** for the plan (**40 CFR 1502.16(c), 1506.2**). The review shall include consideration of:

(i) The objectives of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, as expressed in their plans and policies;

(ii) The compatibility and interrelated impacts of these plans and policies;

This Public Land Element is to implement these State and Federal policies in a manner that provides a healthy environment, sustains a prosperous economy, ensures a desirable quality of life and equitably allocates the benefits and burdens of land use between public and private lands.

B. HISTORICAL SETTING

When Oregon became a state, the federal government owned or managed a vast majority of the original Oregon Territory. In contrast to the original thirteen states which had sovereign authority over all of the lands within their borders and which were therefore provided an economic base as well as a tax base for the support of education and other governmental functions. *See Andrus v. Utah*, 446 US 500, 522 (1980), further west, as the federal government acquired additional territories, the federal government owned the vast majority of the land and it was immune from taxation and any development was dependent upon federal land policies.

As a result, States created from these public lands would not have been on an “equal footing” with those of the original thirteen. Congress, therefore, made land grants to the newly admitted states in order to equalize their tax base status with that of the original thirteen. *See generally, Utah v. Kleppe*, 586 F2d 756, 758 (10th Cir. 1978), *rev'd on other grounds*, 446 US 500, (1980). Early policy was to use the public domain in the promotion of settlement, the very basis of national strength and security. This policy took many forms in Harney County, including military wagon road grants, veterans script, homesteads, desert land grants, grants to miners, railroad grants, timber stone grants, among others.

Prior to the disposal of the public lands, the United States first had to resolve the aboriginal title of the various Indian Tribes through the use of the treaty powers. While some of the tribes have ceded their interests in ancestral lands, various tribes have retained various interests not only on the reservation lands set aside for them from the public domain but also on non-ceded lands as well as lands ceded in the treaties.³

Over time the disposal policies were replaced with withdrawals and reservations that closed parts of the public domain lands from further settlement or disposal (*e.g.* Taylor Grazing Act of 1934,⁴ Creative Act of March 3, 1891). With the passage of these acts and subsequent reservations, large portions of Harney County were removed from entry under the various settlement acts. In Harney County, the Blue

(iii) Opportunities for the plan to address the impacts identified or to contribute to joint objectives; and

(iv) Opportunities to resolve or reduce conflicts, within the context of developing the plan's desired conditions or objectives.

(3) Nothing in this section should be read to indicate that the **responsible official** will seek to direct or control management of **lands** outside of the **plan area**, nor will the **responsible official** conform management to meet non-Forest Service objectives or policies.

³ Separate and apart from this public lands element, the local tribes have independent roles in federal land planning. **See Ex. Ord. No. 13175. Consultation and Coordination with Indian Tribal Governments**

⁴ The Taylor Grazing Act's goals were to “stop injury to the lands from overgrazing and soil deterioration, to provide for their use, improvement and development, and to stabilize the livestock industry dependent on the public range. *Publkic Lands Council v. Babbitt*, 529 U.S. 728 (2000).

Mountain Forest Reserve (1906) and other forest reserves led to the creation of the Malheur National Forest and the Ochoco National Forest.

The Creative Act of 1891 was modified by the Organic Act General Revisions Act was later amended in 1897 by the Organic Administration Act Under the 1897 Act, the purposes for which a forest reserve could be established were identified as (1) to conserve the water flows, and (2) to furnish a continuous supply of timber for the people. As the legislative debates demonstrated, the intent was that National forests were not to be reserved for aesthetic, environmental, recreational, or wildlife-preservation purposes. Further, it was the object that they are not parks set aside for nonuse, but have been established for economic reasons⁵ It was in this context that the 1906 Blue Mountain Forest Reserve was created. The Malheur Forest History illustrates that initially the local sentiment was against the creation of the Blue Mountain Forest Preserve however when the real objects and purposes of the reserve were set forth, there was an immediate subsidence of expressed opposition.⁶ It was in the context of the 1897 objects and purposes that the community resistance to the reserve was overcome.⁷

The social, cultural, economic, environment of Harney County evolved through a close interaction with the public lands. The local communities will be most directly affected by Federal programs. The objectives of land use planning on the local level can be frustrated unless all land use planning and development incorporates a close coordination, consistency and consultation early in the process.

B. SIZE and EXISTING LAND USE

Harney County encompasses 10,226.28 square miles or approximately 6,544,816.37 acres. Land ownership within the County falls into three categories: federal, state trust, and private. Federal land makes up roughly 72% of the total land area (4,716,657.8 acres) and is managed by a number of agencies including the Bureau of Land Management, the US Forest Service, the US Fish and Wildlife Service, etc... State lands comprise approximately 3.02% (197,417.37 acres) and is managed by the Oregon Department of State Lands. The remaining land, approximately 24.92% (1,630,741.18 acres), is in private ownership. Table 3.A and the map on page 3 show the ownership of lands within the County. Uses on public land include grazing, timber harvest, renewable energy, agriculture, recreation, and mineral extraction activities.

Table 3.A

⁵ U.S. v. New Mexico, 438 U.S. 696, 706-709 (1978).

⁶ The Malheur National Forest an Ethnographic History. Pp. 65-75.

⁷ As noted in New Mexico, the subsequent passage of legislation such as the Multiple Use Sustained Yield Act did not broaden the purposes of the Organic Act, rather these multiple use purposes were supplemental to but not in derogation of the purposes for which the national forests were established.

OWNERSHIP	SQ MILES	ACRES	% OWNED
Private	2,548.03	1,630,741.18	24.92%
Bureau of Land Management	6,201.44	3,968,918.55	60.64%
Bureau of Reclamation	6.75	4,320.12	0.07%
Indian Reservation	1.22	781.81	0.01%
Indian Trust Lands	16.17	10,354.48	0.16%
Northern Great Basin Experimental Range	22.47	14,385.59	0.22%
State	308.46	197,417.37	3.02%
U. S. Fish and Wildlife	294.00	188,160.29	2.87%
U. S. Forest Service	817.30	523,071.53	7.99%
Lake/ Unknown	10.41	6,665.42	0.10%
TOTAL PUBLIC	7,678.24	4,914,075.19	75.08%
HARNEY COUNTY GRAND TOTAL	10,226.28	6,544,816.37	100.00%

C. LAND USE ISSUES RELATED TO PUBLIC

Just over seventy five percent of the land within the County's jurisdiction is publicly owned however, the County has the statutory responsibility to provide community services such as schools, hospitals, police, and infrastructure to the entire area within the political boundaries. The federal land management statutes recognize that in lieu of tax income from the federal property, the lands would be productively utilized for mining, renewable energy resources, grazing, farming, recreation, and other uses, which support the local economy.

Additionally, much of the private land in the County provides the base of operations for the productive uses of the public lands, such as livestock grazing. Because of the inherent relationship between federal, state and private lands, all uses of the federal and state lands are of critical interest to the County, and it is the County Plan that provides policies that consider all these interests in one Comprehensive Plan to ensure the future viability of our Community.

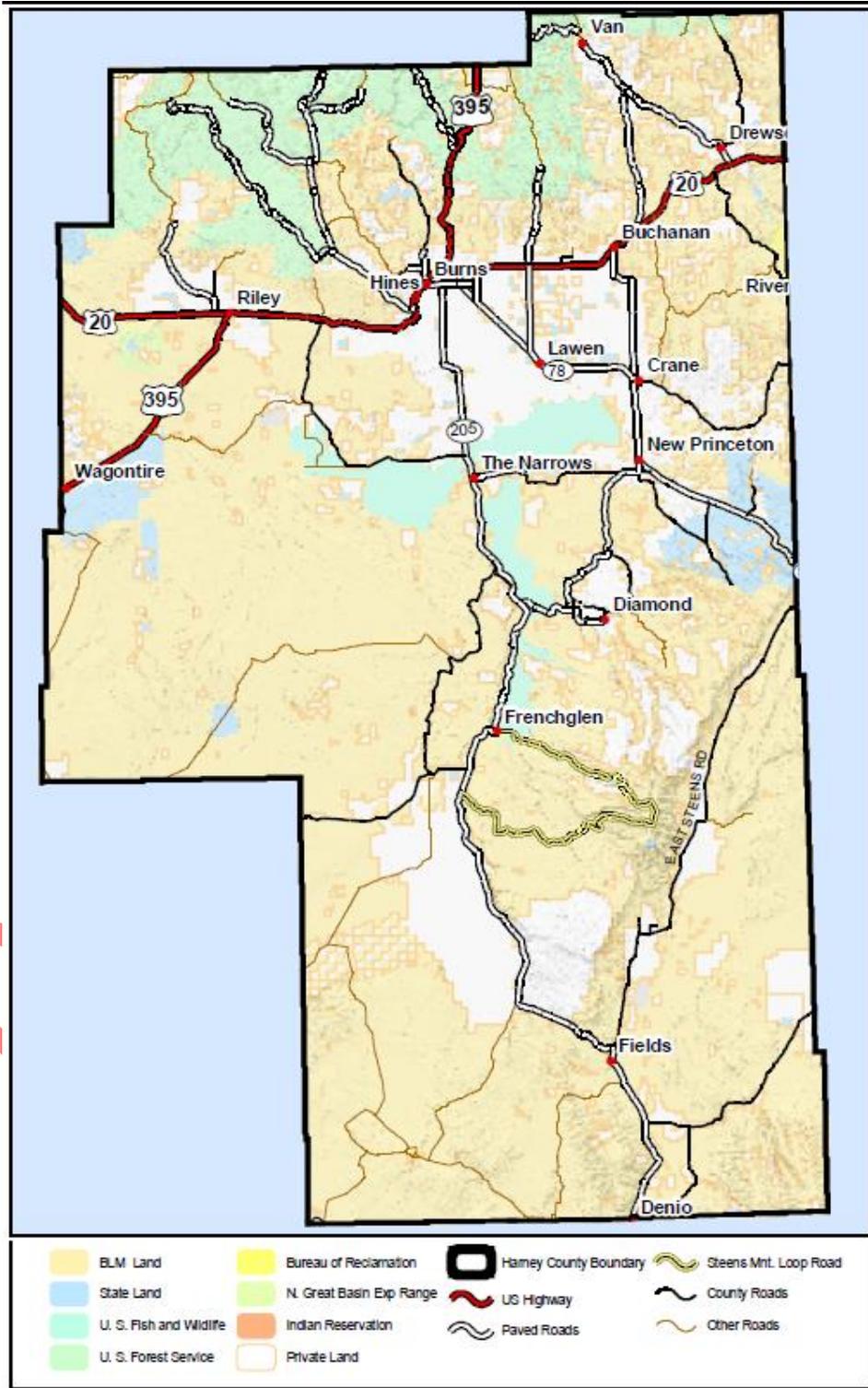
The nature and intent of Harney County land use planning is to protect the custom and culture (defined in greater detail later in this Section) of County citizens through the protection of private property rights, the facilitation of a free market economy, and the establishment of a process to ensure self-determination by local communities and individuals. The goals, objectives, and policy actions in this section provide a general framework to guide planning on federal and state lands.

Harney County depends upon the continued multiple use of federal lands and maximizing the income from the assets and resources of state lands in Harney County. Harney County

expects federal and state agencies to coordinate continuously with the County, for all planning and management actions.

DRAFT DRAFT

LAND OWNERSHIP IN HARNEY COUNTY OREGON



E. FEDERAL / COUNTY JURISDICTION IN LAND USE ISSUES

Recognizing the need for federal land management agencies to harmonize their planning process with counties, federal laws, such as the Federal Land Policy and Management Act (FLPMA), National Environmental Policy Act (NEPA), and National Forest Management Act (NFMA), among others, require federal agencies to coordinate their planning process with local governments and work to reach consistency with county plans. Coordination and consistency are required by the federal agencies for the purpose of ensuring the county maintains the ability to fulfill its statutory responsibility to protect the health, safety and welfare of the citizens.

Congress set forth in the Federal Land Management and Policy Act at 202(c) (9), four specific duties the federal agency is to carry out in order to “coordinate” the federal planning and management activities with local governments. These are: (1) keep apprised of local plans; (2) give consideration to local plans; (3) assist in resolving inconsistencies between federal and non-federal plans; (4) provide meaningful involvement of local governments early in the federal planning process. If the conflicts between the federal plans and local government plans are not resolved through this process, then Congress further placed the burden on the federal agency to make its plans consistent with local plans.

In order to help federal and state agencies understand Harney County’s plans, programs, and policies, and incorporate these into their own planning processes, this document should be reviewed by federal and state agencies and inconsistencies identified. Discussions on how to resolve inconsistencies with the County Court should be held in an open public forum in compliance with the open meeting laws of the state. The purpose of these discussions is to ensure the harmonious planning and implementation of activities between the county and federal and state agencies.

In addition to coordination, counties may participate in the preparation of the environmental analysis of a plan, regulation, or other programs under the National Environmental Policy Act, as a cooperating agency. The County’s role in this process is to utilize their expertise to help identify the issues that should be analyzed and develop alternatives for the analysis in cooperation with other federal and state agencies, and other affected local governments. NEPA specifically requires that an alternative must be developed and rigorously analyzed that resolves the conflicts with local plans (42 U.S.C. § 4332(E)), and the County’s input into this alternative is necessary. However, the cooperative agency process under NEPA does not replace coordination of the plan or the federal agencies obligation to achieve consistency with the local plan as required under NEPA and other statutes such as FLPMA and NFMA.

The County would also participate in federal agency “collaboration” processes, where an inclusive group of stakeholders working together to develop plans with the agencies from scoping through consultation. “Consultation” is also required by some federal statutes with local governments; however, as with the “cooperative agency” process, neither “collaboration” nor “consultation” replaces the federal agencies responsibility to coordinate and reach consistency with the County’s Plan.

Additionally, federal law requires federal agencies to consider the impacts of actions authorized by these agencies on the natural environment, social structure, and economy of counties. The US Forest Service and Bureau of Land Management, for example, are both required to consider the impact of their actions on communities adjacent to and/or near federal lands and on employment in the affected areas.

F. HARNEY COUNTY CUSTOM and CULTURE

The term “custom and culture” is an integral part of the Land Use Element of the

Harney County Comprehensive Plan because it helps to define and enhance the County’s position concerning public lands within Harney County.

Federal land use planning laws and regulations require all federal agencies to consider the impacts from proposed actions on the social structure and economy of an affected area. Federal agencies have accepted the term “custom and culture” in the context of land use planning as synonymous with social structure and economy.

In land use planning, Harney County defines culture as:

“The body of customary beliefs, social forms, and material traits constituting a distinct complex of traditions of a racial, religious, or social group that includes knowledge, belief, morals, law, customs, opinions, religion, superstition, and art.”

Adding the term “custom” in the context of comprehensive land use planning, refers to land uses and practices that have acquired the force of tacit and common consent. This essentially means that certain land uses have historically helped shape the values, attitudes, and traditions of County residents by providing them ways to earn a living, offering recreation, or by providing them places to live. These traditional land uses, which help to define the “custom and culture” of Harney County, are still active today. They include:

- Grazing/ranching;
- Agriculture;
- Mineral production
- Renewable energy (historic use?)
- Recreation.
- Timber harvest

Grazing has always played a prominent role in the history of Harney County and as a practice, has been utilized by many residents. Livestock grazing was the one of the original economic engines in Harney County. Grazing has always been more difficult in an area like Harney County due to its hot summers and sporadic rainfall, requiring more land for livestock to graze. Throughout southeastern Oregon, ranchers would lead their herds to unclaimed public lands to graze, which soon became the norm.

Western expansion and settlement was encouraged by Congress with the passage of a series of Homestead Acts. In 1934, Congress passed the Taylor Grazing Act, which authorized the issuance of grazing permits on vacant unappropriated and unreserved lands constituting a portion of the public domain. Preference in the issuance of grazing permits was given to those land owners engaged in the

livestock business, bona fide occupants or settlers, or owners of water rights as may be necessary to permit the proper use of the lands.

The “custom and culture” associated with agricultural production in Harney County is necessary to the livelihood and well-being of its citizens. Therefore, it is the intent of Harney County to protect agricultural land and promote the continuation of agricultural pursuits by protecting private property rights, relying on self-determination, and ensuring open market conditions. The County will not support unsound agricultural practices that cause watershed damage, soil erosion, and reductions in water quality.

Harney County recognizes that the development of its abundant renewable energy and mineral resources is desirable and necessary to the state and nation. It is, therefore, the intent of Harney County to encourage the practice of responsible mining and mineral resource extraction, and development of renewable energy resources.

Harney County also recognizes that outdoor recreation activities have contributed to the “custom and culture” of County residents. The County realizes that the large amounts of public land within the County provide recreational opportunities to the citizens, but that recreational use of public lands often causes conflicts with private property rights. Harney County intends to promote the continued use of public lands for recreation, but will not permit such recreational use to violate private property rights.

Harney County Comprehensive Plan support federal forest land management practices which result in sustained multiple use and support for stable local economies. Harney County supports sustained timber and forest product commodity harvests which supports the local economy and promotes forest health. Practices which result in unbalanced eco-systems and limits local access to Forest resources shall be considered to be non-conforming under the Forest Management Goals of the Comprehensive Plan.

Forest management practices adopted by the federal and state agencies in Harney County shall fully engaged the local citizenry in planning, developing options and implementing harvest practices in the County. Harney County shall support the sustain harvest levels of forest products under a scientifically supported strategy which maintains our Forest resources for multiple generations of our citizens.

As noted earlier, public lands comprise a substantial portion of Harney County and are used for recreation, grazing, timber, and for mineral extraction and other sustainable harvest of natural resources. These activities are very important for many County residents and work in concert with other activities that take place on private land. Together, these activities contribute to the “custom and culture” of Harney County, which can be defined as all those elements that form the values and morals of County residents, as well as define their sense of place. Harney County residents are very much tied to the land. Their shared history is rooted in farming and ranching in the context of a rural atmosphere. The reason that people choose to live in the unincorporated portions of the County is that they still value this life style and wish to maintain the rural qualities of Harney County. Associated with this desire is the belief that protection of private property rights is extremely important and government, be it federal, state, or local, needs to be respectful of this principle.

Harney County strives to protect the “custom and culture” and private property rights in the County through the enactment and enforcement of ordinances and insists that public land use decisions made at the federal and state level do the same.

In order to maintain the “custom and culture” of Harney County and protect property rights, the County will be involved in land use decisions regarding public lands. The goals, objectives, and implementation policies listed below are intended to help Harney County direct this involvement. In compliance with federal and state law, all federal and state agencies are directed to use this Comprehensive Plan as a guide in the coordination of planning for management of public lands within the geographical boundaries of Harney County.

DRAFT DRAFT