

Draft: November 10, 2016

Project: Harney County Goal 5 Roadmap

Purpose: This report is the culmination of a lengthy public involvement process intended to identify resources of value in Harney County. The recommendations are written to balance the values identified as priority importance to citizens in Harney County with the opportunities available in the Goal 5 program, including law and administrative rules.

Step I. Adopt a policy statement (for the Comprehensive Plan) that provides general guidelines for integrating Goal 5 in Harney County land use.

► **Goal Statement:**

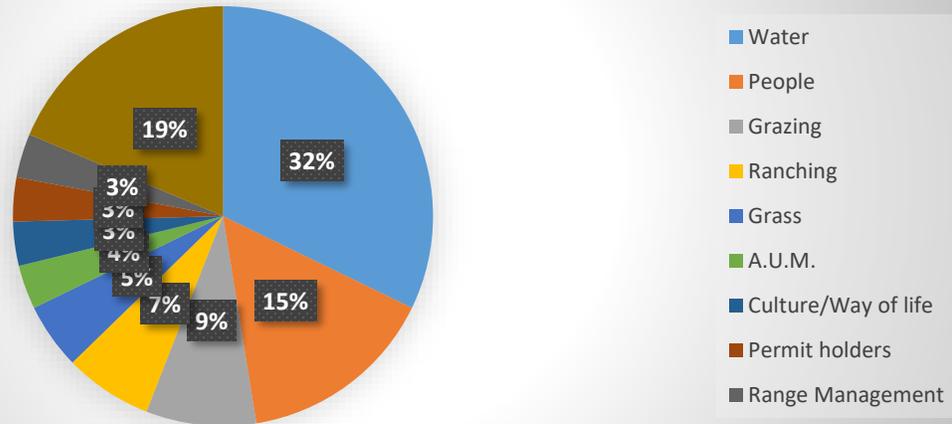
It is the policy of Harney County to plan for and manage our lands and natural resources for long-term sustainable multiple-use for the current and future generations of the county. All land use decisions shall support the **economic, energy, environmental and social** fabric and cultural heritage of Harney County. Activities which seek to restrict or limit local multiple use of our land and natural resources shall be discouraged and/or determined to be in non-conformance with the goals of the Harney County Comprehensive Plan. This policy shall address both public and private lands within Harney County. Harney County expects state and federal agencies to coordinate and consult with County Government and residents and comply with local policies and plans prior to any decisions being made that impact use of private and public lands.

Step II. Prioritize Goal 5 Resources

The list below shows the resources and priorities identified by Harney County residents during the public stakeholder meetings held throughout the spring and summer of 2016. It is recommended that Harney County pursue an update of the Comprehensive Plan to evaluate and protect those resources the public identified as being valuable and important. The Goal 5 inventory and evaluation process can be undertaken in phases, based on available staffing and time and funding opportunities identified to offset the cost. The level of commitment of county residents is very high. Their expertise will prove extremely valuable in the process and will help expedite the process

The following pie chart illustrates the priority resources Harney County citizens identified during the public involvement process. Some of the resources fit neatly into the categories listed in Oregon Administrative Rules for Goal 5 resources.ⁱ The process for inventorying, evaluating, protecting and otherwise incorporating those resources into a Comprehensive Land Use Plan is established in the Administrative Rule. If the resource is one of those listed as a Goal 5 Resource, the process is fairly straightforward. For other resources identified by citizens in Harney County, it will require some creative adaption of the process. Or, alternatively, the county could consider advocating to expand the list of Goal 5 resources not currently numerated in the Administrative Rules.

Harney County Goal 5 Priorities



Administrative Rules for Goal 5 (OAR 660-023) include the following resources: Wetlands, Wildlife Habitat, Greater Sage-Grouse, Federal Wild and Scenic Rivers, Oregon Scenic Waterways, Groundwater Resources, Approved Oregon Recreation Trails, Natural Areas, Wilderness Areas Mineral and Aggregate Resources, Energy Resources, Historic Resources, Open Space and Scenic Views and Sites. Guidelines and definitions for each resource are incorporated within OAR 660 Division 23 rules.

Harney County Comprehensive Plan Goal 5 includes inventories and general policies for seven resources, including Aggregate, Water, Wildlife, Scenic, Natural Areas, Historic and Wilderness.ⁱⁱ These resources were included in the original plan acknowledged by the Land Conservation & Development in 1984. Not all of the resources were thoroughly vetted according to the Administrative Rules in effect at the time (OAR Division 16). It may be worthwhile, depending on local priority, to evaluate those existing resources according to the current Goal 5 OAR Division 23 process. This would require that each individual resource undergo an analysis to determine whether it is “significant,”

followed by an Environmental, Social, Energy and Environment (ESEE) analysis. The final and third step for “significant” resources would be for the county to decide if the resource should be protected, and how to protect the resource. The latter part is known as the “program” to protect the resource.ⁱⁱⁱ

Summary of Goal 5 steps:

1. Inventory
2. ESEE Analysis
3. Program to Achieve Goal 5

Evaluating the priority resources through a robust Goal 5 analysis would enable the county to manage and utilize the resources according to the values of Harney County. Without a robust analysis, and relying solely on policies, the resource is vulnerable to subjective interpretation, particularly by interests outside of the county. Therefore, it is recommended that Harney County undertake a Goal 5 review process for the following resources identified and prioritized by the public in coordination with the efforts of the County Planning Commission and County Court.

The priority list below is based on what appears to be the most practical and feasible to accomplish first. The reasons should become clearer in the evaluation below. Also, the priority list goes from simplest to more complicated, which is important for the process. The more simple resource process would provide a better platform for learning the Goal 5 analysis process.

One important note - Protection of a resource does not necessarily mean limitation of a resource. For example, an aggregate resource is protected so that the owner/operator can blast, mine, extract and process rock. The protection program serves to limit encumbrances to

mining activity. Other types of protections result in what traditionally is understood as protection, such as prohibiting development.

Priority 1. Historic and Cultural resources

This task could include traditional historic resources such as buildings, however, a top priority would be to incorporate rodears and stock driveways into the existing inventory. To do this, the county could begin by developing a list and then a map (GIS) to show the locations and underlying landowners of the rodears. Once a list is complete, the county, with a citizen committee, would evaluate the resources according to the inventory process outlined in OAR 660-023-0030. From that, the “significant” resources would be subject to an economic, social, energy and environmental (ESEE) analysis set forth in OAR 660-023-0040. For resources that present potential conflict, the county could then adopt a program for protecting the resources, according to OAR 660-023-0050. As noted above, it is important to keep in mind that protection of a resource does not necessarily mean limiting use of the resource. In the case of a rodear, for example, protection would likely be policies to protect the historic use of the stock trail rather than restrict use of the trail.

Rangeland management, while not currently considered a goal five resource, is a proven preservation tool for sustaining the historic and cultural land uses within the county. As a land management tool, Harney County supports protection of rangeland health through effective management techniques such as sustainable grazing, juniper abatement, water and fire management. Each region of the state has unique ecological conditions that warrant special provisions under the Oregon Administrative Rules. In Harney County, rangeland management is essential to protect and preserve the long-range health

of public and private lands. Since Goal 5 and OAR 660-023 does not include rangeland as a resource, Harney County will address rangeland management in other goals in the comprehensive plan. In addition, Harney could promote the expansion of the list of resources listed under Goal 5, to include rangeland areas.

Priority 2. Water

Water is a vital resource, especially to the primary economic sectors in Harney County; farming and ranching. The Oregon Water Resources Department (OWRD) has documented groundwater declines in parts of the Harney Basin.^{iv} Additionally, the OWRD has found that all surface waters in the Harney Basin have been fully appropriated.^v OWRD has expanded efforts to better understand and manage groundwater resources in the Harney Basin. OWRD is simultaneously considering management options to limit further over-appropriations, including: designating a groundwater area of concern in the Greater Harney Valley, limiting new groundwater uses within the area of concern, and conducting a five-year groundwater study in cooperation with the USGS (U.S. Geological Survey) to better characterize and quantify groundwater resources. The Harney County Court and OWRD co-convened a Groundwater Study Advisory Committee in April 2016, which includes residents of Harney County. This Advisory Committee will meet with OWRD and the USGS during the course of the Groundwater Study to track progress, exchange information, and provide input.

The Harney County Watershed Council is also the recipient of a grant from OWRD to undertake a community-based water planning effort that is intended to identify local solutions to meet the water needs of people, the economy and the environment; looking at both surface

water and groundwater in an integrated approach. The management objective is to develop a strategic plan with recommended actions to achieve a sustainable water supply for the future.

The Watershed Council and the Groundwater Advisory Committee will eventually produce an inventory of resources, or a “water conditions report.” Since the work of the water committee is similar to the inventory process required for Goal 5, it is recommended that Harney County follow the process closely with a focus on utilizing the data for dual purpose to include the requisite Goal 5 inventory.

In the interim, while the county and OWRD study water conditions and management options, it is advisable that the county develop and adopt water policies for Chapter 5, Goal 5. Policies should reflect specific and tangible local objectives for water management and the integration of water and land use. Policies should be focused enough to provide guidance to the Planning Commission and County Court in evaluating land use applications but not so restrictive so as to be used as a roadblock for local decision-making. The revised policies should reflect the community’s desire to sustain water use while protecting private property and water rights and, allowing new development that may include consumptive water use so long as the specific use can demonstrate available carrying capacity. Ideally, new water policies will reflect values of citizens and land/water right holders and existing laws such as exemption of domestic water wells.

Additionally, the county and citizens are encouraged to remain proactively involved with OWRD to seek long-term management solutions to water management. The county and OWRD are well positioned to develop a long-term water management plan that does not include blanket and far reaching OWRD regulations such as the designation of a Groundwater Limited Area or a Critical Groundwater

Area. County residents expressed a strong desire to move forward with solutions and avoid further regulations and restrictions. A Critical Groundwater Area designation produces serious regulations and limits creative and local solutions to management of the aquifer.

Additionally, once a Critical Groundwater Area designation is adopted by OWRD, Goal 5 Administrative Rules compel a county to consider the groundwater a “significant resource.” Effectively, the state action creates a “safe harbor” significant resource.

As an alternative to the traditional process, whereby the state designates a critical water area, the county and OWRD can jointly follow the state process and the Goal 5 process to determine the best outcome for the Harney Basin. Harney County enjoys a cooperative relationship with OWRD and the state and local agencies can work together with state water laws and local land use laws and programs to develop a long-term plan for a sustainable water supply. Oregon Law and the State Agency Coordination Program was designed just for this mutually beneficial and cooperative relationship where the state program (in this case water law) and the local programs (Harney County Plan and Codes) work together to develop a program that suits the needs of the local community and the interests of the state. Although somewhat dated, the OWRD State Agency Coordination Program acknowledged by the Land Conservation and Development Commission in 1991 was designed just to balance the state and local interests.

Specific Goal Water Policies - Examples to consider:

Goal 5 Water Policy 1. It is the desire of Harney County to protect private property and private water rights while balancing long term sustainability of the groundwater resource.

Goal 5 Water Policy 2. Harney County recognizes the Oregon Water Resources Department (OWRD) has legal authority to utilize a number of regulatory tools to manage water consumption and to prevent over appropriation. Even with those regulatory tools, the Harney Basin appears to be over appropriated; both surface and groundwater. Harney County encourages OWRD to make water management solutions (storage, efficiency, conservation) a top priority and new regulations a last cause of action.

Goal 5 Water Policy 3. Harney County recognizes that the OWRD must comply with State Agency Coordination Program set forth in ORS 197.180 and the agency's State Agency Coordination Program acknowledged by the Land Conservation and Development Commission. Harney County expects OWRD to comply with the spirit and intent of the law and the coordination program when considering water management options in the Harney Basin.

Goal 5 Water Policy 4. Harney County will insist that OWRD comply with the Goal 5 process before designating or adopting a Critical Groundwater Area designation or any other regulatory designation. This includes, but is not limited to, OWRD developing the technical data to adequately quantify and inventory the resource and, to conduct the Environmental, Social, Energy and Economic (ESEE) analysis adopting a new regulatory program designed to protect the resource.

Priority 3. Wilderness Study Areas.

Harney County has numerous Wilderness Study Areas (WSA's) that have been under review by federal agencies for a number of years. A Wilderness Study Area is a precursor to a federal Wilderness Area

designation. Once the federal government designates a Wilderness Area, the OAR (660-023-0170) considers the resource significant. The county would not be required to adopt any policies, however, a Wilderness designation would be an ad hoc amendment to the county plan. Under the current construct of the law, a county or city has little recourse or leverage in the designation process, at least not in terms of the land use program. It may warrant an effort for the county to encourage the state of Oregon to rewrite OAR 660-023-0170 so that federal agencies are required to collaborate with local government before creating a new Wilderness Area. The intent of a rewrite would be to create a platform for local residents and local government to be a part of the decision to designate new Wilderness Areas, given that such an act creates significant land use impacts and conflicts, especially with ranching and farming. Furthermore, Harney County may consider adopting language that states, “A Wilderness Study Area which has not been acted upon within the timeframe established by federal law shall be considered as reverting back to its prior land use status prior to the WSA designation. Furthermore, the County asserts that historic and cultural uses of these areas and resources shall be allowed until a formal designation is made by Congress formally changing the status of the area.”

Priority 4. Other Resources or values.

The public identified important assets, however, as noted above, not all of those resources are considered “Goal 5 resources.” For example, AUM and grazing are not listed as a Goal 5 resource in the Administrative Rules. While those assets are very important, Goal 5 is not the program that can provide protection of those resources. The county could adopt policies that identify those resources as important assets and adopt policies to protect the use of those resources. The

county could consider taking a proactive role in advocating for revision to Goal 5 to include other resources such as rangelands.

- ▶ Sage Grouse. Harney County has been one of the most impacted by Sage Grouse concerns in the state. Accordingly, the county can best decide how and whether to undertake another public process to discuss Sage Grouse. Below are two options for consideration:
 - ▶ 1. Update the Sage Grouse inventory to comply with Oregon Executive Order No. 15-18, adopting the Oregon Sage Grouse Action Plan. Harney County has a lot of time and effort invested in the state process and how the guidelines were developed. The final outcome may not reflect the local values. A Goal 5 update could be fairly simple and could position the county to get the most benefit from the Executive Order. As described above, the county would need to inventory Sage Grouse habitat (county may/may not agree with the ODFW inventory), then decide which elements should be considered “significant.” The final step would be to undergo an ESEE analysis to decide whether and how the county would protect the habitat. The process would require involvement of the natural resource agencies with technical expertise.
 - ▶ 2. Option 2 would be for the county to adopt policies only, and not adopt ODFW inventories. This may be a reasonable interim step until and if the county wants to pursue the full Goal 5 process as summarized in option 1 above.
- ▶ Aggregate. While the county has a large supply of aggregate resources, the majority of those sites were added to the

inventory under the original adoption of the Comprehensive Plan in 1984. Since 1984, new sites were permitted as a conditional use permit process and with a Mineral and Aggregate Resource Overlay Zone. While that process appears to meet the short term need (demand) for aggregate material, primarily for road construction, that process is not in compliance with the applicable Administrative Rules, OAR 660-023. Technically, the current process for approving new sites could be appealable by the state. That is, the state (DLCD) could intervene and require the county to apply the Administrative Rules for any new sites. Existing sites would be protected as pre-existing sites. As the county grows and development encroaches upon the quarry sites, pressures to reduce impacts from the quarry operations will increase. For example, new dwellings or residents in the vicinity may complain about noise and dust and try to pressure the county (Planning Commission and County Court) to put restrictions on the quarry activity. By inventorying the quarries as significant goal 5 resources and applying OAR 660 Division 23 rules, the quarry operations will have better protection against encroachments and conflicts will be mitigated before they occur.

- ▶ Critical Mineral Resources. The Department of Geology and Mineral Industries (DOGAMI) has commissioned a detailed survey of mineral resources in Eastern Oregon. Based on this inventory, Harney County should consider reviewing the resource maps and where appropriate enact policies protecting the resources for future use.

- ▶ Water Quality and Goal 6 (see previous discussion regarding water)

- ▶ Energy Resources. Harney County adopted a comprehensive Renewable Energy Plan in 1983, long before most counties gave much credence to renewable energy. Although the Energy Plan was not incorporated in the Comprehensive Land Use Plan, there is an opportunity to inventory and list significant renewable energy production sites as part of a Goal 5 inventory. This would position Harney County as an attractive place for renewable energy development. In addition to inventorying sites, the county could identify transmission corridors. Together, with development sites and transmission routes identified, it would streamline the development review process. Additionally, Harney County might consider joining a group advocating to change the laws and rules pertaining to the state Energy Facility Siting Council so that most projects are permitted by the county rather than sited by a state agency. The county process, while thorough, is less expensive and exceedingly more expeditious than the state EFSC process. Further, if Harney County is focused on attracting new energy development, renewable and non-renewable, the county could update its chapter on statewide Planning Goal 13. A lot about energy production and generation has changed over the years. When Goal 13 was developed in the early 1980's, the focus was on incorporating energy conservation with land use. Conservation remains a meritorious value. However, conservation alone will not meet the demand of a growing population. Too, energy production is valuable as economic development, creating jobs and increasing the tax base. The county could update Appendix Chapter 4 and include current resources and programs to encourage energy development and conservation. Harney County shall review areas which are suitable for future electrical transmission lines and

corridors to support national renewable energy generation and local infrastructure needs.

- ▶ Wildlife Habitat Wildlife Habitat is a Goal 5 Resource (OAR 660-023-0010) defined as “an area upon which wildlife depend in order to meet their requirements for food, water, shelter, and reproduction. Examples include wildlife migration corridors, big game winter range, and nesting and roosting sites.” Several members of the public described an abundant supply of especially big game (elk and deer) habitat, and others complained about the relocation programs of the Oregon Department of Fish & Wildlife have resulted in destruction of farm land. The intent of Goal 5 Wildlife Habitat is to provide additional protection for habitats. The issue in Harney County appears to be the opposite. That is, the habitat is very good, so good in fact that the big game and wildlife management policies are negatively impacting private land. Goal 5 may be a venue for local land owners to insert influence on wildlife management policies. The ODFW State Agency Coordination Program requires the state to consult with the county and evaluate whether their policies or programs impact land use. The consultation must occur before ODFW adopts new policies or programs that impact land use. Harney County will consult with federal agencies to establish wildlife carrying capacities on all lands in the County. Harney County is encouraged to adopt a policy that recognizes the importance of balancing the integrity of agricultural lands with the value of sustaining wildlife populations. New Critical Winter Range designations should be adopted in collaboration with the ODFW and a citizen advisory committee. The county should consider policies, land use and otherwise, that protect

agricultural lands from overly invasive wildlife habitat populations.

Map 5 of the Comprehensive Plan includes an inventory of significant wildlife habitat. The map was provided by ODFW. According to the OAR, those sites are automatically considered “significant.” However, those areas have not undergone the Goal 5 ESEE process, which would allow the county to decide how those resource areas are managed. The effect of ODFW relocating game has the effect of creating wildlife habitat areas. The county could assert that ODFW must seek local input and obtain authorization from the county before implementing game management policies or programs. The county could decide whether the policies comply with the Comprehensive Plan.

In the interim, the county should consider updating its policies in Chapter 5 to reflect the values and assets of the landowners. The county could initiate a conversation with ODFW local wildlife managers and Division officers in Salem, to determine how best the county and state can coordinate so as to minimize negative impacts to private lands.

Step III. Identify Resources Available to implement priorities.

To be completed after discussion with Planning Commission.

ⁱ See Oregon Administrative Rules Division 660 Chapter 23.

ⁱⁱ See Chapter 5: Natural Resources, Scenic and Historic Areas, and Open Spaces, Harney County Comprehensive Plan pages 41-49.

ⁱⁱⁱ See OAR Division 660-023-0030 Inventory Process, 0040 ESEE Decision Process and 0050 Programs to Achieve Goal 5.

^{iv} Reference documentation provided by OWRD.

^v Reference documentation provided by OWRD.