

Oregon Natural Desert Association

By Email to [planning@co.harney.or.us](mailto:planning@co.harney.or.us)

August 18, 2009

Harney County Court  
c/o Brandon McMullen, Harney County Planning Director  
450 N. Buena Vista #11  
Burns, OR 97720

Re: Revisions to Harney County Comprehensive Plan

Dear Judge Grasty, Commissioner Drinkwater, and Commissioner Nichols:

Please accept the following comments and testimony of Parties of Interest Oregon Natural Desert Association (“ONDA”) and Audubon Society of Portland (“Audubon”) regarding the proposed revisions to the Harney County Comprehensive Plan. These comments are based on the June 8, 2009 final draft of the revised Plan posted on the County Planning Department’s website (“Proposed Plan”).

#### Comments on June 2009 Final Draft Revised Plan

ONDA and Audubon continue to have serious concerns regarding the final draft version of the Proposed Plan, which has received primarily typographical revision since the April 2009 version commented on in our last letter. The Proposed Plan does not demonstrate compliance with the statewide planning goals. It lacks many components required by the statewide planning goals and land use regulations, and is too vague and discretionary to be enforceable. ONDA and Audubon urge the County Court to reject the Proposed Plan and remand the Proposed Plan to the Planning Commission to make appropriate revisions that comply with the planning goals.

#### Chapter 2 – Land Use Planning

No description is given for the process for addressing “Type 4” decisions on page 22 of the Proposed Plan. In the previous Comprehensive Plan, Section 8.3(5) applied to the sort of “zoning and subdivision matters” now listed in the chart on page 18 as Type 4 decisions.

Without the inclusion of provisions similar to those of the former Section 8.3(5) related to the decisionmaking process for Type 4 decisions, this Chapter is inconsistent with Goal 2.

### Chapter 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

This Chapter of the Proposed Plan is not consistent with Goal 5. The chapter does not include necessary substantive or procedural provisions to “protect natural resources and conserve scenic, historic, and open space resources for present and future generations” to “promote a healthy environment and natural landscape that contributes to Oregon’s livability.” Chapter 5 includes no planning provisions sufficient to satisfy the Goal 5 Planning Guidelines and fails to demonstrate compliance with Goal 5 requirements for riparian corridor, wildlife habitat, and natural area protection. Because of the vagueness of the Chapter and the repeated use of the subjective, wholly discretionary qualifier “as appropriate,” Chapter 5 fails to comply with the statutory and regulatory obligations for implementing Goal 5.

There is no evidence in the staff report or in the Proposed Plan itself that Chapter 5 complies with the procedures, processes, criteria, and programs required to inventory Goal 5 resources and achieve compliance with Goal 5 required by OAR 660-016-0000 through 660-016-0030 and OAR 660-023-0000 through 660-023-0250. There is no evidence of compliance with the Goal 5 inventory requirements, no acknowledgement of any existing inventories, no evidence that the County has identified conflicting resources or established programs to protect Goal 5 resources. Instead, the Proposed Plan effectively eliminates any protection for Goal 5 resources that exists in the existing Harney County Comprehensive Plan in derogation of the County’s obligations under Goal 5.

The Natural Areas Policies provide insufficient protection for open space and scenic views and sites, and represent a dramatic departure from the County’s commitment to its scenic areas in the existing Comprehensive Plan. The policies do not include any concrete provisions for ensuring protection of these areas. Natural Areas Policy 1 is inconsistent with Goal 5 because it provides a wholly subjective standard (“Natural areas designated 1B shall be inventoried and further protection designated *as necessary*”) and does not provide for actual inventory, but rather inventory only when, if ever, there are “funds to do site reports,” improperly deferring compliance to the future and failing to guarantee that compliance will ever occur.

Natural Areas Policy 5 is too vague and indeterminate to comply with Goal 5. It specifies unnamed “community partners” with whom the County is to work “to ensure that natural areas are appropriately identified and preserved.” The failure to describe who is to be involved in this process leaves implementation of this Policy too vague, and is inconsistent with Goal 1’s obligation of broad public participation by indicating that a broad spectrum of the public will not be allowed to participate in carrying out this Policy. In addition, the insertion of the term “appropriately” renders this Policy vague and entirely subjective, and thus inconsistent with Goal 5. The Policy also inappropriately defers to an undetermined future the identification of natural areas and provides no process or programs for their protection.

Policy 5 Implementation Strategy provides for limiting access to and use of natural areas “as necessary” to protect these areas. This standard is vague and provides no objective basis for compliance, inconsistent with Goal 5.

Natural Areas Policy 6 is vague and provides no objective basis for compliance by including the term “[t]hrough proper management.” No standard is provided for what constitutes “proper” management that will “maintain or enhance the aesthetic qualities and values of the significant natural scenic landscape resources of the County.” This is inconsistent with Goal 5.

The Policy 6 Implementation Strategy also is inconsistent with Goal 5 by providing a wholly subjective standard that “other significant natural resources shall be designated for inclusion in the scenic resource overlay, *as appropriate*.” There is no measurable, objective standard for what is “appropriate.” Policy 6 and its Implementation Strategy also impermissibly defer to the future the adoption of a Natural Resources Overlay, guidance and interagency response process.

Policy 7 also impermissibly defers to the future the outdoor light policy necessary to preserve and protect Harney County’s night skies.

The Wildlife Preservation Goals do not come remotely close to compliance with Goal 5. They do not provide for conservation and protection of existing fish and wildlife areas, but only provide for doing so “[w]hen reasonable and appropriate” or “where possible.” These vague, subjective, content-less standards cannot satisfy the robust protections for wildlife required by Goal 5. In addition, the Propose Plan includes no provisions that would maintain wildlife diversity and habitats that support wildlife diversity in the County, nor to ensure that maintenance of species at levels that prevent serious depletion of indigenous wildlife species. The Proposed Plan will not address land use and development that could conflict with wildlife migrating in and through the County, and will not ensure the protection of a functioning ecosystem and the obligation to avoid and minimize impacts from development. The Proposed Plan’s only wildlife preservation goal, Goal 1 “To conserve and protect existing fish and wildlife areas,” only addresses existing areas, does not address other potential habitat, and provides no substantive standard that would ensure protection of these areas. The Proposed Plan eliminates all the regulatory and non-regulatory implementation strategies for the remaining goals, disregarding the obligation of consistency with Goal 5.

The implementation policies include no concrete programs for the conservation and protection of fish and wildlife, including instead only exhortations or vague, subjective qualifiers. For example, Policy 3 “encourages” use of land resource management techniques and “urge[s]” consultation with the Oregon Fish & Wildlife Department without guaranteeing that such measures to protect fish and wildlife will actually occur. Policy 4 includes several vague qualifying words that render it essentially meaningless as a measure to actually conserve and protect fish and wildlife, providing for “protection” of essential habitat and breeding sites for endangered species or raptors from conflicting uses by “measures *appropriate to reasonably* insure continued use of the site by the species.” Policy 6 states that new roads should avoid watershed damage and sensitive wildlife use areas “*where possible*.” Policy 8 impermissibly puts off to an indeterminate future the inventory of wildlife resources, and again only requires that it

be done “as *appropriate*” – a meaningless, subjective standard. As written, the single Wildlife Preservation Goal that actually includes language regarding fish and wildlife protection, and the policies drafted to implement that goal, are entirely subjective and effectively mock the wildlife protection requirements of Goal 5. The County Court must remand this Proposed Plan to the Planning Commission to correct these serious deficiencies.

The Proposed Plan and staff report have failed to explain (a) how any existing Goal 5 inventory is incorporated into the Proposed Plan and (b) how any inventories not currently in existence will be performed and implemented in accordance with the Goal 5 rules. There does not appear to be a current inventory of resources, as required by Goal 5, but rather only the promise (in Policy 8) that an inventory may occur at some unspecified time in the future. The Proposed Plan does not explain how current natural area inventories, if any, including scenic areas (which appear to have been identified in some form, based on the current Comprehensive Plan) are incorporated in the Proposed Plan. The Proposed Plan also does not explain how wildlife habitat and riparian area inventories (which appear not to exist currently) will be undertaken and implemented. The Proposed Plan does not comply with the requirements to have an up-to-date Goal 5 inventory. The County must provide for compliance with the Goal 5 inventory requirement in this Proposed Plan, and may not defer it to a future plan revision.

Part II of Chapter 5, covering “Scenic and Historic Resources,” suffers from the same deficiencies as the previous part of the Chapter. It again includes the subjective, meaningless preamble that historical and scenic sites and structures will be protected “as much as reasonable and appropriate,” guaranteeing that the single goal and policies that follow will not comply with Goal 5. All inventories, actions and programs are deferred to the future, merely “encourage[ing]” the completion of a Historic Sites Inventory (Policy 3) and identification of historic and scenic sites on public lands. Rather remarkably for a County which nominates several members of the Steens Mountain Advisory Committee and whose Chamber of Commerce website proudly proclaims it the “Gateway to the Steens!”, the Proposed Plan includes no provisions for inventory and protection of the scenic and historic resources on Steens Mountain. This again departs dramatically from the current acknowledged Comprehensive Plan and further illustrates the Proposed Plan’s failure to comply with the requirements of Goal 5.

### Chapter 13 – Energy Conservation

This Chapter is also inconsistent with Goal 13, which is intended to ensure that land use and development will “maximize the conservation of all forms of energy.” The Chapter as instead focuses on energy development. Additional information regarding energy conservation is needed to demonstrate compliance with Goal 13. To the extent that the current provisions address energy facility development and siting, they are currently vague and would not adequately insure that resource conflicts will be resolved with adequate consideration of natural resource protection.

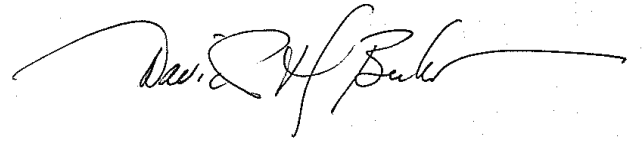
Non-compliance with ORS 197.610(3) and 197.610(4)

The Department of Land Conservation and Development (DLCD) has participated in the local proceeding, but there is no evidence that DLCD has provided the notification and report required by these section, or, if such information has been provided, the County has not made it available to the public in the same manner as the other documents related to the Proposed Plan on the Planning Department website.

Request to Present Additional Information and Continue Hearing/Leave Record Open for Further Evidence

ONDA & Audubon request that any written reports, comments, testimony or other evidence received at the August 19, 2009 hearing be posted on the Planning Department's website or otherwise made available to the parties and that the record be left open for any party to respond and present additional evidence for 14 days after the parties have been given access to that information. ONDA & Audubon also request that the hearing on the Proposed Plan be continued to allow the submission of additional evidence by any party and further consultation of the County Court with the DLCD to ensure compliance with the statewide planning goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Becker", with a long horizontal flourish extending to the right.

Dave Becker  
Staff Attorney  
**Oregon Natural Desert Association**  
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Portland, OR 97205  
Of Attorneys for ONDA and Audubon