

**PROPOSED REGULATION OF THE
SAGEBRUSH ECOSYSTEM COUNCIL**

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STATE OF NEVADA
Sagebrush Ecosystem Program

PROPOSED TEMPORARY REGULATION OF
THE SAGEBRUSH ECOSYSTEM COUNCIL

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AUTHORITY: Statutes of Nevada 2013, NRS 232.162 of Assembly Bill No. 461; Statutes of Nevada 2013, NRS 321.592 of Assembly Bill No. 461; Statutes of Nevada 2013, NRS 321.594 of Assembly Bill No. 461

A REGULATION to clarify NAC 232.480 with respect to verifier certification and decertification

Summary:

NRS 232.162 provides authority for the Sagebrush Ecosystem Council to adopt regulations specific to the management of sagebrush ecosystems and the establishment and oversight of a mitigation program to offset certain disturbances to Greater Sage-Grouse habitat. The Sagebrush Ecosystem Council is a governor-appointed council, established to create and carry out strategies for "the conservation of the Greater Sage-Grouse and sagebrush ecosystems in this State" as well as other strategies outlined in NRS 232.162. NRS 321.592 and NRS 321.594 provides authority for the Division of State Lands to adopt regulations for the oversight and administration of a program to mitigate damage to sagebrush ecosystems. NAC 232.480 provides authority for the Sagebrush Ecosystem Technical Team to train and certify verifiers for the Conservation Credit System. The proposed addition to NAC 232.480 will detail requirements for becoming a certified verifier and the decertification process.

CHAPTER 232 STATE DEPARTMENTS

SAGEBRUSH ECOSYSTEM COUNCIL: MITIGATION OF ADVERSE IMPACT TO GREATER SAGE-GROUSE AND HABITAT

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- 232.480** Training and certification of verifiers by Sagebrush Ecosystem Technical Team; maintenance of list of trained and certified verifiers.

SAGEBRUSH ECOSYSTEM COUNCIL: MITIGATION OF ADVERSE IMPACT TO GREATER SAGE-GROUSE AND HABITAT

NAC 232.400 Definitions. (NRS 232.162) As used in NAC 232.400 to 232.480, inclusive, unless the context otherwise requires, the words and terms defined in NAC 232.405 to 232.450, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.405 “Anthropogenic disturbance” defined. (NRS 232.162) “Anthropogenic disturbance” means any direct or indirect adverse impact to the greater sage-grouse or the habitat of the greater sage-grouse, as determined by the Sagebrush Ecosystem Council.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.410 “Credit” defined. (NRS 232.162) “Credit” means a unit of habitat conservation of the greater sage-grouse as quantified pursuant to the habitat quantification tool or other method approved by the Sagebrush Ecosystem Council.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.413 “De minimis impact” defined. (NRS 232.162) “De minimis impact” means an anthropogenic disturbance for which the adverse impact to the greater sage-grouse or the habitat of the greater sage-grouse has been determined by the Sagebrush Ecosystem Council to be minor or trivial.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.415 “Debit” defined. (NRS 232.162) “Debit” means a unit of loss or degradation of habitat of the greater sage-grouse caused by an anthropogenic disturbance as quantified pursuant to the habitat quantification tool.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.420 “Greater sage-grouse” defined. (NRS 232.162) “Greater sage-grouse” means the species of bird classified as *Centrocercus urophasianus*.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.423 “Habitat quantification tool” defined. (NRS 232.162) “Habitat quantification tool” means the science-based method of calculating debits and credits in the Nevada Conservation Credit System.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.430 “Mineral exploration” defined. (NRS 232.162) “Mineral exploration” means the exploration of gas, oil, coal and other gaseous, liquid and solid hydrocarbons, oil shale, cement material, sand, gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resources, precious metals, base metals and industrial minerals.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.433 “Nevada Conservation Credit System” defined. (NRS 232.162) “Nevada Conservation Credit System” means the system established by the Sagebrush Ecosystem Council pursuant to NRS 232.162 that calculates:

1. Debits that will be caused by a proposed activity or a project.
2. Credits that are created to protect, enhance or restore sagebrush ecosystems.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.438 “Program Manager” defined. (NRS 232.162) “Program Manager” means the program manager of the Sagebrush Ecosystem Technical Team.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.440 “Public lands” defined. (NRS 232.162) “Public lands” means all lands within the exterior boundaries of the State of Nevada except lands to which title is held by any private person, private entity or local government.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.445 “Sagebrush Ecosystem Council” defined. (NRS 232.162) “Sagebrush Ecosystem Council” means the Sagebrush Ecosystem Council created by NRS 232.162.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.447 “Sagebrush Ecosystem Technical Team” defined. (NRS 232.162) “Sagebrush Ecosystem Technical Team” means the interagency technical team created by the Governor pursuant to Executive Order No. 2012-19 to support the Sagebrush Ecosystem Council.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.450 “Verifier” defined. (NRS 232.162) “Verifier” means a person trained and certified by the Sagebrush Ecosystem Technical Team to use the habitat quantification tool for the purpose of calculating:

1. The debits related to an anthropogenic disturbance; and
2. The number of credits necessary to offset such debits

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.460 Applicability. (NRS 232.162)

1. Except as otherwise provided in this section and to the extent it is not prohibited by federal law, the provisions of NAC 232.400 to 232.480, inclusive, apply to any person or entity that proposes an activity or project on public lands subject to state or federal review, approval or authorization, that will cause an anthropogenic disturbance.

2. The provisions of NAC 232.400 to 232.480, inclusive, do not apply to:

- (a) A direct anthropogenic disturbance on private lands;
- (b) An activity or project which was approved by all relevant federal agencies and state agencies before December 7, 2018, so long as the activity or project maintains compliance with any condition or requirement for any such approval;
- (c) An activity or project using a mitigation agreement or framework agreement for greater sage-grouse signed by the United States Fish and Wildlife Service before December 7, 2018, and any amendments thereto;
- (d) A mineral exploration project which is limited to a surface disturbance of not more than 5 acres;
- (e) An activity or project that:
 - (1) Is necessary to protect public health or safety; or
 - (2) Will have a de minimis impact to greater sage-grouse and sagebrush ecosystems in this State; or
- (f) Any emergency activity or routine administrative activity that:
 - (1) Is performed by a federal agency, state agency, local government or utility for a public purpose;

and

- (2) Does not require any additional approval from the Federal Government or the State.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.470 Duties of person or entity proposing activity or project on public lands that will cause anthropogenic disturbance; submission of certain information to Sagebrush Ecosystem Technical Team; criteria for approval of mitigation plan by Council. (NRS 232.162)

1. Any person or entity that proposes an activity or a project on public lands, subject to state or federal review, approval or authorization, that will cause an anthropogenic disturbance shall:

(a) Submit to the Sagebrush Ecosystem Technical Team sufficient information for determining the adverse impact the proposed activity or project will have to the greater sage-grouse or the habitat of the greater sage-grouse, including, without limitation, geographic information system data files and work with the Sagebrush Ecosystem Technical Team to avoid and minimize such adverse impact to the greatest extent possible; and

(b) Have the direct and indirect impacts of the anthropogenic disturbance:

(1) Quantified by a verifier in terms of the number of debits that the activity or project will cause. Upon completion of his or her calculations, the verifier shall submit the calculations to the Program Manager. The Program Manager shall use the habitat quantification tool and available field data to conduct a quality assurance of the calculations of the verifier not later than 30 days after the verifier submits his or her final calculations to the Program Manager. If there is a difference between the calculations of debits by the verifier and Program Manager, the Program Manager will work with the verifier to finalize the calculation. If there is still a difference between the calculations of debits by the verifier and the Program Manager, the calculations of debits by the Program Manager apply to the activity or project; and

(2) Mitigated by:

(I) Acquiring from or transferring a sufficient number of credits in the Nevada Conservation Credit System to offset the number of debits determined pursuant to subparagraph (1); or

(II) Developing a mitigation plan with the Sagebrush Ecosystem Technical Team approved by the Sagebrush Ecosystem Council pursuant to subsection 2 that will generate enough credits to offset the direct and indirect adverse impacts the proposed activity or project will have to the greater sage-grouse or the habitat of the greater sage-grouse.

2. In determining whether to approve a mitigation plan, the Sagebrush Ecosystem Council must consider:

(a) The conservation actions that are included in the plan and the number of credits to be generated from such conservation actions;

(b) The location where the credits will be generated;

(c) The length of time necessary to generate the credits;

(d) The length of time the credits will be maintained;

(e) Whether the credit durability provisions of the plan include appropriate mechanisms to ensure that a sufficient number of credits will be maintained for the appropriate amount of time; and

(f) Whether the financial provisions ensure maintenance of the credits for the duration of the activity or project.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.475 Issuance of certification of mitigation by Program Manager; compliance with terms set forth in certification. (NRS 232.162)

1. Not later than 10 working days after completion of the process set forth in [NAC 232.470](#), the Program Manager must issue to the person or entity that is proposing the activity or project a certification of mitigation that sets forth:

(a) The number of credits that the person or entity will acquire from or transfer to the Nevada Conservation Credit System; or

(b) The mitigation plan approved by the Sagebrush Ecosystem Council pursuant to [NAC 232.470](#) that will mitigate the direct and indirect adverse impacts that the proposed activity or project will have to the greater sage-grouse or the habitat of the greater sage-grouse.

2. The person or entity to whom a certification of mitigation is issued must ensure compliance with the terms set forth in the certification of mitigation for the duration of the activity or project.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

NAC 232.480 Training and certification of verifiers by Sagebrush Ecosystem Technical Team; maintenance of list of trained and certified verifiers. (NRS 232.162) The Sagebrush Ecosystem Technical Team shall:

1. Train and certify persons to be verifiers; and
2. Maintain a list on the Internet website of the Sagebrush Ecosystem Program of all verifiers who have been so trained and certified for the current calendar year.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

3. *All verifiers must complete the following prior to being certified:*

- a. Field verifiers must have all of the following:*

- i. A Bachelor's degree in natural resource management, ecology, forestry, wildlife management, environmental science or equivalent work experience.*
- ii. At least two (2) years' experience with standard quantitative vegetative field data collection methods (i.e., line-intercept, Daubenmire plots, photo points).*
- iii. At least one (1) years' experience using GPS unit and software.*

- b. Preferred experience for Field verifiers: At least two (2) years' experience in Great Basin plant identification, familiarity and experience with plant identification in Northern Nevada.*

- c. Desktop verifiers must have all of the following:*

- i. A Bachelor's degree in GIS, natural resources management, ecology, forestry, wildlife management, environmental science, or equivalent work experience.*
- ii. At least two (2) years' experience using ESRI ArcGIS software to conduct advanced spatial analysis.*

- d. Preferred experience for Desktop verifiers: At least two (2) years' experience in Great Basin, familiarity and experience with geography and ecosystems of Northern Nevada*

- e. Must complete the State of Nevada's CCS Verification Training.*

- f. Must pass the State of Nevada's CCS Verification Training Exam.*

4. *Certifications shall be renewed annually through a refresher course and every five years through a full retraining and retesting.*

5. *The Program Manager may refuse to certify an applicant or, after examination, may refuse to certify an eligible person who:*

- a. Lacks any of the preliminary requirements established for the examination for the certificate for which the applicant or eligible person applies, or*

- b. Has practiced, or attempted to practice, any deception or fraud in the certificate or examination of the applicant or eligible person, or in securing the certification of the applicant or eligible person.*

6. *When the Program Manager refuses to examine an applicant or, after an examination, refuses to certify an eligible person, the applicant or eligible person may request the Program Manager to furnish to the applicant or eligible person a statement of the reasons for the refusal to examine or the refusal to certify, as the case may be. The Program Manager shall furnish the statement upon request.*

- a. If the Program Manager refuses to examine an applicant or, after an examination, refuses to certify an eligible person, the applicant or eligible person may make an appeal to the Finder of Fact. If the Finder of Fact finds that the Program Manager is in error in refusing to examine an applicant or in refusing to certify an eligible person, the Finder of Fact shall order the Program Manager to examine or certify, and the Program Manager shall comply.*

7. *Should there be evidence enough to consider a verifier, certified through Nevada Administrative Code (NAC) 232.400-232.480, a risk to the integrity or workload of the Sagebrush Ecosystem Program, the disciplinary process shall be implemented.*
 - a. *The disciplinary process shall not be implemented, or used as retribution, in response to questions, comments, or constructive criticism of the Sagebrush Ecosystem program provided by certified Verifiers.*
8. *Causes for disciplinary action are as follows:*
 - a. *Activity which is incompatible with a verifier's conditions of certification, or which violates a state or federal provision,*
 - b. *Disgraceful or discourteous treatment of the public, staff, or other Verifiers,*
 - c. *Incompetence, inefficiency, or inexcusable neglect of duty that creates an undue burden on the Sagebrush Ecosystem Program,*
 - d. *Deception or fraud related to the Sagebrush Ecosystem Program, its Proponents, or the public,*
 - e. *Abuse, damage to or waste of public equipment, property, or supplies because of inexcusable negligence or willful acts,*
 - f. *Conviction of any criminal act involving moral turpitude, or documentation of acts of violence that arise out of or during the performance of the Verifier's duties,*
 - g. *Repeated violations of any written rule of the Sagebrush Ecosystem Program, or*
 - h. *Failure to participate in any investigation in which the Verifier is the subject of alleged discrimination, sexual harassment, or any other investigation authorized by the Sagebrush Ecosystem Program.*
9. *Should the Program Manager become aware of any action of a Verifier listed above, the Program Manager will issue a verbal warning to the Verifier that details the cause for disciplinary action and required improvement.*
 - a. *The verbal warning will be documented by the Sagebrush Ecosystem Program via written, electronic, or paper means, and a copy of such documentation will be supplied to the Verifier.*
 - b. *This step may be done multiple times for various causes for disciplinary actions.*
 - c. *Should the Verifier contest any allegations brought forth against them, they are able to request a meeting with the Finder of Fact to contest the step in the decertification process within 30 days of the receipt of the verbal warning.*
10. *If the verbal warning does not cause a correction of the action, various offenses cumulatively add up to a more concerning issue, or a more severe initial action is warranted, a written warning must be sent to the Verifier's last known mailing address by means of a delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received.*
 - a. *The warning must outline the concerns and give the Verifier a timeline to show improvement.*
 - b. *If the notice is returned without having been received by the Verifier, the Verifier's date of receipt shall be deemed to be the third day after the date the notice was sent.*
 - c. *Should the Verifier contest any allegations brought forth against them, they are able to request a meeting with the Finder of Fact to contest the step in the decertification process within 30 days of the receipt of the written warning.*

11. *If the proper corrective action is not completed within the timeframe set above, the Verifier will be notified of suspension of their certification, with the possibility of a full decertification, and a disciplinary hearing will be set with the Deputy Director of DCNR as the Finder of Fact pursuant to NRS 233B.121-150, or if the Verifier so requests, the Finder of Fact may be changed to the Sagebrush Ecosystem Council (SEC), and the hearing can be held at the next public SEC meeting, or if the SEC chooses, a special meeting, but in all circumstances in compliance with the open meeting laws.*
 - a. *The Verifier must be given at least 10 working days' notice of the hearing by means of a delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received.*
 - b. *The notice must include all of the following:*
 - i. *A statement of the time, place, and nature of the hearing.*
 - ii. *A statement of the legal authority and jurisdiction under which the hearing is to be held.*
 - iii. *A reference to the particular sections of the statutes and regulations involved.*
 - iv. *A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.*
 - c. *If the notice is returned without having been received by the Verifier, the Verifier's date of receipt shall be deemed to be the third day after the date the notice was sent.*
 - d. *The written notice must inform the Verifier that a disciplinary hearing has been scheduled on his or her behalf and specify the date, time, and place of the hearing.*
 - e. *If the Program Manager and the Verifier agree, the date of the disciplinary hearing may be changed.*
 - f. *If the Verifier does not understand the reasons for the suspension or decertification or the procedures related to disciplinary actions, the Verifier may seek an explanation from the Sagebrush Ecosystem Program or another person in the agency familiar with the procedure.*
 - g. *The Verifier may waive the right to a disciplinary hearing in writing. If so, the date of decertification is effective immediately.*
 - h. *The Finder of Fact makes the final decision at the hearing, and a copy of the final decision will be provided in writing by means of a delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received to the Verifier and, if applicable, the effective date of decertification.*
12. *The procedures specified above need not be followed before temporarily suspending the certification of a Verifier if the circumstances give the Sagebrush Ecosystem Program a reasonable cause to believe that the continued involvement of the Verifier poses a threat to life, limb, or property, or immediate and irreparable harm to the interests of the State.*
 - a. *Immediately following temporary suspension, the disciplinary process outlined in section 11 will be initiated.*
13. *The Program Manager may reinstate a former Verifier following his or her decertification from the Sagebrush Ecosystem Program after a period of up to 5 years, so long as the subject Verifier formally reapplies and abides by all the requirements for Verifier certification. Additionally, the Verifier needs to have completed and/or finished any requirements that the Finder of Fact from*

the decertification hearing required of the Verifier in fact-finder's written findings before the Verifier may apply for recertification.

- a. A person re-earning Verifier certification will be subject to a 5-year probationary period in which any disciplinary action will immediately initiate the Decertification Process with a written warning.*