

**REVISED PROPOSED REGULATION OF
THE SAGEBRUSH ECOSYSTEM COUNCIL**

LCB File No. R024-19

August 26, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-17, NRS 232.162.

A REGULATION relating to the greater sage-grouse; setting forth certain requirements related to the maintenance of sagebrush ecosystems and the conservation of the greater sage-grouse; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law creates the Sagebrush Ecosystem Council within the State Department of Conservation and Natural Resources and requires the Council to establish a program to mitigate damage to sagebrush ecosystems in this State by authorizing a system that awards credits to persons, federal and state agencies, local governments and nonprofit organizations to protect, enhance or restore sagebrush ecosystems. (NRS 232.162) On December 7, 2018, Governor Sandoval issued Executive Order 2018-32 which requires the Council to adopt regulations requiring compliance with the credit system.

Sections 14 and 15 of this regulation require, with limited exception, a person or entity that proposes an activity or project that will cause an adverse impact on the greater sage-grouse or habitat of the greater sage-grouse to: (1) submit to the Sagebrush Ecosystem Technical Team certain information about the proposed activity or project; and (2) have a verifier quantify such impact in the form of debits. Once the impact on the greater sage-grouse or habitat of the greater sage-grouse is quantified and approved by the Program Manager of the Team, the person or entity is required to mitigate the adverse impact on the greater sage-grouse or habitat of the greater sage-grouse by: (1) acquiring from or creating a sufficient number of credits in the Nevada Conservation Credit System established by the Council to offset the number of debits; or (2) developing a mitigation plan that will generate enough credits to offset the debits. **Section 15** requires that any such mitigation plan be approved by the Sagebrush Ecosystem Council and sets forth certain criteria that the Council must consider in determining whether to approve the mitigation plan.

Section 16 of this regulation requires, under certain circumstances, that the Program Manager of the Sagebrush Ecosystem Technical Team issue to the person or entity that is proposing the activity or project a certificate of mitigation that sets forth: (1) the number of credits that the person or entity will acquire from or create in the Nevada Conservation Credit System; or (2) the mitigation plan approved by the Council. **Section 16** also requires the person

or entity to whom such a certificate is issued to ensure compliance with the terms set forth in the certificate for the duration of the activity or project.

Section 17 of this regulation requires the Sagebrush Ecosystem Technical Team to: (1) train and certify persons to be verifiers; and (2) maintain a list on the Internet website of the Sagebrush Ecosystem Program of all such verifiers.

Sections 3-13 of this regulation define various terms related to the Nevada Conservation Credit System.

Section 1. Chapter 232 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 13, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Anthropogenic disturbance” means any direct or indirect adverse impact on the greater sage-grouse or the habitat of the greater sage-grouse, as determined by the Sagebrush Ecosystem Council.*

Sec. 4. *“Credit” means a unit of habitat conservation of the greater sage-grouse as quantified pursuant to the habitat quantification tool.*

Sec. 5. *“De minimis impact” means an anthropogenic disturbance for which the adverse impact on 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.*

Sec. 6. *“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.*

Sec. 7. *“Greater sage-grouse” means the species of bird classified as Centrocercus urophasianus.*

Sec. 8. *“Habitat quantification tool” means the science-based method of calculating debits and credits in the Nevada Conservation Credit System.*

Sec. 9. *“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 by persons, federal and state agencies, local governments and nonprofit organizations to protect, enhance or restore sagebrush ecosystems.*

Sec. 10. *“Program Manager” means the program manager of the Sagebrush Ecosystem Technical Team.*

Sec. 11. *“Sagebrush Ecosystem Council” means the Sagebrush Ecosystem Council created by NRS 232.162.*

Sec. 12. *“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.*

Sec. 13. *“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.*

Sec. 14. *1. Except as otherwise provided in this section and to the extent it is not prohibited by federal law:*

(a) The provisions of sections 2 to 17, inclusive, of this regulation apply to any person or entity that proposes an activity or project that will cause an anthropogenic disturbance.

(b) No permit or other final approval for a project or activity that will cause an anthropogenic disturbance is effective unless the proponent of the project or activity has complied with the provisions of sections 2 to 17, inclusive, of this regulation.

2. The provisions of sections 2 to 17, inclusive, of this regulation 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, state agencies and local governments 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 with a mitigation agreement or framework agreement for greater sage-grouse signed by the United States Fish and Wildlife Service before December 7, 2018;

(d) A mineral exploration project which is limited to a surface disturbance of not more than 5 acres; or

(e) An activity or project that the Sagebrush Ecosystem Council determines:

(1) Is necessary to protect public health or safety; or

(2) Will have a de minimis impact on greater sage-grouse and sagebrush ecosystems in this State.

Sec. 15. 1. Any person or entity that proposes an activity or a project 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 on the greater sage-grouse or the habitat of the greater sage-grouse, including, without limitation, geographic information system data files; 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 by the verifier and Program Manager, the calculations of debits by the Program Manager apply to the activity or project; and

(2) Mitigated by:

(I) Acquiring from or creating 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 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 on 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.

Sec. 16. 1. *Upon completion of the process set forth in section 15 of this regulation, 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 create in the Nevada Conservation Credit System; or

(b) The mitigation plan approved by the Sagebrush Ecosystem Council pursuant to section 15 of this regulation that will mitigate the direct and indirect adverse impacts that the proposed activity or project will have on 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.

Sec. 17. *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.*