

**PROPOSED REGULATION OF THE
BOARD OF WILDLIFE COMMISSIONERS**

LCB File No. R030-06

May 4, 2006

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

AUTHORITY: §§1-7, NRS 501.105, 501.181, 502.145 and 502.160.

A REGULATION relating to wildlife; revising various provisions relating to damage compensation tags; authorizing the owner or a person authorized by the owner of private land to obtain damage compensation tags; revising the requirements concerning applications and cooperative agreements for damage compensation tags; revising the period for which a damage compensation tag is valid; and providing other matters properly relating thereto.

Section 1. NAC 502.424 is hereby amended to read as follows:

502.424 As used in NAC 502.424 to 502.4268, inclusive, unless the context otherwise requires:

1. “Damage” means a change, caused by deer or antelope, in the quality or quantity of private property that, at the time the Department inspects the private property, is planted, irrigated or otherwise cultivated to produce a harvestable crop.
2. “Damage compensation tag” means a special deer or antelope tag issued to an owner applicant for his own use , or for use by a hunter designated by him , as compensation for damage to his land or to improvements on his land which is caused by deer or antelope.
3. “Owner applicant” means ~~[the owner, lessee or manager]~~ :

(a) *The owner of private land ~~claiming~~, as identified in the deed of the private land which is recorded with the county recorder of the county in which the property is located, who claims that his private land was damaged by deer or antelope ~~;~~; or*

(b) *A person who has obtained written authorization from the owner described in paragraph (a) to represent the owner regarding matters concerning damage compensation tags before the Department, including, without limitation, a lessee or manager of the private land.*

Sec. 2. NAC 502.4246 is hereby amended to read as follows:

502.4246 **1.** To be eligible for the issuance of a damage compensation tag, an owner applicant must:

~~1.~~ (a) Have sustained damage to his private property caused by deer or antelope;

~~2.—Notify~~

(b) *In accordance with the requirements set forth in NAC 502.4252, notify the Department ~~in writing~~ of any damage within 10 days after he discovers it;*

~~3.~~ (c) *Enter into a cooperative agreement with the Department which complies with the requirements set forth in NAC 502.4248;*

(d) Submit an application ~~and~~ *for a damage compensation tag which includes, without limitation:*

(1) *A form which sets forth any proof of the damage ~~form~~;*

~~4.~~ *claimed by the owner applicant;*

(2) *A map which identifies the location on the private land at which the owner applicant will provide access to public land, if applicable; and*

(3) The cooperative agreement entered into with the Department which is signed by the owner applicant and the Department;

(e) Cooperate with the Department in inspecting the damage and formulating a plan to prevent or mitigate the damage;

~~[5. Keep the Department advised if the damage is ongoing or if the damage ceases;~~

~~—6.]~~

(f) Mitigate damages where possible and not feed or bait deer or antelope to attract the animals onto his land; *and*

~~[7. Enter into a cooperative agreement with the Department; and~~

~~—8.]~~ (g) Comply with the requirements of NAC 502.424 to 502.4268, inclusive.

2. A separate application must be made, and a separate cooperative agreement must be entered into, for each request for one or more damage compensation tags made with regard to each separate location on the property of the owner applicant at which damage was sustained.

Sec. 3. NAC 502.4248 is hereby amended to read as follows:

502.4248 1. ~~[To be eligible for the issuance of a damage compensation tag, an owner applicant must enter into a cooperative agreement with the Department.~~

~~—2.—The]~~ A cooperative agreement *entered into pursuant to NAC 502.4246* must [:

~~—(a) Specify, in writing and on a map provided by the Department, the private land designated by the owner applicant as being open to hunting using the damage compensation tag.~~

~~—(b) Provide that, if]~~ *provide that:*

(a) *If* the owner applicant's private land is adjacent to public land for which access is not available except through the private land, the owner applicant shall provide access to the public land during the hunting season to a person or hunting party with a tag for the purpose of hunting

on the public land. The access may be at a specified location or locations as mutually agreed upon by the owner applicant and the Department and must be identified on the map provided by the Department ~~};~~

~~—(c) Provide that~~ *which is required to be submitted with the application for a damage compensation tag pursuant to subparagraph (2) of paragraph (d) of subsection 1 of NAC 502.4246.*

(b) When the Department receives a notice from the owner applicant, the Department agrees to ~~};~~

~~—(1) Act expeditiously when it receives an application for a damage compensation tag;~~

~~—(2) Assess the cause of the problem, consult~~ *act expeditiously to:*

(1) Consult with the owner applicant ;

(2) Assess the cause of damage;

(3) Conduct a count of any depredating animals; and ~~recommend~~

(4) Recommend a course of action to ~~the owner applicant;~~

~~—(3) Compensate the owner applicant for damage by providing one damage compensation tag for each 50 deer or 50 antelope causing damage on private land if a preponderance of the evidence, as determined by the Department, proves that the loss was caused by the deer or antelope; and~~

~~—(4) Allow the user of a damage compensation tag to hunt in the unit or units within the management area or areas in which the owner applicant's damaged property is located.~~

~~—(d) Provide that the~~ *mitigate damages.*

(c) The owner applicant agrees to:

(1) Consult with the Department and consider its technical advice; *and*

(2) Allow a representative of the Department to enter his property at times mutually agreed upon to:

(I) ~~[Remove deer or antelope; and]~~ *Inspect the property;*

(II) *Assess the cause of damage;*

(III) *Count the number of any depredating animals; and*

(IV) Prevent further damage by any method the Department deems to be necessary, including, but not limited to, hazing, hunting, shooting and scaring . ~~;~~

~~—(3) Allow a hunter who has purchased a damage compensation tag that was issued to the owner applicant to hunt on the owner applicant's property as designated on the map which is provided by the Department and attached to the cooperative agreement; and~~

~~—(4) Give such a hunter written authorization to hunt on the designated property and provide him with a map thereof when a damage compensation tag is sold to him.~~

~~—3.]~~ **2.** If the owner applicant stops or attempts to stop any hunter holding a tag from entering or crossing his private land *in violation of paragraph (a) of subsection 1* before the expiration of the agreement, the Department ~~[will]~~ **must** refuse to issue any damage compensation tags to the owner *applicant* for 1 year.

Sec. 4. NAC 502.4252 is hereby amended to read as follows:

502.4252 1. ~~[The owner applicant has the burden of proving the damage claimed. The Department shall provide a form to be used by an owner applicant in proving the damage. The owner applicant must complete and submit the proof of damage form to the Department within 30 days after he files his notice of damage.~~

~~—2.—~~ The proof of damage form must include the following information:

~~—(a) The condition the property was in before the damage occurred;~~

~~—(b) The amount and type of property damaged;~~
~~—(c) The number of deer or antelope that caused the damage;~~
~~—(d) The number of damage compensation tags being requested; and~~
~~—(e) The results of any investigation performed by an investigator of the Department.~~
~~—3. A separate application must be made, and a separate cooperative agreement must be entered into, for each request for one or more damage compensation tags made with regard to each separate location on the owner applicant's property at which damage was sustained.] A notice of damage submitted to the Department pursuant to paragraph (b) of subsection 1 of NAC 502.4246 must include, without limitation, the following information:~~

(a) The name and any contact information of the owner applicant;
(b) The location of the private land and any name or other description of the private land;
(c) The date on which the damage was discovered; and
(d) A description of the damage caused to the private land, including, without limitation, the estimated number of animals, as designated by each species of animal, that caused the damage.

2. Within 10 days after the Department receives a notice of damage, the Department shall inspect the property claimed to have been damaged.

3. After the inspection by the Department pursuant to subsection 2:

(a) The Department shall:
(1) Consult with the owner applicant;
(2) Assess the cause of damage; and
(3) Conduct a count of the number of any depredating animals during the period of the day in which each species of any depredating animal is the most active.

(b) The Department and the owner applicant shall complete a form provided by the Department which sets forth any proof of damage.

Sec. 5. NAC 502.4258 is hereby amended to read as follows:

502.4258 1. ~~Within 10 days after the Department receives a notice of damage, a representative of the Department and the owner applicant shall inspect the property claimed to have been damaged.~~

~~2. After the~~ *After* property *that is claimed to have been damaged* is inspected ~~and~~ *pursuant to NAC 502.4252*, the Department and the owner applicant shall formulate a plan, if possible, to prevent or mitigate damage caused by the deer or antelope, including, but not limited to:

- (a) Hazing and scaring;
- (b) Erecting exclusionary devices;
- (c) Issuing special depredation or emergency depredation hunt tags; or
- (d) Removing the animals that are causing the damage.

2. Each owner applicant shall implement the plan formulated pursuant to subsection 1, where possible, by exercising reasonable care and diligence to minimize or lessen damage.

Sec. 6. NAC 502.426 is hereby amended to read as follows:

502.426 1. If ~~the Department approves the application for a damage compensation tag, and~~ the owner applicant enters into a cooperative agreement with the Department ~~and~~ *the Department approves the application for a damage compensation tag*, the owner applicant is eligible for the issuance of one or more damage compensation tags pursuant to subsection 2.

2. An owner applicant is eligible for the issuance of:

- (a) One damage compensation tag for deer for each 50 deer that caused damage to his property; and

(b) One damage compensation tag for antelope for each 50 antelope that caused damage to his property.

3. *If the Department issues a damage compensation tag, the tag is valid for use in the calendar year after the calendar year in which the application was submitted.*

4. *The unit or units within a management area or areas for which the Department issues a damage compensation tag must be limited to the unit or units within the management area or areas in which the damaged property is located.*

5. The Department shall indicate on each damage compensation tag it issues:

(a) The period or periods *during the calendar year* for which the tag is valid, which must be limited to the hunting season or seasons, other than a hunting season for a tag issued pursuant to subsection 5 of NRS 502.250, established by the Commission for antlered mule deer or antelope with horns longer than their ears, as appropriate for the species to which the tag applies, in the unit or units within the management area or areas *in which the damaged property is located and* for which the tag is valid; and

(b) The unit or units within the management area or areas *in which the damaged property is located and* for which the tag is valid . ~~[, which must be limited to the unit or units within the management area or areas in which the damaged property is located.~~

~~—4.— A damage compensation tag may be used for each type of hunt, as based upon the type of weapon authorized to be used, established by the Commission for antlered mule deer or antelope with horns longer than their ears in the unit or units within the management area or areas for which the tag is valid.]~~

6. A person possessing a valid damage compensation tag may hunt only:

(a) During the period or periods indicated by the Department on the tag ~~§~~, *as established by the Commission;*

(b) With the type of weapon designated for the type of hunt to which each such period applies ~~§~~, *as established by the Commission;* and

(c) In the unit or units within the management area or areas ~~indicated by the Department on~~ *established by the Commission:*

(1) In which the damaged property is located; and

(2) For which the tag ~~§~~ is valid.

7. Damage compensation tags will only be issued to owner applicants and sold to hunters through the headquarters of the Department.

~~6.~~ 8. The fee charged for a damage compensation tag will include:

(a) A fee of \$50 for each such tag;

(b) A license fee based on the status of the hunter as a resident or nonresident; and

(c) The fee specified in NAC 502.331 for acting upon each application for a tag.

~~7.~~ 9. If the Department provides a refund for a cancelled tag under the conditions set forth in NAC 502.422, the Department may reissue an application for a damage compensation tag to the owner applicant.

~~8.~~ 10. If the Department denies an application for a damage compensation tag, the owner applicant may appeal the decision to the Commission within 10 days after the Department notifies the owner applicant of the decision. A request for an appeal pursuant to this subsection must be submitted in writing to the Secretary of the Commission. As soon as practicable after receiving such a request, the Chairman of the Commission will appoint a panel consisting of not

less than two members of the Commission to consider the appeal. The panel shall notify the Commission in writing of its determination. If the panel is unable to make a determination, the Commission will appoint another panel to consider the appeal in accordance with this subsection. The determination of a panel appointed pursuant to this subsection is a final decision for the purposes of judicial review.

Sec. 7. NAC 502.4266 is hereby amended to read as follows:

502.4266 1. If the damage to an owner applicant's property is ongoing and the number of deer or antelope causing the damage is increasing, the owner applicant may amend the proof of damage form which he filed with the Department *pursuant to subparagraph (1) of paragraph (d) of subsection 1 of NAC 502.4246* to increase the number of damage compensation tags being requested.

2. If the owner applicant's request for additional damage compensation tags is approved by the Department, the owner applicant is entitled to one or more additional damage compensation tags in accordance with the provisions of NAC 502.426.

Sec. 8. NAC 502.4254, 502.4256 and 502.4264 are hereby repealed.

TEXT OF REPEALED SECTIONS

502.4254 Notification regarding damage; mitigation of damage. (NRS 501.105, 501.181, 502.145, 502.160)

1. If the damage is ongoing, the owner applicant shall keep the Department advised of the nature, status and extent of the damage.

2. The owner applicant shall notify the Department in writing not later than 30 days after the damage ceases. The notice must include the following information:

- (a) The total extent of the damage; and
- (b) Dates when the damage began and ended.

3. Each owner applicant shall mitigate damages where possible, by exercising reasonable care and diligence to avoid the loss or to minimize or lessen damage.

4. The burden of proving a failure to mitigate damages rests with the Department.

502.4256 Notice of damage: Contents; acceptance of late filing. (NRS 501.105, 501.181, 502.145, 502.160)

1. The notice of damage must include:

- (a) The date on which the damage was discovered;
- (b) The date or dates on which the damage occurred or an estimate of those dates;
- (c) The estimated number of deer or antelope that caused the damage;
- (d) A description of the damage; and
- (e) The location of the damage.

2. The Department will accept a notice of damage that is filed more than 10 days after the owner applicant discovers the damage if:

(a) The owner applicant gave verbal notice of the damage to the Department within the 10 days; and

(b) The owner applicant shows that his failure to file written notice of the damage within the 10 days was:

- (1) For good cause;
- (2) Not caused by his lack of diligence; or
- (3) Caused by the Department.

502.4264 Issuance of tags for subsequent hunting season. (NRS 501.105, 501.181, 502.145, 502.160) If damage to an owner applicant's land in any year occurs after August 1 for antelope, or October 1 for deer, the Department may, upon request, issue damage compensation tags to the owner applicant for use in the following year.