

JOE LOMBARDO
Governor



Sagebrush Ecosystem Program

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STATE OF NEVADA
Sagebrush Ecosystem Program

Notice of Public Workshop to Review Regulation
NAC 232.400-232.480

Thursday, March 2, 2023 – 8:30 a.m.

Nevada Department of Wildlife
6980 Sierra Center Pkwy #120
Reno, NV 89511

Virtual Access

Join Microsoft Teams on your computer, mobile app or room device

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Meeting ID: 255 313 951 397

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[+1 775-321-6111](tel:+17753216111), 280950364# United States, Reno

Phone Conference ID: 280 950 364#

The Sagebrush Ecosystem Program (SEP) under the Sagebrush Ecosystem Council will be holding a public workshop to solicit comments for the following regulation. The purpose of the workshop is to undertake a comprehensive review of the regulation subject to the Program's enforcement, as per Executive Order 2023-003. The Program is seeking comments on how the regulation can be streamlined, clarified, reduced, or otherwise improved to ensure the regulation provides for the general welfare of the State without unnecessarily inhibiting economic growth. Persons wishing to provide comment on the review of NAC 232.400 – 232.480 may appear at the scheduled public workshop or may send their comments, data, views, or arguments in written form to: Sagebrush Ecosystem Program, 201 S. Roop Street, Suite 101, Carson City, NV 89701 or by email to Kathleen Petter at kpetter@sagebrushheco.nv.gov.

Written submissions must be received on or before March 17, 2023.

Nevada Revised Statutes §232.162 (6)(a) provides authority for the Sagebrush Ecosystem Council to adopt regulations specific to the management of sagebrush ecosystem and the establishment and oversight of a mitigation program.

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1. OPEN WORKSHOP, INTRODUCTION

2. PUBLIC COMMENT

Persons making comment will be asked to begin by stating their name for the record. All public comments should be as brief and concise as possible so that all who wish to speak may do so (3 minutes for individuals and 5 minutes for group representatives). **Comment will not be restricted based on viewpoint.**

**3. REVIEW OF REGULATION NAC 232.400-232.480 –
PUBLIC COMMENT ALLOWED**

NRS 232.162 provides authority for the Sagebrush Ecosystem Council to adopt regulations specific to the management of sagebrush ecosystem and the establishment and oversight of a mitigation program. 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.

The purpose of the workshop is to undertake a comprehensive review of the regulations subject to the Program's enforcement, as per Executive Order 2023-003.

4. PUBLIC COMMENT

Persons making comment will be asked to begin by stating their name for the record. All public comments should be as brief and concise as possible so that all who wish to speak may do so (3 minutes for individuals and 5 minutes for group representatives). Comment will not be restricted based on viewpoint.

5. CLOSE OF WORKSHOP

6. ADJOURNMENT – *FOR POSSIBLE ACTION*

NOTICE: Items on this agenda may be taken in a different order than listed.

A copy of this Notice and the Regulations to be adopted, amended, or repealed will be on file at the State Library, 100 North Stewart Street, Carson City, Nevada, or at the Sagebrush Ecosystem Program at 201 S. Roop Street, Suite 101, Carson City, NV 89701 for inspection by members of the public during business hours. In all counties in which an office of the agency is not maintained, the proposed regulation may be reviewed and copied at the main public library, during business hours.

Please contact Kelly McGowan at 201 S. Roop Street, Suite 101, Carson City, NV 89701; or by calling 775-687-2000; or email kmcgowan@sagebrusheco.nv.gov, to obtain support material before or after the meeting. Materials will also be posted on the sagebrusheco.nv.gov website. The agency's small business impact statement is attached.

We are pleased to make reasonable accommodations for individuals with disabilities who wish to attend the meeting. If special accommodations or assistance at the meeting are requested, please notify our office by writing to the Sagebrush Ecosystem Program, 201 S. Roop Street, Suite 101, Carson City, NV 89701; or by calling 775-687-2000 no later than two (2) working days prior to the scheduled meeting. You can also email Kathleen Petter at kpetter@sagebrusheco.nv.gov.

Notice of this meeting was sent to all persons on the agency's mailing list and posted at the following locations:

Department of Conservation and Natural Resources, 901 S. Stewart Street, Carson City, Nevada

Nevada State Library and Archives, 100 S. Stewart Street, Carson City

Department of Wildlife, 6980 Sierra Pkwy #120, Reno, NV (Location of Meeting)

Sagebrush Ecosystem Program, 201 S. Roop Street, Carson City, Nevada

Department of Agriculture, 405 South 21st Street, Sparks, Nevada

Department of Wildlife, 1100 Valley Road, Reno, Nevada

Capitol Building, 101 North Carson Street, Carson City, Nevada

Legislative Building, 401 South Carson Street, Carson City, Nevada

Notice of this meeting was also posted on the Sagebrush Ecosystem Program website at: sagebrusheco.nv.gov, the Nevada Public Notices Website at notice.nv.gov, and the Nevada State Legislature Website at leg.state.nv.us.



STATE OF NEVADA
Sagebrush Ecosystem Program

CHAPTER 232 STATE DEPARTMENTS

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

NAC 232.400-232.480

March 2020

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 mitigate certain activities that impact lands identified as Greater Sage-Grouse Habitat.

<u>232.400</u>	Definitions.
<u>232.405</u>	“Anthropogenic disturbance” defined.
<u>232.410</u>	“Credit” defined.
<u>232.413</u>	“De minimis impact” defined.
<u>232.415</u>	“Debit” defined.
<u>232.420</u>	“Greater sage-grouse” defined.
<u>232.423</u>	“Habitat quantification tool” defined.
<u>232.430</u>	“Mineral exploration” defined.
<u>232.433</u>	“Nevada Conservation Credit System” defined.
<u>232.438</u>	“Program Manager” defined.
<u>232.440</u>	“Public lands” defined.
<u>232.445</u>	“Sagebrush Ecosystem Council” defined.
<u>232.447</u>	“Sagebrush Ecosystem Technical Team” defined.
<u>232.450</u>	“Verifier” defined.
<u>232.460</u>	Applicability.
<u>232.470</u>	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.
<u>232.475</u>	Issuance of certification of mitigation by Program Manager; compliance with terms set forth in certification.
<u>232.480</u>	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)