

BRIAN SANDOVAL
Governor



Sagebrush Ecosystem Program

201 Roop Street, Suite 101
Carson City, Nevada 89701
Telephone (775) 684-8600
Facsimile (775) 684-8604

www.sagebrusheco.nv.gov

**STATE OF NEVADA
Sagebrush Ecosystem Program**

**Notice of Workshop to Solicit Public Comment on Proposed
Mitigation Regulations**

Tuesday, December 11, 2018 – 8:30 a.m.

**Capitol Building, Guinn Room
101 N. Carson St.
Carson City, NV 89701**

The Sagebrush Ecosystem Program (SEP) under the Sagebrush Ecosystem Council will be holding a workshop to solicit comments from interested person on the following general topics that may be addressed in the proposed regulations:

- *Mitigation requirements for certain land uses or activities located in Greater Sage-grouse habitat that are subject to state agency review, approval, or authorization, and that result in anthropogenic disturbances, as defined in the Nevada Greater Sage-grouse Conservation Plan, must avoid, minimize, and mitigate, as necessary.*
- *Any mitigation processes must use:*
 - *The Nevada Conservation Credit System,*
 - *An approved existing Mitigation Program, or*
 - *Some combination therein*
- *Any mitigation on private lands is deemed voluntary and not subject to these regulations.*
- *Any mitigation for notice-level exploration is deemed voluntary and not subject to these regulations.*

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. NRS §321.594 provides authority for Division of State Lands to adopt any regulations necessary to oversee and administer a program to mitigate damage to sagebrush ecosystems.

There will be a telephonic connection available to anyone wishing to attend the meeting. Please call [877.411.9748](tel:877.411.9748), and then enter code [3474617](tel:3474617) to participate.

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 775-684-8600 no later than two (2) working days prior to the scheduled meeting. You can also email Kathleen Petter at kpetter@sagebrusheco.nv.gov

Please contact Kelly McGowan at 201 S. Roop Street, Suite 101, Carson City, NV 89701; or by calling 775-684-8600; or email kmcgowan@sagebrusheco.nv.gov, to obtain support material for the agenda. Materials will also be posted on the <http://sagebrusheco.nv.gov> website. The agency's small business impact statement is attached.

Notice of this meeting was sent to all person on the agency's mailing list and posted in the following location:
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
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: <http://sagebrusheco.nv.gov>, the Nevada Public Notices Website at <http://notice.nv.gov/>, and the Nevada State Legislature Website at <https://www.leg.state.nv.us/>.

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101 N. Carson St.
Carson City, NV 89701**

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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. PRESENTATIONS AND DISCUSSION OF PROPOSED REGULATION

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. 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.

The purpose of the proposed regulation is to clarify requirements to mitigate certain anthropogenic disturbance in greater sage grouse habitat.

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.

Any individual or organization not able to attend may submit comments in writing to kpetter@sagebrusheco.nv.gov until close of business on 12/21/18.

5. CLOSE OF WORKSHOP

6. ADJOURNMENT

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

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FORM 1: FORM FOR ADOPTION, FILING AMENDMENTS OR REPEAL OF COMMISSION REGULATIONS
(Provide attachments as needed)

1. Name, address, telephone number, and signature:

Name: Kelly McGowan

Address: 201 S. Roop St. Ste. 101, Carson City, NV 89701

E-mail Address: kmcgowan@sagebrusheco.nv.gov

Telephone Number: 775.684.8600

Date of Petition: 11/20/2018

Representative capacity and signature of petitioner, authorized individual, officer or attorney:

 11/21/18

2. Specific type of petitioner (individual, partnership, corporation, government agency, or other) and the exact occupation or business, including a description of the occupation or business if necessary:

Government Agency - Sagebrush Ecosystem Council/Division of State Lands -

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. 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.

3. Exact and specific nature of changes sought, including delineation of the regulations, statutory provisions of Commission decisions involved. May include a statement of the written term or substance of the proposed regulatory action, or a description of the subjects and issues involved:

Section 1. Mitigation requirements for certain land uses or activities located in Greater Sage-grouse habitat that are subject to state agency review, approval, or authorization, and that result in anthropogenic disturbances, as defined in the Nevada Greater Sage-grouse Conservation Plan, must avoid, minimize, and mitigate, as necessary.

Sec. 2. Any mitigation processes must use:

1. The Conservation Credit System,
2. An approved existing Mitigation Program, or
3. Some combination therein

Sec. 3. Any mitigation on private lands is deemed voluntary and not subject to these regulations.

Sec. 4. Any mitigation for notice-level exploration is deemed voluntary and not subject to these regulations.

4. A statement of the need for and purpose of the proposed regulations:

In 2015, the US Fish and Wildlife Service determined to not list the greater sage grouse as "endangered", with stipulations. This determination was based, in part, that there were regulatory assurances in place to stem the decline of habitat loss. In order to help stem this loss, the Sagebrush Ecosystem Program created a mitigation system, which still allows for mining, oil, gas, electric, and other actions that cause a disturbance, but offsets certain impacts through on or off-site mitigation. The proposed regulations specify that mitigation would be a requirement, in order to help prevent key habitat loss for the greater sage grouse, thus preventing a listing under the Endangered Species Act, which would cost millions of dollars in economic losses across the range.

5. A statement of the:

(a) Estimated economic effect of the regulation on the business which it is to regulate:

The proposed regulations will clarify and require mitigation for certain disturbances in Greater Sage-grouse habitat. The majority of Greater Sage-grouse habitat is located on federally managed lands with the majority of disturbances created by mineral production, energy development and/or linear transmission facilities. Currently, project proponents are carrying out mitigation for disturbances to federal lands and the proposed regulations will clarify the mitigation is necessary on both federally managed lands as well as state owned lands. This will not add any additional burden to those who are already required to mitigate, such as Oil, Gas, Electric, Geothermal, and Power Industries, as well as Transportation, Communication, Meteorological, and Urban Infrastructures, except in the cases of disturbances on State Lands. With this regulation, mitigation on State Lands will be a new requirement. The effects on these industries could vary depending on desired disturbance and location.

(1) Both adverse and beneficial effects:

An adverse effect from this regulation may be increased expenditures due to more appropriate mitigation of disturbance and higher consulting costs, which will vary depending on the size and type of disturbance, the location, and past mitigation efforts. Many affected businesses will have already expected or participated in voluntary mitigation in the past, so this new regulation will have minimal to no effect on them. However, providing regulatory assurances for the protection of Greater Sage-grouse habitat may help to ensure that the species does not become listed as an endangered species. If the Greater Sage-grouse were to become a listed species, environmental review costs for businesses could increase substantially. Further, there may be some savings to industry by using the conservation credit system for mitigation as there have been times when the conservation credit system model estimated less impacts than what was previously spent on mitigation.

(2) Both immediate and long-term effects:

Same as above.

(b) Estimated economic effect on the public:

There is no direct economic effect to the general public. However, there may be a positive monetary benefit to landowners or industries carry out certain activities to benefit Greater Sage-grouse habitat. Entities that

improve habitat and enroll the activities in the Conservation Credit System are eligible to receive compensation for their work from entities that are required to do mitigation. In addition, the regulations will help manage for more intact landscapes long-term and improved sage-grouse and other wildlife habitats and populations that allow for better recreational benefits to the public, tourism opportunities, hunting opportunities, and preservation of Nevada's natural heritage.

(1) Both adverse and beneficial effects:

See below.

(2) Both immediate and long-term effects:

Immediate impacts will see increased economic opportunities for landowners and businesses carrying out, or involved with, projects to benefit Greater Sage-grouse habitat. In addition to all continuation of all immediate benefits listed above, long-term benefits would include more intact landscapes long-term with better recreational benefits to the public, tourism opportunities, and preservation of Nevada's natural heritage; improved sage-grouse and other wildlife habitats and populations; and better game populations and hunting opportunities. However, most importantly, the regulation will improve upon efforts to avoid a sage-grouse listing, which would likely have significant detrimental impacts to ranchers, ranching communities, agriculture, and other industries.

(c) Estimated cost by the agency for enforcement of the proposed regulation:

The enforcement of the regulation falls within current operations of the Program; therefore, there will be no additional cost to the agency above the current legislatively approved budget.

- 6. A description of any regulations for other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:**

This Regulation does not duplicate any existing federal, state, or local standards regulating the same activity.

- 7. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions. The statement must include the specific citation of the federal statute or regulation requiring such adoption:**

On July 24, 2018, the Bureau of Land Management sent out Internal Memorandum 2018-093 that stated "Except where the law specifically requires, the BLM must not require compensatory mitigation from public land users."

- 8. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used:**

The proposed regulation does not provide for new fees or increase an existing fee.

**FORM 4:
NEVADA SAGEBRUSH ECOSYSTEM PROGRAM SMALL BUSINESS IMPACT DISCLOSURE
PROCESS PURSUANT TO 233B “Nevada Administrative Procedures Act”**

The purpose of this Form is to provide a framework pursuant to NRS 233B.0608 for drafting and submitting a Small Business Impact Statement (SBIS) to the Sagebrush Ecosystem Council in order to determine whether a SBIS is required to be noticed and available at the public workshop. A SBIS must be completed and submitted to the Legislative Counsel Bureau for ALL adopted regulations.

Note: Small Business is defined as a “business conducted for profit which employs fewer than 150 full-time employees” (NRS 233B.0382).

To determine whether a SBIS must be noticed and available at the public workshop, answer the following questions:

1. Does this proposed regulation impose a direct and significant economic burden upon a small business? *(state yes or no. If no, please explain and submit the applicable documentation, which can also be addressed in #8 on the SBIS and simply referred to; and if yes, reference the attached SBIS)*

Yes, See attached Small Business Impact Statement

2. Does this proposed regulation restrict the formation, operation or expansion of a small business? *(state yes or no. If no, please explain and submit the applicable documentation, which can also be addressed in #8 on the SBIS and simply referred to; and if yes, reference the attached SBIS)*

Yes, See attached Small Business Impact Statement

If **Yes** to either of question 1 & 2, a SBIS must be noticed and available at the public workshop.

FORM 4: SMALL BUSINESS IMPACT STATEMENT (NRS 233B.0609)
(Provide attachments as needed)

1. Describe the manner in which comment was solicited from affected small businesses, a summary of the response from small businesses and an explanation of the manner in which other interested persons may obtain a copy of the summary. (*Attach copies of the comments received and copies of any workshop attendance sheets, noting which are identified as a small business.*)

The Sagebrush Ecosystem Program sent a questionnaire out to all known affected businesses, which included mining, energy, and power industries. It was determined that there are 66 small businesses in Nevada that may be impacted by the regulations. All other entities not captured by this mailing will be able to voice their concerns during the workshop on December 11, 2018 in in the Guinn Room at the Capitol Building at 101 N. Carson St., Carson City, NV.

Of the 66 questionnaires sent out, 2 were undeliverable, and 5 were returned with answers. Three stated no impacts, and two stated impacts, but the type and magnitude of impacts were unknown. The Program followed up with the one of the impacted business to further discuss their concerns. They voiced that this might cause a financial hardship for the smaller industries to require mitigation on top of their initial costs.

Minutes of the public workshop and subsequent hearing will capture the discussions held regarding the adopted regulation. These may be obtained online at sagebrusheco.nv.gov, no later than 30 days after the meeting.

2. The manner in which the analysis was conducted (if an impact was determined).

Through initial conversations with affected businesses prior to proposing regulation, it was determined that the regulation would create undue hardships on Notice-level Exploration entities. Thus, the regulation was developed to allow for these types of businesses to be exempt from this regulation.

As noted above, the Sagebrush Ecosystem Program attempted to contact all known small businesses who may be affected by the regulations. As the regulation mostly affects larger industries, small businesses represented a very limited population impacted by the adopted regulation. Then, through the comment period, the Program received three written comments, and spoke on the phone with the one that had known concerns to understand how the regulations might affect them personally.

3. The estimated economic effect of the proposed regulation on small businesses:

The proposed regulations will clarify and require mitigation for certain disturbances in Greater Sage-grouse habitat. The majority of Greater Sage-grouse habitat is located on federally managed lands with the majority of disturbances created by mineral production, energy development and/or linear transmission facilities. Currently, project proponents are carrying out mitigation for disturbances to federal lands and the proposed regulations will clarify the mitigation is necessary on both federally managed lands as well as state owned lands. This will not add any additional burden to those who are already required to mitigate, such as Oil, Gas, Electric, Geothermal, and Power Industries, as well as Transportation, Communication, Meteorological, and Urban Infrastructures, except in the cases of disturbances on State Lands. With this regulation, mitigation on State Lands will be a new requirement. The effects on these industries could vary depending on desired disturbance and location.

a. Both adverse and beneficial effects:

An adverse effect from this regulation may be increased expenditures due to more appropriate mitigation of disturbance and higher consulting costs, which will vary depending on the size and type of disturbance, the location, and past mitigation efforts. Many affected businesses will have already expected or participated in voluntary mitigation in the past, so this new regulation will have minimal to no effect on them. However, providing regulatory assurances for the protection of Greater Sage-grouse habitat may help to ensure that the species does not become listed as an endangered species. If the Greater Sage-grouse were to become a listed species, environmental review costs for businesses could increase substantially. Further, there may be some savings to industry by using the conservation credit system for mitigation as there have been times when the conservation credit system model estimated less impacts than what was previously spent on mitigation.

b. Both direct and indirect effects:

Same as above.

4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of the methods. (Include a discussion of any considerations of the methods listed below.)

In response to comments received from small business owners, the Sagebrush Ecosystem Program considered methods to minimize the burden of the regulation on the most affected small businesses, thus waiving the regulation for Notice-level Exploration. Through the initial official comments once the regulation was proposed, it was determined that the regulations have the potential to cause financial impacts on smaller businesses, but the extent of those impacts are unknown.

A. Simplification of the proposed regulation:

B. Establishment of different standards of compliance for a small business:

C. Modification of fees or fines so that a small business is authorized to pay a lower fee or fine:

5. The estimated cost to the agency for enforcement of the proposed regulation. (Include a discussion of the methods used to estimate those costs.)

The enforcement of the regulation falls within current operations of the Program; therefore, there will be no additional cost to the agency above the current legislatively approved budget.

6. If this regulation provides for a new fee or increases an existing fee, the total annual amount the agency expects to collect and manner in which the money will be used.

The proposed regulation does not provide for new fees or increase an existing fee.

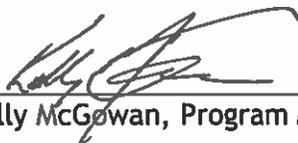
7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, provide and explanation of why such duplicative or more stringent provisions are necessary.

On July 24, 2018, the Bureau of Land Management sent out Internal Memorandum 2018-093 that stated "Except where the law specifically requires, the BLM must not require compensatory mitigation from public land users."

8. The reasons for the conclusions regarding the impact of a regulation on small businesses.

After an analysis of the 66 impacted businesses that the Program is aware of, it was determined that the regulations have the potential to cause financial impacts on smaller businesses, but the extent of those impacts are unknown. A workshop, and subsequent hearing will be held to acquire more comments from the public and affected businesses.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on a small business and the information contained in this statement was prepared properly and is accurate.



Kelly McGowan, Program Manager, Sagebrush Ecosystem Program

11/21/18

Date

<http://www.leg.state.nv.us/Statutes/77th2013/Stats201314.html#Stats201314page2304>