



STATE OF NEVADA
SAGEBRUSH ECOSYSTEM COUNCIL
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MITIGATION REGULATIONS WORKSHOP MINUTES

Date: Thursday, September 19th, 2019
Time: 9:00 a.m.
Place: Richard Bryan Building, Tahoe Room, 2nd Floor
901 South Stewart Street, Carson City, NV 89701

1. OPEN WORKSHOP, INTRODUCTION

Kathleen Petter of the Sagebrush Ecosystem Technical Team opened the workshop at 9:05 AM. She introduced the rest of the Sagebrush Ecosystem Technical Team and stated that this workshop was to gather comments regarding the proposed Mitigation Regulations.

2. PUBLIC COMMENT

No public comment was given at this time.

3. PRESENTATIONS AND DISCUSSION OF PROPOSED REGULATION

Ms. Petter gave a presentation, available on the Sagebrush Ecosystem Program website, outlining the authorities, history, purpose, and content for the proposed regulation. She also explained that any further comments not voiced at the workshop can be emailed to her by Friday, September 27, 2019 for consideration during the Adoption Hearing on Thursday, October 3, 2019 at the Nevada Department of Wildlife Headquarters Office, 6980 Sierra Center Pkwy #120, Reno, NV 89511.

4. PUBLIC COMMENT

Kim Summers of RDD Incorporated observed that in Section 15.2, it seems that the council must consider a list of things for those developing their own mitigation strategy, but requiring following the same Habitat Quantification Tool (HQT) is not there. He questioned whether the rules are going to be the same, and do the same standards apply. He did not want there to be an advantage in creating a mitigation plan versus purchasing credits.

Kelly McGowan, Program Manager of the Sagebrush Ecosystem Program, explained that the language was intentionally left broad. He gave an example of a debit project having single digit debit estimates and the possibility of allowing for an in-lieu fee, but regardless, the intent is still to use the HQT.

Mr. Summers re-stated that he was concerned that the same regulations apply to any disturbance across the board in regards to maintenance, using the HQT, etc. He would like to see everyone under the same timeframes, durability, and regulations as the credit producers when it comes to creating a mitigation plan.

Jim French, Chairman of the Humboldt County Commissions and Chair of the Nevada Association of Counties (NACO) Public Lands Steering Committee expressed concern that mitigation will be applied to taxpayers in delivering services,

such as road maintenance, towers, application of management for weed districts. He stated that NACO feels that a tax burden will be placed on counties that will be difficult to meet.

Mr. McGowan questioned whether he was talking about something beyond activities for public health and safety, as exempted in 14.2(e).

Mr. French affirmed that he was, and stated that many towers go outside of public health and safety, such as TV and communication. Noxious weed management also goes beyond public health and safety. He stated a letter will be sent to the Team regarding these concerns with additional examples.

Jeremy Drew of Resource Concepts Incorporated and representing the Nevada Association of Counties (NACO) expressed deep concern that the proposed regulations are different than and inconsistent with the temporary regulations, the Executive Order 2018-32, and the Nevada Greater Sage-grouse Conservation Plan (State Plan), which could result in significant impacts to local governments. Mr. Drew began with Section 3 and Section 5, the definitions of "Anthropogenic Disturbance" and "De Minimis", stating he would rather they be defined by the State Plan rather than the Sagebrush Ecosystem Council, which would allow for inconsistencies. Another concern stated by Mr. Drew was that there is no geographical limitation in the proposed regulations, both in Section 3 and Section 14.1(a), which he suggested be the Habitat Management Areas defined in the Executive Order, instead of the Service Areas references in the State Plan. Mr. Drew went on to address Section 9.2, noting that Conservation Districts and for-profit organizations are not identified as entities who can create credits. He suggested the language "Credits that are created by persons or entities..." Section 14.1(b) was also stated as a concern, noting that stating permits and final approvals in an open ended manner could impact a county that issues permits. NACO suggested tightening the definitions to the Executive Order's "State or Federal review, approval, or authorization." His final concern acting in a NACO capacity was the loss of "routine administrative functions" from the exemptions, and asked to reinstate that exemption in the permanent regulations.

Mr. Drew also commented on a personal level, representing Resource Concepts Incorporated and as a Verifier through the Conservation Credit System. He expressed desire for there to be an interim step to rectify the inconsistencies between the verifier and program manager stated in Section 15.1(b)(1). He also brought up Section 15.1(b)(2)(I) and (II), stating confusion in the lack of difference between parts (I) and (II). Mr. Drew suggested clarifying "internal transfers" in part (I) after Ms. Petter stated that was the primary difference between the parts.

Jim Penrose of R&R Partners, standing in for Alan Biaggi, representing Nevada Mining Association began with pointing out the differences between the temporary and proposed permanent regulations, including some omissions such as the removal of the avoidance and minimization consultation with the Sagebrush Ecosystem Technical Team. He recommended that to be restored. In addition to working with the Sagebrush Ecosystem Technical Team on the Avoidance and Minimization, Mr. Penrose also recommended the project proponent to work with the Sagebrush Ecosystem Technical Team on the development of the mitigation plan. Mr. Penrose also suggested adding back into the regulation the exemption for routine or administrative functions, as well as adding an interim step to resolve differences in the debit calculations, only adding that maybe the Sagebrush Ecosystem Council should be the ones to resolve the difference. Mr. Penrose went on to suggest establishing a timeline for the completion of the administration process, to ensure that it does not drag on. He stated the project proponent could choose to waive the deadline, but something established, like 90 days or 120 days would be good to have. Finally, Mr. Penrose commented that the regulation is not clear on whether it is applicable to state and local agencies, at it just calls out "any person or entity", but that may not include governmental agencies. He suggested the regulations should apply across the board. He too promised a written summary of the comments he made.

Mr. McGowan clarified the decision regarding the removal of the avoidance and minimization process. The reason for why that type of consultation was removed is because that is part of the process that is not part of mitigation, as it comes before mitigation, and the Sagebrush Ecosystem Program has an MOU establishing that consultation with the Sagebrush Ecosystem Technical Team is already required. But, Mr. McGowan confirms, the concern will be expressed to the Sagebrush Ecosystem Council. He also clarified regarding the routine administrative functions, which concerns will also be relayed to the Sagebrush Ecosystem Council. Part of the reason, he stated, for the omission is that they are activities that are not covered by the Conservation Credit System's requirements, and they may fall under restrictions from the Bureau of Land Management, but they would not require mitigation in the Conservation Credit System. Mr. McGowan asked for additional scenarios that may require mitigation that cause NACO to be concerned.

Mr. Drew asked for clarification on authorizations and permitting. It used to be authorizations by state or federal agencies, and now it is any permitting. He wondered how broad this has become, is the Sagebrush Ecosystem Technical Team now going to work with every permitting authority?

Mr. McGowan replied that through many discussions with the Legislative Council Bureau (LCB), there were many instances where LCB got hung up on the wording and were looking for a catch all statement, including indirect vs direct disturbances. He stated that the Sagebrush Ecosystem Technical Team was just trying to get back the information from the state and federal agencies, but there were sections indicating requiring notification from other types of activities. The Sagebrush Ecosystem Technical Team understands the possibility of a large workload.

5. CLOSE OF WORKSHOP

With no further public comment, Ms. Petter closed the workshop.

6. ADJOURNMENT

Workshop was adjourned at 9:38 AM.