

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

March 2019

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.

Summary:

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 to offset certain disturbances to Greater Sage-grouse habitat. 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 321.592 and 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.

Section 1 states the purpose and authority of the regulations.

Section 2 outlines the instances where the regulation is applicable, as well as certain exceptions to the mitigation requirements.

Section 3 outlines the process to which a Project Proponent must adhere in order to satisfy their mitigation obligations.

Section 4 outlines the requirement of state agencies to receive certification of satisfactory mitigation requirements prior to authorization of activities resulting in anthropogenic disturbance in Greater Sage-grouse Habitat on state-owned land.

COMPENSATORY MITIGATION REQUIREMENTS

Definitions. As used in the regulation below, unless the context otherwise requires, the words and terms defined herein have the meanings ascribed to them in those sections.

“Avoid” defined. “Avoid” refers to eliminating conflicts by relocating disturbance activities outside of Greater Sage-grouse habitat in order to conserve Greater Sage-grouse and their habitat.

“Credits” defined. “Credits” are quantified habitat benefits to Greater Sage-grouse.

“Debits” defined. “Debits” are quantified impacts to Greater Sage-grouse habitats from anthropogenic disturbances.

“De minimis” defined. “De minimis” is defined as an anthropogenic disturbance that is too trivial or minor to merit consideration for mitigation. These actions are determined through the Nevada Greater Sage-grouse Conservation Plan and by the Sagebrush Ecosystem Program.

“Direct Impacts” defined. “Direct Impacts” is defined as Greater Sage-grouse Habitat loss that is caused by or will ultimately result from anthropogenic disturbances within the project footprint.

“Durability” defined. “Durability” is defined as Credit projects that demonstrate habitat functionality performance prior to credit release to be maintained throughout the project’s duration.

“Greater Sage-grouse” defined. “Greater Sage-grouse” (GRSG) is defined as any large ground dwelling bird listed under the name *Centrocercus urophasianus*.

“Greater Sage-grouse Habitat” defined. “Greater Sage-grouse Habitat” is defined as any area identified as Priority, General, or Other Habitat Management Areas in the Nevada Greater Sage-grouse Conservation Plan.

“Habitat Quantification Tool” defined. “Habitat Quantification Tool” (HQT) is defined as a set of metrics (i.e. measurements and methods) within the Nevada Conservation Credit System, applied at multiple spatial scales, to evaluate current conditions and changes in conditions indicative of habitat quality, baseline, and mitigation ratios necessary to determine the amount of total credit or credit obligation debit resulting from credit and debit projects.

“Indirect Impacts” defined. “Indirect Impacts” is defined as impacts to Greater Sage-grouse populations or habitat that are caused by or will ultimately result from anthropogenic disturbances. Indirect impacts could occur at some point in the future or outside of the direct footprint of the disturbance area.

“Minimize” defined. “Minimize” refers to impacts that will be minimized by modifying proposed actions or developing permit conditions to include measures that lessen the adverse effects to Greater Sage-grouse and their habitat.

“Mitigate” defined. “Mitigate” refers to an action required when impacts are not avoided, and, after required minimization measures are implemented, result in residual adverse effects on Greater Sage-grouse habitat.

“Mitigation Plan” defined. “Mitigation Plan” is defined as a contract that outlines the steps that have been or will be taken to fulfill mitigation requirements and includes the contract timeline and length, the debit and the offsetting credit amount, and the actions necessary to fulfill the requirements.

“Nevada Conservation Credit System” defined. “Nevada Conservation Credit System” (CCS) is defined as a pro-active solution to ensure direct, indirect, term, and permanent impacts from new, renewed, modified, or not previously authorized anthropogenic disturbances generate a net conservation gain for Greater Sage-grouse, while enabling human activities vital to the Nevada economy and way of life. Major updates to the CCS are completed annually and are approved through the Sagebrush Ecosystem Council during public meetings.

“Nevada Greater Sage-grouse Conservation Plan” defined. “Nevada Greater Sage-grouse Conservation Plan” (State Plan) is defined as a document, representing best available scientific information, as well as stakeholder input, that provides broad goals, objectives, and management actions to ameliorate the primary threats to Greater Sage-grouse in Nevada. This is meant to be a “working document” that will be updated as new science emerges and lessons are learned through its implementation.

“Project Proponent” defined. “Project Proponent” is defined as a person or entity that proposes or implements an anthropogenic disturbance within Greater Sage-grouse habitat.

“Sagebrush Ecosystem Council” defined. “Sagebrush Ecosystem Council” (SEC) is defined as the governor- appointed, legislatively-established, council comprised of representatives from conservation interests, industry, ranching, and government which is responsible for overseeing the operations of the Conservation Credit System and making policy decisions.

“Sagebrush Ecosystem Program” defined. “Sagebrush Ecosystem Program” (SEP) is a collaborative, multi-disciplinary program made up of the governor-appointed Sagebrush Ecosystem Council and the Sagebrush Ecosystem Technical Team, established to protect and enhance the sagebrush landscape.

“Sagebrush Ecosystem Technical Team” defined. “Sagebrush Ecosystem Technical Team” (SETT) is responsible for administering the Nevada Conservation Credit System and serves as staff to the Sagebrush Ecosystem Council.

“Verifier” defined. “Verifier” is defined as a person certified by the Sagebrush Ecosystem Program that leads the implementation of the Habitat Quantification Tool to quantify and verify credit and debit calculations.

Section 1. Purpose. The purpose of this regulation, inclusive, is to ensure continued management and conservation of Greater Sage-grouse and sagebrush ecosystems pursuant to NRS 232.162, NRS 321.592, and NRS 321.594 by setting forth requirements to mitigate certain disturbances in identified Greater Sage-grouse Habitat.

Sec. 2. Applicability of regulations. Mitigation of direct or indirect anthropogenic impacts, as defined by the Nevada Greater Sage-grouse Conservation Plan, within Greater Sage-grouse Habitat on lands managed by state or federal agencies is required when the disturbance is subject to state or federal review, approval or authorization, as ordered by Nevada Executive Order 2018-32, signed on December 7, 2018. The following are not subject to these regulations:

- 1) Activities that are in compliance with a Record of Decision that was signed prior to December 7, 2018,
- 2) Activities using any mitigation framework authorized by the U.S. Fish and Wildlife Service prior to December 7, 2018,
- 3) Direct impacts of projects or actions located on privately owned lands,
- 4) Mineral exploration activities causing surface disturbance of five (5) acres or less,
- 5) De minimis activities as identified in the Nevada Greater Sage-grouse Conservation Plan, or
- 6) Anthropogenic disturbances outlined in the Nevada Greater Sage-grouse Conservation Plan which directly address public health and safety, through the approval of the Sagebrush Ecosystem Program Manager.

Sec. 3. Any Project Proponent proposing an activity on state or federally-owned lands that impacts Greater Sage-grouse Habitat must be fully compliant with these regulations and receive written authorization from the Sagebrush Ecosystem Program Manager indicating mitigation requirements have been met (as defined in 5a and b below) prior to commencement of the anthropogenic disturbance.

- 1) Any Project Proponent proposing such activity shall submit geographic information system data files sufficient to indicate any proposed, existing, and authorized disturbances, and any additional information required by the Sagebrush Ecosystem Technical Team in order to assess potential impacts to Greater Sage-grouse Habitat as a result of the proposed activity.
- 2) The Project Proponent will also consult with the Sagebrush Ecosystem Technical Team and provide an analysis of the Avoidance and Minimization measures considered and those planned to reduce impacts.
- 3) Following incorporation of the Avoidance and Minimization measures into a final plan of operation, the Project Proponent, in coordination with the Sagebrush Ecosystem Technical Team, shall quantify the impacts associated with the planned disturbance using the most current version of the Nevada Conservation Credit System and Habitat Quantification Tool.

- 4) The number of Debits resulting from the proposed project shall be confirmed by the Sagebrush Ecosystem Program Manager within thirty (30) days of a final and complete Verifier submittal.
- 5) Confirmed impacts to Greater Sage-grouse Habitat in the form of Debits shall be deemed to have adequate mitigation measures under the following circumstances:
 - a) The Project Proponent has secured through a Nevada Conservation Credit System contract the purchase or transfer of an equal or greater number of Credits to offset the number of Debits generated from the project; or
 - b) A Mitigation Plan developed in coordination with the Sagebrush Ecosystem Technical Team and approved by the Sagebrush Ecosystem Program Manager or the Sagebrush Ecosystem Council that considers the following factors:
 - i) Conservation activity (e.g. pinyon/juniper removal, cheatgrass treatment, fire restoration, etc.),
 - ii) Location,
 - iii) Durability,
 - iv) Credit generation term,
 - v) Number of Credits generated or estimated using the Habitat Quantification Tool, and
 - vi) Anything else deemed appropriate by the Sagebrush Ecosystem Council.
- 6) Upon compliance with either 5(a) or 5(b) have been met, the Sagebrush Ecosystem Program Manager shall provide a letter to the Project Proponent and the authorizing land agency certifying that mitigation measures have been or are expected to be met.

Sec. 4. Authorization for the use of state lands within Greater Sage-grouse Habitat:

- 1) The State Lands Registrar shall receive a letter from the Sagebrush Ecosystem Program Manager certifying that mitigation requirements have been satisfied prior to issuing an authorization for any use, activity, or project that results in anthropogenic impacts to Greater Sage-grouse Habitat.
- 2) Prior to any state agency or department authorizing a project that results in anthropogenic disturbances to Greater Sage-grouse Habitat, the authorizing agency must receive certification from the Sagebrush Ecosystem Program Manager that all mitigation requirements have been satisfied.