

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 Intent to Act upon a Regulation

**Notice of Public Hearing for the Adoption of
Proposed Temporary Mitigation Regulations
of the Sagebrush Ecosystem Program**

Tuesday, March 19, 2019 – 8:30 a.m.

**Richard Bryan Building, PEBP Room
901 South Stewart Street
Carson City, NV 89701**

The Sagebrush Ecosystem Program (SEP) under the Sagebrush Ecosystem Council will be holding a public hearing to adopt the following proposed temporary regulation. The purpose of the hearing is to adopt regulations to require Mitigation through the Sagebrush Ecosystem Program. Persons wishing to comment upon the proposed action of the Sagebrush Ecosystem Program may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Sagebrush Ecosystem Program, 201 S. Roop Street, Suite 101, Carson City, NV 89701. Written submissions must be received by the Sagebrush Ecosystem Program on or before March 15, 2019. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Sagebrush Ecosystem Program may proceed immediately to act upon any written submissions.

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.



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1. OPEN HEARING, 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 –
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. 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. CONSIDERATION OF ALL COMMENTS AND ADOPTION OF TEMPORARY REGULATION
– *FOR POSSIBLE ACTION***

5. 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.

6. CLOSE OF HEARING

7. ADJOURNMENT – *FOR POSSIBLE ACTION*

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

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STATE OF NEVADA
Sagebrush Ecosystem Program

The following information is provided pursuant to the requirements of the Nevada Revised Statutes (NRS) 233B.0603 and the directives of the Nevada State Governor:

FORM 1: FORM FOR ADOPTION, FILING AMENDMENTS OR REPEAL OF REGULATIONS

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@sagebrushheco.nv.gov

Telephone Number: 775.684.8600

Date of Petition: 03/19/2019

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

 2/13/19

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:

This will be a new regulation to mitigate certain activities that impact lands identified as Greater Sage-grouse habitat. The exact proposed regulation is located at the end of this form.

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.

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.

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.

5. A statement of the:

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

The proposed regulations will 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 current disturbances generated through mineral production, energy development and/or linear transmission facilities. Currently, project proponents are carrying out voluntary mitigation for disturbances on federal lands and the proposed regulations will clarify that mitigation is required on 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. The effects on these industries could vary depending on the proposed disturbance and location. With this regulation, mitigation on State Lands would be a new requirement. However, impacts to State

Lands is anticipated to be insignificant given the minor amount of State Lands residing within Greater Sage-grouse habitat and the majority of that land being managed for recreational and conservation purposes.

1) Both adverse and beneficial, direct and indirect effects:

An adverse effect from this regulation may be increased expenditures due to more appropriate mitigation of disturbances and higher consulting costs, which will vary depending on the size and type of disturbance, the location, and past mitigation efforts. Many affected businesses have already 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 and conservation actions for businesses could increase substantially. Further, there may be some mitigation savings to industry by using the conservation credit system. There have been instances when the conservation credit system model was used to analyze a proposed disturbance and estimated that the mitigation would be less than the previous methods used to calculate mitigation.

(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, 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 December 6, 2018, the Bureau of Land Management sent out Internal Memorandum 2019-018 that stated " Except as described herein, the BLM will not impose, and will not build mechanisms for it to enforce, mandatory compensatory mitigation into its official actions, authorizations to use the public lands, and any associated environmental review documents, including, but not limited to, permits, rights-of-ways, environmental impact statements, environmental assessments, and resource management plans."

In light of IM 2019-018 and other considerations, Governor Sandoval enacted Executive Order 2018-32 requiring mitigation as a regulation in order to work towards preventing a listing of the Greater Sage-grouse and to continue to conserve sagebrush ecosystems.

- 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.

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 775-684-8600; or email kmcgowan@sagebrusheco.nv.gov, to obtain support material before or after the meeting. Materials will also be posted on the <http://sagebrusheco.nv.gov> website. The agency's small business impact statement is attached.

Upon adoption of any regulation, the Agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

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.

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
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
Sagebrush Ecosystem Program, 201 South Roop Street Suite 101, Carson City, Nevada
Carson City Library, 900 North Roop Street, Carson City, Nevada
Churchill County Library, 553 South Main Street, Fallon, Nevada
Las Vegas-Clark County Library District Headquarters, 833 Las Vegas Boulevard North, Las Vegas, Nevada
Douglas County Public Library, 1625 Library Lane, Minden, Nevada
Elko County Library, 720 Court Street, Elko, Nevada
Esmeralda County Library, Corner of Crook and 4th Street, Goldfield, Nevada
Eureka County Library, 80 Monroe Street, Eureka Nevada
Humboldt County Library, 85 East 5th Street, Winnemucca, Nevada
Battle Mountain Branch Library, 625 South Broad Street, Battle Mountain, Nevada
Lincoln County Library, 63 Main Street, Pioche, Nevada
Lyon County Library System, 20 Nevin Way, Yerington, Nevada
Mineral County Public library, 110 First Street, Hawthorne, Nevada
Pershing County Library, 1125 Central Avenue, Lovelock, Nevada
Storey County Treasurer and Clerk's Office, 265 B Street Drawer D, Virginia City, Nevada
Tonopah Public Library, 167 South Central Street, Tonopah, Nevada
Washoe County Library System, 301 South Center Street, Reno, Nevada
White Pine County Library, 950 Campton Street, Ely, 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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**STATE OF NEVADA
Sagebrush Ecosystem Program**

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

LCB File No. T006-18

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 ecosystems 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 instrument(s) used to secure habitat functionality performance of a credit project site for a specific 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, resulting 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.

“Residual Impacts” defined. “Residual Impacts” are defined as direct or indirect anthropogenic impacts, quantified by the Habitat Quantification Tool, that remain after the Avoid and Minimization process, prior to taking reclamation activities into account.

“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 residual direct or indirect anthropogenic impacts resulting in potential habitat loss or degradation as defined by the Nevada Greater Sage-Grouse Conservation Plan, within Greater Sage-Grouse Habitat is required when the anthropogenic 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 authorized land uses that were signed prior to December 7, 2018,
- 2) Activities using any mitigation framework endorsed 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 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 residual 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) Other supportive documentation deemed appropriate by the Sagebrush Ecosystem Council.
- 6) Upon compliance with either 5(a) or 5(b), the Sagebrush Ecosystem Program Manager shall provide a letter to the Project Proponent and the authorizing land agency certifying that mitigation requirements have been or are expected to be satisfied.

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.

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**STATE OF NEVADA
Sagebrush Ecosystem Program**

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:

- 2. 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

- 3. 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)

- 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, through information from sources such as the Nevada Division of Minerals, there are 66 small businesses in Nevada that may be impacted by the regulations.

Of the 66 questionnaires sent out, 2 were undeliverable, and 6 were returned with answers. Four 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.

All other entities not captured by this mailing were able to voice their concerns during the workshops on December 11, 2018 in the Guinn Room at the Capitol Building at 101 N. Carson Street, Carson City, Nevada and December 20, 2018 in Room 201 at the County Courthouse at 50 W 5th Street, Winnemucca, Nevada. The Sagebrush Ecosystem Program notified interested parties through email, sent notices for posting to eight public buildings, and posted notice of the workshops online at the Sagebrush Ecosystem Program's website, the Legislative Counsel Bureau's site, and the State of Nevada's official site. Entities were encouraged to comment on the proposed mitigation regulation, either verbally or through written comments, due December 28, 2018.

Thirty-seven people were present at the December 11 workshop, with 10 people making verbal comments and 1 submitting written comments. Fifteen people were present at the December 20 workshop, with 8 people making verbal comments and 1 submitting written comments. Three more sets of written comments were submitted following this final workshop. A list of names and contact information, including telephone numbers, electronic mail address, and name of entity or organization represented, for each person identified above is attached below in Appendix A.

Minutes of the public workshops capture the discussions held regarding the adopted regulation. Minutes and written comments may be obtained online at sagebrusheco.nv.gov or from the Sagebrush Ecosystem Program at 201 S. Roop Street, Suite 101, Carson City, Nevada 89701 by contacting Kathleen Petter, Sagebrush Ecosystem Technical Team at kpetter@sagebrusheco.nv.gov. A summary of comments and responses are included below in Appendix B.

- 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 would primarily affect larger industries, small businesses represented a limited population impacted by the adopted regulation. Through the comment period, the Program received three written comments, and spoke with the one that had

known concerns to understand how the regulations might affect them personally. That conversation concluded that there was a misunderstanding in how the regulations would be implemented, and no more comments were given.

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

The proposed regulations will 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 current disturbances generated through mineral production, energy development and/or linear transmission facilities. Currently, project proponents are carrying out voluntary mitigation for disturbances on federal lands and the proposed regulations will clarify that mitigation is required on 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. The effects on these industries could vary depending on the proposed disturbance and location. With this regulation, mitigation on State Lands would be a new requirement. However, impacts to State Lands is anticipated to be insignificant given the minor amount of State Lands residing within Greater Sage-grouse habitat and the majority of that land being managed for recreational and conservation purposes.

1) Both adverse and beneficial, direct and indirect effects:

An adverse effect from this regulation may be increased expenditures due to more appropriate mitigation of disturbances and higher consulting costs, which will vary depending on the size and type of disturbance, the location, and past mitigation efforts. Many affected businesses have already 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 and conservation actions for businesses could increase substantially. Further, there may be some mitigation savings to industry by using the conservation credit system. There have been instances when the conservation credit system model was used to analyze a proposed disturbance and estimated that the mitigation would be less than the previous methods used to calculate mitigation.

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, which made up a good majority of the small businesses. Initial comments indicated that the regulations have the potential to cause financial impacts on small businesses, but the respondents were unsure of the extent of the possible impacts.

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 an explanation of why such duplicative or more stringent provisions are necessary.

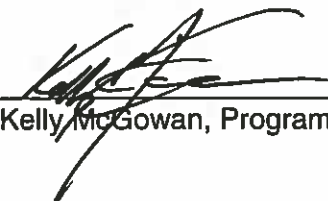
On December 6, 2018, the Bureau of Land Management sent out Internal Memorandum 2019-018 that stated " Except as described herein, the BLM will not impose, and will not build mechanisms for it to enforce, mandatory compensatory mitigation into its official actions, authorizations to use the public lands, and any associated environmental review documents, including, but not limited to, permits, rights-of-ways, environmental impact statements, environmental assessments, and resource management plans."

In light of IM 2019-018 and other considerations, Governor Sandoval enacted Executive Order 2018-32 requiring mitigation as a regulation in order to work towards preventing a listing of the Greater Sage-grouse and to continue to conserve sagebrush ecosystems.

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. Two workshops have been held to acquire more comments from the public and affected businesses and a final hearing will be held prior to adoption. The workshops confirmed the desire to avoid financial hardships on small mineral exploration companies, so an exemption was put in place to relieve them of this financial burden.

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

2/13/19
Date

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

Appendix A. List of all Attendees by Workshop or Hearing

Workshop 12/11/2018					
Name	Organization	Phone	Email	Business Address	Comments (Verbal/Written)
Allen Biaggi	Sagebrush Ecosystem Council			201 South Roop Street Suite 101, Carson City, Nevada 89701	V
Bettina Scherer	Conservation Districts NV Department of Conservation and Natural Resources	775.684.2717	bscherer@dcnr.nv.gov	901 South Stewart Street Suite 1003, Carson City, Nevada 89701	
Bradley Crowell			bcrowell@dcnr.nv.gov	901 South Stewart Street Suite 1003, Carson City, Nevada 89701	
Brian Amme	Bureau of Land Management	775.861.6590	bamme@blm.gov	1340 Financial Blvd, Reno, Nevada 89502	V
Britt Johnson	Sunrise Minerals LLC		Britt_bbr@gmail.com		
Bryan Stockton	Attorney General	775.684.1228	bstockton@ag.nv.gov	100 N Carson St, Carson City, Nevada 89701	
Carolyn Swed	US Fish and Wildlife Service		carolyn_swed@fws.gov	1340 Financial Blvd, Reno, Nevada 89502	
Cheva Gabor	US Forest Service		chevalgabor@fs.fed.us	1200 Franklin Way, Sparks, Nevada 89431	
Chris MacKenzie	Sagebrush Ecosystem Council			201 South Roop Street Suite 101, Carson City, Nevada 89701	V
Don Siecke	Kelmore Development		don@kelmoredevelopment.com		
Doug Busselman	NV Farm Bureau	775.870.3349	doug@nvfb.org	2165 Green Vista Drive #205, Sparks, Nevada 89431	V/W
Floyd Rathbun	FIMCorp.	775.423.4267	Rathbun@phonewave.net		
Gail Ross	Barrick Gold of North America		gsross@barrick.com	905 West Main Street, Elko, Nevada 89801	
Gary Roeder	Conservation Service	775.857.8500	gary.roeder@nv.usda.gov	1365 Corporate Blvd, Reno, Nevada 89502	
Ginger Peppard	Elko Mining Group	775.223.2677	gingerpeppard@elkominimgroup.com	9650 Gateway Dr #202, Reno, Nevada 89521	
J. A. Vacca	Bureau of Land Management	775.681.6613	jvacca@blm.gov	1340 Financial Blvd, Reno, Nevada 89502	
Jasmine Kleiber	NV Department of Wildlife	775.688.1561	jkleiber@ndow.org	6980 Sierra Center Pkwy #120, Reno, Nevada 89511	
Jeremy Drew	Resource Concepts Inc.	775.883.1600	jeremy@rei-nv.com	340 N Minnesota Street, Carson City, Nevada 89703	
Jeremy Sokulsky	Environmental Incentives	530.841.2980	isokulsky@enviroincentives.com	3351 Lake Tahoe Blvd # 2, South Lake Tahoe, California 96150	
Jim Lawrence	NV Department of Conservation and Natural Resources		lawrence@dcnr.nv.gov	901 South Stewart Street Suite 1003, Carson City, Nevada 89701	
Karen Boeger	NV Backcountry Hunters and Anglers	775.722.4249	rboegerroll@gmail.com		
Kim Summers	RDD Inc.	775.304.6214	knottcreekranch@gmail.com		V
Lara Enders	US Fish and Wildlife Service	775.861.6318	lara_enders@fws.gov	1340 Financial Blvd, Reno, Nevada 89502	
Matt Magaletti	Bureau of Land Management	775.861.6472	mmagalet@blm.gov	1340 Financial Blvd, Reno, Nevada 89502	
Meghan Brown	NV Department of Agriculture		m.brown@agri.nv.gov	405 21st Street, Sparks, Nevada 89431	
Mike Visher	NV Division of Minerals	775.684.7044	mvisher@minerals.nv.gov	400 W King Street # 106, Carson City, Nevada 89703	
Monique Nelson	US Forest Service	775.355.5314	moniquelnelson@fs.fed.us	1200 Franklin Way, Sparks, Nevada 89431	
Paige Barnes	Crowley and Ferrato		paige@crowleyandferrato.com		
Pam Robinson	Governor's Office		probinson@gov.nv.gov		V
Rich Perry	NV Division of Minerals	775.684.7047	mperry@minerals.nv.gov	400 W King Street # 106, Carson City, Nevada 89703	V
Sandra Brewer	Bureau of Land Management	775.861.6622	sbrewer@blm.gov	1340 Financial Blvd, Reno, Nevada 89502	
Sherman Swanson	Sagebrush Ecosystem Council		sswanson@cabnr.unr.edu	201 South Roop Street Suite 101, Carson City, Nevada 89701	V
Shiela Anderson	Governor's Office		skanderson@gov.nv.gov	101 N Carson Street # 1, Carson City, Nevada 89701	
Steven Boies	Sagebrush Ecosystem Council			201 South Roop Street Suite 101, Carson City, Nevada 89701	V
Tim Rubald	Retired	775.790.8035	tim@rubaldandassociates.com		
Vinson Guthreau	NV Association of Counties	775.883.7863	vguthreau@nvnaco.org	304 S Minnesota Street, Carson City, Nevada 89701	
William Molini	Sagebrush Ecosystem Council			201 South Roop Street Suite 101, Carson City, Nevada 89701	V
Workshop 12/20/2018					
Name	Organization	Phone	Email	Business Address	Comments (Verbal/Written)
Bevan Lister	Sagebrush Ecosystem Council	775.962.1283	8milelister@gmail.com		V
Doug Busselman	NV Farm Bureau	775.870.3349	doug@nvfb.org	2165 Green Vista Drive #205, Sparks, Nevada 89431	V
Hunter Burkett	Pheasants Forever and Natural Resources Conservation Service	775.843.3669	hburkett@pheasantsforever.org	1200 E Winnemucca Blvd, Winnemucca, Nevada 89445	
Jim French	Humboldt County Commission	775.843.8327	jlfrench6472@sbcglobal.net	50 W 5th Street #205, Winnemucca, Nevada 89445	V
Joe Sicking	NV State Conservation Commission and Paradise Sonoma Conservation District	775.427.3234	sickings@gmail.com		V
Joel Lenz	Governor's Office of Economic Development	775.430.1059	jlenz@diversifynevada.com	808 West Nye Lane, Carson City, Nevada 89703	
Kim Summers	RDD Inc.	775.304.6214	knottcreekranch@gmail.com		V
Kimberley Wolf	Barrick Gold of North America	775.934.0658	kwolf@barrick.com	905 West Main Street, Elko, Nevada 89801	
Kurt Englehart	Senator Cortez Masto	775.225.1457	kurt_englehart@cortezmasto.senate.gov	400 South Virginia Street Suite 902, Reno, Nevada 89501	
Melany Aten	Conservation Districts	775.625.0901	maten@dcnr.nv.gov	901 South Stewart Street Suite 1003, Carson City, Nevada 89701	
Ron Espell	Prophecy Development	775.777.4777	respell@prophecydev.com		
Sam Haigh	Natural Resources Conservation Service	775.623.5025	samuel.haigh@nv.usda.gov	1200 E Winnemucca Blvd, Winnemucca, Nevada 89445	
Shane Hall	Crawford Cattle	775.304.8002	scbarcattle@gmail.com		V
Thad Ballard	Wells Rural Electric Co.	775.752.0926	tballard@wrec.coop	1322 Chestnut Street, Carlin, Nevada 89822	V/W
Tim Crowley	McEwen Mining and Lithium Nevada	775.843.1345	tim@crowleyandferrato.com		V
Other					
Name	Organization	Phone	Email	Business Address	Comments (Verbal/Written)
Peter Webster	Barrick Gold of North America	801.990.3745	pwebster@barrick.com	905 West Main Street, Elko, Nevada 89801	W
Catherine Clark	Lithium Nevada Corp.	775.827.3318	catherine.clark@lithiumamericas.com	1031 Railroad Street Suite 102B, Elko, Nevada 89801	W
Jeremy Drew	Resource Concepts Inc.	775.883.1600	jeremy@rei-nv.com	340 N Minnesota Street, Carson City, Nevada 89703	W
Jake Tibbits	Eureka County		jtibbits@eurekacountynv.gov		W

Appendix B. Summary of Comments and Responses

Comment	Commenter	Resolution
Ensure public works/Safety are exempt and the regulations would not inhibit other agencies' work or conservation activities.	NACO / Pam Robinson (Governor's Office) / Brian Amme (BLM) / Humboldt County Commission	Many instances of public works are already exempt, but it has been outlined as an exemption.
Allow previous proponent driven mitigation plans to be considered under approved existing mitigation programs if they can demonstrate net conservation gain (BEA, McEwann and Lithium NV specifically). Allow flexibility in "existing" by removing the word.	Lithium Nevada / Barrick Gold / McEwan Mining / State Conservation Commission (ish)	Listed as such in the regulations but must work with the SETT and SEC in order to ensure the validity of the project.
Ensure the regulations are required on public lands too. There needs to be an MOA or MOU put into place.	NV Farm Bureau / Wells Rural Electric Company / SEC Member Lister	Out of the Regulation's authority, however MOA is under development with the State and the BLM.
What would trigger the regulation? NEPA, EA, or EIS is suggested.	Wells Rural Electric Company / Richard Perry (NDM)	Anything that requires state or federal review, approval, or authorization is the trigger, which included NEPA. We wanted to capture anything, even non-NEPA projects.
Ensure that those who have participated in the CCS be protected should the sage-grouse be listed in the future.	Wells Rural Electric Company	Out of the Regulation's authority
Don't make this too complicated and harder to fulfill than the previous fed regulations were; ensure on the ground conservation.	Wells Rural Electric Company / Humboldt County Commission	Attempting to do such.
Need a way to fulfill mitigation requirements should the CCS credits not be available.	Barrick Gold	Included in the regulations under a mitigation plan.
Define "Notice Level exploration" (<=5acres)	SEC Member Molini	Removed.
Remove "Existing Mitigation Program" and state the Barrick Enabling Agreement and Newmont's Conservation Framework Agreement only to be more stringent.	Kim Summers (Credit Producers) / Crawford Cattle	Removed and specified to all activities using any mitigation framework authorized by the U.S. Fish and Wildlife Service prior to December 7, 2018.
Lock in language that states that projects with standing mitigation agreements by a certain date can utilize their agreements, but any new or not yet signed agreements must utilize the CCS, BEA, or CFA. Date either the adoption of the regulation or the signing of the EO.	SEC Member Biaggi / Kim Summers (Credit Producers)	Included in the regulations.
Ensure all de minimus activities are captured as exemptions	SEC Member Biaggi	Listed as an exemption.
Figure out how to mitigate in checkerboard areas with private and public lands intermixed in the project	SEC Member Boies	Already outlined in the CCS Manual.
Ensure all disturbances are captured under "state agency review, approval, or authorization"	SEC Member Swanson / SEC Member Lister	We believe so.
The regulations should fall under the authority of the Sagebrush Ecosystem Council	NV Farm Bureau	Included in the regulations.