



# Temporary Mitigation Regulations Adoption Hearing

Tuesday, March 19, 2019



# Authority

- 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".
- 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.



# Brief History

- On October 11, 2018, the Sagebrush Ecosystem Council passed a motion to “proceed with seeking regulation to require implementation of the CCS for the mitigation of any projects undertaken on state or federal land”.
- December 7, 2018, Governor Sandoval enacts Executive Order 2018-32 requiring the SEC to adopt mitigation regulations in conformance with the Nevada CCS and State Plan.
- Most of the land in Nevada is public land. The Nevada Greater Sage-Grouse Conservation Plan requires “net conservation gain” as well as the use of the Conservation Credit System. In order to obtain net conservation gain, mitigation on public lands needs to be required and the BLM (IM 2019-18) cannot require it, but must also abide by State law.



# Proposed Temporary Regulation

## Definitions (not included here)

**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.



# Proposed Temporary Regulation

**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.



# Proposed Temporary Regulation

**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.



# Proposed Temporary Regulation

## Sec. 3. (Cont.)

- 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.



# Proposed Temporary Regulation

## **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.





# Comments?

- Now opening the floor to Public Comments and Discussion.