

1 **REVISED PROPOSED REGULATION OF**
2 **THE SAGEBRUSH ECOSYSTEM**
3 **COUNCIL LCB File No. R024-19**

4 August 26, 2019

5 EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be
6 omitted.
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9 **Section 1.** Chapter 232 of NAC is hereby amended by adding thereto the provisions
10 set forth as sections 2 to 17, inclusive, of this regulation.

11 **Sec. 2.** *As used in sections 2 to 17, inclusive, of this regulation, unless the*
12 *context otherwise requires, the words and terms defined in sections 3 to 13,*
13 *inclusive, of this regulation have the meanings ascribed to them in those sections.*

14 **Sec. 3.** *“Anthropogenic disturbance” means any direct or indirect adverse impact ~~on~~to*
15 *the greater sage-grouse or the habitat of the greater sage-grouse, as determined by the*
16 *Sagebrush Ecosystem Council.*

17 **Sec. 4.** *“Credit” means a unit of habitat conservation of the greater sage-grouse*
18 *as generally ~~as~~ quantified pursuant to the habitat quantification tool.*

19 **Sec. 5.** *“De minimis impact” means an anthropogenic disturbance for which the*
20 *adverse impact ~~on~~to the greater sage-grouse or the habitat of the greater sage-grouse has*
21 *been determined by the Sagebrush Ecosystem Council to be minor or trivial.*

22 **Sec. 6.** *“Debit” means a unit of loss or degradation of habitat of the greater sage-*
23 *grouse caused by an anthropogenic disturbance as quantified pursuant to the habitat*
24 *quantification tool.*

25 **Sec. 7.** *“Greater sage-grouse” means the species of bird classified as Centrocercus*
26 *urophasianus.*
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29 **Sec. 8.** *“Habitat quantification tool” means the science-based method of*
30 *calculating debits and credits in the Nevada Conservation Credit System.*

31 **Sec. 9.** *“Mineral Exploration” means exploration of gas, oil, coal and other*
32 *gaseous, liquid and solid hydrocarbons, oil shale, cement material, sand, gravel, road*
33 *material, building stone, chemical raw material, gemstone, fissionable and*
34 *nonfissionable ores, colloidal and other clay, steam and other geothermal resources,*
35 *precious metals, base metals, and industrial minerals.*

36 **Sec. 910.** *“Nevada Conservation Credit System” means the system established by*
37 *the Sagebrush Ecosystem Council pursuant to NRS 232.162 that calculates:*

- 38 1. *Debits that will be caused by a proposed activity or a project.*
39
40 2. *Credits that are created ~~by persons, federal and state agencies, local governments-~~*
41 *~~and nonprofit organizations~~ to protect, enhance or restore sagebrush ecosystems.*

42 **Sec. 1011.** *“Program Manager” means the program manager of the Sagebrush*
43 *Ecosystem Technical Team.*

44 **Sec. 12.** *“Public lands” means all lands within the exterior boundaries of the State*
45 *of Nevada except lands to which title is held by any private person or entity.*

46 **Sec. 1113.** *“Sagebrush Ecosystem Council” means the Sagebrush Ecosystem*
47 *Council created by NRS 232.162.*

48 **Sec. 1214.** *“Sagebrush Ecosystem Technical Team” means the interagency technical*
49 *team created by the Governor pursuant to Executive Order No. 2012-19 to support the*
50 *Sagebrush Ecosystem Council.*

51 **Sec. 1315.** *“Verifier” means a person trained and certified by the Sagebrush*
52 *Ecosystem Technical Team to use the habitat quantification tool for the purpose of*
53 *calculating:*

Commented [KP1]: Highlighted areas throughout the document are language to be added should there be a decision to exempt direct AND indirect impacts from projects on private lands.

54 1. *The debits related to an anthropogenic disturbance; and*
55 2. *The number of credits necessary to offset such debits.*
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57 **Sec. 4416.1.** *Except as otherwise provided in this section and to the extent it is*
58 *not prohibited by federal law:*

59 (a) *The provisions of sections 2 to 17, inclusive, of this regulation apply to any person*
60 *or entity that proposes an activity or project on public lands subject to state or federal*
61 *review, approval, or authorization that will cause an anthropogenic disturbance.*

Commented [KP2]: Language recommended by NACO and NGM.

62 (b) *No state or federal permit or other final state or federal approval or*
63 *authorization for a project or activity on public lands that will cause an anthropogenic*
64 *disturbance is effective unless the proponent of the project or activity has complied*
65 *with the provisions of sections 2 to 17, inclusive, of this regulation.*

Commented [KP3]: Language recommended by NACO and NGM.

66 2. *The provisions of sections 2 to 17, inclusive, of this regulation do not apply to:*

67 (a) *A direct anthropogenic disturbance on private lands;*

68 (b) *An activity or project which was approved by all relevant federal agencies, and*
69 *state agencies and local governments before December 7, 2018, so long as the activity or*
70 *project maintains compliance with any condition or requirement for any such approval;*

71 (c) *An activity or project with using a mitigation agreement or framework agreement for*
72 *greater sage-grouse signed by the United States Fish and Wildlife Service before December*
73 *7, 2018 and any amendments thereto;*

Commented [KP4]: This was included in the temporary regulations, however, caution should be exercised without knowing the consequences that an amendment might contain.

74 (d) *A mineral exploration project which is limited to a surface disturbance of not*
75 *more than 5 acres; or*

76 (e) *An activity or project that the Sagebrush Ecosystem Council determines:*

Commented [KP5]: An alternative to striking might be to develop a list of activity types that the SEP broadly distributes.

77 (1) *Is necessary to protect public health or safety;*

78 (2) *Routine administrative or emergency functions conducted by federal, state, or*
79 *local government that serve a public purpose that do not require federal or state authorization*
80 *or that do not result in an additional direct or permanent indirect impact; or*
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85 ~~(2)~~(3) *Will have a de minimis impact ~~on~~to greater sage-grouse and sagebrush*
86 *ecosystems in this State.*

87 **Sec. 1517.1.** *Any person or entity that proposes an activity or a project on public lands*
88 *subject to state or federal review, approval, or authorization that will cause an*
89 *anthropogenic disturbance shall:*

90 *(a) Submit to the Sagebrush Ecosystem Technical Team sufficient information for*
91 *determining the adverse impact the proposed activity or project will have ~~on~~to the greater*
92 *sage-grouse or the habitat of the greater sage-grouse, including, without limitation,*
93 *geographic information system data files;*

94 *~~(a)~~(b) Work with the Sagebrush Ecosystem Technical Team to avoid and minimize*
95 *disturbances to the greatest extent possible to reduce the potential mitigation obligations;*
96 *and*

97 *~~(b)~~(c) Have the direct and indirect impacts of the anthropogenic disturbance:*

98 *(1) Quantified by a verifier in terms of the number of debits that the activity or project*
99 *will cause. Upon completion of his or her calculations, the verifier shall submit the*
100 *calculations to the Program Manager. The Program Manager shall use the habitat*
101 *quantification tool and available field data to conduct a quality assurance of the calculations*
102 *of the verifier not later than 30 days after the verifier submits his or her final calculations to*
103 *the Program Manager. If there is a difference between the calculations by the verifier and*
104 *Program Manager, the Program Manager will work with the Verifier to finalize the*
105 *calculation, and if there is still a difference, the calculations of debits by the Program*
106 *Manager apply to the activity or project; and*

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108 *(2) Mitigated by:*
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Commented [KP6]: Language recommended by NACO and NGM.

110 (I) Acquiring ~~from or creating~~ transferring a sufficient number of credits
111 in the Nevada Conservation Credit System to offset the number of debits
112 determined pursuant to subparagraph (1); or

113 (II) Developing a mitigation plan with the Sagebrush Ecosystem Technical
114 Team and approved by the Sagebrush Ecosystem Council pursuant to subsection 2 that
115 will generate enough credits to offset the direct and indirect adverse impacts the
116 proposed activity or project will have ~~to~~ the greater sage-grouse or the habitat of the
117 greater sage-grouse.

118 2. In determining whether to approve a mitigation plan, the Sagebrush
119 Ecosystem Council must consider:

120 (a) The conservation actions that are included in the plan and the number of credits to
121 be generated from such conservation actions;

122 (b) The location where the credits will be generated;

123 (c) The length of time necessary to generate the credits;

124 (d) The length of time the credits will be maintained;

125 (e) Whether the credit durability provisions of the plan include appropriate mechanisms
126 to ensure that a sufficient number of credits will be maintained for the appropriate amount
127 of time; and

128 (f) Whether the financial provisions ensure maintenance of the credits for the duration
129 of the activity or project.

130 Sec. ~~1618.1.~~ Within 10 working days after~~Upon~~ completion of the process set forth in
131 section 15 of this regulation, the Program Manager must issue to the person or entity that is
132 proposing the activity or project a certification of mitigation that sets forth:

133 (a) The number of credits that the person or entity will acquire from or create in

137 *the Nevada Conservation Credit System; or*

138 *(b) The mitigation plan approved by the Sagebrush Ecosystem Council pursuant to*
139 *section 15 of this regulation that will mitigate the direct and indirect adverse impacts that*
140 *the proposed activity or project will have ~~on~~to the greater sage-grouse or the habitat of the*
141 *greater sage-grouse.*

142 *2. The person or entity to whom a certification of mitigation is issued must ensure*
143 *compliance with the terms set forth in the certification of mitigation for the duration of the*
144 *activity or project.*

145 **Sec. ~~17~~19.***The Sagebrush Ecosystem Technical Team shall:*

146 *1. Train and certify persons to be verifiers; and*

147 *2. Maintain a list on the Internet website of the Sagebrush Ecosystem Program of all*
148 *verifiers who have been so trained and certified for the current calendar year.*
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