

Sagebrush Ecosystem Program

201 Roop Street, Suite 101
Carson City, Nevada 89701
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www.sagebrusheco.nv.gov

JOE LOMBARDO
Governor



Kathleen Steele, Program Manager
Casey Adkins, Forestry/Wildland Fire
Sarah Hale, State Lands
Cheyenne Acevedo, Wildlife
Skyler Monaghan, Agriculture

STATE OF NEVADA
Sagebrush Ecosystem Program

Notice of Workshop to Solicit Public Comment on Proposed
Addition to Mitigation Regulations
Wednesday, October 30, 2024 – 12:30 p.m.

Physical Location

DCNR Tahoe 2-E Conference Room
901 S Stewart St, Carson City, NV 89701

Virtual Access for the Public

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The Sagebrush Ecosystem Program (SEP) under the Sagebrush Ecosystem Council will be holding a workshop to solicit comments from interested persons on the following topics that may be addressed in the proposed regulations:

- *Requirements for persons to become certified by the Sagebrush Ecosystem Technical Team as verifiers for the Conservation Credit System*
- *Disciplinary action that will be taken when a certified verifier is considered a risk to the integrity or workload of the Sagebrush Ecosystem Program*

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.

We are pleased to provide 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 775-687-2005 no later than two (2) working days prior to the scheduled meeting. You can also email Kathleen Steele at ksteele@sagebrusheco.nv.gov

Please contact Kathleen Steele, by calling 775-687-2005 or emailing ksteele@sagebrusheco.nv.gov, to obtain support material for the agenda. Materials will also be posted on the <http://sagebrusheco.nv.gov> website. The agency's small business impact statement is attached.

Notice of this meeting was posted in the following locations:

Department of Conservation and Natural Resources, 901 S. Stewart Street, Carson City, NV
Nevada State Library and Archives, 100 S. Stewart Street, Carson City, NV
Department of Wildlife, 6980 Sierra Pkwy #120, Reno, NV
Sagebrush Ecosystem Program, 201 S. Roop Street, Carson City, NV
Department of Agriculture, 405 South 21st Street, Sparks, NV
Department of Wildlife, 1100 Valley Road, Reno, NV
Capitol Building, 101 North Carson Street, Carson City, NV
Legislative Building, 401 South Carson Street, Carson City, NV
Carson City Library, 900 North Roop Street, Carson City, NV
Churchill County Library, 553 South Main Street, Fallon, NV
Las Vegas-Clark County Library District Headquarters, 833 Las Vegas Boulevard North, Las Vegas, NV
Douglas County Public Library, 1625 Library Lane, Minden, NV
Elko County Library, 720 Court Street, Elko, NV
Esmeralda County Library, Corner of Crook and 4th Street, Goldfield, NV
Eureka County Library, 80 Monroe Street, Eureka NV
Humboldt County Library, 85 East 5th Street, Winnemucca, NV
Battle Mountain Branch Library, 625 South Broad Street, Battle Mountain, NV
Lincoln County Library, 63 Main Street, Pioche, NV
Lyon County Library System, 20 Nevin Way, Yerington, NV
Mineral County Public library, 110 First Street, Hawthorne, NV
Pershing County Library, 1125 Central Avenue, Lovelock, NV
Storey County Treasurer and Clerk's Office, 265 B Street Drawer D, Virginia City, NV
Tonopah Public Library, 167 South Central Street, Tonopah, NV
Washoe County Library System, 301 South Center Street, Reno, NV
White Pine County Library, 950 Campton Street, Ely, NV

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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1. OPEN WORKSHOP, 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

NAC 232.480 refers to the training and certification of verifiers by the Sagebrush Ecosystem Technical Team.

The purpose of the proposed regulation change is to clarify requirements for becoming certified as a verifier for the Conservation Credit System, behavior and violations that would warrant warnings or decertification, and the decertification process.

4. 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.

Any individual or organization not able to attend may submit comments in writing to ksteele@sagebrusheco.nv.gov until close of business on 10/30/24.

5. CLOSE OF WORKSHOP

6. ADJOURNMENT

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

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**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:

1. 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)*

No. See Question 8.

2. 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)
(Provide attachments as needed)

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 (SEP) sent a questionnaire out to all known affected businesses, which included independent consultants, consulting firms, ranches, and mining/energy/technology companies. It was determined that there are 105 small businesses in Nevada that may be impacted by the regulation change. All other entities not captured by this mailing will be able to voice their concerns during the workshop on October 30, 2024 in the Tahoe 2-E Conference Room at the Department of Conservation and Natural Resources, 901 S. Stewart St., Carson City, Nevada.

Of the one hundred and five questionnaires sent out, four were undeliverable, and one was returned with answers. The main concern was the indirect cost associated with attending in-person verifier certification training. Although training is provided free of charge, attendees must pay for their own travel, lodging, and food.

Minutes of the public workshop and subsequent hearing will capture the discussions held regarding the adopted regulation. These may be obtained online at sagebrusheco.nv.gov no later than 30 days after the meetings.

2. The manner in which the analysis was conducted (if an impact was determined).

As noted above, the SEP solicited input from all known small businesses who may be affected by the regulation change. The regulation would primarily affect small businesses who are involved in the Conservation Credit System (CCS), including independent consultants, consulting firms, ranches, and small mining, energy, and technology firms. Few concerns were voiced through this initial process, but those affected will have two more opportunities to provide input and participate in the process during the workshop and hearing.

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

a. Both adverse and beneficial effects:

The proposed regulations will codify two SEP policies that relate to third-party verifiers for the CCS. Verifiers are consultants hired by CCS project proponents to act as an unbiased third-party to accurately assess ecosystem conditions at a potential project site for Greater Sage-grouse mitigation. The proposed regulation changes will codify 1) requirements for becoming and remaining a certified verifier for the CCS, and 2) the verifier decertification process for when rules and/or standards are not adhered to.

The proposed regulation change will not directly affect small businesses, but has the potential for indirect economic effects, both adverse and beneficial.

Adverse economic effects could arise from the cost of traveling to the Reno/Carson City area for the full in-person training, required once every five years for each person certified. Additionally, adverse effects could occur if a certified verifier chooses not to adhere to rules and standards set forth by the SEP and is subsequently decertified through a standardized process and disciplinary hearing. Decertification would result in a loss of opportunity to conduct work as a verifier for the CCS, and the associated loss of income. For other small businesses, indirect economic effects could occur from the need to hire a new verifier and potential project delays if their verifier is decertified.

Indirect beneficial economic effects on small businesses are also expected as a result of this regulation change. Once certified, verifiers can generate significant income by performing work for CCS Project Proponents (on average, rates for consulting work can range from approximately \$100 - \$200/hour). Additionally, by requiring rigorous training and holding verifiers accountable when they do not adhere to the SEP's rules and standards, the SEP can ensure that small businesses who hire verifiers will not pay extraneous consulting charges or experience significant project delays when work is completed inefficiently or incorrectly.

a. Both direct and indirect effects:

Same as above.

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.)

The SEP has worked to improve documents and training materials for verifier certification to ensure those becoming certified are clear of the process, their role, and responsibilities.

The SEP has considered methods to minimize the burden of the regulation on the most affected small businesses through several means:

- Providing verifier certification training free of charge
- Requiring in-person attendance for re-certification every 5 years instead of at more frequent intervals
- Offering a virtual option for re-certification in years between a verifier's required in-person training
- Allowing for multiple warnings prior to initiating the decertification process
- Allowing an appeals process at several points during the decertification process

A. Simplification of the proposed regulation:

- See above

B. Establishment of different standards of compliance for a small business:

- NA

C. Modification of fees or fines so that a small business is authorized to pay a lower fee or fine:

- See above

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.

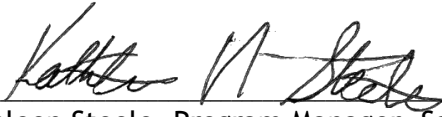
7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, provide an explanation of why such duplicative or more stringent provisions are necessary.

There is no other federal, state, or local standard regulating the activity of verifiers certified by the SEP.

8. The reasons for the conclusions regarding the impact of a regulation on small businesses.

After an analysis of the 105 impacted businesses that the Program is aware of, it was determined that the regulation has the potential to cause indirect financial impacts (both adverse and beneficial) on smaller businesses. The SEP has mitigated the costs of attending in-person training as much as possible (as discussed in number 4) while still ensuring the integrity of the program. Other indirect adverse impacts can be avoided by verifiers adhering to the rules and standards set forth by the SEP. A workshop and a subsequent hearing will be held to acquire more comments from the public and affected businesses.

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.



Kathleen Steele, Program Manager, Sagebrush Ecosystem Program

10/14/2024

Date

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

CHAPTER 232
STATE DEPARTMENTS

**SAGEBRUSH ECOSYSTEM COUNCIL: MITIGATION OF ADVERSE IMPACT TO
GREATER SAGE-GROUSE AND HABITAT**

- 232.400 Definitions.
- 232.405 “Anthropogenic disturbance” defined.
- 232.410 “Credit” defined.
- 232.413 “De minimis impact” defined.
- 232.415 “Debit” defined.
- 232.420 “Greater sage-grouse” defined.
- 232.423 “Habitat quantification tool” defined.
- 232.430 “Mineral exploration” defined.
- 232.433 “Nevada Conservation Credit System” defined.
- 232.438 “Program Manager” defined.
- 232.440 “Public lands” defined.
- 232.445 “Sagebrush Ecosystem Council” defined.
- 232.447 “Sagebrush Ecosystem Technical Team” defined.
- 232.450 “Verifier” defined.
- 232.460 Applicability.
- 232.470 Duties of person or entity proposing activity or project on public lands that will cause anthropogenic disturbance; submission of certain information to Sagebrush Ecosystem Technical Team; criteria for approval of mitigation plan by Council.
- 232.475 Issuance of certification of mitigation by Program Manager; compliance with terms set forth in certification.
- 232.480 Training and certification of verifiers by Sagebrush Ecosystem Technical Team; maintenance of list of trained and certified verifiers.

NAC 232.480 Training and certification of verifiers by Sagebrush Ecosystem Technical Team; maintenance of list of trained and certified verifiers. (NRS 232.162) The Sagebrush Ecosystem Technical Team shall:

1. Train and certify persons to be verifiers; and
2. Maintain a list on the Internet website of the Sagebrush Ecosystem Program of all verifiers who have been so trained and certified for the current calendar year.

(Added to NAC by Sagebrush Ecosystem Council by R024-19, eff. 10-30-2019)

3. All verifiers must complete the following prior to being certified:
 - a. Must hold a valid Class C Driver's License.
 - b. Field verifiers must have all of the following:
 - i. A Bachelor's degree in natural resource management, ecology, forestry, wildlife management, environmental science or equivalent work experience.
 - ii. At least two (2) years' experience in Great Basin plant identification, familiarity and experience with plant identification in Northern Nevada is preferred.
 - iii. At least two (2) years' experience with standard quantitative vegetative field data collection methods (i.e., line-intercept, Daubenmire plots, photo points).
 - iv. At least one (1) years' experience using GPS unit and software.
 - c. Desktop verifiers must have all of the following:
 - i. A Bachelor's degree in GIS, natural resources management, ecology, forestry, wildlife management, environmental science, or equivalent work experience.
 - ii. At least two (2) years' experience using ESRI ArcGIS software to conduct advanced spatial analysis.
 - iii. At least two (2) years' experience in Great Basin, familiarity and experience with geography and ecosystems of Northern Nevada is preferred.
 - d. Must complete the State of Nevada's CCS Verification Training.
 - e. Must pass the State of Nevada's CCS Verification Training Exam.
4. Certifications will need to be renewed annually through a refresher course and every five years through a full retraining and retesting.
5. The Program Manager may refuse to certify an applicant or, after examination, may refuse to certify an eligible person who:
 - a. Lacks any of the preliminary requirements established for the examination for the certificate for which the applicant or eligible person applies.
 - b. Has made a false statement of any material fact, or
 - c. Has practiced, or attempted to practice, any deception or fraud in the certificate or examination of the applicant or eligible person, or in securing the certification of the applicant or eligible person.
6. When the Program Manager refuses to examine an applicant or, after an examination, refuses to certify an eligible person, the applicant or eligible person may request the Program Manager to furnish to the applicant or eligible person a statement of the reasons for the refusal to examine or the refusal to certify, as the case may be. The Program Manager shall furnish the statement upon request.
 - a. If the Program Manager refuses to examine an applicant or, after an examination, refuses to certify an eligible person, the applicant or eligible person may make an appeal to the Finder of Fact. If the Finder of Fact finds that the Program Manager is in error in refusing to

- examine an applicant or in refusing to certify an eligible person, the Finder of Fact shall order the Program Manager to examine or certify, and the Program Manager shall comply.
7. Should there be evidence enough to consider a verifier, certified through Nevada Administrative Code (NAC) 232.400-232.480, a risk to the integrity or workload of the Sagebrush Ecosystem Program, the following shall be completed:
 8. Causes for disciplinary action are as follows:
 - a. Activity which is incompatible with a verifier's conditions of certification, or which violates a state or federal provision,
 - b. Disgraceful or discourteous treatment of the public, staff, or other Verifiers,
 - c. Incompetence, inefficiency, or inexcusable neglect of duty that creates an undue burden on the Sagebrush Ecosystem Program,
 - d. Fraud, dishonesty, or misrepresentation to the Sagebrush Ecosystem Program, its Proponents, or the public,
 - e. Abuse, damage to or waste of public equipment, property, or supplies because of inexcusable negligence or willful acts,
 - f. Drug or alcohol use or abuse without a medical doctor's prescription while representing the Sagebrush Ecosystem Program,
 - g. Conviction of any criminal act involving moral turpitude, or documentation of acts of violence that arise out of or during the performance of the Verifier's duties,
 - h. Violation of any rule of the Sagebrush Ecosystem Program, or
 - i. Failure to participate in any investigation in which the Verifier is the subject of alleged discrimination, sexual harassment, or any other investigation authorized by the Sagebrush Ecosystem Program.
 9. Should the Program Manager become aware of any action of a Verifier listed above, the Program Manager will issue a verbal warning to the Verifier that details the cause for disciplinary action and required improvement.
 - a. The verbal warning will be documented by the Sagebrush Ecosystem Program via written, electronic, or paper means, and a copy of such documentation will be supplied to the Verifier.
 - b. This step may be done multiple times for various causes for disciplinary actions.
 - c. Should the Verifier contest any allegations brought forth against them, they are able to request a meeting with the Finder of Fact to contest the step in the decertification process within 30 days of the receipt of the verbal warning.
 10. If the verbal warning does not cause a correction of the action, various offenses cumulatively add up to a more concerning issue, or a more severe initial action is warranted, a written warning must be sent to the Verifier's last known mailing address by means of a delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received.
 - a. The warning must outline the concerns and give the Verifier a timeline to show improvement.
 - b. If the notice is returned without having been received by the Verifier, the Verifier's date of receipt shall be deemed to be the third day after the date the notice was sent.
 - c. Should the Verifier contest any allegations brought forth against them, they are able to request a meeting with the Finder of Fact to contest the step in the decertification process within 30 days of the receipt of the written warning.
 11. If the proper corrective action is not completed within the timeframe set above, the Verifier will be notified of suspension of their certification, with the possibility of a full decertification, and a

disciplinary hearing will be set with the Deputy Director of DCNR as the Finder of Fact pursuant to NRS 233B.121-150, or if the Verifier so requests, the Finder of Fact may be changed to the Sagebrush Ecosystem Council (SEC), and the hearing can be held at the next public SEC meeting, or if the SEC chooses, a special meeting, but in all circumstances in compliance with the open meeting laws.

- a. The Verifier must be given at least 10 working days' notice of the hearing by means of a delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received.
 - b. The notice must include all of the following:
 - i. A statement of the time, place, and nature of the hearing.
 - ii. A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - iii. A reference to the particular sections of the statutes and regulations involved.
 - iv. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.
 - c. If the notice is returned without having been received by the Verifier, the Verifier's date of receipt shall be deemed to be the third day after the date the notice was sent.
 - d. The written notice must inform the Verifier that a disciplinary hearing has been scheduled on his or her behalf and specify the date, time, and place of the hearing.
 - e. If the Program Manager and the Verifier agree, the date of the disciplinary hearing may be changed.
 - f. If the Verifier does not understand the reasons for the suspension or decertification or the procedures related to disciplinary actions, the Verifier may seek an explanation from the Sagebrush Ecosystem Program or another person in the agency familiar with the procedure.
 - g. The Verifier may waive the right to a disciplinary hearing in writing. If so, the date of decertification is effective immediately.
 - h. The Finder of Fact makes the final decision at the hearing, and a copy of the final decision will be provided in writing by means of a delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received to the Verifier and, if applicable, the effective date of decertification.
12. The procedures specified above need not be followed before decertifying a Verifier if the circumstances give the Sagebrush Ecosystem Program a reasonable cause to believe that the certification of the Verifier poses a threat to life, limb or property or may be detrimental to the interests of the State or the Sagebrush Ecosystem Program's Proponents.
13. The Program Manager may reinstate a former Verifier following his or her decertification from the Sagebrush Ecosystem Program after a period of 5 years, so long as the subject Verifier formerly reapplies and abides by all the requirements for Verifier certification. Additionally, the Verifier needs to have completed and/or finished any requirements that the Finder of Fact from the decertification hearing required of the Verifier in fact-finder's written findings before the Verifier may apply for recertification.
- a. A person re-earning verification will be subject to a 5-year probationary period in which any disciplinary action will immediately initiate the Decertification Process at step 5.