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7 *Attorneys for Petitioner Truckee Meadows*  
8 *Regional Planning Governing Board*

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10 IN AND FOR THE COUNTY OF WASHOE  
11

12 COUNTY OF WASHOE, by and through  
its Board of County Commissioners;  
13 SUN VALLEY GENERAL  
IMPROVEMENT DISTRICT, by and  
14 through its Board of Trustees,

Case No. CV02-03469

15 Petitioners,

Dept. No. 9

16 vs.

17 WASHOE COUNTY REGIONAL  
GOVERNING BOARD.

18 Respondent.  
19 \_\_\_\_\_/

20 In re: Washoe County's Assembly Bill 39

21 TRUCKEE MEADOWS REGIONAL  
PLANNING GOVERNING BOARD,

22 Petitioner,

23 vs.

24 COUNTY OF WASHOE, a political  
subdivision of the State of Nevada,

25 Respondent.  
26 \_\_\_\_\_/

27 **VERIFIED PETITION FOR WRIT OF MANDAMUS OR PROHIBITION**  
**OR IN THE ALTERNATIVE**  
28 **PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

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1 COMES NOW, the Truckee Meadows Regional Planning Governing Board ("RPGB"),  
2 by and through its counsel of record, Norman J. Azevedo and Jessica C. Prunty of Dyer,  
3 Lawrence, Flaherty, Donaldson & Prunty, and hereby brings this verified petition for the  
4 issuance of a writ of mandamus or prohibition, or in the alternative, this verified petition  
5 for declaratory and injunctive relief against the County of Washoe ("County").

6 **NATURE OF PROCEEDING AND INTRODUCTION**

7 This is a civil action requesting writ relief, or in the alternative, declaratory and  
8 injunctive relief to address the County's actions in proposing legislation that would change  
9 the make-up of the RPGB without complying with contractual, statutory and regulatory  
10 provisions imposing mandatory informational requirements upon the three local  
11 governments within Washoe County before proposing legislation regarding regional  
12 planning in the area.

13 In 2002, a settlement agreement ("Settlement Agreement") was reached in this case  
14 which resolved numerous issues amongst the parties regarding regional planning, including  
15 cooperative planning, amendments to the Truckee Meadows comprehensive regional plan  
16 ("Regional Plan"), programs of annexation, dispute resolution and legislation. *See* Ex. 1.  
17 The legislation section of the Settlement Agreement prohibited the parties from proposing  
18 legislation that is contrary to or inconsistent with the terms of the Settlement Agreement;  
19 that section also specifically required the Cities of Reno and Sparks, the County (collectively  
20 "Local Governments") and the RPGB to address all other legislative items in accordance  
21 with NRS 278.0286(2) and a memorandum of understanding on legislative issues ("2001  
22 Legislative Cooperation MOU"). Ex. 1 at 8 (Sec. F).

23 NRS 278.0286(2) requires the Local Governments to file relevant information with  
24 the RPGB before proposing legislation on regional matters. The 2001 Legislative  
25 Cooperation MOU sets forth additional meet, confer, disclosure and informational  
26 requirements upon the Local Governments and affected entities before proposing regional  
27 planning legislation. *See* Ex. 2. Shortly after the 2002 Settlement Agreement was executed,  
28 the RPGB adopted Regulations on Procedure, one of which requires the filing of relevant

1 information at least sixty days before submitting a recommendation for regional planning  
2 legislation to the Legislative Counsel Bureau ("LCB"). Ex. 3 at 26 (Reg X).

3 The County has submitted a bill draft request that alters the composition of the  
4 RPGB to the LCB and then pre-filed the bill, Assembly Bill ("AB") 39, with the 2017  
5 Legislature. See Ex. 4. The County took these actions to propose a change to a regional  
6 planning statute, without consulting with, or providing relevant information regarding the  
7 legislative proposal to the RPGB.

8 The RPGB is currently composed of ten members: four appointed by the City of  
9 Reno, three appointed by the City of Sparks and three appointed by the County; two of the  
10 three members appointed by the County must either represent or reside in the  
11 unincorporated areas of the County. NRS 278.0264(1). The Local Governments may  
12 appoint either citizens or Local Government elected officials. Historically, and currently,  
13 the RPGB has been comprised of elected officials. AB 39 would eliminate one of the City  
14 of Reno's seats and the requirement that two of the County appointees, if commissioners,  
15 must represent the unincorporated areas of the County.

16 Once notified of the unilateral drafting and filing of AB 39, the RPGB determined  
17 that the County submitted AB 39 without complying with the 2002 Settlement Agreement,  
18 NRS 278.0286(2), the 2001 Legislative Cooperation MOU, and Regulation X, and voted to  
19 pursue legal action to address these violations if the County did not withdraw AB 39.

20 The County's legal position is that it did not violate the governing statute, regulation  
21 or the Settlement Agreement as articulated at the most recent meeting of the Board of  
22 County Commissioners on January 10, 2017. During that meeting, the Board of County  
23 Commissioners voted to move forward with AB 39 and various commissioners articulated  
24 the reasoning behind their legislative request. Statements included wanting to have an  
25 equal vote on the RPGB, *wanting to get control* over the management of the RPGB,  
26 wanting to ensure that commissioners who sit on RPGB follow the directives of the majority  
27 of the Board of County Commissioners, and wanting to resolve alleged redundancy of  
28 efforts amongst RPGB, other regional agencies and the Local Governments.

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Unfortunately, the RPGB was forced to seek recourse from this Court. Intergovernmental coordination and transparency in dealing with regional planning issues is critical to the success of regional planning in the Truckee Meadows and benefits all of the citizens who reside in Washoe County. The County's actions are contrary to these precepts and in violation of contract, statute and regulation. Thus, the RPGB submits this matter to this Court's continuing jurisdiction over the 2002 Settlement Agreement to compel the County's compliance with the Settlement Agreement, NRS 278.0286(2) and RPGB's regulation and to prohibit the County from pursuing AB 39 in the 2017 Legislature through either the issuance of a writ of mandamus or prohibition, or through an order granting declaratory and injunctive relief.

**VERIFIED PETITION FOR WRIT OF MANDAMUS OR PROHIBITION**

Pursuant to NRS 34.150 *et seq* and NRS 34.320 *et seq*, Petitioner RPGB hereby petitions this Court for a Writ of Mandamus or Prohibition.

**GROUND FOR PETITION**

This Petition is brought on the following grounds:

1. This Court has continuing jurisdiction over the 2002 Settlement Agreement, including any violation thereof;
2. The County proposed regional planning legislation to the 2017 Legislature without conferring with the RPGB or without providing relevant information regarding the proposal to the RPGB in advance of submitting a bill draft request ("BDR") to LCB;
3. The County took this action without any communication or coordination with RPGB, the City of Sparks or City of Reno;
4. The County violated the 2002 Settlement Agreement;
5. The County violated NRS 278.0286(2);
6. The County violated RPGB's Regulation on Procedure ("Regulation") X;
7. The County's legislative proposal will change the Regional Plan;
8. Petitioner has suffered significant damages as a result of the actions of Respondent;

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9. If AB 39 is not withdrawn before the commencement of the 2017 Legislature, Petitioner will continue to suffer significant damages and those damages will be irreparable;

10. A Writ of Mandamus is proper to compel the County's compliance with the Settlement Agreement, NRS 278.0286(2) and Regulation X and address its legal violation;

11. Alternatively a Writ of Prohibition is proper to arrest the County's actions taken in violation of the Settlement Agreement, NRS 278.0286(2) and Regulation X;

12. There is no plain, speedy, or adequate remedy at law to resolve the County's violations of law;

13. Circumstance reveal that there is urgency or strong necessity;

14. There are important legal issues of law and public policy that need clarification; and

15. Petitioner's request for a Writ of Mandamus or Prohibition is necessary in order to compel Respondent to comply with its statutory, regulatory and contractual obligations and to prevent further harm and injury to Petitioner.

**REMEDY REQUESTED**

WHEREFORE, the RPGB requests that this Court:

1. Issue a Writ of Mandamus declaring that the County violated the 2002 Settlement Agreement, NRS 278.0286(2), and Regulation X, compelling the County to comply with these requirements in recommending regional planning legislative proposals and withdraw AB 39 from the 2017 Legislature;

2. Issue a Writ of Prohibition prohibiting the County from pursuing AB 39 and acting in excess of its legal authority and contrary to its legal obligations and duties in proposing regional planning legislation in violation of the 2002 Settlement Agreement, NRS 278.0286(2) and Board Regulation X; and

3. Award the RPGB costs, interests and such other remedies as this Court deems appropriate.

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MEMORANDUM OF POINTS & AUTHORITIES

IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDAMUS

I.

BACKGROUND - REGIONAL PLANNING

A. Pertinent Statutes and Legislative History

In 1989, the Nevada Legislature created a new regional government. The new regional agency became commonly known as the Truckee Meadows Regional Planning Agency ("TMRPA"). See NRS 278.026 to NRS 278.029, inclusive. The Local Governments, through the urging of the late Senator Raggio, worked together to formulate the regional planning legislation to put in place a coordinated and cooperative approach to planning in the areas within Washoe County. See Ex. 5 at 3, 14-48, 191-92.<sup>1</sup>

As described in a thoughtful floor speech before the Senate, Senator Raggio stated:

This bill represented a goal that I personally set some years back when the local entities in Washoe County saw fit to dismantle the regional planning commission that was then in existence. At that time, I indicated, and I strongly felt that was a regressive step. In fact, it was a step backwards in planning for all of Washoe County. *From that point on for a number of years the individual local governments, the county of Washoe, City of Reno and the City of Sparks went off in different directions or at least not in symmetric directions in regional planning efforts.*

There were some efforts to try to pull together on some of these issues but as things came to pass that effort, *unfortunately, did not develop in the manner in which it should have if we were ever to ensure the residents of our communities some consistent long-term comprehensive planning for the area.*

I think it is especially important because the geographic situation is not like many other areas. For all intents and purposes, if you exclude the Incline Village area which this bill does in effect and some of the rural areas, the Reno-Sparks-Washoe County population is largely in a bowl. It is largely a cohesive population within the confines of the mountains

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<sup>1</sup> Exhibit 5 is the legislative history compiled by the LCB of the 1989 enacting legislation, Senate Bill ("SB") 367, and was obtained from the Legislature's website at <https://www.leg.state.nv.us/dbtw-wpd/exec/dbtwpub.dll>; for purposes of this matter, the entire history was bate-stamped 0001-217 for ease of reference in these proceedings.

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surrounding our urban communities. It makes little sense to impose restrictions, limitations and regulations which are tied to artificial geographic boundaries.

With that thought in mind, it seemed necessary *if we were ever to achieve comprehensive regional planning to reinstitute a regional planning commission which had the efficacy and the authority to do so.* It was for that reason, in answer to Senator Mello's concern, that I did obtain the bill draft (and I'll take the credit or the blame whatever ultimately comes out of it). The bill draft was obtained for that purpose and with some input from the local entities and when it did surface before the members of this Washoe County delegation it was met, to say the least, with mixed emotions. To the credit of the Washoe County delegation (and I will admit to some urging on my part) we gave these entities a limited time in which to work together for the purpose of coming up with some suggestions that would make the bill draft more appealing and more to the point.

I want to commend not only our Washoe delegation for its cohesiveness and in the gentle nudge that was given to the members of the local entities, but for the first time I think realistically it caused the local governments in Washoe County to work together, to communicate fully, and to bring back suggestions to us for a better bill and one which would serve these needs and further these goals.

I indicated to you that through Senator Wagner's leadership on the subcommittee we instituted a process which I would commend to this Senate and to the legislature for future issues of a complex nature. We had more hearings before a bill was introduced than we ever had here on bills that have been introduced. Then we followed that along with hearings after the bill was introduced. It takes time but this was a bill which should not have been hurried; it is a measure which needed to be processed this session and the result is the best bill that could be hammered out with input not only from local entities, but as well from developers, builders, constituents, people who are concerned with reasonable or unreasonable growth, and all elements of these interests were involved in the process of hammering out the bill that is now here before the Senate for final approval. Likewise, I commend the subcommittee and all of the local governments and the interested people and groups who participated in that process.

I do think this is a realistic, meaningful step for comprehensive planning in the Washoe County area. I think it's something that could well be applied to other areas of the state and certainly to those areas that are experiencing unbridled growth. It certainly serves the purpose for which it has been created.

Ex. 5 at 191-92.

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1 Later, in 1999, the Legislature specifically declared that the regional planning  
2 statutes, NRS 278.026 to 278.029, were designed to ensure “that comprehensive planning  
3 will be carried out with respect to population, conservation, land use and transportation,  
4 public facilities and services, annexation and *intergovernmental coordination*.” NRS  
5 278.0261(1) (emphasis added). Moreover, the Legislature emphasized that “[i]t is the  
6 *intent* of the Legislature with *respect to NRS 278.026 to 278.029, inclusive*, that each local  
7 government and affected entity shall exercise its powers and duties in a manner that is in  
8 *harmony* with the powers and duties exercised by other local governments and affected  
9 entities to enhance the long-term health and welfare of the county and all its residents.”  
10 NRS 278.0261(4) (emphasis added).

11 *1. The RPGB – Creation and Composition*

12 One of the regional planning statutes, NRS 278.0264, created the RPGB, and also  
13 dictates its composition:

14 1. There is hereby created in each county whose population is  
15 100,000 or more but less than 700,000, a governing board for  
16 regional planning consisting of:

17 (a) Three representatives appointed by the board of  
18 county commissioners, at least two of whom must represent or  
19 reside within unincorporated areas of the county. If the  
20 representative is:

21 (1) A county commissioner, his or her district  
22 must be one of the two districts in the county with the highest  
23 percentage of unincorporated area.

24 (2) Not a county commissioner, he or she must  
25 reside within an unincorporated area of the county.

26 (b) Four representatives appointed by the governing  
27 body of the largest incorporated city in the county.

28 (c) Three representatives appointed by the governing  
body of every other incorporated city in the county whose  
population is 60,000 or more.

(d) One representative appointed by the governing body  
of each incorporated city in the county whose population is less  
than 60,000.

NRS 278.0264(1).

When initially adopting the regional planning legislation in 1987, the Local  
Governments were concerned, among other issues, about “[f]air representation of  
governments in the three jurisdictions involved[.]” Ex. 5 at 3 (Comments of G. Evangelatos,



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1 City of Sparks Planning Director). At that time, the entity being considered for the regional  
2 planning approving authority was the Washoe Council of Governments ("WCOG"). Ex. 5  
3 at 1-2, 3. Designation of the WCOG as the approving authority was an "attempt[] to balance  
4 the Board of County Commissioners' concept of representing the people with WCOG  
5 representing each jurisdiction." Ex. 5 at 4 (Comments of J. Hester, Washoe County Support  
6 and Comprehensive Planning).

7 But, as reflected in the minutes of the first meeting of the Washoe County Legislative  
8 Delegation during the 1989 Session, there were concerns that such a structure would  
9 "create an underrepresentation of citizens who reside in the county's unincorporated area."  
10 Ex. 5 at 3 (Comments of S. Smith, member of City of Reno council and chair of WCOG).  
11 Washoe County Commissioner Larry Beck also expressed his concern that "individuals  
12 residing in the unincorporated area have one or two commissioners that would represent  
13 them; however, an individual who lives in the city limits would have six city councilman as  
14 well as county commissioners[;] . . . [which], in his opinion, . . . is a more critical issue in  
15 regards to representation." Ex. 5 at 8.

16 Senator Raggio shared the constitutionality concern. As set forth in the minutes of  
17 that meeting:

18 Senator Raggio expressed his concerns regarding the ultimate  
19 approving body. He shared with the delegation the Supreme  
20 Court opinion, with regard to the principle of "one man, one  
21 vote" which he said would be applicable to the alternative  
22 proposal under the constitutional requirements. In the opinion  
23 of the Legislative Counsel, becoming a member of the  
24 approving authority (WCOG) simply by virtue of being elected  
25 as a council member or county commissioner, appears to  
26 violate that concept. It would not affect the parent counties if  
27 the ultimate authority were an appointed body. It could even  
28 be an appointed body of elected officials which would reach  
beyond the constitutional problem. In Senator Raggio's  
opinion, using WCOG creates a situation that might be  
unmanageable.

Ex. 5 at 7.

The then-Mayor of the City of Sparks, Jim Spoo, also stated that "the flip-side' of the  
constitutional issue [was that t]he cities do not want to 'give away' the most significant

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1 issues in the Truckee Meadows, namely, planning/zoning issues which affect everything;  
2 i.e., police service, fire service, parks and so on[; t]he concern is to make sure that  
3 accountability to the citizens is retained[.]” Ex. 5 at 8.

4 After going back to the drawing board, another proposal was presented at the next  
5 meeting of the Washoe County Legislative Delegation, to create a governing board  
6 comprised of appointees by each of the Local Governments and ensuring representation by  
7 the County appointees of the unincorporated areas of the County. Ex. 5 at 25, 47. That  
8 proposal was set forth in bill draft form, and then ultimately in SB 367. Ex. 5 at 66, 68-69,  
9 134-35.

10 When the Senate Committee on Government Affairs considered SB 367, Senator  
11 Raggio informed the members of the committee that “an opinion had been received from  
12 the Legislative Counsel Bureau that they could not structure the bill to automatically  
13 mandate the members of the city council or the commission members of the governing  
14 body. That would violate the constitution, therefore the language had to be structured as  
15 it was written in SB 367.” Ex. 5 at 145. In addressing concerns about the governing board  
16 not being elected by the citizens, Senator Wagner stated that the governing board members,  
17 by being themselves elected officials of their respective local governments, “would be  
18 accountable to the people.” Ex. 5 at 145.

19 The minutes of that meeting also set forth the following discussion regarding the  
20 governing board:

21 John MacIntyre, County Manager for Washoe County,  
22 stated many hours had been spent to establish a commission to  
23 allow the community to prepare a regional plan which could be  
24 brought into by all entities responsible for implementing the  
25 plan. He stated Washoe County supported S.B. 367.

26 Carole Felty, Washoe County resident, stated concern  
27 over the governing board not being elected.

28 Senator Raggio stated the board was comprised of  
elected officials, but the governing body would be appointed  
from the elected members of the city councils of Reno and  
Sparks and the county commissioners.

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Senator Wagner stated the language of the bill made it possible for the governing board to be comprised of members other than elected officials. That issue was discussed in terms of the constitutional question regarding membership. It would be up to the governing body to make those appointments.

Ms. Felty stated she was concerned about not being able to elect the officers to serve on the board. She indicated they were back to a selected board and not elected board.

Senator Wagner stated it was unlikely the local entities would select someone other than an elected official who would be accountable to the people. The residency requirement would be an elected official would have to live in the unincorporated areas and take into consideration the interest and concerns of those living in the unincorporated areas.

Ex. 5 at 143. SB 367 was unanimously passed by both the Senate and Assembly. Ex. 5 at 192, 199, 211.

2. *The RPGB – Duties and Obligations*

The RPGB is required to adopt a comprehensive regional plan (“Regional Plan”) for the areas within Washoe County, and any amendments thereto.<sup>2</sup> NRS 278.0276. The Regional Plan must be reviewed annually and updated every five years. NRS 278.0272. Only the RPGB may adopt an amendment to the Regional Plan.

A key goal and component of the regional planning process is “intergovernmental coordination.” Thus, among other things, the contents of the regional plan “must include goals, policies, maps and other documents relating to . . . *intergovernmental coordination.*” NRS 278.0274; *see also* NRS 278.0261(1). As discussed further below, the Regional Plan contains provisions setting forth that the composition of the RPGB is appointees by the Local Governments, a key component to ensuring intergovernmental coordination in regional planning.

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<sup>2</sup> The Lake Tahoe Basin is exempted from the areas of regional planning as planning in the Basin is overseen by the Tahoe Regional Planning Agency. *See* NRS 278.0288, 278.790.

1 The RPGB is further required to “[a]dopt such regulations as are necessary to carry  
2 out its specific powers and duties.” NRS 278.0265(1). NRS 278.0265(4) also empowers the  
3 RPGB with the authority to enter into inter-local agreements pursuant to NRS Chapter 277  
4 “for a purpose that is consistent with the provisions of NRS 278.026 to 278.029, inclusive.”

5 *3. Requirements for Regional Planning Legislation*

6 NRS 278.0286, another of the Legislature’s methods of ensuring intergovernmental  
7 coordination, imposes several reporting and informational requirements upon the Local  
8 Governments and affected entities.<sup>3</sup> Subsection 1 of the statute requires that the Local  
9 Governments and affected entities prepare and submit annual reports to the regional  
10 planning commission (“RPC”) and the RPGB regarding work or action taken or proposed  
11 in regards to the Regional Plan. NRS 278.0286(1). Subsection 2 is the legislative  
12 mechanism ensuring a transparent and collaborative approach when it comes to the Local  
13 Governments and affected entities proposing legislation on regional matters. NRS  
14 278.0286(2). It expressly provides that “[b]efore submitting a recommendation for  
15 proposed legislation or beginning any program or project relating to the mandatory  
16 provisions of the comprehensive regional plan, a unit of local government or an affected  
17 entity shall file all relevant information relating to that request, program or project with the  
18 governing board.” *Id.* (emphasis added).

19 NRS 278.0286 was included in the enacting legislation in 1989 and has not been  
20 amended since. As summarized for the Washoe County Legislative Delegation, subsection  
21 2 requires as follows:

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25 <sup>3</sup> “Affected Entity” is defined as “a public utility, franchise holder, local or regional  
26 agency, or any other entity having responsibility for planning or providing public facilities  
27 relating to transportation, solid waste, energy generation and transmission, conventions  
28 and the promotion of tourism, air quality or public education. The term does not include:  
(a) A state agency; or (b) A public utility which is subject to regulation by the Public Utilities  
Commission of Nevada.” NRS 278.026(1).

1 Prior to submitting requests for changes in state legislation or  
2 beginning programs or projects related to the issues discussed  
3 in the mandatory elements of the comprehensive regional plan,  
4 each unit of local government and each affected entity must file  
5 information regarding such request or programs/projects with  
6 the governing board.

7 Ex. 5 at 41.

8 B. Regulations

9 Pursuant to the statutory mandate to adopt regulations to carry out its statutory  
10 obligations and duties in November of 2002, the RPGB adopted "Regulations on  
11 Procedure" ("Regulations"), which have been amended throughout the years. Ex. 1  
12 (excerpts of Regulations).

13 Regulation II.A(5) provides that "[a]n affirmative vote by a majority of the total  
14 membership of the RPGB is required to adopt a Regional Plan amendment. Ex. 1 at 3.

15 Regulation X, "Legislation and Projects Relating to the Regional Plan," provides:

16 *Not less than 60 days before submitting a recommendation  
17 for proposed legislation to the Legislative Counsel Bureau, or  
18 beginning any program or project relating to the mandatory  
19 provisions of the comprehensive regional plan, a unit of local  
20 government or an affected entity shall file all relevant  
21 information relating to that request, program or project with  
22 the Governing Board. [See Subsection 2 of NRS 278.0286].*

23 Ex. 3 at 26(emphasis added). Regulations II.A(5) and X have not been changed since their  
24 adoption. See Ex. 3 at 34-36.

25 C. Pertinent Regional Plan Provisions

26 The 2012 Regional Plan provides that:

27 The comprehensive Truckee Meadows Regional Plan is  
28 intended to comply with the statutory requirements of Nevada  
Revised Statutes (NRS) 278.0274. In addition to the  
comprehensive Truckee Meadows Regional Plan, the Regional  
Planning Governing Board (RPGB) has adopted regulations  
pursuant to NRS 278.0265 that address a variety of topics not  
addressed in the comprehensive Truckee Meadows Regional  
Plan. *No reliance should be placed on the comprehensive  
Truckee Meadows Regional Plan without consulting the  
applicable statutes, regulations adopted by the RPGB, and the  
guidelines adopted by the Regional Planning Commission  
(RPC).*

Ex. 6 (excerpts of 2012 Regional Plan) at 1 (emphasis added).

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The Regional Plan sets forth the cooperative, intergovernmental effort involved: “[c]reating and carrying out the Truckee Meadows Regional Plan is a cooperative effort involving a large number of agencies, organizations and individuals. Reno, Sparks, Washoe County and others implement the Regional Plan through their planning and regulatory efforts, capital improvement programs, and other programs.” Regional Plan, Intro. at 1. As stated, “[t]he purpose of the Regional Plan is to implement the legislative mandate given to the RPC and RPGB. It is an opportunity to put into place a resource for the region with a collaborative structure that will serve the Truckee Meadows well into the future.” Ex. 6, Intro. at 4.

The Regional Plan further sets forth the make-up of the RPGB and the RPGB’s role:

The RPGB adopts the Regional Plan with any amendments it deems necessary, after submitting the amendments to the RPC for review and comment (NRS 278.0276).

...

The RPGB has ten members. The Washoe County Commission appoints three members (two of whom must reside in or represent the unincorporated area), the Reno City Council appoints four members, and the Sparks City Council appoints three members. The members serve three-year terms and may be re-appointed. The Reno, Sparks, and Washoe County governing bodies may appoint members from among their own members and traditionally have done so.

...

Upon recommendation of the RPC, the RPGB adopts the Regional Plan with any amendments that it deems necessary after holding required public hearings. The RPGB has all the powers and obligations that are delineated in NRS 278.0264 and NRS 278.0265.

Ex. 6, Intro. at 2-3.

The Regional Plan contains principles and goals regarding Regional Plan Implementation and sets forth in pertinent part:

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1 The basis for goal and policy development for implementation  
2 of the Regional Plan are the following planning principles:

3 **Planning Principles**

4 The Regional Planning Agency will effectively manage growth  
5 within the region through the implementation of the Regional  
6 Plan where:

7 ...

8 The Regional Plan and *regulations adopted by the RPGB*  
9 further identify process and procedures to allow changes to the  
10 Regional Plan.

11 Ex. 6, Module 4 at 1.

12 Lastly, the Regional Plan defines the following terms:

13 “Regional Planning Governing Board[:]” The RPGB consists of  
14 ten members including three from the Washoe County  
15 Commission, four from the Reno City Council, and three from  
16 the Sparks City Council (NRS 278.0264).”

17 “Regulation[:]” A rule or order prescribed for management by  
18 government.”

19 Ex. 6, App. 2 at 11.

20 These type of provisions regarding the composition of the RPGB and  
21 intergovernmental coordination have always been embedded in the Regional Plans adopted  
22 by the RPGB since its inception. See Exs. 7-11.<sup>4</sup>

23 **II.**

24 **STATEMENT OF FACTS**

25 **A. The County’s Pursuit of Regional Planning Legislation**

26 On August 31, 2016, at 4:57 p.m., the County hand-delivered a letter to the TMRPA  
27 Executive Director Kimberly H. Robinson, signed by County Manager John Slaughter. See  
28 Ex. 12. That letter stated:

Per NRS 278.0286, Washoe County has provided to the  
Truckee Meadows Regional Governing Board relevant

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<sup>4</sup> Exhibit 7 is excerpts from the 1991 Regional Plan, Exhibit 8 is excerpts from the  
1993 Regional Plan, Exhibit 9 is excerpts from the 1996 Regional Plan, Exhibit 10 is  
excerpts from the 2002 Regional Plan, and Exhibit 11 is excerpts from the 2007 Regional  
Plan.

1 information relating to a request for proposed legislation.  
2 Attached hereto is the Local Government Bill Draft Request for  
3 the 2017 Legislative Session form that will be submitted to the  
4 Legislative Counsel Bureau on September 1, 2016, per NRS  
5 218D.205.

6 Ex. 12. The BDR attached to the letter contained no information regarding the nature of the  
7 legislative proposal and only stated that "Washoe County is seeking a *comprehensive*  
8 *review* of the Regional Planning Agency as defined in *NRS 278.0264- Governing board for*  
9 *regional planning: Creation; membership; chair; compensation; operational needs;*  
10 *capacity to sue and be sued; budget, as part of that review, the structure of the Governing*  
11 *Board, Washoe County Board composition and review of the authority of the agency."* *Id.*  
12 (emphasis added).

13 At the RPGB's next regularly scheduled meeting on October 20, 2016, the RPGB  
14 members discussed the fact that the County had submitted the BDR and concerns were  
15 expressed that the language of the BDR had not been made available to the RPGB members.  
16 See Ex. 13 (October 20, 2016, Board Minutes). RPGB Member Berkbigler, a County  
17 Commissioner appointed to serve on the RPGB, stated that the BDR "will address changes  
18 the County wants to the statutes that directly *impact the County and not the cities*. The  
19 goal is not to eliminate the RPGB. Washoe County is in the process of working on language  
20 for the BDR and as soon as it is ready it will be provided to the RPGB." *Id.* at 3 (emphasis  
21 added). She further explained "that a number of issues were put on the table and the  
22 County Commission Chair recommended that County staff come back with language that  
23 specifically addresses the issues that directly impact the County that make the County a side  
24 entity and not really part of the team. That information should come back at the *November*  
25 *29, 2016, County Commission meeting."* *Id.* at 4.

26 However, the agenda for the County Board of Commissioners' November 29, 2016,  
27 meeting contains no reference to the BDR. See Ex. 14. The County Board of Commissioners  
28 did discuss the item during their meeting on October 25, 2016, five days after the RPGB  
meeting. See Ex. 15 (Agenda, Item 16). In that meeting, the Commissioners considered two  
different language options and voted to submit a BDR containing one of the options with



1 proposed changes regarding the composition of the Board. *See* Ex. 16 at 30 and attached  
2 materials.

3 Almost two weeks later, County Manager Slaughter emailed Executive Director  
4 Robinson on November 7, 2016, stating that it was providing the “final language of the  
5 Washoe County BDR *submitted* to LCB for drafting.” Ex. 17 (emphasis added). The  
6 attachment to Mr. Slaughter’s email contained the actual proposed change to NRS  
7 278.0264(1) as now set forth in AB 39. *Compare* Ex. 17 attach. at 3 *with* Ex. 4.

8 The County did not provide a copy of AB 39, or any other relevant information  
9 regarding its proposal to the RPGB. On November 28, 2016, Executive Director Robinson  
10 received an email from the TMRPA’s lobbying firm, Crowley and Ferrato, who  
11 independently informed her the bill was out. Ex. 18. The bill had been pre-filed with the  
12 Legislature on November 16, 2016. Ex. 4.

13 AB 39 would amend NRS 278.0264(1) by reducing the number of representatives  
14 appointed by the City of Reno from four to three. Ex. 4. AB 39 would also eliminate the  
15 “unincorporated” representation requirements for the County in that the County would no  
16 longer be required to appoint representatives from the unincorporated areas of the County  
17 (except if an appointee is not a County Commissioner, then that representative must reside  
18 in the unincorporated area of the County). *Id.*

19 *1. RPGB Reaction.*

20 Once notified of the drafting and filing of AB 39 in November, the RPGB considered  
21 the item at its next regularly scheduled meeting on December 8, 2016. *See* Ex. 19 at 4.<sup>5</sup> At  
22 that meeting, several members of the RPGB expressed concerns about AB 39, most  
23 particularly whether the actions of the County in proposing the legislation was valid in light  
24 of the 2002 Settlement Agreement. Ex. 19 at 4. A legal opinion was requested of RPGB’s  
25 counsel regarding the legality of the County’s action. *Id.*

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28 <sup>5</sup> Exhibit 19 is a draft of minutes of the RPGB December 8, 2016, meeting, prepared  
by TMRPA staff; the RPGB has not yet approved those minutes.

1 On December 19, 2016, legal counsel for RPGB rendered his legal opinion and  
2 concluded that the County had violated the 2002 Settlement Agreement, NRS 278.0286(2)  
3 and Regulation X. See Ex. 20. A special meeting of the RPGB was held on December 22,  
4 2016, to consider the legal opinion and determine the appropriate course of action to take.  
5 Ex. 21 (Meeting Agenda). At the meeting, legal counsel for RPGB summarized his opinion.  
6 See Ex. 22 (DVD of meeting); Ex. 23 (draft minutes). No representative from the County  
7 was present in the audience. RPGB member Berkbigler did read into the record portions  
8 of an opinion prepared by the Washoe County District Attorney's Office that had been  
9 emailed to her. *Id.* In sum, the District Attorney's office disagreed with RPGB counsel and  
10 concluded that there was no violation of the 2002 Settlement Agreement, the statute or  
11 regulation. That opinion was later provided to TMRPA staff. Ex. 24. At the conclusion of  
12 the discussion, the RPGB approved a motion to seek legal recourse to challenge the  
13 County's actions unless the County decided to withdraw AB 39 at its meeting scheduled for  
14 January 10, 2017.

15 *2. The County's Response*

16 At the January 10, 2017, meeting of the Board of County Commissioners, the  
17 Assistant District Attorney representing the Board of County Commissioners reiterated his  
18 opinion that the County's actions were legal. The Board of County Commissioners voted  
19 to move forward with AB 39 and various commissioners articulated the reasoning behind  
20 their legislative request. Statements included wanting to have an equal vote on the RPGB,  
21 wanting to get *control* over the management of the RPGB, wanting to ensure  
22 commissioners who sit on RPGB follow the directives of the Board of County  
23 Commissioners, and wanting to resolve alleged redundancy of efforts amongst the RPGB,  
24 other regional agencies and the Local Governments.

25 On January 17, counsel for RPGB sent a letter to the Washoe County District  
26 Attorney requesting to meet to determine if this matter could be resolved out of court. See  
27 Ex. 26. No response was received.

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1 B. 2002 Settlement Agreement

2 In 2002, the County and the Sun Valley General Improvement District ("SVGID")  
3 initiated a lawsuit against the RPGB seeking to set aside the 2002 Regional Plan Update.  
4 The case was assigned to Department 9. Eventually, through protracted settlement  
5 negotiations, the matter was resolved by the parties. Ex. 1.

6 The 2002 Settlement Agreement details criteria for the 2002 Regional Plan  
7 regarding expanding spheres of influence, cooperative planning, land use and zoning  
8 designations, programs of annexation and joint planning. Ex. 1. It further provides for  
9 specific Regional Plan amendments, including clear delineation that the Regional Plan is  
10 natural resource constrained, recognition of existing zoning outside the Truckee Meadows  
11 Service Areas ("TMSA"), and specification of additional criteria for future amendments of  
12 the Plan and conformance review processes. Ex. 1. Many of these concepts have since been  
13 embedded in the Regional Plan. Ex. 1.

14 To ensure that the individual entities involved would not do a legislative end-run  
15 around the agreed-upon terms, Paragraph F of the 2002 Settlement Agreement provides  
16 in part:

17 Reno, Sparks, the County, the Board and the Sun Valley  
18 General Improvement District (hereafter SVGID) *shall not*  
19 *propose legislation that is either inconsistent or contrary to*  
20 *the terms of this settlement agreement.* In the event that Reno,  
21 Sparks, the County and the Board *jointly* believe that  
22 legislation should be proposed to support or further this  
23 agreement, the parties will *jointly* submit and support the  
24 legislation.

25 Ex. 1 at 8. Paragraph F goes on to impose additional obligations regarding legislation on  
26 all other regional planning matters:

27 Reno, Sparks, the County and the Board agree that *all other*  
28 *legislative items* will be addressed pursuant to *NRS*  
*278.0276(2) [sic] and the 2001 Memorandum of*  
*Understanding on legislative issues, as amended.*<sup>6</sup>

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<sup>6</sup> NRS 278.0276(2) does not exist and citation to that provision was a mistake; the correct reference is to NRS 278.0286(2).

1           Shortly after the execution of the 2002 Settlement Agreement, the RPGB took action  
2 to implement its terms, including adopting its Regulations on Procedure on November 14,  
3 2002 through an unanimous vote. *See* Ex. 3; Ex. 27 (Agenda and Minutes of November 14,  
4 2002 RPGB Meeting at pp. 3-4; Ex. 28 (Regulations on Procedure Adopted at November  
5 14, 2002 RPGB Meeting). What is now Regulation X was adopted at that time as  
6 Regulation IX and its verbage has remained unchanged to date. *Compare* Ex. 3 at 26 with  
7 Ex. 28 at 17.

8           The 2001<sup>7</sup> Legislative Cooperation MOU referred to in the 2002 Settlement  
9 Agreement was one of many similar cooperative legislative agreements adopted by the  
10 Board, the County, Reno, Sparks, and at times other entities, such as the Regional  
11 Transportation Commission and the Washoe County School District. *See* Ex. 2, *See* Ex. 25  
12 (Legislative Cooperation Memorandums - 1993, 1994, 1996, 2002-2003, 2004-2005, 2006-  
13 2007, 2008-2009, 2010-2011, 2012-2013).

14           The 2001 Legislative Cooperation MOU recognized that (1) “the interests of the  
15 residents of the Truckee Meadows can be served by a cooperative approach to  
16 intergovernmental relations and a *unified* effort[;]” (2) “it is desired by the region, Washoe  
17 County, the cities of Reno and Sparks, and other affected entities to work together to  
18 present ot [sic] our local legislators, to the extent possible, a *unified legislative position* that  
19 best addresses the needs and interests of the residents of the Truckee Meadows;” and (3)  
20 “it is understood by and among the region, Washoe County, the cities of Reno and Sparks,  
21 and other affected entities that their respective position may not be similar on all issues  
22 considered by, or bill drafts presented to, the 2001 Nevada Legislature, whether related to

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25           <sup>7</sup> The memorandum located in the Board’s records was adopted in 2000 by the  
26 RPGB for the upcoming 2001 Legislative Session and then disseminated to the Local  
27 Governments, Regional Transportation Commission and the Washoe County School  
28 District for their approval and execution; the only version that could be located was  
unsigned, but it is TMRPA’s understanding that it was fully executed by all parties. *See* Ex.  
2.

1 regional planning issues or other matters of governmental interest.” Ex. 2 at 1 (emphasis  
2 added).

3 Thus, the parties agreed that their respective representatives and lobbyists would  
4 meet and confer regarding proposed legislation. They further specifically agreed to the  
5 following:

6 2. *Every effort* will be made by and through each entity’s  
7 representatives and assigned lobbyists to identify and achieve  
8 a *unified* position with regard to pending and *proposed*  
9 *legislation*.

10 3. *Any differences* in position on proposed legislation will be  
11 *identified and discussed* to determine whether there are other  
12 avenues of resolution outside the legislative process by which  
13 the differences could be resolved.

14 4. Each entity commits to *fully disclose* to the representatives  
15 and assigned lobbyists of the other entities all activities and  
16 position [sic] that it takes, or intends to take, with regard to  
17 bills that are part of or that materially affect the unified  
18 legislative agenda.

19 5. In recognition of the limited number of bill draft requests  
20 available to local government, representatives and lobbyists of  
21 each entity will *strive to develop regional legislative positions*  
22 and to find regional solutions to local conflicts that may arise  
23 during the session.

24 6. Representatives and assigned lobbyists of each entity will  
25 provide *assistance and information to each other* and to local  
26 legislators during the session for the purpose of advancing bills  
27 in the *unified legislative agenda*.

28 7. Local legislators will be informed when approached by  
representatives or assigned lobbyists of each entity on a given  
legislative issue whether the position espoused is a unified  
position of the respective entities or the position of one or more  
particular entities only.

8. Representatives and assigned lobbyists of each entity will  
actively solicit the support of businesses, institutions, and other  
affected interest groups on behalf of the *unified legislative*  
*agenda*.

Ex. 2 at 1-2 (emphasis added).<sup>8</sup>

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<sup>8</sup> The other cooperative legislative memorandums executed by the RPGB, the County, Reno and Sparks are contained in Exhibit 25. Those agreements all contain provisions very similar, if not identical, to those in the 2001 Legislative Cooperation MOU, emphasizing the importance of a unified, collaborative legislative approach to regional matters. They also recognize that in the event of a difference in opinions and positions amongst the local governments and RPGB, that transparent and clear communication of the differences to the Legislature was necessary. See Ex. 25.

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**III.**  
**ARGUMENT**

**A. Writ Relief is Appropriate**

A writ of mandamus may be issued by the Court “to compel the performance of an act which the law especially enjoins resulting from an office, trust or station[.]” NRS 34.160. A “writ of prohibition is the counterpart of the writ of mandate[;] it arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.” NRS 34.320. A writ of mandamus and a writ of prohibition are counterparts in that a mandamus compels a government body or official to perform a legally mandated act, whereas a prohibition compels a government body or official to cease performing acts beyond legal authority. *Ashokan v. State, Dep’t of Ins.*, 109 Nev. 662, 856 P.2d 244 (1993).

Writs of mandamus and prohibition are extraordinary remedies. A court will exercise its discretion to consider such petitions only when: (1) there is not a plain, speedy and adequate remedy in the ordinary course of law; (2) there are urgent circumstances; or (3) there are important legal issues that need clarification in order to promote judicial economy and administration. *Cheung v. Eighth Judicial Dist. Ct.*, 121 Nev. 867, 124 P.3d 550 (2005). Each of these circumstances exist in this case and issuance of a writ of mandamus or prohibition to compel the County to comply with NRS 278.0286(2), Board Regulation X and the 2002 Settlement Agreement and to withdraw AB 39 from consideration by the 2017 Legislature is appropriate.

1. *There is No Plain, Speedy, or Adequate Remedy at Law to Address the County’s Violations of Law.*

In this case, RPGB has pled for alternative declaratory and injunctive relief, which are plain and adequate remedies at law, however they are not speedy enough to address the County’s non-discretionary acts taken in excess of its statutory authority and in direct contravention of the governing regulation. The County submitted the BDR resulting in AB 39 to LCB without complying with NRS 278.0286(2), Regulation X or the 2002 Settlement

1 Agreement, and then informed RPGB of that action after the fact. When the RPGB received  
2 that notification, it agendaized the issue for consideration at its next regularly scheduled  
3 meeting on December 8, 2016. At that time, it requested an opinion from legal counsel on  
4 the legality of the County's actions; that opinion was rendered eleven days later and was the  
5 subject of a special RPGB meeting scheduled right before Christmas on December 22. At  
6 that meeting, the RPGB decided to give the County the opportunity to "do the right thing"  
7 and withdraw AB 39, but was informed that the County would not have the opportunity to  
8 take any action in that regard until its January 10, 2017, meeting. On January 10, 2017, the  
9 County Commissioners voted to move forward with AB 39, which resulted in RPGB having  
10 to file this action.

11 The 2017 Legislature convenes on February 6, 2017. AB 39 has already been pre-  
12 filed with the Legislature. It would be a waste of resources for the Legislature to even  
13 begun to take up consideration of AB 39, and more importantly, without court intervention,  
14 AB 39 may take on a life of its own. Allowing AB 39 to proceed without resolving the legal  
15 issues before this court and addressing the County's statutory, regulatory and contractual  
16 violations would be a great disservice to the citizens within the region who will be impacted  
17 by AB 39. It would also sanction the County's acts. This result would undermine the  
18 tenants upon which regional planning was built: cooperation, transparency and  
19 coordination. Accordingly, RPGB has no plain, speedy or adequate remedy at law and  
20 issuance of a writ of mandamus or prohibition is appropriate.

21 2. *Circumstances are Urgent and Reveal a Strong Necessity.*

22 This second justification has been described in a variety of ways by the Nevada  
23 Supreme Court: (1) "where circumstances reveal urgency or strong necessity"; (b) "owing  
24 to unusual and urgent circumstances which reveal a strong necessity"; (c) "where  
25 circumstances reveal urgency and necessity"; and (d) "in cases of great necessity or  
26 urgency". *Cheung*, 121 Nev. at 867, 124 P.3d at 550. As discussed above, this matter  
27 presents urgent circumstances and certainly a necessity of judicial intervention. The  
28 County should not be allowed to introduce AB 39 without complying with requisites of NRS

1 278.0286(2), Regulation X and the 2002 Settlement Agreement. If this court does not  
2 intervene in a relatively quick matter, AB 39 will proceed and the County's violations of law  
3 and contract will be sanctioned as the ability to remedy its violations will be less certain.  
4 Thus, the circumstances of this case present an urgency and necessity that justify the  
5 issuance of a writ of mandamus or prohibition.

6 3. *There Are Important Legal Issues of Law and Public Policy That Need*  
7 *Clarification.*

8 The issues presented in this case are issues of first impression in the State of Nevada.  
9 As discussed throughout, regional planning in Washoe County was built upon the precepts  
10 of cooperation, transparency, collaboration and coordination. None of that occurred in this  
11 case on the part of the County. The comments made by various County Commissioners  
12 during the January 10<sup>th</sup> meeting also make it clear that the goal is for the County to take  
13 over the management of the RPGB and to dictate the actions of the County appointees that  
14 sit on the RPGB. While it is unclear how AB 39 will achieve such a result, the desire itself  
15 undermines the very foundation of regional planning, as does the manner in which the  
16 County went about pursuing its legislative proposal without any discussion or collaboration  
17 with the RPGB. These are important legal issues and policy concerns that have a direct  
18 impact upon the intergovernmental coordinated efforts of regional planning, the citizens  
19 that reside in the region and the RPGB and, hence, present adequate grounds for writ relief.

20 B. Intergovernmental Coordination and Collaboration is Critical to the Success of  
21 Regional Planning.

22 One of the predominant themes that is revealed from a review of the regional  
23 planning statutes, NRS 278.026 to NRS 278.029, inclusive, as well the legislative history  
24 of the 1989 enacting legislation, is that the Legislature wanted to the Local Governments  
25 to work together in a collaborative and coordinated manner to ensure comprehensive  
26 regional planning. As discussed *supra* in the Section I. Background - Regional Planning,  
27 the reason the Legislature felt compelled to have a body statutorily created for regional  
28 planning in Washoe County was because the citizens needed consistent, comprehensive



1 long-term planning and Legislative intervention was necessary to make that happen. At the  
2 “gentle nudging” of Senator Raggio, the Local Governments, through a dedicated,  
3 collaborative effort, crafted legislation creating the TMRPA and governing regional  
4 planning in the areas in Washoe County. *See* NRS 278.026 through NRS 278.029.

5 One of the tenants of the regional planning statutes is an emphasis on  
6 intergovernmental coordination. *See* NRS 278.0261(1). In fact, the Regional Plan “must  
7 include goals, policies, maps and other documents relating to[, among other items],  
8 “intergovernmental coordination.” NRS 278.0274(7). To help ensure a collaborative  
9 approach amongst the Local Governments, the Legislature made its intent very clear that  
10 “with respect to NRS 278.026 to 278.029, inclusive, that *each local government* and  
11 affected entity *shall* exercise its powers and duties in a manner that is *in harmony* with the  
12 powers and duties exercised by other local governments and affected entities to enhance the  
13 long-term health and welfare of the county and all its residents.” NRS 278.0261(4).

14 1. *NRS 278.0286 is a Statutory Mandate for Intergovernmental Cooperation*  
15 *and Coordination.*

16 In furtherance of achieving coordination and collaboration goals, the Legislature  
17 enacted NRS 278.0286, which imposes several reporting and informational requirements  
18 upon the Local Governments and affected entities. Subsection 2 of NRS 278.0286 provides  
19 that “[*b*]efore submitting a recommendation for proposed legislation or beginning any  
20 program or project relating to the mandatory provisions of the comprehensive regional  
21 plan, a unit of local government or an affected entity *shall file all relevant information*  
22 *relating to* that request, program or project with the governing board.” *Id.* (emphasis  
23 added).

24 This provision was included in the enacting 1989 legislation and was summarized  
25 in the legislative proceedings as follows:

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1 Prior to submitting requests for changes in state legislation or  
2 beginning programs or projects related to the issues discussed  
3 in the mandatory elements of the comprehensive regional plan,  
4 each unit of local government and each affected entity must file  
5 information regarding such requests or programs/projects with  
6 the governing board.

7 Ex. 5 at 41.

8 There is a reason NRS 278.0286(2) was included in the enacting legislation in 1989  
9 and has not been amended since. NRS 278.0286(2) is the legislative mechanism that  
10 ensures a transparent and collaborative approach when it comes to proposing legislation  
11 on regional matters. Submission of information regarding regional planning before  
12 embarking on a legislative path informs the RPGB, the body statutorily charged with the  
13 duties and obligations of administering and governing regional planning in Washoe County,  
14 of any actions that may have legislative impact on the very statutes it administers. It also  
15 allows for a discussion and consideration by the RPGB, the Local Governments and affected  
16 entities. This form of intergovernmental coordination will help present a unified legislative  
17 approach or, at a minimum, identify points of disagreements and concerns that can later  
18 be addressed during the process if the proposal is pursued. Thus, it is vitally important that  
19 the Local Governments and affected entities adhere to the dictates of NRS 278.0286(2).

20 2. *Regulation X Emphasizes Importance of NRS 278.0286(2)'s Requirements.*

21 The statutory directive of NRS 278.0286(2) has since been adopted by the RPGB  
22 and further fleshed out. Section X of the RPGB's Regulations on Procedure, "Legislation  
23 and Projects Relating to the Regional Plan," provides:

24 *Not less than 60 days before submitting a recommendation  
25 for proposed legislation to the Legislative Counsel Bureau, or  
26 beginning any program or project relating to the mandatory  
27 provisions of the comprehensive regional plan, a unit of local  
28 government or an affected entity shall file all relevant  
information relating to that request, program or project with  
the Governing Board. [See Subsection 2 of NRS 278.0286].*

Ex. 3 at 26. Emphasis added. This Regulation was adopted in November 2002 as part of  
the RPGB's implementation of the Settlement Agreement. Hence, the RPGB has made it  
very plain and clear that the duty to provide information extends to any legislative proposal  
concerning any aspect of the regional planning statutory scheme. It also specified in no

1 uncertain terms that the Local Governments and affected entities must provide information  
2 to the RPGB relevant to the proposal before submitting a BDR to LCB, and that they must  
3 do so a minimum of sixty days before making any submission to LCB.

4 C. The County Violated NRS 278.0286(2) and Regulation X.

5 The County has violated NRS 278.0286(2) and Regulation X of the RPGB's when it  
6 failed to timely file information relating to its BDR with the Board prior to submitting the  
7 BDR to LCB. The County did file a statement of general information on August 31, 2016,  
8 when it notified the Executive Director that it *was* submitting a BDR on September 1 to  
9 LCB. Ex. 12. But that letter had no specific language and did not give any indication of  
10 what the County was seeking to change with the program of regional planning in Washoe  
11 County.

12 As of October 20, 2016, the County still had not provided specifics of its legislative  
13 agenda to the RPGB. At the meeting of the Board of County Commissioners on October 25,  
14 2016, the County definitively settled on specific language for its proposal. Ex. 16. The  
15 County then sent the BDR to LCB for drafting and informed the Executive Director of that  
16 fact on November 7, 2016. Ex. 17.

17 Therefore, by the time the Executive Director was informed of the legislative  
18 proposal to change the composition of the RPGB, the County had already made the drafting  
19 request to LCB and the bill was filed shortly thereafter with the 2017 Legislature. The  
20 County's failure to file, let alone timely file the information relating to the legislative  
21 proposal of what is now AB 39 with the RPGB is in direct violation of its duties as set forth  
22 in NRS 278.0286(2) and Section X of the RPGB's Regulations on Procedure.

23 *1. The Composition of the RPGB Relates to the Mandatory Provisions of the Plan.*

24 The County has argued that the composition of the RPGB does not relate to a  
25 mandatory provision of the Regional Plan as set forth in NRS 278.0274, and thus, there was  
26 no need to comply with NRS 278.0286 or Regulation X. *See* Ex. 24.

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1                                    i. The County Admitted It Needed to Comply.

2                                    Initially, the County's own actions belie its current legal position. On August 31,  
3 County Manager Slaughter stated that the County was complying with NRS 278.0286 and  
4 providing relevant information to the RPGB regarding a legislative proposal to review the  
5 statute creating and dictating the composition of the RPGB, NRS 278.0264. *See Ex. 12.* If  
6 the County had actually revealed that it was seeking to change to composition of the RPGB,  
7 provided the details of its BDR request and information relevant to its proposal at that time,  
8 we may not be before this Court. The provision of information still would not have been  
9 timely as it was being presented to the RPGB as *fait accompli*. But consideration of the  
10 issue by the RPGB would have taken place earlier and lessened the urgency of this situation.  
11 Unfortunately, it was over two months later that the actual language was provided to RPGB.  
12 *See Ex. 17.* Even at that time, no other relevant information was provided regarding the  
13 proposal, just the BDR itself. *Id.*

14                                    If the County had truly complied, like it espoused it was doing in its August 31<sup>st</sup>  
15 letter, that compliance would have allowed for a discussion and consideration of the  
16 proposal by the RPGB, City of Sparks and City of Reno. That is exactly the purpose of the  
17 regional planning process in general, and the specific intent of the statutory, regulatory and  
18 contractual mandates that the County disregarded. But the County's unilateral actions  
19 preventing that process from occurring. But, for purposes of this discussion, what is  
20 important is that the County, at that time, recognized its obligations to comply with NRS  
21 278.0286 in pursuing a legislative change to NRS 278.0264 regarding the composition of  
22 the RPGB. It was only after RPGB raised the issues of the legality of the County's actions,  
23 that it changed its position and stated it did not need to comply with NRS 278.0286(2),  
24 Regulation X, or the 2002 Settlement Agreement. *See Ex. 24.*

25                                    ii. The County's Narrow Construction Must Fail.

26                                    Despite its prior admission, it is anticipated that the County will urge the Court to  
27 adopt a narrow definition of the term "relating to" as it is used in NRS 278.0286(2).  
28 Specifically, it is anticipated that the County will argue that it is only required to file

1 information related to a proposed BDR with the RPGB if the proposed BDR expressly  
2 references one or more of the mandatory provisions of the comprehensive regional plan.  
3 Or, in other words, the proposal would amend NRS 278.0274. The County's position is  
4 untenable. NRS 278.0274(7) requires that the Regional Plan contain content relating to  
5 intergovernmental coordination. That fundamental concept functions through the very  
6 composition of the RPGB - a body composed of representatives from all three Local  
7 Governments. That composition is now embedded in the Regional Plan.

8 *a. Impacts of AB 39.*

9 An examination of the impacts of AB 39 is helpful to illustrate why it relates to the  
10 mandatory provisions of the Regional Plan. Statements in the 1989 legislative history make  
11 it clear that fair representation of the local governments was a concern, and one that was  
12 obviously resolved through the agreed-upon composition of both the RPGB and the  
13 Planning Commission. Citizens that reside in areas of the County that fall within the  
14 boundaries of the incorporated cities of Reno and Sparks are provided representation on  
15 regional concerns through those City representatives on the RPGB. But, there was also a  
16 need to ensure that citizens residing in the unincorporated areas of the County had a voice  
17 in regional planning matters, which is why the three entities agreed, and the Legislature  
18 enacted, the requirements that the County ensure representation of those unincorporated  
19 areas of the County through its RPGB appointees. The changes proposed by AB 39 could  
20 result in the citizens of the unincorporated areas of the County being unrepresented, which  
21 poses constitutional concerns which the 1989 Legislature addressed by composing the  
22 RPGB as it currently stands.

23 The changes proposed by AB 39 will also result in an increased financial burden to  
24 Sparks and the County. The costs of "necessary facilities, equipment, staff, supplies and  
25 other usual operating expenses necessary to enable the governing board to carry out its  
26 functions" are shared by the County, Reno and Sparks in proportion to the number of  
27 representatives each entity has on the RPGB. NRS 278.0264(7). Accordingly, the change  
28 requested by the County would increase the financial burden upon Sparks and the County.

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Moreover, the County's proposal would change the Regional Plan. As discussed above, the make-up of the RPGB has always been embedded in the Regional Plan, whether through inclusion of the regional planning statutes in the appendices of the Regional Plans, or as it has been in the last several plans, with language in the body of the Regional Plan setting forth the composition of the RPGB and its roles and responsibilities.

Contrary to the County's assertions at the October 20, 2016, RPGB meeting, the proposal does not just affect the County, but directly impacts RPGB and both the Cities of Reno and Sparks. These impacts illustrate why matters concerning regional planning, including the composition of the RPGB, must be arrived at through an open and collaborative process amongst the RPGB, the County, Reno and Sparks. In fact, that is exactly why the Legislature imposed requirements upon the three entities before proposing legislation concerning regional matters - requirements which have since been integrated into the RPGB's regulations, as well as the 2002 Settlement Agreement.

*b. Purpose of Statute.*

It is well-established that when interpreting a statute, the "expressly stated purpose of the statute is a factor to be considered." *Hotel Employees and Restaurant Employees Int'l Union, AFL-CIO v. State ex rel. Nevada Gaming Comm'n.*, 103 Nev. 588, 591, 747 P.2d 878 (1994); *see also Collelo v. Administrator, Real Estate Div.*, 100 Nev. 344, 347, 683 P.2d 15 (1984 ("[w]here the purpose of the legislature is expressly stated, that purpose is a factor to be considered in interpreting a given statute."); *Alper v. State ex rel. Dep't of Highways*, 96 Nev. 925, 928, 621 P.2d 15 (1980) ("[s]tatutes should be interpreted, so far as practicable to carry out the purposes of the legislation and to effectuate the benefits intended to be obtained.").

Here, the Legislature has expressed its intent with respect to NRS 278.0286(2), stating:

It is the *intent* of the Legislature with respect to NRS 278.026 to 278.029, inclusive, *that each local government and affected entity shall exercise its powers and duties in a manner that is in harmony with the powers and duties exercised by other*

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1                    *local governments* and affected entities to enhance the long-  
2 term health and welfare of the county and all its residents.

3 (Emphasis added). Clearly, the Legislature intended NRS 278.0286(2) to be interpreted  
4 broadly to effectuate its stated purpose of local governmental harmony.

5                    Requiring local governments to file BDRs that affect regional planning with the  
6 RPGB prior to submitting them to the Legislature ensures collaboration and discussion.  
7 The County's position, which appears to be that the filing requirements in NRS 278.0286(2)  
8 only apply to BDRs that expressly reference one or more of the mandatory provisions of the  
9 comprehensive plan or propose to amend NRS 278.0274, cuts against the Legislature's  
10 stated purpose and would allow the County to do an "end-run" around RPGB to propose  
11 whatever legislation it desired.

12                    c. "Relating To".

13                    Courts have routinely and in a variety of contexts, construed the term "relating to"  
14 broadly. *See, e.g., Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 397-98  
15 (1967) (construing a "relating to" clause broadly in the arbitration context); *Luu-Le v. INS*,  
16 2224 F.3d 911, 916 (9<sup>th</sup> Cir. 2000) (recognizing the term "relating to" is to be construed  
17 broadly in the immigration context); *Tachiona v. United States*, 386 F.3d 205, 220 (2d Cir.  
18 2004) (noting that the term "relating to," "when used in statutes," is construed broadly to  
19 mean "in connection with," "reference to," or "in association with").

20                    Even assuming that the County is correct in narrowly construing NRS 278.086(2)  
21 as to limit it to only legislation relating to the mandatory provisions of the Regional Plan  
22 as set forth in NRS 278.0274, there is no doubt that the composition of the RPGB is  
23 connected to or associated with those provisions.

24                    First, it is the RPGB and only the RPGB that can adopt the Regional Plan or amend  
25 it. It is the RPGB that ensures that the content dictated by NRS 278.0274 actually makes  
26 it into the plan. Accordingly, the RPGB and its composition as set forth in NRS 278.0264  
27 is connected with the statutory requirements of what content needs to be in the Regional  
28 Plan as set forth in NRS 278.0274.

1 Second, one of the subject areas that NRS 278.0274 dictates that the Regional Plan  
2 address is intergovernmental coordination. NRS 278.0274(7). Adhering to that mandate,  
3 concepts of intergovernmental coordination, including the composition of the RPGB have  
4 always been embedded in the Regional Plan. There really is no argument that the  
5 composition of the RPGB does not relates to this component. The composition is the  
6 foundation in securing intergovernmental coordination. Otherwise, a Local Government  
7 could propose legislation that would make all the members of the RPGB appointees of just  
8 that entity. That is clearly contrary to the concept of “intergovernmental coordination” set  
9 forth in the regional planning statutes.

10 2. *NRS 278.0286(2) and Regulation X are Not Intended to Be Read So*  
11 *Narrowly and Prohibit the Proposing of Any Legislation Regarding Any*  
12 *Aspect of the Regional Planning Statutory Scheme.*

13 NRS 278.0261 refers to the “process of regional planning . . set forth in NRS  
14 278.026 to 278.029, inclusive. Thus, all of the statutes within that range are considered to  
15 be part of the “process of regional planning.” Given the inter-relationship between all of the  
16 regional planning statutes, the Legislature could not have intended to limit the obligation  
17 to provide relevant information regarding legislation to only legislation proposing changes  
18 to NRS 278.0274, which sets forth what subject areas must be part of the Regional Plan.  
19 The intent was to ensure that changes to any of the regional planning statutes would be  
20 subject to the requirements of NRS 278.0286. To find otherwise would allow the Local  
21 Governments and affected entities to propose changes to the regional planning process  
22 without ever having to bring those changes to the attention of the very body that is  
23 statutorily obligated to carry out the directives of the regional planning process statutes.  
24 As previously discussed, that result would be contrary to the precepts upon which regional  
25 planning was built.

26 In fact, that is exactly how the RPGB interprets NRS 278.0286(2). As Regulation X  
27 provides: “before submitting a recommendation for proposed legislation to the Legislative  
28 Counsel Bureau, or beginning any program or project relating to the mandatory provisions  
of the comprehensive regional plan[.]” Clearly, the RPGB is talking about two different



1 items: (1) submission of proposed legislation, or (2) beginning any program or project  
2 relating to the mandatory provisions of the Regional Plan. The requirement to provide  
3 information before submitting proposed legislation is not modified by the the phrase  
4 “relating to the mandatory provisions of the comprehensive regional plan.”

5 The RPGB’s interpretation of one of the statutes it administers as set forth in its  
6 Regulation clarifies the requirements of NRS 278.0286(2) and is entitled to deference.  
7 Therefore, the intent is to require provision of information in a timely manner of any  
8 legislative item regarding regional planning, including the proposals that would alter the  
9 make-up of the RPGB.

10 In sum, whether this court finds that the trigger in NRS 278.0286(2) for providing  
11 relevant information is the proposal of legislation relating to mandatory provisions of the  
12 plan or the proposal of any legislation regarding regional planning, there is no question the  
13 County did not fulfill its duty. Accordingly, the County violated NRS 278.0286(2) and  
14 Regulation X.

15 D. The County Has Violated the 2002 Settlement Agreement.

16 A settlement agreement is a contract that will be construed under state contract law.  
17 *United States v. Baus*, 834 F.2d 1114, 1127 n.13 (1<sup>st</sup> Cir. 1987). Contracts are to be enforced  
18 by the clear implications or spirit arising from the express terms of the contract. *Clark*  
19 *County Public Employees Ass’n v. Pearson*, 106 Nev. 587, 595, 798 P.2d 136, 140 (1990).  
20 Section F of the 2002 Settlement Agreement provides:

21 Reno, Sparks, the County, the Board and the Sun Valley  
22 General Improvement District (hereafter SVGID) shall not  
23 propose legislation that is either inconsistent or contrary to the  
24 terms of this settlement agreement. In the event that Reno,  
25 Sparks, the County and the Board jointly believe that legislation  
26 should be proposed to support or further this agreement, the  
27 parties will jointly submit and support the legislation. *Reno,*  
28 *Sparks, the County and the Board agree that all other*  
*legislative items will be addressed pursuant to NRS*  
*278.0276(2) [sic] and the 2001 Memorandum of*  
*Understanding on legislative issues, as amended.*

Ex. 1 at 8.

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1 The County mistakenly states that the RPGB admits that there is no violation of  
2 Section F because the first two sentences are not at issue in this matter. See Ex. 24. That  
3 is not the case. The last sentence of Paragraph F requires compliance with NRS  
4 278.0286(2) and the 2001 Legislative Cooperation MOU. The County did not comply with  
5 either.

6 1. *Breach of Terms of Settlement Agreement.*

7 As discussed at length in the previous sections, the County has violated NRS  
8 278.0286(2). Given the integration of NRS 278.0286(2) into the Settlement Agreement,  
9 the County's non-compliance results in a breach of the Settlement Agreement.

10 It has also violated the 2001 Legislative Cooperation MOU that is integrated into the  
11 Settlement Agreement by reference. That MOU recognized that (1) "the interests of the  
12 residents of the Truckee Meadows can be served by a cooperative approach to  
13 intergovernmental relations and a *unified* effort[;]" (2) "it is desired by the region, Washoe  
14 County, the cities of Reno and Sparks, and other affected entities to work together to  
15 present ot [sic] our local legislators, to the extent possible, a *unified legislative position* that  
16 best addresses the needs and interests of the residents of the Truckee Meadows;" and (3)  
17 "it is understood by and among the region, Washoe County, the cities of Reno and Sparks,  
18 and other affected entities that their respective position may not be similar on all issues  
19 considered by, or bill drafts presented to, the 2001 Nevada Legislature, whether related to  
20 regional planning issues or other matters of governmental interest." Ex. 2 at 1 (emphasis  
21 added).

22 Thus, the parties agreed that representatives and lobbyists of the parties would meet  
23 and confer regarding proposed legislation. They further specifically agreed to the following:

24 2. *Every effort* will be made by and through each entity's  
25 representatives and assigned lobbyists to identify and achieve  
26 a *unified* position with regard to pending and *proposed*  
27 *legislation*.

28 3. Any *differences* in position on proposed legislation will be  
*identified and discussed* to determine whether there are other  
avenues of resolution outside the legislative process by which  
the differences could be resolved.

4. Each entity commits to *fully disclose* to the representatives

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and assigned lobbyists of the other entities all activities and position [sic] that it takes, or intends to take, with regard to bills that are part of or that materially affect the unified legislative agenda.

5. In recognition of the limited number of bill draft requests available to local government, representatives and lobbyists of each entity will *strive to develop regional legislative positions* and to find regional solutions to local conflicts that may arise during the session.

6. Representatives and assigned lobbyists of each entity will provide *assistance and information to each other* and to local legislators during the session for the purpose of advancing bills in the *unified legislative agenda*.

7. Local legislators will be informed when approached by representatives or assigned lobbyists of each entity on a given legislative issue whether the position espoused is a unified position of the respective entities or the position of one or more particular entities only.

8. Representatives and assigned lobbyists of each entity will actively solicit the support of businesses, institutions, and other affected interest groups on behalf of the *unified legislative agenda*.

Ex. 2 at 1-2 (emphasis added).

While some of the items in the MOU are aspirational, that does not lessen the binding nature of the terms of the MOU upon the Local Governments in regards to regional legislation. What the County has done effectively “pulls the rug out” from the RPGB and the Cities of Reno and Sparks from engaging with the County and making an effort to address the County’s requests and present a unified legislative agenda. At a minimum, if no agreement could be reached on the County’s proposal, following the process and terms set forth in the MOU would ensure that legislators and lobbyists would be fully informed that the change sought is only desired by one of the three Local Governments. The MOU serves to further illustrate the tenants of regional planning of cooperation, collaboration, transparency and coordination. The County’s complete disregard of its mandates, mandates that are incorporated into the binding 2002 Settlement Agreement, is a violation of the 2002 Settlement Agreement.

2. *Breach of Covenant of Good Faith and Fair Dealing.*

It is well settled that every contract in Nevada includes an implied covenant of good faith and fair dealing. *A.C. Shaw Construction v. Washoe County*, 105 Nev. 913, 914, 784

1 P.2d 9, 9-10 (1989). The implied covenant of good faith and fair dealing “essentially forbids  
2 arbitrary, unfair acts by one party that disadvantages the other.” *Frantz v. Johnson*, 116  
3 Nev. 455, 465, 999 P.2d 351, 358 (2000).

4 Here, the County first acknowledged it had an obligation to comply with NRS  
5 278.0286(2), which is integrated into the 2002 Settlement Agreement. Nonetheless, it did  
6 not comply in either a timely manner or with full disclosure of its intentions. It acted  
7 outside of its statutory authority and contrary to Regulation X, which was arbitrary.  
8 Keeping its legislative proposal to itself until after it had already been sent to LCB for  
9 drafting and then pre-filed with the Legislature was an unfair act against the RPGB and a  
10 circumvention of the governing law, including the spirit and intent of the 2002 Settlement  
11 Agreement. Those acts amount to a violation of the covenant of good faith and fair dealing  
12 and should not be sanctioned by this Court.

13 E. The County Has No Inherent Right to Propose Legislation - That is a Right Dictated  
14 and Proscribed by the Legislature.

15 It is well known that Nevada’s counties operate under Dillon’s Rule, which means  
16 that their powers are limited to: (1) those expressly granted by the Legislature; (2) those  
17 necessarily or fairly implied or incidental to the powers expressly granted by the  
18 Legislature; and (3) those essential to the declared objectives and purposes of local  
19 government. *See* NRS 244.137; *State ex rel. King v. Lothrop*, 55 Nev. 405, 408, 36 P.2d 355  
20 (1934); *see also Ronnow v. City of Las Vegas*, 57 Nev. 332, 342-43, 65 P.2d 133 (1937)  
21 (municipal corporations only have powers conferred by the Legislature); *see also Waste*  
22 *Mgmt. Holdings v. Gilmore*, 252 F.3d 316, 331 (4th Cir. 2001) (Under “Dillon’s Rule” a  
23 county or municipal corporation possesses only those powers that are: (1) expressly granted  
24 by the state legislature, (2) necessarily or fairly implied in or incidental to the powers  
25 expressly granted, or (3) essential to the declared objects and purposes of the corporation,  
26 not simply convenient but indispensable.).

27 In accordance with the settled doctrine that counties and municipalities are  
28 politically subordinate subdivisions of the state government, legislatures may put

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1 limitations on any conferred powers. *See E.g., Cali v. City of Philadelphia*, 406 Pa. 290, 177  
2 A.2d 824 (1962); *Kitchens v. City of Paragould*, 191 Ark. 940, 88 S.W.2d 843 (1935); *City*  
3 *of Mountain View v. Southern Pac. R. Co.*, 1 Cal. App. 2d 317, 36 P.2d 650 (1<sup>st</sup> Dist. 1934).  
4 Here, the Nevada Legislature, pursuant to NRS 218D.205, has conferred on counties and  
5 municipalities the power to request the drafting of legislative measures. However, the  
6 Nevada Legislature has specifically limited that conferred power. Pursuant to NRS  
7 218D.205(1)(a), a county or municipality may only request a legislative measure that has  
8 first been “[a]pproved by the governing body. . . at a public hearing.” Furthermore, NRS  
9 218D.205(3) limits the number of legislative measures that each county or municipality  
10 may request.

11 NRS 278A.0286(2) is simply an additional restriction imposed by the Legislature on  
12 the conferred power to request the drafting of legislation. It is a statutory condition  
13 precedent that *requires* that any requested legislation related to regional planning *be filed*  
14 *with the RPGB before* being submitted to the LCB. Fulfilling this statutory condition  
15 precedent is not optional and if a County evades its statutory obligations, it is exceeding its  
16 statutory authority. The Legislature’s imposition of a limitation upon a county’s or  
17 municipality’s statutory authority to submit proposed legislation is a proper exercise of the  
18 legislative powers. Therefore, when the County submitted a bill draft request to the LCB  
19 related to the comprehensive regional plan without first filing it, and relevant information  
20 regarding the proposal, with the RPGB, it exceeded its statutory authority. A n a c t b y  
21 municipality or county that is outside its statutory authority is void. *See Dillard v. Baldwin*  
22 *County Comm’n*, 833 So.2d 11, 16 (Ala. 2002) (“[i]f county commissions exceed the limits  
23 of their powers, their acts are void.”); *Sasse v. King County*, 82 P.2d 536, 539 (Wash. 1938)  
24 (“Boards of county commissioners have only such powers as have been granted to them,  
25 expressly or by necessary implication, by the constitution and statutes of the state, and  
26 when the board goes beyond the scope of its authority its acts are void and not

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1 binding upon the county.”). Therefore, the act of the County in determining to move  
2 forward with AB 39 is void.

3 F. There Must be Consequences for the County’s Acts in Excess of Its Authority and In  
4 Violation of Statute, Regulation and Contract.

5 As discussed, the County’s actions in unilaterally proposing legislation that would  
6 materially alter the composition of the RPGB were taken in excess of its statutory authority  
7 and in violation of statute, regulation and contract. Courts have held such acts to be void,  
8 which necessarily means that the Court must “unwind” the clock and order the County to  
9 withdraw AB 39 as its decision to submit the proposal was void as a matter of law.

10 The County may argue that such a remedy is not contemplated by Nevada law and  
11 all this Court can do is direct the County to now comply with the informational and meet  
12 and confer requirements imposed by the 2002 Settlement Agreement, NRS 278.0286(2)  
13 and Regulation X. But that will not cure the County’s violation because AB 39 has already  
14 been submitted to the 2017 Legislature. Such a result will simply sanction the County’s  
15 actions and embolden the County in any future legislative acts to do an end-run around the  
16 RPGB when seeking regional planning legislative changes. There must be real  
17 consequences for the County’s violations and the most appropriate is to order the  
18 withdrawal of AB 39.

19 **IV.**

20 **CONCLUSION**

21 On the basis of the foregoing reasons, it is appropriate for this Court to exercise its  
22 continuing jurisdiction over the 2002 Settlement Agreement to compel the County’s  
23 compliance with the Settlement Agreement, NRS 278.0286(2) and the 2001 Legislative  
24 Cooperation MOU, RPGB and prohibit the County from pursuing AB 39 in the 2017  
25 Legislature through either the issuance of a writ of mandamus or prohibition, or through  
26 an order granting declaratory and injunctive relief.

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**VERIFIED PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

This is a declaratory and injunctive relief action brought pursuant to NRS 30.040, *et seq.* and NRS 33.010, *et seq.* Petitioner RPGB hereby alleges as follows:

**PARTIES**

1. The Truckee Meadows Regional Planning Governing Board (“RPGB”) is, and was at all relevant times, the governing board for Truckee Meadows Regional Planning Agency (“TMRPA”), created by and existing under NRS 278.0264.

2. The RPGB may sue and be sued in its own name. NRS 278.0264(8).

3. The County of Washoe (“County”) is a political subdivision of the State of Nevada.

4. The County may sue or be sued in its own name. NRS 12.205.

**STATUTORY AND REGULATORY BACKGROUND**

5. In 1989, the Nevada Legislature created a new regional government, the TMRPA. *See* NRS 278.026 to NRS 278.029, inclusive.

6. The Legislature has specifically declared that the regional planning statutes, NRS 278.026 to 278.029, were designed to ensure “that comprehensive planning will be carried out with respect to population, conservation, land use and transportation, public facilities and services, annexation and intergovernmental coordination.” NRS 278.0261(1).

7. “It is the intent of the Legislature with respect to NRS 278.026 to 278.029, inclusive, that each local government and affected entity shall exercise its powers and duties in a manner that is in harmony with the powers and duties exercised by other local governments and affected entities to enhance the long-term health and welfare of the county and all its residents.” NRS 278.0261(4).

8. NRS 278.0264, created the RPGB, and also dictates its composition:

1. There is hereby created in each county whose population is 100,000 or more but less than 700,000, a governing board for regional planning consisting of:

(a) Three representatives appointed by the board of county commissioners, at least two of whom must represent or reside within unincorporated areas of the county. If the representative is:

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- (1) A county commissioner, his or her district must be one of the two districts in the county with the highest percentage of unincorporated area.
- (2) Not a county commissioner, he or she must reside within an unincorporated area of the county.
- (b) Four representatives appointed by the governing body of the largest incorporated city in the county.
- (c) Three representatives appointed by the governing body of every other incorporated city in the county whose population is 60,000 or more.
- (d) One representative appointed by the governing body of each incorporated city in the county whose population is less than 60,000.

NRS 278.0264(1).

9. The primary obligation of the RPGB is the adoption of a comprehensive regional plan ("Regional Plan") for the areas within Washoe County, and any amendments thereto. NRS 278.0276.

10. The Regional Plan must be reviewed annually and updated every five years. NRS 278.0272.

11. Only the RPGB may adopt an amendment to the Regional Plan. NRS 278.0272.

12. A key goal and component of the regional planning process is "intergovernmental coordination." NRS 278.0261(1); NRS 278.0274(7).

13. Among other items, the contents of the regional plan "must include goals, policies, maps and other documents relating to . . . intergovernmental coordination." NRS 278.0274; *see also* NRS 278.0261(1).

14. The RPGB is required to "[a]dopt such regulations as are necessary to carry out its specific powers and duties." NRS 278.0265(1). NRS 278.0265(4) also empowers the RPGB with the authority to enter into inter-local agreements pursuant to NRS Chapter 277 "for a purpose that is consistent with the provisions of NRS 278.026 to 278.029, inclusive."

15. NRS 278.0286(2) provides that "[b]efore submitting a recommendation for proposed legislation or beginning any program or project relating to the mandatory provisions of the comprehensive regional plan, a unit of local government or an affected

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1 entity shall file all relevant information relating to that request, program or project with the  
2 governing board.” *Id.*

3 16. NRS 278.0286 was included in the enacting legislation in 1989 and has not  
4 been amended since.

5 **B. Regulations**

6 17. Pursuant to the statutory mandate to adopt regulations to carry out its  
7 statutory obligations and duties, the RPGB adopted “Regulations on Procedure”  
8 (“Regulations”) on November 14, 2002, which have been amended throughout the years,  
9 the most recent being on April 10, 2014. Ex. 1.

10 18. Regulation II.A(5) provides that “[a]n affirmative vote by a majority of the  
11 total membership of the RPGB is required to adopt a Regional Plan amendment. Ex. 1 at  
12 3.

13 19. Regulation X, “Legislation and Projects Relating to the Regional Plan,”  
14 provides:

15 Not less than 60 days before submitting a recommendation for  
16 proposed legislation to the Legislative Counsel Bureau, or  
17 beginning any program or project relating to the mandatory  
18 provisions of the comprehensive regional plan, a unit of local  
19 government or an affected entity shall file all relevant  
20 information relating to that request, program or project with  
21 the Governing Board. [See Subsection 2 of NRS 278.0286].

19 Ex. 1 at 26.

20 20. Regulation II.A(5) and X have not been changed since their adoption. *See Ex.*  
21 4 at 34-36.

22 **REGIONAL PLAN PROVISIONS**

23 21. The 2012 Regional Plan provides that:

24 The comprehensive Truckee Meadows Regional Plan is  
25 intended to comply with the statutory requirements of Nevada  
26 Revised Statutes (NRS) 278.0274. In addition to the  
27 comprehensive Truckee Meadows Regional Plan, the Regional  
28 Planning Governing Board (RPGB) has adopted regulations  
pursuant to NRS 278.0265 that address a variety of topics not  
addressed in the comprehensive Truckee Meadows Regional  
Plan. No reliance should be placed on the comprehensive

Truckee Meadows Regional Plan without consulting the applicable statutes, regulations adopted by the RPGB, and the guidelines adopted by the Regional Planning Commission (RPC).

Ex. 6 (excerpts of 2012 Regional Plan) at 1.

22. Regional Plan sets for the cooperative, intergovernmental effort involved: “[c]reating and carrying out the Truckee Meadows Regional Plan is a cooperative effort involving a large number of agencies, organizations and individuals. Reno, Sparks, Washoe County and others implement the Regional Plan through their planning and regulatory efforts, capital improvement programs, and other programs.” Regional Plan, Intro. at 1.

23. “The purpose of the Regional Plan is to implement the legislative mandate given to the RPC and RPG. It is an opportunity to put into place a resource for the region with a collaborative structure that will serve the Truckee Meadows well into the future.”

Ex. 6, Intro. at 4.

24. The Regional Plan sets forth the make-up of the RPGB and the RPGB’s role:

The RPGB adopts the Regional Plan with any amendments it deems necessary, after submitting the amendments to the RPC for review and comment (NRS 278.0276).

The RPGB has ten members. The Washoe County Commission appoints three members (two of whom must reside in or represent the unincorporated area), the Reno City Council appoints four members, and the Sparks City Council appoints three members. The members serve three-year terms and may be re-appointed. The Reno, Sparks, and Washoe County governing bodies may appoint members from among their own members and traditionally have done so.

Upon recommendation of the RPC, the RPGB adopts the Regional Plan with any amendments that it deems necessary after holding required public hearings. The RPGB has all the powers and obligations that are delineated in NRS 278.0264 and NRS 278.0265.

Ex. 6, Intro. at 2-3.

25. The Regional Plan contains principles and goals regarding Regional Plan Implementation and sets forth in pertinent part:

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The basis for goal and policy development for implementation of the Regional Plan are the following planning principles:

**Planning Principles**

The Regional Planning Agency will effectively manage growth within the region through the implementation of the Regional Plan where:

...

The Regional Plan and regulations adopted by the RRGB further identify process and procedures to allow changes to the Regional Plan.

Ex. 6, Module 4 at 1.

26. The Regional Plan defines the following terms:

“Regional Planning Governing Board[:] The RRGB consists of ten members including three from the Washoe County Commission, four from the Reno City Council, and three from the Sparks City Council (NRS 278.0264).”

“Regulation[:] A rule or order prescribed for management by government.”

Ex. 6, App. 2 at 11.

27. Provisions regarding the composition of the RRGB and intergovernmental coordination have always been embedded in the Regional Plans. See Exs. 7-11.<sup>9</sup>

**FACTUAL ALLEGATIONS**

The County’s Pursuit of Regional Planning Legislation

28. On August 31, 2016, at 4:57 p.m. the County hand-delivered a letter to the TMRPA Executive Director Kimberly H. Robinson, signed by County Manager John Slaughter. See Ex. 12. That letter stated:

Per NRS 278.0286, Washoe County has provided to the Truckee Meadows Regional Governing Board relevant information relating to a request for proposed legislation. Attached hereto is the Local Government Gill Draft Request for

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<sup>9</sup> Exhibit 7 is excerpts from the 1991 Regional Plan, Exhibit 8 is excerpts from the 1993 Regional Plan, Exhibit 9 is excerpts from the 1996 Regional Plan, Exhibit 10 is excerpts from the 2002 Regional Plan, and Exhibit 11 is excerpts from the 2007 Regional Plan.

1 the 2017 Legislative Session form that will be submitted to the  
2 Legislative Counsel Bureau on September 1, 2016, per NRS  
218D.205.

3 Ex. 12.

4 29. The BDR attached to the letter contained no specific information regarding  
5 the nature of the legislative proposal and only stated that "Washoe County is seeking a  
6 comprehensive review of the Regional Planning Agency as defined in NRS 278.0264-  
7 Governing board for regional planning: Creation; membership; chair; compensation;  
8 operational needs; capacity to sue and be sued; budget, as part of that review, the structure  
9 of the Governing Board, Washoe County Board composition and review of the authority of  
10 the agency." *Id.*

11 30. At the RPGB's next meeting on October 20, 2016, the RPGB members  
12 discussed the fact that the County had submitted the BDR and concerns were expressed that  
13 the language of the BDR had not been made available to the RPGB members. *See Ex. 13.*

14 31. During the RPGB October 20, 2016, RPGB meeting, RPGB Member  
15 Berkbigler, a County Commissioner, stated that the BDR "will address changes the County  
16 wants to the statutes that directly impact the County and not the cities. The goal is not to  
17 eliminate the RPGB. Washoe County is in the process of working on language for the BDR  
18 and as soon as it is ready it will be provided to the RPGB." *Id.* at 3.

19 32. Member Berkbigler explained "that a number of issues were put on the table  
20 and the County Commission Chair recommended that County staff come back with  
21 language that specifically addresses the issues that directly impact the County that make the  
22 County a side entity and not really part of the team. That information should come back  
23 at the *November 29, 2016*, County Commission meeting." *Id.* at 4.

24 33. The agenda for the County Board of Commissioners' November 29, 2016,  
25 meeting contains no reference to the BDR. *See Ex. 14.*

26 34. The County Board of Commissioners did discuss the BDR during their  
27 meeting on October 25, 2016, five days after the RPGB meeting. *See Ex. 15* (Agenda, Item  
28 16).

1           35. In the Board of County Commissioners October 25, 2016, meeting, the  
2 Commissioners considered two different language options and voted to submit a BDR  
3 containing one of the options with proposed changes regarding composition of the RPGB.  
4 *See* Ex. 16 at 30 and Option attachments.

5           36. County Manager Slaughter emailed Executive Director Robinson on  
6 November 7, 2016, stating that it was providing the “final language of the Washoe County  
7 BDR submitted to LCB for drafting.” Ex. 17. The attachment to Mr. Slaughter’s email  
8 contained the actual proposed change to NRS 278.0264(1) as now set forth in AB 39. Ex.  
9 17 attach. at 3; Ex. 4.

10          37. The County never did provide a copy of AB 39, or any other relevant  
11 information, to the RPGB.

12          38. On November 28, 2016, Executive Director Robinson received an email from  
13 the TMRPA’s lobbying firm, Crowley and Ferrato, who independently informed her the bill  
14 was out; AB 39 had been pre-filed with the Legislature on November 16, 2016. Exs. 4, 18.

15          39. AB 39 would amend NRS 278.0264(1) by changing the number of  
16 representatives appointed by Reno from four to three. Ex. 4. AB 39 would also eliminate  
17 the “unincorporated” representation requirements for the County in that the County would  
18 no longer be required to appoint representatives from the unincorporated areas of the  
19 County (except if an appointee is not a County Commissioner, then that representative must  
20 reside in the unincorporated area of the County). *Id.*

21 The RPGB’s Reaction

22          40. Once notified of the drafting and filing of AB 39, the RPGB considered the  
23 item at its December 8, 2016, meeting. *See* Ex. 19 at 4.

24          41. At the RPGB December 8, 2016, meeting, several members of the RPGB  
25 expressed concerns about AB 39, most particularly whether the action of the County in  
26 proposing the legislation was legal in light of the 2002 Settlement Agreement; a legal

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28 ///

1 opinion was requested of RPGB's counsel regarding the legality of the County's action. Ex.  
2 19.

3 42. On December 19, 2016, legal counsel for RPGB rendered his legal opinion and  
4 concluded that the County had violated the 2002 Settlement Agreement, NRS 278.0286(2)  
5 and Regulation X. See Ex. 20.

6 43. A special meeting of the RPGB was held on December 22, 2016, to consider  
7 the legal opinion and determine whether to take legal action. Ex. 21 (Meeting Agenda). At  
8 the meeting, legal counsel for RPGB summarized his opinion. See Ex. 22 (DVD of meeting);  
9 Ex. 23 (draft minutes).

10 44. At the December 22, 2016, RPGB Special Meeting, RPGB member Berkbigler  
11 read into the record portions of an opinion prepared by the Washoe County District  
12 Attorney. *Id.*

13 45. In sum, the District Attorney's office disagreed with RPGB counsel and  
14 concluded that there was no violation of the 2002 Settlement Agreement, the statute or  
15 regulation. That opinion, which was an email, was later provided to TMRPA staff. Ex. 24.

16 46. At the conclusion of the December 22, 2016, Special RPGB Meeting, the RPGB  
17 approved a motion to move forward with court action to challenge the County's actions  
18 unless the County decided to withdraw AB 39 at its Board of County Commissioner's  
19 meeting scheduled for January 10, 2017.

20 The County's Response

21 47. At the January 10, 2017, meeting of the Board of County Commissioners, the  
22 Assistant District Attorney representing the Board of County Commissioners reiterated his  
23 opinion that the County's actions were legal.

24 48. The Board of County Commissioners voted to move forward with AB 39 and  
25 various commissioners articulated the reasoning behind their legislative request.

26 49. Statements were made by individual Commissioners on the Board of County  
27 Commissioners during the January 10, 2017, meeting that included wanting to have an  
28 equal vote on the RPGB, wanting to get control over the management of the RPGB, wanting

1 to ensure commissioners who sit on RPGB follow the directives of the Board of County  
2 Commissioners, and wanting to resolve alleged redundancy of efforts amongst Reno, other  
3 regional agencies and the Local Governments.

4 50. On January 17, 2017, counsel for RPGB sent a letter to the Washoe County  
5 District Attorney requesting a meeting to determine if there was a non-litigation resolution,  
6 Ex. 26; no response was received.

7 The 2002 Settlement Agreement

8 51. In 2002, the County and the Sun Valley General Improvement District  
9 ("SVGID") initiated a lawsuit against the RPGB seeking to set aside the 2002 Regional Plan  
10 Update. Eventually, through protracted settlement negotiations, the matter was resolved  
11 by the parties and the 2002 Settlement Agreement was agreed-upon. Ex. 1.

12 52. The 2002 Settlement Agreement details criteria for the 2002 Regional Plan  
13 regarding expanding spheres of influence, cooperative planning, land use and zoning  
14 designations, programs of annexation and joint planning. Ex. 1.

15 53. The 2002 Settlement Agreement further provides for specific Regional Plan  
16 amendments, including clear delineation that the Regional Plan is natural resource  
17 constrained, recognition of existing zoning outside the Truckee Meadows Service Areas  
18 ("TMSA"), and specification of additional criteria for future amendments of the Plan and  
19 conformance review processes. Ex. 1.

20 54. Many of these concepts have since been embedded in the Regional Plan.

21 55. Paragraph F of the 2002 Settlement Agreement provides:

22 Reno, Sparks, the County, the Board and the Sun Valley  
23 General Improvement District (hereafter SVGID) shall not  
24 propose legislation that is either inconsistent or contrary to the  
25 terms of this settlement agreement. In the event that Reno,  
26 Sparks, the County and the Board jointly believe that legislation  
27 should be proposed to support or further this agreement, the  
28 parties will jointly submit and support the legislation. Reno,  
Sparks, the County and the Board agree that all other legislative  
items will be addressed pursuant to NRS 278.0276(2) [sic] and  
the 2001 Memorandum of Understanding on legislative issues,  
as amended.

Ex. 1 at 8.

1           56. The 2001 Legislative Cooperation MOU referred to in the 2002 Settlement  
2 Agreement was one of many similar cooperative legislative agreements adopted by the  
3 Board, the County, Reno, Sparks, and at times other impacted entities, such as Regional  
4 Transportation Commission and the Washoe County School District. See Ex. 2, Ex. 25  
5 (Legislative Cooperation Memorandums - 1993, 1994, 1996, 2002-2003, 2004-2005, 2006-  
6 2007, 2008-2009, 2010-2011, 2012-2013).

7           57. The 2001 Legislative Cooperation MOU recognized that (1) “the interests of  
8 the residents of the Truckee Meadows can be served by a cooperative approach to  
9 intergovernmental relations and a unified effort[;]” (2) “it is desired by the region, Washoe  
10 County, the cities of Reno and Sparks, and other affected entities to work together to  
11 present ot [sic] our local legislators, to the extent possible, a unified legislative position that  
12 best addresses the needs and interests of the residents of the Truckee Meadows;” and (3)  
13 “it is understood by and among the region, Washoe County, the cities of Reno and Sparks,  
14 and other affected entities that their respective position may not be similar on all issues  
15 considered by, or bill drafts presented to, the 2001 Nevada Legislature, whether related to  
16 regional planning issues or other matters of governmental interest.” Ex. 2 at 1.

17           58. The 2001 Legislative Cooperation MOU further provides:

18                   2. Every effort will be made by and through each entity’s  
19 representatives and assigned lobbyists to identify and achieve  
20 a unified position with regard to pending and proposed  
21 legislation.

22                   3. Any differences in position on proposed legislation will be  
23 identified and discussed to determine whether there are other  
24 avenues of resolution outside the legislative process by which  
25 the differences could be resolved.

26                   4. Each entity commits to fully disclose to the representatives  
27 and assigned lobbyists of the other entities all activities and  
28 position [sic] that it takes, or intends to take, with regard to  
bills that are part of or that materially affect the unified  
legislative agenda.

                  5. In recognition of the limited number of bill draft requests  
available to local government, representatives and lobbyists of  
each entity will strive to develop regional legislative positions  
and to find regional solutions to local conflicts that may arise  
during the session.

                  6. Representatives and assigned lobbyists of each entity will  
provide assistance and information to each other and to local  
legislators during the session for the purpose of advancing bills



1 in the unified legislative agenda.

2 7. Local legislators will be informed when approached by  
3 representatives or assigned lobbyists of each entity on a given  
4 legislative issue whether the position espoused is a unified  
5 position of the respective entities or the position of one or more  
6 particular entities only.

7 8. Representatives and assigned lobbyists of each entity will  
8 actively solicit the support of businesses, institutions, and other  
9 affected interest groups on behalf of the unified legislative  
10 agenda.

11 Ex. 2 at 1-2.

12 59. The other cooperative legislative memorandums executed by the Board, the  
13 County, Reno and Sparks are contained in Exhibit 25 and all contain provisions very  
14 similar, if not identical, to those in the 2001 Legislative Cooperation MOU, emphasizing the  
15 importance of a unified, collaborative legislative approach to regional matters.

16 **FIRST CLAIM FOR RELIEF - DECLARATORY RULING**  
17 **(Breach of 2002 Settlement Agreement)**

18 60. RPGB incorporates by reference all of the allegations previously stated in this  
19 Petition as though set forth fully herein.

20 61. An actual controversy has arisen and now exists between the parties  
21 concerning the County's actions in proposing AB 39.

22 62. Paragraph F of the 2002 Settlement Agreement provides in pertinent part:

23 Reno, Sparks, the County and the Board agree that all other  
24 legislative items will be addressed pursuant to NRS  
25 278.0276(2)<sup>10</sup> and the 2001 Memorandum of Understanding  
26 on legislative issues, as amended.

27 Ex. 1 at 8 (emphasis added).

28 63. RPGB contends as follows:

(a) that the County violated the 2002 Settlement Agreement when it did not  
comply with NRS 278.0286 or the 2001 Memorandum of Understanding when it  
unilaterally submitted a bill draft request to LCB to change the composition of RPGB;

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<sup>10</sup> NRS 278.0276(2) does not exist and citation to that provision was a mistake; the correct reference is to NRS 278.0286(2).

1 (b) that the County violated the 2002 Settlement Agreement when it did not  
2 provide relevant information to the RPGB before submitting its legislative proposal to LCB;

3 (c) that the County breached the 2002 Settlement Agreement that the County  
4 violated the 2002 Settlement Agreement when it did not comply with the 2001 Legislative  
5 Cooperation MOU when it did not (i) meet and confer with the City of Reno, City of Sparks  
6 or the RPGB before seeking a BDR from LCB, (ii) attempt to reach a unified legislative  
7 agenda, (iii) disclose to lobbyists and representatives of the City of Reno, City of Sparks and  
8 RPGB that it was seeking a legislative change of the composition of the RPGB, and (iv)  
9 inform legislators of its unilateral legislative agenda.

10 64. On information and belief, Defendants dispute these contentions.

11 65. This is a proper case for relief under NRS 30.030, 30.040, and 30.070.

12 66. As a result of Defendants' actions, the RPGB has been required to bring this  
13 suit to protect its rights and prosecute this action on its behalf.

14 **SECOND CLAIM FOR RELIEF - DECLARATORY RULING**

15 **(Breach of the Covenant of Good Faith and Fair Dealing)**

16 67. RPGB incorporates by reference all of the allegations previously stated in this  
17 Petition as though set forth fully herein.

18 68. An actual controversy has arisen and now exists between the parties.

19 69. Every contract in the State of Nevada contains an implied covenant of good  
20 faith and fair dealing, which forbids arbitrary, unfair acts by one party that disadvantages  
21 another.

22 70. RPGB contends that the County violated the covenant of good faith and fair  
23 dealing implied in the 2002 Settlement Agreement when it arbitrarily, unfairly and  
24 unilaterally proposed legislation seeking to amend a regional planning statute, specifically  
25 the statute governing the composition of the RPGB without providing information to RPGB  
26 until after the proposal was reduced to a bill and pre-filed with the Legislature.

27 71. On information and belief, Defendants dispute these contentions.

28 72. This is a proper case for relief under NRS 30.030, 30.040, and 30.070.

1           73. As a result of Defendants' actions, the RPGB has been required to bring this  
2 suit to protect its rights and prosecute this action on its behalf.

3                           **THIRD CLAIM FOR RELIEF- DECLARATORY RULING**

4   **(NRS 278.0286(2))**

5           74. RPGB incorporates by reference all of the allegations previously stated in this  
6 Complaint as though set forth fully herein.

7           75. An actual controversy has arisen and now exists between the parties.

8           76. NRS 278.0286(2) provides that "[b]efore submitting a recommendation for  
9 proposed legislation or beginning any program or project relating to the mandatory  
10 provisions of the comprehensive regional plan, a unit of local government or an affected  
11 entity shall file all relevant information relating to that request, program or project with the  
12 governing board." *Id.*

13           77. NRS 278.0286(2) requires the Local Governments and affected entities to file  
14 relevant information before submitting any recommendation for proposed legislation  
15 regarding any regional planning statute set forth in NRS 278.026 to NRS 278.029,  
16 inclusive.

17           78. NRS 278.0286(2) requires the Local Governments and affected entities to file  
18 relevant information before submitting any recommendation for proposed legislation  
19 relating to the mandatory provisions of the comprehensive regional plan.

20           79. RPGB contends that the County violated NRS 278.0286(2) when it did not  
21 file all relevant information relating to its legislative request before submitting the request  
22 to LCB for drafting and when its proposal, AB 39, was pre-filed with the Legislature.

23           80. On information and belief, Defendants dispute these contentions.

24           81. This is a proper case for relief under NRS 30.030, 30.040, and 30.070.

25           82. As a result of Defendants' actions, the RPGB has been required to bring this  
26 suit to protect its rights and prosecute this action on its behalf.

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1 **FOURTH CLAIM FOR RELIEF- DECLARATORY RULING**

2 **(Regulation X)**

3 83. RPGB incorporates by reference all of the allegations previously stated in this  
4 Complaint as though set forth fully herein.

5 84. An actual controversy has arisen and now exists between the parties.

6 85. Regulation X, "Legislation and Projects Relating to the Regional Plan,"  
7 provides:

8 Not less than 60 days before submitting a recommendation for  
9 proposed legislation to the Legislative Counsel Bureau, or  
10 beginning any program or project relating to the mandatory  
11 provisions of the comprehensive regional plan, a unit of local  
12 government or an affected entity shall file all relevant  
13 information relating to that request, program or project with  
14 the Governing Board. [See Subsection 2 of NRS 278.0286].

15 Ex. 1 at 26..

16 86. RPGB contends that the County violated Regulation when it did not file all  
17 relevant information relating to its legislative request at least sixty days before submitting  
18 the request to LCB for drafting.

19 87. On information and belief, Defendants dispute these contentions.

20 88. This is a proper case for relief under NRS 30.030, 30.040, and 30.070.

21 89. As a result of Defendants' actions, the RPGB has been required to bring this  
22 suit to protect its rights and prosecute this action on its behalf.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, RPGB prays for relief as follows:

25 1. For a declaration of the rights and duties of the County, in proposing  
26 legislation seeking to amend, alter, repeal or replace any of the provisions in NRS 278.026  
27 to .029, inclusive.

28 2. For a declaration that the County violated NRS 278.0286(2), Board  
Regulation on Procedure X, and the 2002 Settlement Agreement when it unilaterally  
proposed legislation changing the composition of the RPGB;

3. For an order enjoining the County from further pursuing AB 39;

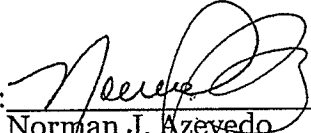
Dyer, Lawrence, Flaherty, Donaldson & Prunty  
2805 Mountain Street  
Carson City, Nevada 89703  
(775) 885-1896

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- 4. For an award of the costs of suit incurred by the RPGB; and,
  - 5. For such other and further relief as this Court deems just and proper.
- Dated this 20th day of January, 2017

DYER, LAWRENCE, FLAHERTY,  
DONALDSON & PRUNTY  
2805 Mountain Street  
Carson City, Nevada 89703

By:   
Norman J. Azevedo  
Nevada Bar No. 3204  
Jessica C. Prunty  
Nevada Bar No. 6926  
*Attorneys for Petitioner RPGB*

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**VERIFICATION**

STATE OF NEVADA )  
                                  ) ss.  
COUNTY OF WASHOE )

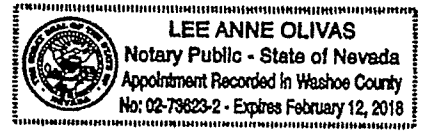
Kimberly Robinson, being first duly sworn, deposes and says:

1. That she is the Executive Director of the Truckee Meadows Regional Planning Agency;
2. That she has read the foregoing Verified Petition for Writ of Mandamus or Prohibition or in the Alternative Petition for Declaratory and Injunctive Relief and knows the contents thereof; and,
3. That the same are true of her own knowledge, except where those matters therein contained are stated upon information and belief, and as to those matters, she believes them to be true.

DATED this 19 day of January, 2017.

Subscribed and sworn  
this 19 day of January, 2017.

Lee Anne Olivas  
Notary Public



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**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, Complaint filed in this case:

X Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

For the administration of a public program

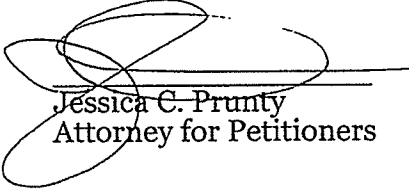
-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: January 20, 2017.

  
\_\_\_\_\_  
Jessica C. Prunty  
Attorney for Petitioners

Dyer, Lawrence, Flaherty, Donaldson & Prunty  
2805 Mountain Street  
Carson City, Nevada 89703  
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