

# NYE COUNTY AGENDA INFORMATION FORM

Action     Presentation     Presentation & Action

Department: Planning		Agenda Date:
Category: Timed Agenda Item – 11:00 a.m.		October 16, 2018
Contact: Brett Waggoner	Phone: 775-751-4249	Continued from meeting of:
Return to: Brett Waggoner	Location:	Phone:
<b>Action requested:</b> (Include what, with whom, when, where, why, how much (\$ and terms))		
Public Hearing, discussion and deliberation to: 1) Adopt, amend and adopt, or reject Nye County Bill No. 2018-16: A Bill proposing to amend Nye County Code Title 15, Building and Construction, by amending Chapter 15.28 entitled Dust Control Regulations Within the Pahrump Regional Planning District, relating to Section 15.28.090 Construction Activities and Section 15.28.160 Posting of Informational Signs on Construction Sites; and providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto; and 2) Set an effective date.		
<b>Complete description of requested action:</b> (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures)		
Staff recommends adoption of the Bill with an effective date of November 5, 2018.		
<b>Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.</b>		
<b>Expenditure Impact by FY(s):</b> (Provide detail on Financial Form)		
<input checked="" type="checkbox"/> No financial impact		

## Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal	RB 09.11.18
4.	Date	9. Finance	Date N/A
5.	Date	10. County Manager	Place on Agenda MCH

ITEM # 9

**NYE COUNTY BOARD OF COUNTY COMMISSIONERS  
PLANNING DEPARTMENT STAFF REPORT**

**Meeting Date:** October 16, 2018

**AGENDA ITEMS**

11:00 - For Possible Action — Public Hearing, discussion and deliberation to: 1) Adopt, amend and adopt, or reject Nye County Bill No. 2018-16: A Bill proposing to amend Nye County Code Title 15, Building and Construction, by amending Chapter 15.28 entitled Dust Control Regulations Within the Pahrump Regional Planning District, relating to Section 15.28.090 Construction Activities and Section 15.28.160 Posting of Informational Signs on Construction Sites; and providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto; and 2) Set an effective date.

**GENERAL INFORMATION SUMMARY**

**BACKGROUND:** Nye County Code Chapter 15.28 entitled Dust Control Regulations Within the Pahrump Regional Planning District was adopted by the BOCC in 2006, and regulates the creation of dust during construction, reconstruction, alteration, or repair of buildings or structures for the purpose of preserving the quality of air, and to protect the health, safety and general welfare of the residents of the county by assuring that the public nuisance of excessive emission of air pollution is prevented.

This Bill proposes to clarify the existing regulations and to modify the requirements related to the posting of information signs on construction sites.

The PRPC heard this matter on June 13, 2018 and on August 15, 2018.

The PRPC recommended adoption of this Bill on August 15, 2018 (see minutes below) by a vote of 7-0.

Staff recommends adoption of Bill 2018-16 with an effective date of November 5, 2018.

Attached is the proposed Bill.

**RPC**

**RPC Minutes from 8-15-2018:**

For possible action: Discussion, deliberation and possible direction to staff and/or recommendation to the Board regarding a Draft Bill proposing to amend Chapter 15.28 "Dust Control Regulations Within the Pahrump Regional Planning District." (The Pahrump Regional Planning Commission makes a recommendation on this item. Final Action by the Board of County Commissioners has not yet been scheduled.)

Mr. Waggoner stated a lot of feedback was received and staff has addressed those concerns.

Commissioner Koenig stated less than  $\frac{1}{2}$  an acre is mentioned several times. He has a problem with the way it is worded, and they need to think about how it needs to be worded. He had an instance where someone was doing a driveway and the dust was horrible.

Mr. Waggoner stated the first page paragraph A, regardless of the size of the project is required to sign an acknowledgement form that they will follow best practices and if there is a complaint received and it is investigated they can still receive a citation and imposed a fee. We are tying this to a C of O. What we would like to require is a verification that that is being done, whether it is a physical inspection of the property or pictures submitted at the counter and signed off on at the office.

Commissioner Koenig stated to discuss it before it gets to the BOCC so it doesn't have to be discussed at the meeting.

Commissioner Hafen stated the scenario Commissioner Koenig stated is against current NCC and MOU with NDEP, they aren't using best practical methods.

**Commissioner Lee motioned to recommend approval to the BOCC.**

**Seconded by Commissioner Bennett.**

Commissioner Fowler stated Commissioner Koenig asked for a discussion on one section with Planning. Will this recommendation be as is or does Planning still have the opportunity to change the verbiage if they come to an agreement to change the  $\frac{1}{2}$  acre.

Commissioner Hafen stated this will go as is, but the BOCC could always bring a recommended change to the meeting.

**Vote: Motion carried by unanimous roll call vote (summary: Yes = 7).**

**Yes: Beth Lee, Carol Curtis, Derek Fowler, Gary Bennett, Gregory T. Hafen II, Leah-Ann DeAnda, Tom Duryea.**

## **RECOMMENDATION**

**Recommended BOCC Motion:** "I move to **adopt** Bill 2018-16 with an effective date of November 5, 2018."

NYE COUNTY ORDINANCE NO. \_\_\_\_\_

**SUMMARY:** A Bill proposing to amend Nye County Code Title 15, Building and Construction, by amending Chapter 15.28 entitled Dust Control Regulations Within the Pahrump Regional Planning District, relating to Section 15.28.090 Construction Activities and Section 15.28.160 Posting of Informational Signs on Construction Sites; and providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto.

**TITLE:** A BILL PROPOSING TO AMEND NYE COUNTY CODE TITLE 15, BUILDING AND CONSTRUCTION, BY AMENDING CHAPTER 15.28 ENTITLED DUST CONTROL REGULATIONS WITHIN THE PAHRUMP REGIONAL PLANNING DISTRICT, RELATING TO SECTION 15.28.090 CONSTRUCTION ACTIVITIES AND SECTION 15.28.160 POSTING OF INFORMATIONAL SIGNS ON CONSTRUCTION SITES; AND PROVIDING FOR THE SEVERABILITY, CONSTITUTIONALITY AND EFFECTIVE DATE THEREOF; AND OTHER MATTERS PROPERLY RELATING THERETO.

**WHEREAS**, pursuant to NRS 244.119, the Nye County Board of Commissioners (“Board”) is authorized to amend the Nye County Code; and

**WHEREAS**, pursuant to NRS 278.020, for the purpose of promoting the health, safety and the general welfare of the residents of Nye County, the Board is authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures; and

**WHEREAS**, any such regulation, restriction and control must take into account the potential impairment of natural resources and the total population which the available natural resources will support without unreasonable impairment;

**NOW, THEREFORE**, pursuant to NRS 244.110, the Board of County Commissioners of the County of Nye, State of Nevada, does ordain:

**NYE COUNTY CODE TITLE 15 IS HEREBY AMENDED AS FOLLOWS**, with **Deletions** shown in strike-through red font, and **additions and modifications** shown in underscored blue font:

**15.28.090: CONSTRUCTION ACTIVITIES AND SIGN REQUIREMENTS:**

- A. A person engaged in construction activity shall employ best practical methods to prevent the generation of fugitive dust and either submit a dust control plan or sign an acknowledgement form, pursuant to this section.
- B. Except when engaged in agricultural operations, no person may initiate commence a construction activity that results in disturbed areas unless best practical methods are taken to prevent generation of fugitive dust during both the active development phases and thereafter if the property is to remain unoccupied, unused, vacant, or undeveloped.

C. All commercial or residential construction projects require the posting of either an informational sign as described in Section 15.28.160 of this Chapter, or the posting of the physical address in a conspicuous location on each parcel, depending on the type of project, prior to commencing any construction activity.

D. For any commercial or residential construction project involving less than one-half ( $\frac{1}{2}$ ) acre of disturbed area, an acknowledgement form shall be signed when submitting a zoning review application. This acknowledgement form shall state that the individual is disturbing less than one-half ( $\frac{1}{2}$ ) acre of land and is therefore exempt from the dust control plan requirements. If it becomes known by the Nye County Air Quality Program Administrator that more than one-half ( $\frac{1}{2}$ ) acre is being or has been disturbed during the construction activity, a dust control plan shall be required before construction activity may continue or the issuance of a Certificate of Occupancy can ~~or will~~ occur.

E. For any commercial or residential construction project involving in aggregate one-half ( $\frac{1}{2}$ ) acre or more of disturbed area, a dust control plan must be submitted to the Nye County Air Quality Program Administrator along with the following, if applicable: zoning review application, building permit application, conditional use permit application, zoning zone change application, or site development plan. The dust control plan shall specify the use of best practical methods to control the generation of fugitive dust from each construction activity. The owner ~~or contractor~~ operator ~~will~~ shall:

1. File a complete dust control plan with the Nye County Air Quality Program Administrator before initiating construction activities;
2. Implement the best practical methods as outlined in the dust control plan;
3. Maintain a written record of self-inspection made each day when soil disturbing work is conducted;
4. Retain records of site self-inspections for a minimum of one year from the start of the construction activity or for six (6) months beyond the project duration, whichever is longer. Self-inspection records include daily inspections for crusted or damp soil, track out conditions and cleanup measures, daily water usage, dust palliative application records, etc. For control measures involving chemical or organic soil stabilization, records shall indicate the type of product applied, vendor name, label instructions for approved usage, and the method, frequency, concentration, and quantity of application;
5. Install an informational sign on said property prior to commencing a construction activity in accordance with that is visible to the public and conforming to county policy on dust control permit design and posting of signage as described in Section 15.28.160, "Posting Of Informational Signs On Construction Sites", of this Chapter article; and;
6. Implement long term stabilization, in accordance with Section 15.28.140 of this Chapter, within ten (10) calendar days following the cessation of active operations. When construction is complete, or a site or part thereof becomes inactive for a period of thirty (30) calendar days or longer, long term stabilization shall be implemented within ten (10) days following the cessation of active operations.

F. The following construction type activities do not require a dust control plan ~~or the signing of an acknowledgement form~~:

1. Landscaping by an individual at the individual's ~~his/her~~ place of residence;
2. Emergency maintenance activities conducted by government agencies on publicly maintained roads, road shoulders, rights of way, and on public flood control facilities; and

3. Dust palliative application projects conducted solely for the purpose of compliance with ~~Section 15.28.110~~<sup>15.28.110</sup>, "Open Areas And Vacant Lots", of this ~~Chapter~~<sup>article</sup>, wherein no grade elevation changes, no soil or rock is imported or exported, or no cut and fill operations occur. Importing of gravel or rock for use as a dust palliative is allowed under this subsection.

~~GE~~. Any material which is tracked onto a paved roadway must be removed as quickly as safely possible. At a minimum all track out must be cleaned up by the end of the workday or evening shift, as applicable. Exceptions to this provision may be made by the Nye County ~~a~~<sup>A</sup>ir ~~q~~<sup>Q</sup>uality ~~p~~<sup>P</sup>rogram ~~a~~<sup>A</sup>dministrator for the construction, maintenance, ~~and~~ or repair of paved roadways and for the application of traction materials for wintertime driving conditions.

~~HF~~. To minimize fugitive dust generated during the loading of haul trucks, the drop heights from front loaders shall not exceed twelve inches (12"). (Ord. 317, 2006)

## **15.28.160: POSTING OF INFORMATIONAL SIGNS ON CONSTRUCTION SITES:**

A. The ~~informational dust control plan~~ sign shall conform to the following requirements:

1. The signboard shall be constructed with materials capable of withstanding the harsh environment (e.g., strong winds, intense sunlight) of Nye County. The signboard must be visible from the road and not obstructed by other signs or materials. ~~Nye County recommends Signboards shall comply with the following materials at a minimum:~~

a. If using plywood for the signboard, the following minimum standards shall apply:

- ai. ~~Three fourths~~<sup>One-half</sup> inch ( $\frac{1}{2} + \frac{1}{2} + \frac{1}{4}$ ) A/C ~~grade~~ laminated plywood board a minimum of two feet by two feet (2' x 2') in dimension;
- bi. Four inch by four inch (4" x 4") posts with the base of the sign four feet (4') above ground level;
- ei. Posts should be attached to the plywood board with a minimum of two (2) carriage bolts on each post; and
- di. The front surface of the signboard should be painted in the contrasting colors of a white background with black lettering ~~or~~

b. If using DiBond® for the signboard, the following minimum standards shall apply:

- ei. A minimum of 0.118 inch DiBond® composite material (aluminum sheets over a thermoplastic core) a minimum of two feet by two feet (2' x 2') in dimension;
- fi. One and seven-eighths inch ( $1\frac{7}{8}$ ") galvanized steel center post with the base of the sign four feet (4') above ground level;
- gi. The sign should be attached to the post with a single fastener to allow for heat expansion; and
- hi. The front surface of the signboard should have a white background with contrasting black lettering.

2. The signboard shall contain the following information:

- a. Project name;
  - b. Project address, if applicable;
  - c. Owner/operator Permittee name;
  - ed. Permittee Telephone number of person responsible for dust control;
  - de. Nye County Air Quality Program Administrator telephone number;
  - ef. Building, site preparation, and/or conditional use permit number(s), if applicable;
  - fg. Dust control plan number, if applicable; and
  - gh. Project acreage.
3. The signboard shall be designed to the following alpha and numeric text dimensions (signboards written in longhand are unacceptable).

<u>PROJECT NAME</u> :	(Project Name)
<u>PROJECT ADDRESS</u> :	(Project Address)
<u>PERMITTEE OPERATOR</u> :	(Your Name)
<u>PERMITTEE OPERATOR TELEPHONE NUMBER</u> :	(Your Number)
<u>NYE COUNTY AIR QUALITY PROGRAM ADMINISTRATOR</u>	(Pahrump Phone Number)
<u>TELEPHONE NUMBER</u> :	
<u>BUILDING/OTHER PERMIT NUMBERS</u> :	(Permit Number)
<u>DUST CONTROL PLAN NUMBER</u> <u>(If applicable)</u> :	(Plan Number)
<u>PROJECT ACREAGE</u> :	(Acreage)

B. Exceptions to Informational Sign Requirement:

- 1. Commercial or residential construction projects that can be completed within two (2) consecutive weeks or less may apply for and request be granted an administrative waiver variance to the requirements of this section.
  - 2. Planned Communities: Construction projects for a planned community only require the posting of one informational sign at the entrance of the construction site. At a minimum, the address of each specific parcel within the planned community shall be posted in a conspicuous location on that specific parcel.
  - 3. Contiguous Parcels: If a commercial or residential construction project consists of more than one parcel, the permittee shall only be required to post one informational sign, so long as the parcels are contiguous. At a minimum, the address for each specific parcel shall be posted in a conspicuous location on that specific parcel.
- C. Construction activities that are limited to roads and/or rights of way where the activity continually moves along the same road and/or right of way may use a sign that is mobile or apply for an administrative waiver variance if the project is less than two (2) weeks in duration. (Ord. 317, 2006)

SEVERABILITY. If any provision of this ordinance or amendments thereto, or the application to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of the ordinance or amendments thereto which can be given effect without the invalid

provisions or applications, and to this end the provisions of this ordinance and amendments thereto are declared to be severable.

CONSTITUTIONALITY. If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the \_\_\_\_ day of \_\_\_\_\_, 2018.

Proposed on the \_\_\_\_ day of \_\_\_\_\_, 2018.

Proposed by: Commissioner \_\_\_\_\_.

Adopted on the \_\_\_\_ day of \_\_\_\_\_, 2018

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

BY: \_\_\_\_\_

John Koenig, Chairman  
Nye County Board of  
County Commissioners

ATTEST: \_\_\_\_\_

Sandra L. Merlino  
Clerk and Ex-Officio  
Clerk of the Board

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**WHEREAS**, any such regulation, restriction and control must take into account the potential impairment of natural resources and the total population which the available natural resources will support without unreasonable impairment;

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- C. All commercial or residential construction projects require the posting of either an informational sign as described in Section 15.28.160 of this Chapter, or the posting of the physical address in a conspicuous location on each parcel, depending on the type of project, prior to commencing any construction activity.
- D. For any commercial or residential construction project involving less than one-half ( $\frac{1}{2}$ ) acre of disturbed area, an acknowledgement form shall be signed when submitting a zoning review application. This acknowledgement form shall state that the individual is disturbing less than one-half ( $\frac{1}{2}$ ) acre of land and is therefore exempt from the dust control plan requirements. If it becomes known by the Nye County Air Quality Program Administrator that more than one-half ( $\frac{1}{2}$ ) acre is being or has been disturbed during the construction activity, a dust control plan shall be required before construction activity may continue or the issuance of a Certificate of Occupancy can occur.
- E. For any commercial or residential construction project involving in aggregate one-half ( $\frac{1}{2}$ ) acre or more of disturbed area, a dust control plan must be submitted to the Nye County Air Quality Program Administrator along with the following, if applicable: zoning review application, building permit application, conditional use permit application, zone change application, or site development plan. The dust control plan shall specify the use of best practical methods to control the generation of fugitive dust from each construction activity. The owner or contractor shall:
  - 1. File a complete dust control plan with the Nye County Air Quality Program Administrator before initiating construction activities;
  - 2. Implement the best practical methods as outlined in the dust control plan;
  - 3. Maintain a written record of self-inspection made each day when soil disturbing work is conducted;
  - 4. Retain records of site self-inspections for a minimum of one year from the start of the construction activity or for six (6) months beyond the project duration, whichever is longer. Self-inspection records include daily inspections for crusted or damp soil, track out conditions and cleanup measures, daily water usage, dust palliative application records, etc. For control measures involving chemical or organic soil stabilization, records shall indicate the type of product applied, vendor name, label instructions for approved usage, and the method, frequency, concentration, and quantity of application;
  - 5. Install an informational sign on said property prior to commencing a construction activity in accordance with Section 15.28.160 of this Chapter; and
  - 6. Implement long term stabilization, in accordance with Section 15.28.140 of this Chapter, within ten (10) calendar days following the cessation of active operations when construction is complete, or a site or part thereof becomes inactive for a period of thirty (30) calendar days or longer.
- F. The following construction type activities do not require a dust control plan or the signing of an acknowledgement form:
  - 1. Landscaping by an individual at the individual's residence;
  - 2. Emergency maintenance activities conducted by government agencies on publicly maintained roads, road shoulders, rights of way, and on public flood control facilities; and
  - 3. Dust palliative application projects conducted solely for the purpose of compliance with Section 15.28.110 of this Chapter, wherein no grade elevation changes, no soil or rock is imported or

exported, or no cut and fill operations occur. Importing of gravel or rock for use as a dust palliative is allowed under this subsection.

- G. Any material which is tracked onto a paved roadway must be removed as quickly as safely possible. At a minimum all track out must be cleaned up by the end of the workday or evening shift, as applicable. Exceptions to this provision may be made by the Nye County Air Quality Program Administrator for the construction, maintenance, or repair of paved roadways and for the application of traction materials for wintertime driving conditions.
- H. To minimize fugitive dust generated during the loading of haul trucks, the drop heights from front loaders shall not exceed twelve inches (12"). (Ord. 317, 2006)

#### **15.28.160: POSTING OF INFORMATIONAL SIGNS ON CONSTRUCTION SITES:**

- A. The informational sign shall conform to the following requirements:
  - 1. The signboard shall be constructed with materials capable of withstanding the harsh environment (e.g., strong winds, intense sunlight) of Nye County. The signboard must be visible from the road and not obstructed by other signs or materials. Signboards shall comply with the following:
    - a. If using plywood for the signboard, the following minimum standards shall apply:
      - i. One-half inch ( $\frac{1}{2}$ ") AC grade laminated plywood board a minimum of two feet by two feet (2' x 2') in dimension;
      - ii. Four inch by four inch (4" x 4") posts with the base of the sign four feet (4') above ground level;
      - iii. Posts should be attached to the plywood board with a minimum of two (2) carriage bolts on each post; and
      - iv. The front surface of the signboard should be painted in the contrasting colors of a white background with black lettering.
    - b. If using DiBond® for the signboard, the following minimum standards shall apply:
      - i. A minimum of 0.118-inch DiBond® composite material (aluminum sheets over a thermoplastic core) a minimum of two feet by two feet (2' x 2') in dimension;
      - ii. One and seven-eighths inch ( $1\frac{7}{8}$ ") galvanized steel center post with the base of the sign four feet (4') above ground level;
      - iii. The sign should be attached to the post with a single fastener to allow for heat expansion; and
      - iv. The front surface of the signboard should have a white background with contrasting black lettering.
  - 2. The signboard shall contain the following information:
    - a. Project name;

- b. Project address, if applicable;
  - c. Permittee name;
  - d. Permittee telephone number;
  - e. Nye County Air Quality Program Administrator telephone number;
  - f. Building, site preparation, and conditional use permit number(s), if applicable;
  - g. Dust control plan number, if applicable; and
  - h. Project acreage.
3. The signboard shall be designed to the following alpha and numeric text dimensions (signboards written in longhand are unacceptable).

<u>PROJECT NAME:</u>	<u>(Project Name)</u>
<u>PROJECT ADDRESS:</u>	<u>(Project Address)</u>
<u>PERMITTEE:</u>	<u>(Your Name)</u>
<u>PERMITTEE TELEPHONE NUMBER:</u>	<u>(Your Number)</u>
<u>NYE COUNTY AIR QUALITY PROGRAM ADMINISTRATOR TELEPHONE NUMBER:</u>	<u>(Phone Number)</u>
<u>BUILDING/OTHER PERMIT NUMBERS:</u>	<u>(Permit Number)</u>
<u>DUST CONTROL PLAN NUMBER:</u>	<u>(Plan Number)</u>
<u>PROJECT ACREAGE:</u>	<u>(Acreage)</u>

B. Exceptions to Informational Sign Requirement:

1. Commercial or residential construction projects that can be completed within two (2) consecutive weeks or less may apply for and be granted an administrative waiver to the requirements of this section.
2. Planned Communities: Construction projects for a planned community only require the posting of one informational sign at the entrance of the construction site. At a minimum, the address of each specific parcel within the planned community shall be posted in a conspicuous location on that specific parcel.
3. Contiguous Parcels: If a commercial or residential construction project consists of more than one parcel, the permittee shall only be required to post one informational sign, so long as the parcels are contiguous. At a minimum, the address for each specific parcel shall be posted in a conspicuous location on that specific parcel. C. Construction activities that are limited to roads and/or rights of way where the activity continually moves along the same road and/or right of way may use a sign that is mobile or apply for an administrative waiver if the project is less than two (2) weeks in duration. (Ord. 317, 2006)

**SEVERABILITY.** If any provision of this ordinance or amendments thereto, or the application to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of the ordinance or amendments thereto which can be given effect without the invalid provisions or applications, and to this end the provisions of this ordinance and amendments thereto are declared to be severable.

**CONSTITUTIONALITY.** If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

**EFFECTIVE DATE.** This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the \_\_\_\_ day of \_\_\_\_\_, 2018.

Proposed on the \_\_\_\_ day of \_\_\_\_\_, 2018.

Proposed by: Commissioner \_\_\_\_\_.

Adopted on the \_\_\_\_ day of \_\_\_\_\_, 2018

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

BY:

John Koenig, Chairman  
Nye County Board of  
County Commissioners

ATTEST:

Sandra L. Merlino  
Clerk and Ex-Officio  
Clerk of the Board

RE