OFFICE OF THE ATTORNEY GENERAL

STATE OF NEVADA

In the Matter of:

PUHRUMP PUBLIC LANDS ADVISORY COMMITTEE.

AG FILE NO.: 13897-197

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

BACKGROUND

Robert Adams filed a complaint (Complaint) with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Pahrump Public Lands Advisory Committee (Committee) arising from public meetings held on May 3 and June 7, 2016. Mr. Adams is a member of the Committee. The gravamen of the Complaint concerns whether sufficient notice was provided for the discussion and action taken under agenda item no. 7 at the May 3 meeting and agenda item no. 8 at the June 7 meeting.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 2141.040. In the course of investigating the Complaint, the OAG reviewed the public notice and agendas, supporting material, minutes and audio recordings of the May 3rd and June 7th, 2016, Committee meetings, together with the Committee's response to the Complaint.

LEGAL STANDARD

Public bodies working on behalf of Nevada citizens must conform to statutory requirements in open meetings under an agenda that provides full notice and disclosure of discussion topics and any possible action. *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003). NRS 241.020(2) requires a public body to post notice of any meeting

together with an agenda consisting of a "clear and complete statement of the topics scheduled to be considered during the meeting." In *Sandoval* the Nevada Supreme Court interpreted the "clear and complete" requirement to mean that it must provide the public with "clear notice of the topics to be discussed at public meetings, so that the public can attend a meeting when an issue of interest will be discussed." *Sandoval,* 119 Nev. at 155, 67 P.3d at 906. The Court rejected a so-called "germane standard" because it was too lenient and allowed a public body to stray from its agenda. *Id.* at 154, 67 P.3d at 905.

NRS 241.020(2) also specifies additional information that must be included on the public notice and agenda. NRS 241.020(3) sets forth the requirements for posting a copy of the notice and agenda, which include posting a copy at the official website of the State pursuant to NRS 232.2175. NRS 241.020(5) requires posting a copy of the notice and agenda on any website maintained by the public body. NRS 241.020(6) requires that supporting material be made available to the public when provided to public body members. NRS 241.035(1) requires that the public body keep written minutes of its meetings, including "the substance of all matters proposed, discussed or decided" at each meeting.

Any action taken in violation of the OML is void. NRS 241.036. Corrective action requires that the public body engage in an **independent deliberative action** in full compliance with the OML. *See, e.g., Page v. MiraCosta Community College Dist.*, 102 Cal. Rptr. 3rd 902, 930 (Cal. Ct. App. 2009); *Colorado Off-Highway Vehicle Coalition v. Colorado Bd. of Parks and Outdoor Recreation,* 292 P.3d 1132, 1137–8 (Colo. Ct. App. 2012); *Zorc v. City of Vero Beach,* 722 So. 2d 891, 902-3 (Fla. Dist. Ct. App. 1998); *Pearson v. Selectmen of Longmeadow,* 726 N.E.2d 980, 985 (Mass. App. Ct. 2000); *Gronberg v. Teton County Housing Authority,* 247 P.3d 35, 42 (Wyo. 2011).

FINDINGS OF FACT

1. The Committee is an advisory body formed for the stated purpose "to assist the Nye County Board of County Commissioners with the decision-making process in supplying public services to the unincorporated town and area of the Town of Pahrump."

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2. The Committee is a "public body" as defined in NRS 241.015(4), subject to the OML.

3. As a matter of practice, the Committee does not post a copy of its public notice and agenda in an electronic file format (such as a PDF file) to comply with the website posting requirements of NRS 241.020(3)(b) and NRS 241.020(5). Rather, the Committee notes the time, place and location of the meeting together with a list of agenda items at http://www.pahrumpnv.org/pahrump-nevada/pahrump-advisory-boards/public-lands/ and provides a link to that webpage at https://notice.nv.gov/.

4. There is no clear evidence that the public notice and agenda that was posted for the May 3, 2016, Committee meeting contained all the information required pursuant to NRS 241.020(2). The Committee provided the OAG two different versions of the public notice and agenda.

5. Agenda item no. 7 for the May 3, 2016, Committee meeting indicated: "FOR POSSIBLE ACTION: Review BLM progress of LCP property for recreational purposes."

6. Agenda item no. 7 did not provide sufficient notice to the Committee members of the scope of discussion and possible action that might be taken under that agenda item. This is evidenced by the fact that Mr. Adams contacted Committee Chair Mike Zaman, Committee Secretary Linda Hatley, and Pahrump Town Manager Pam Webster requesting background information. Mr. Adams was informed that no background information was available and no action was contemplated on that agenda item.

7. The Committee met on May 3, 2016. The minutes of the May 3, 2016, Committee meeting indicate that Chairman Zaman, Vice Chairman Merrilee Spoor, Secretary Hatley, Dorothy Smithers, and Rick Tretter were present; Mr. Adams and Erin Hubbell were absent.

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8. The minutes of the May 3, 2016, Committee meeting state that under agenda item no. 7: "Linda Hatley shared we need to get approval of the two 10 acre parcels, one is an alternative. Merrillee Spoor motioned to except the 2 different parcels, Rick Tretter 2nd. Vote was 5-0."

9. There were no supporting materials available for agenda item no. 7.

10. Agenda item no. 7 was too vague to alert Committee members, let alone the public, of precisely the scope of discussion and possible action that might be taken under the agenda item. The Committee asserts that the agenda item describes the topic of "the BLM's progress of reviewing the LCP property for any recreational purposes that may be approved by the BLM" and that "the BLM sought the identification of two parcels, with one being an alternate, within the LCP property in order to process the BLM's review of the proposal to open land at the LCP property for recreational purposes." However, the express language of the agenda item contains no reference to Bureau of Land Management "approval" nor does it specify the action required of the Committee.

11. The minutes of the May 3, 2016, Committee meeting fail to reference or identify the specific parcels that were approved, or to specify which parcel was the chosen as the alternate, when taking action under agenda item no. 7.

12. There is no clear evidence that the public notice and agenda that was posted for the June 7, 2016, Committee meeting contained all the information required pursuant to NRS 241.020(2). The Committee provided the OAG two different versions of the public notice and agenda.

13. Agenda item no. 8 for the June 7, 2016, Committee meeting indicated: "FOR POSSIBLE ACTION: BLM progress of LCP property for recreational purposes."

14. The Committee met on June 7, 2016. The minutes of the June 7, 2016, Committee meeting indicate that Chairman Zaman, Vice Chairman Spoor, Secretary Hatley, Ms. Smithers, Mr. Adams and Mr. Tretter were present; Ms. Hubbell was absent.

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15. The minutes of the June 7, 2016, Committee meeting indicate in part that "Linda Hatley shared the 5 acre plan and we are now planning a 10 acre parcel" but do not reflect that any action was taken under agenda item no. 8.

16. There were no supporting materials available for agenda item no. 8.

17. Agenda item no. 8 was too vague to alert the public of precisely the scope of discussion and possible action that might be taken under the agenda item. The Committee asserts that the agenda item describes the topic of "the BLM's progress of reviewing the LCP property for any recreational purposes that may be approved by the BLM" and that "the BLM sought the identification of two parcels, with one being an alternate, within the LCP property in order to process the BLM's review of the proposal to open land at the LCP property for recreational purposes." However, the express language of the agenda item contains no reference to Bureau of Land Management "approval" nor does it specify the action required of the Committee.

CONCLUSIONS OF LAW

1. By failing to post an actual copy of the public notice and agenda in an electronic file format (such as a PDF file) at http://www.pahrumpnv.org/pahrump-nevada/pahrump-advisory-boards/public-lands/ and https://notice.nv.gov/, the Committee is not complying with the website posting requirements of NRS 241.020(3)(b) and NRS 241.020(5).

2. An agenda item must be sufficiently "clear and complete" in conformance with NRS 241.020(2)(d)(1) to alert the public of any deliberation and possible action on a matter of substantial public interest. "A higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public." *Sandoval,* 119 Nev. at 154–155, 67 P.3d at 906.

3. If an agenda item is so vague that members of the public body are not provided with sufficient notice and a clear understanding of the scope of discussion and

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possible action that might be taken under that agenda item, that agenda item cannot be sufficiently "clear and complete" to provide notice to the public in conformance with Nevada law.

4. Agenda item no. 7 for the Committee's May 3, 2016, meeting did not provide notice to the public that the Committee would be deliberating and taking action on a matter of substantial public interest: identification of two specific parcels, with one being an alternate, within the LCP property for potential approval by the BLM for recreational purposes.

5. The Committee's action taken under agenda item no. 7 at the May 3, 2016, meeting was a violation of the OML, and is void under NRS 241.036.

6. By failing to reference or identify the specific parcels that were approved, or to specify which parcel was the alternate, when taking action under agenda item no. 7, the minutes of the May 3, 2016, Committee meeting fail to comply with NRS 241.0335(1)(c).

7. Agenda item no. 8 for the Committee's June 7, 2016, meeting further failed to comply with the clear and complete requirement of NRS 241.020(2)(d)(1) and did not provide notice to the public that the Committee would be further deliberating on a matter of substantial public interest: the BML's approval of LCP property for recreational purposes and the Committee's role in that process.

SUMMARY

Because the OAG finds that the Pahrump Public Lands Advisory Committee has taken action in violation of the OML, the Board must place on its next meeting agenda these Findings of Fact and Conclusions of Law and include them in the supporting material for the meeting. The agenda item must acknowledge these Findings of Fact and Conclusions of Law to be the result of the OAG investigation in the matter of Attorney General File No. 13897-197, and that it has been placed there as a requirement of NRS 241.0395.

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Furthermore, the OAG strongly recommends that the Pahrump Public Lands Advisory Committee members and staff receive training in the OML. The OAG is available to provide OML training upon request.

DATED this 26th day of July, 2016.

ADAM PAUL LAXALT
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By: _____
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 26th day of July, 2016, I caused to be deposited for mailing, a true and correct copy of the foregoing, FINDINGS OF FACT AND CONCLUSIONS OF LAW, to the following:

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