Via Email:sbates@red.nv.gov March 9, 2026

Commission for Common-Interest Communities
c/o Nevada Real Estate Division
Nevada State Business Center
3300 W. Sahara Avenue, Suite 350
Las Vegas, NV 89102

Re: **Comments on "Workshop" Agency Draft, LCB File No. R091-25 (Sections 4, 5, 13, & 15); March 10, 2026 CIC Commission Agenda.**

Chair and Members of the Commission:

I submit the following comments regarding the identified sections of the proposed regulation, LCB File No. R091-25.

Summary of Positions

• Section 4 — Remedial Measures During Investigations: **Support** if amended to include transparency requirements when violations are resolved through remedial measures.
• Section 5 — Petition Regulation-Making Proceedings: **Oppose** unless amended to conform to NRS 233B.100 and clarify the petition process.
• Section 13 — NAC 116A.325(6)(e): **Support** if amended for grammatical clarity identifying the responsible party.
• Section 15 — NAC 116.435 Reserve Study: **Oppose**; recommend deletion as exceeding the Division's rulemaking authority and conflicting with the statutory framework.

Sec. 4 — Remedial Measures During Investigations, Support if amended.

The proposed regulation formalizes an ongoing and generally desirable practice: allowing the Division to resolve violations through corrective action during the investigative stage without the need for a formal hearing before the Commission. Resolving matters efficiently where appropriate can benefit all parties and conserve Commission resources.

However, the proposal raises significant transparency concerns which, if not addressed, may further heighten existing distrust among homeowners regarding the investigative process. Investigations conducted by the Division pursuant to NRS 116.765 are confidential while pending. When matters proceed to a hearing before the Commission under NRS 116.745, the proceedings and resulting decisions become part of the public record. In practice, the Division applies the confidentiality provisions of NRS 116.765 more broadly than necessary, resulting in limited transparency regarding the status and resolution of investigations.

By providing a formal mechanism for resolving violations through remedial measures during the investigative phase—thereby expanding the Division's discretion to resolve matters without adjudication—the proposal raises two related concerns that should be addressed prior to adoption:

- What limits exist on the discretion being exercised; and

- Whether adequate transparency accompanies its use.

In the HOA governance context, establishing detailed guardrails governing the exercise of such discretion may prove difficult. Transparency therefore becomes essential. Other regulatory systems provide public visibility into compliance resolutions even when no formal violation finding is made. Similar transparency should be adopted here when alleged violations in common-interest communities are resolved through remedial measures.

If remedial measures are used to achieve compliance with this regulation or with a provision of NRS 116, the existence and nature of those measures should be publicly disclosed in summary form. Absent such transparency, owners may remain unaware that their board engaged in conduct requiring corrective action. The complainant may receive little or no meaningful information regarding the disposition of the complaint. The Commission itself may also lack visibility into patterns of violations being resolved informally. Without some form of public reporting, repeated violations across associations or management companies could be addressed privately without ever becoming visible to the Commission or the public record.

Providing a publicly accessible summary of matters resolved through remedial measures would preserve the benefits of voluntary compliance while ensuring accountability and transparency within the regulatory framework governing common-interest communities.

If the regulation formalizes resolution of violations through remedial measures without adjudication, some level of public reporting should accompany that authority. Even if investigative files remain confidential, the Division should provide a publicly accessible redacted summary describing the nature of violations resolved through corrective action.

These transparency concerns extend beyond the scope of this proposed regulation and warrant broader policy consideration. Accordingly, the issue of investigative transparency should be considered by the Commission as a stand-alone agenda item. A petition requesting Commission review of investigative transparency and confidentiality practices has previously been filed and, to the best of my knowledge, remains pending before the Division.

Section 5 — Petition Regulation-Making Proceedings, Oppose absent amendment.

Section 5 fails to comply with NRS 233B.100 or, at a minimum, creates ambiguity that requires clarification. The proposed language provides that petitions not denied within 30 days will be reviewed by the Commission "at the next feasible scheduled meeting." As required by the statute, however, any post-30-day review by the Commission resulting in action must occur as part of an initiated regulation-making process. Otherwise, such review would necessarily have to occur before the expiration of the 30-day statutory period for denial.

Accordingly, the proposed language should be amended as follows:

If the Administrator does not deny the petition within 30 days of the date of filing, regulation-making proceedings will be initiated and the Commission shall review the petition at the next feasible scheduled meeting.

The proposed language raises two additional issues.

First, it presumes the Commission concurs in granting the Administrator authority to deny a petition on its behalf. For transparency, the regulation should require that the Commission be notified of any petition action taken by the Administrator—in this case denials—at its next meeting.

Second, the amendment ensures that the regulation conforms to the requirement of NRS 233B.100 that, if not denied within 30 days, the petition proceeds to regulation-making proceedings rather than to some intermediate "pre-proceeding" stage.

The proposal also leaves unclear what the phrase "proceed accordingly" entails. Rulemaking proceedings are intended to offer an opportunity for regulators and regulated parties to cooperate on issues of mutual concern. Participation by interested members of the public is a central feature of the procedural safeguards established by the Administrative Procedure Act. NRS Chapter 233B provides agencies considerable latitude regarding how and over what period regulation-making occurs. That latitude, however, underscores the need for clearly articulated rules of practice describing how the Division initiates and conducts regulation-making once a petition proceeds. To my knowledge, petitions seeking the adoption, filing, amendment, or repeal of regulations administered by the Division currently lack such prescribing regulations.

Section 5, if adopted, would address only the initial petition phase of the rulemaking process. Pursuant to NRS 233B.050(1)(a), every agency must adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and instructions used by the agency. NRS 233B.100(1) provides that: "*Each agency shall prescribe by regulation the form for such petitions and the procedure for their submission, consideration and disposition*." Yet to my knowledge petitions seeking the adoption, filing, amendment or repeal of regulations administered by the Division currently lack such prescribing regulations. Nor does the Division appear to have adopted comprehensive rules of practice setting forth the nature and requirements of the formal and informal procedures available before it, as contemplated by NRS 233B.050.

Beyond the petition process itself, the absence of published rules of practice leaves unclear how the Division's rulemaking process is conducted more generally. Open procedural questions go directly to the transparency and accessibility of the rulemaking process. Because Nevada's Administrative Procedure Act contemplates that agencies adopt and publish rules describing the procedures available before them, clarification of these matters would help ensure that the Division's rulemaking process is understandable and accessible to petitioners and the public.

Section 13 — NAC 116A.325(6)(e), Approve if amended

The proposed language in subsection (6)(e) is grammatically unclear and should be revised for clarity. As written, it is unclear whether the duty imposed by the provision applies to the community manager or to the secretary or other officer of the association referenced in the sentence.

Clarifying punctuation or restructuring the sentence would help ensure the regulation clearly identifies which party is responsible for providing the required notice and to whom that notice must be given.

Section 15 — NAC 116.435 Reserve Study, Oppose Section 15 amending NAC 116.435; recommend deletion.

The proposed amending provision should be deleted in its entirety and the continued necessity of NAC 116.435 itself should be considered. The proposed language directs when and how an executive board must act *internally* on a reserve study. Regulating the internal decision-making processes of an association exceeds the Division's rulemaking authority.

The Legislature has already established the necessary governing framework in NRS 116.31152. That statute requires that a summary of the reserve study be submitted to the Division within 45 days after the executive board adopts the results of the study. (NRS 116.31152(4)) The statutory trigger is adoption, not receipt of a draft study. The statute also establishes the broader timing structure for reserve studies by requiring that a study be conducted at least every five years and that the executive board review the study annually to determine whether reserves remain adequate and make adjustments if necessary. (NRS 116.31151(1)(a) and (b))

A reserve study delivered to a board is a professional analysis contracted by the board and prepared for its evaluation. Boards routinely review, question, and return studies for revision before adoption. A regulation that effectively requires the board to adopt the study submitted under contract improperly shifts decision-making authority from the executive board to the consultant preparing the report.

The provision appears intended to prevent an executive board from delaying action on a submitted reserve study—such as one commissioned after only three years—that recommends increased reserve funding or other recommendation the board may deem unpopular. However, tying a regulatory deadline to the board's receipt of a draft study does not address that concern and instead attempts to regulate how boards fulfill their fiduciary responsibilities.

The Division's legitimate regulatory interest is ensuring that a study is complete every five years and it receives the summary of the adopted reserve study. That objective is already satisfied by the statutory requirement that the summary be submitted within 45 days after adoption.

For these reasons, Section 15 should be removed, and the continued necessity of NAC 116.435 should be reconsidered so that the regulations remain aligned with the statutory framework governing reserve studies.

Thank you for your consideration.

/sign/

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