



**REGIONAL TRANSPORTATION COMMISSION**

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February 17, 2012

**AGENDA ITEM 8.3**

**TO:** Regional Transportation Commission

**FROM:** John Fowler  
RTC Chief Legal Counsel

  
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Lee G. Gibson, AICP  
Executive Director

**SUBJECT: Release of Legal Opinion for the Purchase of Regional Road Impact Fee Credits with RTC Funds**

**RECOMMENDATION**

Authorize the Chairman to waive the attorney-client privilege and release the Woodburn and Wedge legal memo and Swendseid opinion letter, both discussing whether the RTC may purchase regional road impact fee credits with RTC Funds.

**SUMMARY**

Members of the development community have requested the RTC review the possibility of purchasing outstanding impact fee credits as a method to reduce the number of credits on the open market and thereby potentially increasing cash payments into the Impact Fee Program. The RTC requested a legal opinion from both RTC's Chief Legal and Bond Counsel to determine any limitations on the use of local funds for such a purpose. John Fowler as RTC Chief Legal Counsel, and John Swendseid, RTC's Bond Counsel, both determined that the RTC's controlling statutes did not permit the RTC to buy impact fee credits. Mr. Fowler informed those attending the November Regional Road Impact Fee Technical Advisory Committee (RRIF TAC) of this legal conclusion. Later, the Builders Association of Northern Nevada requested that a copy of the legal opinions from Mr. Fowler and Mr. Swenseid be released.

**FISCAL IMPACT**

Request for direction only, there is no additional cost in connection with this agenda item.

### **PREVIOUS ACTIONS BY BOARD**

May 16, 2011                      Received a staff update on the status of the Regional Road Impact Fee Program for discussion.

### **ADDITIONAL BACKGROUND**

The attorney-client privilege is an evidentiary rule that protects both attorneys and their clients from being compelled to disclose confidential communications between them made for the purpose of furnishing or obtaining legal advice or assistance. The privilege is held by the client and only the client can waive the privilege. To release any communication between RTC and their legal advisors, the RTC Board must authorize counsel to release the information.

### **ADVISORY COMMITTEE RECOMMENDATION**

#### **REGIONAL ROAD IMPACT FEE TECHNICAL ADVISORY COMMITTEE (RRIF TAC)**

At the November 3, 2011, monthly meeting, John Fowler presented his legal opinion that RTC could not purchase impact credits using RTC funds.