

## **Exhibit 3**

## **Exhibit 3**

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

\*\*\*

JOHN and MELISSA FRITZ,

Plaintiffs,

Case No. CV13-00756

Dept. No. 1

vs.

WASHOE COUNTY

Defendants.

ORDER

On February 2, 2015, Defendant Washoe County, by and through counsel, Michael Large, Esq., filed *Defendant Washoe County's Motion for Summary Judgment*. On February 13, 2015, Plaintiffs John and Melissa Fritz (Plaintiffs) by and through counsel, Luke Busby, Esq., filed an *Opposition to Motion for Summary Judgment*. On February 24, 2015, Washoe County replied and submitted the matter for decision.

This dispute arises from the following facts. Plaintiffs filed a *Verified Complaint* on April 4, 2013, alleging causes of action for trespass, nuisance, and inverse condemnation against Washoe county and other parties who have either been voluntarily dismissed or dismissed by this Court. On November 1, 2013, Plaintiffs filed a *Second Amended Complaint* pursuant to a stipulation. On May 8, 2014, this Court granted Plaintiffs' *Motion to File a Third Amended Complaint* asserting a claim for inverse condemnation against Washoe County. Plaintiffs claim for inverse condemnation is the only remaining claim against Washoe County.

1 Plaintiffs own property located in Reno at 14400 Bhiler Road. The property was originally  
2 owned by John and Dora Du Puy, who took ownership of the land by way of a United States patent  
3 in 1961. In 2001, Plaintiffs purchased the property from the Du Puys, built a home, and thereafter  
4 rented the property to a tenant. White's Creek No. 4 has crossed a back corner of Plaintiffs' Reno  
5 property since at least 1948. In 1984, Washoe County began approving portions of the Lancer  
6 Estates development, which was to be built in 11 consecutive phases, and is located upstream of  
7 Plaintiffs' property. The last plat approval for Lancer Estates was in 1991. The construction of  
8 Lancer Estates was complete or almost complete by the time Plaintiffs built their house. Washoe  
9 County approved subdivision plats for another upstream development, Monte Rosa, sometime after  
10 Plaintiffs built their home.

11 Plaintiffs contend that upstream development by Lancer Estates and Monte Rosa have  
12 increased the flow rate and quantity of water moving through White's Creek, which leads to flooding  
13 from large rainstorms. Mr. Fritz avers that in 2002, he was easily able to walk across White's Creek,  
14 but that the creek has significantly increased in size and depth. Plaintiffs allege the dedications of  
15 curbs, gutter and storm drain in the Lancer and Monte Rose Estates, and approval of final maps,  
16 constitute involvement in the development of Lancer and Monte Rose Estates which have caused  
17 storm waters to flood Plaintiffs property. Third Amended Compl. ¶¶ 39-41. Plaintiffs allege the  
18 "continuous flooding on the Plaintiff's Property caused by the development of Lancer Estates and  
19 Monte Rosa, and other activities of Washoe County constitutes a permanent physical invasion of the  
20 Property. Third Amended Compl. ¶ 43.

21 Washoe County contends Plaintiffs' claim for inverse condemnation fails because Plaintiffs  
22 lack standing to asserts a claim against Washoe County for action occurring before Plaintiffs'  
23 ownership in 2001, because Washoe county never accepted the dedications of drain water facilities  
24 as asserted in the *Third Amended Complaint*, approval of the final map for a development does not  
25 create municipal liability for inverse condemnation, and because Plaintiffs have failed to provide any  
26 evidence a taking has occurred or that Plaintiffs have been substantially injured by the actions of  
27 Washoe County.  
28

1 Municipal Liability for a Taking by Inverse Condemnation

2 Washoe County contends the act of approving a subdivision is legally insufficient to form  
3 the basis of an inverse condemnation claim as alleged in the *Third Amended Complaint*. There is no  
4 case law directly addressing this issue in Nevada, however cases from California are instructive.

5 Washoe County relies on *Ullery et al. v. Contra Costa County*, 202 Cal.App.3d 562, 248  
6 Cal. Rptr. 727 (1988). In *Ullery*, Contra Costa County was sued by a downstream property owner  
7 for inverse condemnation for damage to the owner's property due to landslides allegedly caused by  
8 erosion from water drainage flowing from a county-approved subdivision. Similar to Plaintiffs  
9 argument here, the landowner alleged the County's approval of the subdivision created municipal  
10 liability for inverse condemnation. The landowner argued pursuant to California Subdivision Map  
11 Act, which vested the power to regulate the design of subdivisions, the County created a  
12 "'residential environment' conducive to landslide damage." *Id.* at 570 The California Court of  
13 Appeals held "inverse condemnation liability will not lie for damage to private property allegedly  
14 caused by private development approved or authorized by the public entity, 'where the [public  
15 entity's] sole affirmative action was the issuance of permits and approval of the subdivision map.'" *Id.*  
16 citing *Yox v. City of Whittier*, 182 Cal.App.3d 347, 353. The Court of Appeals recognized the  
17 development approved by Contra Costa County was by private parties on private properties and the  
18 record did not indicate Contra Costa County had performed any acts on the private property in order  
19 to establish inverse condemnation liability." *Ullery, supra*, 202 Cal.App.3d at 571.

20 Similarly, in *Ellison v. City of San Buenaventura*, 60 Cal.App.3d 453 (1976), the California  
21 Court of Appeals held no inverse condemnation liability existed when a downstream landowner  
22 sued for sediment buildup which occurred "at a faster rate than would have occurred without the  
23 upstream development authorized by the city. *Ullery, supra*, 202 Cal.App.3d at 570. The Court  
24 reasoned liability did not exist because the city "played no part [in the private development of the  
25 upstream property] other than [the] approval of plans and issuance of permits." *Ellison, supra*, 60  
26 Cal.App.3d at 459.

27 Plaintiffs contend Washoe County's involvement extends beyond approval of subdivision  
28 maps pursuant to NRS 278.0284 and Sections 110.602.05(a) and 110.420.20(d) of the Washoe

1 County Development Code. Plaintiffs contend NRS 278.0284 and Section 110.602.05(a) require  
2 any action of a local government relating to development, zoning, or subdivision of land or capital  
3 improvements to conform to the local government's master plan. Section 110.420.20(d) of the  
4 Development Code provides development of property shall not adversely affect any natural  
5 drainage facility or natural watercourse, among other things. Plaintiffs aver these regulations and  
6 statute render the County's approval of the maps and acceptance of the dedications in Lancer  
7 Estates substantial involvement in the development of the subdivisions. Plaintiffs do not produce  
8 any statutes or case law supporting this position.

9 Plaintiffs rely on *Clark County v. Powers*, 96 Nev. 497, 611 P.2d 1072 (1980), to support a  
10 finding of liability for inverse condemnation. In *Clark County*, the county was found liable for  
11 inverse condemnation as a result of its actions in conjunction with private parties which resulted in  
12 water damage to private property. However, the facts of *Clark County* are distinguishable from this  
13 case. In *Clark County*, the county had entered onto private property, without authorization and  
14 constructed a rock berm. *Id.* at 500-01. The county filled, leveled, and graded an intersection,  
15 elevated a street, and constructed beds to divert water which eventually caused water to empty onto  
16 private property. *Id.* The county actively participated in engaging in the construction and leaving of  
17 streets and intersections. Here, Washoe County did not design or construct anything resulting in  
18 water being diverted onto Plaintiffs' property. Washoe County approved the final maps of Lancer  
19 and Monte Rosa subdivisions to ensure that said subdivisions complied with building code. The  
20 record demonstrates there was no activity done by Washoe County on private property.


21 Summary judgment under NRCP 56 is appropriate when the record demonstrates no  
22 genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.  
23 *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). A genuine issue exists  
24 where the evidence is such that a rational trier of fact could return a verdict for the nonmoving  
25 party. *Id.* at 731, 121 P.3d at 1031. The nonmoving party's documentation must be admissible  
26 evidence and cannot build a case "on the gossamer threads of whimsy, speculation and conjecture."  
27 *Id.* at 731, 121 P.3d at 1030. NRCP 56 "requires the nonmoving party to go beyond the pleadings  
28 and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on

1 file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex Corp. v.*  
2 *Catrett*, 477 U.S. 317, 324 (1986). A factual dispute is genuine when the evidence is such that a  
3 rational trier of fact could return a verdict for the nonmoving party. *Wood*, 121 Nev. at 731, 121  
4 P.3d at 1031.

5 The Court has considered the pleadings and record in its entirety. The Court finds inverse  
6 condemnation is not a legally viable theory of liability in this case. By approving the subdivision  
7 maps and dedications there was no substantial involvement in the development of Lancer or Monte  
8 Rosa through which inverse condemnation liability may apply. The Court has also considered  
9 Defendant Washoe County's remaining arguments and finds them to be meritorious. Accordingly,  
10 and good cause appearing, *Defendant Washoe County's Motion for Summary Judgment* is  
11 GRANTED.


12  
13 IT IS SO ORDERED.

14 DATED this 19<sup>th</sup> day of March 2015.

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18 JANET J. BERRY  
19 District Judge  
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Luke Andrew Busby, Esq.  
Michael Large, Esq.

  
Tiffany Clements

## **Exhibit 2**

## **Exhibit 2**



2540  
MICHAEL LARGE  
Deputy District Attorney  
Nevada State Bar 10119  
P.O. Box 11130  
Reno, NV 89520-0027  
(775) 337-5700

ATTORNEY FOR WASHOE COUNTY

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF WASHOE**

\* \* \*

JOHN AND MELISSA FRITZ,

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WASHOE COUNTY,

Defendant.

**NOTICE OF ENTRY OF ORDER**

Please take notice that an Order was entered on March 19, 2015. A copy of that Order is attached as Exhibit 1.

**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 20<sup>th</sup> day of March, 2015.

CHRISTOPHER J. HICKS  
Washoe County District Attorney

By /s/ Michael W. Large  
MICHAEL W. LARGE  
Deputy District Attorney  
P.O. Box 11130  
Reno, NV 89520-0027  
(775) 337-5700

ATTORNEYS FOR WASHOE COUNTY



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13 IT IS SO ORDERED.

14 DATED this 19<sup>th</sup> day of March 2015.

15  
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17 JANET J. BERRY  
18 District Judge  
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 19<sup>th</sup> day of March 2015, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Luke Andrew Busby, Esq.  
Michael Large, Esq.



Tiffany Clements

## **Exhibit 1**

## **Exhibit 1**

1 CODE 1090  
Luke Busby  
2 Nevada State Bar No. 10319  
543 Plumas St.  
3 Reno, NV 89501  
775-453-0112  
4 luke@lukeandrewbusbyltd.com  
5 Attorney for John and Melissa Fritz

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 JOHN AND MELISSA FRITZ,

9 Plaintiffs,

CASE NO. CV13-00756

10 vs.

DEPT NO. 1

11 WASHOE COUNTY

12 Defendant(s),  
13 \_\_\_\_\_/

14 **THIRD AMENDED VERIFIED COMPLAINT**

15 COMES NOW, JOHN FRITZ and MELISSA FRITZ, a married couple ("Plaintiffs"),  
16 residents of Washoe County, Nevada, by and through the undersigned counsel and hereby files  
17 the following Complaint, requesting an order from the Court requiring the named Defendants  
18 herein below to compensate Plaintiffs for the taking and condemnation of their property at  
19 14400 Bihler Rd., Washoe County APN No. 142-241-63 (hereinafter "the Property" or  
20 "Plaintiff's Property"). The Property that has been taken is more particularly described in  
21 Exhibit 1, attached hereto and incorporated herein by reference.

22 **Party Identification**

- 23 1. Plaintiffs at all times relevant hereto were residents of Washoe County, State of  
Nevada.  
24 2. Washoe County is a political subdivision of the State of Nevada.  
25 3. The names of all owners, occupants of and claimants to the Property that has been  
26 condemned by Washoe County herein insofar as known to Plaintiffs are as follows: a) Bank of  
27 America, NA as holder of a Revolving Credit Deed of Trust on the Property; b) Wells Fargo  
28 Bank, NA as holder of a Deed of Trust on the Property); and (c) Mr. James Bedlam, who leases

1 the Property from Plaintiffs.

2 **Allegations of Fact**

3 4. Plaintiffs are informed and believe, and thereupon allege, the following facts:

4 5. Washoe County is authorized to exercise the power of eminent domain and to  
5 condemn property.

6 6. Washoe County is a member in and participates in the National Flood Insurance  
7 Program, ("NFIP").

8 7. By virtue of its membership in the NFIP, Washoe County is required to manage  
9 floodplains within Washoe County in ways that meet or exceed standards set by the Federal  
10 Emergency Management Agency ("FEMA").

11 8. Washoe County manages floodplains in ways that meet or exceed the standards set  
12 by FEMA by placing restrictions on the development of and supervising the development of  
13 private land and by adopting the activities of developers, pursuant to various provisions of the  
14 Washoe County Code and Washoe County's Master Plan.

15 9. Washoe County manages the flow of water in the Whites Creek Hydrological  
16 Basin above the Plaintiff's Property by controlling at least one diversion structure on Whites  
17 Creek located near Whites Creek County Park for water rights and flood control purposes.

18 10. Since approximately 1984, Washoe County substantially participated in the  
19 planning and development of and has approved the building plans for housing developments  
20 located within Washoe County commonly known as Lancer Estates and Monte Rosa.

21 11. Washoe County has approved of and adopted the activities of the developers of  
22 Lancer Estates and Monte Rosa pursuant to Article 416 of the Washoe County Code (which  
23 regulates flood hazards), Article 418 of the Washoe County Code (which regulates Significant  
24 Hydrologic Resources), Article 420 (which regulates Storm Drainage Standards), and other  
25 provisions of the Washoe County Code and Washoe County's Master Plan.

26 12. For both Lancer Estates and Monte Rosa, Washoe County approved of and adopted  
27 the activities of the developers of Lancer Estates and Monte Rosa by requiring the submittal of  
28 planning applications and tentative maps which directed the developers of Lancer Estates and  
Monte Rosa to build Lancer Estates and Monte Rosa in accordance with Washoe County's  
applicable rules and regulations regarding the drainage of water from Lancer Estates and Monte  
Rosa.

13. For both Lancer Estates and Monte Rosa, Washoe County approved of and adopted

1 the activities of the developers of Lancer Estates and Monte Rosa by issuing Action Orders  
2 based on the submittal of planning applications and tentative maps, which directed the  
3 developers of Lancer Estates and Monte Rosa to build Lancer Estates and Monte Rosa in  
4 accordance with Washoe County's applicable rules and regulations regarding the drainage of  
5 water from Lancer Estates and Monte Rosa into the natural drainage commonly known as  
6 Whites Creek No. 4.

7 14. On or about November 29, 1984, Washoe County accepted dedication of the curbs,  
8 gutters, and storm drains in Lancer Estates Unit 2 by approving the final map for Lancer Estates  
9 Unit 2 or by later accepting dedication of said facilities and such facilities drain water from  
10 Lancer Estates to the Plaintiff's Property.

11 15. On or about April 1, 1991, Washoe County accepted dedication of the curbs,  
12 gutters, and storm drains in Lancer Estates Unit 3 by approving the final map for Lancer Estates  
13 Unit 3 or by later accepting dedication of said facilities which drain water from Lancer Estates  
14 to the Plaintiff's Property.

15 16. On or about June 26, 1992, Washoe County accepted dedication of the curbs,  
16 gutters, and storm drains in Lancer Estates Unit 4 by approving the final map for Lancer Estates  
17 Unit 4 or by later accepting dedication of said facilities which drain water from Lancer Estates  
18 to the Plaintiff's Property.

19 17. On or about May 23, 1993, Washoe County accepted dedication of the curbs,  
20 gutters, and storm drains in Lancer Estates Unit 5 by approving the final map for Lancer Estates  
21 Unit 5 or by later accepting dedication of said facilities which drain water from Lancer Estates  
22 to the Plaintiff's Property.

23 18. In April of 1994, Washoe County accepted a Preliminary Whites Creek Basin  
24 Management Study ("Cella Bar Study") prepared by Cella Bar Associates, which had been  
25 commissioned by Washoe County to study the hydrology of the Whites Creek area.

26 19. The Cella Bar Study indicates on page 15 that "Existing Problem Areas" include  
27 "Some of the residential lots backing up adjacent to the south of [Whites Creek] Channel No. 4  
28 have potential for flooding during a 100-year event." (See Exhibit 2)

20. The Plaintiff's Property is located in the area identified as a problem area in the  
Cella Bar Study.

21. On or about May 17, 1994, Washoe County accepted dedication of the curbs,  
gutters, and storm drains in Lancer Estates Unit 6 by approving the final map for Lancer Estates

1 Unit 6 or by later accepting dedication of said facilities which drain water from Lancer Estates  
2 to the Plaintiff's Property.

3 22. On or about September 20, 1994, Washoe County accepted dedication of the curbs,  
4 gutters, and storm drains in Lancer Estates Unit 7 by approving the final map for Lancer Estates  
5 Unit 7 or by later accepting dedication of said facilities which drain water from Lancer Estates  
6 to the Plaintiff's Property.

7 23. On or about June 20, 1995, Washoe County accepted dedication of the curbs,  
8 gutters, and storm drains in Lancer Estates Unit 8 by approving the final map for Lancer Estates  
9 Unit 8 or by later accepting dedication of said facilities which drain water from Lancer Estates  
10 to the Plaintiff's Property.

11 24. On or about July 30, 1999, Washoe County accepted dedication of the curbs,  
12 gutters, and storm drains in Lancer Estates Unit 10 by approving the final map for Lancer  
13 Estates Unit 10 or by later accepting dedication of said facilities which drain water from Lancer  
14 Estates to the Plaintiff's Property.

15 25. On or about December 13, 2005, Washoe County accepted dedication of certain  
16 storm drains and/or detention ponds in Monte Rosa Unit 1 by approving the final map for Monte  
17 Rosa Unit 1 or by later accepting dedication of said facilities which drain water from Monte  
18 Rosa to the Plaintiff's Property.

19 26. On or about November 21, 2007, Washoe County accepted dedication of certain  
20 storm drains and/or detention ponds in Monte Rosa Unit 2 by approving the final map for Monte  
21 Rosa Unit 2 or by later accepting dedication of said facilities which drain water from Monte  
22 Rosa to the Plaintiff's Property.

23 27. To the best of the Plaintiff's knowledge and belief, development at Monte Rosa is  
24 ongoing at the time of the filing of this amended complaint.

25 28. The development Monte Rosa by Washoe County and various third parties has  
26 caused alteration, diversion, channeling, and acceleration of rain, nuisance, and flood waters  
27 onto the Plaintiff's Property by substantially increasing the amount of water and accelerating the  
28 flow of that water across the natural drainage commonly known as Whites Creek No. 4, which  
crosses the Plaintiff's Property.

29 29. The development Lancer Estates by Washoe County and various third parties has  
caused alteration, diversion, channeling, and acceleration of rain, nuisance, and flood waters  
onto the Plaintiff's Property by substantially increasing the amount of water and accelerating the

1 flow of that water across the natural drainage commonly known as Whites Creek No. 4, which  
2 crosses the Plaintiff's Property.

3 30. Water from Lancer Estates and Monte Rosa drains onto Plaintiff's Property and is  
4 causing substantial and ongoing damage to the Property including but not limited to the cutting  
5 of a large ditch on the corner of the Fritz's property, flooding of buildings on the Fritz's  
6 property, and sheet flooding over a large area of the Property during storm events.

7 31. The development of Lancer Estates and Monte Rosa, and other activities of  
8 Washoe County, have altered the FEMA floodplain on Whites Creek No. 4 such that it covers a  
9 greater area of the Plaintiff's Property than previous to the development of Lancer Estates and  
10 Monte Rosa.

11 32. Movement of the FEMA floodplain as described above makes a large area of the  
12 Plaintiff's Property unsuitable for further development or improvement without incurring  
13 substantial cost and efforts to prevent flooding.

14 33. Various improvements required or made by Washoe County in the development of  
15 Lancer Estates and Monte Rosa, and other activities of Washoe County involving drainage of  
16 water into Whites Creek No. 4, are public improvements, i.e. made for the benefit of the public  
17 at the expense of the Plaintiff, and are the cause of the Plaintiff's damages.

18 34. Washoe County has allowed and has substantially participated in the development  
19 of Lancer Estates and Monte Rosa, which adds to and accelerates flows of water in Whites  
20 Creek No. 4 despite knowing since at least 1994 upon receiving the Cella Bar Study that the  
21 area where the Plaintiff's Property is located in an existing problem area subject to flooding.

22 35. The use of the Plaintiff's Property by Washoe County for a floodway for the runoff  
23 of water from upstream properties as described above constitutes a public use.

24 36. The Plaintiffs have suffered damages as a result of the taking of their Property by  
25 Washoe County.

### 26 **Claim for Relief**

### 27 **Inverse Condemnation**

28 37. Plaintiffs re-allege the foregoing paragraphs as though the same were set forth  
hereat verbatim, incorporating every one herein by this reference into the claims listed below.

38. Per NRS 278.390, title to dedicated facilities in Lancer Estates and Monte Rosa  
passed to Washoe County either on recordation of the final maps or subsequent acceptance by  
Washoe County.



1       39. By virtue of Washoe County's substantial involvement in the development of  
2 Lancer Estates and Monte Rosa and Washoe County's adoption of the activities of the  
3 developers of Lancer Estates and Monte Rosa as part of Washoe County's Master Plan and  
4 requirements in the Washoe County Code for the drainage and flood control of the area, Washoe  
5 County has exercised the power of eminent domain over the Plaintiff's Property in violation of  
6 Article 1, Sections 8 and 22 of the Constitution of the State of Nevada, the takings clause of the  
7 Fifth Amendment of the United States Constitution, and without complying with the procedures  
8 set forth in Chapter 37 of the Nevada Revised Statutes (which a government entity is required  
9 by law to follow before taking private property for public use).

10       40. Washoe County has taken the Plaintiff's property for public use.

11       41. Storm waters from the drainage system on Lancer Estates and Monte Rosa in  
12 Whites Creek No. 4 has actually invaded the Plaintiff's Property by superinduced additions of  
13 water so as to effectually destroy or impair its usefulness. *Pumpelly v. Green Bay Company*, 80  
14 U.S. (13 Wall.) 166, 181 (1871).

15       42. The Plaintiff's Property is subjected to intermittent-but-inevitable flooding from  
16 waters from Lancer Estates and Monte Rosa, which causes substantial injury and damages to the  
17 Property. *United States v. Cress*, 243 U.S. 316, 328 (1917).

18       43. The continuing flooding on the Plaintiff's Property caused by the development of  
19 Lancer Estates and Monte Rosa, and other activities of Washoe County constitutes a permanent  
20 physical invasion of the Property. *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 662 (Nev.  
21 2006).

22       44. The Plaintiff has suffered damages as a result of the taking of their Property by  
23 Washoe County.

24       45. Plaintiff has been required to seek professional engineering and legal services to  
25 prosecute this action, and, accordingly, each is entitled to recover their reasonable attorney fees  
26 together with other costs incurred therefor.

27       WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- 28       a. For the taking of the Plaintiff's Property as described herein, damages in an amount  
in excess of \$10,000;  
b. For reasonable attorneys' fees and costs per NRS 37.185;  
c. For compensatory damages as permitted by law;  
d. For consequential damages as permitted by law;

- 1 e. For statutory damages as permitted by law;  
2 f. For interest as permitted by law;  
3 g. For such other relief as is just and proper

4 **NRS 239B.030(4) AFFIRMATION**

5 Pursuant to NRS 239B.030 as well as Rule 10 of the Washoe District Court Rules, the  
6 undersigned hereby affirms that this document does not contain the social security number of  
7 any person.

8 Respectfully submitted this Monday, May 12, 2014.

9 By: 

10 Luke Busby  
11 Nevada State Bar No. 10319  
12 543 Plumas St.  
13 Reno, NV 89501  
14 775-453-0112  
15 luke@lukeandrewbusbyltd.com  
16 *Attorney for John and Melissa Fritz*  
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**VERIFICATION**

STATE OF NEVADA     )  
                                  )ss:  
COUNTY OF WASHOE    )


John Fritz, being first duly sworn, deposes and says:

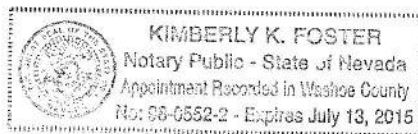
That he is the Plaintiff in the forgoing action. That he has read the foregoing THIRD AMENDED VERIFIED COMPLAINT and knows the contents thereof. That the contents of the THIRD AMENDED VERIFIED COMPLAINT are true and correct to the best of his knowledge, information and belief, and as to those matters he believes them to be true.

  
\_\_\_\_\_  
John Fritz

Subscribed and sworn to before me

This 12<sup>th</sup> day of May, 2014, by xx John Matthew Fritz. xx

  
\_\_\_\_\_  
NOTARY PUBLIC in and for  
said County and State




**CERTIFICATE OF SERVICE**

I hereby certify that I have on this day served the foregoing document upon the following parties  
by electronic service to:

Washoe County DA's Office  
Attn: Terrence Shea, Esq.  
Washoe County District Attorney Civil Div.  
P.O. Box 11130  
Reno, NV 89520

Respectfully submitted this Monday, May 12, 2014.

  
\_\_\_\_\_  
Luke Busby

**Exhibit List**

Exhibit 1. Deed transferring ownership of property incl. legal description

Exhibit 2. Pertinent parts of Cella Bar Study.

# Exhibit 1

# Exhibit 1

A. P. No. 049-371-62

No. 00113970-KJS

When recorded mail to:  
John Fritz  
P.O. Box 70596  
Reno, NV 89570

Mail tax statements to:  
John Fritz  
P.O. Box 70596  
Reno, NV 89570

DEED

THIS INDENTURE WITNESSETH: That JOHN A. DU PUY and DORA V. DU PUY, husband and wife, in consideration of the sum of Ten Dollars <sup>AND OTHER VALUABLE CONSIDERATION</sup> (\$10.00), the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and convey to JOHN FRITZ and MELISSA FRITZ, husband and wife, as joint tenants with right of survivorship, whose address is: P.O. Box 70596, Reno, NV 89570, all that real property situate in the County of Washoe, State of Nevada, described as follows:

TOWNSHIP 18 NORTH, RANGE 20 EAST:

Section 30: Lot 129.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

DATED Aug 16, 2001.

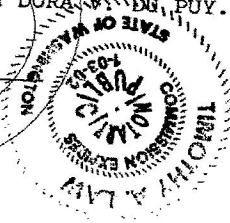
John A. DuPuy  
John A. DuPuy

Dora V. DuPuy  
Dora V. DuPuy

STATE OF WA )  
COUNTY OF KING ) ss

This instrument was acknowledged before me on August 16, 2001, by JOHN A. DU PUY and DORA V. DU PUY.

[Signature]  
Notary Public



DOC # 2589425  
08/24/2001 04:09P Fee:7.00  
BK1  
Requested By  
WESTERN TITLE INCORPORATED  
Washoe County Recorder  
Kathryn L. Burke - Recorder  
Pg 1 of 1 RPT 120.00



LAW OFFICES OF  
OTTO & POPE  
164 HUBBARD WAY  
SUITE A  
RENO, NEVADA 89502

## **Exhibit 2**

## **Exhibit 2**



# PRELIMINARY WHITES CREEK BASIN MANAGEMENT STUDY

(FINAL REPORT)

Prepared For:

WASHOE  
COUNTY



DEPARTMENT  
OF  
PUBLIC WORKS

By:

**CBA**

CELLA BARR  
ASSOCIATES

777 Campus Commons Road, Suite 200  
Sacramento, California 95825

August 17, 1994

CBA File No. 530013-01

to the HEC-1 model presented in the Whites Creek Detention Feasibility Study for NDOT. Since the standard for floodplain management in Washoe County and per FEMA is the 100-year event, floodplain conditions along each of the four (4) flow paths downstream of Shadowridge Park need to be established under the assumption that 3000 cfs is initially delivered to them. Until such time as structural measures are implemented that will serve to establish the flow distribution desired for 5100 cfs at Shadowridge Park, a flow of 3000 cfs being delivered to each flow path must be considered in the design of development projects within the lower Whites Creek watershed.

- C. Existing Problem Areas** - As a part of the field investigations performed by CBA staff and the review of available information, several problem areas or potential problem areas were identified within the lower Whites Creek watershed in terms of flooding potential associated with development projects and existing infrastructure improvements. The following listing represents a preliminary identification of potential problem locations that may merit further investigation as a part of future studies. It must be noted that CBA's conclusions are not substantiated by detailed calculations, but have been based upon engineering judgement; hence, the following listing may not be complete and/or some of the listed locations may be determined to not have problems from a flood hazard or capacity perspective upon closer, more detailed examination.

1. **Existing Culverts Along U.S. 395** - All of the existing drainage structures that drain Whites Creek flows are substantially inadequate to convey distributed discharges underneath the roadway during a 100-year flood event. The existing highway will cause upstream ponding of stormwater runoff and, when ponded flood waters reach sufficient levels, sheet flooding across the highway will occur.
2. **Old Virginia Street Culverts** - Inadequate drainage structures exist across Old Virginia Street, and similar conditions will prevail as described for U.S. 395.
3. **Zolezzi Lane Drainage Structures** - The drainage structure crossing of Zolezzi Lane that serves Channel #1 is of substantially insufficient capacity to pass the proportioned 100-year discharge. The existing roadway will divert some of the flow east along the south side of Zolezzi Lane and some of the flow will spill northerly across the roadway. At the intersection of Zolezzi Lane and U.S. 395, there is virtually no provision for accommodating runoff originating from Channel #2 (with some spillover flow from Channel #3), and flooding of this intersection will occur during a 100-year event.
4. **Existing Residential Structures Immediately Downstream of the Defined Channel at Shadowridge Park** - Several existing residential structures at this location are subject to a high flood and debris flow hazard during a 100-year flood event.

5. **Whites Creek Estates** - Some of the existing residential structures adjacent to Channel #1 have a potential for flooding during a 100-year event as induced by spillover from the channel at subdivision street crossings or by limitations in channel capacity.
6. **Lancers Estate** - Some of the residential lots backing up adjacent to the south of Channel #4 have a potential for flooding during a 100-year event.
7. **Existing Residential Structures South of Whites Creek Lane, West of the Proposed Pine Tree Ranch Subdivision** - Several of these structures have a potential for flooding from Channels #2 and #3 during a 100-year flooding event.
8. **Wedge Parkway** - Wedge Parkway is elevated from one to several feet above existing grade and crosses the lower Whites Creek watershed somewhat transversely to the direction of drainage flow. The newly constructed segment of Wedge Parkway between the Mt. Rose Highway and Whites Creek Lane will have a tendency to impound runoff in excess of the proportioned discharge of 1350 cfs for Channel #4 on the upstream side of the roadway and divert flow northeasterly along the west side of the roadway toward Whites Creek Lane. The existing drainage structure under construction across Channel #4 appears to have adequate capacity for the proportioned discharge for this flow path, provided the flow is delivered to the drainage structure itself. Currently, it is proposed that the proportioned flow within Channel #4 be channelized and delivered to the drainage structure as a part of the future development of Sterling Ranch.

**It should be reiterated that the above observations and conclusions of system capacity problems are based upon preliminary investigations, only, and will require further substantiation as additional more detailed studies are performed.**

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

John and Melissa Fritz,  
(Plaintiff-Appellants)

vs.

Washoe County  
(Defendant-Respondent)

No. 67660

Electronically Filed  
Apr 06 2015 08:27 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

DOCKETING STATEMENT  
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department 1  
County Washoe Judge Hon. Judge Berry  
District Ct. Case No. CV13-00756

**2. Attorney filing this docketing statement:**

Attorney Luke Busby, Esq. Telephone 775-453-0112

Firm Luke Andrew Busby, Ltd.

Address 216 East Liberty St.  
Reno, NV 89501  
Fax 775-403-2192

Client(s) John and Melissa Fritz

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Michael Large, Esq. Telephone (775) 337-5700

Firm Washoe County DA's Office

Address Washoe County District Attorney Civil Div.  
P.O. Box 11130  
Reno, NV 89520

Client(s) Washoe County

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)



**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input checked="" type="checkbox"/> Summary judgment        | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This is an appeal of a grant of summary judgment by the District Court for an inverse condemnation claim brought by John and Melissa Fritz. The Fritzes were requesting an order from the Court requiring Washoe County to compensate Plaintiffs for the taking and condemnation of their property at 14400 Bihler Rd., Washoe County APN No. 142-241-63 (hereinafter "the Property" or "Plaintiff's Property" or "Subject Property").

**9. Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary):

The fundamental issue on appeal is whether Washoe County's activities and involvement in the development of land upstream of the Fritzes property, which the Fritzes allege is causing flooding on their Property, constitutes a taking of the Property for public use in violation of the Nevada Constitution and the US Constitution. The specific issues on appeal are whether the District Court erred by granting summary judgment where: (1) the facts presented by the Fritzes were sufficient to sustain an inverse condemnation claim; (2) the law in Nevada supports a finding that a taking did occur; (3) the District Court did not address facts presented by the Fritzes in opposition to the Motion for Summary Judgment; (4) the District Court misinterpreted the law on inverse condemnation in Nevada and from other jurisdictions; (5) the District Court found that inverse condemnation was not a legally viable theory of liability; and (6) the District Court found that there was no substantial involvement in the development of land by Washoe County through which inverse condemnation may apply.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

The Fritzes are unaware of any pending proceedings in the Nevada Court of Appeals or the Supreme Court that raise the same or similar issues.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This case raises issues under the takings clause of the Nevada Constitution and the US Constitution.

**13. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? NA

**14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No



## TIMELINESS OF NOTICE OF APPEAL

**15. Date of entry of written judgment or order appealed from** March 19, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**16. Date written notice of entry of judgment or order was served** March 20, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**18. Date notice of appeal filed** March 24, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

## SUBSTANTIVE APPEALABILITY

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- ☒ NRAP 3A(b)(1)      ☐ NRS 38.205  
☐ NRAP 3A(b)(2)      ☐ NRS 233B.150  
☐ NRAP 3A(b)(3)      ☐ NRS 703.376  
☐ Other (specify)

(b) Explain how each authority provides a basis for appeal from the judgment or order: NRAP 3A(b)(1) provides that a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered is appealable. Because a timely Notice of Appeal was filed by the Fritzes in the District Court within the time permitted by NRAP 4 (a), and the Order granting summary judgment in favor of Washoe County is a "final judgment," this matter is appealable per NRAP 3A(b)(1).

**21. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

JOHN AND MELISSA FRITZ (Plaintiffs) v. WASHOE COUNTY; BARNESON INVESTMENTS, INC. DBA LANCER, LTD; CFA, INC. LOTS, INC.; MCMILLIAN CONSTRUCTION CO.; PACIFIC WEST BUILDERS, INC.; WALSH ODYSSEY ENGINEERING, LTD DBA ODYSSEY ENGINEERING, INC.; FPE ENGINEERING & PLANNING; and NICHOLAS S. VESTBIE, LTD DBA NORTECH GEOTECHNICAL/CONSUL,LTD. (Defendants)

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

BARNESON INVESTMENTS, INC. DBA LANCER, LTD; CFA, INC. LOTS, INC.; MCMILLIAN CONSTRUCTION CO.; PACIFIC WEST BUILDERS, INC.; WALSH ODYSSEY ENGINEERING, LTD DBA ODYSSEY ENGINEERING, INC.; FPE ENGINEERING & PLANNING; and NICHOLAS S. VESTBIE, LTD DBA NORTECH GEOTECHNICAL/CONSUL,LTD. were all dismissed from this proceeding based on a 2/20/2014 ruling from the District Court that the statute of limitations had lapsed on other Nuisance and Trespass claims.

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

The only remaining claim is the Fritzes Inverse Condemnation claim against Washoe County.

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**24. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order




## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

John and Melissa Fritz  
Name of appellant

Luke Busby, Esq.  
Name of counsel of record

April 3, 2015  
Date

  
Signature of counsel of record

Nevada, Washoe County  
State and county where signed


## CERTIFICATE OF SERVICE

I certify that on the 3rd day of April, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Micheal Large, Esq.  
Washoe County District Attorney Civil Div.  
P.O. Box 11130  
Reno, NV 89520

Dated this 3rd day of April, 2015

  
Signature

# **John and Melissa Fritz v. Washoe County**

**Docket No. 67660**

## **Docketing Statement Exhibit List**

1. May 12, 2014 - Third Amended Complaint
2. March 20, 2015 - Notice of Entry of Order
3. March 19, 2015 - Order