

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, on relation of its
Department of Transportation,

Petitioner,

vs.

Case No. 70098

THE EIGHTH JUDICIAL DISTRICT
COURT, COUNTY OF CLARK, STATE OF
NEVADA, AND THE HONORABLE
GLORIA STURMAN, DISTRICT JUDGE,

Respondents,

and

FRED NASSIRI, individually and as trustee of
the NASSIRI LIVING TRUST, a trust formed
under Nevada law,

Real Party in Interest.

APPENDIX VOLUME 6, part 4

TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

ADAM PAUL LAXALT, ESQ.
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ATTORNEYS FOR PETITIONER

Document Description	Volume Number	Bates Number
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Answer to the State's Counterclaim	2	PA00283-292
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Appendix to Nassiri's Opposition to Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI...	11	PA02092-2281
Appendix to Nassiri's Opposition to the State's MPSJs Re Inverse Claim and Contract Claims	5	PA00808-977
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Prayer for Rescission		
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Motion for Summary Judgment on Nassiri's Claim for Inverse Condemnation (with Appendix)	3	PA00293-503
Motion to Bifurcate/Confirm the May 4, 2015, Trial as a Bench Trial	7	PA01306-1339
Motion to Dismiss Filed by the State	1	PA00055-108
Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	9	PA01649-1746
Notice of Supplemental Authority Re MPSJs Filed by the State	7	PA01239-1249
Opposition to the State's Motion to Bifurcate/Confirm the May 4, 2015, Trial as a Bench Trial	7	PA01340-1390
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Opposition to the State's MPSJ on Nassiri's Contract Claims	5	PA00755-774
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Reply in Support of the State's Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	12	PA02282-2348
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A SELF-CONTAINED APPRAISAL REPORT OF

66.63 ACRES OF VACANT LAND
LOCATED AT THE NORTHWEST CORNER OF
SOUTH LAS VEGAS BOULEVARD AND BLUE DIAMOND ROAD
LAS VEGAS, CLARK COUNTY, NEVADA 89123
(NSB FILE NO. 09-792)

The report is intended for the sole use of Nevada State Bank ("Bank"). No republication, copying or distribution of any part of this report is authorized without the Bank's express written consent. Bank makes no representation as to the accuracy of any information or conclusion in the report, and no person, other than Bank, is entitled to rely on the report.

PREPARED FOR

MR. JOHN PHELON, JR.
VICE PRESIDENT
APPRAISAL REVIEW DEPARTMENT
NEVADA STATE BANK
1501 WEST WARM SPRINGS ROAD
HENDERSON, NEVADA 89014

DATE OF VALUATION

MARKET VALUE "AS IS"
JANUARY 14, 2010

PREPARED BY

RCS APPRAISAL, INC.
RICHARD C. SMITH, MAI
WILLIAM O. WEST
1611 EAST 2450 SOUTH, BUILDING 1, SUITE C
ST. GEORGE, UTAH 84790

RCS FILE NO.

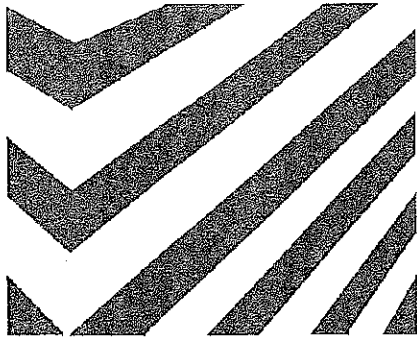
10-007

DATE OF REPORT

FEBRUARY 10, 2010

Nassiri002118

OPPOMSJ0324



RCS Appraisal, Inc.

Richard C. Smith, MAI
Steve E. Porter • William O. West
Richard A. Koldewyn • Alex B. Blake • Justin W. Decker

Real Estate Appraisers & Consultants • Certified In Arizona, Nevada And Utah

February 10, 2010

Mr. John Phelon, Jr.
Vice President
Appraisal Review Department
Nevada State Bank
1501 West Warm Springs Road
Henderson, Nevada 89014

The report is intended for the sole use of Nevada State Bank ("Bank"). No republication, copying or distribution of any part of this report is authorized without the Bank's express written consent. Bank makes no representation as to the accuracy of any information or conclusion in the report, and no person, other than the Bank, is entitled to rely on the report.

Re: *A Self-Contained Appraisal Report* of 66.63 acres of vacant land located at the northwest corner of South Las Vegas Boulevard and Blue Diamond Road, Las Vegas, Clark County, Nevada 89123 (NSB File No. 09-792)

Dear Mr. Phelon:

Pursuant to the request of Nevada State Bank to prepare an appraisal of the above referenced property, we have made a personal inspection of the property and conducted an investigation of the local real estate market with an analysis of the data relevant thereto. This analysis enabled us to form a market-supported opinion of value of the subject.

The subject consists of five parcels totaling 66.63 acres. The accompanying appraisal report describes the Sales Comparison Approach, which was used to form opinions of the "As Is" market value of the entire 66.63 acres, the value of 30.27 acres at the immediate corner of Las Vegas Boulevard and Blue Diamond Road, and the value of the remaining 36.36 acres.

It is our understanding that the intended use of this appraisal is for use by Nevada State Bank to assist in establishing value for collateral evaluation purposes. The values expressed in the appraisal are according to the definitions stated in the report, but subject to the Assumptions and Limiting Conditions set forth in the attached appraisal report.

This appraisal has been prepared in accordance with:

- Assignment criteria and appraisal standards established by Nevada State Bank;
- Regulation 12 CFR Part 34 of the Office of the Comptroller of the Currency titled Real Estate Appraisals as revised in Federal Register Vol. 59, No. 108, dated June 7, 1994;
- The Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation; and
- The Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

Mr. John Phelon, Jr.
February 10, 2010
Page iii

we caution the users of this appraisal that the value conclusion(s) reported herein may have a short period of utility.

This report contains Digital Security in the form of a Data Matrix 2d barcode affixed by the appraiser on the Table of Contents page. This advanced Technology called Appraisal Matrix has created a proof of authenticity, origin and identity of the appraiser. Most importantly, it is sustaining the integrity, reliability, and accuracy of crucial data on the appraisal report. If the Table of Contents page is found not to have the barcode affixed, it may not be a true copy of the appraisal. The lender or user can e-mail a "pdf" of the Table of Contents page to Appraisal Matrix, LLC that they will scan. Appraisal Matrix, LLC will then send back a verification sheet. The user can then verify that the appraisal report has not been manipulated or fabricated. Please visit www.AppraisalMatrix.net (Scanning) for information on how to verify appraisal reports.

We appreciate this opportunity to serve you and trust that this report satisfies your request. Please call if you have any questions or need further assistance.

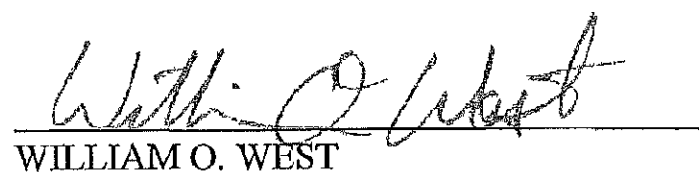
Respectfully Submitted,

RCS APPRAISAL, INC.



RICHARD C. SMITH, MAI

Nevada Certified General Appraiser A.0000135-CG
Expiration Date: May 31, 2011



WILLIAM O. WEST

Nevada Certified General Appraiser A.0006107-CG
Expiration Date: August 31, 2011

The report is intended for the sole use of Nevada State Bank ("Bank"). No republication, copying or distribution of any part of this report is authorized without the Bank's express written consent. Bank makes no representation as to the accuracy of any information or conclusion in the report, and no person, other than the Bank, is entitled to rely on the report.

66.63 Acres: South Las Vegas Boulevard
(RCS File No. 10-007)

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PA01138

SIZE & SHAPE

According to the Clark County Assessor, the subject parcels total 66.63 acres. A topographic survey of the subject site was provided by the property owner and is presented Page 5. The total size of the subject according to the topographic survey is 66.89 acres, with no referenced legal description. Given the immaterial discrepancy between the size of the subject as reported by the Assessor and on the topographic survey, for purposes of this report, the size of the subject is 66.63 acres as reported by the Assessor.

Despite the subject's irregular shape, the site has excellent site utility at the northwest corner of South Las Vegas Boulevard and Blue Diamond Road and at the northeast quadrant of the Interstate 15 Blue Diamond Road Interchange. The subject includes approximately 2,000 feet of frontage along the west side of Las Vegas Boulevard, approximately 2,200 feet of frontage along the north side of Blue Diamond Road, and approximately 1,200 feet of frontage along the east side of Interstate 15. The subject's shape actually benefits the site as it provides more frontage along Interstate 15 and Las Vegas Boulevard than a comparably-sized site with a straight northern boundary would.

ACCESS

Direct access to the subject is from Las Vegas Boulevard on the east and Blue Diamond Road on the south.

STREETS

Las Vegas Boulevard is a section-line major arterial street with a right-of-way as wide as 200 feet (based on right-of-way and easement lines on Clark County InfoMapper). Blue Diamond Road is also a section-line major arterial street with a right-of-way as wide as 200 feet. Las Vegas Boulevard includes multiple lanes of asphalt pavement, but lacks curb, gutter, and sidewalks. Blue Diamond Road is fully improved along the subject's frontage with asphalt pavement, concrete curb, gutter and sidewalks.

MUNICIPAL SERVICES

The subject property is located in the Enterprise Township of unincorporated Clark County. Fire protection is provided by the Clark County Fire Department. Police protection is provided by the Las Vegas Metropolitan Police Department.

UTILITIES

The following utilities are available to the subject site:

Water:	Las Vegas Valley Water District
Sanitary Sewer:	Clark County Water Reclamation District
Power:	Nevada Power Company
Natural Gas:	Southwest Gas Corporation
Telephone:	CenturyLink

66.63 Acres: South Las Vegas Boulevard
(RCS File No. 10-007)

Nassiri002146

OPPOMSJ0327

for holding time, which could be equated to market conditions. For this analysis, we consider a five to seven year holding period reasonable for this type of parcel before there is renewed demand for assemblage. Applying a discount of 12% per year for five to seven years, the suggested discount is 43% to 55%. This adjustment is difficult to support using just closed sales; however, considering the current listings, some of which have significantly lowered prices within the past few months, the large amount of current supply, and the general overall lack of demand, a discount near the upper end of the range of 50% for market conditions is considered reasonable for Sales 1, 2, 3, and 5. Sale 4 is a more recent transaction and more heavily influenced by a highly motivated buyer. Nevertheless, the market has continued to soften since November 2008. A downward 30% adjustment for market conditions is applied to Sale 4.

Location

Adjustments to the sales data must be made for overall location and is evaluated in terms of surrounding development and access. The subject and all five sales are located along the "South Strip" area of Las Vegas Boulevard. More precisely, the subject has excellent access at the northeast corner of the Interstate 15 Blue Diamond Road interchange. The subject's location along the south strip corridor is likely one of the top five sites and superior to all of the comparables. Making an adjustment for the subject's superior location is difficult as there is limited market evidence to support a value. Considering the subject's superior location, an upward adjustment of 5% is applied to Sales 1 through 5 for inferior location.

Physical Characteristics

Physical characteristics of a site may include differences in size, frontage/exposure, and utilities/offsites. If the physical characteristics of a comparable property and the subject property differ, each of these differences may require comparison and adjustment.

Size

Sometimes there is an inverse relationship between price per unit and size, all else being equal. This can be offset by economies of scale achieved when developing a larger parcel. In other words, upfront development costs can be spread over a greater number of units thereby increasing the overall return. Just a couple of years ago, larger parcels were selling for higher prices than smaller parcels for this reason. However, with the recent credit market tightening and dramatic decrease in sales, it appears there is no premium being paid for either larger or smaller parcels. No adjustments are applied for size.

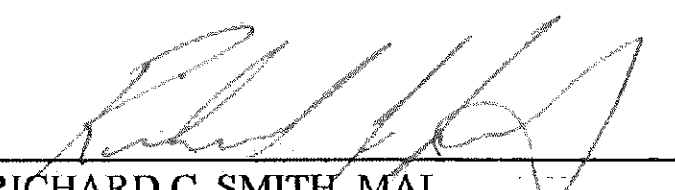
Frontage/Exposure

The subject has excellent frontage and exposure at the northwest corner of South Las Vegas Boulevard and Blue Diamond Road, as well as some exposure along I-15. Sales 1 through 3 have similar frontage and exposure along Las Vegas Boulevard. Sales 4 and 5 lacks frontage and exposure along Las Vegas Boulevard or I-15 and are worth considerably less without it. As By pairing Sales 4 and 5 to Sales 1 through 3, an upward adjustment of 27% to 43% is indicated. We conclude to an upward adjustment of 30% to Sales 4 and 5 for inferior frontage and exposure.

CERTIFICATION

We certify that, to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in the property that is the subject of this report and we have no personal interest with respect to the parties involved.
4. We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. The appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.
8. Our analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the *Uniform Standards of Professional Appraisal Practice*.
9. Richard C. Smith and William O. West have made a personal inspection of the property that is the subject of this report.
10. No one provided significant real property appraisal assistance to the person(s) signing this certification.
11. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity and compliance with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
13. As of the date of this report, Richard C. Smith, MAI has completed the requirements of the continuing education program of the Appraisal Institute.
14. The appraisers' state certification has not been revoked, suspended, canceled, or restricted.
15. RCS Appraisal, Inc. reports the following prior involvement in the subject property:
 - ☐ No prior involvement in the subject of this appraisal in the past 3 years
 - ☒ Prior involvement in the subject of this appraisal in the past 3 years: appraised February 20, 2009 for Nevada State Bank.


RICHARD C. SMITH, MAI

Nevada Certified General Appraiser A.0000135-CG
Expiration Date: May 31, 2011


WILLIAM O. WEST

Nevada Certified General Appraiser A.0006107-CG
Expiration Date: August 31, 2011

66.63 Acres: South Las Vegas Boulevard
(RCS File No. 10-007)

Nassiri002190

OPPOMSJ0329

EXHIBIT 45

VALUATION REPORT

VACANT LAND

NWC-Las Vegas Boulevard & Blue Diamond
Las Vegas, Clark County, Nevada 89123
CBRE, Inc. File No. 13-275LV-0234

Fred Nassiri
Chairman
NASSIRI LLC
2035 Helm Drive
Las Vegas, Nevada 89119

CBRE

Nassiri002433

VALUATION & ADVISORY SERVICES

CBRE

3993 Howard Hughes Parkway, Suite 720
Las Vegas, NV 89169

T (702) 933-6761
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www.cbre.com

July 26, 2013

Fred Nassiri
Chairman
NASSIRI LLC
2035 Helm Drive
Las Vegas, Nevada 89119

RE: Appraisal of Vacant Land
NWC-Las Vegas Boulevard & Blue Diamond
Las Vegas, Clark County, Nevada
CBRE, Inc. File No 13-275LV-0234

Dear Mr. Nassiri:

At your request and authorization, CBRE, Inc. has prepared an appraisal of the market value of the referenced property. Our analysis is presented in the following Summary Appraisal Report.

The subject is a vacant parcel of land located at the northwest corner of Las Vegas Boulevard and Blue Diamond Road in Las Vegas, Nevada. The subject is zoned H-1 and contains 66.63 acres. The property has good frontage along Las Vegas Boulevard, Blue Diamond Road and Interstate 15. The subject is more fully described, legally and physically, within the enclosed report.

Based on the analysis contained in the following report, the market value of the subject is concluded as follows:

MARKET VALUE CONCLUSION			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
As Is	Fee Simple Estate	July 10, 2013	\$77,000,000
Compiled by CBRE			

Data, information, and calculations leading to the value conclusion are incorporated in the report following this letter. The report, in its entirety, including all assumptions and limiting conditions, is an integral part of, and inseparable from, this letter.

The following appraisal sets forth the most pertinent data gathered, the techniques employed, and the reasoning leading to the opinion of value. The analyses, opinions and conclusions were developed based on, and this report has been prepared in conformance with, our interpretation of the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP),

Nassiri002434

OPPOMSJ0332

Fred Nassiri
July 26, 2013
Page 2

the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

The intended use and user of our report are specifically identified in our report as agreed upon in our contract for services and/or reliance language found in the report. No other use or user of the report is permitted by any other party for any other purpose. Dissemination of this report by any party to non-client, non-intended users does not extend reliance to any other party and CBRE will not be responsible for unauthorized use of the report, its conclusions or contents used partially or in its entirety.

It has been a pleasure to assist you in this assignment. If you have any questions concerning the analysis, or if CBRE, Inc. can be of further service, please contact us.

Respectfully submitted,

CBRE, Inc - VALUATION & ADVISORY SERVICES



Steven E. Evans, MAI, MRICS
Vice President
NV Certified General Appraiser #A.0005911-CG
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Managing Director
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CBRE

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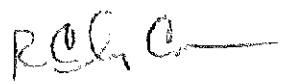
CERTIFICATION OF THE APPRAISAL

We certify to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in or bias with respect to the property that is the subject of this report and have no personal interest in or bias with respect to the parties involved with this assignment.
4. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
5. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
6. This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.
7. Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice, as well as the requirements of the State of Nevada.
8. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
10. As of the date of this report, Steven E. Evans, MAI, MRICS and R. Clay Carson, MAI, MRICS have completed the continuing education program of the Appraisal Institute.
11. Steven E. Evans, MAI, MRICS has and R. Clay Carson, MAI, MRICS has not made a personal inspection of the property that is the subject of this report.
12. No one provided significant real property appraisal assistance to the persons signing this report.
13. Valuation & Advisory Services operates as an independent economic entity within CBRE, Inc. Although employees of other CBRE, Inc. divisions may be contacted as a part of our routine market research investigations, absolute client confidentiality and privacy were maintained at all times with regard to this assignment without conflict of interest.
14. Steven E. Evans, MAI, MRICS and R. Clay Carson, MAI, MRICS have not provided any services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.



Steven E. Evans, MAI, MRICS
NV Certified General Appraiser #A.0005911-CG



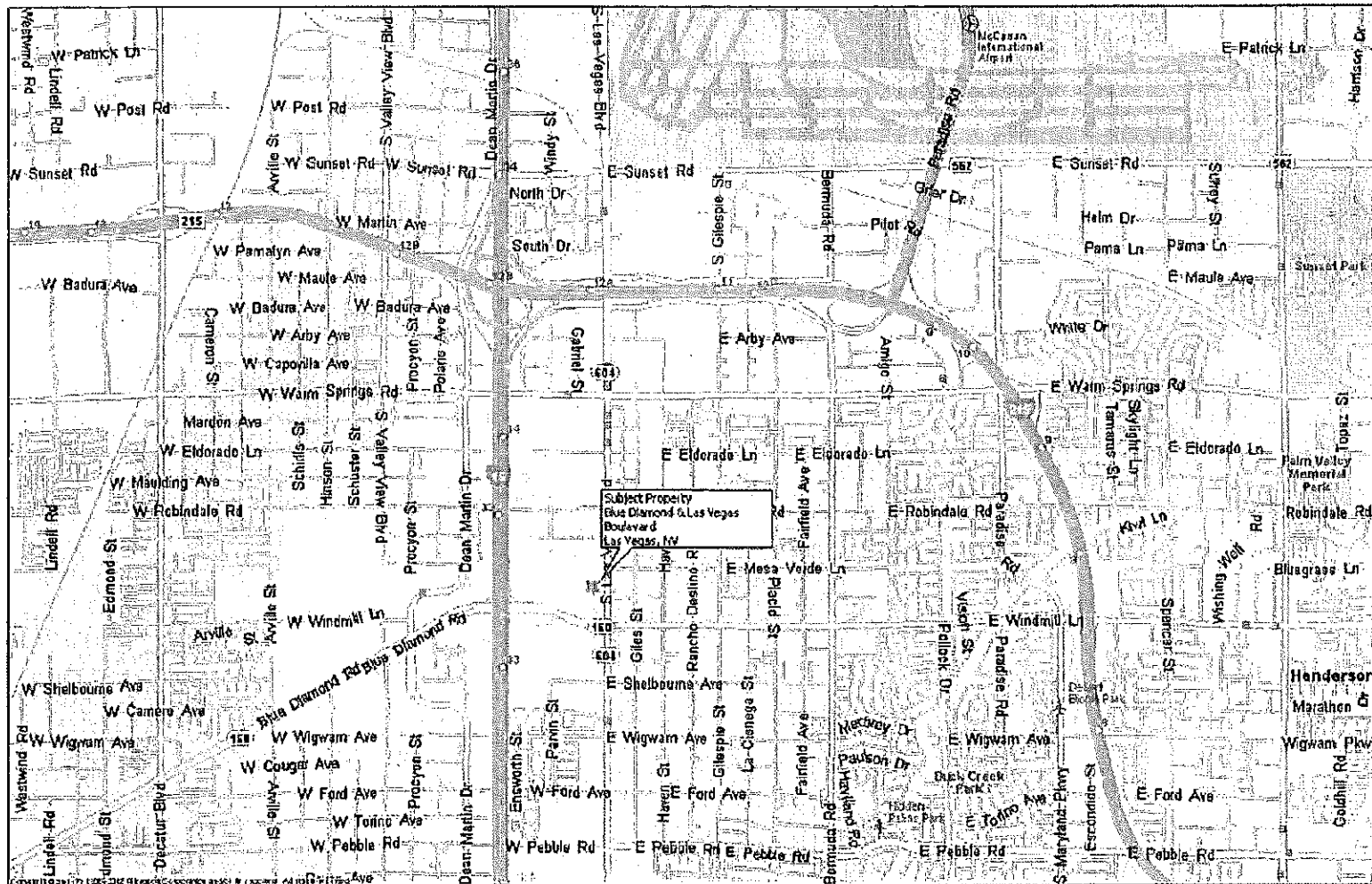
R. Clay Carson, MAI, MRICS
NV Certified General Appraiser #A.0003310-CG

CBRE

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NEIGHBORHOOD ANALYSIS



LOCATION

The neighborhood is located in the unincorporated area of Clark County that is generally south of the Las Vegas Strip in an area known as Enterprise. Enterprise is located in the southeast portion of the Las Vegas valley about 10 miles south of the Las Vegas Central Business District.

BOUNDARIES

The neighborhood boundaries are detailed as follows:

North:	Interstate Highway 215
South:	Lake Mead Drive
East:	Lake Mead Drive/Interstate 215
West:	Interstate Highway 15

LAND USE

The subject is located on the "south strip," and is not in core area with close proximity of the mega resort casinos associated with the common perception of Las Vegas. The subject is located along Las Vegas Boulevard at Blue Diamond Road; the One condominium tower is located on the south side of Blue Diamond and the Las Vegas Outlet mall is located to the immediate east; a 110 acre vacant land parcel is located to the north and is listed for sale at no price with Michael Parks and John Knott

at Newmark Grubb. Interstate 15 is located to the west; due to the Blue Diamond fly over the site is partially occluded.

Beyond the immediate uses the surrounding uses include single family residential, hospitality, neighborhood retail, a recently constructed condo property to the immediate north and many failed condominium properties (One Las Vegas to the south and Boca Raton further to the south). Beyond a five block radius, land uses within the subject neighborhood consist of a mixture of vacant land, commercial and planned residential development as well as neighborhood retail centers. There are several large land parcels to the south. The immediate area surrounding the subject is characterized by commercial buildings, vacant land, a mobile home park, and single family homes. The majority of the detached single-family residential development within a one mile radius of the subject may be described as tract homes in the \$100,000-\$300,000 price range. According to information obtained from Claritas, over 56% of the homes built within a three-mile radius of the subject were constructed since 1990.

There are three large casino resorts in the south Las Vegas Boulevard area. The South Coast Resort/Casino is located south of the subject and recently completed the addition of the second tower is located south of the subject on Las Vegas Boulevard. Beyond the South Coast there is significant vacant land up to the "M" Resort, located at St. Rose Parkway and Las Vegas Boulevard. The Silverton is located west of the subject along Blue Diamond Road and Interstate 15; it also includes a Bass Pro Shop.

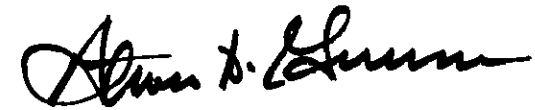
GROWTH PATTERNS

Over the past three years, growth on the south corridor has nearly stalled and there have been few land sales and no new construction. Historically, the area experienced significant growth and the construction of several commercial and residential properties as well as large neighborhood Casinos (South Pointe, is located at Silverton and Las Vegas Boulevard, just south of the subject and was constructed in 2006 with a second tower in 2008). The corridor along Interstate 15 and Las Vegas Boulevard south of the Las Vegas strip is one of the last close-in areas in the Las Vegas MSA that offers a significant amount of undeveloped land. There is a significant quantity of vacant land along Las Vegas Boulevard to the north and south of the subject property.

ACCESS

Primary access to the subject neighborhood is provided by Interstate Highway 15 and the new IH-215 (Beltway). The commute to the Las Vegas Central Business District is about 10 to 15 minutes, via IH-15. Interstate Highway 15 (Las Vegas Freeway) extends from San Diego, California in a northeasterly direction through Los Angeles and Las Vegas to Salt Lake City, Utah and beyond to the Canadian border. This arterial travels in a generally in north/south direction and forms the western border of the subject neighborhood. Primary east/west thoroughfares traversing the neighborhood include the new

EXHIBIT 46



CLERK OF THE COURT

OPPM
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

FRED NASSIRI, an individual; NASSIRI
LIVING TRUST, a trust formed under Nevada
law,

Plaintiffs,

vs.

STATE OF NEVADA, on relation of its
Department of Transportation; DOE
GOVERNMENT AGENCIES I-X, inclusive;
DOE INDIVIDUALS I-X; and DOE ENTITIES
1-10, inclusive,,

Defendants.

THE STATE OF NEVADA, on relation of its
Department of Transportation,

Counterclaimants,

vs.

FRED NASSIRI, an individual; DOES I through
X; and ROE CORPORATIONS I through X,
inclusive,

Counterdefendants.

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CASE NO. A672841
DEPT. XXVI

1 **OPPOSITION TO MOTION FOR SUMMARY JUDGMENT ON**
2 **PLAINTIFF'S PRAYER FOR RESCISSION**

3 **Date of Hearing: April 7, 2015**

4 **Time of Hearing: 9:30 a.m.**

5 Plaintiffs, Fred Nassiri, individually and as trustee of the Nassiri Living Trust
6 ("Plaintiffs"), by and through counsel, the law firm of Gordon Silver, hereby oppose the Motion
7 for Summary Judgment on Plaintiff's Prayer for Rescission filed by Defendant, State of Nevada.

8 This Opposition is made and based upon the following Memorandum of Points and
9 Authorities, the exhibits thereto; the papers and pleadings on file, including the Opposition to
10 Motion for Summary Judgment on Plaintiff's Claim for Inverse Condemnation ("Condemnation
11 MSJ") and the Opposition to Motion for Summary Judgment on Plaintiff's Claims for:
12 (1) Breach of Contract, (2) Breach of Implied Covenant of Good Faith and Fair Dealing, and
13 (3) Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing (the "Second
14 MSJ"), as well as any oral argument the Court may permit upon a hearing of this matter.

15 Unless otherwise stated, all Capitalized words herein have the meaning ascribed to them
16 in the Condemnation MSJ and Second MSJ, and all references to exhibit numbers relate to
17 Plaintiffs' Exhibits to Opposition to Motion for Summary Judgment on Plaintiff's Claim for
18 Inverse Condemnation and to Opposition to Motion for Summary Judgment on Plaintiff's Claims
19 for: (1) Breach of Contract, (2) Breach of Implied Covenant of Good Faith and Fair Dealing, and
20 (3) Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing (the "Appendix").

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I**

23 **SUMMARY**

24 Not only should summary judgment be denied on the rescission claim, but the
25 acknowledged facts also demonstrate that rescission would be the most complete and fair way to
26 address the State's wrongs in this case.

27 The evidence that NDOT planned a flyover for the Blue Diamond Interchange, but failed
28 to tell Plaintiff of those plans during negotiations is overwhelming and undisputed. Similarly, the
evidence that NDOT failed in its statutory duty to do so can only be contested by re-writing the

1 Settlement Agreement and facts surrounding its negotiation, as NDOT so desperately tries to
2 do—for example, by substituting “Surplus Property” for “Exchange Property.” Nor can the
3 devastating difference in impact on the property, between what is portrayed in the Alleged Blue
4 Diamond Project Map and the as-built 60 foot flyover, be denied with a straight face.

5 There can be no doubt that in arriving at “just compensation,” the basic assumption of the
6 Settlement Agreement, NDOT and Plaintiffs did not consider the impact of the flyover. The
7 State’s own appraisals excluded the flyover and assigned specific value to the view Plaintiffs
8 would have in the absence of a flyover. NDOT also knew or had reason to know that Plaintiffs
9 had mistakenly believed that the Blue Diamond Project would not include a flyover. NDOT
10 caused Plaintiffs’ mistake through its representations and non-disclosure of facts.

11 Rescission based on mistake is not only available based on these facts, but the best way
12 to resolve this action.

13 II

14 STATEMENT OF RELEVANT FACTS

15 For the sake of judicial economy, Plaintiffs hereby incorporate their statement of facts
16 from their Opposition to the Condemnation to the Condemnation MSJ (the “Opposition to the
17 Condemnation MSJ”). Plaintiffs further restate the following facts for ease of reference.

18 A. NDOT always intended on constructing the Flyover as part of the Blue Diamond 19 Project.

20 1. NDOT’s Assistant Director and Chief Engineer and NRCP 30(b)(6) designee
21 unequivocally testified that as of 2005 the Blue Diamond Project included a flyover:

22 Q. Was the flyover—was there ever a flyover as—conceived as part of the
23 2005—2000 to 2005 Blue Diamond project itself as opposed to the I-15 corridor
project, which I understand you—you put in a different time frame, 2006 or ‘07?

24 A. Yes, there was a flyover in the Blue Diamond Project.

25 (Deposition of NDOT’s NRCP 30(b)(6) Designee and NDOT’s Chief Engineer John Terry
26 (“Terry Deposition”), at p. 12:8-14).

27 2. While, the Blue Diamond Project was broken into multiple phases and built in
28 multiple contracts, it is undisputed that the Blue Diamond Project was not completed until the

flyover was built. (*Id.* at pp. 16:13-17:5; 57:16-58:3). The “last phase of [the Blue Diamond Realignment] project—one of the last phases of that project, which was the flyover, was actually incorporated into the I-15 South. So you could—you could say it wasn't complete until the design build project was done.” (*Id.* at p. 16:21-25).

3. During the design process of the Blue Diamond Project, Mr. Terry, NDOT’s NRCP 30(b)(6) designee, testified that the flyover always had to be considered because “the grades of the flyover affect... where you can get access and the drainage.” (Terry Deposition, at p. 48:16-21). “The grade of the roadway going up to the flyover and how it affected their drainage was a big consideration” during the planning of the Blue Diamond Project. (*Id.* at p. 48:16-49:6).

4. NDOT actively planned and developed the flyover during NDOT’s acquisition of the Condemned Property from Plaintiffs:

Exhibit	Date	Discussion
	July 7, 1999	NDOT began planning the right-of-way acquisition that would allow it to “build a fully functional and operational six-lane divided SR-160 highway and interchange” with I-15. (See Deposition Transcript of NDOT’s Chief Right-of-Way Agent, Heidi Mireles (“Mireles Deposition”), Exhibit 6 , at p. 26:6-13).
Exhibit 8	September 29, 2000	The State internally expressed concern that its flyover would impact the flood plan and recognized the need to consider the impacts of the flyover on the Blue Diamond Project.
Exhibit 9	August 26, 2002	Blue Diamond Project manager John Bradshaw and engineers discussed lane configurations and noted that accommodations needed to be made for a flyover.
Exhibit 10	November 21, 2002	NDOT Engineer Steve Merrill directed NDOT engineers to develop alternatives for the flyover
Exhibit 11	February 3, 2003	NDOT’s Assistant Director of Engineering “agree[d] that if the flyover is needed prior to the design year, [NDOT] should cover it in the EA, show it at the informational meeting, and <u>acquire the necessary right-of-way now, especially if it means we don’t have to go back and hit a property owner twice.</u> ”
Exhibit 12	February 12, 2003	NDOT’s Principal Traffic Engineer Jeff Lerud has a recommendation for the right-of-way needs for the flyover.
Exhibit 13	February 14, 2003	NDOT discussed right of way needed for flyover’s construction.

1	Exhibit	Date	Discussion
2		July 7, 1999	NDOT began planning the right-of-way acquisition that
3			would allow it to “build a fully functional and operational
4			six-lane divided SR-160 highway and interchange” with I-
5	Exhibit 14	March 4, 2003	15. (See Deposition Transcript of NDOT’s Chief Right-of-
6			Way Agent, Heidi Mireles (“Mireles Deposition”),
7			Exhibit 6 , at p. 26:6-13).
8			
9	Exhibit 15	March 3, 2003	NDOT engineers discuss that the Blue Diamond
10			Interchange needed to accommodate the flyover.
11	Exhibit 16	May 6, 2003	NDOT held a right-of-way setting meeting to discuss the
12			needed right-of-way outside of its existing right of way.
13			NDOT was concerned with the impacts of the flyover on
14			flood planning. NDOT’s need included Plaintiffs’
15			property.
16	Exhibit 17	May 22, 2003	NDOT’s Roadway Design team included a flyover in the
17			Blue Diamond Project.
18	Mireles Deposition, at p. 31:8- 24	May 22, 2003	NDOT’s Chief Right-of-Way agent, Ms. Mireles, began
19			acquiring right-of-way for the Blue Diamond Project.
20	Exhibit 18	June 6, 2003	Ms. Mireles was directed to “acquire right-of-way for the
21			“ultimate design” or “build out” scenario.”
22	Exhibit 19	July 3, 2003	NDOT’s Principle Traffic Engineer recommended the
23			realignment of Blue Diamond Road leave room for the
24			flyover.
25	Exhibit 20	July 24, 2003	NDOT’s Surplus Property Committee recognized that
26			NDOT was acquiring right-of-way for the flyover.
27	Exhibit 21	January 7, 2004	NDOT’s Road Designers has developed design files for
28			the flyover.
	Exhibit 22	April 3, 2004	NDOT admits that the Blue Diamond Interchange would
			include an I-15 flyover ramp.
		April 6, 2004	NDOT makes an informal offer to acquire the Condemned
			Property. (Rescission MSJ at p. 8, ¶ 12).
	Exhibit 22	May 7, 2004	NDOT informs the Federal Highway Administration that
			the Blue Diamond Project would include a flyover.
		May 30, 2004	NDOT’s Chief Right-of-Way agent meets with Plaintiffs
			to discuss NDOT’s project but omits reference to the
			flyover. Chapman Deposition, at p. 37:2-9.
	Exhibit 25	June 30, 2004	NDOT’s design recommendation notes that all designs of
			the Blue Diamond Project include flyovers.
		September 1, 2004	NDOT serves Plaintiffs with the Condemnation Action.
		April 28, 2005	NDOT and Plaintiffs reached the Settlement Agreement.
		Fall 2006	NDOT had realigned Blue Diamond Road
		March 26, 2007	The appropriations bill to fund the Flyover was introduced
			in the Nevada Legislature.

Exhibit	Date	Discussion
	July 7, 1999	NDOT began planning the right-of-way acquisition that would allow it to “build a fully functional and operational six-lane divided SR-160 highway and interchange” with I-15. (See Deposition Transcript of NDOT’s Chief Right-of-Way Agent, Heidi Mireles (“Mireles Deposition”), Exhibit 6 , at p. 26:6-13).
Exhibit 31	July 1, 2009	NDOT selects Nevada Paving to build the flyover.

B. In negotiating the Condemnation Action and the Settlement Agreement, NDOT failed to disclose to Plaintiffs that the flyover would be built.

5. On April 6, 2004, NDOT made Plaintiffs an informal offer to acquire approximately 4.22 acres of their property (the “Condemned Property”). (Rescission MSJ at p. 8, ¶ 12).

6. On May 28, 2004, NDOT’s Chief Right-of-Way agent Heidi Mireles and the Attorney General held a meeting with Plaintiffs. (Chapman Deposition, at p. 37:2-9). “One of the main purposes of the meeting is the scope of the project. Because in order to evaluate the settlement—or the severance damages of the project, we needed to know what the entire project is . . . that the Department intends to build. (*Id.* at p. 50:14-51:2; see also *id.* at p. 41:1-6). NDOT’s “obligation[was] to lay out the plan so that the landowner can understand what the impacts may or may not be to the remaining property.” (*Id.* at p. 40:24-41:1).

7. During the May 28, 2004, meeting, NDOT made representations as to what the Blue Diamond Project would entail and provided Plaintiffs with a map that reportedly laid out the Blue Diamond Project. (Chapman Deposition, at pp. 37:23-28:20, 39:7-10, & 51:14-17; see also Mireles Deposition, at p. 40:22-25 (having no reason to dispute Chapman’s recollection)).

8. NDOT provided Plaintiffs with a map represented as the Blue Diamond Project plan (the “Alleged Blue Diamond Project Map”). (See Alleged Blue Diamond Project Map, **Exhibit 34**; Chapman Deposition, at p. 40:3-41:14). NDOT specifically represented that the Alleged Blue Diamond Project Map was “the plan that the Department was going to be proceeding on in its eminent domain case.” (Chapman Deposition, at p. 40:19-23; see also *id.* at 40:3-12). The Alleged Blue Diamond Project Map **DID NOT** contain a flyover.

1 9. While there were specific “discussions as to what the ultimate configuration
2 would look like at the intersection of Blue Diamond and Interstate 15,” there was no discussion
3 of a flyover that “would connect eastbound ST-160 traffic with northbound I-15 traffic.
4 (Chapman Deposition, at p. 41:21-42:3). “The Department never mentioned a flyover during any
5 of the process, and the maps that we used in the settlement agreement and the first amendment to
6 settlement agreement are very similar to this one, not showing a flyover.” (Id. at p. 42:13-
7 24)(emphasis added).

8 10. To the contrary, Mr. Nassiri recalls Ms. Miereles talked about how the Blue
9 Diamond Project would provide Plaintiffs’ property with increased visibility and how Plaintiffs’
10 property would be better with the new alignment. (Nassiri Deposition, at p.127:5-18).

11 11. The fact that NDOT did not inform Plaintiffs of the flyover is not in dispute.
12 (Terry Deposition, at pp. 66:20-24& 87:12-16; Mireles Deposition at p. 42:25-43:2; Malfabon
13 Deposition at p. 39:5-10).

14 12. On August 30, 2004, NDOT’s appraiser Gary Kent appraised the Exchange
15 Property in the “after condition, presuming reconstruction and realignment of the State Route
16 160/Interstate 15 interchange.” (See Kent Appraisal, at pp. 1, 55-57A, 59, 64 and 68). That
17 appraisal contains four maps, none of which show a “flyover.” (Id. at pp. 55, 56; 57, 57A). Kent
18 also specifically noted that the Exchange Property NDOT was swapping with Mr. Nassiri
19 benefits from its visibility to Interstate 15:

20 13. On or about August 31, 2004, NDOT filed the Condemnation Action.

21 14. On December 6, 2004, NDOT made a written offer to Mr. Nassiri to “conclude”
22 the Condemnation Action (the “Settlement Offer”). (See Exh. 37; Chapman at p. 85:3-12).
23 NDOT specifically identified the 23.8 acres that the Plaintiffs would acquire as the “Exchange
24 Property.” (Exh. 37, at p. 1). The terms of the Settlement Offer make clear that the Settlement
25 Agreement is one agreement and that the Exchange Property was exchanged. (Id.)(emphasis
26 added).¹ NDOT also included a map titled “EXCHANGE PROPERTY,” that map included a

27
28 ¹ Despite the clear language of the Settlement Offer, in its motions for summary judgment, NDOT has
intentionally replaced each reference to “Exchange Property” with “Surplus Parcel.” (See Second MSJ, at

1 diagram of the realigned Blue Diamond but did not include a flyover. (Id. at p.3).

2 15. On January 27, 2005, Plaintiffs accepted NDOT's Settlement Offer. The
3 Settlement Agreement was "entered into in contemplation of the scope of the project as is
4 depicted" in the maps provided during settlement negotiations. (Chapman Deposition, at
5 p. 112:13-23).

6 16. Ultimately, on or about April 28, 2005, NDOT and Plaintiffs executed the
7 Settlement Agreement. (Exhibit 38). The Settlement Agreement establishes that the Lawsuit was
8 related to "construction and reconstruction of the interchange at I-15 and Blue Diamond Road,
9 and the attendant widening and realignment of Blue Diamond Road." (Settlement Agreement, at
10 § 1.01). The Settlement Agreement refers to the 24.42 acres to be exchanged as the "Exchange
11 Property," under section 1.03, which is also titled "**The Exchange Property.**" (Settlement
12 Agreement, at § 1.03)(emphasis in original). The Settlement Agreement makes plain reference to
13 the fact that the Condemned Property was being condemned and that the complaint filed in the
14 Condemnation Action was a complaint in condemnation. (See generally id.).

15 17. Along with the Settlement Agreement, the parties included a map of the
16 realignment of the SR-160 east and I-15 (the "Settlement Agreement Map"). (Chapman
17 Deposition, at p. 75:14-16). The parties included the Settlement Agreement Map to demonstrate
18 what NDOT represented was its proposed improvements for purposes of condemnation damages:

19 Q. And was the purpose of this diagram to show the proposed realignment of Blue
20 Diamond east of I-15?

21 A. The purpose of it was to show the thought process of the parties in putting the
22 deal together, which, as I said, was a package deal, not two separate ones. Mr.
Nassiri would not have done the deal if it was—if he was not able to get this
property in trade.

23 Q. . . . So the purpose—one of the purposes was to show the realignment of the
24 SR-160 east of I-15. Correct?

25 A. And the scope of the rest of the project as if (sic) would affect the settlement
26 that the parties are putting together.

27 _____ (continued)
p. 10, ¶¶ 17-18). NDOT's alteration of this language is a clear attempt to mislead the Court as to the
28 agreement of the parties and is not supported by the record.

1 Q. And to show the surplus property of the—or the diagram of the surplus
2 property. Correct?

3 A. And the construction of the project in the manner proposed by the Department
4 [NDOT].

5 (Chapman Deposition, at p. 75:17-76:12). The Settlement Agreement Map did not include the
6 flyover. (See Settlement Agreement Map; Chapman Deposition, at p. 76:13-14). Likewise, the
7 map included with the amended Settlement Agreement (the “Amended Settlement Agreement
8 Map”) did not include the flyover. (See Amended Settlement Agreement Map”).

9 18. The Settlement Agreement is not two separate transactions:

10 It's a package deal. It's not two separate transactions. It was, I believe, set up as
11 two separate transactions for a couple of reasons. One, the Department generally
12 takes by final order of condemnation once a lawsuit has been filed. That's your
13 4.2-acres. Further, the Department had to convey by quitclaim deed the surplus
14 property because that's a statute. So the transactions actually are evidenced by
15 different paper, but the intent of the parties — I mean, the whole thing would not
16 have gone down this way but for the fact that Mr. Nassiri was able to exchange
17 his property for the exchange property and make the adjustment in money. That's
18 the thought process.

19 (Chapman Deposition, at p. 72:8-73:3). NDOT's own director does not dispute that the
20 Exchanged Property was being exchanged as part of the settlement of the condemnation action.
21 (See Malfabon Deposition at pp. 37:3-20 & 50:1-3; Nassiri Deposition, at p. 26:23-27:12 (“they
22 did not want to use the word "sale." They want to do the exchange because I don't know if
23 they—legally they were qualified to do this transaction or not.”).

24 19. When the Settlement Agreement closed, Plaintiffs did not know about the flyover:

25 Q. (By Mr. Coulthard) Okay. When you — when you closed on that — on the
26 surplus property, acquired that property, you knew that there was a flyover
27 planned for eastbound traffic on Blue Diamond connecting with northbound I-
28 15? It was always in the plans. I showed you the 1999 diagram, and it — and it
followed through, through 2004, and it followed through all the plans. You —
you knew that when you closed, there was a flyover. Correct?

A. There was never — no, I —... Never knew about flyover. No idea.

Q. (By Mr. Coulthard) Okay. And isn't it true your real complaint is the shifting
of the flyover from the proposed plan in the 2004 Environmental Assessment as
shown on the diagram I showed you earlier from your Exhibit 2, shifting that
flyover approximately 800 feet north crossing I-15, and that's your real
complaint?

THE WITNESS: No.

1 Q. (By Mr. Coulthard) Okay.

2 A. There — there was — I — I never knew anything about flyover.

3 (Nassiri Deposition, at p. 110:24-111:23). Neither Mr. Nassiri nor Mr. Chapman become aware
4 of the fly-over until after it was built in 2010. (Terry Deposition, at p. 42:9-12; Nassiri
5 Deposition, at p.66:17-25).

6 20. Plaintiffs would not have wanted to acquire the Exchange Property if they knew
7 about the flyover. (Nassiri Deposition, at p. 144:22-145:6). Mr. Nassiri testified that “I bought it
8 for the view, I bought it for the traffic, and I bought it for the signage.” (Nassiri Deposition, at
9 p. 45:18-25). Plaintiffs further contend that NDOT knew that the properties visibility

10 But they sold me — what I always talked about is that traffic in I-15. So what
11 they sold me is the visibility. I bought it for the visibility and signage and NDOT
12 knew about that, and so it's — it was not something that was made up. And their
13 own appraisal says that . . . It says that they sold me the property for visibility.
14 Their own appraisal said the visibility and — and appraisal — I mean visibility
15 and signage is very important for adjoining property, which was me.

16 (Nassiri Deposition, at p. 41:18-42:10)

17 C. The flyover as built indisputably has a greater impact on Plaintiffs property than
18 the plans and depictions provided by NDOT to Plaintiffs during settlement
19 negotiations.

20 21. The present matter is not about Plaintiffs being unhappy with the price they paid,
21 rather it is based on the fact that NDOT “completely ruined [the] property, [their] existing
22 property and the property [they] bought from [NDOT].” (Nassiri Deposition, at pp. 122:8-24
23 &79:5-13).

24 22. As a result of the flyover, the property cannot be seen from I-15:

25 the 250, 300,000 cars that [NDOT] told me goes by. I don't—they don't see me.
26 I—and I—the billboard, the signage is very important. We can't put no signage
27 up, and all of that is damage and costs—costs a lot of money. . . Signage,
28 visibility, and all of that. I'm—we just—you don't see our property.

(Nassiri Deposition, at p. 110:3-16); Photos of Property, Exhibit 39).

23. Plaintiffs expert, Keith Harper, opined that the “parcel [] is significantly different
from the parcel in the before acquisition condition . . . due to the loss of exposure because a 56.6
foot high, flyover has been constructed above the grade of the southwest corner of the subject.”

1 (Harper Report, at HARPER0000083). Indisputably, “the flyover is located between the main
2 travel lanes of [I-15] and the subject which causes the subject to lose its expose to and visibility
3 from the main traffic lanes of this major interstate.” (Id). Mr. Harper opines that the flyover has
4 decreased the value of Plaintiffs property by \$10,000,000. (Id).

5 24. Prior to the construction of the flyover, other appraisers found that the property
6 benefited from its frontage on I-15. (See Exhibit 44). However, after the flyover was constructed,
7 appraisers immediately recognized that the flyover occludes the property. (See Exhibit 45).

8 III

9 LEGAL ANALYSIS

10 Rescission is an equitable remedy which totally abrogates a contract and which seeks to
11 place the parties in the position they occupied prior to executing the contract. Bergstrom v.
12 Estate of DeVoe, 109 Nev. 575, 577, 854 P.2d 860, 861 (1993). “A unilateral mistake occurs
13 when one party makes a mistake as to a basic assumption of the contract, that party does not bear
14 the risk of mistake, and the other party has reason to know of the mistake or caused it.” In re
15 Irrevocable Trust Agreement of 1979, 130 Nev. Adv. Op. 63, 331 P.3d 881, 885 (2014).
16 Generally, a unilateral mistake is grounds for the rescission of a contract or release if the “other
17 party had reason to know of the mistake or his fault caused the mistake.” In re Irrevocable Trust
18 Agreement of 1979, 331 P.3d at 885; Oh v. Wilson, 112 Nev. 38, 39-40, 910 P.2d 276, 277-78
19 (1996); Graber v. Comstock Bank, 111 Nev. 1421, 1428, 905 P.2d 1112, 1116 (1995);
20 Chwialkowski v. Sachs, 108 Nev. 404, 406, 834 P.2d 405, 406 (1992); Home Savers, Inc. v.
21 United Security Co., 103 Nev. 357, 358–59, 741 P.2d 1355, 1356-57 (1987).

22 When considering unilateral mistake, the Nevada Supreme Court has adopted the rule set
23 forth in the Restatement (Second) of Contracts § 153 (1981). In re Irrevocable Trust Agreement
24 of 1979, 331 P.3d at 885; Tropicana Pizza, Inc. v., 124 Nev. 1514, 238 P.3d 861 (2008); Home
25 Savers, Inc., 103 Nev. at 359, 741 P.2d at 1357. The Restatement of Contracts provides that:

26 Where a mistake of one party at the time a contract was made as to a basic
27 assumption on which he made the contract has a material effect on the agreed
28 exchange of performances that is adverse to him, the contract is voidable by him
if he does not bear the risk of the mistake under the rule stated in § 154, and

1 (a) the effect of the mistake is such that enforcement of the contract would be
unconscionable, or
2 (b) the other party had reason to know of the mistake or his fault caused the
mistake.
3

4 Restatement (Second) of Contracts § 153 (1981).

5 Plaintiffs have clearly demonstrated that the Settlement Agreement is subject to
6 rescission under the test set forth in Section 153 of the Restatement. Therefore, a question of
7 material fact exists and summary judgment on Plaintiffs' prayer for rescission should be denied.

8 **A. Plaintiffs were unilaterally mistaken that the Blue Diamond Project would not**
9 **include a flyover and NDOT was or should have been aware of the mistake and is**
directly responsible for that mistake.

10 "A mistake is a state of mind not in accord with the facts." Tarrant v. Monson, 96 Nev.
11 844, 845, 619 P.2d 1210, 1211 (1980); Restatement of Restitution § 6 (1937); see also Oh v.
12 Wilson, 112 Nev. 38, 40, 910 P.2d 276, 278 (1996)(denying summary judgment when a genuine
13 question of material fact exists as to whether a party knew or should have known that the other
14 party made a mistake). The mistake here is that Plaintiffs were unaware that NDOT intended on
15 building a flyover.

16 Case law further dictates that "courts may inquire into the adequacy of consideration
17 when it is relevant to ascertaining whether . . . mistake . . . exist[s]." Oh v. Wilson, 112 Nev. 38,
18 41-42, 910 P.2d 276, 279 (1996); see also Wilson v. Bristol W. Ins. Grp., No. 209-CV-00006-
19 KJD-GWF, 2009 WL 3105602, at *4-5 (D. Nev. Sept. 21, 2009). Generally, "[c]onsideration is
20 the exchange of a promise or performance, bargained for by the parties." Jones v. SunTrust
21 Mortgage, Inc., 128 Nev. Adv. Op. 18, 274 P.3d 762, 764 (2012). However, in the condemnation
22 context, consideration or "just compensation" has a unique, legal significance.

23 "Under federal and state constitutional law, condemnation of private property requires the
24 condemnor to pay just compensation." Cnty. of Clark v. Sun State Properties, Ltd., 119 Nev.
25 329, 335, 72 P.3d 954, 957 (2003); State ex rel. Dep't of Transp. v. Barsy, 113 Nev. 712, 719,
26 941 P.2d 971, 976 (1997) *overruled on other grounds by* GES, Inc. v. Corbitt, 117 Nev. 265, 21
27 P.3d 11 (2001). Landowners are entitled to the "value of the property sought to be condemned"
28 and "the damages which will accrue to the portion not sought to be condemned" based on the

1 “construction of the improvement in the manner proposed by the plaintiff.” NRS 37.110(a)-(b).
2 “Just compensation requires that the landowner ‘be put in as good position pecuniarily as he
3 would have been if his property had not been taken.’” Barsy, at 718, 941 P.3d at 975(emphasis
4 added). NDOT’s Right-of-Way manual states that all acquisition discussions:

5 shall be conducted to accomplish the end result that the property owner receives
6 just compensation, which is also just and fair to the public. Right-of-Way staff
7 shall extend courtesy, consideration and patience, so as to foster feelings of
confidence and respect by the property owner toward the Department. The mind
set for our interaction should be one of a client-business relationship.

8 (Right of Way Manual, Exhibit 33, at § 5.351). The Right-of-Way Agent must explain “the
9 acquisition thoroughly, with the use of exhibits, drawings and plans.” (Id at § 5.357).

10 “The determination of market value includes the consideration of any elements that fairly
11 enter into the question of value which a reasonable businessman would consider when
12 purchasing.” Sun State Properties, Ltd., 119 Nev. at 335, 72 P.3d at 958. NDOT recognizes that
13 the following elements should be considered when determining “just compensation:”

- 14 a. Changes to a more irregular shape
15 b. Change in size to less than required for a use
16 c. Changes to access
17 d. Changes of the roadway/highway grade
18 e. Impairment of visibility from the roadway/highway
f. Impairment of view from the remainder parcel
Some of the above items are more applicable to specific types of uses, i.e.,
visibility from the highway issues generally relate to commercial properties and
view impacts are generally related to residential properties

19 (Right of Way Manual, Exhibit 33, at § 4.207(1)).

20 Because a property owner is largely powerless to stop condemnation, an action for
21 condemnation naturally centers on “just compensation.” There is no doubt that the *sine qua non*
22 of the Condemnation Action was the value of the Condemned Property and the impact NDOT’s
23 proposed improvement would have on Plaintiffs’ remaining property. Therefore, the value of the
24 condemned property and NDOT’s proposed improvement were basic assumptions upon which
25 the Settlement Agreement was based.

26 The evidence clearly demonstrates that at the time of the Settlement Agreement,
27 Plaintiffs were unaware that NDOT intended on building a flyover as part of the Blue Diamond
28 Project—Plaintiffs did not know the flyover until 2010—and Plaintiffs did not consider the

1 impact of the flyover when determining “just compensation.” (Terry Deposition, at p. 42:9-12;
2 Nassiri Deposition, at p.66:17-25; Kent Appraisal, at pp. 1, 55-57A, 59, 64 and 68). Thus,
3 Plaintiffs were mistaken as to NDOT’s proposed improvement of the Blue Diamond Interchange.

4 NDOT’s claim that Plaintiffs were aware of the flyover because “the State’s future
5 Flyover plan [that] was publically-available since 1999” is fatally flawed (Second MSJ, at p. 18).
6 NDOT refers to a 2 dimensional conceptual drawing marked “subject to revision” that was
7 distributed to several landowners in 1999, including Plaintiffs. (See Exh. 4). Mr. Nassiri testified
8 that he never knew that the “map” depicted a flyover. (Nassiri Deposition at p. 66:17-25).
9 Furthermore, in 2004 and 2005, NDOT had an obligation to inform Nassiri of the improvements
10 it planned for the Blue Diamond Project. Importantly, the 1999 conceptual drawing did not put
11 Plaintiffs on legal notice that NDOT was going to build a flyover. That 1999 depiction also
12 became wholly irrelevant when during their 2004 and 2005 negotiations NDOT represented to
13 Mr. Nassiri that the Blue Diamond Project would not have a flyover. Thus, Plaintiffs did not
14 have notice of the flyover and were mistaken that NDOT would not build a flyover.

15 NDOT wildly exaggerates Mr. Oxoby’s involvement with both the Blue Diamond Project
16 and with the transaction at issue. To the point he departed NDOT in 2001, Mr. Oxoby stated had
17 “very little” involvement with the Blue Diamond Project. (Oxoby Deposition, Exh. 20, at
18 p. 12:13-18). Furthermore, Mr. Oxoby had minimal involvement in NDOT’s condemnation of
19 Plaintiffs land and specifically did not tell Mr. Nassiri that NDOT had plans prior to 2001 to
20 build a flyover . (Oxoby Deposition, at p. 28:20-23; Chapman Deposition, at pps.65:24-66:2; see
21 also id. at pp. 64:19-65:4; 65:15-66:23; 85:6-25). Even if Mr. Oxoby had told Mr. Nassiri about
22 his pre-2001 knowledge of the flyover, as discussed above, his pre-2001 knowledge of what
23 NDOT might do does not take away from what NDOT agreed to do in 2005.² Thus, Mr. Oxoby’s
24 knowledge of a pre-2001 flyover was not imparted to Plaintiffs.

25 _____
26 ² Furthermore, NDOT provides no authority—because none exists—for the proposition that all
27 of Mr. Oxoby’s knowledge acquired as an employee of NDOT—including confidential
28 development plans—is imputed, as a matter of law, to all of his clients. Nor does the State show
that such knowledge would somehow counteract NDOT’s express representations and statutory
duties.

1 Therefore, Plaintiffs' understanding that the Blue Diamond Project would not include a
2 flyover is clearly a unilateral mistake. There can also be no doubt that in arriving at "just
3 compensation," the basic assumption upon which the Settlement Agreement was based, NDOT
4 and Plaintiffs did not consider the impact of the flyover. (Chapman Deposition, at pp. 37:23-
5 28:20, 39:7-10, 40:3-23, 41:21-42:3, 42:13-24, 51:14-17, & 75:14-76:12; Nassiri Deposition, at p.
6 110:24-111:23; Terry Deposition, at p. 66:20-24 & 87:12-16; Mireles Deposition at p. 42:25-
7 43:2; Malfabon Deposition at p. 39:5-10; Settlement Agreement Map; Alleged Blue Diamond
8 Project Map). Even Plaintiffs own appraisals excluded the flyover and assigned specific value to
9 the view Plaintiffs would have in the absence of a flyover. (Kent Appraisal, at pp. 1, 55-57A, 59,
10 64 and 68).

11 NDOT also knew or had reason to know that Plaintiffs had mistakenly believed that the
12 Blue Diamond Project would not include a flyover. Restatement (Second) of Contracts § 153(b).
13 Additionally, NDOT caused Plaintiffs' mistake through its representations and non-disclosure of
14 facts. See Restatement (Second) of Contracts § 161(b)-(d) (1981); NOLM, LLC v. Cnty. of
15 Clark, 120 Nev. 736, 740, 100 P.3d 658, 661 (2004). NDOT had an obligation to reveal to
16 Plaintiffs their proposed improvement of the Blue Diamond Interchange. NRS 37.110; Right of
17 Way Manual, Exh. 33, at § 5.351. During the negotiation of NDOT's condemnation of the
18 Condemned Property and exchange of the Exchange Property, NDOT never disclosed that it was
19 building the flyover. See comments on Restatement (Second) of Contracts § 153 (1981)(stating
20 that the parol evidence rule does not preclude introduction of parol evidence to demonstrate
21 mistake)(citing Restatement (Second) of Contracts § 214(d)). To the contrary, NDOT provided
22 Plaintiffs with maps that allegedly depicted the Blue Diamond Project. (Alleged Blue Diamond
23 Project Map; Settlement Agreement Map). Plaintiffs and NDOT incorporated the Settlement
24 Agreement Map, which does not include a flyover, into the Settlement Agreement to
25 demonstrate what NDOT intended on building. (Settlement Agreement Map; Chapman
26 Deposition, at pp. 75:17-76:12 & 76:13-14). All of the documentation and representations from
27 NDOT conspicuously omitted the flyover. (Chapman Deposition, at pp. 37:23-38:20, 39:7-10,
28 40:3-23, 41:21-42:3, 42:13-24, 51:14-17, & 75:14-76:12; Nassiri Deposition, at p. 110:24-

1 111:23; Terry Deposition, at pp. 66:20-24 & 87:12-16; Mireles Deposition at p. 42:25-43:2;
2 Malfabon Deposition at p. 39:5-10; Settlement Agreement Map; Alleged Blue Diamond Project
3 Map). Plaintiffs testified that NDOT represented that Plaintiffs would benefit from the
4 realignment and increased visibility from the freeway, substantiated by the fact that NDOT's
5 appraisal assigned value to that visibility. (Nassiri Deposition, at p.127:5-18). It is also
6 undisputed that Plaintiffs would not have entered into the Settlement Agreement if they had
7 known about the flyover. (Nassiri Deposition, at pp. 45:18-25 & 144:22-145:6). Thus, the
8 evidence clearly demonstrates that NDOT knew or should have known that Plaintiffs were under
9 the mistaken belief that the Blue Diamond Project did not include a flyover.

10 Moreover, Plaintiffs did not bear the risk of a mistake. A party bears the risk of mistake if
11 it is assigned to him by the parties' agreement, if he is aware at the time of the contract that he
12 has limited knowledge with respect to the mistaken facts yet nevertheless enters into the
13 agreement, or if the risk is allocated to him by the courts because it is reasonable to do so.
14 Coleman Holdings Ltd. P'ship v. Eklund, No. 59323, 2015 WL 428567, at *1 (Nev. Jan. 29,
15 2015) (citing Restatement (Second) of Contracts § 154 (1981)). Here, NDOT had a statutory
16 mandate to inform Plaintiffs of its proposed improvements to the Blue Diamond Interchange so
17 that Plaintiffs could make an informed decision about "just compensation." This inescapable
18 statutory duty was not discharged by the Settlement Agreement. While NDOT has previously
19 argued that Plaintiffs took the Exchange Property "as-is," that is in clear reference to the physical
20 condition of the Exchange Property at the time of the exchange and does not refer to the Blue
21 Diamond Project itself. (See Opposition to Second MSJ, at pp. 21-22). Plaintiffs did not believe
22 they were entering into the Settlement Agreement with limited knowledge. In fact, NDOT
23 purported to provide Plaintiffs with all of the requisite knowledge of the Blue Diamond Project.
24 (Chapman Deposition, at pp. 41:21-42:3 & 75:17-76:12). Finally, it is not reasonable for the
25 Court to allocate the risk that NDOT may construct a different project to Plaintiffs. Simply, the
26 statutory scheme mandates that NDOT provide Plaintiffs with "just compensation." NRS 37.110,
27 the U.S. Constitution and the Nevada Constitution require that Plaintiffs receive "just
28 compensation" for their property. Thus, it would be unreasonable for Plaintiffs to bear the risk

1 that NDOT would not provide Plaintiffs with “just compensation” as a result of NDOT’s
2 decision to build a different improvement. Certainly, Plaintiffs did not bear the risk of their
3 mistake.

4 This action is similar to Nevada’s seminal case on rescission, Home Savers, Inc. v.
5 United Security Co., 103 Nev. 357, 741 P.2d 1355 (1987). There, the Nevada Supreme Court
6 found all the elements necessary to rescind the purchase agreement between Home Savers Inc.
7 (“Home Savers”) and United Security Co. (“United”). United gave notice of a trustee’s sale that
8 accurately described that the property to be sold was the back-half of a parcel and a 600 square
9 foot dilapidated home. Home Savers, Inc., 103 Nev. at 358, 741 P.2d at 1356. The published
10 notice, however, also included misleading information, i.e. the street address for the front parcel.
11 Id. at 359, 741 P.2d at 1357. The front parcel had a value of approximately \$90,000.00, while the
12 back parcel had a value of \$17,000.00. Id. Even though both parcels had been originally
13 encumbered by the lien, the lien on the front parcel had been release. Id.

14 Home Savers investigated and inspected the property and believed it was purchasing the
15 front parcel. Id. at 358-59, 741 P.2d at 1356-57. At the foreclosure sale, Home Savers actually
16 purchased the back property for \$64,285.00, one dollar more than United’s opening bid. Id. at
17 358, 741 P.2d at 1356. It was only after the purchase that Home Savers learned that it purchased
18 just the backlot. Id. Home Saver sought to rescind the sale of the property. The district court
19 dismissed the rescission counts. Id. at 359, 741 P.2d at 1357.

20 On appeal, the Nevada Supreme Court found that the inclusion of the front property’s
21 address on the notice, the fact that the back parcel was not clearly visible from the road and was
22 not readily apparent that it would be security for a loan, and the fact that United provided Home
23 Savers with the tax parcel number for the front parcel “clearly reveal[ed] that United caused
24 Home Savers' mistake.” Id. The Supreme Court reversed the district court and directed that it
25 enter an order granting rescission.” Id.

26 Like Home Savers, NDOT presented information to Plaintiffs that was misleading, i.e.
27 depictions of the Blue Diamond Interchange that did not include a flyover. Moreover, Plaintiffs
28 had several meetings with NDOT in which NDOT repeatedly represented that it would build an

1 interchange that did not include a flyover. NDOT knew that those meetings and the diagrams
2 presented were being used by Plaintiffs to calculate “just compensation.” NDOT also presented
3 settlement terms that represented values of the Condemned Property and Exchange Property that
4 were consistent with there being no flyover. However, unlike Home Savers where legal notice
5 identified the correct parcel, here NDOT acknowledges that in 2004 and 2005 NDOT never told
6 Plaintiffs about the flyover. Therefore, it is clear that rescission is available to Plaintiffs.

7 **B. Rescission will place the parties in the position they occupied prior to executing the**
8 **Settlement Agreement.**

9 As a final contention, NDOT alleges that Rescission is not available because NDOT has
10 already realigned the Blue Diamond Interchange. This argument fails, because “complete
11 restoration is not necessary for rescission if the party that is not fully restored was actually at
12 fault.” Graber v. Comstock Bank, 111 Nev. 1421, 1429, 905 P.2d 1112, 1116 (1995). Here, it is
13 clear that NDOT is actually at fault for Plaintiffs’ unilateral mistake; thus, NDOT’s position not
14 need to be completely restored.

15 Without support, NDOT contends that Plaintiffs are “not seeking to rescind the entire
16 Settlement Agreement.” (Rescission MSJ, at p.22:22-23). NDOT claims that Plaintiffs only seek
17 to rescind the exchange of the Exchange Property and that doing so is impermissible because you
18 cannot rescind part of the Settlement Agreement—this, of course, contradicts NDOT’s erroneous
19 position that the Settlement Agreement is two distinct agreements. Nonetheless, NDOT is
20 mistaken. Plaintiffs do seek to rescind the entire Settlement Agreement, i.e. to place the parties in
21 the same position they were prior to the Settlement Agreement.

22 Prior to the Settlement Agreement, NDOT had title to the Exchange Property, Nassiri had
23 title to the Condemned Property, and NDOT had a right of occupancy to the Condemned
24 Property. While NDOT claims that rescission would cause the sky to fall—NDOT to remove
25 Blue Diamond Road—this is simply not true.

26 At that time, NDOT had already filed a notice of condemnation and an affidavit of public
27 use, and Plaintiffs had consented to NDOT’s occupancy of the Condemned Property. Therefore,
28 after unwinding the Settlement Agreement, NDOT would still have a right to occupy the

1 Condemned Property and build the Blue Diamond Interchange. The only remaining question
2 would be the “just compensation” NDOT would have to pay Plaintiffs for the Condemned
3 Property. This is in fact the exact position NDOT and Plaintiffs were in at the time the
4 Settlement Agreement was executed. Therefore, the Rescission is available.

5 IV

6 CONCLUSION

7 Not only should summary judgment be denied on the rescission claim, but the
8 uncontested facts demonstrate that rescission would be the most complete and fair way to resolve
9 this action.

10 The evidence that NDOT planned a flyover for the Blue Diamond interchange, but failed
11 to tell Plaintiff of those plans during negotiations is undisputed. Similarly, the evidence that
12 NDOT failed in its to statutory duty to do so cannot be contested without re-writing the facts
13 surrounding its negotiation, as NDOT has tried to do. Nor can the clear difference in impact on
14 the property, between what is portrayed in the Alleged Blue Diamond Project Map and the as-
15 built 60 foot flyover, be denied.

16 There can be no doubt that in arriving at “just compensation” NDOT and Plaintiffs did
17 not consider the impact of a flyover. The State’s own appraisals did not account for the flyover,
18 yet specifically assigned value to the view Plaintiffs would have as a result of the Alleged Blue
19 Diamond Project Map presented to them by NDOT, and as a result of its owns representations
20 and non-disclosure also knew, or had reason to know, that Plaintiffs believed the Blue Diamond
21 Project was as the State portrayed it, without a flyover. Why would Plaintiffs think NDOT had
22 told them something that was false and/or incomplete?

23 Rescission based on mistake is not only available based on these facts, but the most
24 complete remedy to this wrongs of this case. Based on the foregoing, Plaintiffs respectfully

25 ///

26 ///

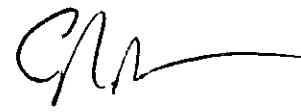
27 ///

28

1 request the Court deny the Motion, and grant such other and further relief as the Court deems just
2 and appropriate.

3 Dated this 23^d day of March 2015.

4 GORDON SILVER

5 

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14 **CERTIFICATE OF SERVICE**

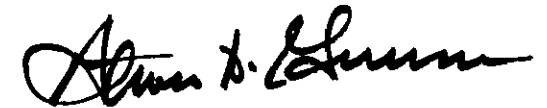
15 The undersigned, an employee of Gordon Silver, hereby certifies that on the 23rd day of
16 March 2015, s/he caused a copy of the foregoing **OPPOSITION TO MOTION FOR**
17 **SUMMARY JUDGMENT ON PLAINTIFF'S PRAYER FOR RESCISSION** to be
18 transmitted by electronic service in accordance with Administrative Order 14.2, to all interested
19 parties, through the Court's **Odyssey E-File & Serve** system addressed to:

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14
15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 FRED NASSIRI, individually and as trustee
18 of the NASSIRI LIVING TRUST, a trust
formed under Nevada law,

19 Plaintiffs,

20 vs.

21 STATE OF NEVADA, on relation of its
22 Department of Transportation; DOE
GOVERNMENT AGENCIES I-X, inclusive;
23 DOE INDIVIDUALS I-X; and DOE
ENTITIES 1-10, inclusive,

24 Defendants.
25

Case No.: A672841
Dept. No.: XXVI

**THE STATE'S REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFF'S CLAIMS FOR: (1)
BREACH OF CONTRACT, (2) BREACH
OF THE IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING,
AND (3) TORTIOUS BREACH OF THE
IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING**

Date of Hearing: April 1, 2015
Time of Hearing: 10:30 a.m.

26
27 Defendant State of Nevada, on relation of its Department of Transportation (the "State"),
28 by and through its counsel of record, Kemp, Jones & Coulthard, LLP, and the Office of the

1 Attorney General, hereby files its Reply in support of motion for summary judgment on
2 Plaintiff's claims for: (1) breach of contract, (2) breach of the implied covenant of good faith
3 and fair dealing, and (3) tortious breach of the implied covenant of good faith and fair dealing
4 (collectively, the "Breach Claims").

5 I.

6 ARGUMENT

7 A. Plaintiff Completely Abandons The Vast Majority Of His Previous Breach
8 Allegations.

9 Plaintiff's Amended Complaint alleges that the State breached the Settlement
10 Agreement and/or the implied covenant of good faith and fair dealing by building the 2010
11 Flyover *and* by allegedly: (1) "refus[ing] to disclose its independent 2004 appraisal of the
12 Surplus Parcel during negotiations, (2) "conveying the [Surplus Parcel] by Quitclaim Deed
13 instead of by warranty deed," and (3) failing to disclose that its offered sales price for the
14 Surplus Parcel included a "premium 'assemblage value,'" thereby charging Plaintiff
15 "approximately \$8,000,000.00 over and above the appraised value of the [Surplus Parcel]."
16 Acompl., ¶¶ 10, 15, and 16; *see also* Plaintiff's *Verified* Answer to Interrogatory No. 7, attached
17 as Ex. X to Mot. Discovery has confirmed that these claims are bogus and Plaintiff has
18 abandoned these last three theories.

19 When the moving party shows the absence of a genuine issue of material fact, "the party
20 opposing summary judgment assumes a burden of production to show the existence of a
21 genuine issue of material fact." *Cuzze v. University and Community College System of Nevada*,
22 172 P.3d 131, 134 (Nev. 2007) (citations omitted). The State's motion establishes that it had no
23 obligation to disclose the basis for its offered sales price, which was the subject of arms-length
24 negotiations between the parties; that Plaintiff expressly agreed to take the Surplus Parcel by
25 Quitclaim Deed, which was the manner in which the State was statutorily required to convey it
26 under NRS 408.533(3); and that Plaintiff purchased the Surplus parcel with full knowledge of
27 the State's appraised assemblage value. Mot., 16:13-17:15.
28

1 Although Plaintiff assumed the burden to show the existence of a disputed material fact,
2 his opposition makes no attempt to meet this burden. Plaintiff fails to address any of the State's
3 arguments on these allegations. He completely abandons his previous breach theories and, at a
4 minimum, partial summary judgment is required to the extent that Plaintiff's Breach Claims rely
5 on those allegations.¹ See EDCR 2.20(e).

6 **B. Plaintiff Cannot, As A Matter Of Law, Identify Any Obligation Arising**
7 **Under The Settlement Agreement That Would Substantiate His Claim**
8 **For Breach Of Contract.**

9 After abandoning the vast majority of his previously-disclosed theories, each of
10 Plaintiffs' Breach Claims now rest solely on Plaintiff's conclusory assertion that the State
11 somehow breached the 2005 Settlement Agreement by building the 2010 Flyover. Opps., 5:26-
12 28. "A breach of contract [is the] material failure of performance of a duty arising under or
13 imposed by agreement." *Bernhard v. Rockhill Development Co.*, 734 P.2d 1238, 1240 (Nev.
14 1987) (quotation omitted). Thus, the only way that Plaintiff's sole remaining theory could ever
15 substantiate a breach of contract claim is if Plaintiff can establish that a material term of the
16 Settlement Agreement prohibited the State from building the Flyover.

17 As the State establishes in its motion, Plaintiff's breach of contract claim fails under
18 *Bernhard* because the 2005 Settlement Agreement does not include any contractual duty or
19 obligation precluding the construction of the Flyover. While the logical argument in opposition
20 to the State's motion would be to identify and explain the contractual term that allegedly
21 prohibited the State from building the 2010 Flyover, Plaintiff barely even mentions the written
22 terms in the Settlement Agreement. Instead, he confusingly focuses on the State's irrelevant
23 planning activities in connection with the 2004 Blue Diamond Project, including the 2004

24 ¹ Plaintiff's silence on these matters, again, speaks volumes. He tellingly makes no effort to
25 explain the basis for these allegations in the first place, or the discovery efforts that he
26 undertook to substantiate those bases. The unfortunate reality is that Plaintiff never had
27 reasonable grounds to bring any of his claims, and the State has incurred hundreds of thousands
28 of dollars in defense fees and costs over the last two years entertaining Plaintiff's fruitless
fishing expedition. With no evidence to support his claims—because the State did nothing
wrong—Plaintiff is abandoning and/or changing the cornerstones of his lawsuit on the eve of
trial. This is another example of Plaintiff's abusive litigation practices, which this Court should
not condone.

1 condemnation action (the “2004 Condemnation Action”) in which the State acquired roughly
2 four acres of Plaintiff’s land needed to realign the Blue Diamond Highway/State Route 160 (the
3 “Condemnation Strip”).

4 In an extremely convoluted and hard-to-follow analysis, Plaintiff baldly argues that: (1)
5 the State had a *statutory* duty under NRS 37.110(2) and the NDOT Right-of-Way Acquisition
6 Manual to disclose any and all future improvements to the Blue Diamond/I-15 interchange to
7 Plaintiff during the 2004 Condemnation Action, (2) the State provided him with two sketch
8 maps *during negotiations* (the “2004/2005 Sketch Maps”) as alleged notice of those
9 improvements; and (3) because neither of these *2004/2005* Sketch Maps depicted the *2010*
10 Flyover, the State’s future construction of the Flyover somehow amounts to a breach of the
11 *2005* Settlement Agreement. Opps., 5:4-6:5. It is not clear whether Plaintiff is contending that
12 NRS 37.110, alone, creates a contractual obligation prohibiting the State’s construction of the
13 Flyover, or that the statute creates a contractual duty only when combined with the 2004/2005
14 Sketch Maps. Either way, however, Plaintiff’s tenuous argument fails for several reasons.

15 *I. At bottom, nothing within the four corners of the Settlement Agreement*
16 *precluded the State from building the Flyover, and the State cannot be*
17 *held liable for breaching an obligation that does not exist.*

18 “A settlement agreement is a contract governed by general principles of contract law,”
19 *The Power Co. v. Henry*, 321 P.3d 858, 863 (Nev. 2014) (citations omitted). Like a contract,
20 the interpretation of a settlement agreement is an issue of law. *Id.* “[C]ontracts will be
21 construed from their written language and enforced as written.” *Id.* (citations omitted). “Thus,
22 when a contract’s language is unambiguous, [the] court will construe it and enforce it according
23 to that language.” *Id.* (citation omitted).

24 *a. The Settlement Agreement is unambiguous and it should be*
25 *enforced as written.*

26 The State seeks summary judgment in its favor on Plaintiff’s breach of contract claim
27 because the Settlement Agreement is unambiguous and it plainly does not include any provision
28 that prohibited the State from constructing the 2010 Flyover. In opposition, Plaintiff simply
concludes to have “presented sufficient evidence that [the State] breached [an unidentified

1 provision of] the Settlement Agreement” and contends to “have a triable breach of [contract]
2 claim” on that basis. Opps., 5:4-5; 6:4-5. But “[m]ere allegations and conclusory
3 statements... are insufficient to survive summary judgment.” *King v. Carlidge*, 124 P.3d
4 1161, 1163 (Nev. 2005) (emphasis added).

5 In reality, the Settlement Agreement does not contain any language regarding the
6 Flyover or any promise to preserve the visibility of Plaintiff’s property from I-15 (Mot., 20:21-
7 21:7). Instead, it contains: (1) an “As-Is” provision, (2) an express waiver of any and all past
8 and future claims regarding the 2004 Condemnation Action or Surplus Parcel, (3) a reservation
9 of the State’s “right to adapt and improve the whole or any part of the Property” in the future,
10 (4) an unambiguous acknowledgement “that no promise or inducement has been offered except
11 as set forth [in the Agreement],” and (5) an Integration Clause confirming that the Settlement
12 Agreement “constitutes the entire agreement by and between the parties. Ex. Q to Mot., ¶¶
13 2.04, 2.09, 2.14, 2.19, and 2.20.

14 Recognizing that each of these contractual provisions is fatal to his breach of contract
15 claim, Plaintiff simply ignores the State’s arguments on them. He does not address his
16 bargained for waivers. He overlooks his express acknowledgements. He completely ignores
17 the agreed-upon Integration Clause. And he does not even attempt to suggest that the
18 Settlement Agreement is ambiguous in any way. Contrary to his irrational argument, Plaintiff’s
19 refusal to acknowledge the plain language of the Settlement Agreement, which his attorney
20 largely drafted and he agreed to, does not create a “triable claim for breach of [contract].”
21 Opps., 6:4-5. The Settlement Agreement is unambiguous; it plainly does not include any
22 provision that precluded the State from building the Flyover. Enforcing the contract as written,
23 as the Court must, requires summary judgment in the State’s favor on Plaintiff’s breach of
24 contract claim.

25 ***b. Summary judgment as to liability on Plaintiff’s breach of***
26 ***contract claim is required one way or the other.***

27 “To succeed on a claim for breach of contract, the plaintiff must show that a contractual
28 relationship existed between it and the defendant, and that the defendant materially breached a

1 *duty owed to the plaintiff under the contract.*” *Chamani v. Mackay*, 238 P.3d 800, *1 (Nev.
2 2008) (emphasis added), citing *Bernhard*, 734 P.2d at 1240. The State argues that summary
3 judgment should be entered in its favor because the Settlement Agreement did not preclude it
4 from constructing the Flyover, and that it cannot be held liable for breaching an obligation that
5 does not exist. In opposition, Plaintiff contends that the State’s “building of the Flyover is a
6 material breach of the Settlement Agreement and the oral and written representations made by
7 the State in the negotiation of the Settlement Agreement.” 5:26-6:1. The parties’ competing
8 arguments turn on the Court’s interpretation of the Settlement Agreement, which should be
9 resolved on summary judgment.

10 “[I]ssues of contractual construction, in the absence of ambiguity..., present **questions**
11 **of law for the courts** and are suitable for determination by summary judgment.” *Ellison v.*
12 *California State Auto. Ass’n*, 797 P.2d 975, 977 (Nev. 1990) (citations omitted) (emphasis
13 added). “It has long been the policy in Nevada that absent some countervailing reason,
14 contracts will be construed from the written language and enforced as written.” *Id.* “**When the**
15 **facts are not in dispute, contract interpretation is a question of law.**” *Federal Ins. Co. v.*
16 *American Hardware Mut. Ins. Co.*, 184 P.3d 390, 392 (Nev. 2008) (emphasis added).

17 Neither party contends that the Settlement Agreement is ambiguous. The sole issue to
18 be resolved on summary judgment is whether the Settlement Agreement precluded the State
19 from building the Flyover. This is an issue for the Court, as it would be inappropriate to ask the
20 jurors to read the contract and interpret whether the State had any **legal** obligation to refrain
21 from building the Flyover.

22 There is also no dispute that the State built the Flyover in 2010. If the Court determines
23 that a material term of the Settlement Agreement somehow prohibited the State from building
24 the Flyover, then the State seemingly breached that material term because it built the Flyover.
25 Alternatively, however, if the Court determines that the State had no contractual duty with
26 respect to the Flyover, then summary judgment on liability must be entered in the State’s favor.
27 Accordingly, the Court should enter summary judgment one way or the other.

2. *Neither NRS 37.110(2) nor the irrelevant 2004/2005 Sketch Maps, independently or combined, create a contractual duty that prohibited the State from building the 2010 Flyover.*

Unable to identify any provision in the Settlement Agreement that prohibited the State's construction of the Flyover, Plaintiff labors to manufacture an extracontractual duty. Despite never previously referencing NRS 37.110(2), or suggesting that Nevada's eminent domain laws related to his Breach Claims in any way, Plaintiff argues that this statute somehow created a duty upon the State under the Settlement Agreement to disclose "proposed improvements" to him during the 2004 Condemnation Action. Opps., 5:12-6:1. He further reasons that by allegedly providing Plaintiff with the 2004/2005 Sketch Maps, which did not depict the Flyover, during negotiations over the 2005 Settlement Agreement, the State somehow breached the Settlement Agreement by later constructing the Flyover in 2010. *Id.* This new-found theory is flawed for several reasons.

a. *NRS 37.110 does not impose a contractual or statutory duty of "disclosure" on the State.*

Plaintiff argues that "[i]t is undisputed that NRS 37.110 requires [the State] to disclose the 'proposed improvement' to a landowner when condemning a portion of the landowner's property," and that the State's failure to disclose the **2010** Flyover during the **2004** Condemnation Action somehow supports his breach of contract claim. Opps., 5:12-6:5. But NRS 37.110 does not say anything about disclosing proposed improvements to landowners. Nor does it impose any duties on a condemning agency. It is a statute that applies to a *trial*, and merely provides for the matters on which evidence may be presented when *value is contested*. NRS 37.110.

NRS 37.110 is irrelevant here because the 2004 Condemnation Action never went to trial; it settled. Moreover, by virtue of the settlement, the value of the Condemnation Strip was not contested. NRS 37.100 neither applies nor creates a contractual duty between the parties.

Assuming *arguendo* that the Court considers Plaintiff's misplaced application of NRS 37.110 to this case, the State nevertheless disclosed all of its proposed improvements, including a conceptual design for the future Flyover, under the 2004 Blue Diamond Project. Although

1 Plaintiff baldly contends (at SF ¶ 4) that “[the State] offers no evidence that Mr. Nassiri was
2 [individually] aware of the Flyover” at any time before 2010, he completely ignores the
3 publicly-available 2004 Environmental Assessment for the 2004 Blue Diamond Project (the
4 “2004 EA”). The relevant pages from the 2004 EA are attached to the State’s motion as Ex. B.

5 The 2004 EA, which included a “proposed design for a future flyover,” indisputably
6 provided public notice of the 2004 Blue Diamond Project’s “proposed improvements.” Mot.,
7 Ex. B, NV_Nassiri001888-90. The 2004 EA was the subject of several public notices; it was
8 presented at multiple public meetings; and it was readily available to the public. Contrary to
9 Plaintiff’s suggestion, the State was not required to push the publicly-available 2004 EA under
10 Plaintiff’s nose to make sure that he was personally aware of the proposed future Flyover.
11 Plaintiff’s failure to perform adequate due diligence by looking into the State’s well-known,
12 publicized plans before agreeing to the Settlement Agreement does not substantiate a breach of
13 contract claim against the State. NRS 37.110 does not impose a contractual or statutory duty of
14 “disclosure” on the State, and even if it did, the State complied with any such hypothetical
15 disclosure requirement by publishing the 2004 EA.

16 ***b. The State did not breach the Settlement Agreement by***
17 ***improving the Blue Diamond/I-15 interchange in a manner***
18 ***different than that depicted in the irrelevant 2004/2005 Sketch***
19 ***Maps.***

20 The two 2004/2005 Sketch Maps include what Plaintiff refers to as the *Alleged Blue*
21 *Diamond Project Map* (Ex. 34 to Opps.) and the *Settlement Agreement Map* (Ex. 40 to Opps.).
22 He argues that the State breached the Settlement Agreement because it “did not build what is
23 represented in the [2004/2005 Sketch Maps].” Opps., 5:24-25. Plaintiff’s logic, however, fails
24 to add up.

25 ***i. The “Alleged Blue Diamond Project Map” did not***
26 ***supplant the federally-mandated 2004 EA, which***
27 ***disclosed all of the proposed improvements (including a***
28 ***future Flyover) under the 2004 Blue Diamond Project.***

29 Plaintiff argues that the State provided Plaintiff with the *Alleged Blue Diamond Project*
30 *Map* “during settlement negotiations...for the specific purpose of allowing Plaintiff to assess
31 ‘the severance damages of the project.’” Opps., 5:14-17. In support of this false assertion,

1 Plaintiff cites to the self-serving, hearsay testimony of his lawyer, Michael Chapman, Esq. *Id.*
2 Although this inadmissible evidence fails to rebut summary judgment, Plaintiff's argument is
3 simply wrong.

4 The *Alleged Blue Diamond Project Map* is undated and untitled. Ex. 34 to Opps. There
5 is no attached letter or supporting information to put this map into any context and there is no
6 indication that this map was even prepared by the State. There is nothing contained in this
7 blurry, loose leaf map—which is found nowhere within the 2004 EA—that would support
8 Plaintiff's argument that the map's "specific purpose" was to allow him to assess severance
9 damages of the 2004 Blue Diamond Project, or that the State somehow locked itself in to
10 building only what is depicted therein. The *Alleged Blue Diamond Project Map* is completely
11 devoid of the comprehensive editorial and design details set forth in the 2004 EA. Plaintiff's
12 attempt to supplant the 2004 EA with this map is absurd.

13 **ii. The so-called "Settlement Agreement Map" is not a part**
14 **of the Settlement Agreement.**

15 Again relying on the self-serving hearsay testimony of Mr. Chapman, Plaintiff contends
16 that the State "*included* the [so-called] *Settlement Agreement Map with the Settlement*
17 *Agreement*... to show that 'the scope of the rest of the project as it would affect the settlement
18 that the parties [were] putting together.'" Opps., 5:19-21. Although the so-called *Settlement*
19 *Agreement* provides much more detail than the *Alleged Blue Diamond Project Map*, and at least
20 bears the State's insignia, it fails to supplant the 2004 EA for the same reasons stated above.

21 It also fails to create a contractual duty on the part of the State to build only what is
22 contained therein. Contrary to Plaintiff's inference, the so-called *Settlement Agreement Map*
23 was *not* "included with the Settlement Agreement." The Settlement Agreement included four
24 exhibits, none of which was the so-called *Settlement Agreement Map*. Ex. Q to Mot.² The First

25 _____
26 ² Neither party produced a copy of the Settlement Agreement with all of the attached exhibits.
27 The exhibits to the Settlement Agreement have all been separately produced, however, and as
28 referenced in the body of the Agreement include: (1) a legal description of the Surplus Parcel (§ 1.03), (2) a Stipulated Final Judgment and Final Order of Condemnation (§ 2.02), (3) the Quitclaim Deed (§ 2.04(a)), and (4) a temporary construction easement (§ 2.06).

1 Amendment to the Settlement Agreement included one exhibit, which also was not the so-called
2 *Settlement Agreement Map*. Ex. T to Mot. Very simply, the Settlement Agreement was not
3 contingent on the State's plans to improve the Blue Diamond/I-15; there was no reason to
4 include an exhibit of the State's proposed improvements, which were set forth in the 2004 EA
5 anyway; and the Settlement Agreement does not reference that topic at all. The so-called
6 *Settlement Agreement Map* is not part of the Settlement Agreement, and Plaintiff's attempt to
7 manufacture a contractual duty on this basis must fail.

8 *c. Plaintiff's argument is untenable under the Settlement*
9 *Agreement's Integration Clause and the parol evidence rule.*

10 Plaintiff argues that the Court should look beyond the four corners of the Settlement
11 Agreement and impose ex post facto breach of contract liability on the State for building the
12 2010 Flyover based on alleged "oral and written representations" made during negotiations over
13 the 2004 Settlement Agreement. Opps., 5:24-6:5. But Plaintiff's argument is squarely refuted
14 by the Settlement Agreement's Integration Clause, which unambiguously provides that the
15 written Settlement Agreement "constitutes the entire Agreement between the Parties and
16 *supersedes and replaces any and all previous agreements entered into or negotiated between*
17 *the Parties.*" Ex. Q. to Mot. (emphasis added). Even if the State made some sort of
18 representation about what the Blue Diamond/I-15 interchange would eventually look like,
19 which it did not, any such representations were not included in the Settlement Agreement and,
20 therefore, they were superseded and replaced by the terms of the Settlement Agreement.
21 Plaintiff's efforts to pull contractual duties from unrelated statutes (i.e., NRS 37.110) that are
22 outside of the Settlement Agreement and to manufacture development restrictions based on
23 maps that are outside of the Settlement Agreement go beyond the plain terms of the contract and
24 should be rejected.

25 Additionally, "in order to defeat summary judgment, the nonmoving party must
26 transcend the pleadings and, by affidavit or other *admissible evidence*, introduce specific facts
27 that show a genuine issue of material fact." *Francis v. Wynn Las Vegas, LLC*, 262 P.3d 705,
28 714-15 (Nev. 2011) (emphasis added). Plaintiff, however, seeks to introduce specific facts

1 based on evidence of alleged “oral and written representations” that is *inadmissible* under the
2 parol evidence rule.

3 Generally, parol evidence may not be used to contradict the terms of a written
4 contractual agreement.

5 The parol evidence rule forbids the reception of evidence which
6 would vary or contradict the contract, since all prior negotiations
7 and agreements are deemed to have been merged therein. *Where*
8 *a written contract is clear and unambiguous on its face,*
9 *extraneous evidence cannot be introduced to explain its*
10 *meaning.*

11 *Kalidi v. Farmers Ins. Exchange*, 21 P.3d 16, 21 (Nev. 2001) (citations omitted) (emphasis
12 added). Even though Plaintiff does *not* argue that the Settlement Agreement is ambiguous in
13 any way, his opposition wholly relies on the 2004/2005 Sketch Maps and other alleged oral
14 representations (i.e., parol evidence) to contradict the plain language of the Settlement
15 Agreement. These alleged “representations,” however, are inadmissible. Accordingly,
16 Plaintiff’s argument fails to rebut summary judgment, as it is untenable under the Settlement
17 Agreement’s Integration Clause and the parol evidence rule.

18 3. *Plaintiff’s breach of contract claim is nothing more than an attempt to*
19 *circumvent Nevada’s longstanding abolition of implied negative*
20 *easements.*

21 Plaintiff effectively argues that, even though he failed to bargain for an express right for
22 view/visibility,³ the Court should imply such a right based on alleged “oral and written
23 representations made by [the State] in the negotiation of the Settlement Agreement.” Opps.,
24 5:27-6:1. But it is well-settled that Nevada has expressly repudiated the doctrine of implied
25 negative easements for light, air, and view for the purpose of a lawsuit by one landowner
26 against a neighbor:

27 ³ There is no dispute that Plaintiff never acquired an express right to view over the Flyover. See
28 Chapman Depo., 112:13-20, the relevant pages of which are attached hereto as Ex. A (Q: “There is not an expressed reservation or an expressed easement for view and – or visibility as against [the State] in favor of [Plaintiff] in the [Settlement Agreement], is there?” A: “*I do not see an express reservation of an easement. I’m not aware of a conveyance of an easement in that regard by [the State] to [Plaintiff].*”) (emphasis added).

To imply the grant of [a right of light, air and view], without express words, would greatly embarrass the improvement of estates, and, by reason of the very indefinite character of the right asserted, promote litigation. The simplest rule, and that best suited in a country like ours, in which changes are taking place in the ownership and the use of lands, is that *no right of this character can be acquired without express grant of an interest in, or covenant relating to, the lands over which the right is claimed.*"

Boyd v. McDonald, 408 P.2d 717, 722 (Nev. 1965) (quotation omitted) (emphasis added).

Boyd is not only fatal to Plaintiff's roundabout attempt to acquire an implied negative easement for view, but it articulates the fundamental flaws that permeate throughout Plaintiff's entire case. At most, Plaintiff is an abutting landowner who is upset that the State improved its neighboring property in a manner that he does not approve. As there is no *express* easement to define the parties' respective rights and obligations, Plaintiff's whole Complaint relates to his subjective belief as to what the State could or could not build within its own right-of-way. This is the "indefinite character" that the *Boyd* Court warned would "promote litigation. Moreover, if Plaintiff is allowed to proceed on his claims, the floodgates will open to litigation by other neighboring landowners who are subjectively dissatisfied with how the State's public roadway improvement projects supposedly interfere with their light, air, or view. This result will burden the State (and taxpayers) with unfathomable litigation expenses and "greatly embarrass the improvement of [public roadways]." *Boyd*, 408 P.2d at 722. The *Boyd* Court's admonitions have come to fruition here. Summary judgment should be entered.

4. Plaintiff's argument wholly relies on a never-before-disclosed theory that contradicts the entire alleged basis for his breach of contract claim.

Plaintiff argues that the State breached the Settlement Agreement because it "did not build what is represented in the [2004/2005 Sketch Maps]." Opps., 5:24-25. But this argument represents a total change in theory from the one presented by Plaintiff in his Amended Complaint and during discovery. Under his new theory, Plaintiff contends that the State breached the Settlement Agreement by changing the Blue Diamond/I-15 interchange from an interchange with *no* Flyover to an interchange with a Flyover. Prior to the close of discovery, however, Plaintiff only ever argued that his claims related to a change in design from a 2008

1 conceptual flyover (the “2008 Conceptual Flyover”) to the Flyover that was actually built. The
2 2008 Conceptual Flyover was proposed as part of the 2008 I-15 South Corridor Improvement
3 Project, and it was included in that Project’s 2008 EA.

4 On May 29, 2012, Plaintiff submitted a formal claim to the State (the “Letter
5 Complaint”), a copy of which is attached hereto as Ex. A. The Letter Complaint alleged that the
6 State changed its 2008 Conceptual Flyover design without notifying him, and that the “*new*
7 [2010 As-Built] Flyover... destroy[ed] all visibility from I-15.” Ex. A, NV_Nassiri000739
8 (emphasis added). The Letter Complaint alleged damages based on a 2012 appraisal report
9 prepared by Timothy R. Morse, which was enclosed therewith. Mr. Morse’s appraisal
10 confirmed that Plaintiff’s complaint related to a change in design from the 2008 Conceptual
11 Flyover to the 2010 As-Built Flyover.

12 On March 27, 2013, Plaintiff filed his Amended Complaint. Like his Letter Complaint,
13 the Amended Complaint alleged claims relating to the change from the 2008 Conceptual
14 Flyover to the 2010 As-Built Flyover:

15 On March 24, 2010, NDOT held a public meeting on the I-15
16 South improvements. A review of meeting materials reveals that
17 NDOT, and its agent Las Vegas Paving, discussed and presented a
18 *new* “flyover” at the Blue Diamond Road Interchange [without
19 notice to Plaintiffs].

20 Three weeks later, on April 15, 2010, [] Las Vegas Paving entered
21 into a Ground Lease Agreement with Plaintiffs to use a portion of
22 the Subject Property as storage and staging area for I-15
23 construction. At that time, Las Vegas Paving provided, and
24 incorporated into the Agreement, a diagram of the Blue Diamond
25 Road Interchange improvements. *That diagram, however, did
26 not depict the “flyover” that [was] actually planned at that
27 time....*

28 *The Blue Diamond Road Interchange “flyover” is contrary to
plans shown to Plaintiffs in April 2010.... Plaintiffs [] relied on
the plans in taking or refraining from taking action, including
action to object to the changed and damaging construction, or to
seek judicial relief to alter or halt the planned construction.*

ACompl., ¶¶ 25-26, 30 (emphasis added). Plaintiff was well-aware of the 2008 Conceptual
Flyover; he had no reason to “seek judicial relief to alter or halt the planned construction” of the
2008 Conceptual Flyover; and his claims in this lawsuit relate to the change from the acceptable

1 2008 Conceptual Flyover to the 2010 As-Built Flyover—or at least they did.

2 In opposition to the State’s motion, Plaintiff now argues that his claim relates to the
3 State changing the Blue Diamond/I-15 interchange from an interchange with *no* Flyover to an
4 interchange with a Flyover. The Court should reject Plaintiff’s attempt to change the entire
5 theory of his case after the close of discovery. *See Francis*, 262 P.3d at 713 (rejecting a similar
6 “manipulative cat and mouse approach to litigation.”) (Quotation omitted). In either case (2008
7 Conceptual Flyover to As-Built Flyover or No Flyover to Flyover), however, Plaintiff has failed
8 to demonstrate that the State violated any duty owed to Plaintiff under the Settlement
9 Agreement.

10 **5. *Assuming arguendo that the Court allows Plaintiff to suddenly change***
11 ***the basis of his claim, his new theory is still barred by the express***
12 ***waivers and releases set forth in the Settlement Agreement.***

13 The State argues in its motion that Plaintiff’s breach of contract claim cannot survive in
14 light of the Settlement Agreement’s “As-Is” clause and other express waivers and
15 acknowledgements. In opposition, Plaintiff contends that the State’s argument “either mistakes
16 or intentionally ignores that Plaintiff’s breach of contract claim is based on [the State’s]
17 building of an improvement that differed from what it disclosed to Plaintiff.” Opps., 8:8-9.
18 Plaintiff, however, fails to expand on this incoherent assertion. Nor does he explain how his
19 new breach of contract theory nullifies the express waivers, releases, and acknowledgements
20 that he agreed to in the Settlement Agreement. It appears that Plaintiff’s true aim is to merely
21 create confusion, which he succeeds in doing.

22 Plaintiff also ignores the State’s extensive legal arguments on this topic. The State
23 explains at length—with citations to on point, binding and persuasive case law—that an “As-Is”
24 provision, like the one set forth in the Settlement Agreement, precludes the exact claims that
25 Plaintiff asserts in this lawsuit. Mot., 21:10-12 (“When a buyer acquires real estate pursuant to
26 an ‘as is’ disclaimer, he cannot later sue over the subject property’s condition,” citing *Bill*
27 *Stremmel Motors, Inc. v. IDS Leasing Corp.*, 514 P.2d 654, 657 (Nev. 1973)). Plaintiff makes
28 no effort to distinguish *Bill Stremmel Motors*, or any of the State’s other applicable authorities,
and he provides no legal authority of his own to refute the State’s arguments. He merely

1 parades one conclusory assertion after another. The Court should reject Plaintiff's incoherent
2 allegations and conclusory statements, which, as a matter of law, "are insufficient to survive
3 summary judgment." *King*, 124 P.3d at 1163 (emphasis added). Plaintiff's claim fails in light
4 of the Settlement Agreement's "As-Is" clause.

5 It also fails under the comprehensive release in which Plaintiff expressly agreed to in the
6 Settlement Agreement:

7 NASSIRI RELEASE: Nassiri hereby releases and forever
8 discharges: (i) the [2004 Condemnation Action], or any matters
9 asserted therein, or which could have been asserted therein, or its
10 subject matter, ***including but not limited to any claims related to
the location on the Property of a public highway and necessary
incidents thereto***, and any claims for severance damages to the
remainder of Nassiri's property...

11 Ex. Q to Mot., Settlement Agreement, ¶ 2.09 (emphasis added). Plaintiff's failure to
12 acknowledge the State's arguments does not make them go away. Plaintiff's theories—both
13 new and old—are barred by the express waiver and release provisions in the Settlement
14 Agreement.

15 ***6. Plaintiff's opposition confirms that his breach of contract claim is
16 barred by the statute of limitations.***

17 In order to save his wholly unsupported claim from being time-barred, Plaintiff asserts
18 that he "became aware [the State] planned to build a flyover" in 2010. Opps., 10:14-15. Yet,
19 Plaintiff admits to receiving the State's conceptual 1999 Flyover Depiction in 1999. *Id.* at
20 10:27-28. Although Plaintiff alleges in his Opposition that the conceptual drawing contains "an
21 inconspicuous flyover," (at 11:2) the Flyover is clearly labeled in the drawing as "east to
22 northbound fly-over." UF, ¶¶ 2, 4. Additionally, the publicly-presented and available 2004 EA
23 stated the 2004 Blue Diamond Project "include[d] a proposed design for a future eastbound
24 [Blue Diamond] to northbound I-15 fly-over ramp to be constructed when traffic demand
25 warrants have been met and funding is available." UF, ¶ 1. The 1999 Flyover Depiction was
26 also attached as Figure 2 to the 2004 Environmental Assessment. UF, ¶ 4. Plaintiff therefore
27 knew (or should have known) of the facts that would later form the basis of his breach of
28 contract claim before he even entered into the Settlement Agreement. The limitation period for

1 this claim ran on April 29, 2011, six years after Plaintiff entered into the Settlement Agreement
2 and more than a year before Plaintiff filed his Complaint. Plaintiff's breach of contract claim is
3 time-barred and judgment must be entered in favor of the State on this claim.

4 **C. Plaintiff's Contractual Breach of the Implied Covenant of Good Faith and**
5 **Fair Dealing Claim Fails As a Matter of Law Because, Even Though The**
6 **State Disclosed Its Plan To Eventually Build The Flyover, It Had No Duty**
7 **To Do So Under The Settlement Agreement.**

8 Plaintiff argues that the State breached the Settlement Agreement's implied covenant of
9 good faith and fair dealing "by fail[ing] to disclose that it would [eventually] build the Flyover."
10 Opps., 14:19-20. This argument fails for two main, independent reasons. First, it is untrue.
11 The State publicized its future plans for the Flyover in the 2004 EA (and many other times
12 before that). Plaintiff even admits to receiving notice of the proposed future Flyover in *1999*.
13 Opps., 10:27-28. There is no factual basis for him to suggest that the State failed to disclose its
14 plan to eventually build the Flyover, and the entire foundation for Plaintiff's "breach" allegation
15 is wrong.

16 Notwithstanding this fatal flaw, Plaintiff's argument also fails because it is the same
17 exact contention that the Nevada Supreme Court rejected in *Nelson v. Heer*, 163 P.3d 420, 427
18 (Nev. 2007). Although the State cites heavily to *Nelson* in its motion, there is not even a
19 whisper of this dispositive case in Plaintiff's opposition.

20 *Nelson v. Heer* involved a dispute over the purchase and sale of real estate. *Id.* at 422.
21 Heer, the buyer, sued Nelson, the seller, for Nelson's alleged failure to disclose water damage to
22 the property that occurred four years before the sale. *Id.* at 423. Heer asserted claims for breach
23 of contract, intentional and negligent misrepresentation, and breach of the implied covenant of
24 good faith and fair dealing. *Id.* The district court allowed Heer's claims to go to the jury, who
25 found in Heer's favor on all claims (except the negligent misrepresentation claim, which was
26 subsumed by the intentional misrepresentation claim). *Id.* The district court denied Nelson's
27 motion for new trial and Nelson appealed. *Id.*
28

1 On appeal, the Nevada Supreme Court reversed in part and dismissed in part. *Id.* at 427.
2 Heer's claim for breach of the implied covenant of good faith and fair dealing fell within the
3 Court's dismissal:

4 It is well established that all contracts impose upon the parties an
5 implied covenant of good faith and fair dealing, which prohibits
6 arbitrary or unfair acts by one party that work to the disadvantage
7 of the other.

8 Our review of the record reveals no basis to support the jury's
9 determination that Nelson breached the implied covenant of good
10 faith and fair dealing. Heer asserted that Nelson breached the
11 covenant of good faith and fair dealing by failing to disclose the
12 prior water damage. *Nelson, however, did not have a duty under
13 the contract to disclose the water damage.... Since Nelson bore
14 no contractual duty to disclose the water damage, Nelson's
15 omission did not constitute an arbitrary or unfair act that
16 worked to Heer's disadvantage.*

17 *Id.* (citations omitted) (emphasis added).

18 Plaintiff's claim for breach of the implied covenant of good faith and fair dealing fails
19 for the reasons articulated in *Nelson*, which is indistinguishable from the present case. In
20 *Nelson*, the sole basis for Heer's claim for breach of the implied covenant was Nelson's alleged
21 failure to disclose water damage. Similarly, the sole basis for Plaintiff's claim is the State's
22 alleged "fail[ure] to disclose that it would [eventually] build the Flyover." Opps., 14:19-20.
23 Just as Heer's claim failed because "Nelson [] did not have a duty under the contract to disclose
24 the water damage," Plaintiff's claim likewise fails because the State bore no duty under the
25 Settlement Agreement to disclose its future plan to build the Flyover (even though those plans
26 were publicly available). *Nelson* is squarely on point, and it requires summary judgment in the
27 State's favor on Plaintiff's claim for breach of the implied covenant of good faith and fair
28 dealing.

1 **D. Plaintiff's Tortious Breach Of The Implied Covenant Of Good Faith And**
2 **Fair Dealing Fails As A Matter Of Law.**

3 ***1. Plaintiff fails to rebut the State's argument that no fiduciary or special***
4 ***relationship exists between the state and its citizens, especially in an***
5 ***adversarial, arm's length transaction between two unrelated,***
6 ***sophisticated parties.***

7 Judgment should also be entered in favor of the State on Plaintiff's tortious breach of the
8 implied covenant claim for many of the same reasons as Plaintiff's contractual breach of the
9 implied covenant claim, including the fact that the State breached no duty owed to Plaintiff,
10 Plaintiff expressly waived his right to assert this claim, and the claim is time-barred. Those
11 arguments are incorporated into this section by reference.

12 This claim should also be dismissed for the additional and fundamental reason that the
13 special element of reliance or fiduciary duty does not exist between the State and Plaintiff. It is
14 undisputed that the Settlement Agreement was an arm's length transaction between two
15 unrelated and sophisticated parties. See Ex. 23 to Opps., Chapman Depo., 71:7-14 (Q: "Would
16 you consider the -- the Settlement Agreement [] and the agreements included therein to be an
17 arm's-length transaction between the [State] and [Plaintiff]?" A. "Yes."). It is also undisputed
18 that the terms of the Settlement Agreement were heavily negotiated. UF ¶¶ 25-34. See also
19 *Great Am. Ins. Co. v. General Builders, Inc.*, 934 P.2d 257, 263 (Nev. 1997) (stating the Nevada
20 Supreme Court has *consistently "denied tort liability in certain relationships where*
21 *agreements have been heavily negotiated and the aggrieved party was a sophisticated*
22 *businessman."*) (Emphasis added).

23 Despite clearly overlooking the fact that Plaintiff's lawyer admitted the parties entered
24 into an arm's length transaction, Plaintiff also completely disregards the case law cited by the
25 State which specifically establishes that no fiduciary relationship exists between a government
26 and its citizens. See 2/20/15 Mot. At 27:18-29:3 (citing and analyzing *Smith v. City and County*
27 *of San Francisco*, 275 Cal.Rptr. 17 (Cap. App. Ct. 1990)). He makes no attempt to distinguish
28 *Smith* or provide any case law of his own to dispute the State's arguments. Again, Plaintiff's
"*[m]ere allegations and conclusory statements... are insufficient to survive summary*
judgment." *King*, 124 P.3d at 1163 (emphasis added).

Plaintiff's citation to the State's Right-of-Way Manual does not trump Nevada case law or create the fiduciary relationship needed to substantiate this claim. Although Plaintiff fails to explain how the **2011** Right-of-Way Manual applies to the parties' **2005** Settlement Agreement, the section cited by Plaintiff in his opposition does not apply to the parties' arm's length transaction anyway. That section applies to "acquiring property expeditiously by negotiation" and does not apply to the transaction between Plaintiff and the State, especially since the State had filed an eminent domain action against Plaintiff making them adversaries in Court. Plaintiff and the State were also each separately represented by competent legal counsel and expert consultants during the 2004 condemnation proceedings, as well as the non-condemnation proceedings relating to the purchase and sale of the Surplus Parcel. UF, ¶¶ 13, 15. Given that the terms of the Settlement Agreement were heavily negotiated, one party did not have vastly superior bargaining power over the other, and because there is no fiduciary relationship between a government and its citizens, there was no special element of reliance between the parties and judgment must be entered in favor of the State on this claim.

2. The State Is Immune From Tort Liability.

The Court was hesitant to dismiss Plaintiff's tortious breach claim pursuant to the immunity doctrine because it was unclear whether the claim was "a pure tort that the immunity statutes applied to." Ex. Y, 48:24-25. The State established in its motion that this claim is a pure tort. Plaintiff does not dispute that in his opposition. Therefore, because this Court already held that the State "is immune from tort liability under NRS 41.032 as to its decision to [design and] construct the Flyover" when dismissing Plaintiff's same allegations under his misrepresentation claims, 10/16/16 Order, ¶ 9, the immunity doctrine also applies to Plaintiff's tortious breach claim.

E. **Plaintiff Confuses His Breach Claims With His Misrepresentation Claims, Which This Court Previously Dismissed With Prejudice.**

Even if Plaintiff's allegations could survive the forgoing fatal flaws, which they cannot, they still do not make out a cognizable claim for either breach of contract, breach of the implied covenant, or tortious breach of the implied covenant. Plaintiff's Breach Claims solely rely upon alleged "misrepresentations" made to him by the State:

- Opps. at 5:24-6:1 (alleging the State "did not build what is **represented** in the [maps]" and that the "building of the flyover is a material breach of the Settlement Agreement and the oral and written **representations** made by [the State] in the negotiation of the Settlement Agreement");
- Opps. at 8:8-9 (alleging "Plaintiff[s] breach of contract claim is based on [the State]'s building of an improvement that **differed from what it disclosed** to Plaintiff");
- Opps. at 10:1-2 ("[the State] **presented** to Plaintiff[] plans . . . that did not contain a flyover"); 10:5 ("[the State] **never mentioned** a flyover to Plaintiff[]");
- Opps. at 10:11-12 ("[the State] **represented** that it was building the Blue Diamond Interchange without a flyover");
- Opps. at 11:12-13 ("[the State] **represented** . . . that the Blue Diamond Plan did not include a flyover"); 11:13 (pointing out alleged "direct **representations**" made by the State) (emphasis added).

Assuming *arguendo* that these misrepresentation allegations are true, which they absolutely are not, they would—at most—amount to a misrepresentation claim;⁴ not any one of his Breach Claims. Plaintiff confuses his Breach Claims with his misrepresentation claims, which the Court previously dismissed **with prejudice**. Accordingly, summary judgment should be entered in the State's favor on Plaintiff's deficient Breach Claims.

⁴ The elements of a negligent misrepresentation claim include: (i) defendant, in the course of an action in which he had a pecuniary interest, supplied false information for the guidance of others in their business transactions, (ii) defendant failed to exercise reasonable care or competence in obtaining or communicating the information to plaintiff; (iii) plaintiff justifiably relied on this information; and (iv) plaintiff suffered damages as a result. *Blanchard v. Blanchard*, 839 P.2d 1320, 1322 (Nev. 1992). The elements of an intentional misrepresentation claim include: (i) defendant made a false representation, (ii) defendant knew or believed that his or her representation was false, or defendant had an insufficient basis of information for making the representation; (iii) defendant intended to induce plaintiff to act or refrain from acting upon misrepresentation; (iv) plaintiff justifiably relied upon defendant's representation; and (v) plaintiff sustained damages as a result. *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386 (Nev. 1998).

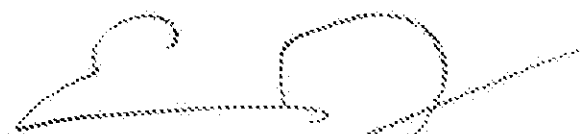
II.

CONCLUSION

Plaintiff has failed to develop any evidence to establish that the State breached any obligation, promise, or duty arising under the written terms of the Settlement Agreement. Plaintiff instead relies upon dismissed misrepresentation allegations in an attempt to save his wholly unsupported claims for relief, abandons old theories for new ones, and fails to rebut many of the State's legally and factually-supported arguments. It is uncontroverted that the State did *not* breach any express contractual duty contained within the written Settlement Agreement. To the contrary, the State expressly reserved the right to "adapt and improve the whole or any part of the Property in accordance with the provisions of NRS Chapter 408." Ex. Q to Mot., ¶ 2.14. The Integration Clause of the Settlement Agreement further precludes Plaintiff from attempting to bootstrap a duty into the Settlement Agreement via inapplicable statutes, provisions from a State manual, or irrelevant, unauthenticated sketch maps. As no contractual duties have been breached, and for all of the foregoing reasons, summary judgment should be entered in favor of the State on each of Plaintiff's Breach Claims.

DATED this 25th day of March, 2015.

Respectfully submitted by:



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Certificate of Service

I hereby certify that on the 25th day of March, 2015, I served a true and correct copy of the above and foregoing **THE STATE'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS FOR: (1) BREACH OF CONTRACT, (2) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, AND (3) TORTIOUS BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING** to all parties, via the Court's e-filing service.

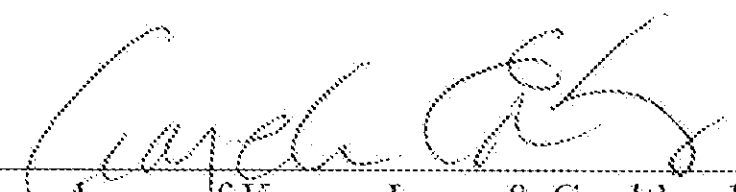

An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT A

ERIC R. OLSEN, ESQ.
eolsen@gordonsilver.com

May 29, 2012

VIA FEDERAL EXPRESS

Office of the Ex Officio Clerk of the
State Board of Examiners
100 North Carson Street
Blasdel Building, Capitol Complex
Carson City, Nevada 89701

Attn: Keith Marcher, Deputy Attorney General

Re: Submission of Claim on Behalf of Fred Nassiri Against State of Nevada on
Relation of Its Department of Transportation Pursuant to NRS 41.036 *et seq.*;
NAC 41.100 *et seq.*

To Whom It May Concern:

This firm has been retained to represent the interests of Fred Nassiri concerning property he acquired from the State of Nevada on relation of its Department of Transportation ("NDOT"). Mr. Nassiri hereby submits this claim against NDOT pursuant to NRS 41.036 *et seq.* and NAC 41.100 *et seq.*

FACTUAL BACKGROUND

Mr. Nassiri owns certain property located at I-15 and Blue Diamond Road abutting the I-15 interchange.¹ He acquired a substantial part of that property from the State of Nevada.

On or about August 31, 2004, NDOT filed a condemnation action against Mr. Nassiri in the Eighth Judicial District Court, Clark County, Nevada, Case No. A491334 (the "Condemnation Action"), to acquire certain property Mr. Nassiri owned in fee simple in connection with the construction and reconstruction of the I-15/Blue Diamond interchange and the attendant widening and realignment of Blue Diamond Road.

The parties resolved the Condemnation Action by entering into a Settlement Agreement and Release of All Claims dated April 28, 2005 (the "Settlement Agreement").² Pursuant to the terms of the Settlement Agreement, NDOT acquired 4.21 acres from Mr. Nassiri for

¹ See diagram of this property attached hereto as Exhibit 1 for ease of reference.

² See Settlement Agreement and Release of Claims and First Amendment thereto attached collectively hereto as Exhibit 2.

Gordon Silver

Attorneys and Counselors at Law

Office of the Ex Officio Clerk of the
State Board of Examiners
May 29, 2012
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\$4,810,000 and, as an "exchange," Mr. Nassiri acquired 24.41 acres from NDOT for \$23,239,004.50 (the "Exchange Property"). Mr. Nassiri owned adjoining parcels, and together with the Exchange Property, he would own a contiguous 67 acre parcel following this transaction.

As for the 4.21 acres, Mr. Nassiri did not question NDOT, and simply accepted NDOT's asking price, knowing the State needed this land. However, while Mr. Nassiri was cooperative in the process of resolving the Condemnation Action, as detailed below, NDOT unlawfully took advantage of Mr. Nassiri and deceived him in this process, thereby entitling him to the relief requested herein.

NDOT Conveyed the Exchange Property to Mr. Nassiri by Quit Claim, Exposing Him to Costly Litigation

NDOT did not convey the Exchange Property to Mr. Nassiri by Warranty Deed. Instead, NDOT only conveyed the Exchange Property by Quit Claim,³ possibly with specific knowledge of a pending or threatened lawsuit, thus exposing Mr. Nassiri to litigation.

In fact, on or about March 6, 2007, Alexandra Properties, LLC, Oasis Las Vegas, LLC, and New Horizon 2001, LLC filed an action against Mr. Nassiri and the Nassiri Living Trust in the Eighth Judicial District Court, Clark County Nevada, Case No. A537215 (the "Koroghli Litigation"), alleging claims against Mr. Nassiri relating to his acquisition of the Exchange Property.

On or about November 17, 2008, the parties entered into a Settlement Agreement to resolve the Koroghli Litigation.⁴ Pursuant to the terms of the Settlement Agreement, the parties each agreed to a mutual exchange of parcels that were contiguous to other's large parcels of land, but Mr. Nassiri was required to pay the settlement sum of \$5,500,000 to plaintiffs.

Together with legal expenses, Mr. Nassiri incurred over \$7 Million in connection with the Koroghli Litigation. NDOT exposed Mr. Nassiri to this claim, and potentially others with easements or reversionary rights, by conveying the Exchange Property to him by Quit Claim, instead of by Warranty Deed. Specifically, Mr. Nassiri incurred expenses in the amount of

³ See Quit Claim Deed, attached hereto as Exhibit 3.

⁴ See Settlement Agreement attached hereto as Exhibit 4.

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Attorneys and Counselors at Law

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\$200,000 to resolve a claim by Carolyn Ann Chambers relating to an alleged reversionary interest in a portion of the Exchanged Property.

NDOT Conceals an Appraisal of the Exchange Property from Mr. Nassiri and Charges Him a Staggering 46% Premium on the Purchase Price

During his discussions with NDOT concerning the purchase of the Exchange Property, Mr. Nassiri repeatedly requested that NDOT provide him with a copy of the appraisal relating to the Exchange Property. Despite Mr. Nassiri's repeated requests, NDOT refused to disclose its appraisal, and Mr. Nassiri ultimately purchased the Exchange Property from NDOT for \$23,239,004.50. Together with all applicable title fees, Mr. Nassiri paid \$23,396,223 to Nevada Title Co. to close escrow.

It was not until years later that Mr. Nassiri obtained a copy of NDOT's 2004 appraisal of the Exchange Property and he learned that NDOT had charged him approximately \$8,000,000.00 over and above the appraised value of the Exchanged Property (\$15,550,000.00 stand-alone value for Exchange Property versus \$22,650,000.00 value for assemblage with the adjoining parcel).⁵

While the market may recognize, in some instances, that parcels purchased from private parties for assembly carry a premium above the market value of a parcel on a stand-alone basis, Mr. Nassiri was denied knowledge that he was being charged a premium, and he was not negotiating based on a premium at all. NDOT essentially penalized Mr. Nassiri, with a hidden premium of approximately 45.65%, for buying an adjoining parcel of land.⁶ Mr. Nassiri did not charge NDOT a premium, though it needed to assemble land for its right-of-way. He accepted the bid of \$4.8 million from the State for his property. The notion that the government would charge its citizen, who had not haggled one dollar over his selling price to the State, an undisclosed premium on his purchase price from the State, because he was unlucky enough to own the adjoining parcel, is offensive.

⁵ See Appraisal attached hereto as Exhibit 5.

⁶ This price, \$23 per foot, is somewhat astonishing for a land-locked parcel without frontage on Las Vegas Blvd. and five, effectively, unusable acres - \$5,400,000.00.

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NDOT overcharged Mr. Nassiri for the Exchange Property in the amount of \$7,846,223.00 (i.e., \$23,396,223 less \$15,550,000). This overpayment has also resulted in Mr. Nassiri being required to pay additional interest on money borrowed to make this overpayment, in the amount of \$3,405,190, and additional property taxes based on the inflated value, in the amount of \$954,218.00.⁷

In sum, not only did NDOT, a government agency, refuse to disclose an appraisal of the Exchange Property to Mr. Nassiri, a taxpayer and good citizen, in connection with the land purchase, but NDOT also overcharged Mr. Nassiri by nearly \$8 Million more than the appraised value of the Exchange Property, resulting in Mr. Nassiri paying over \$4 Million in additional interest and property taxes, on top of the overpayment.

NDOT Changes the Blue Diamond Interchange Construction Plan and Constructs a "Fly Over" at Blue Diamond Road That Significantly Diminishes the Value of the Property

The Exchange Property adjoins the Blue Diamond Road portion of the I-15 South Design-Build Project. During his discussions with NDOT concerning the purchase of the Exchange Property, Mr. Nassiri inquired as to the plans for the Blue Diamond Interchange construction. Importantly, the plans that NDOT provided for disclosure and explanation of the construction to be performed at that location did not include the new "Fly Over" at Blue Diamond Road as now constructed.⁸

Mr. Nassiri was enticed to purchase the Exchange Property from NDOT primarily by the enhancements set forth in the New Blue Diamond Road Interchange plan. Specifically, the plan depicted the enhanced I-15 traffic flow and visual exposures for the Exchange Property and Mr. Nassiri's contiguous 40+ acres that he already owned, totaling 1500+ feet of I-15 visual exposure for a future development project.

Importantly, NDOT was also specifically aware of the substantial value of the Exchange Property deriving from the visibility of the property, as its own appraisal prepared in 2004 stated, as follows: "The subject property, in the after condition, will have good visibility from Las Vegas Boulevard, Interstate 15 and the realigned Blue Diamond Road..." (See Exhibit 5 at 64.) In addition, NDOT's appraisal went on to state that "with the assemblage or plottage of

⁷ See Spreadsheet detailing overpayment, interest, and property taxes calculations attached hereto as Exhibit 6.

⁸ See diagram, Figure 10F, attached hereto as Exhibit 7.

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Attorneys and Counselors at Law

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the subject site, would include and/or benefit from direct visibility along the Interstate 15 right-of-way." (*Id.* at 68.) Thus, NDOT specifically appreciated the value of the projects (and related signage) visibility, particularly at one of the southernmost interchanges in Las Vegas.

Despite this knowledge, and the money obtained by the State from Mr. Nassiri in exchange for land with visibility, in 2010, without providing Mr. Nassiri with any notice whatsoever of the drastic revisions to the previously disclosed plans prior to commencing construction and/or providing Mr. Nassiri with any opportunity to object or take legal action regarding the same, NDOT began construction of the new "fly over" at Blue Diamond Road in a manner contrary to plans shown to him at the time of the transaction.⁹ Indeed, the "fly over" that was constructed at a height of approximately 60 feet completely blocks any view of Mr. Nassiri's property, and of any possible signage. The new "fly over" not only resulted in a negative impact on the Exchange Property acquired directly from NDOT, but it also negatively impacted Mr. Nassiri's entire 67 acre property.

The "fly over" has had an enormous and disastrous impact on Nassiri's entire property, resulting in a significant decline in the value and development uses to both the Exchange Property and Mr. Nassiri's existing contiguous parcel due to the loss of visibility from I-15. Specifically, the appraised value of the total assemblage has decreased by at least \$6 Million as a result of the loss of view from the "fly over" constructed at Blue Diamond Road.¹⁰

As the I-15 visual exposure was a central consideration to this transaction, Mr. Nassiri never would have purchased the Exchange Property from NDOT, let alone for the high purchase price of nearly \$24 Million if he had known that NDOT would ever to construct the new "fly over" at Blue Diamond Road and destroy all visibility from I-15. Moreover, NDOT failed to provide notice to Mr. Nassiri of the new "fly over," notwithstanding the fact it sold him the property with full knowledge that the visibility had material value and that NDOT had charged him a 46% premium.

When all of the foregoing acts by NDOT are taken as a whole, they reveal a bad faith pattern of taking unlawful actions that seriously reduced the value of Mr. Nassiri's property and causing him significant damages amounting to the tens of millions of dollars.

⁹ See photographs attached hereto as Exhibit 8.

¹⁰ See Appraisal attached hereto as Exhibit 9.

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MR. NASSIRI'S REQUESTED RELIEF

As detailed herein, Mr. Nassiri has dealt in good faith with NDOT. Notwithstanding NDOT's deceptions, Mr. Nassiri remains reasonable in his endeavor to resolve this matter. Thus, Mr. Nassiri proposes the following two alternatives as a resolution to this matter.

1. Option 1: Rescission

As a result of NDOT's bad faith conduct related to the sale of the Exchange Property, Mr. Nassiri hereby demands a rescission of the entire transaction relating to his purchase of the Exchange Property.

It is important to note that a rescission contemplates not only a return of the purchase price that Mr. Nassiri paid for the Exchange Property (\$23,396,223¹¹), but also includes damages. Those damages and the total monetary demand for rescission are detailed as follows:

Return of Purchase Price	\$23,396,224.00
Chambers' Claim Settlement	\$200,000.00
Interest Paid on Purchase (6/1/05-5/31/12)	\$9,986,715.00
Property Taxes (incl. interest) for Tax Years 2006-2012	\$1,844,256.00
Koroghli Litigation Settlement and Legal Expenses	\$7,086,262.00
TOTAL	\$42,513,457.00

2. Option 2: Damages and Concessions by NDOT

In the event that NDOT is not inclined to rescind the transaction, Mr. Nassiri demands compensation related to the overpayment for the Exchange Property that NDOT charged him

¹¹ The final purchase price was \$23,239,004.50. However, Mr. Nassiri paid \$23,396,223 to Nevada Title Co. to close escrow, which included all applicable title fees.

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(including the additional interest and property taxes resulting therefrom) and compensation for the diminution of value to his assemblage due to the loss of visibility from the new "fly over" at Blue Diamond Road, together with certain concessions from NDOT related to the property.

The overpayment amounts to a total of \$12,405,631.00, detailed as follows:

Overpayment - Purchase Price Less Appraised Value per NDOT Appraisal (\$23,396,223 less \$15,550,000)	\$7,846,223.00
Chambers' Settlement Claim	\$200,000.00
Interest on \$8,046,223 (at 6.010% for 2504 days)	\$3,405,190.00
Additional Property Taxes (as a result of overpayment) plus interest	\$954,218.00
TOTAL	\$12,405,631.00

In addition, Mr. Nassiri demands compensation related to the significant decrease in the value of his entire property resulting from the new "fly over" at Blue Diamond Road. As Mr. Nassiri's property has decreased by \$6 Million dollars due to the loss of visibility, Mr. Nassiri demands that he be compensated for this reduction in the value of his property accordingly.

Thus, Mr. Nassiri seeks **total damages in the amount of \$18,405,631.00** (*i.e.*, \$12,405,631.00 plus \$6,000,000), for the overcharge, plus diminution in value.¹²

¹² It is important to note that this damages figure does not include additional financial hardships that destruction of the value of this property has caused. For example, in order to pay for the bank's loan interest and required principal pay-downs, Mr. Nassiri had no choice but to dispose some of other properties for a loss (*i.e.* 30-acre parcel in Pahrump, including water rights, sold in 2011 for a loss of almost \$2 Million; property in Horizon/Gibson was also sold at distressed prices). In addition, Mr. Nassiri had to resort to additional loans (\$3.15 Million at 8% interest) from a third party and mortgaged three properties to keep up with the expenses related to this property.

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Attorneys and Counselors at Law

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In conjunction with this compensation, Mr. Nassiri demands that NDOT provide the following concessions related to the property:

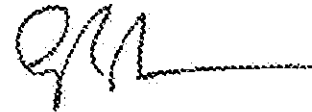
1. A merging lane from the Exchange Property to I-15
2. That NDOT convey strip along I-15 continuing to Blue Diamond Road
3. That NDOT convey strip along Blue Diamond Road
4. A left/right turn signal at Blue Diamond Road
5. That NDOT convey strips along Las Vegas Boulevard
6. That NDOT convey rectangular parcel at Las Vegas Boulevard and old Blue Diamond Road
7. A left/right traffic signal at Las Vegas Blvd. and old Blue Diamond Road
8. An accommodation for signage for the Nassiri property on I-15.

These concessions are more particularly detailed in "yellow" in the diagram attached hereto as Exhibit 1. These parcels Mr. Nassiri requests NDOT to convey are necessary to complete the property, and consistent with previous requests by Nassiri, as Mr. Nassiri was not granted the entire property and these parcels would complete the contiguous property to provide for best use.

If you have any questions about the foregoing, please do not hesitate to contact me at (702) 796-5555. I look forward to hearing from you.

Sincerely,

GORDON SILVER



ERIC R. OLSEN, ESQ.

Enclosures (as noted)
cc: Fred Nassiri

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, on relation of its
Department of Transportation,

Petitioner,

vs.

Case No. 70098

THE EIGHTH JUDICIAL DISTRICT
COURT, COUNTY OF CLARK, STATE OF
NEVADA, AND THE HONORABLE
GLORIA STURMAN, DISTRICT JUDGE,

Respondents,

and

FRED NASSIRI, individually and as trustee of
the NASSIRI LIVING TRUST, a trust formed
under Nevada law,

Real Party in Interest.

APPENDIX VOLUME 6, part 3

TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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ATTORNEYS FOR PETITIONER

Document Description	Volume Number	Bates Number
Amended Complaint	1	PA00015-054
Answer to Amended Complaint and Counterclaim	2	PA00233-282
Answer to the State's Counterclaim	2	PA00283-292
Appendix to Nassiri's Opposition to Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	10	PA01841-2091
Appendix to Nassiri's Opposition to Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI...	11	PA02092-2281
Appendix to Nassiri's Opposition to the State's MPSJs Re Inverse Claim and Contract Claims	5	PA00808-977
Appendix to Nassiri's Opposition to the State's MPSJs Re Nassiri's Inverse Claim and Contract Claims...	6	PA00978-1150
Appendix to the State's Motion for Partial Summary Judgment on Nassiri's Contract Claims	4	PA00504-695
Complaint	1	PA00001-014
Hearing Transcript (4-1-15 Hearing on the State's MPSJ on Nassiri's Inverse Claim and Contract Claims)	13	PA02460-2540
Hearing Transcript (5-19-15 Transcript of Closing Arguments at Bench Trial)	13	PA02541-2634
Hearing Transcript (Motion to Dismiss)	1	PA00156-224
Hearing Transcript (MPSJ on Prayer for Rescission)	7	PA01391-1451
Hearing Transcript (MPSJ Re Rescission Based on Bench Trial Ruling)	9	PA01763-1812
Hearing Transcript.1 (Motion to Exclude Damages Evidence or Strike Harper-Oral Arguments)	12	PA02389-2455
Hearing Transcript.2 (Motion to Exclude Damages Evidence or Strike Harper-Announcement of Ruling)	12	PA02349-2388
Motion for Partial Summary Judgment on Nassiri's Contract Claims	4	PA00596-726
Motion for Partial Summary Judgment on Nassiri's	5	PA00727-754

Prayer for Rescission		
Motion for Partial Summary Judgment on Nassiri's Rescission Claim Based on the Court's Trial Ruling	8	PA01598-1614
Motion for Summary Judgment on Nassiri's Claim for Inverse Condemnation (with Appendix)	3	PA00293-503
Motion to Bifurcate/Confirm the May 4, 2015, Trial as a Bench Trial	7	PA01306-1339
Motion to Dismiss Filed by the State	1	PA00055-108
Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	9	PA01649-1746
Notice of Supplemental Authority Re MPSJs Filed by the State	7	PA01239-1249
Opposition to the State's Motion to Bifurcate/Confirm the May 4, 2015, Trial as a Bench Trial	7	PA01340-1390
Opposition to the State's Motion to Dismiss	1	PA00108-136
Opposition to the State's Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	9	PA01813-1840
Opposition to the State's MPSJ on Nassiri's Claim for Inverse Condemnation	5	PA00775-807
Opposition to the State's MPSJ on Nassiri's Contract Claims	5	PA00755-774
Opposition to the State's MPSJ on Nassiri's Prayer for Rescission	6	PA01151-1170
Opposition to the State's MPSJ on Nassiri's Rescission Claim Based on Trial Ruling	8	PA01615-1648
Order Re Motion to Bifurcate/Confirm May 4, 2015, Trial as Bench Trial	8	PA01552-1555
Order Re Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	12	PA02456-2457
Order Re MPSJ on Nassiri's Claim for Inverse Condemnation	8	PA01536-1543
Order Re MPSJ on Nassiri's Contract Claims	8	PA01526-1535
Order Re MPSJ on Nassiri's Prayer for Rescission	8	PA01544-1551
Order Re MPSJ on Nassiri's Rescission Claim Based on Trial Ruling	12	PA02458-2459
Order Re the State's Motion to Dismiss	1	PA00225-232
Reply in Support of the State's Motion to Dismiss	1	PA00137-155

Reply in Support of the State's Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	12	PA02282-2348
Reply in Support of the State's MPSJ on Contract Claims	6	PA01171-1201
Reply in Support of the State's MPSJ on Nassiri's Claim for Inverse Condemnation	7	PA01202-1238
Reply in Support of the State's MPSJ on Nassiri's Prayer for Rescission	7	PA01250-1305
Reply in Support of the State's MPSJ on Nassiri's Rescission Claim Based on Trial Ruling	9	PA01747-1762
Supplemental Trial Brief Filed by Nassiri	8	PA01505-1525
Supplemental Trial Brief Filed by the State	8	PA01494-1504
Trial Brief Filed by Nassiri	8	PA01479-1493
Trial Brief Filed by the State	8	PA01452-1478
Trial Ruling	8	PA01577-1597
Trial Ruling (with Handwritten Changes)	8	PA01556-1576

APPRAISAL

f. Impairment of view from the remainder parcel

Some of the above items are more applicable to specific types of uses, i.e., visibility from the highway issues generally relate to commercial properties and view impacts are generally related to residential properties.

2. Proximity damages: Damages caused by the construction of the improvement in the manner proposed, including, but not limited to, visual impacts of the improvements proposed to be constructed as part of the project, noise, dust and fumes.

It is imperative that the appraiser has a copy of the construction plans and fully understands all impacts to the remainder parcel caused by the construction of the project.

B. Damages are to be addressed in all appraisals for partial acquisitions. If possible, the degree of damages should be proven by a paired-sale analysis of the market data. Damages should not be simply assumed and conversely, the lack of damages should not be assumed. If it is determined there are no damages to the remainder, the statement to that effect must be accompanied by an analysis that may, at times, approach the complexity of that used to ascertain damages.

4.208 Non-Compensable Damages

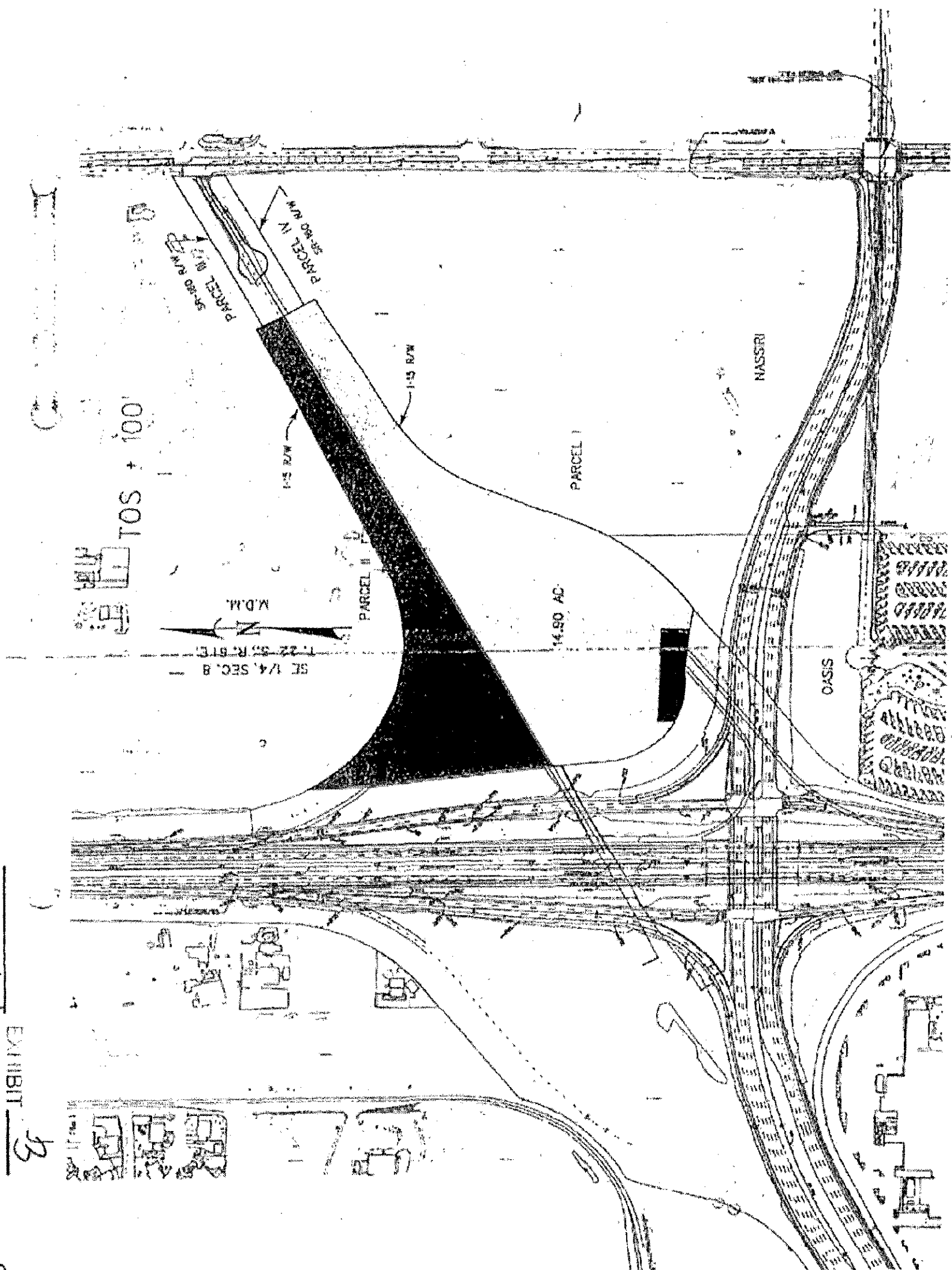
Not all damages to a remainder property are compensable. Nevada Case Law, which normally defines non-compensable damages, is ever changing. It is imperative that eminent domain appraisers keep current with Nevada Supreme Court rulings on damages. Past rulings have found that remote and speculative damages are generally held to be non-compensable. Some damages that have been ruled non-compensable when they are not accompanied by an acquisition are considered compensable when there is a acquisition from the parcel. As appraisers for the Department are normally appraising parcels with acquisitions, most of these damages are compensable. Counsel must be consulted to determine the non-compensability of any questionable damage item, such as:

Acquisitions from properties where there are businesses, including outdoor advertising, that must be relocated, or, from a property that is in the process of being developed, or redeveloped, may involve claims of damages related to business losses, i.e., frustration of plan or loss of goodwill.

The *Uniform Relocation Assistance and Real Property Acquisition Policies Act* of 1970, as amended requires condemners to break out their offers of purchase between acquisition and damages.

EXHIBIT 34

19/20/25 10280 10000



DATE 2/4/15

EXHIBIT

3

WITNESS Chapman

Amber M. Riggio, CCR NO. 914

Chapman003531

OPPOMSJ0280

EXHIBIT 35

MICHAEL G. CHAPMAN, P.C.

Attorney at Law

Michael G. Chapman
Michelle Stone
Kevin Bertonneau*
*Licensed in CA & NV

9585 Prototype Court, Ste. C
Reno, Nevada 89521
Telephone (775) 827-1866
Facsimile (775) 827-1872

August 27, 2004

Heidi Mireles
Nevada Department of Transportation
1263 S. Stewart Street
Carson City, NV 89701

RE: Nassiri re: NDOT
Our File No.: 470

Dear Ms. Mireles:

Mr. Nassiri, Steve Oxoby, and I would like to meet with you confidentially to discuss our settlement of this position vis a vis the Department of Transportation.

Our position is that we would like to acquire as much of the land, rendered excess to NDOT's needs by the project, as possible. We will exchange value for value with respect to the land needed by the Department for the project. We will then purchase additional land from the Department. We understand the Department's appraisal by Gary Kent is nearly finished and will be submitted to review shortly. The appraisers engaged by Mr. Nassiri may be asked to simply review Mr. Kent's work as opposed to prepare their own independent appraisal.

It is also our position that we would like the portion of the old Blue Diamond Road, which I am referring to as the Stub Piece, made available for exchange/purchase as well. (See attachment map).

It is also our position that we would like the Department to abandon the unabandoned 50 feet of right-away along Las Vegas Boulevard in order to create a consistent piece. (See attached map). You advised me the department's present position is not to abandon Las Vegas Boulevard right of way, but we are still making the formal request.

We realize Ray Koroghli and the other principals in the Oasis RV Park may want to exchange some of the land as well. We will work this matter out with them separately. The important point is that we would like to work out the entire matter now as part of a package settlement, and not wait until the NDOT project is done to complete said transaction.

Email - michael@michaelchapman.com — Web site - www.michaelchapman.com



Nassiri000062

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Heidi Mierles
27 August 2004
Page 2

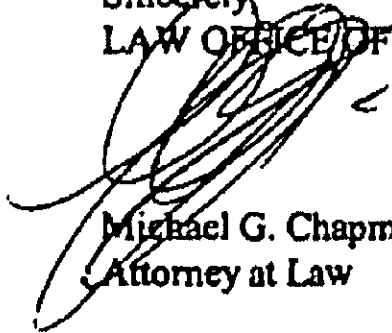
As you know, we also favor the installation of a full signal at the location discussed in our last meeting as part of the project.

I have spoken recently with Brian Hutchins to determine if there were any legal issues involved. While he was not aware of any offhand, it would be my intention to meet with the Department's legal counsel promptly to discuss and resolve any questions you may have regarding any of the settlement issues.

As we discussed today by phone, attorney Walch's office will phone to schedule a meeting for the second or third week of September. You will also attend this meeting. We look forward to meeting with you.

Thank you for working with us on this matter.

Sincerely,
LAW OFFICE OF MICHAEL G. CHAPMAN, P.C.



Michael G. Chapman,
Attorney at Law

MC/cw
cc: Brian Hutchins
Steve Oxoby
Fred Nassiri

W:\Nassiri\MierlesDiscussSettlement.ltr.wpd

Nassiri000063

OPPOMSJ0283

Review Comments



NOTE: Not To Scale

EXHIBIT 36

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DISTRICT COURT

CLARK COUNTY, NEVADA

FRED NASSIRI, individually)
and as trustee of the NASSIRI)
LIVING TRUST, a trust formed)
under Nevada law,)

Plaintiffs,) CASE NO.: A672841
vs.) DEPT. NO.: XXVI

STATE OF NEVADA, on relation)
of its Department of)
Transportation; DOE GOVERNMENT)
AGENCIES I-X, inclusive; DOE)
INDIVIDUAL I-X; and DOE)
ENTITIES 1-10, inclusive,)

Defendants.)

AND ALL RELATED CROSS-CLAIMS.)

DEPOSITION OF PAUL SAUCEDO

30(b)(6) of the NEVADA DEPARTMENT OF TRANSPORTATION

LAS VEGAS, NEVADA

TUESDAY, FEBRUARY 3, 2015

REPORTED BY: AMBER M. RIGGIO, CCR NO. 914

JOB NO.: 234324 - B

1 Q. But you didn't review the visibility -- any
2 policies or procedures in the right-of-way manual
3 concerning visibility before your deposition today?

4 A. I did not.

5 Q. What was your purpose in reviewing the
6 appraisal section?

7 A. I wanted to see what the -- the written
8 instructions were for appraising surplus property in
9 regards to assemblage.

10 Q. The instructions for appraising surplus
11 property in regards to an assemblage?

12 A. Yes.

13 Q. You're not here, counsel says, to discuss the
14 appraisal of the exchange property prepared and
15 obtained by the State from Gary Kent on August 30th,
16 2004 -- right?

17 A. Correct.

18 Q. Did you look at that appraisal before giving
19 your deposition today?

20 A. No.

21 Q. Did you look at correspondence concerning the
22 request for that appraisal to have been turned over to
23 Mr. Nassiri?

24 A. Yes.

25 Q. What were the instructions that you found in

1 the manual concerning a request for appraisal and
2 whether that request should be honored? Did you find
3 anything on that?

4 A. I did find in records to the acquisition
5 process, that we are to provide on a -- on a
6 acquisition for a project where we are to provide the
7 appraisal to the property owner.

8 Q. Was the October 1st, 2003, appraisal provided
9 to Mr. Nassiri?

10 A. Not to my knowledge.

11 Q. The negotiation section of the right-of-way
12 manual, what was your purpose in -- in looking at that
13 for purposes of the policies and procedures question?

14 A. I wanted to be -- to -- I know -- well, let
15 me back up. I know that the right-of-way manual
16 changes from time to time and there was a change in
17 how -- if we -- when we provide appraisals to the
18 property owner and so I wanted to make sure that that
19 change was in our current manual.

20 Q. What was the -- was there a different manual
21 in effect in 2005?

22 A. There was a different version of the manual.
23 It would be the same general manual but it -- it gets
24 revised every five years so.

25 Q. Fair enough.

1 It's revised every five years so there was a
2 revision of the 2005 in 2010?

3 A. Yes.

4 Q. Sorry, I probably misstated that. It
5 actually says here the date of the manual is
6 February 24th, 2011. Is that the date of the
7 right-of-way manual?

8 A. Yes.

9 Q. Okay. So it would have actually been revised
10 from a 2006 version?

11 A. It get --

12 Q. Or is it not exactly five years?

13 A. Well, it's going to be probably a little more
14 than five years because by the time it gets from the
15 Federal Highway Administration, gets through all the
16 legal checks and everything else, it might be a little
17 longer.

18 Q. You compared, at least with respect to the
19 appraisal turnover, the appraisal issue, did you
20 compare the 2011 with an earlier version of the
21 right-of-way manual?

22 A. Yes.

23 Q. Okay. What was the change, if any, with
24 respect to providing appraisals between those two
25 manuals?

1 A. In the earlier manual, it was not -- we were
2 to provide an appraisal if requested on -- and this is
3 during -- on the acquisition process. So during the
4 negotiation phase of the acquisition process if
5 requested we would provide an appraisal. And I believe
6 that had to be in writing. On the new version it is --
7 it is part of our process that we provide that upfront,
8 and again, that's in relation to acquisition of
9 property.

10 Q. Is there anything stated in the current
11 manual about property which is the subject, independent
12 of an acquisition, the subject of sale or exchange, is
13 there a different policy for appraisers -- appraisals?

14 A. Oh, I didn't look at that, to see if there
15 was a different policy on that specific issue. I don't
16 believe there is in regards to assemblage.

17 Q. Okay. How about -- okay.

18 Any other differences that you looked at
19 personally between the 2000 -- well, the prior version,
20 we'll call it 2005 or '6, and the current version on
21 these topics, the policies and procedures related to
22 sale and/or exchange of property?

23 A. No, I -- I didn't.

24 Q. You focused on the -- what you do with
25 appraisals and the distinction between what you had to

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) SS:
4 COUNTY OF CLARK)

5 I, Amber Riggio, a duly commissioned and
6 licensed court reporter, Clark County, State of Nevada,
7 do hereby certify: That I reported the taking of the
8 deposition of the witness, PAUL SAUCEDO, commencing on
9 Tuesday, February 3, 2015, at 3:18 p.m.;

10 That prior to being examined, the witness
11 was, by me, duly sworn to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript of said
14 deposition is a complete, true, and accurate
15 transcription of said shorthand notes.

16 I further certify that I am not a relative or
17 employee of an attorney or counsel or any of the
18 parties, nor a relative or employee of an attorney or
19 counsel involved in said action, nor a person
20 financially interested in the action; that a request
21 ([X] has) ([] has not) been made to review the
22 transcript.

23 IN WITNESS THEREOF, I have hereunto set my
24 hand in my office in the County of Clark, State of
25 Nevada, this 11th day of February 2015.

Amber M. Riggio
Amber Riggio, CCR No. 914

EXHIBIT 37

RECEIVED

DEC 10 2004

JOHN E. LEACH
GREGORY J. WALCH
NICHOLAS J. SANTORO
MICHAEL E. KEARNEY
J. DOUGLAS DRIGGS, JR.
RICHARD F. HOLLEY
DAVID G. JOHNSON
RONALD J. THOMPSON
JAMES E. WHITHIRE, III
STEVEN A. GIBSON
DANIEL L. SCHWARTZ
VICTORIA I. NELSON

**SANTORO, DRIGGS, WALCH
KEARNEY, JOHNSON & THOMPSON**

ATTORNEYS
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LAS VEGAS, NEVADA 89101
TEL (702) 791-0308
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MICHELLE D. BRIGGS
BRYCE K. EARL
ODONNA M. ATAMON
JENNIFER K. CRAFT
BYRON E. THOMAS
JENNIFER L. HANONO
BEH WEST
MICHAEL F. LYNCH
RYAN T. SCHULTZ
R. MICHAEL BLANLEY
STELLA B. DORRAN
TRACY A. GALLEGO

MICHAEL E. ROWE
JAVIER A. AROUELLO
LEK E. DAVIS
DEAN S. BENNETT
SEAN L. ANDERSON
JAMES D. BOYLE
BRETT D. EKINS

OF COUNSEL
ANTHONY A. ZHAILA
CHARLES L. TITUS

December 6, 2004

Via Facsimile: (775) 827-1872

Michael G. Chapman, Esq.
Chapman Law Office
9585 Prototype Court, #C
Reno, Nevada 89521

**RE: The State of Nevada, on relation of its Department of Transportation
(NDOT") v. Fred Nassiri, et al.; Case No. A491334; Our File No. 02740.19;
Settlement Offer**

Dear Mr. Chapman:

Thank you for your patience in waiting for NDOT's Settlement Offer to conclude the above-referenced litigation. As you know, several NDOT representatives and consultants have given their input to formulate this proposal.

NDOT engaged Gary H. Kent, Inc., and Gary Kent, MAI, to appraise Mr. Nassiri's parcel numbers S-160-CL-000.015 (0.58 acres), S-160-CL-000.016 (4.22 acres), and S-160-CL-000.016TE (a temporary easement consisting of 0.02 acres) (together the "Nassiri Parcels") in connection with acquisitions needed for the new SR-160/I-15 interchange. Mr. Kent concluded the value of the Nassiri Parcels is Four Million, Eight Hundred Ten Thousand Dollars (\$4,810,000), which is set forth in greater detail in the Complaint filed in the above-referenced proceeding. NDOT has also engaged Mr. Kent's group to evaluate the worth of 23.8 acres of land located on both sides of the existing SR-160 alignment north and west of Mr. Nassiri's property (the "Exchange Property"). It is my understanding that you already have maps of the Exchange Property, but I have enclosed a copy of the map illustrating the general locations of parcels 1 and 2 prepared by NDOT's Right-Of-Way Division. Mr. Kent concluded that the Exchange Property is worth Twenty-Two Million, Six Hundred Fifty Thousand Dollars

112740(SR-160) Project\19 Nassiri\Correspondence\Chapman Ltr 12.06.04.doc

EXHIBIT 12
DATE 2/4/15
WITNESS Chapman
Amber M. Rigglo, CCR NO.914
Chapman000653

16

OPPOMSJ0293

Michael G. Chapman, Esq.
December 6, 2004
Page 2

(\$22,650,000). NDOT has performed a review appraisal of Mr. Kent's analysis and concluded that Mr. Kent's valuation accurately estimates the value of the Exchange Property.

Subject to the conditions below, NDOT would be prepared to convey NDOT's interest in the Exchange Property to Mr. Nassiri in exchange for Mr. Nassiri conveying the Nassiri Parcels to NDOT together with Seventeen Million Eight Hundred and Forty Thousand Dollars (\$17,840,000).

The conditions for the exchange would include, but not be limited to, the following:

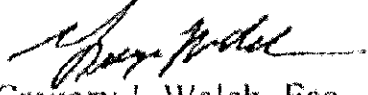
1. Mr. Nassiri would take the Exchange Property as is, where is, with all faults;
2. Mr. Nassiri would take the Exchange Property subject to any interest Carolyn Ann Chambers has in parcel numbers 177-08-899-014 and 177-08-899-015, which interest, if any, was previously disclosed to you and which you have independently reviewed;
3. NDOT would need to use some or all of the Exchange Property during construction of the new interchange at SR-160 and I-15. NDOT is reviewing the extent to which it would need the existing SR-160 alignment and surrounding areas during construction;
4. NDOT would take the Nassiri Parcels as is, where is, with all faults.

This letter is not intended to be an offer that can be accepted by your client. This letter is merely an expression of NDOT's interest in negotiating a definitive agreement with your client that would include some or all of the terms herein, and, quite likely, additional material terms.

NDOT has agreed not to sell or otherwise dispose of the Exchange Property for a period of twenty-one (21) days from the date of this letter so that Mr. Nassiri has an opportunity to fully evaluate NDOT's proposal. NDOT may, however, accept and negotiate back-up offers that would be given effect in the event we are unable to close an exchange or enter into a definitive agreement with Mr. Nassiri to do so within the prescribed twenty-one (21) day period.

If you have any questions, please feel free to call.

Very truly yours,


Gregory J. Walch, Esq.

GJW:as
Enclosure

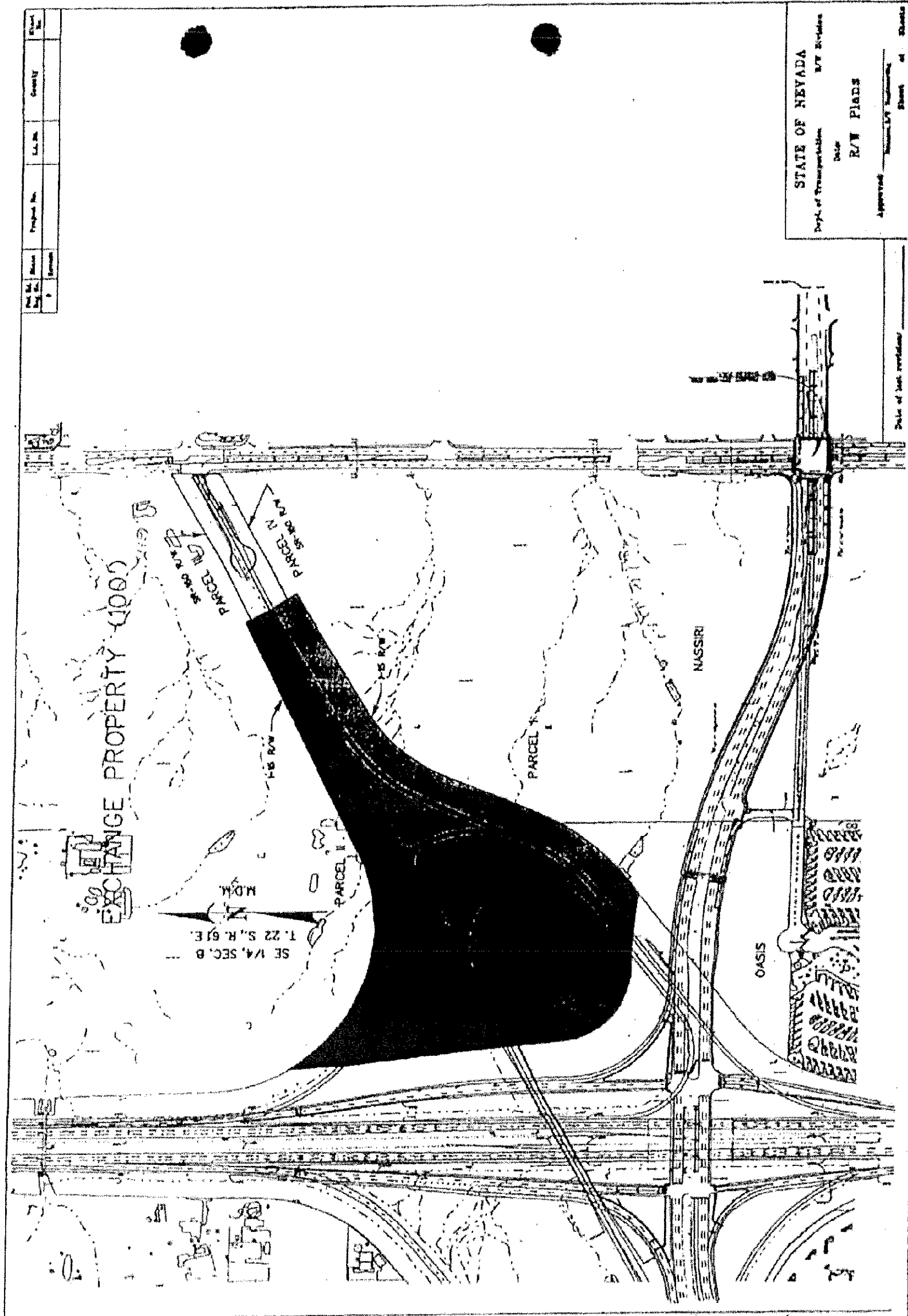
cc: Heidi Mireles, NDOT
Liesl K. Freedman, Senior Deputy Attorney General
Kirby C. Gruchow, Jr., Esq.

132740SR-160 Project\19 Nassiri\Correspondence\Chapman Ltr 12.06.04.doc

Chapman000654

OPPOMSJ0294

PA01106



Sheet	County	Project	Scale
1			
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3			

STATE OF NEVADA
 Dept. of Transportation
 R/W Division
 Date
 R/W Plans
 Approved
 Sheet of 10

Chapman000655

EXHIBIT 38

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (this "Agreement") is entered into this 28 day of April, 2005 (the "Execution Date") by and among The State of Nevada, on relation of its Department of Transportation ("NDOT" or "Plaintiff") and Fred Nassiri, a resident of Clark County, Nevada ("NASSIRI" or "Defendant", and together with NDOT, "the Parties").

I.

Recitals

1.01 The Lawsuit. On or about August 31, 2004, NDOT filed its Complaint in condemnation ("Complaint") against, among others, NASSIRI, in the Eighth Judicial District Court, Clark County, Nevada, Case Number A491334 (the "Lawsuit") to acquire certain property owned by NASSIRI in fee simple and other property owned by NASSIRI for a two-year construction easement in connection with the construction and reconstruction of the interchange at I-15 and Blue Diamond Road, and the attendant widening and realignment of Blue Diamond Road (the "Project"). NDOT also named Clark County as a defendant in the Lawsuit. Clark County filed a disclaimer of any interest in the proceedings on October 13, 2004.

1.02 Funds on Deposit With Court Clerk. On September 27, 2004, NDOT deposited with the Clerk of the Court ("Clerk") the sum of FOUR MILLION EIGHT HUNDRED TEN THOUSAND and NO/100 DOLLARS (\$4,810,000.00) in connection with NDOT's motion for immediate occupancy (the "Deposit").

1.03 The Exchange Property. NDOT owns 24.41 acres (1,063,132 square feet) of land located generally southeast of the intersection of existing Blue Diamond Road and I-15 and east of NASSIRI's property, which land is more particularly described in the legal description attached hereto at Exhibit "1" and incorporated herein by this reference (the "Exchange Property"). NASSIRI desires to purchase the Exchange Property from NDOT.

1.04 Settlement. The parties hereto desire to enter into this Agreement, which among other things provides for full and final resolution of the Lawsuit, the release of the Deposit to NASSIRI, the conveyance in fee simple of certain property owned by Nassiri to NDOT by judgment, the conveyance of temporary construction easements over the Exchange Property to NDOT, and the conveyance of the Exchange Property to NASSIRI on the terms and conditions set forth herein.

...

Nassiri000077

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II.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows.

2.01 Escrow. The Parties shall establish an escrow in Las Vegas, Nevada with Nevada Title Company ("Escrow"), establishing a certified escrow officer to act as the Escrow Agent, and this Agreement shall serve as the instructions to the Escrow Agent for handling the transaction. The Escrow Agent shall not take any action contrary to this Agreement absent the express direction of both Parties in writing. Closing shall occur on the Closing Date as defined in Section 2.07, below.

2.02 Stipulated Judgment and Condemnation Proceeds. On or before the Closing Date, the Parties shall execute and deliver to Escrow a stipulation ("Stipulated Judgment") in the form attached hereto as Exhibit "2" together with an executed Final Judgment and Final Order of Condemnation attached thereto ("Final Judgment"), which Stipulated Judgment shall provide, among other matters, that the Clerk shall release the Deposit to NASSIRI, and release the balance of any funds held by the Clerk in connection with the Lawsuit to NDOT.

2.03 Vesting of Title in NDOT. The property to be conveyed to NDOT by recordation of the Final Judgment is located in unincorporated Clark County, Nevada, and consists of portions of the property generally located at the southwest corner of the intersection of Las Vegas Boulevard South and existing Blue Diamond Road, having Clark County Assessor's Parcel Number 177-08-803-002 and an address of 8011 Las Vegas Boulevard South, Las Vegas, Nevada 89123, and more specifically described in the Complaint as a 183,823 square-foot portion of NDOT Parcel No. S-160-CL-000.016 in fee simple absolute, as further described and identified in Exhibit "2" attached hereto and incorporated herein by this reference (the "Fee Acquisition"), a temporary easement on a 705 square-foot portion of NDOT Parcel No. S-160-CL-000.016TE, also as described in Exhibit "2" (the "TE"), and a 25,419 square-foot portion of NDOT Parcel No. S-160-CL-000.015, which the Complaint requested in fee simple but the Parties have agreed will serve instead as a temporary easement (the "Teardrop TE", and together with the TE and the Fee Acquisition, the "Subject Property"). The Subject Property shall be condemned and given over to NDOT through entry with the Clerk of the Stipulated Judgment attached hereto as Exhibit "1" and the recording with the Clark County Recorder of the Final Judgment attached thereto, or such other documentation as NDOT may require to vest fee simple title to the Fee Acquisition in NDOT and secure NDOT's TE and Teardrop TE.

2.04 Conveyance of Exchange Property to NASSIRI.

(a) Quitclaim Deed. NDOT shall convey the Exchange Property to NASSIRI by quitclaim deed in the form attached hereto as Exhibit "3", without warranty, "as-is", "where-is", and

"with all faults" (the "Quitclaim Deed"). NASSIRI acknowledges that he is aware of claims by Carolyn Ann Chambers or her representatives relating to an alleged reversionary interest or other right relating to the Exchange Property (the "Chambers Claims"), that he has performed his own investigation of the Chambers Claims, and, based upon such investigation, accepts the Exchange Property subject to any claims of Chambers, her assigns or successors.

(b) Title. NASSIRI may cause Escrow Agent to issue to NASSIRI (with a copy to NDOT) a preliminary title report with respect to the Exchange Property (the "Preliminary Report") on or before the close of business on the tenth business day following the Execution Date, together with copies of all documents relating to title exceptions referred to in the Preliminary Report. NASSIRI shall give NDOT notice if the Preliminary Report contains any exceptions that are not reasonably acceptable to NASSIRI on or before the close of business on the tenth (10th) business day prior to Closing ("NASSIRI's Title Notice"). NDOT shall notify NASSIRI on or before the close of business on the fifth (5th) business day following the date of NASSIRI's Title Notice if NDOT will satisfy any requirement or remove any exception before the Closing Date ("NDOT's Title Notice"). NDOT's failure to provide NDOT's Title Notice with respect to any requirement or exception shall constitute NDOT's refusal to satisfy or remove the requirement or exception. NASSIRI shall thereafter, but not less than two (2) business days prior to the Closing Date, approve the title contingency set forth herein, or terminate this Agreement. NASSIRI's failure to give such notice of termination shall constitute NASSIRI's agreement to all title exceptions or requirements and NASSIRI's agreement to consummate the transactions contemplated by this Agreement. If notice of termination is given, this Agreement shall terminate and the parties shall be released from any and all further obligations under this Agreement, except for any such obligation which survives termination. Those exceptions to title set forth in the Preliminary Report to which NASSIRI has not objected in writing to NDOT or that NDOT has not agreed to remove pursuant to this Section 9 shall, together with any interest of Carolyn Ann Chambers, her assigns or successors, constitute the "Approved Exceptions".

(c) Chambers Representation and Indemnity. Nassiri represents and warrants as of the Closing Date that Nassiri shall have secured an assignment to Nassiri of all right, title, and interest of Carolyn Ann Chambers, her successors or assigns, in or to the Chambers Claims. Nassiri shall indemnify and hold harmless the State of Nevada and NDOT, their managers, agents, employers, employees, attorneys, insurers, successors, and assigns, and their political subdivisions and sister agencies, of and from all claims, known or unknown, asserted or unasserted of whatever nature, now existing or hereafter arising, including but not limited to claims for attorney's fees and costs, relating in any way to the Chambers Claims.

2.05 Exchange Compensation. On or before the Closing Date, NASSIRI shall deposit in Escrow the sum of TWENTY-THREE MILLION TWO HUNDRED TWENTY NINE THOUSAND FIVE HUNDRED and NO/100 DOLLARS (\$23,229,500.00) (the "Exchange Compensation") in "Cash." For purposes of this Agreement, "Cash" means immediately available United States funds transferred by certified check or wire transfer.

2.06 Exchange Property Construction Easement. On or before the Closing Date, NASSIRI shall execute and deliver to Escrow a temporary construction easement in the form attached hereto as Exhibit "4" allowing NDOT to use certain portions of the Exchange Property in connection with Project planning, staging, and construction (the "Exchange Property Easement").

2.07 Closing.

(a) Date and Location. Closing shall occur at the offices of Escrow Agent at 10:00 a.m. on the thirtieth (30th) day after the Execution Date, or at such other time or place as the Parties may agree in writing (the "Closing Date").

(b) NASSIRI Deliveries on Closing Date. Unless previously provided, NASSIRI shall deliver the following to Escrow on the Closing Date:

- (i) Executed Stipulated Judgment together with executed Final Judgment and such other documentation as NDOT may require to vest fee simple title to the Fee Acquisition in NDOT and secure NDOT's TE and Teardrop TE;
- (ii) Executed Exchange Property Easement;
- (iii) Exchange Compensation;
- (iv) Any fees for issuance by Nevada Title Company of a policy of title insurance for the Exchange Property;
- (v) ½ of any fees of Escrow or Escrow Agent for handling this transaction; and
- (vi) Real property transferor other taxes, if any, that apply to the recording of the Quitclaim Deed.

(c) NDOT Deliveries on Closing Date. Unless previously provided, NDOT shall deliver the following to Escrow on the Closing Date:

- (i) Executed Stipulated Judgment together with executed Final Judgment and Final Order of Condemnation; and
- (ii) The Quitclaim Deed;

(d) Actions by Escrow Agent on Closing Date. On the Closing Date, Escrow Agent shall:

- (i) Collect the deliveries required by NASSIRI and NDOT as set forth in Sections 2.07(b) and (c), above;
- (ii) If desired and paid for by NASSIRI, issue an Owner's Policy of Title Insurance for the Exchange Property subject only to the Approved Exceptions;
- (iii) Record the Quitclaim Deed and the Exchange Property Easement;
- (iv) Deliver to NDOT, less ½ any applicable Escrow or Escrow Agent fees for handling this transaction, the Exchange Compensation; and
- (v) Prepare and deliver to the Parties a closing statement.

2.08 NDOT Release. NDOT hereby fully releases and forever discharges NASSIRI and his agents, employers, employees, attorneys, insurers, successors, and assigns, of and from all claims, known or unknown, asserted or unasserted, of whatever nature, now existing or hereafter arising, including but not limited to claims for attorney's fees and costs, relating in any way to the Lawsuit, or any matters asserted therein, or which could have been asserted therein, or its subject matter.

2.09 NASSIRI Release. NASSIRI hereby releases and forever discharges: (i) the Lawsuit, or any matters asserted therein, or which could have been asserted therein, or its subject matter, including but not limited to any claims related to the location on the Property of a public highway and necessary incidents thereto, and any claims for any severance damages to the remainder of NASSIRI's property; and (ii) the physical condition of the Exchange Property as of the Execution Date or matters affecting title or claims thereto.

2.10 NDOT Ownership. NASSIRI represents and warrants that, to the best of his knowledge, no third party has any right, title, or interest in the Fee Acquisition or TE or Teardrop TE land, and Nassiri covenants that he shall take no action between the Execution Date and Closing Date that will result in any third party having any right, title, or interest in or to the Fee Acquisition, TE, or Teardrop TE.

2.11 Property Damage. NASSIRI shall be responsible for any and all risk and liability for any injury or damage to persons or personal property or for any injury or damage to the Subject Property, including but not limited to any and all repairs and/or maintenance to the Property, until the Final Judgment and Final Order of Condemnation is recorded with the Clark County, Nevada Recorder. NDOT shall be responsible for any and all risk and liability for any injury or damage to persons or personal property or for any injury or damage to the Exchange Property, including but not limited to any and all repairs and/or maintenance to the Exchange Property, until the Closing Date

2.12 Condition of TE and Teardrop TE. NDOT shall leave the TE and Teardrop TE in as neat and presentable condition as it existed prior to NDOT's use of the TE and Teardrop TE, with

all fences, structures and other property belonging to NASSIRI that NDOT may remove or relocate in order to complete the Project to be replaced as nearly in their original condition as is reasonably possible.

2.13 Civil Rights Act. The regulations pertaining to nondiscrimination and Title VI of the Civil Rights Act of 1964, as contained in Title 23, Code of Federal Regulations Part 200, and Title 49, Code of Federal Regulations Part 21, are hereby incorporated by reference and made a part of this Agreement.

2.14 NRS Chapter 408. NDOT shall have the right to adapt and improve the whole or any part of the Property in accordance with the provisions of NRS Chapter 408, including but not limited to NRS 408.487.

2.15 Highway Engineer's Stationing. All Highway Engineer's Stationing is approximate and subject to slight adjustment as necessary to meet construction requirements. To the extent adjustments due to Highway Engineer's Stationing result in a net Fee Acquisition more than one hundred (100) square feet greater or less than 183,823 square feet, the rate of Twenty-Three dollars (\$23.00) per square foot shall be applied to such net change and a credit or invoice generated by NDOT at the conclusion of the Project or at such earlier time as the net area can be finally calculated. NDOT shall pay any credit owing Nassiri hereunder within sixty (60) days of calculating the final net Fee Acquisition, or, alternatively, Nassiri shall pay any invoice generated by NDOT hereunder within sixty (60) days of receipt.

2.16 Extension of TE and Teardrop TE Term. The termination date of the TE and Teardrop TE has been established in compliance with the best available information on the time frame needed for the Project. If NDOT determines that circumstances warrant an extension of the term of the TE and Teardrop TE to complete the Project, NASSIRI shall grant such an extension to NDOT at a rate of \$500.00 per month.

2.17 No Liability. By entering into this Agreement, no party shall be deemed to admit: (i) any liability for any claims, causes of action, or demands; (ii) any wrong doing or fault; nor (iii) violation of any law, precedent, rule, regulation, or statute. Further, nothing contained in this Agreement may be construed as an admission against the interest of any party.

2.18 Attorney's Fees. If any action is commenced to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all of its expenses related to such action, including but not limited to, its reasonable attorney's fees and costs.

2.19 Acknowledgments. The parties mutually understand, agree, and warrant: (i) that NDOT and NASSIRI deny the legal liability and damages alleged in the Lawsuit, that the payment and distribution of the Condemnation Proceeds, and execution of the Judgment, as provided herein is not to be construed as admissions of liability on the part of NDOT or NASSIRI, but such payment and distribution is solely in compromise and settlement of disputed claims, and the amount of the

Condemnation Proceeds is not an admission by any party as to the fair market value of the Subject Property, or any claims for damages; (ii) that the releases contained herein extend and apply to and also cover and include all unknown, unforeseen, unsuspected, and unanticipated injuries, claims, damages, losses, and liabilities, if any, arising from the matters addressed herein; (iii) that no promise or inducement has been offered except as herein set forth; (iv) that this settlement is in good faith and is equitable; (v) that this Agreement is executed without reliance upon any statement or representation by any party or its representatives concerning the nature and extent of the claimed damages or legal liability therefor; (vi) the parties are legally competent to execute this Agreement and to accept full responsibility therefore; (vii) that this Agreement and the releases set forth herein have been carefully read in their entirety by the Parties, who have had the benefit and advice of counsel of their choosing, and this Agreement and the releases set forth herein are known by the Parties to be in full and final and complete compromise, settlement, release, accord and satisfaction, and discharge of all claims and actions as above stated; and (viii) that in entering into this Agreement and the settlement and releases that are encompassed herein, the Parties are acting freely and voluntarily and without influence, compulsion, or duress of any kind from any source, including, but not limited to, any other party or parties, their attorneys, representatives, or anyone acting or purporting to act on behalf of any party.

2.20 Integration. This Agreement constitutes the entire Agreement by and between the Parties and supersedes and replaces any and all previous agreements entered into or negotiated between the Parties.

2.21 Assignment. This Agreement shall not be assigned by NASSIRI, in whole or in part, to any third party, except to a buyer of all of the property NASSIRI owns within Parcel Number 177-08-803-002 as of the Execution Date, without the approval of NDOT in writing, and only then in the event such third party agrees to be bound by the terms herein. Any such assignment will not relieve NASSIRI of any obligations to NDOT hereunder.

2.22 Amendments. This Agreement may not be amended or modified except in writing and signed by each of the Parties.

2.23 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

2.24 Counterparts. This Agreement may be executed in any number of counterparts confirmed by facsimile signatures transmitted by telephone, each of which shall be deemed a duplicate original.

2.25 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors, or assigns, as the case may be.

2.26 Notices. Any Notice required or desired to be given under this Agreement shall be

in writing and personally hand delivered, given by overnight express delivery with receipt, or given by United States registered or certified mail, postage prepaid, return receipt requested. All Notices shall be sent to the receiving party at the following address or at such other address as the party may from time to time direct in writing:

If to NASSIRI:
6590 Bermuda Road
Las Vegas, Nevada 89119

With a copy to:
Michael Chapman, Esq.
9585 Prototype Court, #C
Reno, Nevada 89521
Fax: (775)827-1872

If to NDOT:
Nevada Department of Transportation
Attn: Jeffrey Fontaine, P.E., Director
1263 S. Stewart St.
Carson City, Nevada 89712

With a copy to:
Gregory J. Walch, Esq.
Santoro, Driggs, Walch et al.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Fax: (702)791-0308

For purposes of this Agreement, Notices shall be deemed to have been given, delivered, or received upon personal delivery thereof or seventy-two (72) hours after having been deposited in the United States mail as provided herein.

2.27 Headings. All headings and subheadings employed within this Agreement are inserted only for convenience and ease of reference and shall not be considered in the construction or interpretation of any provision of this Agreement.

2.28 No Third Party Beneficiaries. This Agreement is for the benefit of the State of Nevada on relation of its Department of Transportation and NASSIRI only, and is not for the benefit of any other person or entity. Without limiting the generality of the preceding sentence, the Parties hereto agree that there are no third-party beneficiaries of this Agreement.

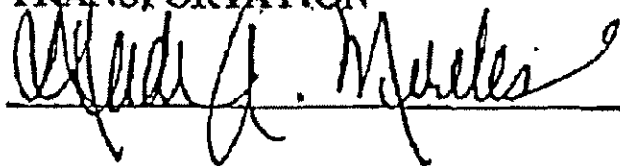
2.28 No Presumption Regarding Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between NDOT and NASSIRI, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would not be appropriate to deem either Party to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

...

...

2.29 Time is of the Essence. The Parties acknowledge that time is of the essence in every aspect of this Agreement.

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION



By: Heidi A. Mireles
Its: Chief Right-of-Way Agent
Date: April 29, 2005

FRED NASSIRI

Date: _____

Approved as to Legality and Form:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

CHAPMAN LAW OFFICE

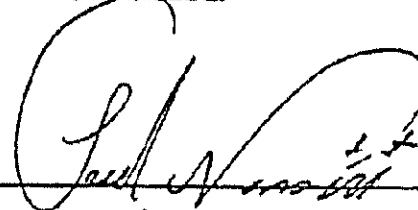
By: _____
GREGORY J. WALCH, ESQ.
Nevada Bar No. 4780
KIRBY C. GRUCHOW, JR., ESQ.
Nevada Bar No. 6663
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
Phone: (702) 791-0308
Attorneys for Plaintiff The State of
Nevada, on relation of its Department
of Transportation

By: _____
MICHAEL G. CHAPMAN, ESQ.
Nevada Bar No. 1630
9585 Prototype Court, #C
Reno, Nevada 89521
Phone: (775) 827-1866
Attorney for Defendant Fred Nassiri

2.29 Time is of the Essence. The Parties acknowledge that time is of the essence in every aspect of this Agreement.

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION

FRED NASSIRI



Date: 4-28-05

By: _____
Its: _____
Date: _____

Approved as to Legality and Form:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

CHAPMAN LAW OFFICE

By: _____
GREGORY J. WALCH, ESQ.
Nevada Bar No. 4780
KIRBY C. GRUCHOW, JR., ESQ.
Nevada Bar No. 6663
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
Phone: (702) 791-0308
Attorneys for Plaintiff The State of
Nevada, on relation of its Department
of Transportation

By: _____
MICHAEL G. CHAPMAN, ESQ.
Nevada Bar No. 1630
9585 Prototype Court, #C
Reno, Nevada 89521
Phone: (775) 827-1866
Attorney for Defendant Fred Nassiri

2.29 Time is of the Essence. The Parties acknowledge that time is of the essence in every aspect of this Agreement.

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION

FRED NASSIRI

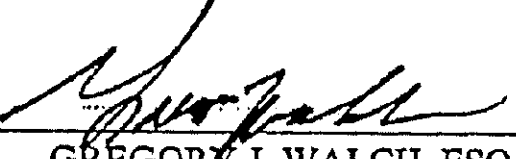
By: _____
Its: _____
Date: _____

Date: _____

Approved as to Legality and Form:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

CHAPMAN LAW OFFICE

By: 
GREGORY J. WALCH, ESQ.
Nevada Bar No. 4780
KIRBY C. GRUCHOW, JR., ESQ.
Nevada Bar No. 6663
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
Phone: (702) 791-0308
Attorneys for Plaintiff The State of
Nevada, on relation of its Department
of Transportation

By: _____
MICHAEL G. CHAPMAN, ESQ.
Nevada Bar No. 1630
9585 Prototype Court, #C
Reno, Nevada 89521
Phone: (775) 827-1866
Attorney for Defendant Fred Nassiri

Apr 29 05 10:01a

MICHAEL CHAPMAN

7758271872

p.9

2.29 Time is of the Essence. The Parties acknowledge that time is of the essence in every aspect of this Agreement.

THE STATE OF NEVADA, ON
RELATION OF ITS DEPARTMENT OF
TRANSPORTATION

FRED NASSIRI

By: _____
Its: _____
Date: _____

Date: _____

Approved as to Legality and Form:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

CHAPMAN LAW OFFICE

By: _____
GREGORY J. WALCH, ESQ.
Nevada Bar No. 4780
KIRBY C. GRUCHOW, JR., ESQ.
Nevada Bar No. 6663
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
Phone: (702) 791-0308
Attorneys for Plaintiff The State of
Nevada, on relation of its Department
of Transportation

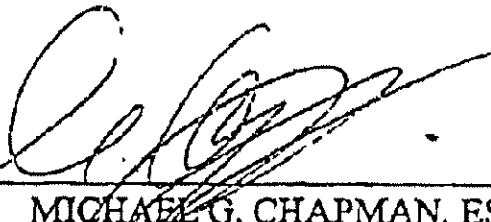
By:  _____
MICHAEL G. CHAPMAN, ESQ.
Nevada Bar No. 1630
9585 Prototype Court, #C
Reno, Nevada 89521
Phone: (775) 827-1866
Attorney for Defendant Fred Nassiri

EXHIBIT 39

From: Snyder, William
Sent: Tuesday, February 14, 2006 9:16 AM
To: Mireles, Heidi A.; Yezek, John F.
Cc: Turner, Victor R.
Subject: RE: SR160 Phase 1 - Construction

Heidi - I'll make sure everyone is aware of this easement. This helps clarify everything.

Bill

From: Mireles, Heidi A.
Sent: Tuesday, February 14, 2006 9:12 AM
To: Yezek, John F.; Snyder, William
Cc: Turner, Victor R.
Subject: RE: SR160 Phase 1 - Construction
Importance: High

NDOT received a temporary construction easement deed that can be used for planning, staging, and construction over and across the same 24.41 acres. The term is two years from 6/17/2005. Our right is exclusive and should be undisturbed by Mr. Nassiri or his successors and assigns. At the end of this term NDOT must remove all personal property and leave the site in a safe condition. We also have permission to disturb and remove vegetation, if any, and leave the property in a scarified condition.

Call me if you need more information. Heidi
Ext. 7480

From: Yezek, John F.
Sent: Tuesday, February 14, 2006 6:35 AM
To: Mireles, Heidi A.
Subject: FW: SR160 Phase 1 - Construction

Heidi - I have no idea - can you please help us out here? Thanks

bn

From: Snyder, William
Sent: Monday, February 13, 2006 4:38 PM
To: Yezek, John F.
Subject: SR160 Phase 1 - Construction

The RE for phase 1 was telling our utility inspector that they are going to make a change in the traffic control at the I15/Blue Diamond interchange. The RE is assuming that NDOT still owns all of the r/w around the old interchange. Since there was a "trade" with Nassari, has any of that r/w been traded away to Nassari? Were any provisions made so we can continue to use the r/w until we finish construction? I just want to make sure I can give construction all the correct info.

Bill

NV_NASSIRI001845

OPPOMSJ0310

EXHIBIT 40

Amber M. Riggio, CCR NO.914

WITNESS Chapman

DATE 2/4/5

四一四一

[illegible]

Chapman003491

EXHIBIT 41

Valuation Consultants

An Appraisal Report Of

A 66.63 Net Acre Tract of Land

Located

At the Northwest Corner of Blue Diamond Road and Las Vegas Boulevard South,
Las Vegas, Clark County, Nevada 89123

Clark County Assessor's Parcel Numbers (APNs) 177-08-803-013, 177-08-702-002, 177-08-803-014, 177-08-803-001, and 177-08-803-010

Prepared For

GORDON SILVER
ATTN.: Mr. Dylan T. Ciciliano, Esq.
3960 Howard Hughes Parkway
Las Vegas, Nevada 89169

Prepared By

Valuation Consultants
Keith Harper, MAI
File Number V-14-64

Date of Report

November 3, 2014

**Date of Retrospective "Undivided Fee" Fair Market Value of the
Whole Property Before Acquisition and Just Compensation**

April 17, 2013

**4200 Cannoli Circle, Las Vegas, Nevada 89103-5404
Telephone (702) 222-0018 Fax (702) 222-0047**

HARPER000001

OPPOMSJ0314

LAND SALE ADJUSTMENT GRID				
Element of Comparison	Sale 1	Sale 2	Sale 3	Sale 4
Sale Price	\$350,000,000	\$8,015,000	\$16,025,000	\$150,020,623
Size/Acre	87.24	5.29	4.48	24.40
Price/Acre	\$4,011,921	\$1,515,123	\$3,577,009	\$6,148,386
Property Rights Adj.	0%	0%	0%	0%
Adjusted Price	\$4,011,921	\$1,515,123	\$3,577,009	\$6,148,386
Financing Terms Adj.	0%	0%	0%	0%
Adjusted Price	\$4,011,921	\$1,515,123	\$3,577,009	\$6,148,386
Conditions of Sale Adj.	0%	0%	0%	0%
Adjusted Price	\$4,011,921	\$1,515,123	\$3,577,009	\$6,148,386
Market Conditions Adj.	0.0%	0.0%	0.0%	0.0%
Adjusted Price	\$4,011,921	\$1,515,123	\$3,577,009	\$6,148,386
Location Adj.	Very Superior	Slightly Inferior	Superior	Very Superior
Physical Characteristics Adj.				
Size	Similar	Superior	Superior	Similar
Total Adjust. for Location And Physical Factors	Very Superior	Slightly Superior	Very Superior	Very Superior
INDICATED VALUE PER ACRE	>\$4,011,921	>\$1,515,123	>\$3,577,009	>\$6,148,386

VALUATION OF REMAINDER

The remainder of the subject property is a parcel that is significantly different from the parcel in the before acquisition condition. This is due to the loss of exposure because a 56.6 foot high, flyover has been constructed above the grade of the southwest corner of the subject. The flyover is located between the main travel lanes of Interstate Highway 15 and the subject which causes the subject to lose its exposure to and visibility from Interstate Highway 15. The whole property in the before condition had exposure and visibility from the main traffic lanes of this major interstate.

The remainder is the same sized and shaped parcel as the before acquisition parcel. However, due to the loss of the exposure along Interstate Highway 15 it is my opinion that there are severance damages. The right to have exposure and to be seen is often referred to as the "Rights of Access, Light, View, and Air". This is a right that is included in the bundle of rights with the ownership of property.

With the loss of the exposure to and visibility from Interstate Highway 15, the right to see and to be seen has been significantly impacted. This causes the remainder to not have the same physical characteristics as the Whole Property in the Before Condition.

I have researched the market in order to try and find pairings or indications in the market for properties that have lost exposure to major roads or have limited visibility. I have also been provided with prior appraisals of the property. A list of these appraisals was provided earlier in the Scope of the Appraisal.

Based on my research, it is my opinion that the remainder property is diminished in value by 10 percent.

The value of the Remainder Property in the before condition is, by definition, simply calculated by deducting the value of the Part Taken from the value of the Whole Property. This calculation is as follows:

Retrospective Fair Market Value of the Whole Property:	\$99,945,000
Less: Value of the Part Taken:	<\$ -0->
Equals: Value of Remainder Before:	\$99,945,000

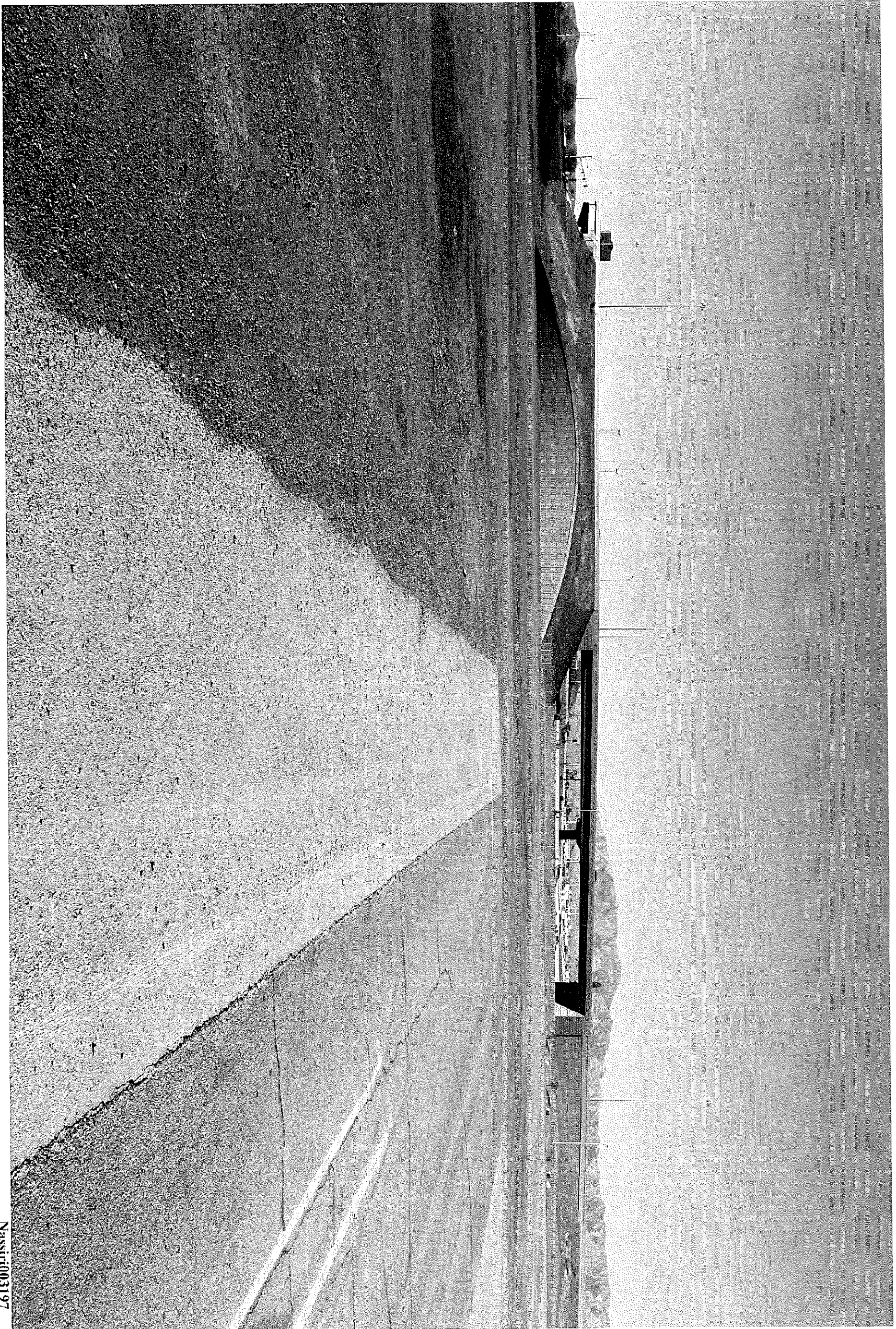
It is felt that the remainder property **after** the acquisition has been negatively affected. It is my opinion that the remainder property after is decreased by 10 percent

As shown above, the retrospective value opinion of the subject whole property before is \$99,945,000. Based on the market research, the value of the remainder after is decreased 10 percent because of the loss of the exposure. This equates to a rounded gross severance damage of \$10,000,000 ($\$99,945,000 \times 0.10 = \$9,994,500$, rounded to \$10,000,000).

There are not any Special Benefits to the remainder in the after condition.

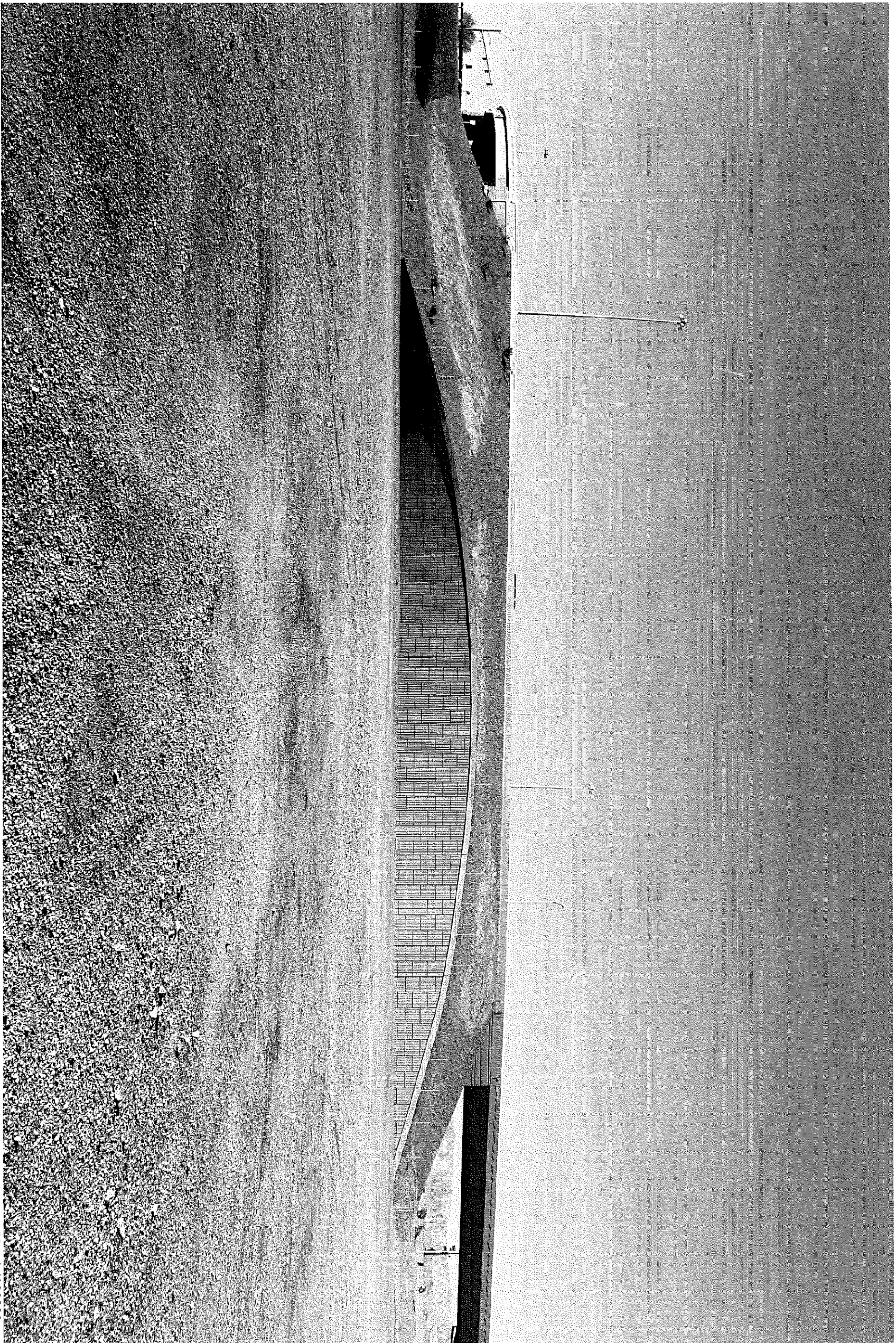
EXHIBIT 42

EXHIBIT 43



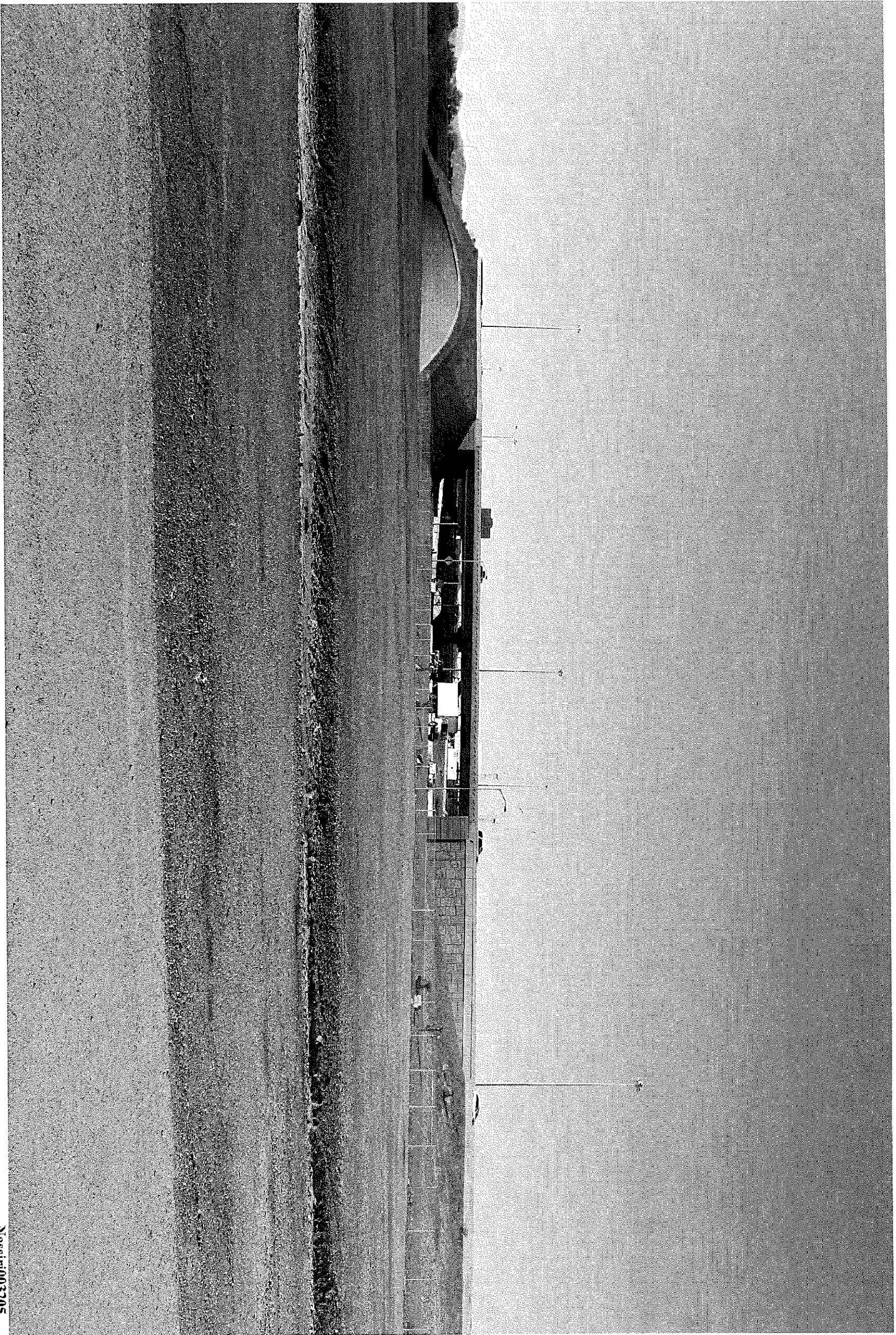
Nassir003197

OPPOMSJ0320



Nassir003230

OPPOMSJ0321



Nassir003205

OPPOMSJ0322

EXHIBIT 44

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, on relation of its
Department of Transportation,

Petitioner,

vs.

Case No. 70098

THE EIGHTH JUDICIAL DISTRICT
COURT, COUNTY OF CLARK, STATE OF
NEVADA, AND THE HONORABLE
GLORIA STURMAN, DISTRICT JUDGE,

Respondents,

and

FRED NASSIRI, individually and as trustee of
the NASSIRI LIVING TRUST, a trust formed
under Nevada law,

Real Party in Interest.

APPENDIX VOLUME 6, part 2

TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

ADAM PAUL LAXALT, ESQ.
Attorney General
DENNIS V. GALLAGHER, ESQ.
Nevada Bar No. 955
Chief Deputy Attorney General
AMANDA B. KERN, ESQ.
Nevada Bar No. 9218
Deputy Attorney General
555 E. Washington Ave, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3420
Facsimile: (702) 486-3768
Email: akern@ag.nv.gov

WILLIAM L. COULTHARD, ESQ.
Nevada Bar No. 3927
ERIC M. PEPPERMAN, ESQ.
Nevada Bar No. 11679
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway
17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
Facsimile: (702) 385-6001
Email: emp@kempjones.com

ATTORNEYS FOR PETITIONER

Document Description	Volume Number	Bates Number
Amended Complaint	1	PA00015-054
Answer to Amended Complaint and Counterclaim	2	PA00233-282
Answer to the State's Counterclaim	2	PA00283-292
Appendix to Nassiri's Opposition to Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	10	PA01841-2091
Appendix to Nassiri's Opposition to Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI...	11	PA02092-2281
Appendix to Nassiri's Opposition to the State's MPSJs Re Inverse Claim and Contract Claims	5	PA00808-977
Appendix to Nassiri's Opposition to the State's MPSJs Re Nassiri's Inverse Claim and Contract Claims...	6	PA00978-1150
Appendix to the State's Motion for Partial Summary Judgment on Nassiri's Contract Claims	4	PA00504-695
Complaint	1	PA00001-014
Hearing Transcript (4-1-15 Hearing on the State's MPSJ on Nassiri's Inverse Claim and Contract Claims)	13	PA02460-2540
Hearing Transcript (5-19-15 Transcript of Closing Arguments at Bench Trial)	13	PA02541-2634
Hearing Transcript (Motion to Dismiss)	1	PA00156-224
Hearing Transcript (MPSJ on Prayer for Rescission)	7	PA01391-1451
Hearing Transcript (MPSJ Re Rescission Based on Bench Trial Ruling)	9	PA01763-1812
Hearing Transcript.1 (Motion to Exclude Damages Evidence or Strike Harper-Oral Arguments)	12	PA02389-2455
Hearing Transcript.2 (Motion to Exclude Damages Evidence or Strike Harper-Announcement of Ruling)	12	PA02349-2388
Motion for Partial Summary Judgment on Nassiri's Contract Claims	4	PA00596-726
Motion for Partial Summary Judgment on Nassiri's	5	PA00727-754

Prayer for Rescission		
Motion for Partial Summary Judgment on Nassiri's Rescission Claim Based on the Court's Trial Ruling	8	PA01598-1614
Motion for Summary Judgment on Nassiri's Claim for Inverse Condemnation (with Appendix)	3	PA00293-503
Motion to Bifurcate/Confirm the May 4, 2015, Trial as a Bench Trial	7	PA01306-1339
Motion to Dismiss Filed by the State	1	PA00055-108
Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	9	PA01649-1746
Notice of Supplemental Authority Re MPSJs Filed by the State	7	PA01239-1249
Opposition to the State's Motion to Bifurcate/Confirm the May 4, 2015, Trial as a Bench Trial	7	PA01340-1390
Opposition to the State's Motion to Dismiss	1	PA00108-136
Opposition to the State's Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	9	PA01813-1840
Opposition to the State's MPSJ on Nassiri's Claim for Inverse Condemnation	5	PA00775-807
Opposition to the State's MPSJ on Nassiri's Contract Claims	5	PA00755-774
Opposition to the State's MPSJ on Nassiri's Prayer for Rescission	6	PA01151-1170
Opposition to the State's MPSJ on Nassiri's Rescission Claim Based on Trial Ruling	8	PA01615-1648
Order Re Motion to Bifurcate/Confirm May 4, 2015, Trial as Bench Trial	8	PA01552-1555
Order Re Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	12	PA02456-2457
Order Re MPSJ on Nassiri's Claim for Inverse Condemnation	8	PA01536-1543
Order Re MPSJ on Nassiri's Contract Claims	8	PA01526-1535
Order Re MPSJ on Nassiri's Prayer for Rescission	8	PA01544-1551
Order Re MPSJ on Nassiri's Rescission Claim Based on Trial Ruling	12	PA02458-2459
Order Re the State's Motion to Dismiss	1	PA00225-232
Reply in Support of the State's Motion to Dismiss	1	PA00137-155

Reply in Support of the State's Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	12	PA02282-2348
Reply in Support of the State's MPSJ on Contract Claims	6	PA01171-1201
Reply in Support of the State's MPSJ on Nassiri's Claim for Inverse Condemnation	7	PA01202-1238
Reply in Support of the State's MPSJ on Nassiri's Prayer for Rescission	7	PA01250-1305
Reply in Support of the State's MPSJ on Nassiri's Rescission Claim Based on Trial Ruling	9	PA01747-1762
Supplemental Trial Brief Filed by Nassiri	8	PA01505-1525
Supplemental Trial Brief Filed by the State	8	PA01494-1504
Trial Brief Filed by Nassiri	8	PA01479-1493
Trial Brief Filed by the State	8	PA01452-1478
Trial Ruling	8	PA01577-1597
Trial Ruling (with Handwritten Changes)	8	PA01556-1576

Highest and Best Use Analysis (Assuming the Subject Parcel is Plotted or Assembled to the Adjoining Nassari Ownership)

Preface:

The highest and best use of a property, such as the subject, is generally determined after analyzing or considering four tests including; the *legally permissible, physically possible, economically feasible* and *maximally productive use*, or that use, which would provide the highest net return to the land or property owner. These tests of highest and best use, have been considered or applied, on an as vacant or unimproved land basis only.

Legally Permissible Use:

The subject property under appraisal, in the after condition, presumably would be zoned a combination of M-D, H-2, H-1 and R-E. As noted previously, under the two valuation scenarios, we have presumed rezoning would be generally a formality, given development trends along the Las Vegas Boulevard and Interstate 15 corridors, within the immediate and general submarket.

Under the second valuation scenario, the subject property, i.e., site, is being appraised as a part of the adjoining Nassari ownership or landholding and considering its contributory value. It is noted, that the majority of the Nassari parcel is presently zoned H-1 (Limited Resort and Apartment District). This zoning classification allows for tourist commercial related developments, including; hotel/casinos, non-gaming related hotels, timeshare resorts, etc. in the after condition, the Nassari parcel would be suitable for future development, with a major tourist commercial related hotel/casino facility. It is noted, that the subject property, in the after condition, will have direct corner orientation at the realigned interchange of Las Vegas Boulevard and Blue Diamond, a.k.a., State Route 160 and likewise, with the assemblage or plottage of the subject site, would include and/or benefit from direct visibility along the Interstate 15 right-of-way.

Pltfs T-7-117-070
NV_NASSIRI015427

OPPOMSJ0238

Based upon available information, the Nassari parcel is being held for future development with a tourist commercial hotel/casino type facility. This would presume use permitting and other necessary licensing would be granted which, would facilitate the ultimate development of the larger parcel, with a major tourist commercial type facility.

Physically Possible Use:

The subject site, in the after condition, will contain approximately 23.80 acres. The Nassari parcel, in the after condition, will include a total of 42.21 acres, with 41.63 acres generally oriented at the northwest corner of Las Vegas Boulevard and the realignment of Blue Diamond Road.

A small remnant or remainder site, containing approximately .58 acres, will be oriented along the south side of the realigned Blue Diamond Road. Combined with the Nassari parcel, the subject property, in the after condition, would contain a total of 66.01 acres and be suitable in size to be improved with a major tourist commercial related hotel/casino project.

Obviously, demand would have to be warranted for the development and use of the subject property, with a major tourist commercial hotel project. As noted previously, demand for sites suitable for primary and secondary tourist commercial type development is very strong at this time, an expected continued trend noted.

Economically Feasible and Maximally Productive Use:

As previously discussed in the Economically Feasible and Maximally Productive Use section of the "standalone" valuation of the subject property, the overall development trend within the immediate and general submarket, is for tourist commercial high density multifamily residential and commercial retail related type development, especially, those parcels including direct frontage along Las Vegas Boulevard South.

Pltfs. T-5-147-037
NV_NASSIRI015428

OPPOMSJ0239

EXHIBIT 28

705 North Plaza St. Suite 220
Carson City, NV 89701

September 17, 2004



In Reply Refer To:

HFO-NV
520.9

Nevada Division

Subject: I-15/Blue Diamond Road Interchange, Control of Access Request

Mr. Jeff Fontaine, P.E.
Director, Nevada Department of Transportation
1263 South Stewart Street
Carson City, Nevada 89712

Attention: Mr. Ruedy Edgington
Assistant Director - Engineering

Date 9/10/04
Daniel Patt
Dan DA
Hal #
Return to Daryl File

Dear Mr. Fontaine:

Mr. Kinder's letter of May 28, 2004 requested revised access at the existing I-15 interchange with Blue Diamond Road (SR 160). The NDOT proposal calls for moving the interchange approximately 450 feet south of the current location, and changing the configuration from a rural diamond (with one loop on-ramp) to a tight urban diamond in the near term. In the long term, the proposal includes the addition of a flyover on-ramp and the addition of collector-distributor roads to better accommodate northbound traffic. The report addressed the eight points of the FHWA Interstate Access Policy, with a detailed traffic analysis included. The request also noted that an Environmental Assessment was underway. That document was recently completed, and we concurred in a Finding Of No Significant Impact (FONSI) on August 13, 2004.

Our review of the Change in Control of Access Report was coordinated with our Office of Infrastructure in Washington, D.C., and we agree that the modifications to the Blue Diamond interchange are acceptable. Traffic increases in the area call for the reconfigured interchange, as well as capacity increases on Blue Diamond Road and Warm Spring Road, in three distinct phases. A fourth phase will add the flyover on-ramp, and we encourage close monitoring of traffic conditions to determine when that improvement is needed. Changes in the overall highway network in southern Las Vegas and accelerated land development along Blue Diamond Road may advance the implementation date of the fourth phase.

The list of mitigation and commitment measures in the FONSI (copy attached) are to be applied to the project, and are not subject to change or modification without prior FHWA written approval. In addition, the following conditions must be addressed before the project can proceed:

1. The public notification process for the FONSI needs to be completed, with announcements printed in the appropriate newspapers.

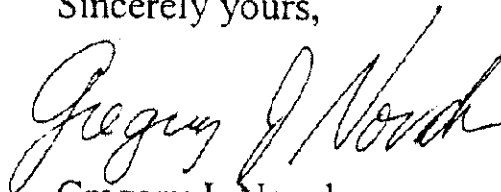


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2. All traffic signals along Blue Diamond Road need to be interconnected, with proper signal phasing and timing used to assure optimized operation of the tight urban diamond interchange. Coordination with the Freeway and Arterial System of Transportation (FAST), now a part of the Regional Transportation Commission of Southern Nevada, will be necessary. This will also assure that the interchange continues to function as designed as Intelligent Transportation System devices are deployed on I-15.

Sincerely yours,



Gregory J. Novak
Technology and Operations Engineer

Enclosure: List of Mitigation Measures

cc: Mr. Wayne Kinder, NDOT
Mr. John Bradshaw, NDOT

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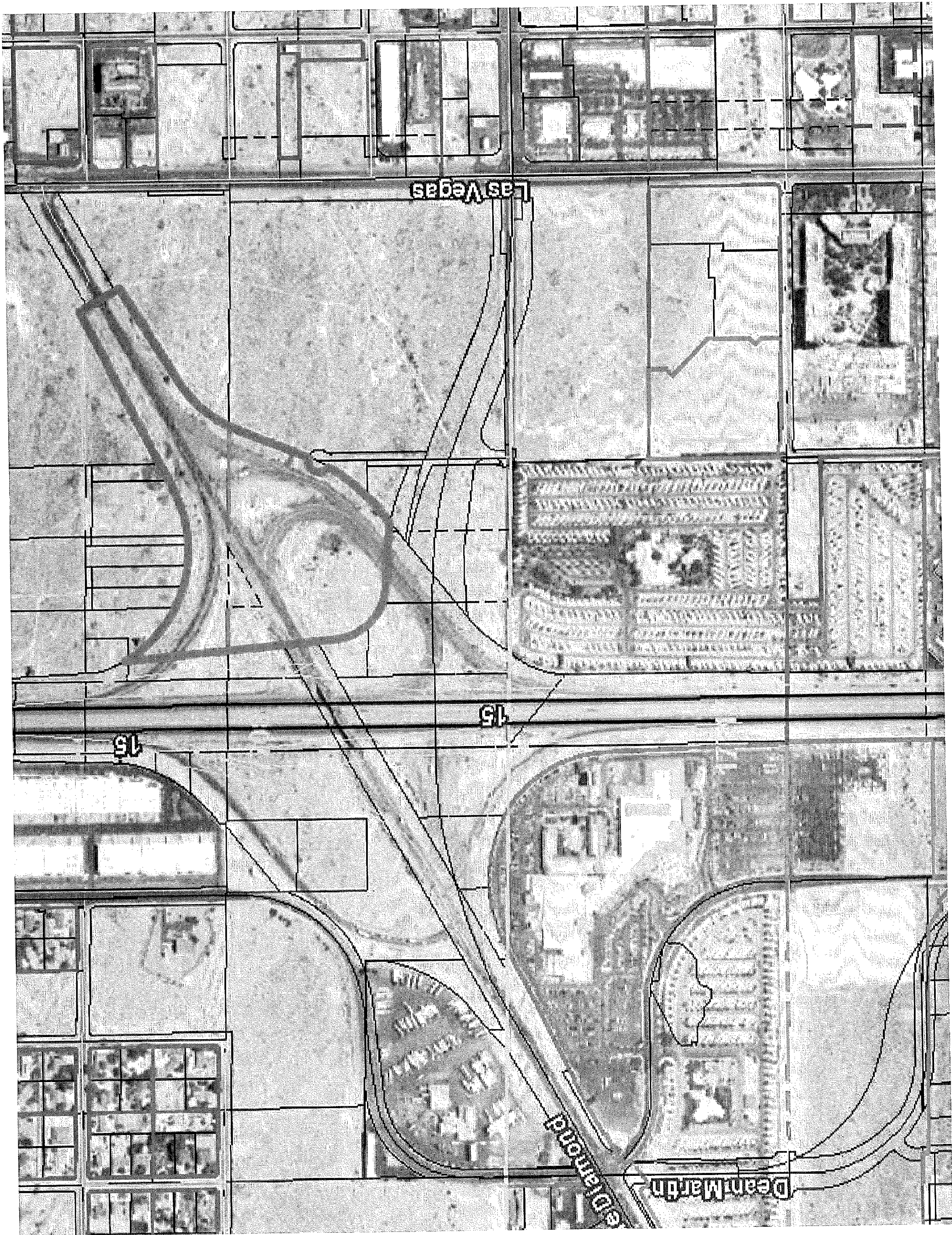
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EXHIBIT 29



OPPOMSJ0244

EXHIBIT 30



OPPOMSJ0246

EXHIBIT 31

Contractor selected for \$270 million I-15 project

By Torey Van Oot

Wednesday, July 1, 2009 | 2:38 p.m.

Nevada transportation officials came one step closer to breaking ground on a massive construction project aimed at easing congestion and improving access and safety on the I-15 south corridor today by announcing the selection of a contractor team to design and build the project.



Las Vegas Paving was selected out of four finalists to lead the I-15 South Design-Build project, which is an estimated expansion and renovation of I-15 between Blue Diamond Road and Tropicana Avenue that planners say could cost up to \$270 million. The project calls for widening I-15 to four lanes in each direction, improving off-ramps and overpass bridges and adding one-way collector-distributor roadways to improve traffic flow on interchanges.

"Ultimately, what that means is you will be able to get to one point to the other and be happier when you get there," Susan Martinovich, director of the Nevada Department of Transportation, said when announcing the selection.

Officials said Las Vegas Paving was selected because its proposal included all of the criteria for the project, as well as all of NDOT's desired additional features, for a bid of \$246.5 million. Organizers had not required that plans include all the additional features out of concern that it would cause the project to go over budget.

"[The proposal by] Las Vegas Paving gave us all of the base scope, all of the additives and about a dozen other items, all for the lowest price," NDOT engineer Mary Martini said.

Construction on the I-15 South corridor will extend from Blue Diamond through the 215 Beltway exchange, and on to Tropicana Avenue. It will also tie in with current construction on and around I-15 North.

"Really, we are going to have every aspect of I-15 under construction, that's not a bad thing, that's a good thing. That means that there's economic growth. That means when we get done with the construction, we'll have a product that will treat and make the system," Martinovich said. "(We'll) have better facilities to drive on and better utilization (and) just much better ways to get around."

Officials said despite a high volume of construction, they expect to save time and money by utilizing a design-build process to complete the project. Traditionally, large-scale construction projects are completed in three phases: a design phase, a bidding phase and a construction phase. In a design-build

process, the engineers and contractor work together to design and build the project simultaneously. This is NDOT's second project to use this process, which is often implemented in vertical construction projects.

Supporters say the practice is efficient and cost-effective.

"The economical part of it is you can save money, because time is money," said Martini, who noted that the estimated completion for the project is two years.

Martini also said the plan will allow the transportation department to continue to renovate the interstate to meet the state's growing transportation needs.

"One of the things we wanted to make sure is that whatever gets built now has forward compatibility," Martini said. "(So that) when we come along widening in the future, as little as possible is lost from what is being constructed now, and yet we have good operational flow in the meantime."

Officials hailed the project as vital to improving the economic health and quality of life in Las Vegas and beyond.

"It helps bring lifeblood into our economy from Southern California, people and goods coming into Las Vegas," said Martinovich. "(The project is a) great opportunity for commerce, great opportunity for jobs and just a great opportunity to bring people into our state."

Assemblyman Joe Hogan (D- Clark County), who serves on the Transportation Committee, said this project, combined with the I-15 North construction, has the potential to drastically reduce congestion and improve traffic flow in Las Vegas.

"We have been growing so fast that we always seem to be on the edge of saturation for local traffic and this is an opportunity to hopefully get ahead of the number of lanes we need, the number of vehicles we can handle smoothly," he said.

Hogan also said the Legislature plans to work with NDOT officials, the contractor and the community to ensure the project creates jobs for minority and women workers.

"We think that there is room for a lot more women construction workers and the need to provide construction employment to our very fast growing minority population as well," he said. "Any large contract like this has the potential to get a diversified workforce together."

"I think we have a very good chance to get a workforce that we're very proud of and that can represent the overall workforce in the area."

Las Vegas Convention and Visitors Authority President and CEO Rossi Ralenkotter characterized the construction as an important boost to the tourism industry. He noted that about half of Las Vegas' visitors come to the city by automobile.

"We need to be able to get them to Las Vegas and back, out and more importantly to give them a pleasant experience as they go around the valley to go to the Strip or downtown or the outlying areas," he said. "It's a win-win because it impacts (the LVCVA) as we try to bring more business to Las Vegas, but also, for all of us who live in Las Vegas and Southern Nevada, it will improve our ability to move throughout the area."

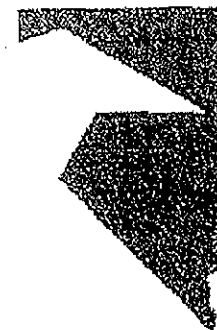
The selection must be approved by the state Transportation Board, and the contractor and the state must negotiate a conforming document with the winning team to solidify the plans. If an agreement cannot be met, the project bid will be offered to one of the three runner-up proposals: Granite Construction, Kiewitt Frehner or Skanska Flatiron.

Officials said they hope to proceed with the confirming design-build team selection by August. Construction on the corridor is expected to run from late 2009 to December 2011.

EXHIBIT 32

I-15 SOUTH CORRIDOR

From Blue Diamond Road
To Tropicana Avenue



I-15 SOUTH BLUE DIAMOND ROAD TO TROPICANA AVENUE DESIGN-BUILD PROJECT

REQUEST FOR FINAL PROPOSALS

DESIGN-BUILD CONTRACT DOCUMENTS

PART 1 CONTRACT



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Contract Number 3366 DB

DESIGN-BUILD CONTRACT

This Contract, made and entered into this 10th day of September, 2009, by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT and Las Vegas Paving Corp., 4420 S. Decatur Blvd. Las Vegas, NV 89103, hereinafter called the DESIGN-BUILDER.

WITNESSETH:

WHEREAS, the DEPARTMENT desires to undertake improvement of the I-15 corridor in Las Vegas, Nevada, from the Blue Diamond Road Interchange to Tropicana Avenue Interchange (such roadway and alignment, including its interchanges with other highways and roads, bridges and other facilities, as more specifically described in Appendix A hereto (the "Project"), for the purpose of improving safety and to reduce future congestion throughout the area as a result of growth in the Las Vegas Valley;

WHEREAS, Nevada Revised Statutes (NRS) sections 408.3875 to 408.3887, inclusive, set forth the conditions under which the DEPARTMENT may use the design-build delivery methodology for its projects;

WHEREAS, at a public meeting held on September 16, 2008, the State Transportation Board made the determinations required by NRS 408.388 allowing use of the design-build delivery methodology for the Project;

WHEREAS, in accordance with NRS 408.3883, the DEPARTMENT advertised in a newspaper of general circulation for preliminary proposals for the design and construction of the Project, and issued a request for preliminary proposals;

WHEREAS, the DEPARTMENT received preliminary proposals in response to said request and selected at least three but not more than five finalists from among the firms that submitted preliminary proposals, after having determined that these finalists met the requirements set forth in NRS 408.3884 and 408.3885;

WHEREAS, in accordance with NRS 408.3886, the DEPARTMENT provided to each finalist a request for final proposals for the Project which set forth the factors the DEPARTMENT used to select the DESIGN-BUILDER to design and construct the Project, including the relative weight assigned to each factor; and set forth the date by which final proposals were to be submitted to the DEPARTMENT;

WHEREAS, in accordance with NRS 408.3886(2), the DEPARTMENT assigned a relative weight of at least 30 percent to the proposed cost of design and construction, and due to use of federal funding for the Project the DEPARTMENT assigned no weight to possession of a

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certificate of eligibility to receive a preference in bidding on public works;

WHEREAS, the DESIGN-BUILDER was one of the finalists and timely submitted a responsive proposal;

WHEREAS, the DEPARTMENT determined that the DESIGN-BUILDER's proposal was the most cost-effective proposal submitted, based on evaluation of the factors set forth in the request for final proposals;

WHEREAS, in accordance with NRS 408.3886(6), the State Transportation Board reviewed and ratified the selection of the DESIGN-BUILDER at a public meeting held on August 26, 2009;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, it is hereby agreed by and between the parties as follows:

**ARTICLE I
CONTRACT DOCUMENTS AND INTERPRETATION**

Certain Definitions. Refer to Part 2, Design-Build (DB) Section 101 for the meaning of various terms used in the Contract Documents.

Contract Documents. The Contract Documents are initially comprised of ten Parts, as follows:

Part 1: This executed Contract, including the attachments and appendices hereto, together with the foregoing recitals;

Part 2: DB Sections 101 through 115;

Part 3: Design Requirements;

Part 4: Performance Specifications;

Part 5: Special Provisions;

Part 6: Third Party Requirements;

Part 7: RFFP Plans;

Part 8: Engineering Data;

Part 9: Construction Specifications; and

Part 10: Portions of the Design-Builder's Proposal.

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Part 10, Appendix A – Supplemental Information to Design-Builder's Proposal

Part 10, Appendix B – Transcript from Discussions with Design-Builder

Part 10, Appendix C – Clarifications to Design Builder's Proposal

The Contract Documents also include any supplemental agreements, amendments, Change Orders and Contract Modifications. The Contract Documents shall be deemed to include all provisions required by law to be inserted in the Contract, whether actually inserted or not.

The order of precedence of the Contract Documents shall be as set forth in Part 2, DB Section 102-3, provided that the federal clauses (Appendix B hereto) shall have precedence over all other Contract Documents.

Bonds. The DESIGN-BUILDER has furnished and shall maintain in effect Performance and Labor and Material Bonds as described in Part 2, DB Section 103.

Contract Interpretation. In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined herein which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. The DESIGN-BUILDER acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the Contract Documents and to bring to the attention of the DEPARTMENT any conflicts or ambiguities contained therein. The DESIGN-BUILDER further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Person which prepared them, and instead other rules of interpretation and construction shall be used. The DEPARTMENT's final answers to the questions posed during the Proposal process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

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ARTICLE II
SCOPE OF SERVICES AND PERFORMANCE

Scope of Services. The DESIGN-BUILDER agrees to furnish all labor, materials, services, equipment, and tools (excluding only those items and services which the Contract Documents specify will be undertaken by the DEPARTMENT or third parties) (a) to design and construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents and applicable law so as to achieve Substantial Completion by the Substantial Completion Date specified herein and to achieve Final Acceptance as specified herein, and (b) otherwise to do everything required by and in accordance with the Contract Documents.

Personnel. The DESIGN-BUILDER shall assign one individual throughout the life of this Contract who shall have overall Project responsibility unless illness or termination should require replacement. The DESIGN-BUILDER agrees to furnish qualified and sufficient personnel to perform all services as required under this Contract. See also Part 2, DB Section 108.

Licenses. The DESIGN-BUILDER warrants that it has a valid business license. Any services to be performed under this Contract requiring licensure or registration under Nevada law shall be performed by a professional licensed or registered in accordance with such laws.

Control of Work. The DESIGN-BUILDER shall at all times maintain control over and have complete responsibility for all services performed by the DESIGN-BUILDER and any Subcontractor under this Contract.

Self-Performance. In accordance with NRS 408.3886(8)(b), the member of the DESIGN-BUILDER's team identified as the prime construction contractor in the proposal shall perform at least 30 percent of the construction Work with its own organization. The term "its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and Equipment owned or rented by the prime contractor, with or without operators. Such term does not include Employees or Equipment of a Subcontractor, assignee, or agent of the prime contractor.

Subcontracts. The DESIGN-BUILDER shall not subcontract any of the Work performed under this Contract without the prior written approval of the DEPARTMENT. Should the DESIGN-BUILDER subcontract any Work under this Contract, it is the DESIGN-BUILDER's responsibility to ensure that the Subcontractor is in compliance with all provisions of 48 CFR Chapter 1, Part 31. Should the DESIGN-BUILDER fail to ensure that Subcontractors comply with 48 CFR Chapter 1, Part 31, then the DESIGN-BUILDER shall be responsible for any costs or deficiencies resulting from such non-compliance. Any attempted assignment of rights or

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delegation of duties under this Contract, without the prior written consent of the DEPARTMENT, shall be void.

Correction of Errors. The DESIGN-BUILDER shall make all necessary revisions or corrections resulting from errors and omissions on the part of the DESIGN-BUILDER without additional compensation. Acceptance of the work by the DEPARTMENT will not relieve the DESIGN-BUILDER of the responsibility for subsequent correction of any such errors and the clarification of any ambiguities. Should the DEPARTMENT use its own personnel, supplies or equipment to remedy the deficiency, such costs will be deducted from the sum due the DESIGN-BUILDER at the time of the next invoice.

Performance in Accordance with Intent of Contract. The Work identified in the Contract Documents shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the DEPARTMENT other than the consideration named in this Contract.

Modifications. The DEPARTMENT reserves the right, at any time during the progress of the Work, to alter the scope of Work, or omit any portion of the Work as it may deem reasonably necessary for the public interest, subject to the obligation to adjust compensation and time for performance in accordance with the Contract Documents, without constituting grounds for any claim by the DESIGN-BUILDER for damages or for loss of anticipated profits.

**ARTICLE III
SCHEDULE**

Notice To Proceed. Delivery of a fully executed copy of this Contract to the DESIGN-BUILDER shall constitute the written Notice to Proceed (NTP) with the Work from the DEPARTMENT. The DESIGN-BUILDER shall commence Work promptly upon receipt of the NTP and thereafter diligently prosecute the Work to achieve Substantial Completion and Final Acceptance as specified. The DESIGN-BUILDER shall notify the DEPARTMENT in writing of the exact date of commencement. The DESIGN-BUILDER acknowledges that any Work performed prior to receipt of the NTP is at the DESIGN-BUILDER's risk and that no payment will be owing hereunder unless and until the NTP is issued.

Substantial Completion Date. The Substantial Completion Date is December 31, 2011. Except as otherwise specifically provided in the Contract Documents, the DEPARTMENT shall have no obligation to extend the Substantial Completion Date and the DESIGN-BUILDER shall not be relieved of its obligation to achieve Substantial Completion by the Substantial Completion Date for any reason.

Time of Essence. Time is of the essence of this Contract, and it is important that the Work be pursued vigorously to completion. The public is subject to detriment and inconvenience when

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full use of infrastructure cannot be made because the Project has not been completed.

Liquidated Damages. If the DESIGN-BUILDER fails to achieve Substantial Completion by the deadline specified herein, the DESIGN-BUILDER agrees to pay a Liquidated Damages charge of \$10,000.00 per day. If the DESIGN-BUILDER fails to perform any of the other items of Work described in Part 5, Special Provision 108C, the DESIGN-BUILDER agrees to pay the applicable Liquidated Damages charge specified in Part 5, Special Provision 108C.

The DESIGN-BUILDER agrees that the DEPARTMENT may withhold additional payments under the Contract or attach the DESIGN-BUILDER's Performance Bond to cover the Liquidated Damages set forth above. Liquidated Damages shall continue until Substantial Completion is achieved. These Liquidated Damages are not intended as a penalty. Damages are difficult to ascertain as of the date hereof, and the parties agree that the amount specified above is a reasonable estimate of presumed actual damages.

ARTICLE IV COMPENSATION

1.18 Compensation. As full compensation for the Work, the DEPARTMENT will pay the DESIGN-BUILDER a total Contract Price not to exceed Two Hundred Forty-Six Million Five Hundred Thousand and No/100 Dollars (\$246,500,000.00), which includes Seven Million Two Hundred Thousand and No/100 Dollars (\$7,200,000.00) for landscaping and aesthetics.

The Contract Price is subject to adjustment from time to time by Contract Change Order or Amendment in accordance with the Contract Documents.

The Contract Price includes payment of any taxes, duties, permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein. Real property and personal property taxes are the responsibility of the DESIGN-BUILDER in accordance with NRS 361.157 and 361.159. The DESIGN-BUILDER agrees to be responsible for payment of any such government obligations not paid by any Subcontractor during performance of this Contract. The DEPARTMENT may set-off against consideration due any delinquent government obligation.

1.19 Payments. The Contract Price is payable following receipt of periodic payment requests based on Price Center Values for completed Work as described in Part 2, DB Section 109. The DEPARTMENT will pay to the DESIGN-BUILDER the monies due as provided in NRS 408.317 and 408.383.

1.20 Withholding. In addition to other withholdings allowed under the Contract Documents, in the event that the DESIGN-BUILDER fails to comply with any lawful or proper direction concerning the Work given by the DEPARTMENT, the DESIGN-BUILDER shall not be entitled to have any periodic payment made for the Price Center under which the non-

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set by law or regulation, the DEPARTMENT, FHWA and their representatives have the right to examine all books, records, documents and other data of the DESIGN-BUILDER related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

1.25 Extension of Retention Period. The retention period for books and records shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

1.26 Public Records Law. Pursuant to NRS 239.010, information or documents received from the DESIGN-BUILDER may be open to public inspection and copying. The DEPARTMENT will have the duty to disclose this information or these documents unless a particular record is made confidential by law or a common law balancing of interests. The DESIGN-BUILDER may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333 or as "financial information" or "proprietary information" in accordance with NRS 408.3886, provided that the DESIGN-BUILDER thereby agrees to indemnify and defend the DEPARTMENT for honoring such a designation. The failure to so label any document that is released by the DEPARTMENT shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

1.27 Subcontracts. All Subcontracts shall reflect the requirements of this Article.

ARTICLE VII FEDERAL PROVISIONS

1.28 Federal Requirements. The Work to be performed under this Contract will be financed in part with federal funds and is therefore subject to federal statutes, rules and regulations applicable to work financed with federal funds, including the federal requirements set forth in Appendix B hereto. In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions, but only to the extent of the conflict.

The Design-Builder and subcontractors shall submit monthly reports detailing the number of newly hired employees and the number of existing employees. This information shall include the number of employees (subtotal by new-hire and existing), the total hours for employees (subtotal by new-hire and existing), and the total wages for employees (subtotal by new-hire and existing). The format for reporting the information will be provided by the Department. Failure

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to submit the required employee information may result in withholding of the progress payment.

1.29 **DBE Program.** The DESIGN-BUILDER agrees to use its best efforts to carry out the DEPARTMENT's Disadvantaged Business Enterprise (DBE) Program to maximize the use of DBEs, as required by the United States Department of Transportation's DBE regulations applicable to all Federal-aid contracts. The DEPARTMENT's program for this Contract is race neutral, but the DESIGN-BUILDER is nevertheless obligated to undertake good faith efforts to utilize DBEs for Work under this Contract

1.30 **Additional Requirements.** In addition to the representations set forth in Attachment 4 to Appendix B, entitled "Affidavit Required under Section 112(c) of Title 23 United States Code," the DESIGN-BUILDER, for itself, its assignees and successors in interest, agrees as follows:

(a) **Debarment and/or Suspension:** The DESIGN-BUILDER certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) **ADA:** The DESIGN-BUILDER and any Subcontractor shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1980, as amended, and regulations adopted thereunder contained in 49 CFR, Part 27, and any relevant program-specific regulations.

(c) **Civil Rights:** The DESIGN-BUILDER and any Subcontractor shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or person offered employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition, including AIDS and AIDS-related conditions.

**ARTICLE VIII
INDEMNITY; LIABILITY LIMITATIONS**

1.31 **Indemnity.** To the fullest extent permitted by law, the DESIGN-BUILDER shall defend, indemnify and hold harmless the State of Nevada, and the employees, officers and agents of the State of Nevada from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorney's fees, that are caused by the negligence, errors, omissions, reckless or intentional misconduct of the DESIGN-BUILDER or the employees or agents of the DESIGN-BUILDER in the performance of this Contract. The DESIGN-BUILDER agrees that drawings and plans included in the RFFP are subject to review and modification by the DESIGN-BUILDER and shall not be deemed "contract documents" as the term "contract documents" is used in NRS 338.140(1)(c).

Nevada Department of Transportation

1.32 Liability Limitations. The DEPARTMENT will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated Damages shall apply as set forth in Article III. Damages for any breach by the DEPARTMENT shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to the DESIGN-BUILDER, for the fiscal year budget in existence at the time of the breach. Damages for any DESIGN-BUILDER breach shall not exceed 150% of the maximum Contract Price set forth above in Article IV. The DESIGN-BUILDER's tort liability shall not be limited.

**ARTICLE IX
NOTICES; DELEGATION OF AUTHORITY**

1.33 Notices. Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by telefacsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

For the DEPARTMENT:

Susan Martinovich, P.E. Director
Attn: John Terry, P.E.
Nevada Department of Transportation
Division: Project Management
1263 South Stewart Street
Carson City, Nevada 89712

For the DESIGN-BUILDER:

Corey Newcome, Project Manager
Bill Wellman, Project Principal
Las Vegas Paving Corporation
4420 S. Decatur Blvd.
Las Vegas, Nevada 89103

1.34 Delivery. Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Pacific Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed

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received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by the DESIGN-BUILDER's Project Manager and technical representatives designated by the DEPARTMENT. The DESIGN-BUILDER's representatives shall be available at all reasonable times for consultation. Except as otherwise provided in Section 1.36, each party's representative shall be authorized to act on behalf of such party in matters concerning the Work.

1.35 Project Correspondence. The DESIGN-BUILDER shall copy the DEPARTMENT on all written correspondence pertaining to the Contract between the DESIGN-BUILDER and any Person other than the DESIGN-BUILDER's Subcontractors, consultants and attorneys.

1.36 Delegation of Authority. The individuals designated in Section 1.33 are authorized to make decisions and bind the parties on matters relating to the Contract Documents, except as follows:

(a) Any notices sent by the DEPARTMENT providing opportunity to cure or declaring a default under Part 2, DB Section 108-8 shall be issued only with prior written approval of the Director.

(b) [Any additional special notice requirements to be inserted prior to execution]

ARTICLE X MISCELLANEOUS PROVISIONS

1.37 Independent Contractor. It is expressly understood that the DESIGN-BUILDER is an independent contractor and is subject to all statutes and laws, including NRS 284.173, relating to independent contractors. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the DEPARTMENT whatsoever with respect to the indebtedness, liabilities, and obligations of the DESIGN-BUILDER or any other party. In no event shall the DESIGN-BUILDER or its agent, employee, or representative be considered the agent, employee, or representative of the DEPARTMENT.

1.38 Responsibility for Employees. The DESIGN-BUILDER shall be solely responsible for its own employees, and the DEPARTMENT shall have no obligation with respect to:

(a) Withholding of income taxes, FICA or any other taxes or fees;

(b) Industrial insurance coverage;

(c) Participation in group insurance plans which may be available to employees of the DEPARTMENT;

Nevada Department of Transportation

(d) Participation or contribution by either the DESIGN-BUILDER or the DEPARTMENT to the Public Employees Retirement System;

(e) Accumulation of vacation leave or sick leave; or

(f) Unemployment compensation coverage provided by the DEPARTMENT.

The DESIGN-BUILDER shall indemnify and hold the DEPARTMENT harmless from, and defend the DEPARTMENT against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees.

1.39 Use of DEPARTMENT Personnel. Unless expressly provided in this Contract, the DESIGN-BUILDER shall not engage or use the devices of the DEPARTMENT's personnel without the prior written consent of the DEPARTMENT.

1.40 Insurance. The DESIGN-BUILDER shall maintain insurance and shall furnish evidence of insurance as specified in Part 2, DB Section 107-24.

1.41 Responsibility for Accuracy of Data; Warranties. The DESIGN-BUILDER has total responsibility for the accuracy and correctness of data prepared under this Contract, and shall check all such material accordingly for completeness, missing items, correct multipliers and consistency. The deliverables shall be reviewed by the DEPARTMENT for conformity with the DEPARTMENT's procedures and Contract terms. The DESIGN-BUILDER acknowledges that review by the DEPARTMENT does not include detailed review or checking of major components and related details or the accuracy of such deliverables. See Part 5, Special Provision 104 for terms and conditions regarding warranties.

1.42 Ownership of Property. The DESIGN-BUILDER agrees that any reports, materials, studies, photographs, negatives, drawings or other documents prepared by the DESIGN-BUILDER in the performance of its obligations under this Contract shall be the exclusive property of the DEPARTMENT. Upon completion, termination or cancellation of the services embraced under this Contract, all such documents, together with all Work inclusive of research, investigation and analysis data, reports (including files on disks), computations, tabulations, original drawings (including CAD information on disks), correspondence input from external sources (including Subcontractors), etc., shall be delivered to and become the property of the DEPARTMENT without limitation. Reuse of said materials, information or data, during performance or following termination of this Contract, on any other project or for any other purpose except as provided for herein, shall be at the DEPARTMENT's discretion and the DEPARTMENT's sole responsibility. The DESIGN-BUILDER shall not utilize any materials, information or data obtained as a result of performing the services called for in this Contract in any commercial or academic publication or presentation without the express written permission of the DEPARTMENT. The DESIGN-BUILDER shall not reference an opinion of an employee or agent of the DEPARTMENT obtained as a result of performing the services called for in this

Nevada Department of Transportation

Contract in any publication or presentation without the written permission of the employee or agent to whom the opinion is attributed, in addition to the permission of the DEPARTMENT.

1.43 Assignment. In accordance with NRS 408.377, this Contract shall not be assigned by the DESIGN-BUILDER, or its right, title, or interest therein assigned, transferred, conveyed, sublet, or disposed of, without the previous consent, in writing, of the DEPARTMENT. Any attempts to assign the Contract without the DEPARTMENT's written consent are null and void.

1.44 Successors and Assigns. The DESIGN-BUILDER and all successors, executors, administrators, and permitted assigns of the DESIGN-BUILDER's interest in the Work or the compensation herein provided shall be bound to the DEPARTMENT to the full legal extent to which the DESIGN-BUILDER is bound with respect to each of the terms of this Contract.

1.45 Disputes. Any dispute arising under this Contract as to performance, compensation, and the interpretation of satisfactory fulfillment of the terms of this Contract shall be decided by the DEPARTMENT. It is the intent of the DEPARTMENT to resolve disputes at the lowest level possible. Nothing herein contained shall impair the parties' rights to file suit in the courts of the State of Nevada in accordance with Section 1.53 below. The prevailing party in an action to enforce this Contract is entitled to reasonable attorney's fees and costs. Disputes involving this Contract, including the breach or alleged breach thereof, shall not be submitted to binding arbitration. Certain disputes are subject to resolution as specified in Part 2, DB Section 114.

1.46 No Prior Breach. The DESIGN-BUILDER warrants that it has not been found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause. The DESIGN-BUILDER further warrants that it has not been disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333.

1.47 No Broker. The DESIGN-BUILDER warrants that it has not employed or retained any company or persons (other than a bona fide employee working solely for the DESIGN-BUILDER) to solicit or secure this Contract and that it has not paid or agreed to pay any company or persons (other than a bona fide employee working solely for the DESIGN-BUILDER) any fee, commission, percentage, brokerage fee, or any other gifts contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

1.48 The DESIGN-BUILDER is required to register as a vendor with the Nevada State Controller's office. The Registration Substitute IRS Form W-9 can be accessed at http://controller.nv.gov/Vendor_Services.html. The DESIGN-BUILDER will follow the Registration Instructions, complete the Registration Substitute IRS Form W-9 and submit it to

Nevada Department of Transportation

the State Controller's Office.

1.49 Remedies Not Exclusive. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages.

1.50 Authority to Execute. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth herein.

1.51 Severability. The illegality or invalidity of any provision or portion of this Contract shall not affect the validity of the remainder of the Contract, and this Contract shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

1.52 Governing Law. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The venue of any proceeding under this Contract shall be in the First Judicial District Court, Carson City, Nevada, unless changed by the judicial officer.

1.53 Entire Agreement. This Contract, its integrated attachments, and the other Contract Documents constitute the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract or the other Contract Documents, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

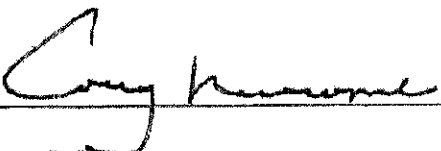
Nevada Department of Transportation

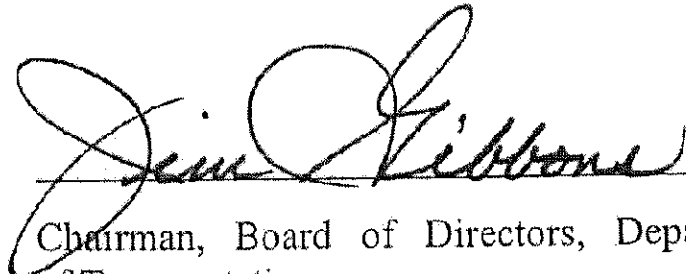
IN WITNESS WHEREOF, the DESIGN-BUILDER has signed and the DEPARTMENT has caused its name to be signed hereon on the date first above written.

DESIGN-BUILDER:

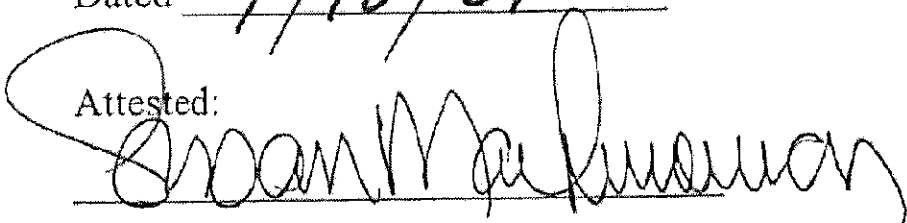
Las Vegas Paving Corporation

State of Nevada, acting by and through its
DEPARTMENT OF TRANSPORTATION

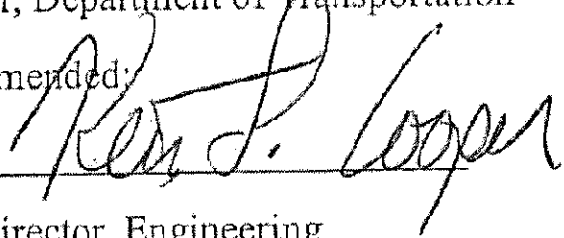

Project Manager
Dated 9/08/09


Chairman, Board of Directors, Department
of Transportation

Dated 9/10/09

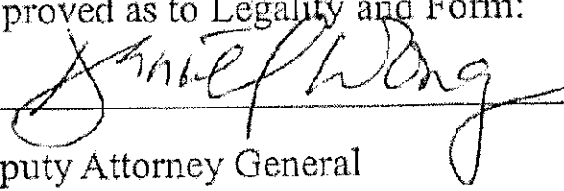
Attested:


Director, Department of Transportation

Recommended:


Asst. Director, Engineering

Approved as to Legality and Form:


Deputy Attorney General

Nevada Department of Transportation

Acknowledgment by LAS VEGAS PAVING CORPORATION

STATE Nevada } OF NEVADA
COUNTY OF Clark } SS.:

On this 8th day of September, 2009, before me personally came COREY NEWCOME to me known, who being duly sworn, did depose and say that he resides in Clark County, Nevada, that he is the Project Manager of Las Vegas Paving Corporation, the corporation described in and which executed the foregoing instrument, and that he signed his name thereto by Power of Attorney granted by that corporation.

Christine Waldron
Notary Public

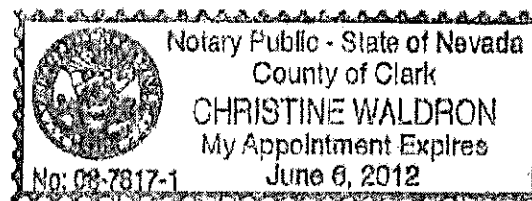


EXHIBIT 33

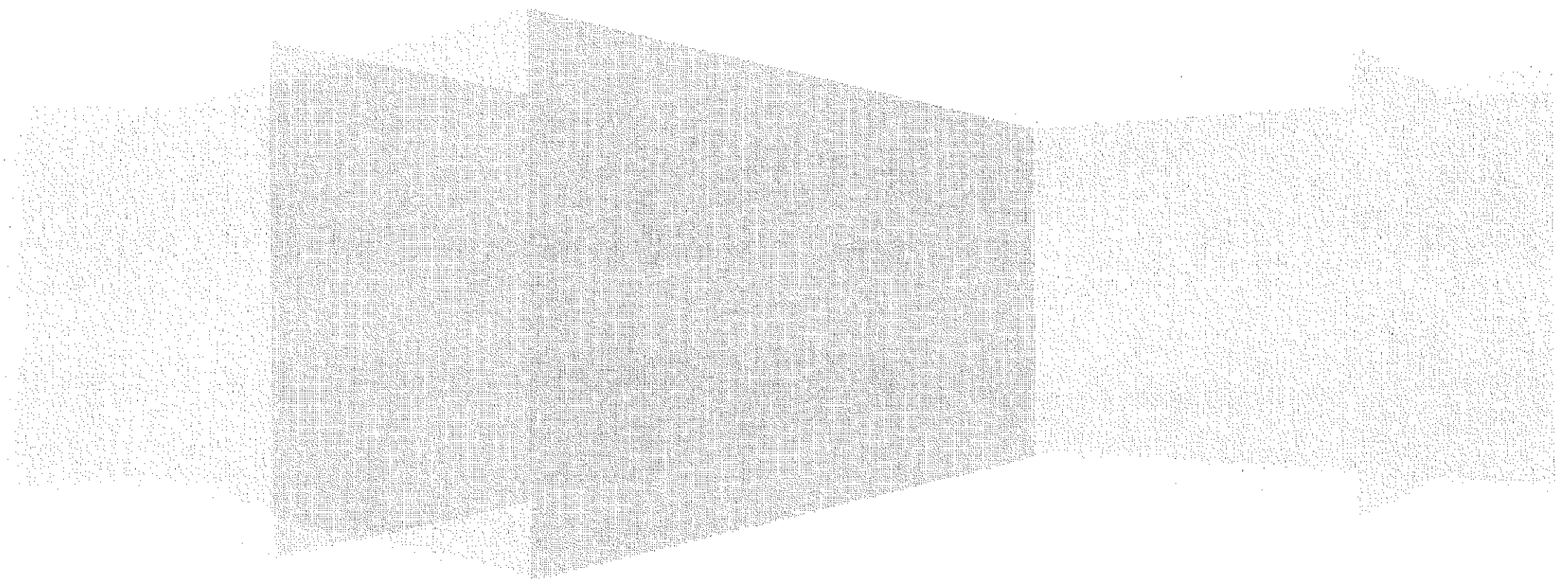


DEPARTMENT OF TRANSPORTATION



RIGHT-OF-WAY MANUAL

February 24, 2011



NEVADA DEPARTMENT OF TRANSPORTATION
RIGHT-OF-WAY MANUAL

FOREWORD

This Right-of-Way Manual has been compiled to provide guidance to the officers and various employees of the Nevada Department of Transportation and specifically the employees of the Right-of-Way Division. It is the purpose of this manual to provide uniformity in interpretation and administration of applicable State and Federal Laws, Departmental policies and the implementation of the Code of Federal Regulations as they apply to Right-of-Way acquisition.

This manual is designed to provide Right-of-Way personnel with a reference guide to the policies and procedures of the Right-of-Way Division. No policy and procedure manual can be expected to cover all of the potential eventualities that might be encountered by members of the Right-of-Way Division. The policies and procedures contained in this manual are considered general guidelines to be followed. If a situation should arise that is not specifically covered in this manual, members are encouraged to contact their immediate supervisor.

Director

Rev.: February 24, 2011

OPPOMSJ0274

PA01086

NEGOTIATIONS

- C. The Right of Entry Agreement (Form 524) must be prepared with the assistance of the Supervisory Right-of-Way Agent and Legal Counsel.

5.416 Legal Complications

- A. In each of the following situations, the Agent should immediately confer with the Supervisory Right-of-Way Agent:
 - 1. Estates in Probate; persons under 18 years of age, with or without legal guardians; incompetents, whether or not legally adjudged so; bankruptcies, etc.
 - 2. Properties of disenfranchised, lapsed or extinct corporations for which no trustee can be found.
 - 3. Leases, recorded or unrecorded, regardless of whether they contain an eminent domain or condemnation clause.
 - 4. Title complications.

5.417 Negotiating an Agreement

- A. The Agent's fundamental job is to buy property and/or property rights at fair market value. To be successful, the negotiator must be perceived as an honest, knowledgeable and effective Agent of the Department. The Agent may regard an acquisition assignment as a problem solving task. Utilizing a variety of approaches, including the funnel technique to problem solving, the Agent should identify the areas of agreement and disagreement with the property owner, endeavor to resolve the disputes and achieve an outcome that is fair to the property owner and fair to the public. The Agent's success will be influenced by a thorough understanding of the project, confidence in the approved offer of just compensation, effective communication and listening skills, and credibility with one's own supervisor and others in the Department.
- B. A common source of contention with owners of improved properties is the inventory of improvements. When it is apparent that something has been overlooked, omitted, or improperly described, this should be reported to the Supervisory Right-of-Way Agent for corrective action.
- C. Of a more difficult nature is the money impasse when an owner has repeatedly refused the State's offer. The negotiator should try to determine upon what basis the owner has formed a differing opinion of value and how strongly he or she believes in it. If the property owner knows of additional or more recent comparable sales, this information should be verified and reported to the Supervisory Right-of-Way Agent.

NEGOTIATIONS

- D. If the Agent and supervisor determine that a negotiated settlement is possible, the matter should be discussed with the Assistant Chief Right-of-Way Agent. Right-of-Way Administration will decide whether to attempt a settlement or call for a Condemnation Review Board to resolve the acquisition.
- E. Land exchanges, pursuant to NRS Chapter 408, provided another means of settling right-of-way negotiations.
 - 1. The parcels of land to be exchanged must be reasonably equal in appraised values. Exchanges that involve surplus property will require approval of the Transportation Board of Directors. (See Surplus Property Disposal, Section 8.312 in the Property Management Section of the Manual for disposal policy and procedures)
 - 2. Most land exchanges are made within project limits. If an exchange is requested between two different projects, documentation recommending the exchange must be submitted to the Chief Right-of-Way Agent. Final approval for the land trade must be obtained from the Federal Highway Administration.
- F. When all issues in the negotiations have been resolved, the Agent should request the property owner's signature on the agreement, deed(s) and other documents that are necessary to complete the negotiation. If handwritten changes are made to the agreement, each entry must be initialed by all parties to the agreement.

5.418 Administrative Settlement

- A. When it is evident that the owner does not agree with the approved offer of just compensation and requires additional consideration, whether monetary or otherwise, the Agent should attempt to obtain a written counter-offer. If the owner's counter-offer has merit and it appears that a negotiated settlement is feasible, the Agent may consider submitting a proposal for administrative settlement. The administrative settlement process should be maintained separate from the appraisal review function. An administrative settlement is simply that, a settlement made for administrative reasons considered to be reasonable, prudent, in the public interest and properly documented. The Agent must ensure that all settlement discussions are thoroughly documented for the permanent record.
- B. After the Agent has obtained the proper documentation, the Recommendation for Administrative Settlement (Form 546) is completed. The proposal must be typewritten. A narrative justification for the settlement with supportive factual data must be attached to the form and signed by the Agent and Supervisory Right-of-Way Agent.

APPRAISAL

the temporary easement is to be placed, and the type and character of property being valued. A method of measuring the compensation is the present value of land rental and any temporary damages to the remaining real estate for the duration of the easement.

5. Valuation of Permanent Easements

A permanent easement is defined as an area outside the right-of-way limits required to construct a highway related feature that is permanent in nature and requires ongoing maintenance. This type of easement requires the purchase of a less than fee interest in the land. Typically, a use or utility factor is estimated based upon remaining utility to ownership.

4.206 Before and After – Partial Acquisitions

The appraiser shall estimate the value of the whole (larger parcel) before the take, the value of the part taken as part of the whole and the value of the remainder as part of the whole. Next, the appraiser shall estimate the value of the remainder after the take. Damages, if any, are calculated as the difference between the value of the remainder as part of the whole and the value of the remainder after the take. Compensation is the sum of the value of the part taken and net damages.

4.207 Damages

- A. Compensation for damages to remainder properties in an eminent domain proceeding is addressed in the Nevada Revised Statutes and in Nevada case law. In determining damages to the remainder(s) in a partial acquisition, NRS 37.110 states that damages must be assessed...” which will accrue to the portion not sought to be condemned, both by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff” (NDOT). These damages can be generally placed in the categories of severance damages and what may be called proximity damages. However, in the reporting of damages to the remainder, these two categories should be combined into one sum.
 - 1. Severance damages: The following occurrences are commonly considered as being among the potential causes of a diminution in value of the remainder.
 - a. Changes to a more irregular shape
 - b. Change in size to less than required for a use
 - c. Changes to access
 - d. Changes of the roadway/highway grade
 - e. Impairment of visibility from the roadway/highway

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, on relation of its
Department of Transportation,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT, COUNTY OF CLARK, STATE OF
NEVADA, AND THE HONORABLE
GLORIA STURMAN, DISTRICT JUDGE,

Respondents,

and

FRED NASSIRI, individually and as trustee of
the NASSIRI LIVING TRUST, a trust formed
under Nevada law,

Real Party in Interest.

Electronically Filed
May 19 2016 08:44 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No. 70098

APPENDIX VOLUME 6, part 1

TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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ATTORNEYS FOR PETITIONER

Document Description	Volume Number	Bates Number
Amended Complaint	1	PA00015-054
Answer to Amended Complaint and Counterclaim	2	PA00233-282
Answer to the State's Counterclaim	2	PA00283-292
Appendix to Nassiri's Opposition to Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	10	PA01841-2091
Appendix to Nassiri's Opposition to Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI...	11	PA02092-2281
Appendix to Nassiri's Opposition to the State's MPSJs Re Inverse Claim and Contract Claims	5	PA00808-977
Appendix to Nassiri's Opposition to the State's MPSJs Re Nassiri's Inverse Claim and Contract Claims...	6	PA00978-1150
Appendix to the State's Motion for Partial Summary Judgment on Nassiri's Contract Claims	4	PA00504-695
Complaint	1	PA00001-014
Hearing Transcript (4-1-15 Hearing on the State's MPSJ on Nassiri's Inverse Claim and Contract Claims)	13	PA02460-2540
Hearing Transcript (5-19-15 Transcript of Closing Arguments at Bench Trial)	13	PA02541-2634
Hearing Transcript (Motion to Dismiss)	1	PA00156-224
Hearing Transcript (MPSJ on Prayer for Rescission)	7	PA01391-1451
Hearing Transcript (MPSJ Re Rescission Based on Bench Trial Ruling)	9	PA01763-1812
Hearing Transcript.1 (Motion to Exclude Damages Evidence or Strike Harper-Oral Arguments)	12	PA02389-2455
Hearing Transcript.2 (Motion to Exclude Damages Evidence or Strike Harper-Announcement of Ruling)	12	PA02349-2388
Motion for Partial Summary Judgment on Nassiri's Contract Claims	4	PA00596-726
Motion for Partial Summary Judgment on Nassiri's	5	PA00727-754

Prayer for Rescission		
Motion for Partial Summary Judgment on Nassiri's Rescission Claim Based on the Court's Trial Ruling	8	PA01598-1614
Motion for Summary Judgment on Nassiri's Claim for Inverse Condemnation (with Appendix)	3	PA00293-503
Motion to Bifurcate/Confirm the May 4, 2015, Trial as a Bench Trial	7	PA01306-1339
Motion to Dismiss Filed by the State	1	PA00055-108
Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	9	PA01649-1746
Notice of Supplemental Authority Re MPSJs Filed by the State	7	PA01239-1249
Opposition to the State's Motion to Bifurcate/Confirm the May 4, 2015, Trial as a Bench Trial	7	PA01340-1390
Opposition to the State's Motion to Dismiss	1	PA00108-136
Opposition to the State's Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	9	PA01813-1840
Opposition to the State's MPSJ on Nassiri's Claim for Inverse Condemnation	5	PA00775-807
Opposition to the State's MPSJ on Nassiri's Contract Claims	5	PA00755-774
Opposition to the State's MPSJ on Nassiri's Prayer for Rescission	6	PA01151-1170
Opposition to the State's MPSJ on Nassiri's Rescission Claim Based on Trial Ruling	8	PA01615-1648
Order Re Motion to Bifurcate/Confirm May 4, 2015, Trial as Bench Trial	8	PA01552-1555
Order Re Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	12	PA02456-2457
Order Re MPSJ on Nassiri's Claim for Inverse Condemnation	8	PA01536-1543
Order Re MPSJ on Nassiri's Contract Claims	8	PA01526-1535
Order Re MPSJ on Nassiri's Prayer for Rescission	8	PA01544-1551
Order Re MPSJ on Nassiri's Rescission Claim Based on Trial Ruling	12	PA02458-2459
Order Re the State's Motion to Dismiss	1	PA00225-232
Reply in Support of the State's Motion to Dismiss	1	PA00137-155

Reply in Support of the State's Motion to Exclude Nassiri's Damages Evidence or Strike His Expert, Keith Harper, MAI	12	PA02282-2348
Reply in Support of the State's MPSJ on Contract Claims	6	PA01171-1201
Reply in Support of the State's MPSJ on Nassiri's Claim for Inverse Condemnation	7	PA01202-1238
Reply in Support of the State's MPSJ on Nassiri's Prayer for Rescission	7	PA01250-1305
Reply in Support of the State's MPSJ on Nassiri's Rescission Claim Based on Trial Ruling	9	PA01747-1762
Supplemental Trial Brief Filed by Nassiri	8	PA01505-1525
Supplemental Trial Brief Filed by the State	8	PA01494-1504
Trial Brief Filed by Nassiri	8	PA01479-1493
Trial Brief Filed by the State	8	PA01452-1478
Trial Ruling	8	PA01577-1597
Trial Ruling (with Handwritten Changes)	8	PA01556-1576

EXHIBIT 23

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 FRED NASSIRI, individually)
and as trustee of the NASSIRI)
4 LIVING TRUST, a trust formed)
under Nevada law,)
5)
Plaintiffs,) CASE NO.: A672841
6) DEPT. NO.: XXVI
vs.)
7)
STATE OF NEVADA, on relation)
8 of its Department of)
Transportation; DOE GOVERNMENT)
9 AGENCIES I-X, inclusive; DOE)
INDIVIDUAL I-X; and DOE)
10 ENTITIES 1-10, inclusive,)
11 Defendants.)
12)
AND ALL RELATED CROSS-CLAIMS.)
13)

14

15

16

17 DEPOSITION OF MICHAEL G. CHAPMAN, ESQ.

18 LAS VEGAS, NEVADA

19 WEDNESDAY, FEBRUARY 4, 2015

20

21

22

23

24 REPORTED BY: AMBER M. RIGGIO, CCR NO. 914

25 JOB NO.: 232863

1 A. 24.42.

2 Q. There you go. Thank you.

3 And so we'll define that as the surplus
4 property for purposes of this deposition. Will you
5 understand what I'm referring to?

6 A. If I don't, I'll ask for you to clarify the
7 question.

8 Q. Okay. Thank you.

9 MR. CICILIANO: And I'll just object to the
10 definition as having any legal significance beyond just
11 your definition.

12 Q. (By Mr. Coulthard) And in your meeting --
13 well, strike that.

14 In your correspondence, you state, An
15 adjustment in price can be made for any difference in
16 the quality and quantity of land exchanges. And in
17 addition, we're interested in resolving access issues
18 at this time as well.

19 Were you proposing that an exchange be made
20 for the realigned proposed take, 4 acres, for part of
21 the surplus property on Mr. Nassiri's behalf in April
22 of 2004?

23 MR. CICILIANO: Objection to form.

24 THE WITNESS: Yes.

25 Q. (By Mr. Coulthard) Prior --

1 A. Yes.

2 Q. Could you tell me who participated? And was
3 that in April or May, shortly after you sent this
4 letter?

5 A. It was on May 28th, 2004, at Mr. Nassiri's
6 office in Las Vegas. I attended, Mr. Nassiri attended,
7 Heidi Mireles attended, I think Steve Oxoby was there,
8 Liesl Freedman, who was a Deputy Attorney General at
9 the time, attended.

10 (Whereupon, Ms. Kern reenters the
11 proceedings.)

12 MR. KLADNEY: What was her last name?

13 THE WITNESS: Freedman.

14 The Department had some other people there
15 who I don't recall at the time -- who I don't recall at
16 this time. Ray Koroghli was there, and somebody was
17 with him. I think a member of his ownership group, but
18 I don't remember the person's name. And there could be
19 other people who I'm no longer remembering.

20 Q. (By Mr. Coulthard) Was Mr. Garth Dull on
21 behalf of Mr. Koroghli present at that meeting?

22 A. Yes.

23 Q. Tell me about the meeting. If you can
24 recall, what occurred at that meeting?

25 A. Yeah. The Department provided a map, which

1 we had produced to you, that laid out the project. And
2 it was discussed what the project entailed, and it was
3 discussed was any land going to be freed up -- in other
4 words, made surplus -- and, again, I'm not speaking
5 precisely but just kind of generically from memory --
6 by the reorientation of the interchange. And if it
7 were freed up, then Mr. Nassiri and Ray Koroghli would
8 be interested in knowing on that and perhaps acquiring
9 some in trade with respect to the eminent domain case,
10 which had not been filed yet. But both landowners told
11 the State that they did not object to the project and
12 that they would essentially be stipulating for
13 occupancy.

14 The Department also was clear that they were
15 going to go ahead and file. They weren't going to
16 delay the acquisition and construction of the project
17 for the purposes of settlement discussion, but they
18 were certainly open and preferred settlement,
19 considering a trade in concept. In a nutshell, that
20 was the meeting.

21 Q. Do you have any recollection as to the
22 Department suggesting that they'd like to wait until
23 the realignment project had been constructed before
24 they sold the surplus land to Mr. Nassiri or -- or
25 exchanged the surplus land to Mr. Nassiri?

1 A. Not specifically. What the Department did
2 relay is that the amount of land which would be surplus
3 was not exactly known at the time, you know, how many
4 square feet it would be and exactly where it would be.
5 And so that was a -- the actual quantity of the land
6 was something to be decided later.

7 Q. Was there any discussion at this meeting as
8 to the project as to what would -- what the project
9 entailed or what the -- what was the project?

10 A. Yes.

11 Q. And was -- what was the project as you define
12 it, NDOT's project?

13 A. Do you have a copy of the map that Heidi
14 provided? I wrote on the bottom of it "From Heidi on"
15 --

16 Q. Yeah.

17 MR. COULTHARD: Let me go make some copies.

18 MR. CICILIANO: I have three copies here.

19 THE WITNESS: See if you can make a smaller
20 one.

21 MR. CICILIANO: Well, mine doesn't get much
22 bigger so. . .

23 THE WITNESS: I only brought one pair of
24 glasses.

25 MR. COULTHARD: Will you mark one of these?

1 (Deposition Exhibit 3 was marked for
2 identification.)

3 Q. (By Mr. Coulthard) Do you recognize what's
4 been marked as Exhibit 3?

5 A. Yes. And you can see from the bottom, on the
6 bottom right, it says, "From Heidi 5/28/04."

7 Q. Right.

8 A. I wrote that at the time.

9 Q. And --

10 A. So this was the map which the Department
11 brought to the meeting to show everybody about the
12 project.

13 Q. This was a document that your office produced
14 pursuant to a subpoena from -- from my firm in this
15 lawsuit. Correct?

16 A. Correct.

17 And if you look, at the top left is a Bates
18 stamp from our office, 3531.

19 Q. So this map was provided to you by Heidi
20 Mireles. What was your understanding as to the purpose
21 of this map?

22 A. This was the plan that the Department was
23 going to be proceeding on in its eminent domain case,
24 and the Department's obligation is to lay out the plan
25 so that the landowner can understand what the impacts

1 may or may not be to the remaining property. And so
2 the purpose of the meeting was to understand how much
3 land was being taken, what possible severance damages
4 might entail from that, what the solution was, would it
5 be either litigation or settlement, and where would the
6 surplus land be.

7 And I no longer recall why there are
8 different colors. You see where it says 14.9 acres on
9 there?

10 Q. Yes.

11 A. That's basically half of the pork chop that
12 you were referring to earlier, but for some reason they
13 have part of it in black and I don't know why that is
14 anymore.

15 Q. Was there any discussion related to Parcel 3
16 and Parcel 4, which is -- those parcels are adjacent to
17 Las Vegas Boulevard, sort of at the end of the pork
18 chop? Do you recall any discussions at that meeting
19 related to that property?

20 A. No.

21 Q. Was there any discussion as to what the
22 ultimate configuration would look like at the
23 intersection of Blue Diamond and Interstate 15?

24 A. Yes.

25 Q. Do you recall were there any discussion at

1 that meeting related to a flyover that would connect
2 eastbound SR-160 traffic with northbound I-15 traffic?

3 A. There was no discussion of that.

4 Q. At the time you attended this meeting at
5 5/28/2004, were you aware that a flyover that would
6 connect eastbound SR-160 with northbound I-15 was
7 planned at some time in the future?

8 A. No.

9 Q. Did you ever become aware of the Department
10 of Transportation's plan to connect a flyover between
11 eastbound SR-160 and northbound I-15?

12 A. Not until they built what's there now.

13 Q. So it's your testimony that you did not
14 become aware or you were never made aware of the fact
15 that there was a flyover planned to connect eastbound
16 SR-160 with northbound I-15 until the construction of
17 the as-built flyover?

18 A. The Department never mentioned a flyover
19 during any of the process, and the maps that we used in
20 the settlement agreement and the first amendment to
21 settlement agreement are very similar to this one, not
22 showing a flyover. And the word flyover was never
23 mentioned in the settlement agreement or the first
24 amendment to settlement agreement.

25

1 Q. (By Mr. Coulthard) Did you ever become aware
2 during any of your post-April 2004 engagement with
3 Mr. Nassiri related to this project, that NDOT had a
4 proposed design for a future eastbound SR-160 to
5 northbound I-15 flyover ramp that would be constructed
6 when traffic demand warrants had been met and funding
7 was available?

8 A. No.

9 Q. Refer you to the third page of that exhibit.
10 There's a diagram of a proposed I-15/SR-160
11 interchange. Do you see that?

12 A. Yes.

13 MR. CICILIANO: That's Bates NV_NASSIRI
14 '1890. Correct?

15 Q. (By Mr. Coulthard) Does that document appear
16 to show a proposed flyover at the intersection of Blue
17 Diamond and I-15?

18 A. It appears to show a proposal, but that's not
19 what was built at the interchange.

20 Q. Understood.

21 A. And this was not shown to us in May of 2004
22 when Heidi came to our meeting.

23 Q. Okay.

24 A. Interesting.

25 Q. In the May meeting, you were talking about

1 the Blue Diamond realignment project. Correct?

2 MR. CICILIANO: Objection to the extent it
3 misstates testimony.

4 Q. (By Mr. Coulthard) As part -- one of the
5 topics of discussion was the -- was the proposed take
6 of land for the realignment. Correct?

7 A. One of the topics was how much land they
8 wanted to take from Nassiri, that's correct.

9 Q. One of the topics was how much surplus land
10 would be available that could potentially be exchanged
11 or acquired by Mr. Nassiri after the realignment.
12 Correct?

13 A. That's true.

14 Q. Was there any discussion whatsoever about the
15 ultimate configuration of I-15 and Blue Diamond
16 highway?

17 A. Yeah.

18 Q. Okay.

19 A. That's one of the main purposes of the
20 meeting is the scope of the project. Because in order
21 to evaluate the settlement -- or the severance damages
22 of the project, we needed to know what the entire
23 project is --

24 (Whereupon, Ms. Kern reenters the
25 proceedings.)

1 THE WITNESS: -- that the Department
2 intendeds to build.

3 Q. (By Mr. Coulthard) Isn't it true, from the
4 language we just looked at, the entire project related
5 to the SR-160 did not include the flyover. That was
6 planned for a subsequent project when funds were
7 available and traffic warrants were met?

8 MR. CICILIANO: Objection. Foundation.
9 Calls for a legal conclusion.

10 MR. KLDNEY: Speculation. Document speaks
11 for itself.

12 THE WITNESS: It's hard to know what the
13 Department was thinking of or planning or what the
14 intent of the Department actually was at this time.

15 Q. (By Mr. Coulthard) I'm not asking you to do
16 that.

17 Mr. Nassiri's letter, which is attached,
18 August 10th, 1999, was included -- is included in the
19 Environmental Assessment as Tab B38, Nevada Nassiri
20 Bates stamp 1969, and the document attached to that,
21 1970, in fact shows a flyover, doesn't it?

22 MR. CICILIANO: Objection to the
23 representation of flyover.

24 Q. (By Mr. Coulthard) Well --

25 MR. CICILIANO: Being the same I guess is the

1 Q. What were those assignments?

2 A. He was at -- the word "review" is a term of
3 art amongst appraisers, and it triggers a written
4 report with -- which we didn't need. So what
5 Mr. Kiehlbauch did was read the Gary Kent report and
6 give us kind of more in the role of a valuation
7 consultant. His opinion on whether those -- whether
8 those values were fairly accurate. That's what he did
9 for us.

10 Q. And what was Mr. Kiehlbauch's opinion as to
11 whether the State's valuation of the Nassiri property
12 for purchase of the take were -- were fair or
13 reasonable?

14 MR. CICILIANO: Objection. Calls for
15 speculation. Document, if it was prepared, speaks for
16 itself.

17 Q. (By Mr. Coulthard) What were his opinions?

18 MR. KLADNEY: Excuse me. Who hired
19 Mr. Kiehlbauch as regards to attorney-client privilege?
20 I'm just trying to figure that out. Who paid him? Who
21 hired him? Was it Nassiri or was it Chapman?

22 MR. COULTHARD: If you want to answer that,
23 you sure can.

24 THE WITNESS: I don't know the answer to that
25 question.

1 A. And I didn't follow up to say, Are you sure
2 it's everything, or whatever. I got a bunch of stuff,
3 which they sent.

4 Q. The second page of the document -- yeah, and
5 I'm not sure it goes with it, but it's the same date.
6 But it's got Steve Oxoby at Carter-Burgess on it.

7 So -- so in this time frame, in June of 2004,
8 Mr. Oxoby was involved with you in representing
9 Mr. Nassiri. Correct?

10 A. No. Steve Oxoby had been hired by
11 Mr. Nassiri independently of our office. We didn't
12 hire him, and we didn't jointly represent Mr. Nassiri.

13 Q. Okay.

14 A. If that's what you meant.

15 Q. No, but thank you.

16 But Mr. -- was Mr. Oxoby working for
17 Mr. Nassiri prior to your engagement by Mr. Nassiri?

18 A. To the best of my memory, yes.

19 Q. And what was Mr. Oxoby's role?

20 A. His role was to figure out how much extra
21 land would be available for Mr. Nassiri; in other
22 words, excess to the Department's needs. His other
23 role was there was an engineering question with regard
24 to a street called Parvin Street, and there was some
25 issue whether that would be signalized or whether that

1 would be signalized as part of the Department's
2 project. And that never went very far, and I think it
3 was actually more of an Oasis issue than it was of
4 concern to Mr. Nassiri.

5 Q. And Mr. Oxoby, did he have a history with the
6 Nevada Department of Transportation?

7 A. Yes. He worked there for a number of years.

8 Q. Do you recall what his position was at the
9 time he departed the -- NDOT?

10 A. No. By the time he was working with
11 Mr. Nassiri, he had already left the Department.

12 Q. Understood.

13 He was with Carter-Burgess. Correct?

14 A. I believe that's right.

15 Q. Mr. Oxoby was a resources for you and
16 Mr. Nassiri to address engineering questions or
17 concerns related to the NDOT/Nassiri property take.
18 Correct?

19 MR. CICILIANO: Objection to the extent it
20 misstates testimony.

21 THE WITNESS: I don't know that he's actually
22 a resource. He was somebody who was on board, hired
23 directly by Fred Nassiri to, I guess, have some
24 engineering expertise, if need be. My memory of what
25 he did was mainly the calculations of the land areas

1 and work on the metes and bounds descriptions of what
2 would be conveyed.

3 He also got involved a little bit with what
4 we call the Chambers matters. There were some claims
5 by other folks to a portion of that 24-acre piece,
6 which eventually went to Mr. Nassiri. He helped with
7 that.

8 Q. (By Mr. Coulthard) And just so I'm clear,
9 then, Mr. Oxoby was on what I would call the -- was he
10 a part of the Nassiri team?

11 A. I don't know if I agree or disagree with the
12 characterization. He had been hired by Mr. Nassiri.

13 Q. He was an asset that you could go to -- a
14 civil engineering asset if you had engineering
15 questions or concerns related to the Nassiri matter?

16 MR. CICILIANO: Objection. Asked and
17 answered.

18 Q. (By Mr. Coulthard) Or was he an -- such an
19 asset?

20 A. He was available to me for dealing with the
21 areas -- the land areas as I've described and the
22 Parvin issue -- or I mean to say Chambers issue. That
23 was my memory of my interaction with Mr. Oxoby.

24 Q. Yeah, let's talk about the Chambers issue.
25 So it's my understanding that the Chambers

1 Q. While it's defined in this agreement under
2 2.04 as conveyance of exchange property to Nassiri and
3 it's defined as the exchange property, it wasn't really
4 an exchange, was it?

5 MR. CICILIANO: Objection to the --

6 MR. KLADNEY: Objection. Calls for --

7 MR. COULTHARD: Well, strike that.

8 Q. (By Mr. Coulthard) Was it an exchange or was
9 it a purchase and sale for all cash?

10 MR. CICILIANO: Objection to the extent that
11 the document speaks for itself and calls for a legal
12 conclusion.

13 THE WITNESS: I'll defer to document, but I
14 can tell you what I remember.

15 Q. (By Mr. Coulthard) Sure.

16 A. It's a package deal. It's not two separate
17 transactions. It was, I believe, set up as two
18 separate transactions for a couple of reasons. One,
19 the Department generally takes by final order of
20 condemnation once a lawsuit has been filed. That's
21 your 4.2-acres. Further, the Department had to convey
22 by quitclaim deed the surplus property because that's a
23 statute. So the transactions actually are evidenced by
24 different paper, but the intent of the parties -- I
25 mean, the whole thing would not have gone down this way

1 but for the fact that Mr. Nassiri was able to exchange
2 his property for the exchange property and make the
3 adjustment in money. That's the thought process.

4 Q. Mr. Nassiri was paid in full for the 4 acres
5 as part of the transaction. Correct?

6 A. He was paid the value of the Gary Kent
7 appraisal as we stated.

8 Q. And then Mr. Nassiri paid full dollar value
9 for the surplus property?

10 A. According to another Gary Kent appraisal,
11 which we were not provided. But, in other words, that
12 was the Department's price.

13 Q. Okay.

14 A. And you asked whether it was arm's-length. I
15 suppose so. But there was no negotiating over that
16 Gary Kent price for the exchange property.

17 Q. Right.

18 A. And also, to make the deal go down,
19 Mr. Nassiri did not assert a claim for severance damage
20 to the remainder of the property. He simply accepted
21 the Gary Kent appraisal except for the small amount of
22 damages that Gary Kent allowed for isolating. I think
23 a little something got landlocked or whatever.

24 MR. KLADNEY: So can we take a break?

25 MR. COULTHARD: Sure.

1 I didn't do such a good job with putting the exhibits
2 in the right spot. But from reading the documents and
3 my memory from being there at the time, I know what the
4 exhibits were.

5 Q. Bate No. 3491, diagram of Bate number 3491
6 was -- what is your understanding as -- and I made a
7 copy.

8 MR. COULTHARD: We'll go ahead and mark that
9 next in order.

10 (Deposition Exhibit 10 was marked for
11 identification.)

12 Q. (By Mr. Coulthard) And you reviewed --

13 A. I did review this.

14 Q. And do you have an understanding, was this a
15 document that was attached to the settlement agreement?

16 A. Yes.

17 Q. And was the purpose of this diagram to show
18 the proposed realignment of Blue Diamond east of I-15?

19 A. The purpose of it was to show the thought
20 process of the parties in putting the deal together,
21 which, as I said, was a package deal, not two separate
22 ones. Mr. Nassiri would not have done the deal if it
23 was -- if he was not able to get this property in
24 trade.

25 Q. So this showed the --

1 A. Did I answer your question?

2 Q. Yeah.

3 So the purpose -- one of the purposes was to
4 show the realignment of the SR-160 east of I-15.
5 Correct?

6 A. And the scope of the rest of the project as
7 if would affect the settlement that the parties are
8 putting together.

9 Q. And to show the surplus property of the -- or
10 the diagram of the surplus property. Correct?

11 A. And the construction of the project in the
12 manner proposed by the Department.

13 Q. And when you say "the project," what is
14 the -- the scope of the project that you're referring
15 to?

16 A. It is the realignment of the interchange as
17 it shows on here, Interstate 15 going as it goes. But
18 it does not show that any kind of a flyover was in the
19 contemplation of the parties.

20 Q. And is that stated anywhere in the settlement
21 agreement and release of claims, the purpose of this
22 document?

23 A. The word --

24 MR. CICILIANO: An objection to the extent
25 that it calls for a legal conclusion. The document

1 A. And it would certainly apply to the land that
2 NDOT bought from Mr. Nassiri, right, because they're
3 going to build this realignment on it. Correct?

4 Q. Correct. I mean, I guess --

5 A. Sorry, Bill. Can I sit where you are? I'm
6 starting to fall back into mode.

7 So let me just try to ask the question rather
8 than answer it.

9 THE WITNESS: Can we read back what I just
10 said? Let me pick up in a more congenial way.

11 Q. (By Mr. Coulthard) No, it's okay. I'll move
12 on.

13 There were mutual releases granted between
14 NDOT and Nassiri under the settlement agreement.
15 Correct?

16 A. Yes.

17 Q. As you sit here today -- well, strike that.

18 There were -- you actually prepared the
19 initial draft of the settlement agreement, didn't you?

20 A. One that was very much different than this,
21 and this was significantly changed by Greg Walch and
22 Kirby Gruchow. So what you see before you is really a
23 second effort. This is more on the Santoro Driggs
24 format.

25 MR. KLADNEY: A moment, please.

1 A. But just to finish my answer, why Greg Walch
2 took that position in this particular case, you'll have
3 to ask Greg.

4 Q. Okay.

5 A. Because I really don't know what his thoughts
6 were.

7 Q. So the next in order exhibit is a
8 November 16th, 2004, letter from you to Mr. Kirby
9 Gruchow at Santoro Driggs. He was involved in
10 assisting Mr. Walch to represent NDOT. Correct?

11 A. Was Kirby involved in assisting Greg Walch?

12 Q. Right.

13 A. Yes. Yes, he was.

14 Q. And representing the State?

15 A. Yes, that's true.

16 Q. Is this a follow up to another request asking
17 for the Gary Kent appraisal report related to the
18 surplus property?

19 A. Looks like it.

20 MR. KLADNEY: Are you speculating?

21 THE WITNESS: Not actually. We already had
22 the first Gary Kent report, I think. So I think it was
23 for the --

24 Q. (By Mr. Coulthard) Okay.

25

1 agreement were agreed to between NDOT and Mr. Nassiri
2 and the execution of the Settlement and Release of All
3 Claims, did anyone coerce or place any form of duress
4 or undue influence or pressure on Mr. Nassiri forcing
5 him to enter into this settlement agreement, to your
6 knowledge?

7 MR. KLADNEY: Objection. Speculation. Only
8 as to his knowledge.

9 THE WITNESS: Not that I recall.

10 Q. (By Mr. Coulthard) And I think I asked you,
11 but it is a pretty important issue in this case, so I
12 want to ask it again.

13 There is not an expressed reservation or an
14 expressed easement for view and -- or visibility as
15 against NDOT in favor of Mr. Nassiri in the final
16 Settlement Agreement and Release of All Claims, is
17 there?

18 A. I do not see an express reservation of an
19 easement. I'm not aware of a conveyance of an easement
20 in that regard by NDOT to Mr. Nassiri. Again, though,
21 the agreement was entered into in contemplation of the
22 scope of the project as is depicted on the various maps
23 that we've discussed.

24 MR. KLADNEY: And I would just add the
25 document speaks for itself.

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) SS:
4 COUNTY OF CLARK)

5 I, Amber Riggio, a duly commissioned and
6 licensed court reporter, Clark County, State of Nevada,
7 do hereby certify: That I reported the taking of the
8 deposition of the witness, MICHAEL G. CHAPMAN, ESQ.,
9 commencing on Wednesday, February 4, 2015, at 9:29
10 a.m.;

11 That prior to being examined, the witness
12 was, by me, duly sworn to testify to the truth. That I
13 thereafter transcribed my said shorthand notes into
14 typewriting and that the typewritten transcript of said
15 deposition is a complete, true, and accurate
16 transcription of said shorthand notes.

17 I further certify that I am not a relative or
18 employee of an attorney or counsel or any of the
19 parties, nor a relative or employee of an attorney or
20 counsel involved in said action, nor a person
21 financially interested in the action; that a request
22 ([X] has) ([] has not) been made to review the
23 transcript.

24 IN WITNESS THEREOF, I have hereunto set my
25 hand in my office in the County of Clark, State of
Nevada, this 16th day of February, 2015.

Amber Riggio, CCR No. 914

EXHIBIT 24

May 7, 2004

Ms. Susan Klekar
Division Administrator
Federal Highway Administration
705 North Plaza, Suite 220
Carson City, NV 89701

Subject: I-15 @ SR-160 Interchange
Justification for Change of Access
EA 72495

Dear Ms. Klekar:

The Nevada Department of Transportation (NDOT) is proposing a revision to the existing access for the SR 160, (the Blue Diamond Highway) connection to the Interstate System (I-15) in Clark County, Nevada. This revised access location requires approval by the Federal Highway Administration (FHWA) pursuant to 23 USC Section 111, subsequent to demonstration by NDOT that the safety and operational efficiency will be improved by the revised access point to the Interstate system. This report presents documentation for the project and justification for the revised location of the SR-160 access to the Interstate System (I-15) in Southwest Las Vegas, in Clark County, Nevada.

The approval by the FHWA of this revised access point to the interstate constitutes a Federal action that requires conformance to the National Environmental Policy Act (NEPA) of 1969. This policy has been followed and a determination of a "Finding Of No Significant Impact" (FONSI) is pending.

A. LOCATION

The attached figures show the location of the SR-160 Blue Diamond Highway Project. The new alignment is approximately 450 feet south of the existing interchange on Interstate 15, in Southwest Las Vegas, Nevada. The nearest existing adjacent interchanges on I-15 are the St. Rose Parkway interchange, approximately 5.6 miles south, and the I-215 interchange, approximately 1.4 miles north. A new interchange is under design at I-15 and Silverado, approximately 1.5 miles south of the proposed I-15/SR 160 interchange.

B. BACKGROUND

The Nevada Department of Transportation (NDOT), in cooperation with the Federal Highway Administration (FHWA) and Clark County, is proposing to improve State Route (SR) 160, Blue Diamond Road, from Las Vegas Boulevard (SR-604) across Interstate 15 (I-15) to just west of Rainbow Boulevard (SR-595). This project proposes to widen SR-160 from two lanes to eight lanes, construct a grade separation on SR-160 at

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the Union Pacific Railroad (UPRR) crossing, reconstruct the interchange at SR-160 and I-15, and reconstruct the Warm Springs grade separation over I-15. In conjunction with the roadway and interchange improvements, the Lower Blue Diamond Detention Basin (LBDDDB) and inflow channel flood control facilities, located adjacent to the UPRR between Robindale Road and Windmill Lane, are proposed to be constructed.

C. PURPOSE and NEED

Based upon projections adopted by the Regional Transportation Commission of Southern Nevada (RTC) in October 1999, the population of the Las Vegas metropolitan area is projected to increase from approximately 1.3 million people to approximately 2.2 million people by the year 2025.

The purpose of the project is to serve the existing and projected future traffic volumes in the southern I-15 corridor by completing elements of planned local roadway network; to provide access to and from the existing and planned development in this Southwest Las Vegas study area; to provide continuity in the east west arterial street system across I-15; help alleviate congestion at the existing SR-160 Blue Diamond Interchange (and surrounding interchanges) and to improve access for arterial traffic utilizing this area, entering and exiting I-15.

The proposed improvements will provide sufficient roadway capacity to accommodate future traffic volumes, accommodate alternative transportation modes (bicycles and pedestrians), improve the operational characteristics of SR-160 and the I-15/SR-160 interchange. The proposed structures at I-15/SR-160 and I-15/Warm Springs Road will allow new travel lanes to be constructed crossing the I-15 corridor, and provide safe and efficient east-west bicycle/pedestrian facilities across I-15. The SR-160/UPRR grade separation will eliminate traffic queues and accidents at the at-grade crossing. In addition, constructing the inflow channel and detention basin will allow reduction in the size and cost of drainage structures associated with the proposed improvements, while meeting capacity requirements to convey and store flows from 100-year storm events to protect downstream properties from potential flood damage.

The proposed improvements to SR-160 would consist of realigning and widening the roadway to eight travel lanes (four in each direction) from Las Vegas Boulevard to Industrial Road and widening along the present alignment from Industrial Road west to Rainbow Boulevard. At Rainbow Boulevard, the roadway section will transition to match the existing two-lane configuration. The proposed improvements include construction of a full access interchange at I-15, replacing the existing Blue Diamond Road interchange, and connecting SR-160 on the east at Windmill Road and Las Vegas Boulevard South. The UPRR at-grade crossing with SR-160 will be replaced with a new grade separation, eliminating the crossing arms and signals now in place. This project also includes a preliminary conceptual design for a future eastbound SR-160 to northbound I-15 fly-over ramp to be constructed when traffic demand warrants have been met and funding is available. In addition to the work proposed on SR-160, the work on Warm Springs Road

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will consist of replacing the existing two-lane grade separation over I-15 with a new six-lane structure and widening Warm Springs Road to six lanes from Las Vegas Boulevard to Industrial Road.

The proposed project will be constructed in phases. Phase I is proposed to include the new SR-160 and I-15 interchange, the widening of SR-160 to an eight-lane roadway from Las Vegas Boulevard to Valley View (three lanes in each direction over the new I-15 bridge), and the realignment of SR-160 between Industrial Road and Windmill Lane/Las Vegas Boulevard. Construction will begin in late 2004 to early 2005 and is expected to last 18-24 months.

Phase II is proposed to include the widening of SR-160 to an eight-lane roadway from Valley View to Rainbow. The at-grade UPRR crossing will be replaced with a grade separation over the railroad tracks. Mechanically stabilized earthwalls (MSE), at an approximate height of 35 to 38 feet, will be utilized to construct the railroad grade separation from approximately Lindell Avenue to Mann Street and to realign Jones Boulevard. Phase II is expected to start construction in early 2005. Construction is also expected to last 18-24 months.

Phase III is proposed to include the Warm Springs bridge replacement at I-15, and the widening of Warm Springs from two to six lanes between Industrial Road and Las Vegas Boulevard South to match the six-lane configuration of Warm Springs east of Las Vegas Boulevard. This phase is expected to begin in late 2005, with construction lasting 12-18 months.

As mentioned earlier, a future potential fourth phase (Phase IV) would be required to build a new EB SR 160 to NB I-15 flyover structure (ramp) when traffic demand warrants are met, and funding becomes available. A new flyover ramp at the interchange would also entail building a C-D road NB on I-15, as well as having to reconfigure the ramp gores, and a portion of each proposed ramp.

Construction of flood control facilities consist of a trapezoidal inflow concrete-lined channel along the UPRR alignment and the 69-acre Lower Blue Diamond Detention Basin, primarily situated on BLM land. Phase I will construct a haul road into the Detention Basin and will start removing material from the Basin. Phase II will finish the removal of the material from the Detention Basin and will construct the trapezoidal inflow channel. The proposed flood control facilities will be designed to store flows for the 100-year storm event.

D. COORDINATION

The impacts of this revised access request affect the jurisdictions and constituencies of several entities, all of who have participated from the project inception and throughout the ultimate development of alternatives. Besides the Nevada Department of Transportation (NDOT) and the Federal Highway Administration

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(FHWA), other crucial parties affecting the design and development of alternatives have been Clark County, RTC of Southern Nevada, and several major local property owners.

In 2001, the Nevada Department of Transportation completed the Interstate Route 15, Corridor Operational Analysis. This study analyzed existing and future conditions along I-15. This study helped provide base data, including average daily traffic (ADT) and peak hour volumes, which have been modified and used with other appropriate analyses that have been used for design and development of this project.

COMPLIANCE WITH FEDERAL REQUIREMENTS

Recognizing the Federal Highway Administration's (FHWA) policy of maintaining the highest levels of safety and mobility on the Interstate System, this revised access request documents and complies with the various FHWA requirements. The eight requirements are discussed below:

1. *The existing interchanges and/or local roads and streets in the corridor can neither provide the necessary access nor be improved to satisfactorily accommodate the design year traffic demands while at the same time providing the access intended by the proposal.*

Serious capacity constraints on SR-160, the Blue Diamond Highway, and the Interstate 15 interchange exist currently, and worsen considerably with the future 20 year No Build Alternative. Mobility deficiencies have been identified under the no build alternative due to the over demand for access to the freeway at the interchange and to poor ongoing operational characteristics of the existing facility.

Through the traffic and operational analysis it has become apparent that the existing partial cloverleaf interchange with a 2-lane bridge crossing structure has more than outlived its usefulness. The existing rural interchange now with traffic signals is operating at capacity. The 2 lane capacity of the bridge crossing, as well as SR-160 approaches to the interchange coupled with current traffic getting onto SR-160 at the Industrial Road and Las Vegas Boulevard intersections, have created an almost daily gridlock situation on SR-160, up to and within the present I-15 interchange area. The current SR-160 Blue Diamond Interchange does not adequately accommodate the present peak hour traffic, not the future projected design year traffic. While the proposed interchange will certainly improve local traffic circulation (shorter trips), it is intended primarily to service regional trips, as well as trips outside the region. The interchange has been designed to adequately handle the large volume of traffic from this Southwest area of Las Vegas and outlying areas such as Pahrump, and to accommodate the heavy regional commute that relies on SR-160 and Interstate 15 as their major routes of access and conveyance.

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TRAFFIC and OPERATIONAL CHARACTERISTICS

The reconfiguration of the I-15/SR-160 interchange and the widening of SR-160 from Industrial Road to Las Vegas Boulevard South will provide an improved level of service (LOS) to accommodate the growth occurring and planned for the SR-160 corridor. Levels of service categorize traffic operating conditions and are designated from A, representing the best operating conditions, to F, representing the worst. Levels of service are shown in Table 1 for the no-build and build scenarios. Projected average annual daily traffic (AADT) volumes are shown in Table 2. Under the no-build scenario, the level of service associated with projected traffic volumes for both the interchange and the roadway is expected to deteriorate to "F," a situation in which traffic demand exceeds facility capacity, resulting in forced or breakdown traffic flow (unstable queues, short bursts of movement followed by stoppages, and lower average travel speeds).

Although the Table 1 shows comparable levels of service (LOS) for the intersections along Blue Diamond for the 2023 Build and 2023 Build with flyover, it is important to note Table 3 and Figures 1 through 5. Table 3 shows that the LOS for the weaving and diverge sections for northbound I-15 improve with the flyover in place. While the Blue Diamond northbound on ramp merge section is relatively the same (LOS B/B (am/pm) versus LOS B/B), the I-15 weave section and the I-15 to I-215 diverge section improve drastically. The weave section for northbound I-15 between Blue Diamond and the I-215 is eliminated with the flyover option while the "with out flyover" option is a LOS E/D. The reason for this improvement is that all of the I-15 traffic that wants to travel to I-215 east and west, diverges off of I-15 prior to the Blue Diamond interchange onto a collector distributor (CD) that serves the northbound Blue Diamond off ramp, the northbound Blue Diamond on ramp, the flyover traffic traveling to I-215 where the CD ultimately turns into the I-15 to I-215 system to system ramp connection. As a result, the weaving section on I-15 between Blue Diamond and I-215 is eliminated. The corresponding weaving section on the I-215 off ramp (CD) that begins from I-15 prior to Blue Diamond is an LOS C/B. Thus the overall I-15 weave is much better. Also, the diverge section for I-215 improves with the flyover option. The reason for this is that the I-215 off ramp (CD) that begins prior to Blue Diamond is two lanes and the I-215 east and west traffic have more distance to weave and preposition themselves prior to taking the ramps for I-215 east and I-215 west. The corresponding LOS for the "with flyover" versus the "without flyover" is A/A versus F/F. See Table 3 and Figures 1 through 5 for comparison purposes.

The traffic forecasts shown in Table 2 were developed by the NDOT Traffic Information Division with concurrence from the NDOT Program Development Office. The forecasts were developed utilizing the Regional Transcad Travel Demand Model Phase I (1140 TAZ) approved by the Metropolitan Planning Organization (MPO) and RTC of Southern Nevada, prior to August 2002, with the output adjusted according to standard procedures in accordance with the principles delineated in NCHRP 255¹.

¹ Documentation of the specific adjustments made to the model output is on file with the NDOT Traffic Information Division at 1263 South Stewart Street in Carson City, Nevada.

Additional analysis predicts traffic volumes will reach 49,900 vehicles at the western limits of the proposed project by 2028. However, based on the amount and rate of growth in the SR-160 corridor, it is expected that this condition will occur even sooner than predicted, thus generating the need for an eight-lane facility.

The Southern I-15 Corridor Study (1999) identified the potential demands and street and highway capacity improvements that would be needed. With all of the improvements to all of the other streets and highways, SR 160 still needs to be 8 lanes. The existing interchange simply will not accommodate those lanes and volumes.

Table 1
Levels of Service
SR-160 Blue Diamond Road

To		Year 2003	Year 2023	Year 2003	Year 2023	
		No-Build		Build	Build No Flyover, then With Flyover	
Las Vegas Boulevard		E	F	D	C	C
Industrial Road		C	F	C	D	D
Valley View Boulevard		B	F	B	D	D
I-15 Interchange Southbound Ramps		C	F	C	D	C
I-15 Interchange Northbound Ramps		A	F	C	C	C

Table 2
Average Annual Daily Traffic (AADT)
SR-160 Las Vegas Boulevard South to Rainbow Boulevard

From	To	Year 2003	Year 2023	% of Increase
Las Vegas Boulevard South	I-15	27,100	44,700	64.5%
I-15	Industrial Road	20,700	65,700	217%
Industrial Road	Decatur Boulevard	18,200	55,700	206%
Decatur Boulevard	Jones Boulevard	16,200	47,700	194%
Jones Boulevard	Rainbow Boulevard	14,400	42,100	192%

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2. All reasonable alternatives for design options, location and transportation system management type improvements (such as ramp metering, mass transit, and HOV facilities) have been assessed and provided for if currently justified, or provisions are included for accommodating such facilities if a future need is identified.

No Build Alternative

This alternative would leave capacity, operations, and safety conditions as they exist, worsening over time as development places greater demand on the SR-160 facility. The no-build alternative is considered not feasible due to capacity issues generated by the approximately 200 percent increase in traffic by design year 2023. This tremendous new capacity need is justified by the huge increase in development and growth seen in this Southwest region of Las Vegas. The new development is a combination of multiple new housing developments, and industrial/ commercial/ retail / hotel casino development near and within the SR-160 Blue Diamond Highway corridor. This continued, unabated growth will further exacerbate an almost daily, near gridlock condition on SR-160 within the project area.

Build Alternative(s) – I 15 / SR 160 Interchange Configurations

The following interchange configurations were considered for the new I-15/SR-160 interchange:

- A standard diamond interchange with four full-access ramps.
- A single point urban interchange (SPUI) with four full-access ramps.
- A tight urban diamond interchange (TUDI) with four full-access ramps.

Operational analysis of both the standard diamond interchange and the SPUI determined that these configurations did not perform as efficiently as the TUDI, given the predicted traffic volumes, geometric constraints, existing right-of-way, and hydrology/drainage issues. The TUDI configuration was selected as the preferred interchange alternative.

There were numerous advantages to selecting the TUDI as the preferred alternative. For example, it gave more options in the timing schemes when considering the TUDI. Because of the high volume of east to north traffic in comparison to the lower westbound volume, the eastbound left turns can be given more green time to clear the queue while allowing the eastbound through traffic to continue through. In the case of the SPUI, where opposite left turns are simultaneous the through movements suffer. Another benefit of the TUDI is that the structure needed is smaller than the SPUI and it has some flexibility for future expanding. For example, ramp meters can be

accommodated by the on ramps with minimal ramp work. Also, because the relative closeness of the ramp terminals, a flyover can be incorporated into the design to handle the future high directional volumes (east to north) with minimal ramp work as well.

One of the reasons that the standard diamond was eliminated from the analysis is due to the proximity of the existing Industrial Road and Valley View intersections with SR 160. The standard diamond reduces the much-needed distance between signals in order to achieve efficient signal progression. If a standard diamond were constructed, the signal progression would be lost without some kind of realignment/shifting farther out of Industrial Road. Another possibility to get the most efficient signal progression would be to entirely abandon the existing Industrial Road, and hence shift the major signal to Valley View or Decatur. This was unacceptable to most of the other project stakeholders including Clark County and many private property owners.

One of the reasons that the SPUI was eliminated was due to the heavy offset volumes. In order for a SPUI to operate efficiently, the opposing left turns should be close to equal and be somewhat balanced. In the case of SR-160, the eastbound SR-160 to northbound I-15 left turn volume is approximately six times greater than the opposing left turn volume (west bound SR-160 to southbound I-15). In addition the SPUI structure is more complex, and larger, and thus would cost significantly more.

Ramp Metering, HOV, Transit – According to the currently scheduled FAST projects, Package “C” will address ramp metering, HOV’s and public transportation systems in the I-15 corridor from I-15/I-215 to St. Rose Parkway. According to the draft of NDOT’s “Ramp Meter Guidelines” the current and future volumes in this corridor will not trigger the need for ramp metering; however, the plan for ramp metering is to meter all ramps to assist in managing incidents and other off peak congestion. It is anticipated that transportation system management strategies such as ramp metering, HOV lanes, and regional transit improvements will be used to address future traffic demands. The TUDI will accommodate future ramp metering.

3. The proposed access point does not have a significant adverse impact on the safety and operation of the Interstate facility based on an analysis of current and future traffic. The operational analysis for existing conditions shall, particularly in urbanized areas, include analysis of sections of Interstate to and including at least the first adjacent existing or proposed interchange on either side. Crossroads and other roads and streets shall be included in the analysis to the extent necessary to assure their ability to collect and distribute traffic to and from the interchange with new or revised access points.

The reader’s attention is directed to the previously discussed general section titled “Traffic and Operational Characteristics”. Further discussion of all the requested aspects is as follows.

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The Highway Capacity Manual software 2000 (HCS2000) was used in analyzing the freeway segment, merge/diverge, and weaving operations. In the year 2003, the I-15 segments from SR-160 Blue Diamond to the I-215 Southern Beltway operate at an acceptable LOS in the north and south bound directions for both the build and no-build options. In 2023, with the no build option, the LOS for this section of I-15 north of Blue Diamond seriously deteriorates in the Northbound AM, and Southbound PM to an LOS E or F. For the merge and diverge operational analysis for 2003, I-15 with the ramps operated at an acceptable LOS. See figures 1 through 5 where LOS information (etc) for the merge/diverge, and weave analysis are clearly depicted for the build and no build situations.

The diverge area at I-215 – For the 2023 Build and No Build scenarios for NB I-15 to west and east I-215 is over capacity due to the single lane feeding the east and west movements. In the 2023 Build with flyover scenario, a collector-distributor road is utilized that will take the I-215 traffic from I-15 prior to Blue Diamond where all of the weaving can take place. Also, the collector distributor road will be two lanes feeding the west and east I-215 movements, which result in a level of service A.

4. The proposed access connects to a public road only and will provide for all traffic movements. Less than “full interchanges” for special purposes access for transit vehicles, for HOV’s, or into park and ride lots may be considered on a case-by-case basis. The proposed access will be designed to meet or exceed current standards for Federal-aid projects on the Interstate System.

Full Interchange Access to a Public Road

The reader is directed to review the included project sketches showing the new proposed “revised access” Blue Diamond Interchange. As will be noticed, the new interchange being proposed is a “tight urban diamond interchange” or TUDI, and is a full interchange with full access ramps in all directions to the Interstate 15 facility. The new proposed interchange connects to a highly traveled public road (SR-160), and is being designed to meet or exceed current standards for Federal aid projects on the Interstate System.

The control of access limits on the crossroad (SR 160) will be to almost Industrial Road on the west side of I-15, and almost to Parvin on the east side of I-15.

5. The proposal considers and is consistent with local and regional land use and transportation plans. Prior to final approval, all requests for new or revised access must be consistent with the metropolitan and/or statewide transportation plan, as appropriate, the applicable provisions of 23 CFR part 450 and the transportation conformity requirements of 40 CFR parts 51 and 93.

a. Revised Access Consistency with Local/Regional Land Use Planning and Transportation Plans.

The proposed project is located within the Clark County Enterprise Township planning area, located in the southwestern portion of the Las Vegas Valley,² including the unincorporated Town of Enterprise. Enterprise is about 70 square miles (44,500 acres), with 28,700 acres of developable area (excluding easements, rights-of-way, and the area south of the BLM's land disposal boundary). SR-160 is the major transportation corridor traversing Enterprise from east to west. Interstate 15 is the major north-south transportation corridor.

Commercial development is concentrated at the eastern limits of the project at the I-15/SR-160 interchange and Industrial Road and at the SR-160/Rainbow Boulevard intersection at the western limits of the project. A large percentage of the property abutting the project area is undeveloped; but this is changing very rapidly as new businesses and master-planned communities are being approved and developed along the SR-160 corridor and arterial streets (Rainbow, Decatur, Valley View, Jones, etc.) accessing the corridor.

According to the Clark County Comprehensive Planning Department, the proposed project is located within the Enterprise "Gateway District," characterized as a "compact, mixed use activity center" along the SR-160 corridor. The Gateway District is intended to provide a mix of housing types and businesses, including casino/hotel resorts and other commercial/retail/industrial employers. It is expected that pedestrian and bicycle traffic would utilize the SR-160 corridor to access employment facilities and housing located in the Gateway District east and west of the I-15 freeway. Several large master-planned communities, which Clark County Comprehensive Planning has designated as major projects (300 acres or larger in size), are planned in proximity to the proposed project. Mountain's Edge, Rhodes Ranch, and Pinnacle Peaks are in closest proximity to the project area. Mountain's Edge³ directly abuts the project's western limit south of Blue Diamond Road and west of Rainbow Boulevard with a total of 3,627 acres extending west to Fort Apache Road. Within this development, the planned land uses include approximately 2,150 acres of single- and multi-family residential, 114 acres of office professional, and 150 acres of general commercial. Zoning indicates that office and commercial uses will abut Blue Diamond Road. Mountain's Edge has a residential cap of 12,500 units. Construction of this development is expected to begin in 2003. Build-out is projected to occur over the next 10 years. Pinnacle Peaks⁴ is 1,485 acres in size located east of Rainbow Boulevard between Warm Springs Road to the north and Pebble Road to the south. Build-out for this project is projected at 5,200 residential units with supporting commercial zoning. Rhodes Ranch⁴, with a cap of 9,000 residential units, is located east of Durango Boulevard Land uses Sunset Road to the north and Pebble Road to the south. Southern Highlands is removed from the project area

² Enterprise Land Use Plan, Clark County Comprehensive Planning, December 1998

³ Clark County Development Services Major Projects Descriptions:

http://www.co.clark.nv.us/development_services/majproj.htm

further to the south, situated along I-15 and Valley View, Decatur, and Jones arterials, all feeding traffic into the SR-160 and I-15 transportation corridors.

b. Project Conformity

The project is in the Clark County Regional Transportation Plan (RTP) and the Clark County Transportation Improvement Program (TIP). The project is listed in the State Transportation Improvement Program (STIP) which has been approved by the FHWA; therefore, pursuant to 40 CFR 93, this project conforms to the State Implementation Plan (SIP). The project will not violate the NAAQS for the build scenario.

6. In areas where the potential exists for future multiple interchange additions, all requests for new or revised access are supported by a comprehensive Interstate network study with recommendations that address all proposed and desired access within the context of a long term plan.

Analysis of the SR 160 Blue Diamond Project in conjunction with the associated new (in design) Silverado Ranch Interchange (approximately a mile and a half to the south) has been taken into consideration. Operational characteristics between the two have been analyzed and looked at for this revised access, SR-160 / I-15 Interchange project. A separate request has been prepared for Silverado Ranch with conceptual approval given by FHWA-HQ. An environmental analysis is underway with final approval expected upon completion of NEPA activities.

7. The request for a new or revised access generated by new or expanded development demonstrates appropriate coordination between the development and related or otherwise required transportation system improvements.

The proposed new "revised access" interchange for SR-160 Blue Diamond Road and Interstate 15 is consistent with the existing and planned land uses in this Southwest area of Las Vegas, Nevada. Attention is directed to the previous section titled "Revised Access Consistency with Local/Regional Land Use Planning and Transportation Plans". The project is currently programmed for the initial design activities, and as such is included as part of the transportation plan conformity process.

8. The request for new or revised access contains information relative to the planning requirements and the status of the environmental processing of the proposal.

In accordance with the Federal requirements, an Environmental Assessment (EA) is currently being prepared for this project. The issuance of a FONSI is anticipated by early Spring 2004.

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In summation, the analysis, planning, and review required for this project all predict unacceptable LOS levels of service for the interchange and on I-15 and SR 160 for the "no build" alternative. Clearly the total gridlock, and delays and inconvenience to the users at the interchange and along SR-160 and I-15 would be unacceptable. The proposed improvements with the widening, and building of the new interchange will provide an acceptable level of service for this facility, and more importantly allow this interchange and surrounding area to function well through the design period.

The project costs for construction are estimated to be between \$70 and \$75 million dollars, (for Phases I, II, III) exclusive of final R/W and PE costs. NDOT and Clark County both agree that the increasing transportation demands being placed upon this facility now and in the 20 year design future clearly justifies the access revision and building of the new interchange, and necessary widening improvements to SR-160. Your approval is requested for this revision in access to the existing SR-160/ I-15 Interchange. Your attention to this matter is greatly appreciated.

Sincerely,

Wayne G. Kinder
Chief Road Design Engineer

WGK:JB:ld

Cc: Susan G. Martinovich, Deputy Director
Greg Novak, FHWA
Frank Csiga, Assistant Chief Road Design Engineer
Ruedy Edgington, Asst. Director Engineering

EXHIBIT 25



1263 South Stewart Street
Carson City, Nevada 89712
Phone: (775) 888-7490
Fax: (775) 888-7401

MEMORANDUM

June 30, 2004

TO: Jeff Fontaine, P.E., Director

FROM: Wayne G. Kinder, Chief Road Design Engineer

SUBJECT: Design Recommendation
SR 160 Blue Diamond Road From Las Vegas Blvd (SR 604)/Windmill to Valley View Blvd – Phase 1 and SR 160 Blue Diamond Road From Valley View Blvd to Rainbow Blvd – Phase 2 and FR CL25, Warm Springs Road From Industrial Road to Las Vegas Blvd (SR 604) – Phase 3
Project #: SPSR-160(006)
Project ID #: 72495

Background:

The Nevada Department of Transportation (NDOT), in cooperation with the Federal Highway Administration (FHWA) and Clark County, is proposing to improve State Route (SR) 160, Blue Diamond Road, from Las Vegas Boulevard (SR-604) across Interstate 15 (I-15) to just west of Rainbow Boulevard (SR-595). This project proposes to widen SR-160 from two lanes to eight lanes, construct a grade separation on SR-160 at the Union Pacific Railroad (UPRR) crossing, reconstruct the interchange at SR-160 and I-15, and reconstruct and widen the Warm Springs grade separation over I-15. In conjunction with the roadway and interchange improvements, the Lower Blue Diamond Detention Basin (LBDDB) and inflow channel flood control facilities, located adjacent to the UPRR between SR-160 and Windmill Lane, are proposed to be constructed.

The proposed improvements to SR-160 would consist of realigning and widening the roadway from Las Vegas Boulevard to Industrial Road and along the present alignment from Industrial Road west to Rainbow Boulevard. At Rainbow Boulevard, the roadway section will transition to match the existing two-lane configuration. The proposed improvements include construction of a full access interchange at I-15, removing the existing Blue Diamond interchange, and connecting SR-160 on the east at Windmill Road and Las Vegas Boulevard South. The UPRR at-grade crossing with SR-160 will be replaced with a new grade separation, eliminating the crossing arms now in place. This project will also include a proposed design for a future eastbound SR-160 to northbound I-15 fly-over ramp to be constructed when traffic demand warrants have been met and funding is available. In addition to the work proposed on SR-160, the work on Warm Springs Road will consist of replacing the two-lane grade separation over I-15 with a new six-lane structure and widening Warm Springs Road to six lanes from Las Vegas Boulevard to Industrial Road.

The proposed project will be constructed in phases. Phase I is proposed to include the new SR-160 and I-15 interchange, the widening of SR-160 to a six-lane roadway from Las Vegas Boulevard to ramps on the west side of I-15 then to eight-lanes up to Valley View. The portion of SR160 from Industrial Road to Windmill Lane/Las Vegas Boulevard will be on a new alignment. Construction will begin in early 2005 and is expected to last 18-24 months.

Phase II is proposed to include the widening of SR-160 to an eight-lane roadway from Valley View to Rainbow. The at-grade UPRR crossing will be replaced with a grade separation over the railroad tracks. Mechanically stabilized earthwalls (MSE), at an approximate height of 35 to 38 feet, will be utilized to construct the railroad grade separation from approximately Lindell Avenue to Mann Street and to realign and reconstruct Jones Boulevard to match new SR160 profile. Construction is expected to begin in late 2005, with construction lasting 18-24 months.

Phase III is proposed to include the Warm Springs bridge replacement at I-15, and the widening of Warm Springs from two to six lanes between Industrial Road and Las Vegas Boulevard South to match the six-lane configuration of Warm Springs east of Las Vegas Boulevard. This phase is expected to begin in early 2006, with construction lasting 12-18 months. Phases II and III may be broken into smaller construction projects as necessary to efficiently coordinate with adjacent property developments.

Construction of flood control facilities consist of a rectangular inflow concrete-lined channel along the UPRR alignment and the 69-acre Lower Blue Diamond Detention Basin, primarily situated on BLM land. Phase I will construct a haul road into the Detention Basin and will start removing material from the Basin. Phase II will continue to remove material from the Detention Basin and will construct the rectangular inflow channel. Phase III will also continue to remove material from the basin. The total approximate amount of material removed from the basin for all three phases is 631,000 cubic yards. The total amount to be removed from the basin is approximately 950,000 cubic yards. The remaining 319,000 cubic yards will be available for other federal aid projects within the area. Any material left in the basin after three years of completion of our project will be removed by the County. Currently the County has plans to construct the outfall to the basin as a separate contract. The proposed flood control facilities will be designed to store flows for the 100-year storm event.

Design Criteria:

Appropriate design criteria was selected and used on this project based upon the roadway classifications. Phase 1 has three roadway classifications. These are Interstate Highways, Other Principal Arterials, and Local Roads and Streets. In order to provide for future widening on I-15 and provide the necessary connectivity to I-15 from SR-160 the alignment of SR-160 had to be changed into its planned configuration. The new structure over I-15 will provide for a future build out of seven lanes in each direction on I-15 as recommended in the "I-15 SOUTH CORRIDOR STUDY Dated April 21, 1999". I-15 has been designed to 75 mph. The existing I-15 along with the new ramps meet the 2001 AASHTO Green Book policies and AASHTO policy on Design Standards-Interstate System. Adjustments to the location of the ramp terminals will need to be made when I-15 is widened to its ultimate width. Consideration was given to future ramp design in order to minimize throwaway pavement.

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The Blue Diamond Highway (SR-160) is considered an Other Principal Arterial. Within the limits of phase 1, Las Vegas Boulevard to Valley View Drive, a design speed of 45 mph was used. The general lane configuration between Las Vegas Boulevard and the ramps on the West side of I-15 will be six twelve-foot lanes (three EB, three WB) a median that varies from three feet to forty-one feet wide with eight foot outside shoulders including gutter pan and five foot sidewalks. From the West ramps to Valley View the general lane configuration in each direction will be eight twelve foot lanes (four EB, four WB) a median that varies from three feet to fifty feet wide (to accommodate a future flyover ramp) with eight-foot shoulders including gutter pan and five foot sidewalks. There will be an additional twelve-foot drop lane from the I-15 southbound off ramp to Industrial Road. A two foot shy distance to the raised median island will also be include for the inside lanes. A full movement intersection is provided at Industrial Road. Right in, right out and left in movements are provided at Parvin Street.

The only other roadway that will be built during phase 1 is the haul road into and out of the Lower Blue Diamond Detention Basin. The haul road has been designed to county standards.

Phase II has been designed to 55 mph and meets the 2001 AASHTO Green Book policies. The general lane configuration between Valley View and Rainbow Boulevard (SR-595) will be eight twelve foot lanes (four EB, four WB) a median that varies from three feet to twenty-seven feet wide with eight foot shoulders including gutter pan and five foot sidewalks. A two foot shy distance to the median island will also be include for the inside lanes. Full movement intersections are provided at Valley View Drive, Arville Street, Decatur Boulevard, Lindell Road, Jones Boulevard, Torrey Pines Drive and Rainbow Boulevard. All other streets will be right in right out. The grade separation over the UPRR will have the same roadway configuration as the rest of phase II. In order to limit the right-of-way impacts, mechanically stabilized earth (MSE) retaining wall will be constructed. The limits of the MSE wall will be from approximately Lindell Road to the bridge structure and from the bridge structure to Mann Street.

Phase III has been designed to 45 mph and will meet the 2001 AASHTO Green Book policies. Warm Springs Road will be a six-lane facility, three lanes in each direction, separated by a raised median ranging in width from two to twenty-two feet. The general configuration will be two-eleven foot through lanes with a fourteen foot outside lane. A two foot shy distance to the raised median island will also be include for the inside lanes. Curb and gutter with five-foot sidewalks will be placed on the south side of Warm Springs Road. Curb and gutter is currently existing on the north side up to the fill touchdown points. From the touch down point east of I-15, west to Industrial Road, a new twelve-foot shared use path will be placed, separated by barrier rail.

Purpose and Need:

The proposed improvements will provide sufficient roadway capacity to accommodate future traffic volumes, accommodate alternative transportation modes (bicycles and pedestrians), improve the operational characteristics of SR-160 and the I-15/SR-160 interchange. The proposed structures at I-15/SR-160 and I-15/Warm Springs Road will allow new travel lanes to be constructed crossing the I-15 corridor. The SR-160/UPRR grade separation will eliminate traffic queues and accidents at the at-grade crossing. In addition, constructing the inflow channel and detention basin will allow reduction in the size and cost of drainage structures associated with the proposed improvements, while meeting capacity requirements to convey and store flows for the 100-year storm events and will protect downstream properties from potential flood damage.

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Alternatives:

1. No-Build Alternative

This alternative would leave capacity, operations, and safety conditions as they exist, worsening over time as development places greater demand on the SR-160 facility. The no-build alternative is considered not feasible due to capacity issues generated by the 192 percent increase in traffic by design year 2023.

2. Build Alternative

a. I-15/SR-160 Interchange Modifications

The following interchange configurations were considered for the new I-15/SR-160 interchange:

- A standard diamond interchange with four full-access ramps.
- A single point urban interchange (SPUI) with four full-access ramps.
- A tight urban diamond interchange (TUDI) with four full-access ramps.

All of the above alternatives included provisions for a future fly-over ramp to be constructed when warranted by traffic demands. Operational analysis of both the standard diamond interchange and the SPUI determined that these configurations did not perform as efficiently as the TUDI for the predicted traffic volumes, geometric constraints, existing right-of-way, and hydrology/drainage issues. The TUDI configuration was selected as the preferred interchange alternative.

b. SR-160 Widening and UPRR Grade-Separation

Widening SR-160 highway to an eight-lane divided highway with a grade-separation over the UPRR tracks as described in the preceding section is the preferred build alternative which will meet the purpose and need by providing operational and level of service improvements over the no-build scenario. Aligning SR-160 under the UPRR tracks was considered not feasible due to drainage and operational constraints.

c. Warm Springs Road Widening and I-15 Grade-Separation

Widening Warm Springs Road to a six-lane facility with a raised median is the preferred build alternative. The existing grade separation over I-15 will be removed and a new six-lane structure will be built in its place. These improvements will meet the purpose and need by providing operational and level of service improvements over the no-build scenario. Again, aligning Warm Springs Road under the I-15 was considered not feasible due to drainage and operational constraints.

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Traffic and Operational Characteristics:

The reconfiguration of the I-15/SR-160 interchange and the widening of SR-160 from Industrial Road to Las Vegas Boulevard South will provide an improved level of service (LOS) to accommodate the growth occurring and planned for the SR-160 corridor. Levels of service categorize traffic operating conditions and are designated from A, representing the best operating conditions, to F, representing the worst. Levels of service are shown in Table 1 for the no-build and build scenarios. Projected average annual daily traffic (AADT) volumes are shown in Table 2. Under the no-build scenario, the level of service associated with projected traffic volumes for both the interchange and the roadway is expected to deteriorate to "F," a situation in which traffic demand exceeds facility capacity, resulting in forced or breakdown traffic flow (unstable queues, short bursts of movement followed by stoppages, and lower average travel speeds).

The traffic forecasts shown in Table 2 were developed by the NDOT Traffic Information Division with concurrence from the NDOT Program Development Office. The forecasts were developed utilizing the Regional Transcad Travel Demand Model Phase I (1140 TAZ) approved by the Metropolitan Planning Organization (MPO) prior to August 2002, with the output adjusted according to standard procedures in accordance with the principles delineated in NCHRP 255. Additional analysis predicts traffic volumes will reach 49,900 vehicles at the western limits of the proposed project by 2028, however, based on the amount and rate of growth in the SR-160 corridor, it is expected that this condition will occur even sooner than predicted, thus generating the need for an eight-lane facility.

Table 1
Levels of Service

SR-160 Blue Diamond Road

<u>To</u>	Year 2003	Year 2023	Year 2003	Year 2023
	No-Build		Build	
Las Vegas Boulevard	D	F	D	C
Industrial Road	C	F	C	D
Decatur Boulevard	F	F	B	D
Jones Boulevard	E	F	A	C
Rainbow Boulevard	D	F	B	C
Valley View Boulevard	B	F	B	D
I-15 Interchange Southbound Ramps	D	F	C	D
I-15 Interchange Northbound Ramps	D	F	C	C

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Table 2
Average Annual Daily Traffic (AADT)
SR-160 Las Vegas Boulevard South to Rainbow Boulevard

<u>From</u>	<u>To</u>	Year 2003	Year 2023
Las Vegas Boulevard South	I-15	27,100	44,700
I-15	Industrial Road	20,700	65,700
Industrial Road	Decatur Boulevard	18,200	55,700
Decatur Boulevard	Jones Boulevard	16,200	47,700
Jones Boulevard	Rainbow Boulevard	14,400	42,100

Public Hearings and Comments

Public Informational Meetings

The National Environmental Policy Act (NEPA) decision-making process for the project was initiated with a public information meeting held July 27, 1999 from 4:00 p.m. to 7:00 p.m. at the Enterprise Library, 25 East Shelbourne Avenue, Las Vegas, Nevada. Representatives from NDOT explained the proposed project and invited comments from those in attendance. Written and verbal statements submitted during the informational meeting and open comment period become part of the project record. Sixty-five people attended this meeting. A court reporter was present to transcribe comments from those who preferred to make a verbal statement. Four people offered verbal comments to the court reporter.

Three more meetings were held for the proposed project at the same location on February 23, 2000; May 7, 2002; and July 28, 2003. Again, representatives from NDOT explained the proposed project and invited comments from those in attendance. Thirty-seven people attended the February 23, 2000 meeting, with three people offering verbal comments to the court reporter. Fifty-one people attended the May 7, 2002 meeting, with two people offering verbal comments to the court reporter. Forty-four people attended the July 28, 2003 meeting, with four people offering verbal comments to the court reporter.

Written and verbal comments and responses are presented for each public information meeting in Appendix B. of the printed Environmental Assessment, followed by the verbatim text or oral transcript for reference.

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OPPOMSJ0209

Location/Design Hearing

A Location/Design Hearing was held on May 19, 2004, at Enterprise library, 25 East Shelbourne Avenue, Las Vegas, Nevada. Seventy-nine members from the public attended. Also in attendance was a court reporter to transcribe oral comments from those who wished to make a statement, which then becomes part of the project record. Representatives from NDOT explained the proposed project and invited comments from those in attendance. Written comments submitted during the public comment period prior to and following the Location/Design Hearing also become part of the project record.

Summaries of the comments are as follows:

Oral:

- Comment: Eleven oral comments were received at the hearing. All the people were generally in favor of the project. All the comments were specific to a single phase except one. Mr. Hiatt made the comment that the proposed future fly-over should be going in now and the project should be lengthened to Mountain Springs Summit.
- Response: At this time, we do not have the funds to construct the fly-over nor do we have the funds to lengthen the project limits to Mountain Springs Summit. Provisions have been made for the future fly-over once it is warranted.
- Comment: There were two comments made concerned with construction traffic being diverted through the residential neighborhoods during phase one construction.
- Response: At no time during the phase one construction is traffic being diverted into a residential neighborhood, however we cannot account for detours through these neighborhoods that local residents may take. The current number of lanes will be maintained during the construction of phase one and will be increased during later stages.
- Comment: There were seven comments concerned with phase two of the project. Five of the seven were specifically concerned with signals and additional capacity on the North/South routes that intersect Blue Diamond Road and having signals placed at these intersections. These routes were Rainbow Road, Torrey Pines Drive, Jones Boulevard and Decatur Boulevard.

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OPPOMSJ0210

Response: Currently the Department has plans to place a new signal at Decatur Boulevard. The plans will be out mid July. Conduits will be placed at Torrey Pines Drive and Jones Boulevard. Once warrants are met at Torrey Pines Drive, the signal will be installed. Jones Boulevard will have a full signal installed once the County takes the North leg over the UPRR. Rainbow Boulevard is a State route highway (SR595) North of Blue Diamond Road and currently has a signal. Currently the County is looking at widening Rainbow Boulevard North of Blue Diamond Road as part of a work exchange with the Department. The remaining roads are County owned and providing additional capacity on these roads are outside the scope of this project.

Comment: The last two comments made in regards to this phase were right-of-way related. Mr. Pearson was worried about being land locked and Mr. Bogan was concerned with the proximity of his garage with Torrey Pines Drive.

Response: Mr. Pearson will not be land locked. Again, Torrey Pines Drive is a County road and it is not know if it will be impacted during a future widening of Torrey Pines.

Comment: There was only one oral comment made in regards to the phase three project. The comment was made by Ms. Richter. Ms. Richter would like to have Warm Springs Road stay open during construction.

Response: Due to the right-of-way constraints and the additional cost, approximately 4 million dollars, it is unlikely that we will be able to keep Warm Springs Road open during construction. This issue will be investigated further as plans are developed.

Written:

Comment: Seven written comments were received after the hearing. All the people who responded were in general favor of the project. Three of the comments generally stated that the project was overdue or they just agreed that the project was needed. Again, as in the oral comments, there were two residents close to Warm Springs Road that wanted Warm Springs Road to stay open during construction.

Response: Again, due to the right-of-way constraints and the additional cost, approximately four million dollars, it is unlikely that we will be able to keep Warm Springs Road open during construction. This issue will be investigated further as plans are developed.

Comment: One person requested that the project be extended to the four-lane highway past Mountain Springs.

Response: Again, this is outside the scope of the project.

Comment: There was one new comment regarding phase one. One person requested that a signal be placed at Parvin Street.

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OPPOMSJ0211

Response: We have extensively looked at placing a signal at Parvin Street. At this time, the signal is not warranted and we will only place conduit under the highway for a future signal. Once signal warrants are met at this location, the Department will reconsider this location.

Social, Economic, and Environmental:

The EA concluded that the proposed project has no significant impact on the environment. A Finding of No Significant Impact (FONSI) will be requested pending approval of this design recommendation.

Project Actions:

Project Actions:

- I. Project activities that are in conformance with the policies and procedures promulgated in the following:
 - A. 7 CFR 658 providing for the Farmland Protection Policy Act.
 - B. 16 USC 661-667 (d) Fish and Wildlife Coordination Act.
 - C. 23 CFR 650 providing for implementation of Part B of the National and State water quality standards.
 - D. 40 CFR 93 providing for implementation of the Clean Air Act of 1970 and the Clean Air Act Amendment of 1990.
 - E. 23 CFR 771 providing for implementation of Section 102 (2)(c) of the National Environmental Policy Act of 1969.
 - F. 23 CFR 772 providing for compliance with the traffic noise standard.
 - G. 33 CFR requiring a permit under Section 404 of the Clean Water Act, 33 USC 1344.
 - H. The Intergovernmental Cooperation Act of 1968 providing for implementation of state and metropolitan area clearinghouse notification, review, and coordination procedures as issued in Circular No. A-95, "Evaluation, Review, and Coordination of Federal Assistance Programs and Projects."
 - I. Section 106 of the National Historic Preservation Act of 1966; and Title 49 Section 303 of the DOT Act of 1966 as amended by the DOT Act of 1968.
 - J. Alternate Procedures Policy providing for implementation of Section 128, 23 USC that establishes requirements for public hearings.

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OPPOMSJ0212

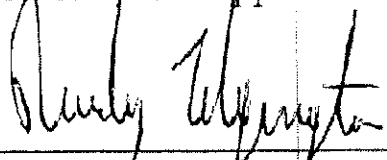
II. Project activities that are pending clearance for conformance with the policies and procedures promulgated in the following:

A. None.

Recommendation:

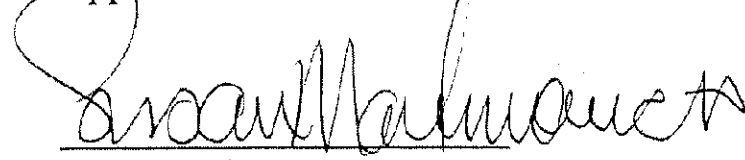
After considering all aspects of the project development to date, I recommend the Department proceed with Alternative 2 (Build Alternative) as presented at the design hearing. This recommendation is made based on the improved access to I 15, greater capacity on SR-160, greater surface street capacity, and providing access to the potential land development to the west and east of I 15.

Recommend Approval:



Ruedy Edgington P.E.
Assistant Director Engineering

Approved:



Jeff Fontaine, P.E.
Director

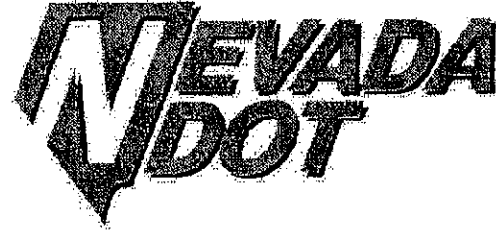
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OPPOMSJ0213

EXHIBIT 26

To: SR-160 Project Team
From: Paul Tremel, HDR
Date: July 22, 2004
Subject: SR 160 Blue Diamond Meeting
E.A. 72495



A monthly status meeting was held on **July 15, 2004** on the above referenced project.
The following persons were in attendance:

Natalie Caffaratti – NDOT Design
Jim Ceragioli – NDOT Design
Tina Furlong – Nevada Power
Dean Howard – NDOT Traffic
Lorraine Kusahara – NDOT Utilities
Ken Mammen – NDOT Design
Paul Sinnott – NDOT Design
Charles Wolf – NDOT Hydraulics
Roy Davis – Clark County Public Wks
Brian Lee – HDR
Paul Tremel - HDR
Justin Ahlstrom – Juliet
Darlene Tharp – Nevada Power
Jim Dufault – SWG
Vinnie LaValette – TBE Group
Glendyne Maddox – TBE Group
Terry Pilkenton – TBE Group
Jason Childs – TBE Group
Curtis Horton – TKC
Ken Kraemer – TKC
Chad Halverson – VTN

The following comments were made:

Phase I

A. Silvererton Coordination:

1. The realigned Industrial Road will be used for the Phase I design.
2. Nevada Power must coordinate the Silvererton vault relocation to accommodate the future flyover ramp.

B. Roadway Design Issues:

1. September 10 Doc date

2. Ken Mammen has plans for specific items available upon request. A full plan set will be available to all team members upon advertisement.

C. Hydraulic Design Issues

1. Hydraulics is holding pending comments from checking.
2. Charles Wolf requested input from the team as to whether utilities should be shown on the hydraulic profile sheets. Jim Dufault stated that showing utilities is useful for coordination during construction.

D. Bridge

1. NDOT Bridge has requested that Nevada Power supply the conduit configuration on the SR-160 / I-15 structure.
2. NDOT Bridge has requested that Stantec provide conduit configuration required on the SR-160 / I-15 structure.
3. HDR is holding pending comments from checking.

E. Utilities

1. Curtis Horton, TKC, noted that a waterline will be required along Valley View in the future, therefore the relocation proposed with this project may not be necessary. After considerable discussion, the team decided that the SR-160 Phase I project plans would not be modified at this time, as a change could impact the timing of the stakeholder signatures and bid date.
2. Brian Lee stated that the sewerline design is complete.
3. Brian Lee stated that the waterline re-design is complete. CCWRD signed the mylars on July 6. Revised plans were submitted to LVVWD on July 7. CC Fire Department has indicated they are ready to sign, however, we will wait to see if LVVWD has additional comments before transmitting.
4. Nevada Power / NDOT meeting on July 16 to discuss vault location issue (see item A2). Tina Furlong has submitted a permit to NDOT and requested that the design team expedite, if possible.
5. Fiber optic / telephone relocations complete. Hydraulics requested that a pot-hole be taken on the fiber optic line adjacent to B729 in order to refine grading.

F. Right-of-way

Phase 1:

1. Phase I Right-of-way is on schedule.
2. All of the offers have been presented to appropriate owners/representatives.
 - a. 2 parcels – Signed documents and escrow opened
 - b. 1 parcel – Temporary Easement signed
 - c. 6 parcels – Referred to Transportation Board for condemnation with continued negotiations.
 - d. 2 parcels – Determination has been made that the two remaining parcels will be acquired in phase 3.

Phase 2

A. Schedules and Advertise/Construction time frames.

1. Phase 2A – Valley View to Decatur
 - 60% - 9-21-04
 - 100% - 12-14-04
 - Doc – 3-22-05
 - Const. – 12 to 14 months estimated
2. Phase 2B – Decatur to west of Rainbow
 - 60% - TBD
 - 100% - 6-7-05
 - Doc – 9-6-05-Const.
 - 12 to 18 months estimated

B. Roadway Design Status

1. A 60% set of plans 2A will be available by mid August.
2. Phase 2B plans will be available as soon as schedule the 60% set for Phase 2A completed. A good pre-60% set available by the October monthly status meeting.
3. Traffic Control / Constructability for 2A was held on June 6, 2004 and traffic control plans are now being developed.

C. Right-of-way Status

1. Phase 2A
 - a. The Right-of-Way setting for Phase 2A was completed on February 26th.
 - b. The R/W plans have been completed and are in Las Vegas for appraisals and negotiations.
 - c. TBE has received Phase 2A right-of-way plans, legal descriptions and preliminary title reports for all parcels involved. Information has been sent to the appraiser to begin appraisals.
 - d. First priority to be appraised and offer presented will be Clark County Aviation parcel between Valley View and Arville, north of Blue Diamond Road. The County's parcels will be appraised in three separate appraisals. TBE has received one of the appraisals and it has been forwarded to the Review Appraiser. The remaining two appraisals should be received the week of the July 19, 2004.
 - e. Second priority will be the remainder parcels between Valley View and Arville, north of Blue Diamond Road.
 - f. Third priority remainder parcels
 - g. Project timeline for the Clark County Aviation parcels
 - 7-12-04 TBE received appraisal
 - 7-13-04 TBE delivered appraisal to Review Appraiser
 - 7-19-04 TBE may receive the other two appraisals for the County's parcels and they will be sent to the Review Appraiser.
 - 7-23-04 Projected date for the first appraisal and review appraisal to
 - 7-26-04 The second and third appraisals to be sent to NDOT for review and approval.
 - 8-2-04 Offer regarding all three parcels needed for Blue Diamond Project presented to the Clark County Aviation.

- 8-17-04 Clark County Aviation process - requires offer to be presented before two Board of Commission meetings.
- 9-8-04 Second Board meeting for review and approval by Commissioner
- 9-15-04 Escrow will be opened and payment package will be prepared to request money to be placed in escrow.
- 10-15-04 Possible closing of escrow.

2. Phase 2B

- a. The Right-of-Way setting for Phase 2B was completed on April 29th.
 - b. The Right-of-Way setting memo has been submitted and signed.
3. Material Pit / Detention Basin - R/W engineering has requested additional information for submittal to the BLM for the certification of this site. Jon Bunch will be supplying this info to the BLM in approximately 2 weeks. The Department may have to use a commercial material source for Phase 1 and 2A if permit is not signed prior to advertisement.

D. Bridge Status

- 1. Paul Tremel has contacted Dana Boomhower, NDOT Materials, to obtain soil properties/design parameters for use at the SNWA blowoff valve box.
- 2. Paul Tremel noted that the Southwest Gas line is in direct conflict with the SR-160 / UPRR structure footings. A separate meeting was scheduled for August 11 at 1:00 in the HDR main conference room to discuss.
- 3. The Level 3 fiber optics line is currently projected to be very close to the east abutment footing. Loraine Kusahara noted that this line is under permit within SR-160 right-of-way. Outside of SR-160 right-of-way, the line is located in UPRR right-of-way and the UPRR will not revoke this permit, however, the UPRR may participate in funding for the relocation. Charles Wolf noted that the channel outlet north of SR-160 is in conflict with this fiber optics line. Loraine Kusahara / TBE to coordinate relocation of the line to eliminate conflicts with proposed SR-160 improvements.
- 4. Paul Tremel noted that a FHWA crash tested barrier has not been identified for a design speed of 55 mph. A design exception will be required to proceed with this barrier configuration.
- 5. Paul Tremel stated that R2H had researched options for terminating the MSE walls north of SR-160 along the future Jones Boulevard alignment. Local MSE suppliers stated that both vertical face wall and sloped wire wall are common. If a sloped wire wall is selected, the angle of the slope should be coordinated with panel size/placement. Jim Ceragioli has noted that right-of-way was set with a vertical face on this wall. NDOT Materials is to be contacted to ascertain other design requirements/preferences.

E. Hydraulics

- 1. Chad Halverson noted that the Lower Blue Diamond Detention Basin is required for interim storage (see item C3).

F. Traffic

- 1. Traffic design is holding pending completion of the study by TKC.

G. Utility Status

1. NV Power

- a. Nevada power will be behind our right of way line in the Juliet Groups property by easement from Valley View to Arville. From Arville to Decatur location will have to be determined.
- b. NDOT/Nevada Power to meet on August 11, 2004 to discuss issues that are still outstanding.

2. SWG

- a. Southwest Gas will be impacted by our project.
- b. A meeting was established on August 11 at 1 pm to discuss the conflicts with the bridge and hydraulics structures.

3. SNWA

- a. SNWA's reaction to our blowoff relocation design was positive. They are currently reviewing the design/concept in depth.
- b. TKC is coordinating the location of the valve with HDR. The easement documentation will be written by TKC as soon as a location is identified.

4. LVVWD

- a. LVVWD has a concern regarding the height of fill at the intersection of Blue Diamond and Jones. LVVWD performed preliminary study of alternatives. LVVWD's preferred approach is to construct pipe bridge over the existing 42-inch CML&C SP along Jones and abandon the portion of existing 12-inch PVC pipe along Blue Diamond (La Costa to Jones). The 12-inch waterline is to be relocated along La Costa, Ford, and tie back to 42-inch pipeline at Jones. LVVWD will also request pipe and sleeves at Torrey Pines (24-inch DIP pipe and 42-inch steel casing) and Rainbow (12-inch DIP pipe and steel casing). LVVWD has requested that HDR design these relocations.

5. LEVEL 3 COMUNICATIONS

- a. Level 3 is located within the UPRR corridor and know that they are in conflict and will relocate. (See discussion under item D3.)

6. UPRR

- a. Agreement has been started and has been sent out for the first review.
- b. Loraine Kusuhara is preparing an emergency contract for Nevada Power to provide service points on UPRR property.

Phase 3

A. Project Update:

- 1. Option 4 was selected (see attached file – note that the collector/distributor roads may be revised on the southbound side). This option shifts Warm Springs Road approximately 20 feet south and will miss the power poles adjacent to I-15.
- 2. NDOT will provide access for bike paths across I-15. Ken Mammen requested that Roy Davis / Clark County research how to terminate bike path at Industrial Road and Windy Street.

B. Phase 3 Doc date has been established – October 2005.

C. NDOT Design is currently updating horizontal and vertical geometry and will provide to HDR for updating of the Warm Springs BSR.

The next project meeting will be August 19, 2004 at 9:30 am in the HDR main conference room.

Phase 1 Action Items

1. NDOT Bridge has requested that Nevada Power supply the conduit configuration on the SR-160 / I-15 structure.
2. NDOT Bridge has requested that Stantec provide conduit configuration required on the SR-160 / I-15 structure.
3. Hydraulics requested that a pot-hole be taken on the fiber optic line adjacent to B729.

Phase 2 Action Items

1. Loraine Kusuhara / TBE to coordinate relocation of the Level 3 fiber optic line to eliminate conflicts with proposed SR-160 improvements.
2. NDOT Materials to be contacted to ascertain other design requirements/preferences for the termination of Jones Boulevard retaining walls.
3. HDR to coordinate with TKC on the location of the SNWA blow-off valve.
4. NDOT/HDR to scope relocation of LVVWD lines at Jones/SR-160.
5. Loraine Kusuhara to prepare an emergency contract for Nevada Power to provide service points on UPRR property.

EXHIBIT 27

**A Complete Appraisal, Self-Contained Report
of the**

**Nevada Department of Transportation (NDOT) Surplus Land,
Identified as Parcels I and II, as Part of the Interstate 15/Diamond
Road Interchange Realignment/Reconstruction
Project: SPSR-160 (006)
SR-160 (Blue Diamond Road) Phase I - E.A.: 72495**

**Property Owned
by**

Nevada Department of Transportation

**Located
within and to the**

**North and South Sides of the Existing SR-160 Right-of-Way, a.k.a., Blue Diamond Road,
West of Las Vegas Boulevard, Las Vegas, Clark County, Nevada**

**Legally Described
as a**

**Portion of the Southeast $\frac{1}{4}$
of Section 8, Township 22 South, Range 61 East, M.D.B.&M.**

**For the Purpose
of**

**Developing an Opinion of Market Value, Prospective, Under a Hypothetical
Condition, in the After Condition, Presuming Realignment and Reconstruction of
the Interstate 15/State Route 160 (Blue Diamond Road) Interchange
as of**

August 16, 2004

Date of Appraisal Report

August 30, 2004

**File Number
374-04-MM**

Pltfs.NV_NASSIRI015352

OPPOMSJO222

August 30, 2004

Ms. Patricia K. Springer
Supervisory Right-of-Way Agent
State of Nevada
Department of Transportation
123 East Washington Avenue
Las Vegas, Nevada 89101

File No. 374-04-MM
Tax ID # 88-0121119
Project: SPSR-160 (006)
SR-160 (Blue Diamond Road) - Phase I
E.A.: 72495
RFP: SR-160 - Phase I
NDOT Parcels I and II

Dear Ms. Springer:

In compliance with your request and authorization, we have prepared a complete appraisal, self-contained report of the Nevada Department of Transportation (NDOT) owned parcels or land identified as Parcels I and II, generally located within and north and south of the existing State Route 160 right-of-way. These surplus land parcels are being appraised in the after condition, under a hypothetical condition, presuming realignment and reconstruction of the Interstate 15/State Route 160 interchange. The surplus land areas are identified by your mapping, as 14.90 acres within Parcel I and approximately 8.90 acres in Parcel II. This indicates a total land area containing approximately 23.80 acres.

As part of this analysis and valuation, we have appraised the properties under two separate or individual scenarios.

Scenario 1 is the valuation of the 23.80 acre parcel as a "standalone" property. This valuation assumes that NDOT will provide perpetual access by way of existing road easements, identified as Parcels III and IV, from the existing Las Vegas Boulevard right-of-way.

Scenario 2 includes a market value opinion of the surplus land Parcels I and II combined, as part of the adjoining Nassari ownership, based on its contributory value to the adjacent landholding. This analysis and valuation, presumes the Nassari ownership will have a remainder, in the after condition, of approximately 41.36 acres on the north side of the realigned State Route 160 and an approximate .58 acre remainder on the south side of the realigned roadway. The market value opinion of the 23.80 acre NDOT surplus parcels, as part of the adjoining Nassari ownership, is based on the contributory value. In the after condition, the Nassari ownership will maintain its frontage on Las Vegas Boulevard and will include direct ingress and egress from the realigned State Route 160, a.k.a., Blue Diamond Road and include a full interchange with Interstate 15.

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OPPOMSJ0223

Certificate of Appraiser - Nevada Department of Transportation

**Project: SPSR-160 (006)
SR-160 (Blue Diamond Road) - Phase I
E.A.: 72495
RFP: SR-160 - Phase I
NDOT Parcels I and II**

We hereby certify:

That on August 16th, 2004, we personally made a field inspection of the property herein appraised, and that we have afforded the property owner, or his designated representative, the opportunity of accompanying us at the time of the inspection. Additionally, on August 16 through August 25, 2004, we personally made field inspections of the comparable sales relied upon in this analysis and valuation. The subject and the comparable sales relied upon in making said appraisal, are represented by the photographs and aerial photographs contained within this document.

That to the best of our knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon with the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That any decrease or increase in the fair market value of real property prior to the date of valuation caused by the proposed public improvement for which said property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

That we understand said appraisal is to be used in connection with the acquisition of right of way for a highway interchange to be constructed by the State of Nevada with the assistance of Federal-aid highway funds, or other Federal funds.

That said appraisal has been made in conformity with the appropriate State laws, regulations, policies and procedures applicable to appraisal of right of way for such purposes; and that to the best of our knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said state.

That the provisions of Public Law 91-646, Title III, Section 301, were taken into consideration in the performance of this appraisal.

That neither our employment nor our compensation for preparing this appraisal are in any way contingent upon the values reported herein.

That we have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

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That we have not revealed the findings and results of said appraisal to anyone other than the proper officials of the Nevada State Department of Transportation of said state officials or the Federal Highway Administration and will not do so until so authorized by State officials, or until we are required to do so by due process of law, or until we are released from this obligation by having publicly testified as to such findings.

That our independent opinion of the market value, in fee simple interest, under the afore discussed hypothetical condition, presuming completion of the Interstate 15 SR-160 realignment or in the after condition, as of the 16th day of August, 2004, and that the conclusions set forth in this appraisal, was reached without collaboration or direction as to value, is:

Surplus Parcels I and II, as a "Standalone" Parcel Containing 23.80 Acres

\$15,550,000.00

**Surplus Parcels I and II, as Part of the Adjoining Nassari Ownership,
Considering its Contributory Value**

\$22,650,000.00

Signature: _____ Date August 30, 2004
Gary H. Kent, MAI, Certified General Appraiser

Signature: _____ Date August 30, 2004
Mark D. Mummey, Certified General Appraiser

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Addenda

Appraiser's Qualifications
Engagement Letter
Zoning Map
Reduced Maps/Exhibits

Summary of Salient Facts

Location: The subject surplus land parcels, in the after condition, are located within the existing SR-160 right-of-way and to the north and south sides of the existing SR-160 right-of-way, just west of Las Vegas Boulevard South and east of the Interstate 15 right-of-way, Las Vegas, Clark County, Nevada

APN's: Not Applicable

Legal Description: Portion of the Southeast $\frac{1}{4}$ of Section 8, Township 22 South, Range 61 East, M.D.B.&M.

Property Owner: State of Nevada, Nevada Department of Transportation

Present Use: Vacant land and existing roadways.

Zoning: H-1, H-2, M-D, R-E (Clark County)

Highest and Best Use: The highest and best use of the subject surplus land parcels, in the after condition, has been considered under two separate or individual scenarios and a hypothetical condition. Scenario 1 represents or reflects a "standalone" 23.80 acre parcel and Scenario 2 as a part of the adjoining Nassari ownership, considering its contributory value. Under Scenario 1, or as a "standalone" parcel, we have concluded the highest and best use of the property, in the after condition, as high density, multifamily residential or secondary tourist commercial. Under Scenario 2 or as a part of the adjoining Nassari ownership, we have concluded that the highest and best use is future tourist commercial type development.

Land Size:

Parcel I	14.90 acres
Parcel II	8.90 acres
Total	23.80 acres

Existing Improvements: The subject property is being appraised in the after condition, presuming reconstruction and realignment of the State Route 160/Interstate 15 interchange. In the after condition, we have presumed generally vacant, unimproved land only. As a "standalone" parcel, we have likewise,

presumed ingress and egress from Las Vegas Boulevard, by way of a road easement identified on available NDOT Mapping, as Parcels III and IV. Under the valuation of the subject surplus land, presuming its adjoining the Nassari ownership, represents the after condition and presumes the property is vacant land only. All public utilities are generally available within the immediate neighborhood and submarket.

Effective Date of Report: August 30, 2004

Effective Date of Valuation: August 16, 2004

Last Date of Inspection: August 16, 2004

Property Rights Appraised: The market value opinions of the subject property, represent or reflect the fee simple interest, presuming the properties are free and clear of all liens and encumbrances.

Market Value Opinion(s): The market value opinion of the subject property, in the after condition, under the hypothetical condition that the parcel is vacant land and a "standalone" development site, containing approximately 23.80 acres, is \$15,550,000.00.

The market value opinion of the subject surplus land parcels, as a part of the adjoining Nassari ownership, considering its contributory value, is \$22,650,000.00.

As part of this analysis and valuation, we have developed a market value opinion of the entire Nassari landholding or ownership, along with the NDOT surplus parcels, which combined, would contain approximately 66.01 acres. This analysis and valuation, presumes a hypothetical condition, presuming completion of the realignment/reconstruction of Interstate 15 and State Route 160 Interchange. The market value opinions under the two separate or individual scenarios, does not include any contributory value to Parcel V, which is a road easement, containing approximately one acre. This parcel is located adjacent south of subject surplus Parcel I. Given the lack of known or identified market transactions for abandoned easements and generally presuming that the abandonment of an easement or parcel, would revert the parcel back to the fee owner which, in the case of the subject Parcel V, would be the United States Government (BLM).

The easement was obtained for road purposes and typically, an alternate use would violate the original grant. Since NDOT does not have a fee simple interest or ownership in the road easement (Parcel V), a legal opinion may be appropriate to address the marketable rights of the easement, if any, this analysis and valuation of the subject surplus parcels, does not include the Parcel V road easement.

Purpose, Client and Intended User of the Appraisal

The purpose of this appraisal report, is to develop an opinion of the market value of the subject surplus Parcels I and II, as a "standalone" site or development parcel and also, as a part of the adjoining Nassari ownership or landholding, considering its contributory value in the after condition. The market value opinions concluded herein, represent or reflect the fee simple interest, presuming the properties are free and clear of all liens and encumbrances.

The intended use of this report, is limited to developing market value opinions of the subject property, in the after condition, under the hypothetical condition, that the realignment and reconstruction of SR-160 and Interstate 15 interchange has been completed, but does reflect or represent a current valuation date. The intended user of and client of this report, is the State of Nevada, Department of Transportation (NDOT), or assignees/nominees, for the ultimate disposal of the surplus parcels or properties and/or future negotiation purposes. The appraisers are not responsible for the unauthorized or unintended use of this report.

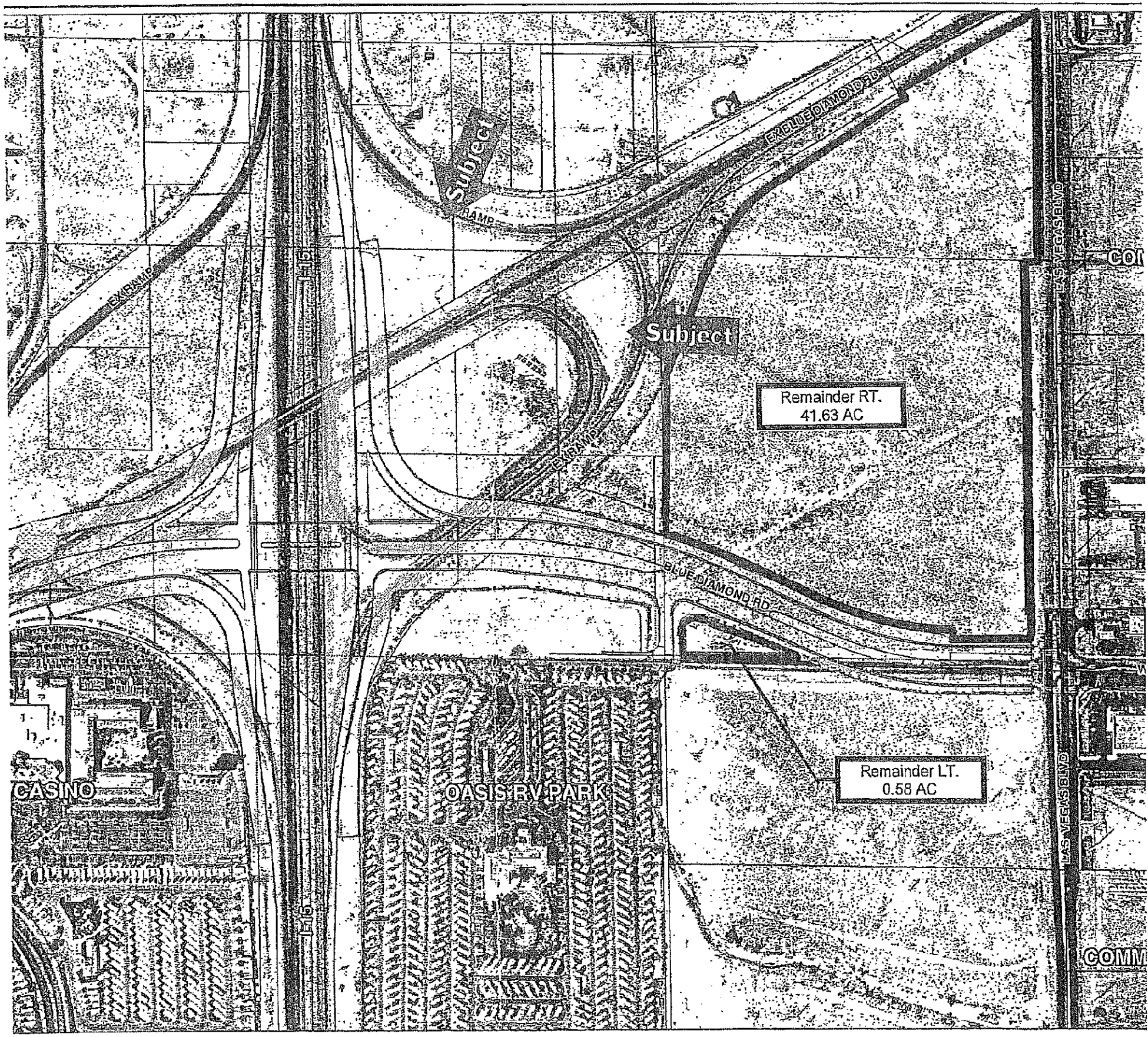
Definitions

Market Value, Nevada Revised Statutes, Chapter 37-Eminent Domain, Defined:
The following definition of (market) value is provided by Nevada State Law for Eminent Domain:

"Value" means the most probable price which a property should bring in a competitive and open market under the conditions of a fair sale, without the price being affected by undue stimulus, whereby the sale is consummated on a specified date and the title to the property is passed from seller to buyer under the following conditions:

- (a) The buyer and seller are acting prudently and knowledgeably;
- (b) The buyer and seller are typically motivated;
- (c) The buyer and seller are well informed or well advised, and acting in what they consider their own best interests;

NDOT Project Map



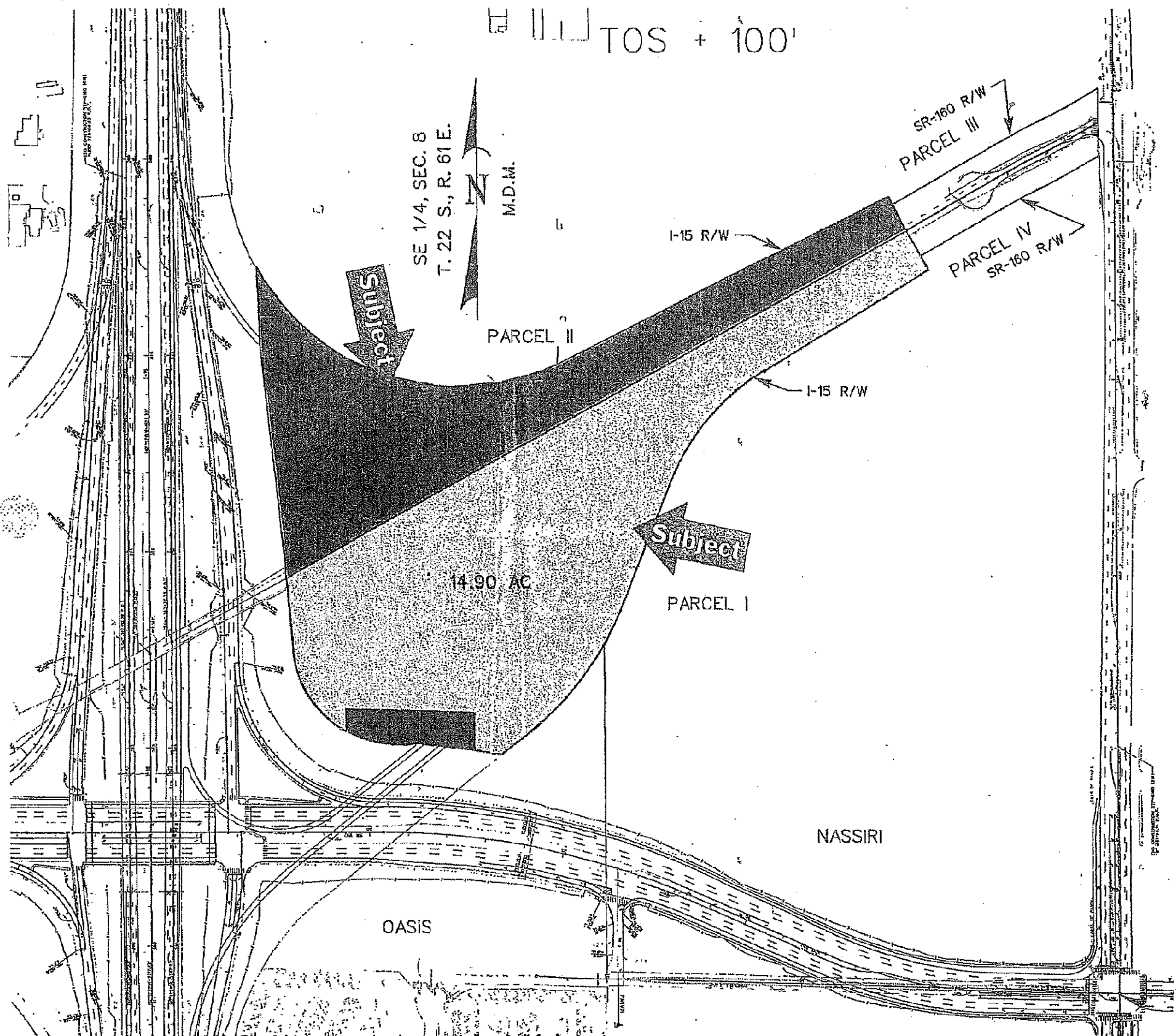
Note: Not to Scale

Nassiri Ownership After Acquisition

Pltfs NV_NASSIRI015414

OPPOMSJ0231

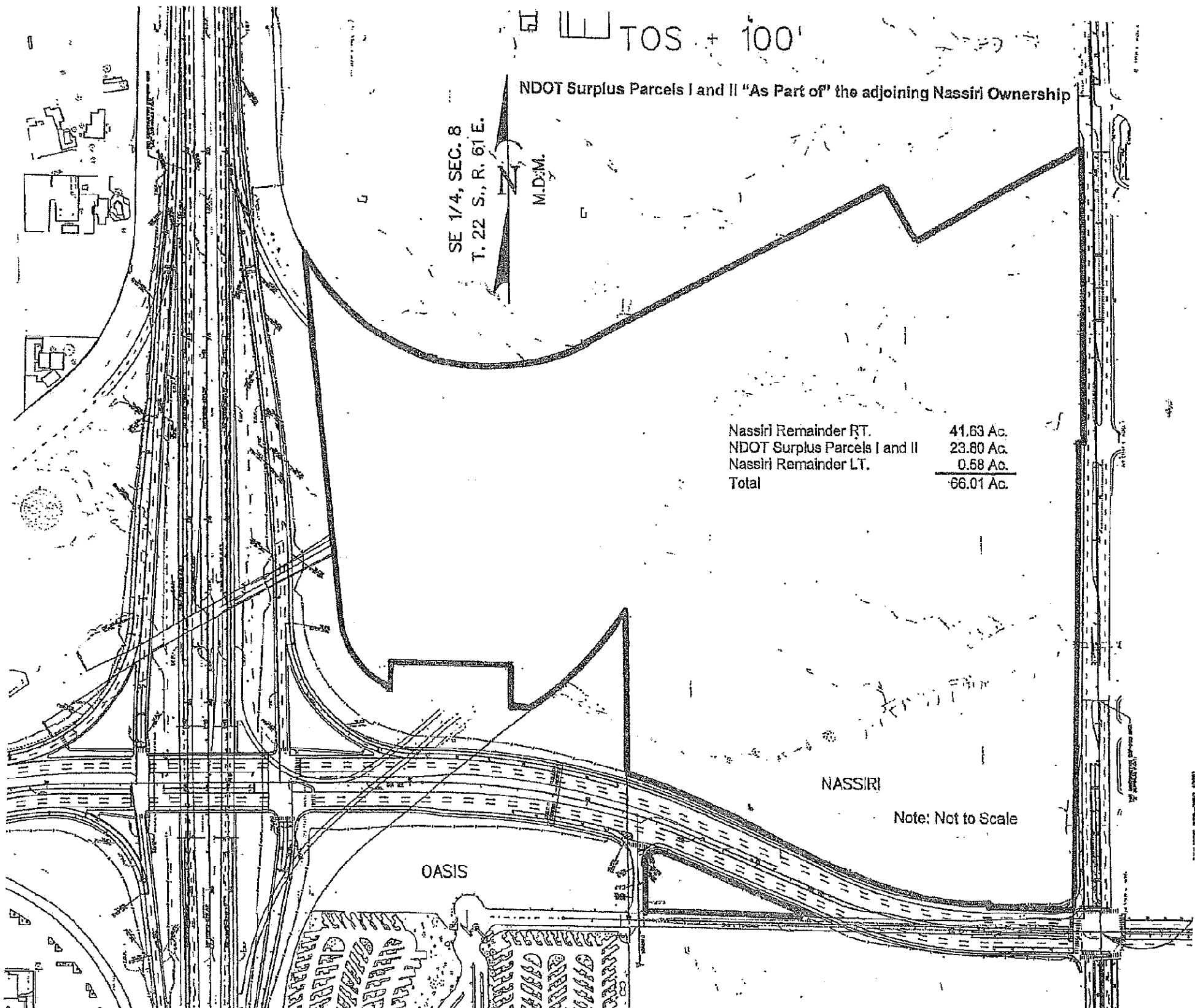
Subject Property Site Plan in the After Condition



Pltfs. NV NASSIRI 015415

OPPOMSJ0232

NDOT and Nassari Parcels Combined - Site Plan



Description of Subject Site

Property Location:

The subject property lies within and adjacent north and south of the existing State Route 160 right-of-way. The property is located just west of Las Vegas Boulevard and just east of the Interstate 15 right-of-way. The subject property is identified by Clark County Assessor Records, as all and portions of multiple numbers and the reader of this report is referred to the included mapping and exhibits. The property is located in the south central portion of the greater Las Vegas Valley, Clark County, Nevada.

Shape, Dimensions and Area:

The subject site, in the after condition, will be irregular in shape and beyond polygonal in description. Based on the site plan and mapping provided by the Nevada Department of Transportation, the parcels which are identified as I and II, contain a total of 23.80 acres, with approximately 14.90 acres in Parcel I and 8.90 acres in Parcel II. The two parcels or sites, are being appraised as a single potential future development site, or assemblage to adjacent vacant landholdings, e.g., the Nassari ownership. The subject site or parcel, in the after condition, under the "standalone" valuation scenario, would have direct ingress and egress from Las Vegas Boulevard, by way of an access easement, which is presently developed and improved as State Route 160. This access easement is sufficient in width to provide adequate ingress and egress to the parcel.

Under the second valuation scenario, the subject parcel or site, would presumably be a portion or part of the adjoining Nassari landholding. The parcel could be assembled with this ± 42.21 acre parcel.

The overall shape of the subject property, in the after condition, is recognized as being irregular and it is recognized, that the northwesterly and southwesterly most portions of the parcel, as assembled with the Nassari parcel, is likely not directly developable, but

could be utilized as part of the overall potential or future development density and also, could be utilized as onsite parking, landscaped areas, etc.

The reader of this report is referred to mapping and exhibits included or set forth within the body and Addenda of this appraisal report, for a visual depiction of the subject property, in its present or "As Is" condition and also, in its expected after condition.

Zoning:

Based on available Clark County zoning maps, it appears that the majority of the subject property, is zoned M-D (Design Manufacturing), which is a light industrial zoning classification. Additionally, portions of the site appear to be zoned H-2 (General Highway Frontage) and also, H-1 (Limited Resort and Apartment District). Finally, it appears that the northerly and southerly most portions of the property under appraisal, could be within an R-E (Rural Estates Residential) zoning classification. As can be seen, the subject property includes a myriad of zoning classifications on an "As Is" basis.

In the after condition, presuming completion of the realignment of the Interstate 15/Blue Diamond Road, a.k.a., State Route 160, rezoning of the subject property to allow for future development would, in these appraisers' opinion, be somewhat of a formality. The subject property does and will include direct visibility and presumed frontage on the easterly most portion of the Interstate 15 right-of-way. Further, the property would be located just north of the realigned Blue Diamond Road and just west of Las Vegas Boulevard. The H-1 zoning classification is predominate along the Las Vegas Boulevard corridor. Commercial zoning classifications are also prevalent within the immediate submarket, as is light industrial, highway frontage, etc.

In these appraisers' opinion, rezoning of the subject property, in the after condition, to allow for primary, as well as secondary tourist commercial type development and also, high density, multifamily residential, would be allowed. Additionally, it should be noted,

Highest and Best Use Analysis ("Standalone" Valuation)

Preface:

The highest and best use of a property, such as the subject, is generally determined after analyzing or considering four tests including; the *legally permissible*, *physically possible*, *economically feasible* and *maximally productive use*, or that use, which would provide the highest net return to the land or property owner. These tests of highest and best use, have been considered or applied, as vacant, unimproved land only. Our analysis and valuation is best described as being in the after condition, assuming completion of construction of the realignment of Blue Diamond Road, a.k.a., State Route 160 at Interstate 15 Interchange.

Legally Permissible Use:

Under both valuation scenarios, the legally permissible use of the subject site, would require rezoning. The subject property or site is zoned, with what appears to be a myriad of classifications, including; M-D (Design manufacturing, i.e., Light Industrial), H-2 (General Highway Frontage), H-1 (Limited Resort and Apartment District) and R-E (Residential Estates). Given the locational characteristics of the subject property, it is generally anticipated that the subject site or parcel could be rezoned for ultimate development of either multifamily residential development, or as secondary tourist commercial type development or use. As will be further discussed, overall demand for parcels or sites, suitable for high density multifamily residential, or secondary tourist commercial, such as a timeshare condominium resort or timeshare related hotel, is strong at this time.

Physically Possible Use:

Under the "standalone" valuation scenario, the subject property or site again, would be irregular in shape and beyond polygonal in description. However, given the size of this site, a total of 23.80 acres and presuming perpetual ingress and egress from Las Vegas

Boulevard, along a road easement, the subject site would be suitable for development with wide and varied types of potential uses. Overall demand for sites suitable for high density multifamily residential development and/or condominium timeshare resorts, has been strong, with a continued trend generally expected. It is also recognized, that some form of secondary commercial type development, such as limited service hotel or inn type development, would also represent a physically possible use of the site or parcel, in the after condition.

The general physical characteristics and shape of the parcel, would present some development restrictions and the entire parcel or site, would not be developable. It is recognized that the northwesterly most portion of the parcel or site, given its shape, would be restricted to onsite parking, landscaping, etc. Our market value opinion of the subject site, in the after condition, as a "standalone" parcel, does take into account, the overall irregular shape characteristics.

Even with the irregular site shape characteristics exhibited by the subject property, in the after condition, it would be suitable for development with a myriad of potential uses. The physically possible use of the site, with some form of high density multifamily residential, or timeshare resort, i.e., condominium project, or even a limited service hotel facility or multiple facilities, could be experienced. The subject property, in the after condition, will have good visibility from Las Vegas Boulevard, Interstate 15 and the realigned Blue Diamond Road, a.k.a., State Route 160.

Economically Feasible and Maximally Productive Use:

As discussed in the Neighborhood Description section of this report, the subject property is located in an area that has experienced new development and construction, including single family residential, multifamily residential, condominium timeshare resorts, limited service hotel properties and hybrid combination daily, weekly and monthly type multifamily apartment projects. The subject property, as noted, will include direct access