

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 10, part 1

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

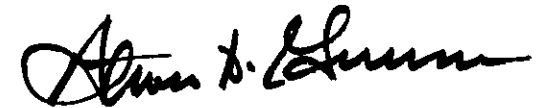
WILLIAM L. COULTHARD, ESQ.
Nevada Bar No. 3927
ERIC M. PEPPERMAN, ESQ.
Nevada Bar No. 11679
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway
17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
Facsimile: (702) 385-6001
Email: emp@kempjones.com

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



CLERK OF THE COURT

APEN
GARMAN TURNER GORDON, LLP
ERIC R. OLSEN
Nevada Bar No. 3127
Email: eolsen@gtg.legal
DYLAN T. CICILIANO
Nevada Bar No. 12348
Email: dciciliano@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Tel: (702) 796-5555
Fax: (702) 369-2666
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

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.

CASE NO. A672841
DEPT. XXVI

**APPENDIX OF EXHIBITS TO OPPOSITION TO THE STATE'S MOTION TO
EXCLUDE DAMAGES EVIDENCE RELATED TO PLAINTIFF'S BREACH OF
CONTRACT CLAIMS AND/OR MOTION TO STRIKE PLAINTIFF'S EXPERT,
KEITH HARPER, MAI**

Date of Hearing: January 11, 2015

Time of Hearing: 10:00 a.m.

EXHIBIT No.	NAME OF EXHIBIT	PAGE NUMBER(S)
1	Letter to the State Board of Examiners	OEXH0000001- OEXH 000009
2	Plaintiffs Initial Disclosure Pursuant to NRCP 16.1(a)(1)	OEXH000010- OEXH 000026

EXHIBIT No.	NAME OF EXHIBIT	PAGE NUMBER(S)
3	Plaintiffs Second Supplement to Initial Disclosure Pursuant to NRCP 16.1(a)(1),	OEXH000027- OEXH 000031
4	Expert Report of Keith Harper	OEXH000032- OEXH 000184
5	Plaintiffs' Fifth Supplement to Initial Disclosure Pursuant to NRCP 16.1(a)(1)	OEXH000185- OEXH 000189
6	Email between NDOT and Plaintiffs	OEXH000190- OEXH 000192
7	Transcript of Deposition of Fred Nassiri	OEXH000193- OEXH 000198
8	Plaintiffs' Ninth Supplement to Plaintiffs' Initial Disclosures pursuant to NRCP 16.1	OEXH000199- OEXH 000203
9	Plaintiffs' Responses to Interrogatories	OEXH000204- OEXH 000211
10	Transcript of Deposition of Keith Harper	OEXH00212- OEXH 000260
11	Harper Supplemental Report	OEXH00231- OEXH 000435
12	Declaration of Keith Harper	OEXH000436- OEXH 000438

Dated this 7th day of December 2015.

GARMAN TURNER GORDON, LLP

/s/ Dylan Ciciliano

ERIC R. OLSEN

Nevada Bar No. 3127

Email: eolsen@gtg.legal

DYLAN T. CICILIANO

Nevada Bar No. 12348

Email: dciciliano@gtg.legal

650 White Drive, Ste. 100

Las Vegas, Nevada 89119

Tel: (702) 796-5555

Fax: (702) 369-2666

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the ____ day of December 2015, she caused a copy of the foregoing Plaintiffs' **APPENDIX OF EHBITS TO OPPOSITION TO THE STATE'S MOTION TO EXCLUDE DAMAGES EVIDENCE RELATED TO PLAINTIFF'S BREACH OF CONTRACT CLAIMS AND/OR MOTION TO STRIKE PLAINTIFF'S EXPERT, KEITH HARPER, MAI**, by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system addressed to:

KEMP, JONES & COULTHARD,
LLP
William L. Coulthard, Esq.
w.coulthard@kempjones.com
Eric M. Pepperman, Esq.
e.pepperman@kempjones.com
Mona Kaveh, Esq.
m.kaveh@kempjones.com
3800 Howard Hughes Parkway, 17th
Flr.
Las Vegas, Nevada 89169

OFFICE OF THE
ATTORNEY GENERAL
Amanda B. Kern
Deputy Attorney General
akern@ag.nv.gov
555 E. Washington Avenue
Suite 3900
Las Vegas, NV 89101

Co-Counsel for Defendant

/s/ Rebecca Post

Rebecca Post, an employee of
Garman Turner Gordon

EXHIBIT 1

EXHIBIT 1

GORDON SILVER

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.

07662-015/1557720

3960 HOWARD HUGHES PARKWAY, NINTH FLOOR | LAS VEGAS, NEVADA 89169
T: 702.796.5555 | F: 702.369.2666
gordonsilver.com

LAS VEGAS | PHOENIX | WASHINGTON, D.C.

NV_NASSIRI000735

OEXH000002

PA01845

Gordon Silver

Attorneys and Counselors at Law

Office of the Ex Officio Clerk of the
State Board of Examiners
May 29, 2012
Page 2

\$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.

Gordon Silver

Attorneys and Counselors at Law

Office of the Ex Officio Clerk of the
State Board of Examiners
May 29, 2012
Page 3

\$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.

Gordon Silver

Attorneys and Counselors at Law

Office of the Ex Officio Clerk of the
State Board of Examiners
May 29, 2012
Page 4

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.

Gordon Silver

Attorneys and Counselors at Law

Office of the Ex Officio Clerk of the
State Board of Examiners
May 29, 2012
Page 5

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.

Gordon Silver

Attorneys and Counselors at Law

Office of the Ex Officio Clerk of the
State Board of Examiners
May 29, 2012
Page 6

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.

Gordon Silver

Attorneys and Counselors at Law

Office of the Ex Officio Clerk of the
State Board of Examiners
May 29, 2012
Page 7

(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.

Gordon Silver

Attorneys and Counselors at Law

Office of the Ex Officio Clerk of the
State Board of Examiners
May 29, 2012
Page 8

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

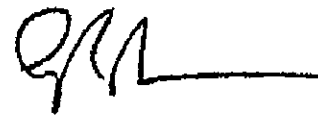
1. A merging lane from the Exchange Property to I-15
2. That NDOT convey strip along I-15 continuing to Blue Diamond Road
3. That NDOT convey strip along Blue Diamond Road
4. A left/right turn signal at Blue Diamond Road
5. That NDOT convey strips along Las Vegas Boulevard
6. That NDOT convey rectangular 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

EXHIBIT 2

EXHIBIT 2

1 GORDON SILVER
ERIC R. OLSEN
2 Nevada Bar No. 3127
Email: eoisen@gordonsilver.com
3 DYLAN T. CICILIANO
Nevada Bar No. 12348
4 Email: dciciliano@gordonsilver.com
3960 Howard Hughes Pkwy., 9th Floor
5 Las Vegas, Nevada 89169
Tel: (702) 796-5555
6 Fax: (702) 369-2666

7 *Attorneys for Plaintiffs*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 FRED NASSIRI, an individual; NASSIRI
11 LIVING TRUST, a trust formed under Nevada
law,
12
13 Plaintiff,

13 vs.

14 STATE OF NEVADA, on relation of its
Department of Transportation; DOE
15 GOVERNMENT AGENCIES I-X, inclusive;
DOE INDIVIDUALS I-X; and DOE ENTITIES
16 1-10, inclusive,,
17
18 Defendants.

18 THE STATE OF NEVADA, on relation of its
Department of Transportation,
19
20 Counterclaimant,
21
22 vs.

22 FRED NASSIRI, an individual; DOES I through
X; and ROE CORPORATIONS I through X,
23 inclusive,
24
25 Counterdefendants.

CASE NO. A672841
DEPT. XXVI

**PLAINTIFF'S INITIAL DISCLOSURES
PURSUANT TO N.R.C.P. 16.1(a)(1)**

25 Pursuant to Rule 16.1(a)(1) of the Nevada Rules of Civil Procedure, Fred Nassiri, an
26 individual and Nassiri Living Trust ("Plaintiff") hereby submits the following initial disclosures
27 in the above-captioned action. Because formal discovery has just commenced in this matter, the
28 content of these initial disclosures is provisional and based on the limited information reasonably

1 available to Plaintiff at this time. These disclosures are subject to, and made without waiving,
2 Plaintiff's right to assert in these or any other proceedings any and all objections based on the
3 competency, relevancy, materiality, discoverability, privilege, work-product, use, or
4 admissibility as evidence, for any purpose, of any of these disclosures, or of the subject matter of
5 these disclosures or the individuals and documents identified herein. Plaintiff reserves the right
6 to supplement, amend, correct, or otherwise modify these disclosures as its investigation and
7 discovery in this matter are conducted.

8 **I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION**

9 Plaintiff identifies the following individuals who may have discoverable information that
10 they may use to support its claims or defenses, excluding those individuals who may have
11 discoverable information that they may use solely for impeachment. Plaintiff has in good faith
12 listed the probable general subject matter of these witnesses' knowledge, but this general
13 description does not limit the subject areas of information that each witness may provide.

- 14 1. Fred Nassiri
15 c/o Gordon Silver
16 3960 Howard Hughes Pkwy., 9th Floor
17 Las Vegas, NV 89169

18 Fred Nassiri is expected to testify as to his knowledge of the facts and circumstances at
19 issue in the instant litigation.

- 20 2. NRCP 30(b)(6) Person(s) Most Knowledgeable – Nassiri Living Trust
21 c/o Gordon Silver
22 3960 Howard Hughes Pkwy., 9th Floor
23 Las Vegas, NV 89169

24 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
25 facts and circumstances at issue in the instant litigation.

- 26 3. NRCP 30(b)(6) Person(s) Most Knowledgeable - State of Nevada
27 c/o Office of the Attorney General
28 555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
facts and circumstances at issue in the instant litigation.

1 4. Gary H. Kent, General Appraiser
2 Gary H. Kent, Inc.
3 2950 S. Rancho Drive, Suite 200A
 Las Vegas, NV 89102

4 Gary H. Kent is expected to testify as to his preparation of the Appraisal Report dated
5 August 30, 2004.

6 5. Mark D. Mummey, General Appraiser
7 Gary H. Kent, Inc.
8 2950 S. Rancho Drive, Suite 200A
 Las Vegas, NV 89102

9 Mark D. Mummey is expected to testify as to his preparation of the Appraisal Report
10 dated August 30, 2004.

11 6. Patricia K. Springer
12 c/o Office of the Attorney General
13 555 E. Washington Avenue, Suite 3900
 Las Vegas, Nevada 89101

14 Ms. Springer is expected to testify as to his/her knowledge of the facts and circumstances
15 at issue in the instant litigation.

16 7. NRCP 30(b)(6) Person(s) Most Knowledgeable - Nevada
17 Department of Transportation
18 1263 S. Stewart Street
 Carson City, NV 89712

19 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
20 facts and circumstances at issue in the instant litigation.

21 8. John Terry, PE
22 c/o Office of the Attorney General
23 555 E. Washington Avenue, Suite 3900
24 Las Vegas, Nevada 89101

25 Mr. Terry is expected to testify as to his knowledge of the facts and circumstances at
26 issue in the instant litigation.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. Heidi A. Mireles
c/o Nevada Department of Transportation
1263 S. Stewart Street
Carson City, NV 89712

Heidi Mireles is expected to testify as to her knowledge of the facts and circumstances at issue in the instant litigation.

10. Corey Newcome, PE
c/o Las Vegas Paving Corporation
3920 W. Hacienda Avenue
Las Vegas, NV 89118

Corey Newcome is expected to testify as to his knowledge of the facts and circumstances at issue in the instant litigation.

11. NRCP 30(b)(6) Person(s) Most Knowledgeable -- Las Vegas Paving
c/o Las Vegas Paving Corporation
3920 W. Hacienda Avenue
Las Vegas, NV 89118

The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the facts and circumstances at issue in the instant litigation.

12. Gregory J. Walch, Esq.
Cotton Driggs et al.,
400 S. Fourth Street, Suite 300
Las Vegas, NV 89101

Gregory Walch is expected to testify as to his knowledge of the facts and circumstances surrounding the NDOT settlement.

13. Carry Baird
c/o Stantec
7450 Arroyo Crossing Pkwy., Suite 10
Las Vegas, NV 89113

Carry Baird is expected to testify as to his knowledge of the facts and circumstances at issue in the instant litigation.

14. NRCP 30(b)(6) Person(s) Most Knowledgeable -- Stantec
7450 Arroyo Crossing Pkwy., Suite 10
Las Vegas, NV 89113

1 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
2 facts and circumstances at issue in the instant litigation.

3 15. Scott Cannon
4 c/o Las Vegas Paving Corporation
5 3920 W. Hacienda Avenue
6 Las Vegas, NV 89118

7 Scott Cannon is expected to testify as to his knowledge of the facts and circumstances at
8 issue in the instant litigation.

9 16. NRCP 30(b)(6) Person(s) Most Knowledgeable – Gary H. Kent, Inc.
10 2950 S. Rancho Drive, Suite 200A
11 Las Vegas, NV 89102

12 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
13 facts and circumstances at issue in the instant litigation.

14 17. NRCP 30(b)(6) Person(s) Most Knowledgeable – KJE Consulting Engineers
15 4222 E. Pinecrest Circle
16 Las Vegas, NV 89121

17 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
18 facts and circumstances at issue in the instant litigation.

19 18. Ray Koroghli
20 2711 West Windmill Lane
21 Las Vegas, NV 89123

22 Ray Koroghli is expected to testify as to his knowledge of the facts and circumstances at
23 issue in the instant litigation.

24 19. Timothy R. Morse
25 3140 S. Rainbow Blvd.
26 Las Vegas, NV 89146

27 Timothy R. Morse is expected to testify as to his preparation of the Appraisal Report.

28 20. NRCP 30(b)(6) Person(s) Most Knowledgeable – Timothy R. Morse &
Associates
3140 S. Rainbow Blvd.
Las Vegas, NV 89146

1 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
2 facts and circumstances at issue in the instant litigation.

3 21. Carol Lamb
4 c/o Nevada Department of Transportation
5 1263 S. Stewart Street
6 Carson City, NV 89712

7 Carol Lamb is expected to testify as to her knowledge of the facts and circumstances at
8 issue in the instant litigation.

9 22. Jon Bunch
10 c/o Nevada Department of Transportation
11 1263 S. Stewart Street
12 Carson City, NV 89712

13 Jon Bunch is expected to testify as to his knowledge of the facts and circumstances at
14 issue in the instant litigation.

15 23. Steve Cooke
16 c/o Nevada Department of Transportation
17 1263 S. Stewart Street
18 Carson City, NV 89712

19 Steve Cooke is expected to testify as to his knowledge of the facts and circumstances at
20 issue in the instant litigation.

21 24. Daryl James
22 c/o Nevada Department of Transportation
23 1263 S. Stewart Street
24 Carson City, NV 89712

25 Daryl James is expected to testify as to his knowledge of the facts and circumstances at
26 issue in the instant litigation.

27 25. Julie Maxey
28 c/o Nevada Department of Transportation
 1263 S. Stewart Street
 Carson City, NV 89712

 Julie Maxey is expected to testify as to her knowledge of the facts and circumstances at
issue in the instant litigation.

1 26. Terri Brown
2 c/o Nevada Department of Transportation
3 1263 S. Stewart Street
4 Carson City, NV 89712

5 Terri Brown is expected to testify as to her knowledge of the facts and circumstances at
6 issue in the instant litigation.

7 27. Andrea Reeves
8 c/o Nevada Department of Transportation
9 1263 S. Stewart Street
10 Carson City, NV 89712

11 Andrea Reeves is expected to testify as to her knowledge of the facts and circumstances
12 at issue in the instant litigation.

13 28. Iyad Alattar
14 c/o U.S. Department of Transportation, Federal Highway Administration
15 705 North Plaza Street, Suite 220
16 Carson City, NV 89701

17 Iyad Alattar is expected to testify as to his knowledge of the facts and circumstances at
18 issue in the instant litigation.

19 29. NRCP 30(b)(6) Person(s) Most Knowledgeable -- Nevada Bureau of Land
20 Management
21 1340 Financial Blvd.
22 Reno, NV 89502

23 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
24 facts and circumstances at issue in the instant litigation.

25 30. Mary Jo Rugwell
26 c/o Nevada Bureau of Land Management
27 1340 Financial Blvd.
28 Reno, NV 89502

 Mary Jo Rugwell is expected to testify as to her knowledge of the facts and
 circumstances at issue in the instant litigation.

1 31. Julia Ervin Holonbok
2 c/o Nevada Department of Transportation
3 1263 S. Stewart Street
 Carson City, NV 89712

4 Julia Ervin Holonbok is expected to testify as to her knowledge of the facts and
5 circumstances at issue in the instant litigation.

6 32. Mark Slaughter
7 c/o Nevada Bureau of Land Management
8 1340 Financial Blvd.
 Reno, NV 89502

9 Mark Slaughter is expected to testify as to his knowledge of the facts and circumstances
10 at issue in the instant litigation.

11 33. Rudy Malfabon
12 c/o Nevada Department of Transportation
13 1263 S. Stewart Street
 Carson City, NV 89712

14 Rudy Malfabon is expected to testify as to his knowledge of the facts and circumstances
15 at issue in the instant litigation.

16 34. Ted P. Bendure
17 c/o U.S. Department of Transportation
18 705 North Plaza Street, Suite 220
 Carson City, NV 89701

19 Ted P. Bendure is expected to testify as to his knowledge of the facts and circumstances
20 at issue in the instant litigation.

21 Plaintiff reserves the right to supplement this witness list up to and including the time of
22 trial.

23
24 **II. CATEGORIES OF DOCUMENTS IN PLAINTIFF'S POSSESSION**

25 The following are documents in Plaintiff's possession, custody, or control that Plaintiff
26 may use to support his claims or defenses. By providing these documents, Plaintiff does not
27 waive, but expressly preserves, any and all objections as to the relevance and admissibility of the
28 documents.

No.	Date	Description	Bates No.
1.	4/6/2005	Letter from the State of Nevada Department of Transportation	Nassiri00001-Nassiri00002
2.	5/5/2005	Letter from Daryl N. James P.E.	Nassiri00003
3.		Cover Page – Public Information Meeting	Nassiri00004
4.	11/18/2008	Letter from Nevada Department of Transportation	Nassiri00005
5.		Comment Form – Sydney J. Gordon	Nassiri00006
6.	11/21/2008	Email exchange from Michael Nollsch and Patricia Brisbin re: Comment on I-15 Corridor Improvement	Nassiri00007
7.	12/8/2008	Email from Patricia Brisbin to Andrea Reeves re: Customer Comments from Internet	Nassiri00008-Nassiri00010
8.	12/8/2008	Email from Patricia Brisbin to Andrea Reeves and John Terry re: Customer Comments from Internet	Nassiri00011-Nassiri00016
9.	12/8/2008	Email from Patricia Brisbin to Andrea Reeves and John Terry re; Location/Design Hearing at Las Vegas, 6/27/2007	Nassiri00017-Nassiri00018
10.	12/4/2008	Email from Patricia Brisbin to Andrea Reeves Re: I-15 South Comments	Nassiri00019-Nassiri00020
11.	12/5/2008	Letter from Bryan L. Wright, Esq. to Steve Cooke re: I-15 South Corridor Environmental Assessment	Nassiri00021-Nassiri00023
12.	12/12/2008	Letter from Carl F. Hagelman at Station Casinos to Rudy Malfabon re: Public Response to I-15 South Corridor Improvement	Nassiri00024-Nassiri00028
13.	12/3/2008	Letter from Matthew E. Woodhead at M Resort Spa Casino to Nevada Department of Transportation re: Environmental Assessment	Nassiri00029-Nassiri00030
14.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study	Nassiri00031-Nassiri00035
15.	4/30/2005	Letter from Charles Troiano at Image Design Group to Mr. James	Nassiri00036-Nassiri00044
16.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study	Nassiri00045-Nassiri00049
17.	4/30/2005	Letter from Charles Troiano at Image Design Group to Mr. James	Nassiri00050-Nassiri00051
18.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study with highlights	Nassiri00052-Nassiri00056
19.	11/18/2008	Letter from Nevada Department of Transportation with track changes	Nassiri00057
20.	12/2/2008	Letter from Matthew E. Woodhead to Nevada Department of Transportation re Environmental Assessment	Nassiri00058
21.	2/7/2012	Email from Christopher Young to Donald Nacquin re: I-15 South	Nassiri00059-Nassiri00060

No.	Date	Description	Bates No.
22.	11/16/2004	Letter from Michael Chapman, Esq. to Kirby Gruchow Jr. re: Nassiri vs. NDOT	Nassiri00061
23.	8/27/2004	Letter from Michael Chapman, Esq. to Heidi Mireles re: Nassiri re: NDOT	Nassiri00062- Nassiri00064
24.	1/25/2005	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re: NDOT re: Nassiri	Nassiri00065- Nassiri00066
25.	1/20/205	Letter from Timothy R. Morse to Michael Chapman, Esq.	Nassiri00067- Nassiri00070
26.	12/7/2004	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re: Nassiri v. NDOT	Nassiri00071
27.	12/7/2004	Letter from Gregory Walch, Esq. to Michael Chapman, Esq. re: State of Nevada vs. Fred Nassiri	Nassiri00072
28.	12/6/2004	Letter from Gregory Walch, Esq. to Michael Chapman, Esq.	Nassiri00073- Nassiri00074
29.	9/20/2011	Letter from Patrick Sheehan, Esq. to Corey Newcome re: Ground Lease Agreement	Nassiri00075- Nassiri00076
30.	4/28/2005	Settlement Agreement and Release of All Claims	Nassiri00077- Nassiri00090
31.	6/14/2005	First Amendment to Settlement Agreement and Release of All Claims	Nassiri00091- Nassiri00095
32.	8/7/2007	Email from Steven Sullivan to Patrick Sheehan and usavc@aol.com re: Nassiri Purchase Agreement	Nassiri00096
33.	8/7/2007	Agreement for the Purchase and Sale of Real Property	Nassiri00097- Nassiri00110
34.	11/17/2008	Settlement Agreement	Nassiri00111- Nassiri00121
35.	4/15/2010	Ground Lease Agreement	Nassiri00122- Nassiri00126
36.		Aerial Photographs	Nassiri00127- Nassiri00135
37.		Nevada Department of Transportation Notice – Terazza Neighborhood Meeting	Nassiri00136
38.		Transportation Notice Public Information Meeting I-15 South Design Build Project	Nassiri00137
39.		Transportation Notice Public Information Meeting for Cactus Avenue Interchange on I-15 Project	Nassiri00138
40.		Transportation Notice Public Information Meeting for cactus Avenue/I-15 Interchange and I-15 Intelligent Transportation Installation	Nassiri00139
41.		Transportation Notice Public Information Meeting I-15 South Design Build Project	Nassiri00140
42.		Transportation Notice Public Information Meeting for Cactus Avenue Interchange on I-15 Project	Nassiri00141

No.	Date	Description	Bates No.
43.		Transportation Notice Public Information Meeting for cactus Avenue/I-15 Interchange and I-15 Intelligent Transportation Installation	Nassiri00142
44.		Transportation Notice	Nassiri00143
45.		Nevada Department of Transportation Notice	Nassiri00144- Nassiri00146
46.		Public Notice	Nassiri00147
47.		Transportation Notice Public Information Meeting for I-15 South Design Build Project	Nassiri00148- Nassiri00164
48.		Transportation Notice Public Information Meeting for I-15 South Design Build Project	Nassiri00165
49.		Affidavit of Publication	Nassiri00166- Nassiri0170
50.		Nevada DOT Terraza Neighborhood Meeting	Nassiri00171- Nassiri00177
51.	3/10/2009	Memo from State of Nevada to John Terry, Steve Cooke, Iyada Alattar, Daryl James, Carol Lamb and Jon Bunch from Julie Maxey re: Replacement Pages of Transcripts of Hearing	Nassiri00178- Nassiri00227
52.		Sign In Sheet	Nassiri00228- Nassiri00230
53.		Nevada DOT Terraza Neighborhood meeting	Nassiri00231- Nassiri00237
54.		I-15 South Design-Build Public Information Meeting	Nassiri00238- Nassiri00245
55.		Sign In Sheet	Nassiri00246- Nassiri00249
56.		12 Tips for Driving in Construction Zones	Nassiri00250- Nassiri00259
57.	5/3/2010	State of Nevada Memorandum From Julie Maxey re: Public Information Meeting Transcripts for I-15 South Design Build	Nassiri00260- Nassiri00292
58.	11/18/2008	Welcome Letter and comment form	Nassiri00293- Nassiri00295
59.		Public Information Meeting Potential Transportation Improvements	Nassiri00296- Nassiri00300
60.	10/2008	Environmental Assessment	Nassiri00301- Nassiri00515
61.	3/10/2009	State of Nevada Memorandum from Julie Maxey	Nassiri00516- Nassiri00565
62.		Sign In Sheets	Nassiri00566- Nassiri00568
63.		Nevada DOT Terraza Neighborhood Meeting	Nassiri00569- Nassiri00576
64.		I-15 South Design-Build Public Information Meeting	Nassiri00577- Nassiri00584
65.		Sign In Sheets	Nassiri00585- Nassiri00588
66.		12 Tips for Driving In Construction Zones	Nassiri00589-

No.	Date	Description	Bates No.
			Nassiri00596
67.	4/6/2005	Letter from the Department of Transportation To Whom It May Concern	Nassiri00597- Nassiri00599
68.		Nevada DOT Transportation Notice Terazza Neighborhood Meeting	Nassiri00600
69.		Nevada DOT Transportation Notice Potential Transportation Improvements to the I-15 Corridor from Tropicana Avenue to Sloan Road	Nassiri00601- Nassiri00602
70.		Comment Form- Sydney J. Gordon	Nassiri00603
71.	11/21/2008	Email from Michael Nollsch to Patricia Brisbin re: Comment on I-15 Corridor Improvement	Nassiri00604
72.	12/8/2008	Email from Patricia Brisbin to Andrea Reeves re: Customer Comments from the Internet	Nassiri00605- Nassiri00611
73.	12/8/2008	Email from Patricia Brisbin to Andrea Reeves and John Terry Re: Customer Comments from the Internet	Nassiri00612- Nassiri00615
74.	12/4/2008	Email from Patricia Brisbin to Andrea Reeves re: I0-15 South Comments	Nassiri00616- Nassiri00617
75.	12/5/2008	Letter from Bryan L. Wright to Steve M. Cooke re: I-15 South Corridor Environmental Assessment	Nassiri00618- Nassiri00620
76.	12/12/2008	Letter from Carl Hagelman at Station Casinos to Rudy Malfabon re: Public Response to I-15 South Corridor Improvement	Nassiri00621- Nassiri00625
77.	12/2/2008	Letter from Matthew E. Woodhead at M Resort to Nevada Department of Transportation re: Environmental Assessment	Nassiri00626- Nassiri00627
78.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study Interstate 15 South	Nassiri00628- Nassiri00632
79.	4/30/2005	Letter from Charles Troianao at Image Design Group, LLC to Mr. James	Nassiri00633- Nassiri00634
80.	5/5/2005	Public Information Meeting	Nassiri00635
81.	Undated	Letter from Daryl N. James	Nassiri00636- Nassiri00637
82.	4/6/2005	Letter from the State of Nevada to Whom it May Concern	Nassir00638- Nassiri00641
83.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study Interstate 15 South	Nassiri00642- Nassiri00646
84.	4/30/2005	Letter from Charles Troianao at Image Design Group, LLC to Mr. James	Nassiri00647- Nassiri00648
85.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study Interstate 15 South with highlights	Nassiri00649- Nassiri00653
86.		Transportation Notice Public Information Meeting I-15 South Design Build Project	Nassiri00654- Nassiri00656
87.	5/3/2010	State of Nevada Memorandum from Julie	Nassiri00657-

No.	Date	Description	Bates No.
		Maxey re: Public Information Meeting Transcripts for I-15 South Design Build	Nassiri00689
88.		Transportation Notice Public Information Meeting I-15 South Design-Build Project	Nassiri00690
89.		Affidavit of Publication	Nassiri00691- Nassiri00695
90.		Nevada DOT Terraza Neighborhood Meeting	Nassiri00696- Nassiri00704
91.		Comment Form – Sydney J. Gordon	Nassiri00705
92.	10/26/2006	Analysis of a Las Vegas Events Center	Nassiri00706- Nassiri00724
93.	8/30/2004	Appraisal Report prepared by Gary H. Kent	Nassiri00725- Nassiri00875
94.		Clark County Real Property Information	Nassiri00876- Nassiri00877
95.		Assessor's parcels Map	Nassiri00878
96.	2/28/2010	Errata To Stipulation and Order to Amend Judgment and Final Order of Condemnation	Nassiri00879- Nassiri00902
97.		Fonsi Notice of Availability	Nassiri00903- Nassiri00904
98.	10/2008	Environmental Assessment	Nassiri00905- Nassiri01118
99.		I-15 South Design-Build Public Information Meeting	Nassiri01119- Nassiri01154
100.		Map	Nassiri01155
101.	Undated	Letter from Fred Nassiri to John Terry	Nassiri01156-
102.	9/30/2011	Letter from Eric R. Olsen to John Terry re: Nassiri- NDOT Blue Diamond Road/I-15 North	Nassiri01157- Nassiri01158
103.	8/30/2004	NDOT's Appraisal Report Summary	Nassiri01159- Nassiri01232
104.	12/7/2010	Email from Fred Nassiri to jterry@dot.state.nv.us re: the overpass	Nassiri01233
105.		Prospective Buyers Subject Site Information	Nassiri01234
106.		Blue Diamond Interchange 67-Acres	Nassiri01235
107.	8/30/2004	Appraisal prepared by Gary H. Kent	Nassiri01236- Nassiri01406
108.	11/16/2004	Letter from Michael Chapman, Esq. to Kirby Gruchow, Jr. Re: Nassiri v. NDOT	Nassiri01407
109.	12/6/2004	Letter from to Michael Chapman re: State of Nevada vs. Fred Nassiri	Nassiri01408- Nassiri01410
110.	12/7/2004	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re: Nassiri v. NDOT	Nassiri01411
111.	12/7/2004	Letter from Gregory Walch, Esq. to Michael Chapman, Esq. re: State of Nevada vs. Fred Nassiri	Nassiri01412
112.	12/27/2004	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re Nassiri re NDOT (with redaction log)	Nassiri01413

No.	Date	Description	Bates No.
113.	1/25/2005	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re: NDOT re Nassiri	Nassiri01414-Nassiri01415
114.	1/20/2005	Letter from Timothy R. Morse to Michael Chapman, Esq.	Nassiri01416-Nassiri01419
115.	1/25/2005	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re: NDOT re: Nassiri	Nassiri01420-Nassiri01421
116.	1/20/2005	Letter from Timothy R. Morse to Michael Chapman, Esq.	Nassiri01422-Nassiri01425
117.	4/15/2010	Ground Lease Agreement	Nassiri01426-Nassiri01430
118.	8/30/2011	Letter from KJE Consulting Engineers, Inc. to Fred Nassiri re: Site Visit to the construction yard located within APN 177-08-803-013	Nassiri01431-Nassiri01432
119.	9/1/2011	Letter from Fred Nassiri to Scott Cannon re: Ground Lease Agreement- Nassiri Living Trust and Las Vegas Paving Corp.	Nassiri01433
120.	9/20/2011	Letter from Patrick Sheehan, Esq. to Corey Newcome re: Ground Lease Agreement between Nassiri Living Trust and Las Vegas Paving Corp.	Nassiri01434-Nassiri01435

Plaintiff reserves the right to supplement or modify this disclosure as it identifies during discovery additional categories of documents, electronically stored information, and tangible things in his possession, custody or control that may be used to support his claims or defenses. Plaintiff further reserves the right to object to the relevance or admissibility of any of the documents identified above.

III. COMPUTATION OF DAMAGES

Summary of Cost/Expenses -- 24.42-acre Parcel Acquisition

Purchase Cost (24.42-acre parcel)	\$23,396,224.00
Interest paid to NV State Bank (6/1/2005-3/31/2012)	\$ 9,766,812.00
Property Taxes (Tax years 2006 to 2012)	\$ 1,845,454.00
Others (mapping, survey)	\$ 3,200.00
TOTALS	\$35,011,690.00

1 IV. RULE 26(a)(1)(A)(iv) INSURANCE AGREEMENTS

2 Not applicable.

3 Nothing in this initial disclosure shall constitute a waiver of any claim, defense, or
4 privilege, including, without limitation, the following: any claim or defense as to the sufficiency
5 of the complaint; any applicable privilege, including the attorney-client privilege, the work
6 product doctrine privilege, or any other privilege; and the right to object to discovery requests
7 that seek material, documents or information that is not relevant or sufficiently probative to
8 justify the burden or expense of a response. Moreover, nothing in this initial disclosure shall
9 constitute an admission or concession on the part of Petitioner with respect to any issues of fact
10 or law, including, but not limited to, the relevance, discoverability, or admissibility of any of the
11 information set forth herein. Petitioner specifically reserves the right to challenge the
12 discoverability or admissibility of such testimony or information.

13 Dated this 3rd day of January, 2014.

14 GORDON SILVER

15 
16 ERIC R. OLSEN

17 Nevada Bar No. 3127

18 DYLAN T. CICILIANO

19 Nevada Bar No. 12348

20 3960 Howard Hughes Pkwy., 9th Floor

21 Las Vegas, Nevada 89169

22 Attorneys for Plaintiffs
23
24
25
26
27
28

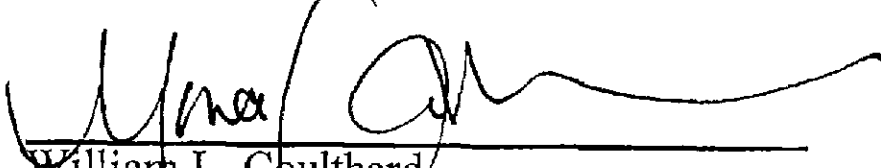
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIPT OF COPY

RECEIPT OF COPY of PLAINTIFF'S INITIAL DISCLOSURES PURSUANT TO

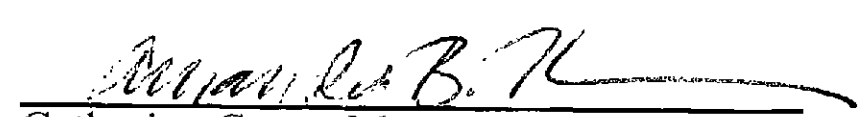
N.R.C.P. 16.1(a)(1) is hereby acknowledged this 3rd day of January, 2014.

KEMP, JONES & COULTHARD



William L. Coulthard
Eric M. Pepperman
Mona Kaveh
3800 Howard Hughes Parkway, 17th Fl.
Las Vegas, NV 89169

OFFICE OF THE ATTORNEY GENERAL



Catherine Cortez Masto
Dennis V. Gallagher
Amanda B. Kern
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

EXHIBIT 3

EXHIBIT 3

1 GORDON SILVER
ERIC R. OLSEN
2 Nevada Bar No. 3127
Email: ecolsen@gordonsilver.com
3 DYLAN T. CICILIANO
Nevada Bar No. 12348
4 Email: dciciliano@gordonsilver.com
3960 Howard Hughes Pkwy., 9th Floor
5 Las Vegas, Nevada 89169
Tel: (702) 796-5555
6 Fax: (702) 369-2666
7 *Attorneys for Plaintiffs*

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

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

12 Plaintiff,

13 vs.

14 STATE OF NEVADA, on relation of its
Department of Transportation; DOE
15 GOVERNMENT AGENCIES I-X, inclusive;
DOE INDIVIDUALS I-X; and DOE ENTITIES
16 1-10, inclusive,,

17 Defendants.

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

19 Counterclaimant,

20 vs.

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

23 Counterdefendants.
24

CASE NO. A672841
DEPT. XXVI

**PLAINTIFF'S SECOND SUPPLEMENT
TO INITIAL DISCLOSURES PURSUANT
TO N.R.C.P. 16.1(a)(1)**

25 Pursuant to Rule 16.1(a)(1) of the Nevada Rules of Civil Procedure, Fred Nassiri, an
26 individual and Nassiri Living Trust ("Plaintiff") hereby submits the second supplemental
27 disclosures¹ in the above-captioned action. Because formal discovery has just commenced in

28 ¹ Supplemental information identified in **bold**

things in his possession, custody or control that may be used to support his claims or defenses.
Plaintiff further reserves the right to object to the relevance or admissibility of any of the
documents identified above.

III. COMPUTATION OF DAMAGES

Summary of Cost/Expenses -- 24.42-acre Parcel Acquisition

Purchase Cost (24.42-acre parcel)	\$23,396,224.00
Interest paid to NV State Bank (6/1/2005-3/31/2012)	\$ 9,766,812.00
Property Taxes (Tax years 2006 to 2012)	\$ 1,845,454.00
Others (mapping, survey)	\$ 3,200.00
TOTALS	\$35,011,690.00

Severance Damages **\$5,996,700.00**

IV. RULE 26(a)(1)(A)(iv) INSURANCE AGREEMENTS

Not applicable.

///

///

///

///

///

///

///

///

///

///

///

///

1 Nothing in this supplemental disclosure shall constitute a waiver of any claim, defense, or
2 privilege, including, without limitation, the following: any claim or defense as to the sufficiency
3 of the complaint; any applicable privilege, including the attorney-client privilege, the work
4 product doctrine privilege, or any other privilege; and the right to object to discovery requests
5 that seek material, documents or information that is not relevant or sufficiently probative to
6 justify the burden or expense of a response. Moreover, nothing in this supplemental disclosure
7 shall constitute an admission or concession on the part of Plaintiff with respect to any issues of
8 fact or law, including, but not limited to, the relevance, discoverability, or admissibility of any of
9 the information set forth herein. Plaintiff specifically reserves the right to challenge the
10 discoverability or admissibility of such testimony or information.

11 Dated this 6th day of June, 2014.

12 GORDON SILVER

13
14 
ERIC R. OLSEN

Nevada Bar No. 3127

DYLAN T. CICILIANO

Nevada Bar No. 12348

3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169

17 Attorneys for Plaintiffs
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

The undersigned, an employee of Gordon Silver hereby certifies that on the 6th day of June 2014, she served a copy of the **PLAINTIFF'S SECOND SUPPLEMENT TO INITIAL DISCLOSURES PURSUANT TO N.R.C.P. 16.1(a)(1)**, by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Kemp, Jones & Coulthard, LLP
Mona Kaveh
3800 Howard Hughes Pkwy., 17th Fl.
Las Vegas, NV 89169

Office of the Attorney General
Amanda B. Kern
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
Co-Counsel for Defendant

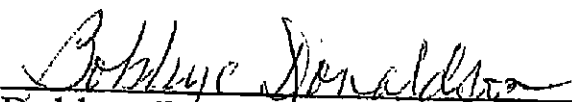

Bobbye Donaldson, an employee of
GORDON SILVER

EXHIBIT 4

EXHIBIT 4

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

OEXH000033

PA01876

Valuation Consultants

4200 Cannoli Circle
Las Vegas, NV 89103
Phone (702) 222-0018
Fax (702) 222-0047

November 3, 2014

GORDON SILVER

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

RE: 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.

Dear Mr. Ciciliano:

As requested I, Keith Harper, MAI, has completed an appraisal of the tract of land referenced above. According to Clark County public records, the subject property contains a total of 66.63 net acres, or 2,902,403 square feet. The subject is further identified as Clark County Assessor's Parcel Numbers as follows:

No.	Assessor Parcel No.	Address	Acreage
1	177-08-803-013	N/A	24.34
2	177-08-702-002	N/A	11.04
3	177-08-803-014	N/A	30.27
4	177-08-803-001	N/A	0.31
5	177-08-803-010	N/A	0.67
	Total		66.63

The purpose of this appraisal is to form opinions of the following valuation scenarios:

- Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and Just Compensation as of April 17, 2013

The property was visited on October 27, 2014 by Eric C. Greene who took the photographs presented in the attached report. I, Keith Harper, MAI visited the property on October 22, 2014 and walked and drove portions of the property. However, I have been asked to provide a retrospective value opinion of the whole property before acquisition and the just compensation as of April 17, 2013. It is noted that I did not physically visit the subject property on April 17, 2013. I have visited the immediate area on several occasions during the time frame of April 17, 2013 in the course of my appraisal work. I have also observed the property on many occasions since I moved to Las Vegas in March of 1992. The pictures in this report are considered representative of the property as of the effective date. It should be noted that Clark County Assessor's Parcel Number 177-08-803-013 was previously improved as the Blue Diamond Road and Interstate 15 Interchange. As of the date of my

HARPER000002

OEXH000034

PA01877

Mr. Dylan T. Ciciliano, Esq.
November 3, 2014
Page ii

last property visit the improvements were still in place. It has been reported to me that the previous owner, Nevada Department of Transportation (NDOT), has agreed to remove all the improvements.

To develop the opinions of the retrospective values, I have performed an Appraisal Report as defined by the 2014-2015 Edition of the *Uniform Standards of Professional Appraisal Practice* (USPAP). This is an appraisal report, which is intended to comply with the reporting requirements set under Standards Rule 2-2 (a) of the 2014-2015 Edition of USPAP for an Appraisal Report. I am not responsible for unauthorized use of this report.

The intended use of this appraisal is to assist Mr. Dylan T. Ciciliano, Esq. of Gordon Silver as well as any attorneys, paralegals, and others associated with Gordon Silver representing the property ownership by providing an opinion of just compensation. The appraisal is subject to the attorney work privilege. The intended user of this appraisal is Mr. Dylan T. Ciciliano, Esq. of Gordon Silver as well as any attorneys, paralegals, and others associated with Gordon Silver. This report has no other intended use or intended users other than what has been stated herein.

It should be noted that this appraisal report is intended solely for the intended use and intended users for presentation for a possible legal action in the jurisdiction of the District Court, Clark County, Nevada. The specific case is Case No. A672841, Department No. XXVII.

After considering all of the available facts and subject to the underlying assumptions and limiting conditions contained herein, I am of the opinion that the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and the Just Compensation, as of April 17, 2013, are as follows:

VALUE IDENTIFICATION	DATE OF VALUE	VALUE OPINION
Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition	April 17, 2013	\$99,945,000*

FINAL OPINION OF THE JUST COMPENSATION

After analyzing the subject property and the market data, the total Just Compensation for the subject property, considering severance damages and special benefits to the remainder property, as of April 17, 2014, is as follows:

TEN MILLION DOLLARS

\$10,000,000*

*These value opinions are based on the definition of value as defined in NRS 37.009, 6., that stipulates that the property has a "reasonable time to find a purchaser".

HARPER000003

OEXH000035

PA01878

Mr. Dylan T. Ciciliano, Esq.
November 3, 2014
Page iii

Extraordinary Assumptions

An extraordinary assumption is "something that is believed to be true for the sake of the appraisal but that may or may not in fact be true as of the effective date of the appraisal. Extraordinary assumptions are specific to the assignment at hand. If an extraordinary assumption ends up not being true, the results of the assignment will be affected." (Source: *The Appraisal of Real Estate, 14th Edition, 2013, Appraisal Institute, page 53*)

The final opinions of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and the Retrospective Just Compensation reported in this appraisal assignment is based on the following Extraordinary Assumptions:

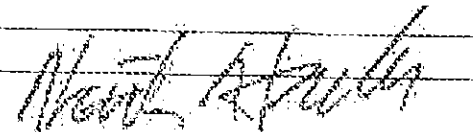
- 1) In this case it is an extraordinary assumption that the subject whole property as of the retrospective effective date is physically as it was observed on October 22, 2014 which was the last date of visitation and observation.
- 2) It is an extraordinary assumption that the Exhibit included in the Addenda of this report and titled "I-15 South Corridor Improvements Environmental Assessment Build Alternative Figure 10F" is an accurate depiction of the subject in the Before Condition.

If these extraordinary assumptions that are is directly related to this specific assignment as of the appropriate retrospective date of the assignment results are found to be false, the opinions or conclusions could be altered.

Thank you for the opportunity to complete this assignment. If I may be of further assistance, please contact me at your convenience.

Sincerely,

VALUATION CONSULTANTS



Keith Harper, MAI
Certified General Appraiser
License Number A.0000604-CG
State of Nevada
Expires: 3/31/16

HARPER000004

OEXH000036

PA01879

EXECUTIVE SUMMARY

Location: The subject property is located at the northwest corner of Blue Diamond Road and Las Vegas Boulevard South, Las Vegas, Clark County, Nevada 89123.

Assessor Parcel Nos.: 177-08-803-013, 177-08-702-002, 177-08-803-014, 177-08-803-001, and 177-08-803-010

Site Area: According to Clark County public records, the subject property contains a total of 66.63 net acres, or 2,902,403 square feet.

Use as of the Retrospective Date: Vacant Land

Census Tract: 28.37

Highest and Best Use: As Vacant: To hold this property until market conditions improve and then develop it with a major mixed-use resort or tourist related development.

Intended Use/User of Appraisal: The intended use of this appraisal is to assist Mr. Dylan T. Ciciliano, Esq. of Gordon Silver as well as any attorneys, paralegals, and others associated with Gordon Silver representing the property ownership by providing an opinion of just compensation. The appraisal is subject to the attorney work privilege. The intended user of this appraisal is Mr. Dylan T. Ciciliano, Esq. of Gordon Silver as well as any attorneys, paralegals, and others associated with Gordon Silver. This report has no other intended use or intended users other than what has been stated herein.

Dates of Opinion:

Date of Report:

November 3, 2014

Retrospective "Undivided Fee" Fair Market Value of the

Whole Property Before Acquisition: April 17, 2013

Retrospective Just Compensation: April 17, 2013

Interest Appraised:

Undivided Fee

Zoning:

H-1, Limited Resort and Apartment District, H-2, General Highway District, and R-E, Rural Estates Residential District [2 Units per Acre], Clark County

Dates of Property Visits:

October 27, 2014 – Date Photographs were Taken
October 22, 2014 – Date Keith Harper, MAI visited site

SUMMARY OF RETROSPECTIVE JUST COMPENSATION

Fair Market Retrospective Value Opinion Before Acquisition - Whole Property	\$99,945,000
Fair Market Retrospective Value Opinion of the Part Taken	\$ -0-
Fair Market Retrospective Value Opinion of the Remainder Before Acquisition	\$99,945,000
Fair Market Retrospective Value Opinion of the Remainder After Acquisition	\$89,950,500
Severance Damages	\$9,994,500
Special Benefits	\$ -0-

Calculation of Recommended Just Compensation:

Acquisition Area (Part Taken):	\$ -0-
Remainder Before Acquisition:	\$99,945,000
Less: Remainder After Acquisition:	<\$89,950,500>
Equals: Severance Damages:	\$9,994,500
Total Recommended Retrospective Just Compensation:	\$9,994,500

ROUNDED TO: **\$10,000,000**

Extraordinary Assumptions

An extraordinary assumption is "something that is believed to be true for the sake of the appraisal but that may or may not in fact be true as of the effective date of the appraisal. Extraordinary assumptions are specific to the assignment at hand. If an extraordinary assumption ends up not being true, the results of the assignment will be affected." (Source: *The Appraisal of Real Estate, 14th Edition, 2013, Appraisal Institute, page 53*)

The final opinions of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and the Retrospective Just Compensation reported in this appraisal assignment is based on the following Extraordinary Assumptions:

- 1) In this case it is an extraordinary assumption that the subject whole property as of the retrospective effective date is physically as it was observed on October 22, 2014 which was the last date of visitation and observation.
- 2) It is an extraordinary assumption that the Exhibit included in the Addenda of this report and titled "I-15 South Corridor Improvements Environmental Assessment Build Alternative Figure 10F" is an accurate depiction of the subject in the Before Condition.

If these extraordinary assumptions that are directly related to this specific assignment as of the appropriate retrospective date of the assignment results are found to be false, the opinions or conclusions could be altered.

TABLE OF CONTENTS

Property Photographs – Taken on October 27, 2014.....	1
Property Introduction	7
Las Vegas Area Analysis – April 2013.....	16
Subject Market Area Analysis	35
Site Data.....	44
Method of Valuation.....	49
Highest and Best Use Analysis	50
Retrospective “Undivided Fee” Fair Market Value of the Whole Property Before Acquisition.....	53
Reconciliation of the Retrospective “Undivided Fee” Fair Market Value of the Whole Property Before Acquisition.....	74
Valuation of the Part Taken	75
Valuation of the Remainder	76
Summary of Retrospective Just Compensation	77
Assumptions and Limiting Conditions	78
Certification	81

Addenda

- * Subject Property Information from Various Sources
- * Proposal Letter
- * Qualifications of the Appraiser

PROPERTY PHOTOGRAPHS – Taken on October 27, 2014

Valuation Consultants

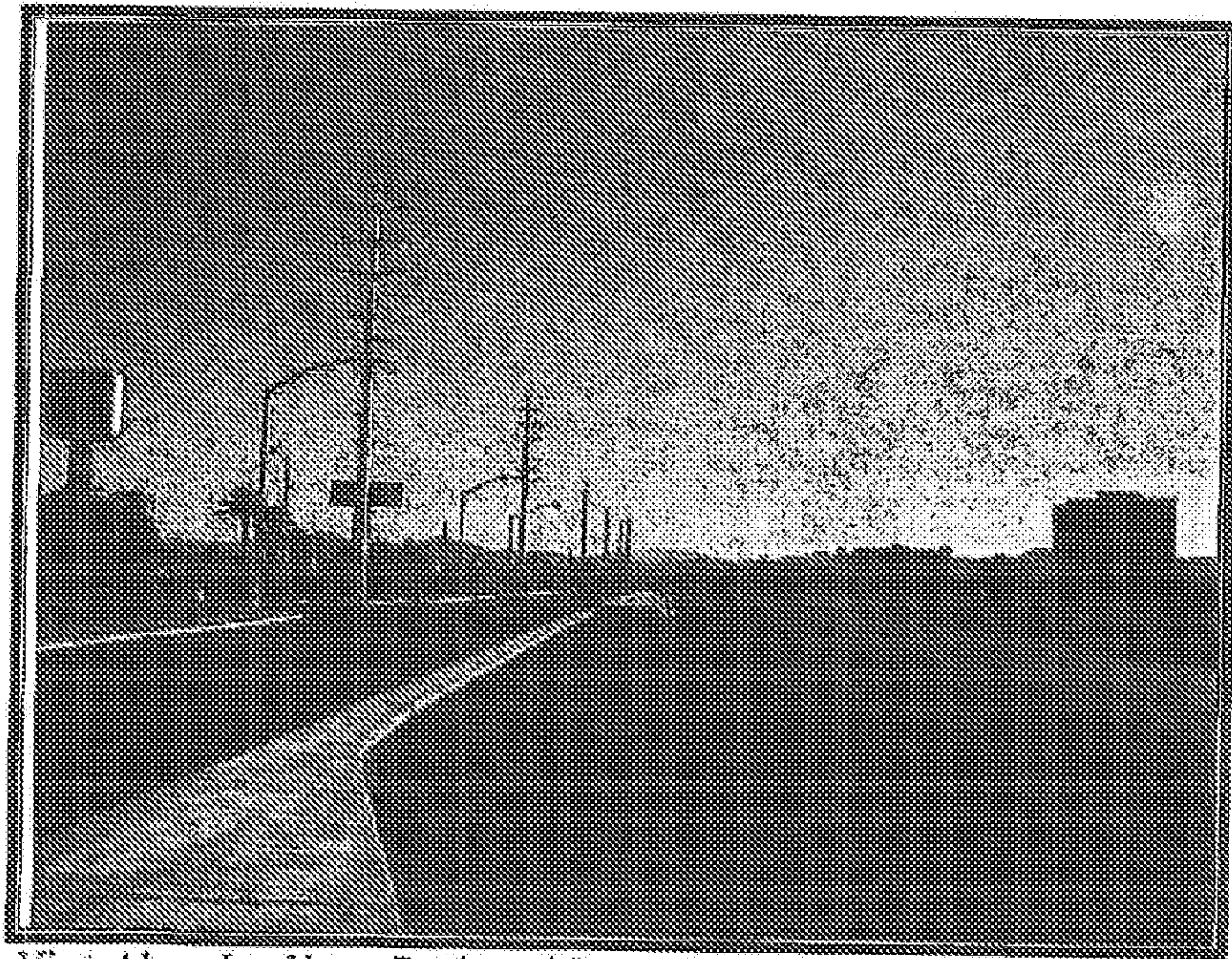
File No. V-14-64

1

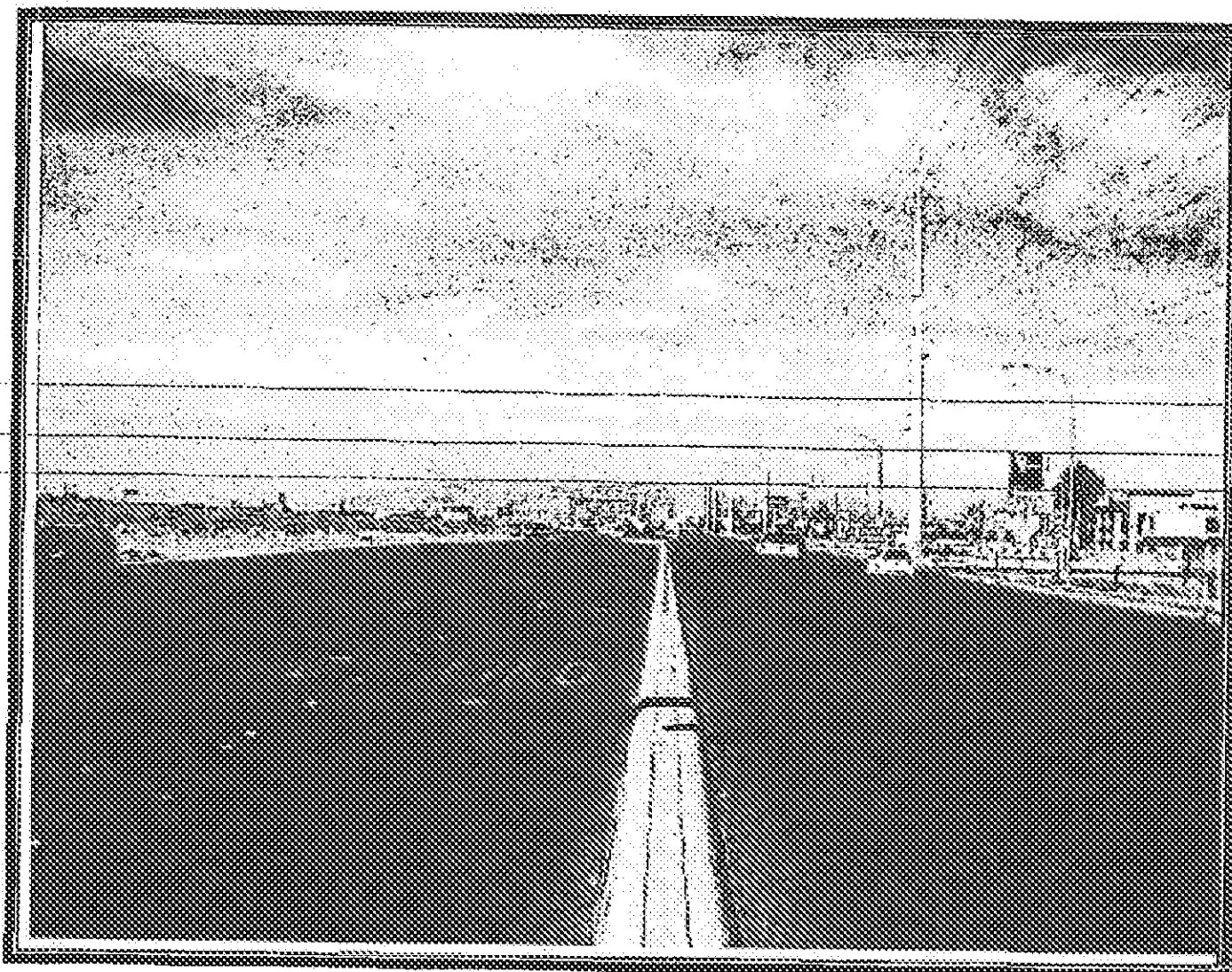
HARPER000008

OEXH000040

PA01883



View Along Las Vegas Boulevard South, Facing South; Subject to the Right



View Along Las Vegas Boulevard South, Facing North; Subject to the Left

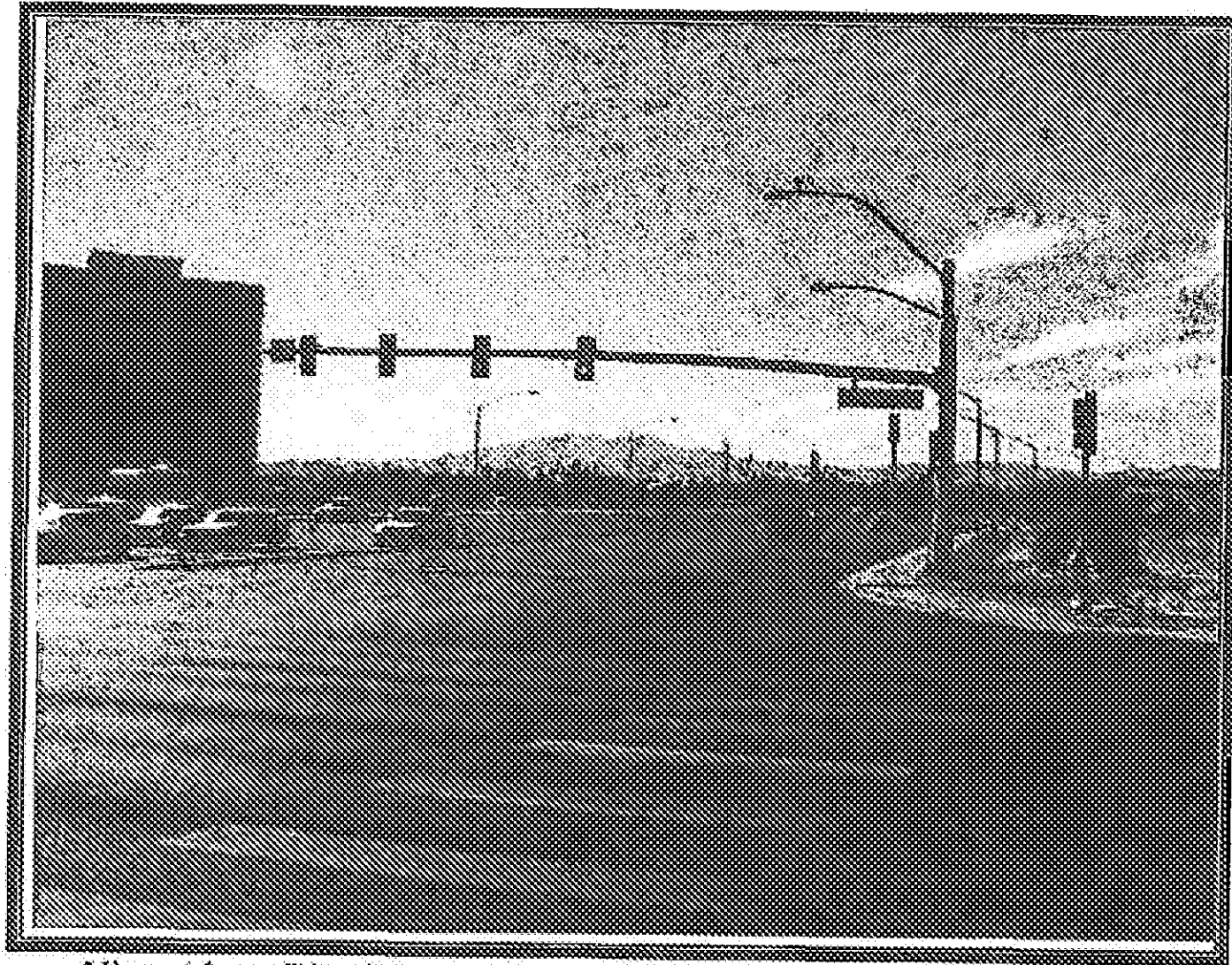
Valuation Consultants
File No. V-14-64

2

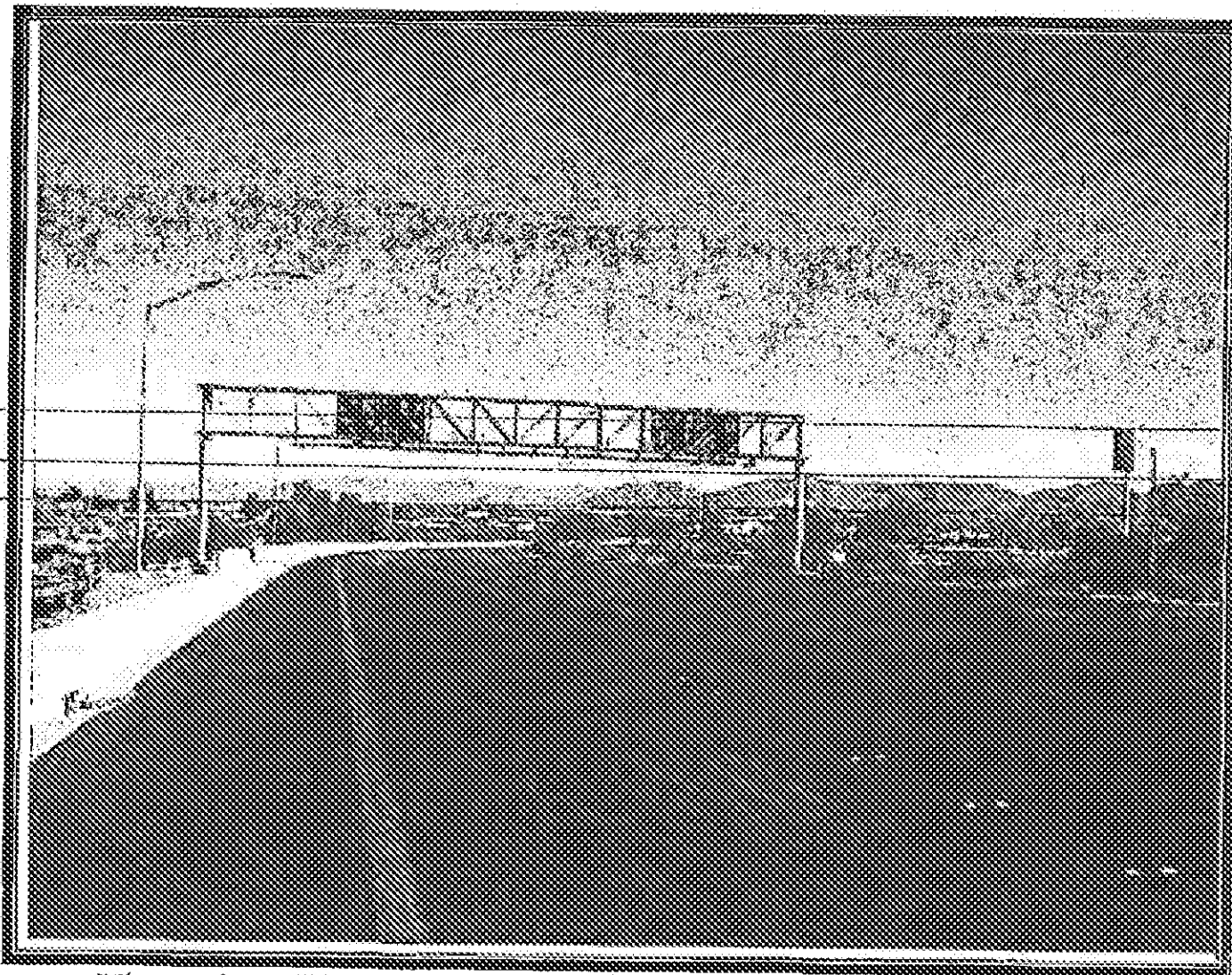
HARPER000009

OEXH000041

PA01884



View Along Blue Diamond Road, Facing West; Subject to the Right



View Along Blue Diamond Road, Facing East; Subject to the Left



View Along the Ramp East Blue Diamond North I-15, Facing North; Subject to the Right



View Along the Ramp East Blue Diamond North I-15, Facing South; Subject to the Left

Valuation Consultants

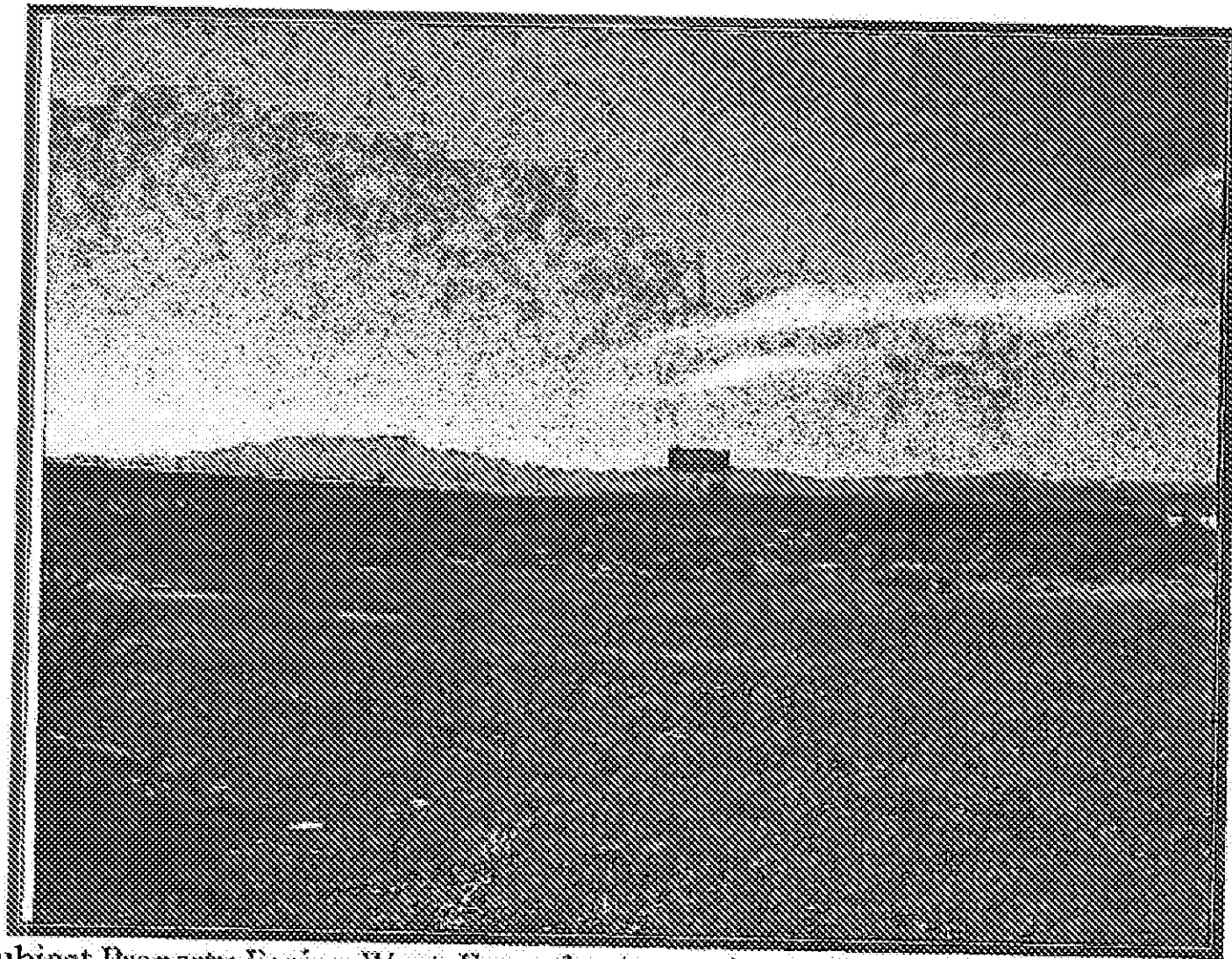
File No. V-14-64

4

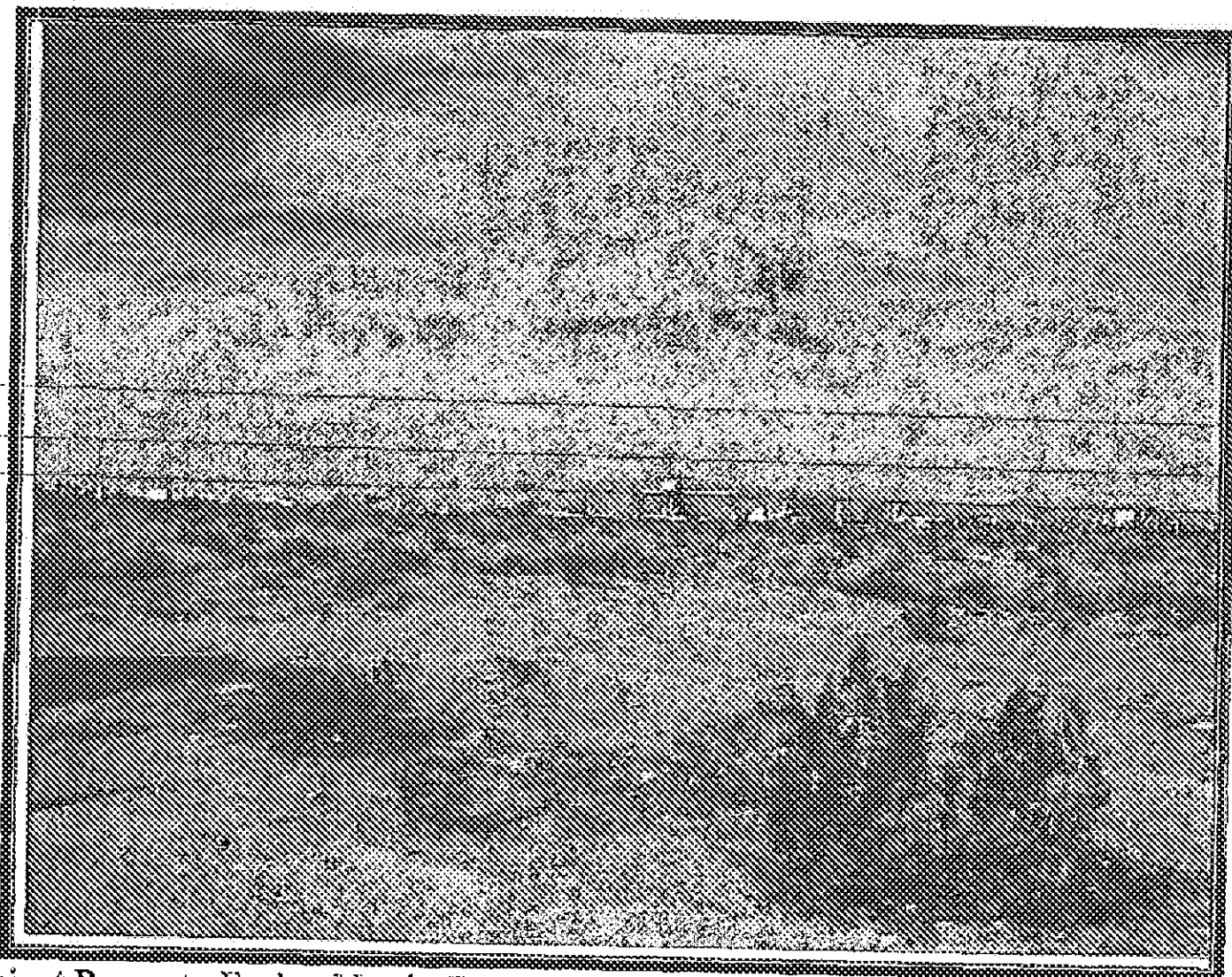
HARPER0000011

OEXH000043

PA01886

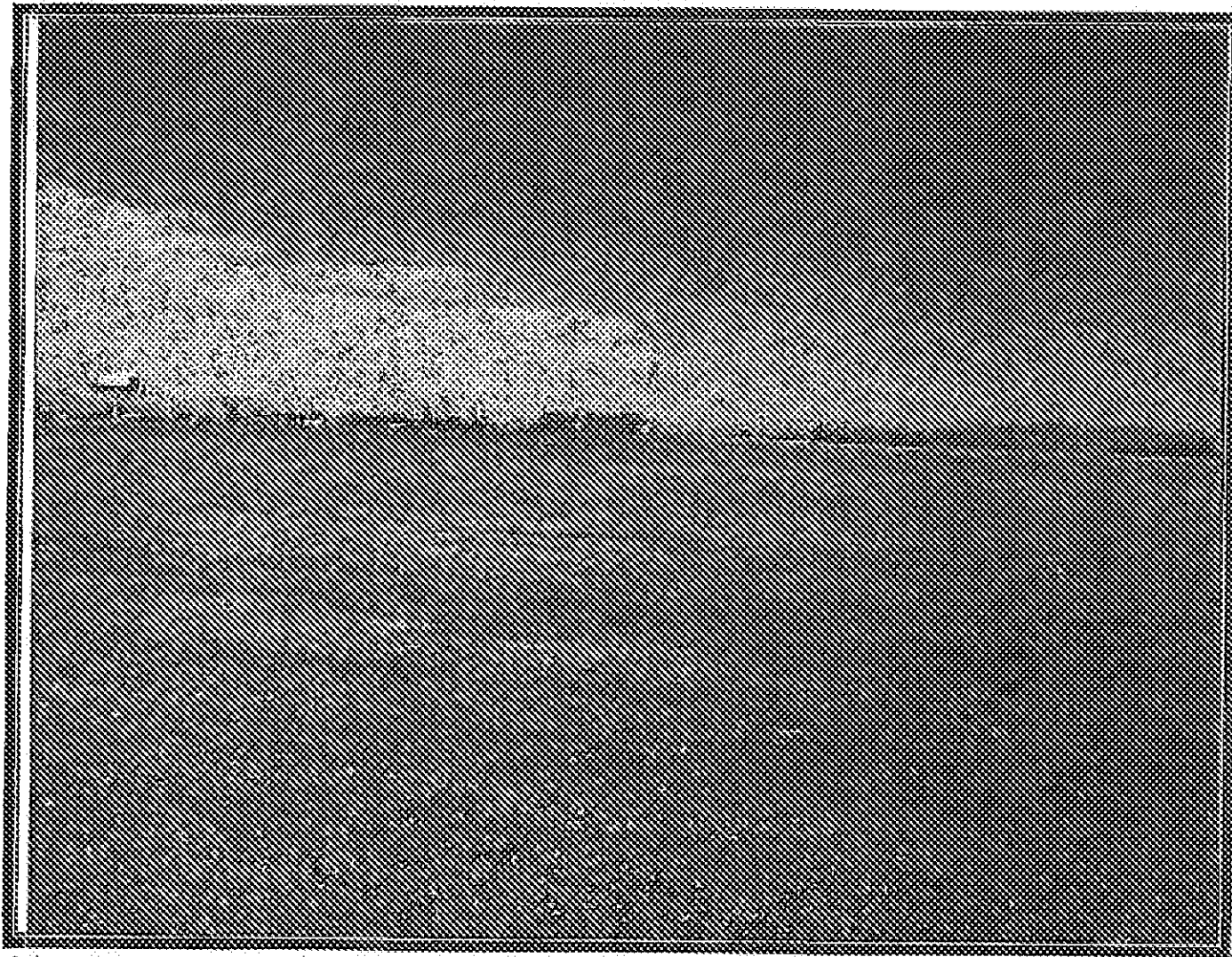


View of Subject Property Facing West, From the Approximate Center of the Eastern Property Line

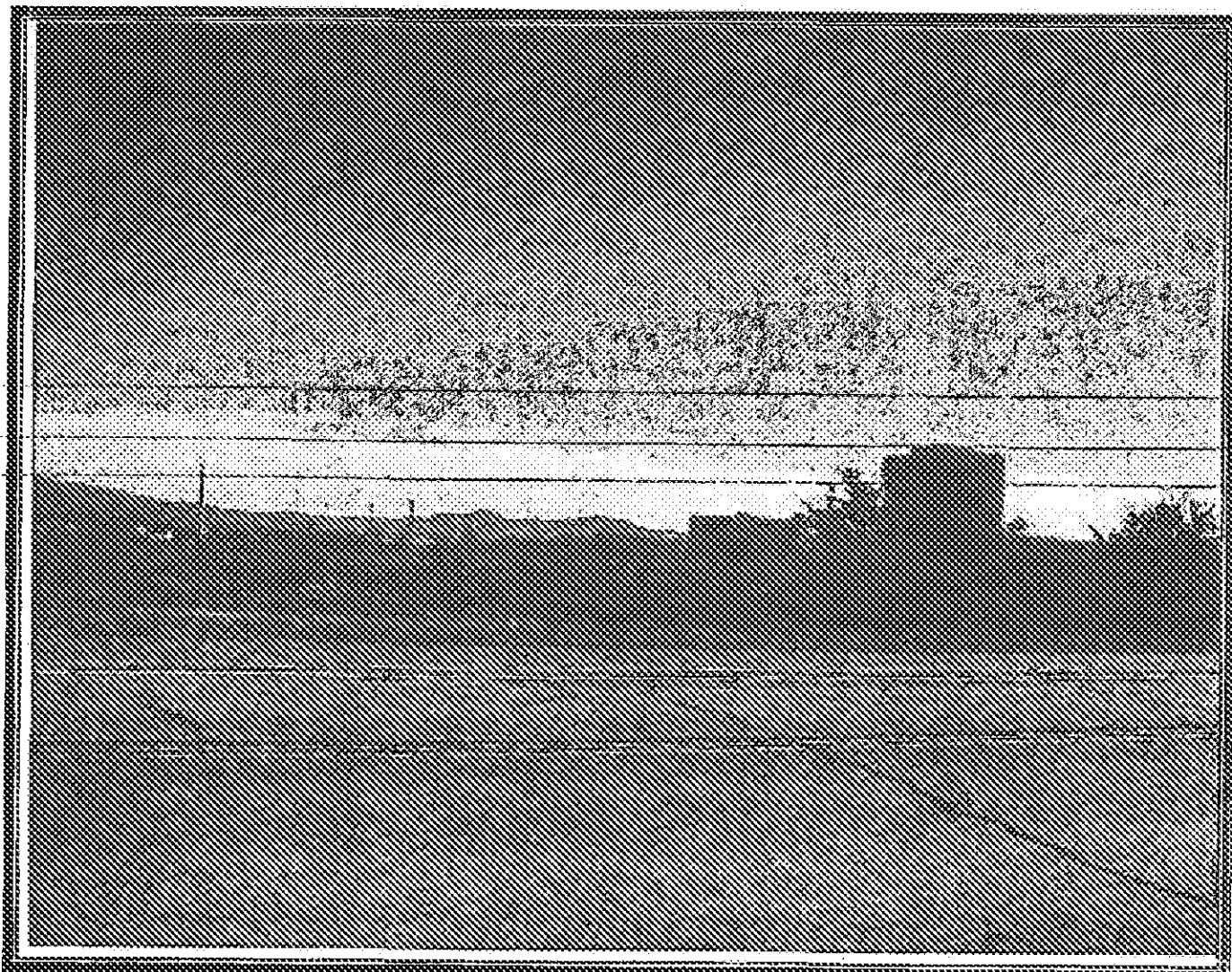


View of Subject Property Facing North, From the Approximate Center of the Southern Property Line

Valuation Consultants
File No. V-14-64



View of Subject Property Facing East, From the Approximate Center of the Western Property Line



View of Subject Property Facing South, From the Approximate Center of the Northern Property Line

Valuation Consultants
File No. V-14-64

PROPERTY INTRODUCTION

Subject Identification

The subject property is 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.

The subject is further identified as Clark County Assessor's Parcel Numbers as follows:

No.	Assessor Parcel No.	Address	Acreage
1	177-08-803-013	N/A	24.34
2	177-08-702-002	N/A	11.04
3	177-08-803-014	N/A	30.27
4	177-08-803-001	N/A	0.31
5	177-08-803-010	N/A	0.67
	Total		66.63

The property was visited on October 27, 2014 by Eric C. Greene who took the photographs presented in the attached report. I, Keith Harper, MAI visited the property on October 22, 2014 and walked and drove portions of the property. However, I have been asked to provide a retrospective value opinion and just compensation as of April 17, 2013. It is noted that I did not physically visit the subject property on April 17, 2013. I have visited the immediate area on several occasions during the time frame of April 17, 2013 in the course of my appraisal work. I have also observed the property on many occasions since I moved to Las Vegas in March of 1992. The pictures in this report are considered representative of the property as of the effective date. It should be noted that Clark County Assessor's Parcel Number 177-08-803-013 was previously improved as the Blue Diamond Road and Interstate 15 Interchange. As of the date of my last property visit the improvements were still in place. It has been reported to me that the previous owner, Nevada Department of Transportation (NDOT), has agreed to remove all the improvements.

Property Ownership and History

Clark County Assessor's Parcel Number (APN) 177-08-803-013

As of the effective of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition, title was vested in Nassiri Living Trust, Fred Nassiri, Trustee, as of October 30, 2006 as recorded in Document Number 20061030:02044 in the Office of the Clark County Recorder, Clark County, Nevada. This was not an arm's length transaction and between related parties.

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

As of the effective of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition, title to the parcels were vested in Nassiri Living Trust, Fred Nassiri, Trustee, as of August 12, 2004 as recorded in Document Number 20040812:00174 in the Office of the Clark County Recorder, Clark County, Nevada. This was not an arm's length transaction and between related parties.

Valuation Consultants

File No. V-14-64

7

HARPER0000014

OEXH000046

PA01889

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

As of the effective of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition, title to the parcels were vested in Nassiri Living Trust, Fred Nassiri, Trustee, as of December 17, 2008 as recorded in Document Number 20081217:04562 in the Office of the Clark County Recorder, Clark County, Nevada. This was not an arm's length transaction and between related parties.

It should be noted that all of the above mentioned parcels were assembled under LVBBD, LLC on January 3, 2014, as recorded in Document Number 20140103:00495 in the Office of the Clark County Recorder, Clark County, Nevada. This was not an arm's length transaction and between related parties.

To the best of my knowledge the overall property was not in escrow as of the effective of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition.

Legal Description

A current, updated title report was not provided to me. The legal description is located in the Addenda of this report as shown in Exhibit "A" in the most recent recorded Quit Claim Deed. The subject property is also known as 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.

Purpose of the Appraisal

The purpose of this appraisal is to form opinions of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and the Just Compensation as of April 17, 2013.

Intended Use and Intended Users of the Appraisal

The intended use of this appraisal is to assist Mr. Dylan T. Ciciliano, Esq. of Gordon Silver as well as any attorneys, paralegals, and others associated with Gordon Silver representing the property ownership by providing an opinion of just compensation. The appraisal is subject to the attorney work privilege. The intended user of this appraisal is Mr. Dylan T. Ciciliano, Esq. of Gordon Silver as well as any attorneys, paralegals, and others associated with Gordon Silver. This report has no other intended use or intended users other than what has been stated herein.

It should be noted that this appraisal report is intended solely for the intended use and intended users for presentation for a possible legal action in the jurisdiction of the District Court, Clark County, Nevada. The specific case is Case No. A672841, Department No. XXVII.

Definitions

Estate is defined as, "a right or interest in property."

(Source: *The Dictionary of Real Estate Appraisal*, 5th ed. [Chicago: Appraisal Institute, 2010] pg. 70.)

Fee Simple Estate is defined as, "absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."

(Source: *The Dictionary of Real Estate Appraisal*, 5th ed. [Chicago: Appraisal Institute, 2010] pg. 78.)

Leased Fee Interest is defined as, "a freehold (ownership interest) where the possessory interest has been granted to another party by creation of a contractual landlord-tenant relationship (i.e., a lease)."

(Source: *The Dictionary of Real Estate Appraisal*, 5th ed. [Chicago: Appraisal Institute, 2010] pg. 111.)

Undivided-Fee Rule provides that, "condemned property is first valued as though it was unencumbered...which requires the court to first determine the value of the property as a whole..."

(Source: *County of Clark v. Sun State Properties, Ltd.*, 119 Nev. 329, 2003, Supreme Court of Nevada)

Larger Parcel in governmental land acquisitions is defined as, "the tract or tracts of land that are under the beneficial control of a single individual or entity and have the same, or an integrated, highest and best use. Elements for consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership and unity of highest and best use. In most states, unity of ownership, contiguity and unity of use are the three conditions that establish the larger parcel for the consideration of severance damages. In federal and some state cases, however, contiguity is sometimes subordinated to unitary use."

(Source: *The Dictionary of Real Estate Appraisal*, 5th ed. [Chicago: Appraisal Institute, 2010] pg. 111.)

In this case, the larger parcel and the whole property are one in the same.

"Value" means the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. In determining value, except as otherwise provided in this subsection, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property

sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property.

(Source: Nevada Revised Statutes 37.009)

Just Compensation as used herein in all actions in eminent domain, is defined as, "...that sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken, excluding any governmental offsets except special benefits. Special benefits may only offset severance damages and may not offset the value for the property. Just compensation for the property taken by the exercise of eminent domain must include, without limitation, interest computed pursuant to NRS 37.175 and reasonable costs and expenses, except attorneys fees, incurred by the owner of the property that is the subject of the action. (1911 CPA§675; RL§5617; NCL§9164) – (NRS A 1965, 686; 1991, 1641; 1993, 526; 1999, 3533; 2007, 336)

(Source: Nevada Revised Statutes 37.120)

Just Compensation is also defined within the Nevada State Constitution as, "In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred."

(Source: Nevada State Constitution, Article 1, Section 22, Part 4)

It is noted that this appraisal is being used in an eminent domain proceeding and the retrospective value opinions contained in the report are based on the above definitions of Just Compensation. In my opinion, the final opinion of the retrospective Just Compensation stated in this appraisal is reflective of and would be the same under either definition.

Special-purpose property is defined as, "a property with a unique physical design, special construction materials, or a layout that particularly adapts its utility to the use for which it was built: also called a special-design property."

(Source: The Dictionary of Real Estate Appraisal, 5th ed. [Chicago: Appraisal Institute, 2002] 184.)

"Retrospective" Market Value means, "a value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specified prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiations, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., 'retrospective market value opinion'."

(Source: The Dictionary of Real Estate Appraisal, 5th ed. [Chicago: Appraisal Institute, 2010] pg. 171.)

Property Visitation Dates

The property was visited on October 27, 2014 by Eric C. Greene who took the photographs presented in the report. I, Keith Harper, MAI visited the property on October 22, 2014 and walked and drove portions of the property. However, I have been asked to provide a retrospective value opinion and just compensation as of April 17, 2013. It is noted that I did not physically visit the subject property on April 17, 2013. I have visited the immediate area on several occasions during the time frame of April 17, 2013 in the course of my appraisal work. I have also observed the property on many occasions since I moved to Las Vegas in March of 1992. The pictures in this report are considered representative of the property as of the effective date. It should be noted that Clark County Assessor's Parcel Number 177-08-803-013 was previously improved as the Blue Diamond Road and Interstate 15 Interchange. As of the date of my last property visit the improvements were still in place. It has been reported to me that the previous owner, Nevada Department of Transportation (NDOT), has agreed to remove all the improvements.

Effective Date of Retrospective Valuation

I have been asked to provide opinions of Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and the Just Compensation as of April 17, 2013. As stated above, I did not physically visit the subject property on April 17, 2013.

Date of Report

The date of this report is November 3, 2014. This is the date that the report was prepared.

Type of Report

To develop the opinions of the retrospective values, I have performed an Appraisal Report as defined by the 2014-2015 Edition of the *Uniform Standards of Professional Appraisal Practice* (USPAP). This is an appraisal report, which is intended to comply with the reporting requirements set under Standards Rule 2-2 (a) of the 2014-2015 Edition of USPAP for an Appraisal Report. I am not responsible for unauthorized use of this report.

Scope of the Appraisal

The scope of the appraisal required investigating sufficient data relative to the subject property to derive the opinions of the retrospective values. The depth of the analysis was intended to be appropriate in relation to the significance of the appraisal problem.

I was engaged via a Proposal Letter dated October 22, 2014. A copy of the Proposal Letter has been included in the Addenda.

- **Extent to which the property is identified** – I did not receive a copy of the metes and bounds legal description for the subject property. Also, I was not provided with a copy of a survey. In lieu of a survey, I relied on the Clark County Assessor records for an accurate reflection of the size and shape of the subject site, as well as the history of the property. I reserve the right to modify the final conclusion based upon surveys or other

Valuation Consultants

File No. V-14-64

studies that reflect different sizes or dimensions than used in this appraisal. Because I was not provided with a copy of a preliminary title report, I am unaware of any easements or encroachments that may be on the property. A title search or survey of the subject property was not performed.

- * **Extent to which tangible property is inspected** – On October 27, 2014 Eric C. Greene visited the subject property in order to develop impressions of physical characteristics based on visual observations of apparent, not unapparent conditions. He walked the majority of the perimeter of the site and obtained photographs of the subject property at that time. Said photographs are contained herein. I, Keith Harper, MAI visited the subject property on October 22, 2014.

This appraisal is not a property condition report, and should not be relied upon to disclose any conditions present in the property, and it does not guarantee the property to be free of defects. I am not a licensed inspector, and I did not make an “inspection” of the property.

I am not qualified to detect or identify hazardous substances, which may, or may not, be present on, in, or near the subject property. The presence of hazardous materials may negatively affect the opinions of the Retrospective “Undivided Fee” Fair Market Value of the Whole Property Before Acquisition and the Just Compensation. I have no reason to suspect the presence of hazardous substances and I have valued the subject **assuming that none are present**.

No responsibility is assumed for any such conditions or for any expertise or engineering required to detect or discover them. I urge the user of this report to obtain the services of specialists for the purpose of conducting inspections, engineering studies, or environmental audits. While it is noted that the subject does not lie within the 100-year flood plain and I refer to FEMA flood maps, I am not a surveyor and not qualified to make flood plain determinations, and it is recommend that a qualified party be consulted before any investment-type decision is made.

- **The type and extent of data researched** - Sales data was obtained through researching the MLXchange, COMPS service, the Loop Net data service, PropertyLine and public records. Attempts were made to contact brokers to confirm sales. The comparable properties were analyzed with consideration of such differences as legal encumbrances, conditions of sale, financing terms, market conditions, location, physical characteristics, availability of utilities, zoning, and highest and best use.

- * **The type and extent of analysis applied** – Per the client’s request, this is an appraisal report of the vacant land located at the northwest corner of Blue Diamond Road and Las Vegas Boulevard South, Las Vegas, Clark County, Nevada 89123. Since the subject is vacant land, only the Sales Comparison Approach to value will be utilized. I am of the opinion that this would produce credible results.

The following is a list of documents and items that I was provided by the clients and/or property owner, Fred Nassiri:

- 1) Copy of the Amended Complaint that was electronically filed on 03/27/2013. This Amended Complaint is a total of 17 pages and is dated March 27, 2013.
- 2) Copy of Affidavit of Service that was electronically filed on 04/22/2013. This affidavit was executed on 04/18/2013 by Wade Morlan.
- 3) Copy of an appraisal completed by Timothy R. Morse & Associates Real Estate Appraisers and Consultants dated April 6, 2012.
- 4) Copy of an appraisal completed by Gary H. Kent, Inc. dated August 30, 2004.
- 5) Copy of an appraisal completed by RCS Appraisal, Inc. dated February 10, 2010.
- 6) Copy of an appraisal completed by Timothy R. Morse & Associates Real Estate Appraisers and Consultants dated August 17, 2009.
- 7) Copy of an appraisal completed by Timothy R. Morse & Associates Real Estate Appraisers and Consultants dated June 8, 2011.
- 8) Copy of an appraisal completed by Timothy R. Morse & Associates Real Estate Appraisers and Consultants dated October 24, 2007.
- 9) Copy of the Amended Complaint with Exhibits that was electronically filed on 03/27/2013.
- 10) Copy of Nassari's Answer to Department of Transportation's Counterclaim that was electronically filed on 11/25/2013. This is a total of 10 pages and is dated November 25, 2013.
- 11) Copy of Department of Transportation's Answer to Amended Complaint and Counterclaim that is a total of 22 pages plus attached Exhibits. This document is dated October 31, 2013.
- 12) Copy of an appraisal completed by CBRE Valuation and Advisory Services dated July 26, 2013.
- 13) A Marketing Package completed by the property owner.
- 14) Broker Price Opinion completed by Colliers International with an effective date of May 14, 2013
- 15) Video dated July 8, 2014. This was prepared by the property owner.

The report has been prepared in a condemnation format to assist in the pending legal matter. The legal representatives of the property owner have filed an Amended Complaint stating that the remainder property has been damaged due to a loss of exposure. This is a permanent taking of the ownership interests in the subject remainder property in the after condition. The valuation will follow in the sequence summarized below:

1. Valuation of the whole property.
2. Identification of the part taken.
3. Valuation of the acquisition area (i.e., the part taken).
4. Analysis of the property after the acquisition (i.e., the remainder).
5. Project any severance damages.
6. Project any special benefits.
7. Provide an opinion of the Retrospective Just Compensation.
8. Summary of the Retrospective Just Compensation.

This appraisal report is intended to be an "appraisal assignment". That is the intention that the appraisal service be performed in such a manner that the results of the analysis, opinion, or conclusion be that of a disinterested third party.

Environmental Problems Observed

Unless otherwise stated in this report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyl, petroleum leakage, or agricultural chemicals, which may or may not be present on the subject property, or other environmental conditions were not called to my attention, nor did I become aware of such during my property visits. The presence of hazardous materials may negatively affect the final opinions of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and the Just Compensation.

I have no knowledge of the existence of such materials on, in, or near the subject property, and I am not qualified to detect or identify hazardous substances, which may, or may not, be present on, in, or near this property. I was not provided with environmental studies relative to the subject property. The presence of hazardous materials may negatively affect the opinions of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and the Just Compensation. If the presence of such substances, such as asbestos, urea formaldehyde foam insulation, or other hazardous substances or environmental conditions including asbestos, may affect the values of the property, then this appraisal is based on the assumption that there are no such conditions on or in the property, or in such proximity thereto, that it would cause a loss in value.

No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to detect or discover them. I urge the user of this report to retain an expert in this field, and I reserve the right to modify my conclusions based on the results of such a report.

Valuation Consultants

File No. V-14-64

14

HARPER0000021

OEXH000053

PA01896

Extraordinary Assumptions

An extraordinary assumption is “something that is believed to be true for the sake of the appraisal but that may or may not in fact be true as of the effective date of the appraisal. Extraordinary assumptions are specific to the assignment at hand. If an extraordinary assumption ends up not being true, the results of the assignment will be affected.”

(Source: The Appraisal of Real Estate, 14th Edition, 2013, Appraisal Institute, page 53)

The final opinions of the Retrospective “Undivided Fee” Fair Market Value of the Whole Property Before Acquisition and the Retrospective Just Compensation reported in this appraisal assignment is based on the following Extraordinary Assumptions:

1) In this case it is an extraordinary assumption that the subject whole property as of the retrospective effective date is physically as it was observed on October 22, 2014 which was the last date of visitation and observation.

2) It is an extraordinary assumption that the Exhibit included in the Addenda of this report and titled “I-15 South Corridor Improvements Environmental Assessment Build Alternative Figure 10F” is an accurate depiction of the subject in the Before Condition.

If these extraordinary assumptions that are is directly related to this specific assignment as of the appropriate retrospective date of the assignment results are found to be false, the opinions or conclusions could be altered.

Hypothetical Conditions - None

Valuation Consultants

File No. V-14-64

15

HARPER0000022

OEXH000054

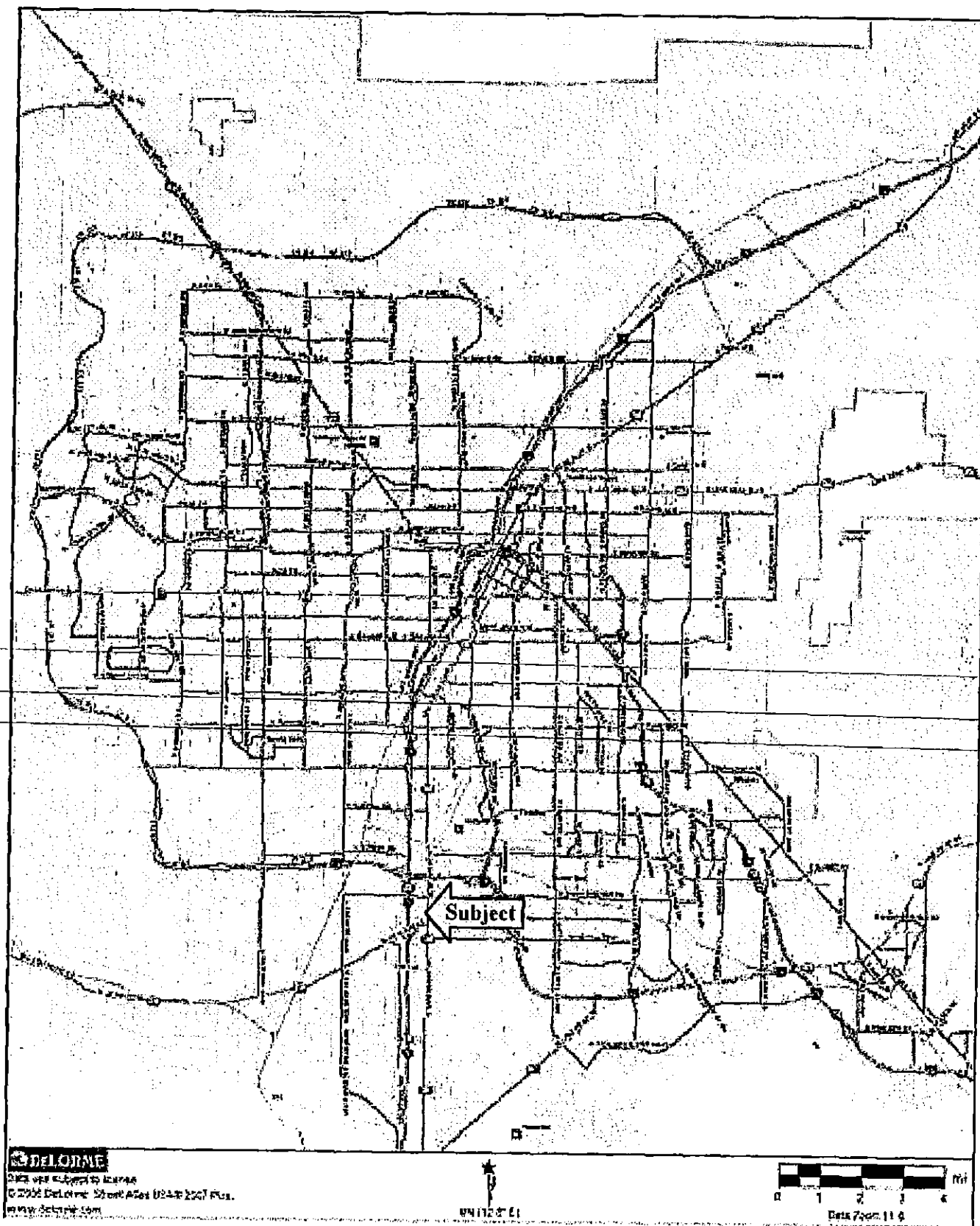
PA01897

LAS VEGAS AREA ANALYSIS – APRIL 2013

Introduction

Las Vegas is situated at the southern tip of Nevada in the Great Basin – the western region between the Sierra Nevada and Wasatch Mountain ranges, which contains isolated mountains and has no drainage to the ocean. Known as the most populous city in Nevada, it was established in 1905 and officially became a city in 1911. The name Las Vegas is often applied to the unincorporated areas of Clark County that surround the city, especially the resort areas on and near the Las Vegas “Strip.” This 6 mile stretch of Las Vegas Boulevard is mostly outside of the Las Vegas city limits, in the unincorporated town of Paradise.

Area Map



Valuation Consultants

File No. V-14-64

16

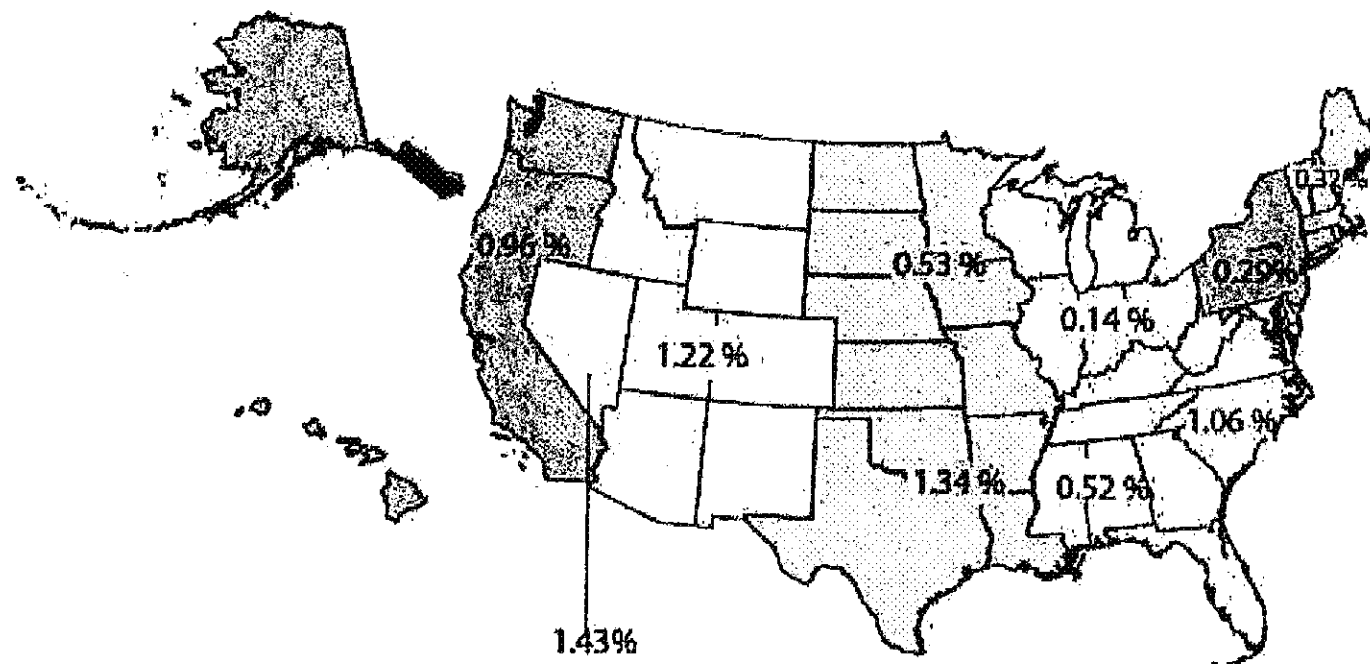
HARPER000023

OEXH000055

PA01898

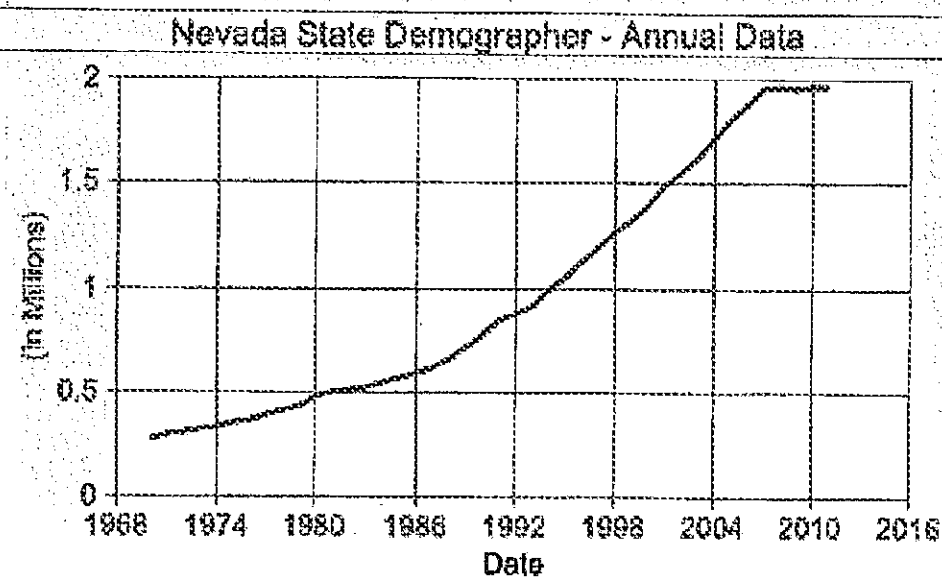
Population & Household Income

According to the Bureau of the Census, Nevada's population grew 1.4%, in 2012, making it the 6th fastest-growing state in the nation. Growth was reported at 38,900 and Nevada's population was reported at 2.76 million, according to the Census.



Source: [http://www.nevadaworkforce.com/nevada labor market briefing/December 2012](http://www.nevadaworkforce.com/nevada%20labor%20market%20briefing/December%202012)

Using population forecasts from the report published by the State Demographer, *The Nevada County Population Projections 2012 to 2031*, published in October 2012. From 2012 to 2016 Clark County is projected to grow at 1.10, 1.20, 1.30, 1.40 and 1.40%. Starting in 2017, the population growth rate for Clark County is projected to range from 1.10 to 1.40% for the next five years. This reflects a 1.28% average annual growth rate for the first 5 years (starting in 2012) and a projected population growth expectation for the following 5 years that averages 1.28% annually. This results in a total 5 year non-compounded growth of 6.40% for the first 5 year period and 6.40% for the following 5 years. The following chart illustrates the historical trajectory of population growth in Clark County.



Source: [http://cber.unlv.edu/CCEconData.html/annual data/nevada state demographer](http://cber.unlv.edu/CCEconData.html/annual%20data/nevada%20state%20demographer)

Each year, the Regional Transportation Commission of Southern Nevada (RTC), the Southern Nevada Water Authority (SNWA), the Southern Nevada Regional Planning Coalition (SNRPC), the Center for Business and Economic Research (CBER) at the University of Nevada, Las Vegas, and a group of community demographers and analysts work together to provide a long-term forecast of economic and demographic variables influencing Clark County's population growth.

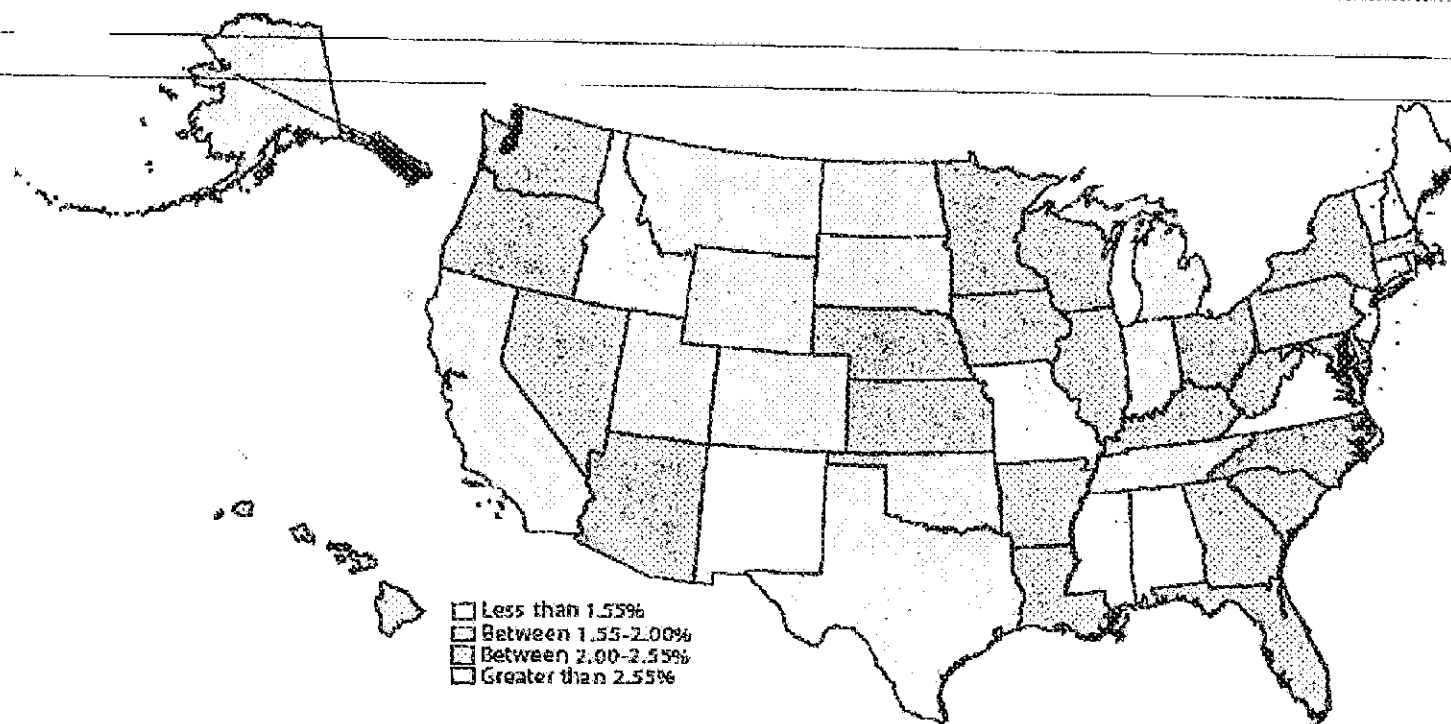
The resulting long-term forecast predicts positive population growth throughout the range of the forecast. By 2035, CBER predicts that Clark County's population will reach approximately 2.85 million and by 2050, it will reach nearly 3.3 million. By 2025, annual population growth has declined to 1.3%. By 2050, growth reaches 0.8%, the projected long-term national population growth rate. This represents a long-term convergence to the national average annual population growth rate.

According to CBER, from 2012 to 2016 Clark County is projected to grow at 0.80, 1.00, 2.70, 2.70 and 2.60%. Starting in 2017, the population growth rate for Clark County is projected to range decelerating from 2.40 to 1.70% for the next five years. This reflects a 1.82% average annual growth rate for the first 5 years (starting in 2012) and a projected population growth expectation for the following 5 years that averages 2.10% annually. This results in a total 5 year non-compounded growth of 9.08% for the first 5 year period and 10.50% for the following 5 years.

In projecting the growth of Clark County an average of the estimates by the State Demographer and those of the Center for Business and Economic Research would be the likely basis for any residual demand projection.

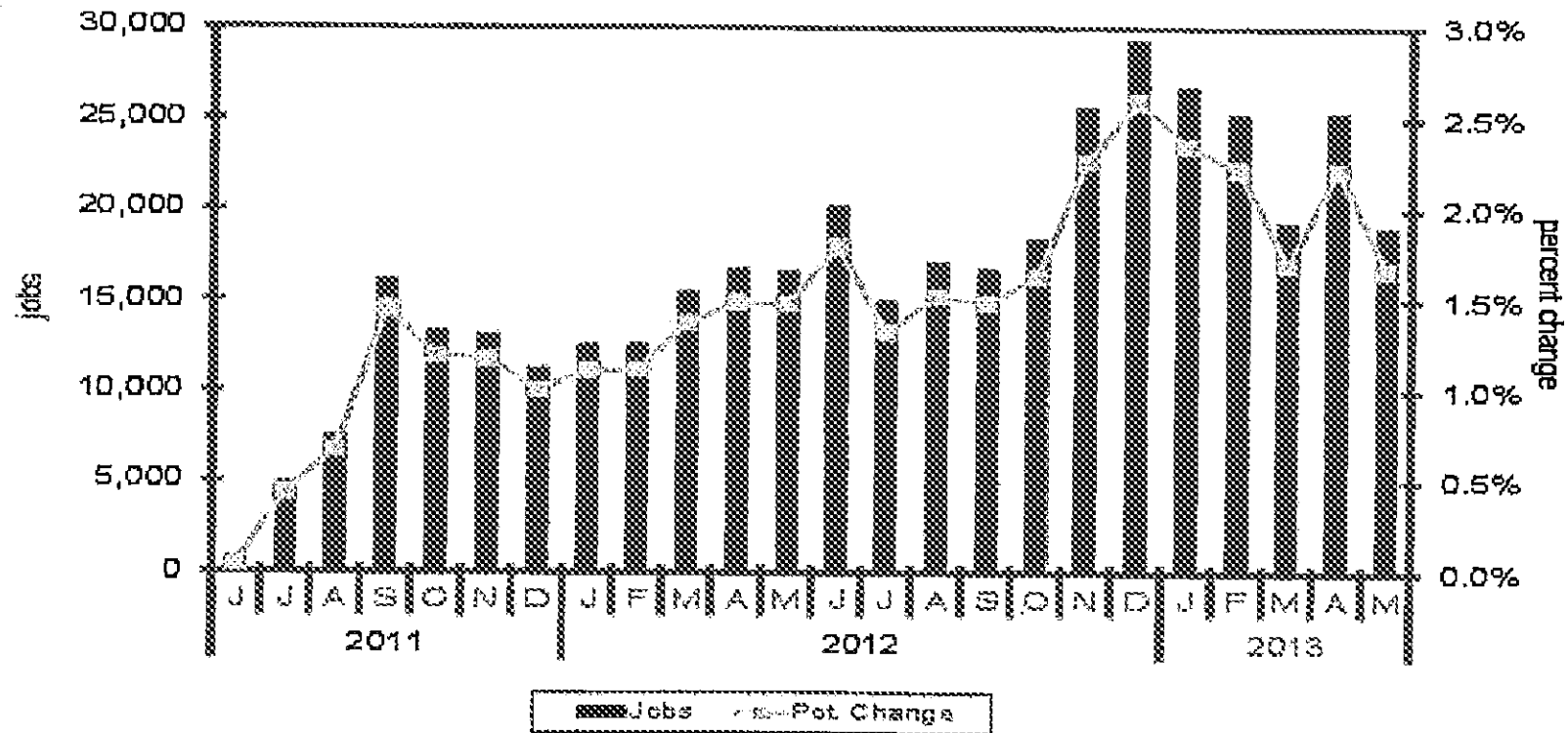
Employment /Unemployment

Nevada was the most negatively affected state during the recent recession, mostly due to above average levels of employment in the construction industry and the State's reliance on tourism and gaming. The map below compares Nevada's job growth in 2012 with the nation.



Source: [http://www.nevadaworkforce.com/nevada labor market briefing/December 2012](http://www.nevadaworkforce.com/nevada%20labor%20market%20briefing/December%202012)

Employment levels in Nevada are increasing but the growth has lagged national trends due to the dependence on a healthy national and international economy to feed disposable income into Nevada's leisure, hospitality and gaming industries. According to Nevada Workforce, Nevada job readings are up 1.7% from a year ago. The increase marks the 29th straight month in which year-over-year gains have been recorded. The following chart compares the two-year time frame of June 2011 to May 2013.



Source: <http://www.nevadaworkforce.com> \nevada labor market briefing\May 2013

The following is a summary chart of the largest employers in the Las Vegas MSA as of yearend 2012, published by the Nevada Department of Employment, Training and Rehabilitation (DETR) Research & Analysis Bureau.

Largest Employers in Las Vegas MSA - 2012

Industry	Size of Class	Trade Name	Address	City	State	Zip
Elementary and Secondary Schools	30000 to 39999 employees	CLARK COUNTY SCHOOL DISTRICT	5100 W SAHARA AVE	LAS VEGAS	NV	89146
Executive & Legislative Offices Combined	8000 to 8499 employees	CLARK COUNTY	500 S GRAND CENTRAL PKWY	LAS VEGAS	NV	89155
Casino Hotels	7500 to 7999 employees	WYNN LAS VEGAS	3131 LAS VEGAS BLVD S	LAS VEGAS	NV	89109
Casino Hotels	7500 to 7999 employees	BELLAGIO LLC	3800 LAS VEGAS BLVD SOUTH	LAS VEGAS	NV	89109
Casino Hotels	7500 to 7999 employees	MGM GRAND HOTEL/CASINO	3798 LAS VEGAS BLVD SOUTH	LAS VEGAS	NV	89109
Casino Hotels	7000 to 7499 employees	ARIA RESORT & CASINO LLC	3730 LAS VEGAS BLVD S	LAS VEGAS	NV	89109
Casino Hotels	6000 to 6499 employees	MANDALAY BAY RESORT AND CASINO	3950 LAS VEGAS BLVD SOUTH	LAS VEGAS	NV	89119
Casino Hotels	5500 to 5999 employees	CAESARS PALACE	3570 LAS VEGAS BLVD SOUTH	LAS VEGAS	NV	89109
Police Protection	5000 to 5499 employees	LAS VEGAS METROPOLITAN POLICE	400 STEWART AVE	LAS VEGAS	NV	89101
Colleges and Universities	5000 to 5499 employees	UNIVERSITY OF NEVADA LAS VEGAS	4505 S MARYLAND PKWY	LAS VEGAS	NV	89154
Casino Hotels	4000 to 4499 employees	THE VENETIAN CASINO RESORT	3355 LAS VEGAS BLVD S	LAS VEGAS	NV	89109
Casino Hotels	4000 to 4499 employees	MIRAGE CASINO-HOTEL, THE	3400 LAS VEGAS BLVD SO	LAS VEGAS	NV	89109
Casino Hotels	3500 to 3999 employees	THE COSMOPOLITAN OF LAS VEGAS	3708 LAS VEGAS BLVD S	LAS VEGAS	NV	89108
General Medical and Surgical Hospitals	3500 to 3999 employees	UNIVERSITY MEDICAL CTR OF SNV	1800 W CHARLESTON BLVD	LAS VEGAS	NV	89102
Casino Hotels	3500 to 3999 employees	THE PALAZZO CASINO RESORT	3325 LAS VEGAS BLVD S	LAS VEGAS	NV	89109
Casino Hotels	3000 to 3499 employees	ENCORE LAS VEGAS	3121 LAS VEGAS BLVD S	LAS VEGAS	NV	89109
Casino Hotels	3000 to 3499 employees	FLAMINGO LAS VEGAS OPERATING C	3555 LAS VEGAS BLVD S	LAS VEGAS	NV	89109
Scheduled Passenger Air Transportation	3000 to 3499 employees	SOUTHWEST AIRLINES CO	6075 S SPENCER	LAS VEGAS	NV	89119
Executive & Legislative Offices Combined	2500 to 2999 employees	CITY OF LAS VEGAS	495 S MAIN ST	LAS VEGAS	NV	89101
Casino Hotels	2500 to 2999 employees	PARIS LAS VEGAS	3655 LAS VEGAS BLVD S	LAS VEGAS	NV	89109

Source: <http://www.nevadaworkforce.com/?PAGEID=67&SUBID=169> \clark county

Valuation Consultants

File No. V-14-64

20

HARPER0000027

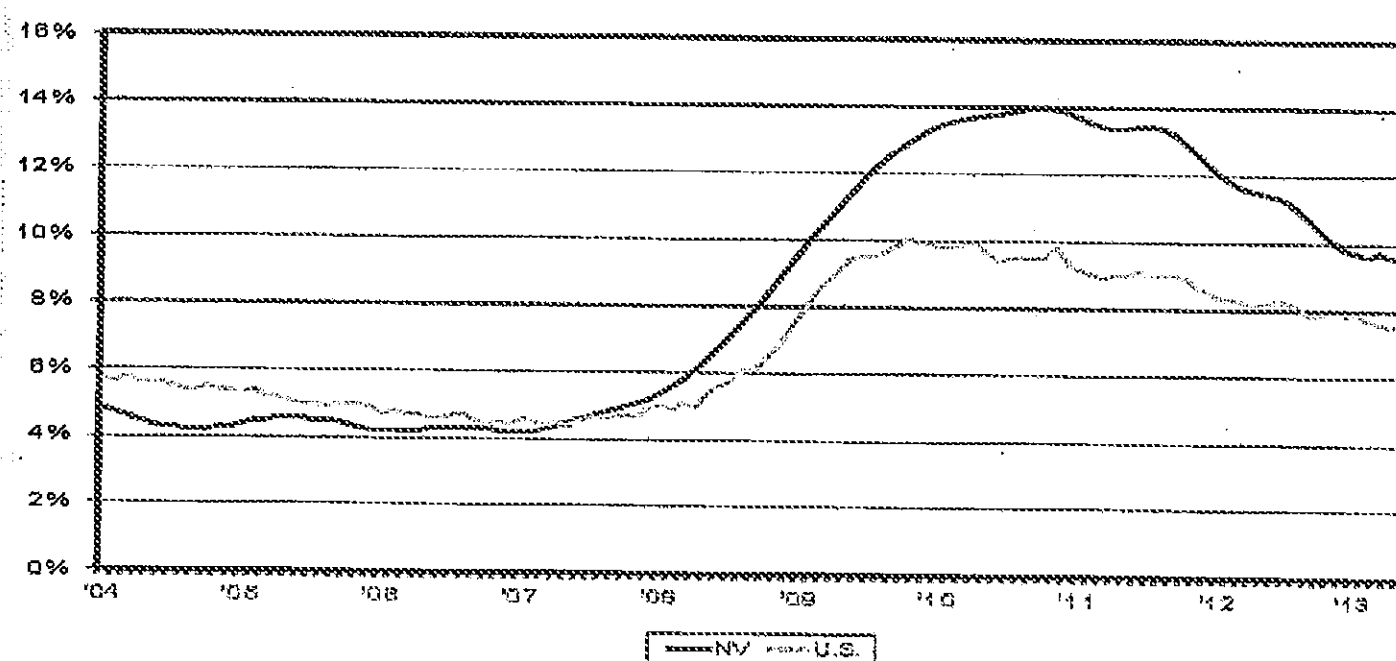
OEXH000059

PA01902

Unemployment

The following table presents the unemployment rates for both the U.S. and Nevada. It was reported in May 2013 by DETR (Nevada Department of Employment, Training and Rehabilitation) that the unemployment rate stood at 9.50%, down from 9.60% in April, and down from 11.50% a year ago. This marks the lowest reading since the end of 2008 and is off from a record high of 14% recorded in October 2010.

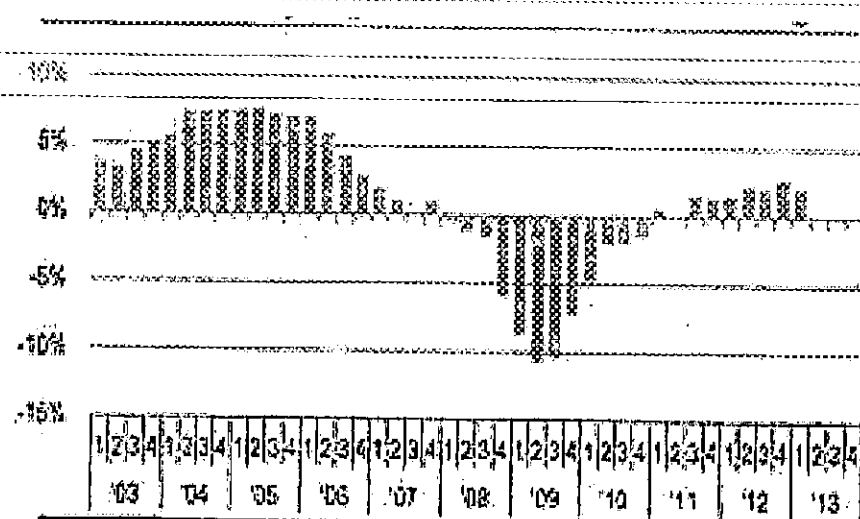
Nevada Unemployment vs. U.S. Unemployment Rate (SA)



Source: <http://www.nevadaworkforce.com> \ nevada labor market briefing\May 2013

The economic situation is slowly improving in Nevada. The following chart illustrates the unprecedented decline in employment growth for the Las Vegas area and the real possibility of recovery. However, employment will likely remain below the pre-recession peak levels for several more years.

Employment Growth – Las Vegas



Source: *Applied Analysis Las Vegas Quarterly Market Reports – 1st Quarter 2013*

Tourism & Gaming


Las Vegas welcomed a record 39.7 million visitors in 2012, approximately a half-million more visitors than the previous high of 39.2 million set in 2007. The record visitation generated more than \$40 billion in economic impact for the local economy last year. The 2012 year-end statistics, released by the Las Vegas Convention and Visitors Authority (LVCVA), point to continued recovery for Las Vegas tourism with increases in all of the key core indicators.

"The record visitation is a testament to the dedication and commitment of our resort partners and every employee who works in the industry," said Rossi Ralenkotter, president/CEO of the LVCVA. "Tourism is the economic leader for Southern Nevada and the entire state, so we are encouraged to see positive signs of continued growth for the industry. With more than \$2 billion of reinvestment in the destination, Las Vegas is well positioned for continued growth in 2013 and on the threshold of hosting more than 40 million visitors."

The Las Vegas Convention Center, the primary convention facility, is the largest convention complex in the United States with a total square footage of 3.2 million. The Las Vegas Convention Center now features approximately 2 million square feet of net exhibit space and 380,000 square feet of net meeting room space, accommodating 170 meeting rooms with seating capacities from 20 to 7,500. The Sands Hotel Expo and Convention Center has an additional 1,200,000 square feet of exhibition space, bringing Las Vegas' total meeting and exhibition space to more than 9,500,000 square feet, more than any other city in the nation.

Historically, the economic base of Las Vegas was driven by gaming and tourism. Compared to 2011, visitor volume increased 2.1 percent in 2012 with approximately 800,000 more guests allowing the destination to reach 39.7 million annual visitors. Gradual improvement in the meetings and convention industry with 4.9 million delegates attending a convention, trade show or meeting in 2012, reflecting a 1.6 percent increase over last year. This is the highest convention attendance in four years.

Following is a monthly and year-over-year summary, as published by the Las Vegas Convention and Visitors Authority.

		LVCVA EXECUTIVE SUMMARY					
		April			April YTD		
		2012	2013	Change	2012	2013	Change
LAS VEGAS	Visitor Volume	3,324,459	3,339,657	0.5%	13,081,046	13,037,268	-0.3%
	Room Inventory (as of Apr 30)	150,920	149,800	-0.7%	150,920	149,800	-0.7%
	Citywide Occupancy	86.5%	87.0%	0.5	83.7%	84.3%	0.6
	Hotel Occupancy	89.6%	89.6%	0.0	87.0%	87.0%	0.0
	Motel Occupancy	59.7%	63.7%	4.0	55.4%	59.6%	4.2
	Weekend Occupancy	92.7%	95.3%	2.6	90.1%	89.8%	-0.3
	Midweek Occupancy	84.2%	83.9%	-0.3	80.9%	81.8%	0.9
	Average Daily Room Rate	\$108.42	\$115.90	6.9%	\$109.48	\$112.65	2.9%
	Total Room Nights Occupied	3,916,538	3,915,074	0.0%	15,286,640	15,199,289	-0.6%
	Convention Attendance	414,510	477,275	15.1%	2,041,789	2,119,383 r	3.8%
	Conventions & Meetings Held	1,938	2,233	15.2%	7,716	8,313 r	7.7%
	Total En/Deplaned Air Passengers	3,554,497	3,548,947	-0.2%	13,493,137	13,349,136	-1.1%
	Avg. Daily Auto Traffic: All Major Highways	105,916 e	103,046	-2.7%	96,212 e	98,590	2.5%
	Avg. Daily Auto Traffic: I-15 at NV/CA Border	44,610	41,350	-7.3%	39,075	39,868	2.0%
	Gaming Revenue: Clark County	\$743,643,000 r	\$736,319,000	-1.0%	\$3,214,715,000 r	\$3,283,199,000	2.1%
	Gaming Revenue: Las Vegas Strip	\$459,356,000 r	\$448,590,000	-2.3%	\$2,062,241,000 r	\$2,159,296,000	4.7%
	Gaming Revenue: Downtown	\$48,579,000	\$45,222,000	-6.9%	\$184,076,000	\$177,200,000	-3.7%
	Gaming Revenue: Boulder Strip	\$70,184,000	\$74,231,000	5.8%	\$288,893,000	\$285,473,000	-1.2%

NOTES & HIGHLIGHTS:

Total visitation for April 2013 was up +0.5% over last April. Average Daily Rate for the month was also up +6.9% to \$116.

The number of conventions was up in April (+15.2%) along with convention attendance (+15.1%) due in part to show rotation cycle. Rotating in this year were the International Sign Association (19,500), International Security Conference (17,000 attendees) and the International Carwash Association (6,000).

Comparing to a strong April 2012, gaming revenues were down slightly in Clark County (-1.0%) and on the Las Vegas Strip (-2.3%). Contributing to the decrease was one fewer weekend day this year vs. last year.

Passenger traffic at McCarran was down -0.2% for the month vs. last year. Average daily auto traffic for all major highways was down -2.7% for the month vs. last year and traffic on I-15 to/from Southern California was also down -7.3% over 2012. As a reminder, air and auto traffic counts reflect a mix of resident and/or commercial traffic in addition to visitors.

Sources: Las Vegas Convention and Visitors Authority; McCarran International Airport; Nevada Department of Transportation (NDOT); Nevada Gaming Control Board
NOTE: Convention figures for Feb and Mar 2013 have been revised to reflect additional data that was omitted from previous tables due to a technical issue.
e-estimate as partial NDOT data unavailable.

Revised

LVCVA.com

Source: <http://www.lvcva.com/press/statistics-facts/index.jsp> \April 2013

Las Vegas hosted 21,615 meetings, tradeshow or conventions in 2012, up 13.6 percent from the 2011 total of 19,029. The 2012 total is the highest number of meetings and conventions held in Las Vegas since 2008.

Average citywide lodging occupancy was up 0.6 percentage points to 84.4 percent for 2012. Las Vegas' citywide occupancy is 23 percentage points higher than the national average of 61.4 percent. With industry-leading occupancy of 84.4 percent for its 150,481 rooms, Las Vegas fills more rooms per night on average than any destination in North America. In 2012, Las Vegas' average daily room rate increased \$3 to \$108 in 2012.

Clark County gross gaming revenue reached \$9.4 billion in 2012, a 1.9 percent increase over last year. On the Las Vegas Strip, revenues increased 2.3 percent to \$6.2 billion in 2012. Another positive indicator for Southern Nevada's tourism industry is the addition of nearly 23,000 jobs in the resort-industry since the recessionary low in November 2009. Tourism supports 370,000 jobs, or 46 percent of all the local jobs.

Valuation Consultants

File No. V-14-64

23

HARPER0000030

OEXH000062

PA01905

Transportation & Visitor Traffic

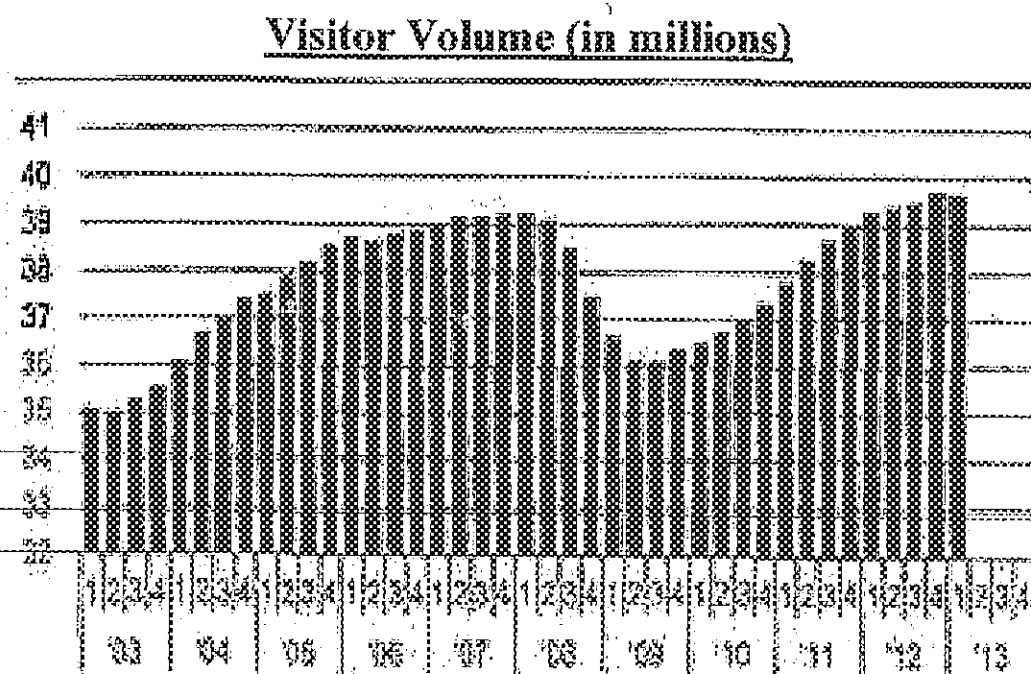
Clark County has excellent transportation facilities. Three major highways directly connect Las Vegas to Los Angeles, Phoenix, Salt Lake City and Reno. Interstate 15 extends between Los Angeles and Las Vegas and handles approximately 50 percent of the total incoming motor vehicle traffic. McCarran International Airport was ranked as the sixth busiest in North America and the 19th busiest in the world, serving more than 40 million annually. The airport has two terminals, 1 and 3, with Terminal 3 serving international travelers. There are over 1,300 gaming terminals located throughout the airport. Below is the most recent air passenger traffic information published by McCarran International Airport.

ARRIVING & DEPARTING PASSENGERS MONTHLY TOTAL		
MAY 2013	MAY 2012	PERCENT CHANGE
3,757,979	3,663,251	2.6

ARRIVING & DEPARTING PASSENGERS YEAR-TO-DATE (YTD) TOTAL		
2013 YTD	2012 YTD	PERCENT CHANGE
17,107,115	17,155,388	-0.3

Source: [http://www.mccarran.com/news release](http://www.mccarran.com/news%20release)

Although the number of McCarran airport passengers may have leveled off in recent months, the total number of visitors to Las Vegas has increased as presented in the following chart.

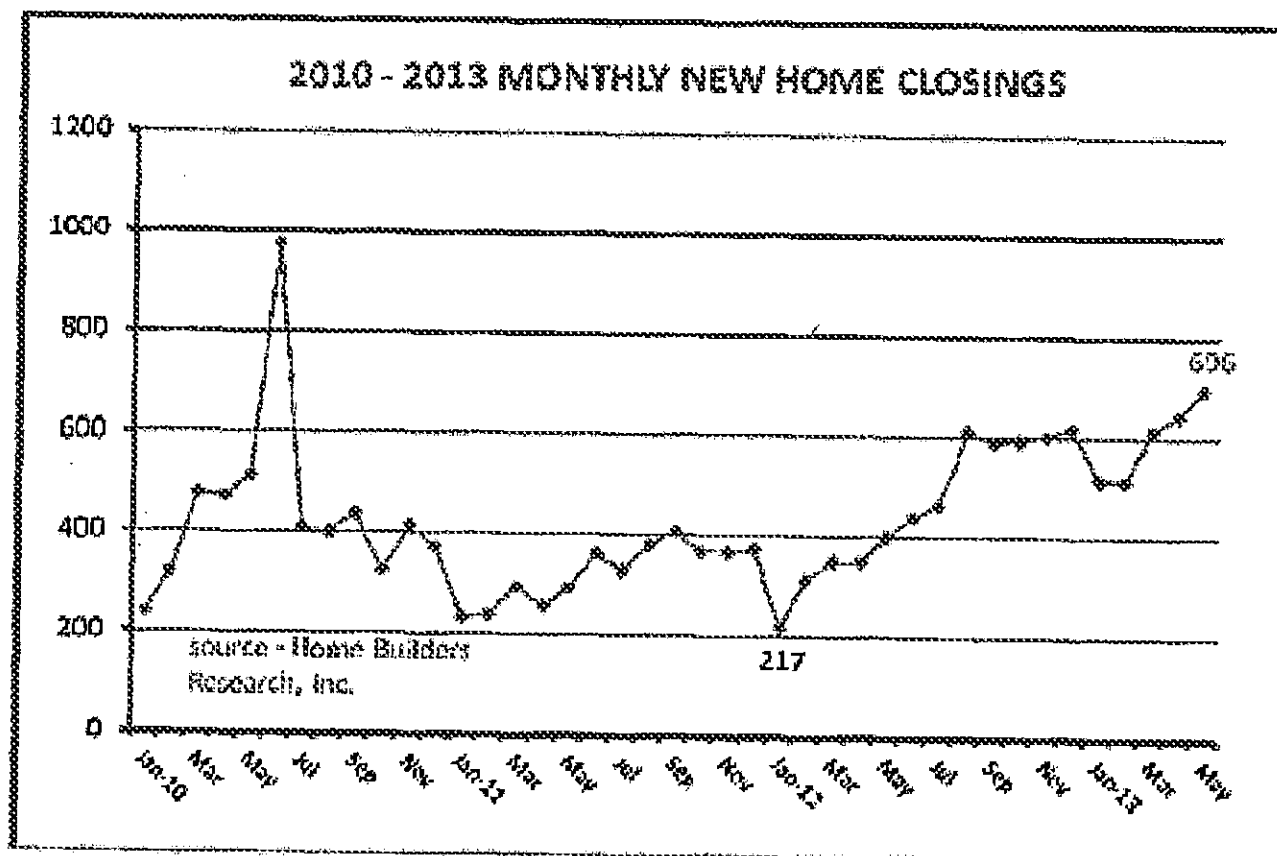


Source: *Applied Analysis Las Vegas Quarterly Market Reports – 1st Quarter 2013*

Housing

Home Builders Research reported in their June 22, 2013 publication that in May, Las Vegas' new-home sales were approximately 696, which puts the total for 2013 at 2,981. This represents a year to year increase of 1,355 transactions or 83%. The median price of the new home closings in May was \$254,550, which is a year to year increase of approximately \$61,046 or a 32% increase. The following chart illustrates monthly new homes closings from January 2010 to May 2013.

Valuation Consultants
File No. V-14-64



Source: "The Las Vegas Housing Market Letter", Home Builders Research, Inc., Volume 308, published June 22, 2013

Another measure of the state of the new home market is the number of building permits that have been pulled. In 2009 a total to 3,860 permits were pulled, a decrease of 2,269 permits which is a 37.2 percent decline from the end of 2008 to the end of 2009. In 2010, there were a total 4,550 permits, a year to year increase of 690 permits or 18 percent. In 2011, there were 3,732 permits pulled, which is a year to year decline of 818 or 18%. Builders pulled 5,908 new housing permits in 2012, a 58 percent increase from 2011 permits. The following chart illustrates the annual building permits pulled and new-home sales from 2003 to 2012.

Year	New-home sales	Building permits
2012	5,544	5,908
2011	3,894	3,732
2010	5,379	4,550
2009	5,271	3,860
2008	10,504	6,129
2007	19,773	18,483
2006	36,156	23,219
2005	38,957	31,010
2004	29,472	32,879
2003	25,230	25,213

Source: Homebuilders Research

In Henderson, Las Vegas, North Las Vegas and Clark County, there were 809 permits pulled by home builders in May 2013, which puts the total permits pulled for 2013 at 3,266. This reflects a year to year rise of 1,020 or 45%. It needs to be remembered that the housing market is coming off an annual increase of 58% in 2012. *Home Builders Research* is estimating that there will be a total of somewhere around 7,500-8,000 total permits pulled in 2013.

Valuation Consultants

File No. V-14-64

The following chart outlines the net sales by builder for 2013.

BUILDER	2013 NET SALES
DR HORTON	442
AMERICAN WEST HOMES	354
RICHMOND AMERICAN HOMES	300
KB HOME	292
LENNAR HOMES	286
RYLAND HOMES	285
HARMONY HOMES	238
PULTE/DEL WEB	221
BEAZER HOMES	204
PARDEE HOMES	183
WILLIAM LYON HOMES	149
WOODSIDE HOMES	138
DUNHILL HOMES	135
WARMINGTON HOMES	82
GHEA HOMES	56
STORYBOOK HOMES	52
HERITAGE HOMES	24
TOLL BROTHERS	21
ADAVEN HOMES	16
PINNACLE HOMES	9

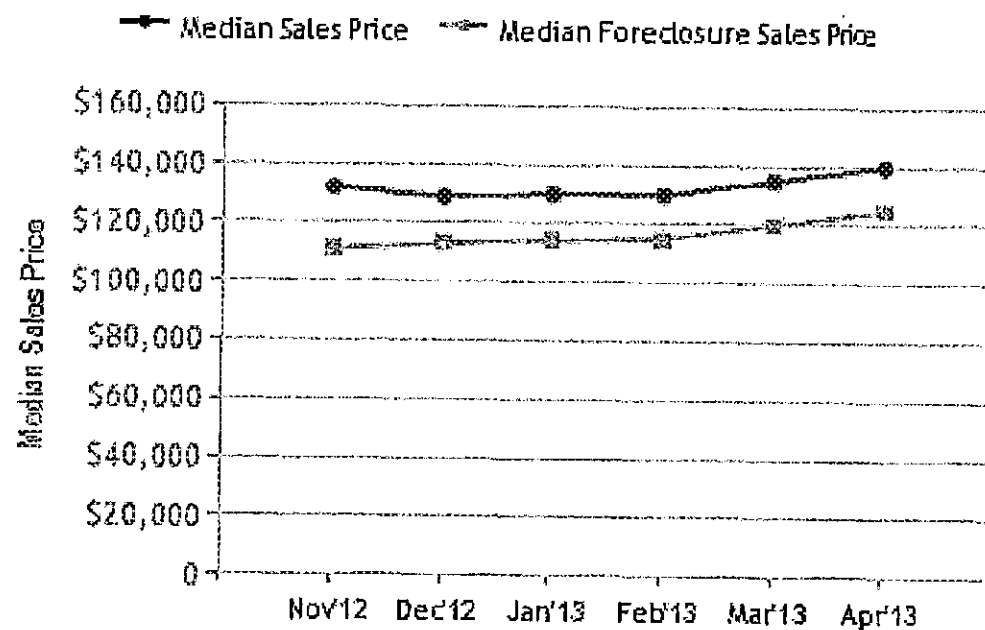
Source: "The Las Vegas Housing Market Letter", Home Builders Research, Inc., Volume 308, published June 22, 2013

Home Builders Research reports that May 2013 re-sales totaled 3,912, which puts the 2013 total re-sales count at 18,592. This represents a year to year decrease of 2,737 transactions or 13%. The median price of the May re-sale closings was \$150,000. This equates to a year to year increase of \$32,000 or 27%. Since January 2013, the monthly re-sale median price has increased 11.1%.

In their June 22, 2013 publication, *Home Builders Research* states that, according to some of the of the more recent national press reports, the Las Vegas housing industry is "out of the woods" and is "back on solid ground". *Home Builders Research* points out that they are using the year to year comparisons as a way to support this outlook. It is true that most of the annual changes are in double digits, but this is because they are compared to figures from the recession. *Home Builders Research* states in their June 22, 2013 report that "The housing market is definitely going in the right direction, but it still has a LONG way to go before anyone should believe the Las Vegas housing market is on solid ground."

According to RealtyTrac, there are 14,475 properties in Las Vegas, Nevada that are in some stage of foreclosure (default, auction or bank owned) while the number of homes listed for sale on RealtyTrac is 2,690. In May, the number of properties that received a foreclosure filing in Las Vegas, NV was 4% higher than the previous month and 8% lower than the same time last year. Home sales for April 2013 were down 4% compared with the previous month, and up 16% compared with a year ago. According to RealtyTrac, the median sales price of a non-distressed home was \$140,000. The median sales price of a foreclosure home was \$125,000, or 11% lower than non-distressed home sales.

Las Vegas, NV Median Sales Prices

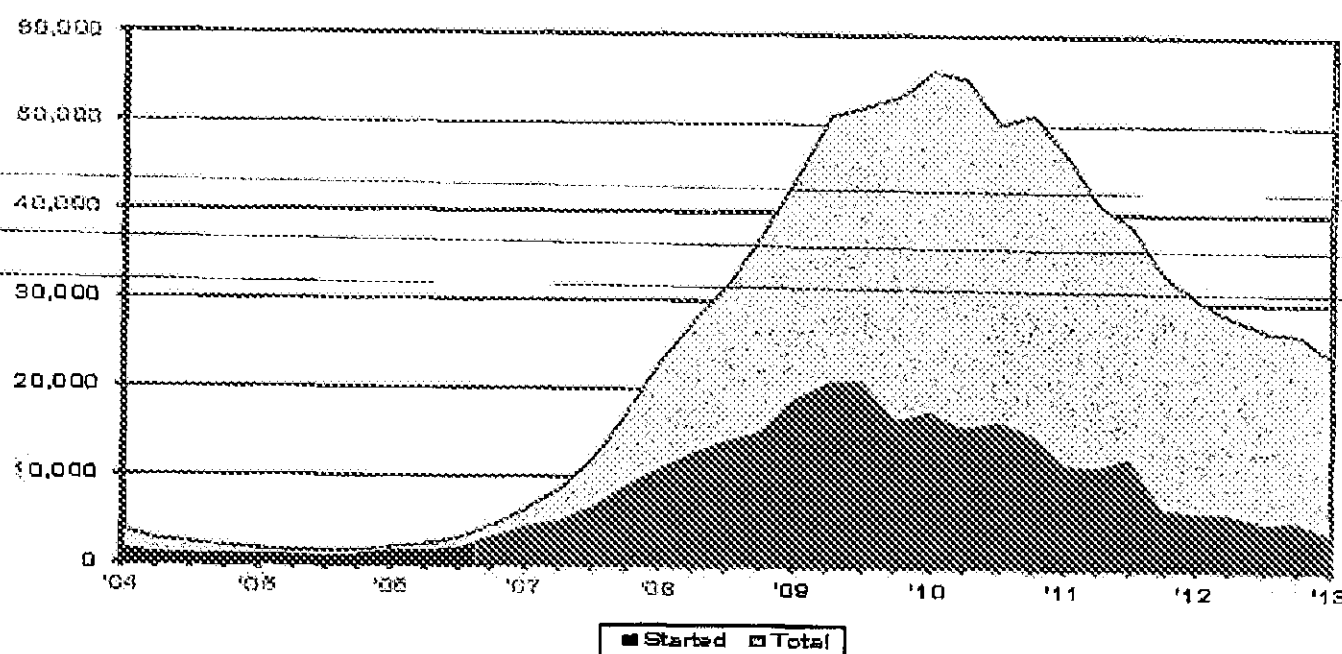


Source: <http://www.realtytrac.com>

Delinquent Mortgages

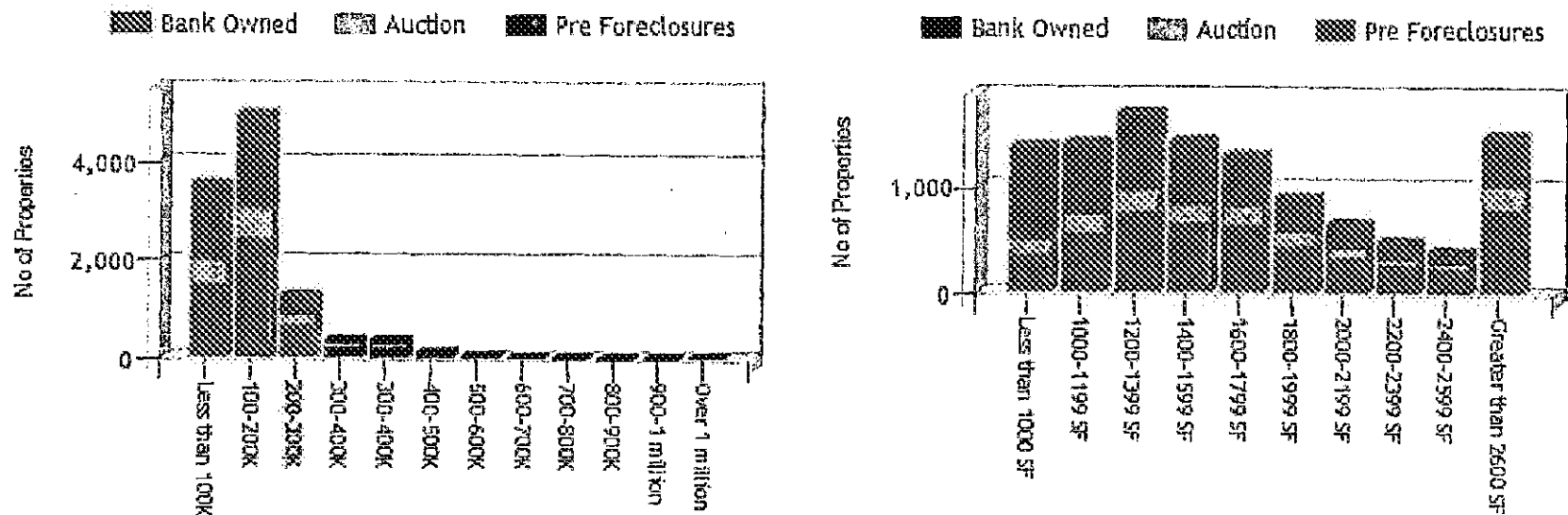
The following charts illustrate the foreclosure trends from 2004 to May 2013. According to the *Nevada Workforce Informer*, the number of residential mortgages entering the foreclosure process totaled 3,800 in the first quarter of 2013. This is down by 1,500 from the fourth quarter of 2012 and down from a peak of 20,700 in early/mid 2009. This is the lowest reading since late 2006. All told, the total number of residential loans in the foreclosure process is approximately 24,100, down from a peak of 56,000 in late 2009/early 2010.

Loans Starting Foreclosure/Total Mortgages in Foreclosure ~ Nevada May 2013



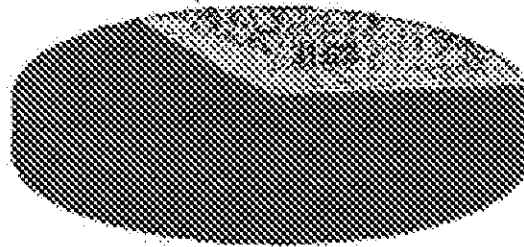
Source: <http://www.nevadaworkforce.com> \nevada labor market briefing\May 2013

Las Vegas Distress Properties by Category



Source: <http://www.realtytrac.com>

Pre-Foreclosure Auction Bank-Owned



Source: <http://www.realtytrac.com>

Commercial Real Estate Markets

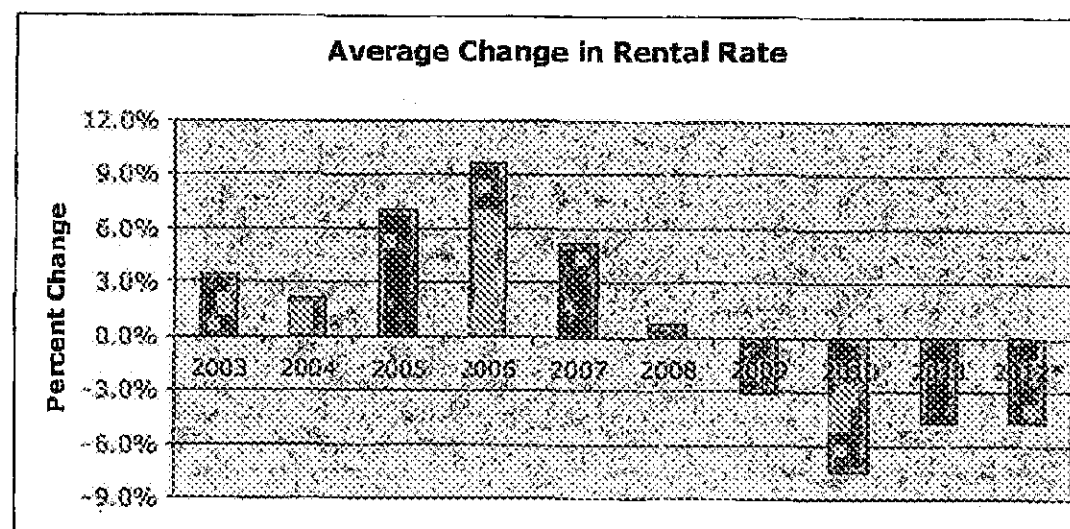
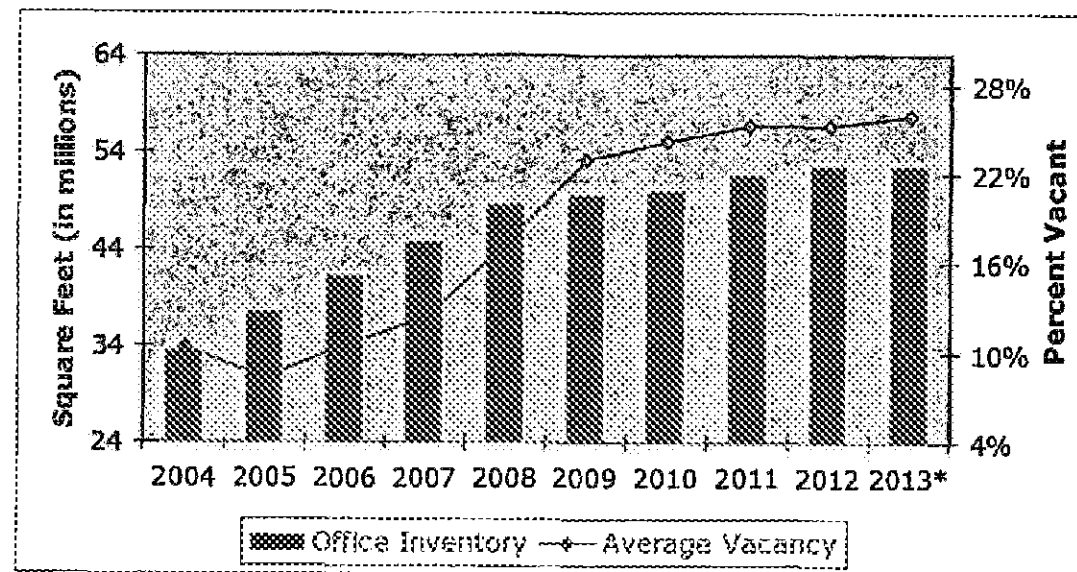
The Office Market

Applied Analysis' Second Quarter 2013 Las Vegas Quarterly Office Market Report survey indicates the office market citywide is bottoming out. With the significant amount of new construction over the previous several years and the collapse of the regional economy, vacancies started to climb, generally ranging approximately from 8.4 to 26.0%. In most submarkets negative absorption has decelerated, flattened and in some quarters has turned slightly positive. Little in the way of new inventory (already in the pipeline) has been added. The office market witnessed numerous consecutive quarters of negative net absorption as businesses contracted or left the market and then has been alternating from positive absorption to slightly negative net absorption. The quarter recorded a positive net absorption of approximately 115,152 square feet. This resulted in a net absorption for 2013 of a negative 104,650 square feet.

Valuation Consultants

File No. V-14-64

The following graphs illustrate the inventory and vacancy rates for the Las Vegas office market since 2004 as well as the average change in rental rates during the same time frame.

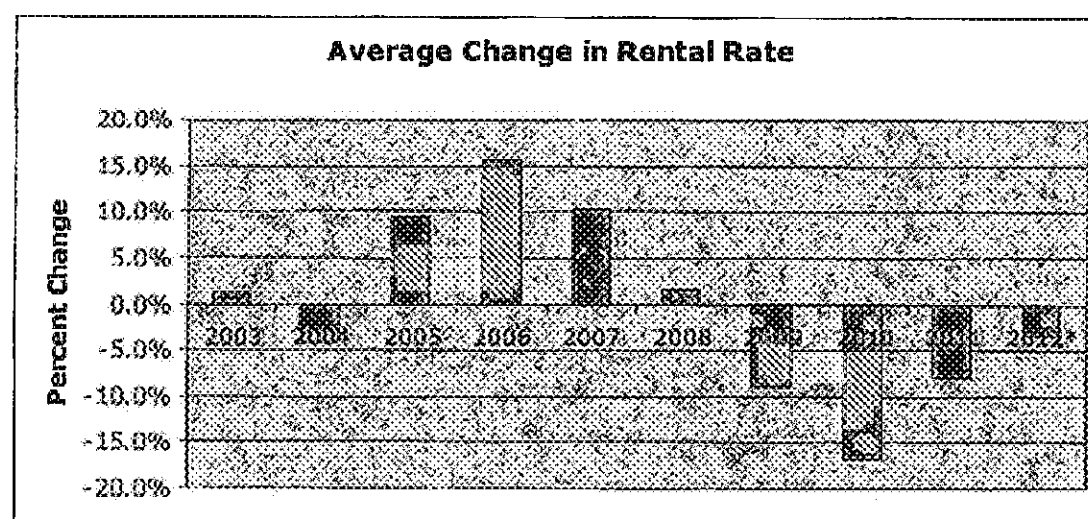
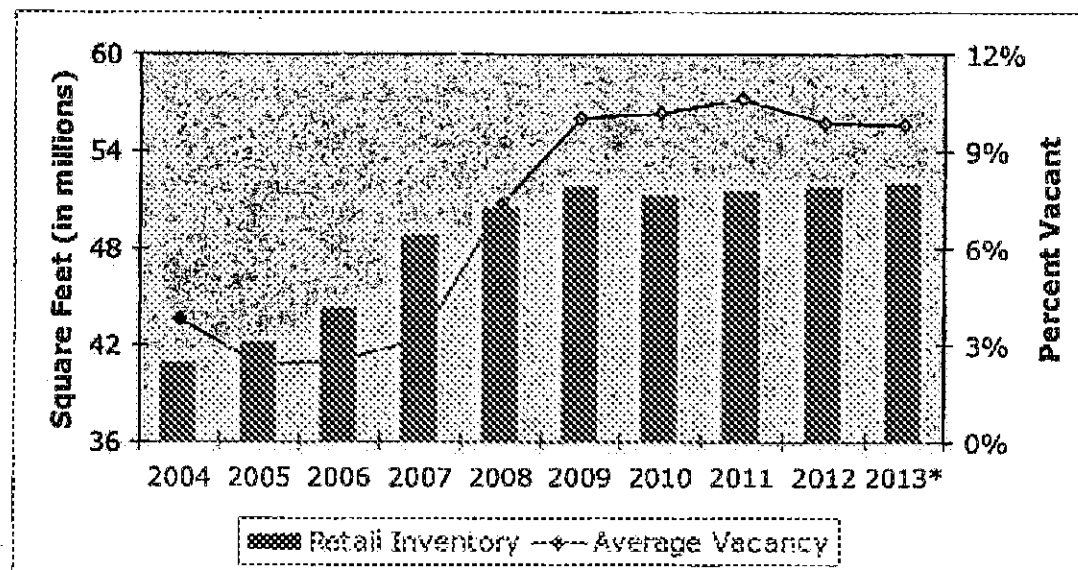


* Note: Cumulative annual totals reported at end of 4th Quarter. Current year reflects cumulative total or average through last survey published.

The Retail Market

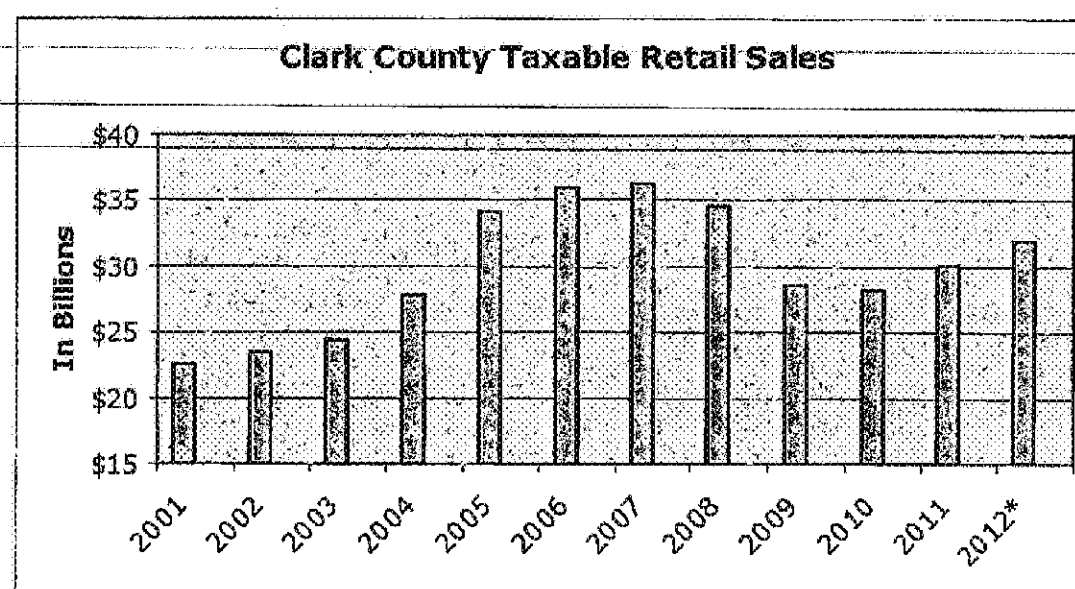
Applied Analysis' Second Quarter 2013 Las Vegas Quarterly Retail Market Report survey indicates a retail market citywide that is still challenged. As in the office market, a significant amount of new construction over the previous several years in tandem with the collapse of the regional economy propelled vacancy increases that generally ranged from 2.5 to 10.8%. Vacancy rates climbed steeply and then essentially leveled off. In 2012, vacancy has started to decline even with the addition of new inventory. The total net absorption was a positive 145,826 square feet in the quarter. This resulted in a net absorption for 2013 of a positive 101,781 square feet.

The following graphs illustrate the inventory and vacancy rates for the Las Vegas retail market since 2004 as well as the average change in rental rates during the same time frame.



* Note: Cumulative annual totals reported at end of 4th Quarter. Current year reflects cumulative total or average through last survey published.

As the saying goes, “retail follows rooftops”, and clearly as Las Vegas’ population grew so too did the inventory of retail space. Concurrently, taxable retail sales increased as well. However, from 2007, although the inventory of retail space remained, taxable sales declined 22.1% to 2010. The following chart illustrates the trajectory of taxable retail sales from 2001 and illustrates continued annualized improvement from 2010.

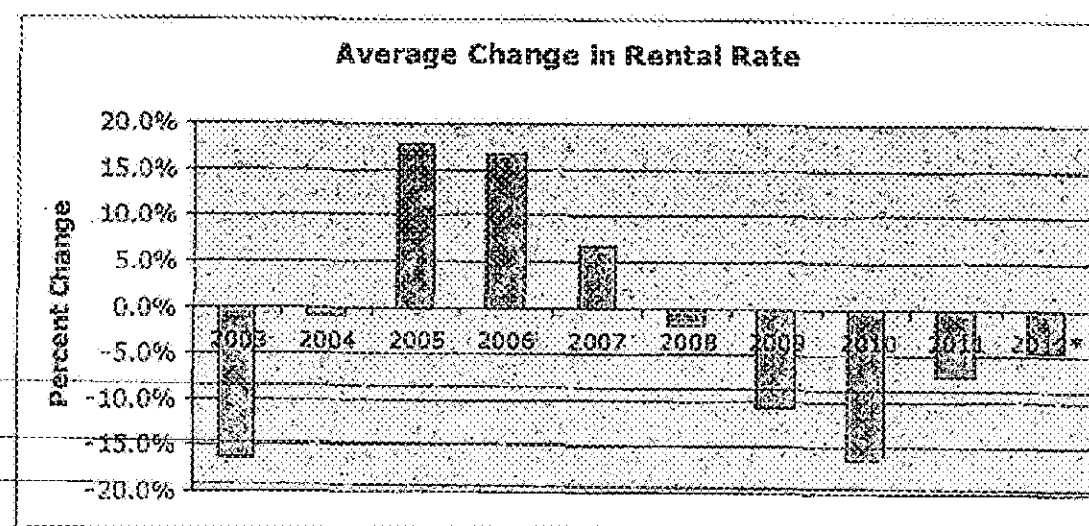
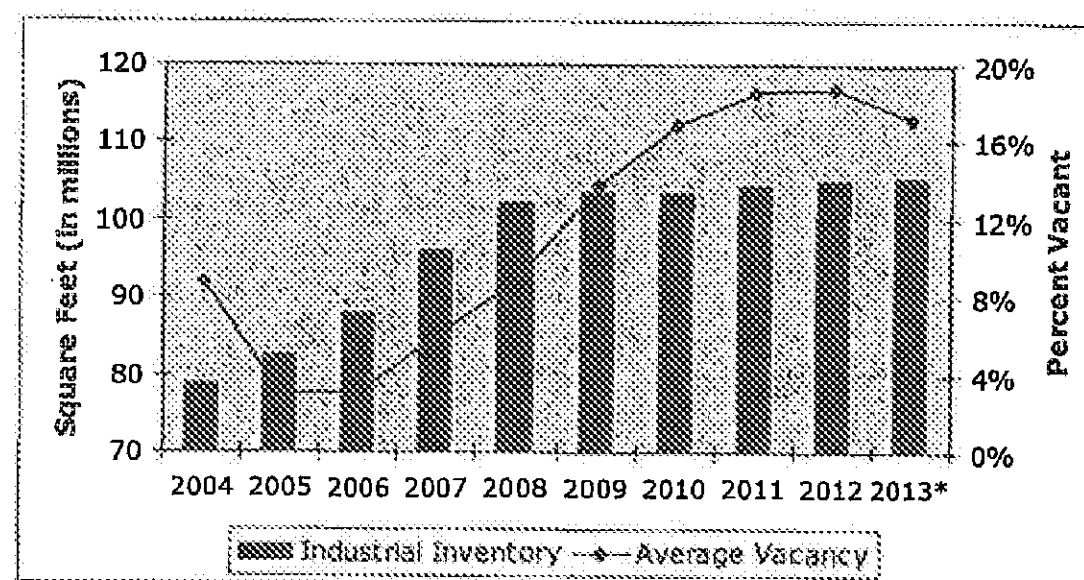


* Note: Cumulative annual totals reported at end of 4th Quarter. Current year reflects cumulative total or annualized average through last survey published. Source: <http://www.tax.state.nv.us/pubs.htm>

The Industrial Market

Applied Analysis' Second Quarter 2013 Las Vegas Quarterly industrial Market Report survey indicates a weakening industrial market citywide. Vacancies have generally increased, ranging approximately from 4.0 to 19.0%. The result of the 'Great Recession' is that significant space is being returned to the market as businesses contract or leave the market. The vacancy rate has recently stabilized and is decreasing. This quarter reported a 741,028 square foot positive net absorption. This resulted in a net absorption for 2013 of a negative 1,619,214 square feet.

The following graphs illustrate the inventory and vacancy rates for the Las Vegas industrial market since 2004 as well as the average change in rental rates during the same time frame.



* Note: Cumulative annual totals reported at end of 4th Quarter. Current year reflects cumulative total or average through last survey published.

Overall for all the commercially improved markets, rents, which were increasing during the beginning of this real estate building cycle, stalled, fell and are now reaching a new equilibrium. National real estate markets already demonstrate signs of improvement and although local conditions reflect a persistent bottoming out, further declines are unlikely with space utilization metrics suggesting that the Las Vegas commercial marketplace is beginning to move in tandem with national trends.

The Land Market

Given the fundamentals in the market in early 2013, speculative land sales are still below historical records. The historically reduced volume of activity reflects impacts associated with a slowdown in the residential market, the near standstill of the credit markets and concerns regarding the overall economic climate on both a national and local level. However, this may be changing.

As indicated in the following table, the land sale market has experienced a reduction in price and change in volume since its high in 2007. The data was collected by Applied Analysis. The transactions reported do not include 'Strip' or resort property sales and are representative of the broader land market.

Las Vegas Vacant Land Sales*							
Transactions	2001	2007	2012	Q1 2012	Q2 2012	Q3 2012	Q4 2012
Parcels Sold	N/A	543	2,546	156	136	145	2,109
Acres Sold	3,745	2,236	2,342	318	441	314	1,269
Price Per Acre	\$158,126	\$784,150	\$150,702	\$118,047	\$115,983	\$134,562	\$174,944
Price Per Square Foot	\$3.63	\$18.00	\$3.46	\$2.71	\$2.66	\$3.09	\$4.02
Quarter-over-quarter Change				15.2%	-1.7%	16.0%	30.0%
Year-over-year Change		12.0%	-5.1%	-24.7%	-16.0%	32.7%	70.7%
Peak (07) to Low			-80.8%				-77.7%
Source: Applied Analysis							
*Excluding Resort Property							

In surveys of the retail, office and industrial markets, high vacancy rates across all improvement subclasses would suggest there is little demand for speculative new construction and consequently, the demand for vacant land is understood to be weakened at least in historical terms. The market started to erode from its peak in 2007 and 2012's averages continued the decline. However, the last two quarters of 2012 demonstrated a material uptick in the amount of land sold as well as its average selling price. Although average land prices in 2012 declined approximately 80% since 2007 (which was the top of the market), the last two quarters of 2012 both presented strong increases in average pricing. Still, the average price per square foot in 2012 was approximately 5% below the average price per square foot in 2001. If the increase in volume and pricing continues this would confirm a sea-change in the Las Vegas land market.

Taxation

In comparison to neighboring western states, Nevada residents and businesses enjoy a significant tax advantage. Nevada has no personal income, inheritance, state, gift, or inventory taxes. Taxes are kept low primarily due to tax revenues generated from tourist-related and gaming expenditures.

Nevada has a Freeport law allowing goods to escape taxation while warehoused, assembled, or repackaged in the state. Las Vegas has been designated as a foreign trade zone where firms can store, manufacture, assemble, or repair goods for shipping to other destinations without paying a tax or duty.

Valuation Consultants

File No. V-14-64

Nevada States Statutes limit the property tax rate to a total of \$3.64 per \$100 of assessed valuation. The assessment is set at 35 percent of the taxable value. The tax bill is capped at a maximum increase of 3.0 percent over the prior year for an owner-occupied residence and a maximum increase of 8.0 percent for all other real and personal property.

Government

Clark County is operated as an independent political entity and is administered by a County Manager who is supervised by a seven-member board of County Commissioners. The City of Las Vegas government consists of an elected mayor, a City Council and a City Manager. The city's governing bodies and those of Henderson and North Las Vegas, work together to promote growth of the areas' tourism industries as well as diversification of the local economic base. With the exception of Boulder City, no residential, commercial or industrial moratoriums, rent control statutes or similar measures are in effect.

Utilities

Utility services are available, affordable, and at adequate capacity for development throughout the Las Vegas Valley. The availability of water may eventually limit the amount of new development in the Las Vegas Valley. The state is continuing to negotiate with Arizona and California for a larger allocation of the Colorado River water. Further, local governments are encouraging water conservation and will likely limit water theme projects. There appears to be adequate plans in place to ensure ample water supplies for continued growth in the coming years. Water rate increases, forced desert landscaping, water use quotas and other disincentives have been instituted in Las Vegas as water conservation motivators. These measures are necessary to assure the availability of water for continued growth in the coming years.

Education

As of 2012, Southern Nevada is the home of the nation's fifth largest school district. One half of the district's elementary schools are year-round. The district operates 324 schools. The Clark County School District (CCSD) employs about 37,341 including 18,010 teachers as well as part time, substitute, and temporary employees. Enrollment for the 2012/2013 school year was 311,429, and increase from the previous school year.

The University of Nevada, Las Vegas contains more than 28,000 students enrolled in academic degree programs. UNLV offers 220 undergraduate, master, and doctoral degree programs with classes taught by the University's more than 800 faculty members.

The College of Southern Nevada (CSN) is ranked as America's third largest two-year college. CSN serves two-thirds of the state's population and has an approximate 2013 enrollment of near 44,000.

Area Conclusion

The Las Vegas metropolitan area went through a period of considerable growth in the time frame of 2000 through 2007. It transformed during the last decade from a gambling destination to a mainstream medium-size city. The tremendous growth primarily resulted from a single economic sector's (gaming/tourism) need for service employees, the draw from Southern California and other neighboring states with higher costs of living, by the quality of life features that are attributed with most western states, i.e. milder climate and an attractive tax structure including no state income tax.

While the growth was significant, the local governments did not fully anticipate the magnitude and they struggled with the process of implementing local and regional land planning necessary for a maturing regional area. The global and national recession that began in late 2008 hit Las Vegas extremely hard. Population growth has slowed considerably. Although CityCenter opened in December of 2009, the new jobs that this development created could not offset the losses in the other sectors, specifically in the construction industry.

Global financial issues, specifically in Europe, do have an effect on the Las Vegas market. If consumer confidence continues to slowly grow, which is one of the major bases for any recovery in Las Vegas, the local employment market may continue to see improvement. The Las Vegas economy and real estate market will not recover until jobs become available and the unemployment rate decreases to 8.0 or 9.0%. Las Vegas will always attract retirees and investors due its national and global image as well as the quality of life offered in the southwest U.S. However, until the job market improves, Las Vegas will not have the migration numbers and population growth that occurred in the time frame of 2000 through 2007.

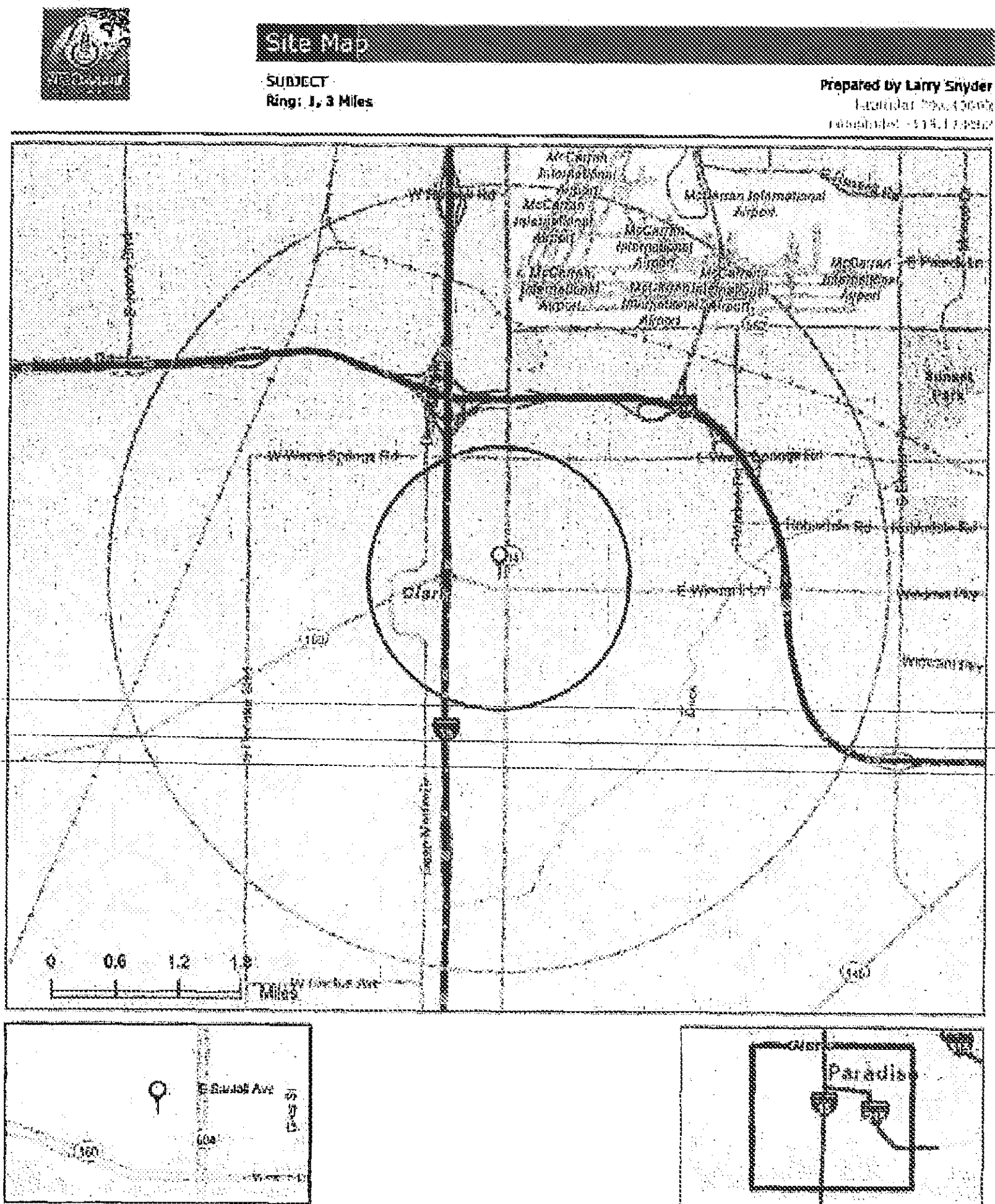
Local economists believe that the leisure and hospitality industry must lead Nevada out of recession and this appears to be happening. The conventional wisdom would be that until the U.S. economy shows significant progress in employment, disposable income and personal consumption spending, the Nevada economy will continue to face headwinds. However, due to larger macroeconomic factors such as favorable exchange rates, the number of foreign tourists that are traveling to Las Vegas has materially increased and is bolstering both total visitor volumes and also gambling revenue.

In conclusion, with the apparent stabilizing of the local housing market, a bottoming out in most sectors of the commercial real estate market, improving macroeconomic factors affecting travel decisions, and recent increases in year over year reports for visitor volume, there is evidence that that some improvement and recovery in the local economy occurred in 2012 and it is projected that it will continue in 2013.

SUBJECT MARKET AREA ANALYSIS

Immediate Subject Market Area Overview

The following map illustrates the position of the subject's neighborhood within the context of the larger Las Vegas region as well as that the subject's neighborhood would probably be between the 1 and 3 mile centroid. This illustration is particularly useful when detailing the demographics of the subject market area; an analysis that will shortly follow.



Land Uses

The land uses along Las Vegas Boulevard South consist of a mixture of uses, including casinos, resorts, multi-family residential, retail, restaurants, grocery stores, automotive uses, public facility, and vacant land.

Access

Primary access into the subject neighborhood is available via the various major thoroughfares both along its boundaries and within the neighborhood. North/south access through the neighborhood is several commercial thoroughfares, including I-15 and Las Vegas Boulevard. The major East/west access through the neighborhood is Silverado Ranch Boulevard and Blue Diamond Road.

Public Services/Facilities

The subject property is a vacant tract of land, and the availability of utilities (fresh water supply and waste water treatment) is critical to its ability to be developed to its highest and best use. Because of this, it is necessary to ascertain the availability of utilities, in terms of both accessibility to the site and capacity at the plant.

On the date of my site visit I observed public water and sewer mains along the fronting streets. Therefore, this appraisal is based on the assumption that there is sufficient utility capacity at the plant that would not restrict the property from being developed to its highest and best use. I urge the user of this report to ascertain the capacity of the utilities, and I reserve the right to modify my conclusions based upon such findings.

Summary

In conclusion, the subject neighborhood is located in the southeasterly portion of the Las Vegas Valley. The immediate market area generally contains a mixture of commercial, residential, and single family residential uses. After Las Vegas went through a difficult period during the recent recession, the economic conditions are improving as indicated by a reduction in unemployment, increasing home and property values, increasing investments in new planned developments such as Genting's planned \$2 Billion plus casino project as well as the acquisition of various parcels of land along The Strip and in Downtown Las Vegas.

Demographics

Data was obtained from the STDB Online website regarding the demographics of the population within 1 mile and 3 mile radii of the subject property. An executive summary follows with detailed demographic and income profile information.



Demographic and Income Profile - Appraisal Version

SUBJECT
Rings: 1, 3 mile radii

Prepared by Larry Snyder
Latitude: 36.613562
Longitude: -115.177460

Summary	Census 2010	2013	2018			
Population	5,181	5,396	5,784			
Households	2,343	2,427	2,599			
Families	1,210	1,253	1,336			
Average Household Size	2.21	2.22	2.23			
Owner Occupied Housing Units	746	722	777			
Renter Occupied Housing Units	1,597	1,706	1,812			
Median Age	36.2	36.6	37.2			
Trends: 2013 - 2018 Annual Rate	Area	State	National			
Population	1.40%	1.07%	0.71%			
Households	1.30%	1.04%	0.74%			
Families	1.29%	0.98%	0.63%			
Owner HHs	1.48%	1.15%	0.94%			
Median Household Income	3.56%	2.85%	3.03%			
Households by Income		2013	2018			
		Number	Percent	Number	Percent	
<\$15,000		319	13.1%	322	12.4%	
\$15,000 - \$24,999		266	11.8%	224	8.7%	
\$25,000 - \$34,999		274	11.3%	234	9.0%	
\$35,000 - \$49,999		484	19.9%	463	17.9%	
\$50,000 - \$74,999		359	14.8%	369	14.3%	
\$75,000 - \$99,999		239	9.6%	354	13.7%	
\$100,000 - \$149,999		271	11.2%	361	13.9%	
\$150,000 - \$199,999		85	3.5%	127	4.9%	
\$200,000+		109	4.5%	135	5.2%	
Median Household Income		\$44,104		\$52,530		
Average Household Income		\$65,310		\$76,635		
Per Capita Income		\$29,092		\$33,972		
Population by Age	Census 2010	2013	2018			
	Number	Percent	Number	Percent	Number	Percent
0 - 4	289	5.6%	292	5.4%	314	5.4%
5 - 9	257	5.0%	262	4.9%	276	4.8%
10 - 14	253	4.9%	259	4.8%	274	4.7%
15 - 19	208	5.6%	201	5.2%	203	4.9%
20 - 24	479	9.2%	507	9.4%	465	8.4%
25 - 34	935	18.0%	985	18.3%	1,074	18.6%
35 - 44	744	14.4%	727	13.5%	769	13.3%
45 - 54	720	13.9%	723	13.4%	712	12.3%
55 - 64	694	13.4%	749	13.8%	816	14.1%
65 - 74	347	6.7%	409	7.6%	522	9.0%
75 - 84	141	3.7%	161	3.0%	211	3.6%
85+	24	0.7%	43	0.8%	49	0.8%

Data Notes: Income is expressed in current dollars.
Source: U.S. Census Bureau, Census 2010 Summary File 1. Projections for 2013 and 2018.

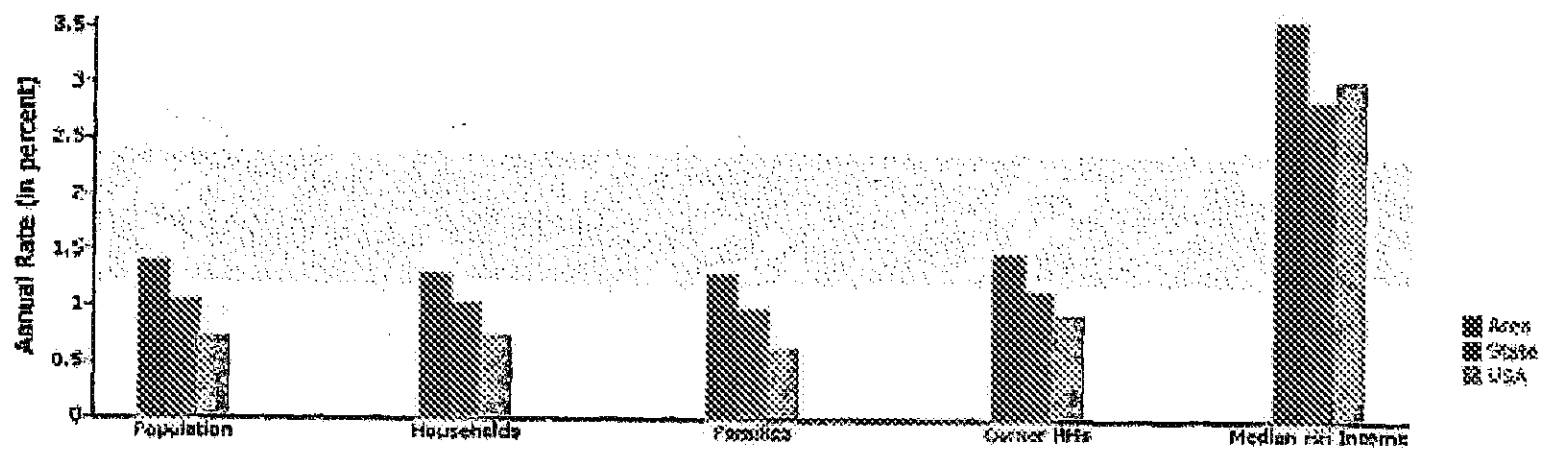


Demographic and Income Profile - Appraisal Version

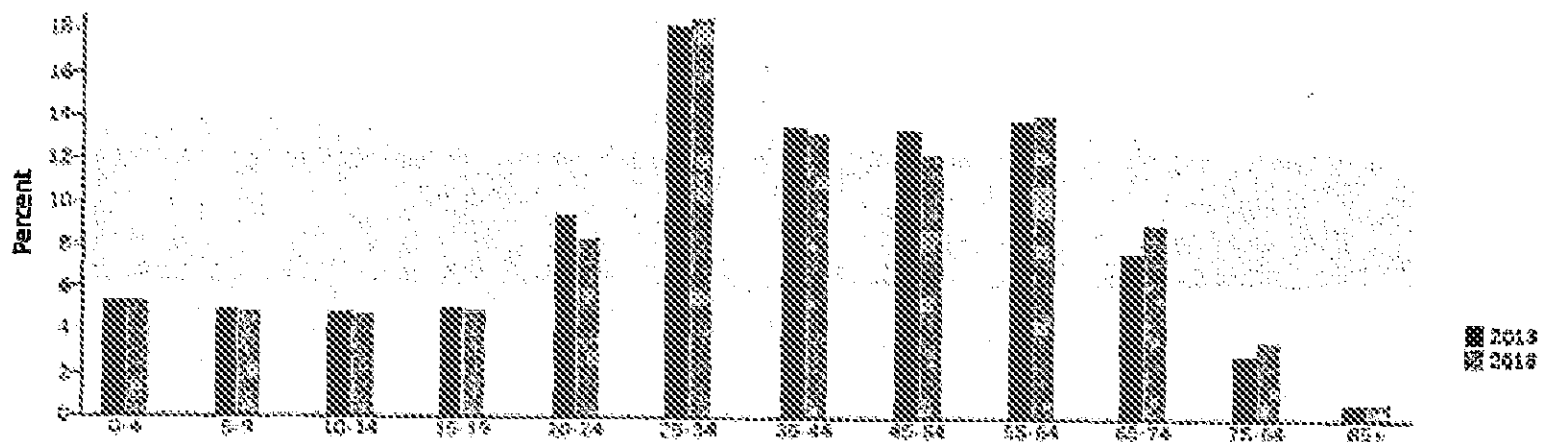
SUBJECT
Rings: 1, 3 mile radii

Prepared by Larry Snyder
Latitude: 36.042683
Longitude: -115.173462

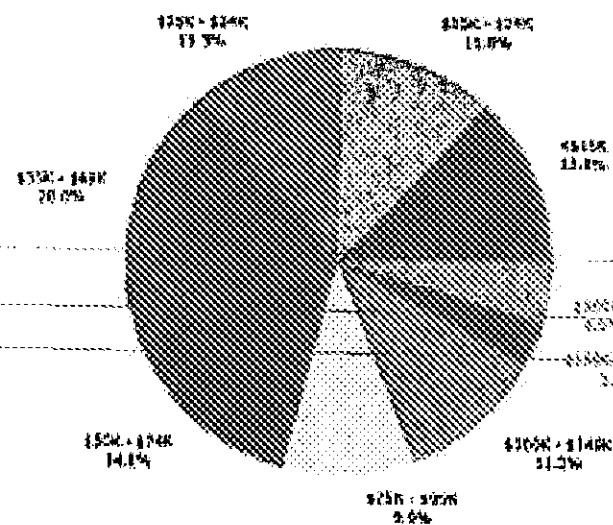
Trends 2013-2018



Population by Age



2013 Household Income



Source: U.S. Census Bureau, Census 2010 Summary file 1. Lari forecasts for 2013 and 2018.



Demographic and Income Profile - Appraisal Version

SUBJECT
Rings: 1, 3 mile radii

Prepared by Larry Snyder

11/01/04: 06.04.00.00

Amended: 11/15/10: 17.04.00

Summary	Census 2010	2013	2018			
Population	82,551	85,807	91,698			
Households	32,392	33,618	35,876			
Families	19,801	20,456	21,719			
Average Household Size	2.55	2.55	2.55			
Owner Occupied Housing Units	18,630	18,235	19,588			
Renter Occupied Housing Units	13,762	15,383	16,288			
Median Age	35.5	36.2	37.0			
Trends: 2013 - 2018 Annual Rate	Area	State	National			
Population	1.34%	1.07%	0.71%			
Households	1.31%	1.04%	0.74%			
Families	1.31%	0.98%	0.63%			
Owner HHs	1.44%	1.15%	0.94%			
Median Household Income	3.35%	2.65%	3.03%			
Households by Income		2013	2018			
		Number	Percent	Number	Percent	
<\$15,000		2,311	6.9%	2,194	6.1%	
\$15,000 - \$24,999		2,550	7.6%	1,890	5.3%	
\$25,000 - \$34,999		3,327	9.6%	2,538	7.1%	
\$35,000 - \$49,999		4,869	14.5%	4,609	13.0%	
\$50,000 - \$74,999		8,216	24.4%	7,893	22.0%	
\$75,000 - \$99,999		5,493	16.3%	7,463	20.8%	
\$100,000 - \$149,999		4,637	13.8%	6,090	17.0%	
\$150,000 - \$199,999		1,421	4.2%	2,070	5.8%	
\$200,000+		892	2.7%	1,066	3.0%	
Median Household Income		\$58,969		\$69,545		
Average Household Income		\$72,425		\$82,022		
Per Capita Income		\$28,550		\$32,281		
Population by Age	Census 2010	2013	2018			
	Number	Percent	Number	Percent	Number	Percent
0 - 4	4,925	6.0%	4,993	5.8%	5,417	5.9%
5 - 9	4,862	5.9%	4,900	5.7%	5,112	5.6%
10 - 14	4,941	6.0%	4,946	5.8%	5,123	5.6%
15 - 19	4,813	5.8%	4,800	5.6%	4,824	5.3%
20 - 24	5,842	7.1%	6,096	7.1%	5,863	6.4%
25 - 34	15,217	18.4%	15,558	18.1%	16,314	17.8%
35 - 44	13,059	15.8%	13,308	15.4%	14,259	15.6%
45 - 54	11,851	14.4%	12,140	14.1%	12,226	13.3%
55 - 64	9,244	11.2%	10,054	11.7%	11,100	12.1%
65 - 74	4,962	6.0%	5,866	6.8%	7,308	8.0%
75 - 84	2,163	2.6%	2,473	2.9%	3,197	3.5%
85+	672	0.8%	773	0.9%	952	1.0%

Data Note: Income is expressed in current dollars.

Sources: U.S. Census Bureau, Census 2010 Summary File 1. End forecasts for 2013 and 2018.

Valuation Consultants

File No. V-14-64

39

HARPER0000046

OEXH0000078

PA01921

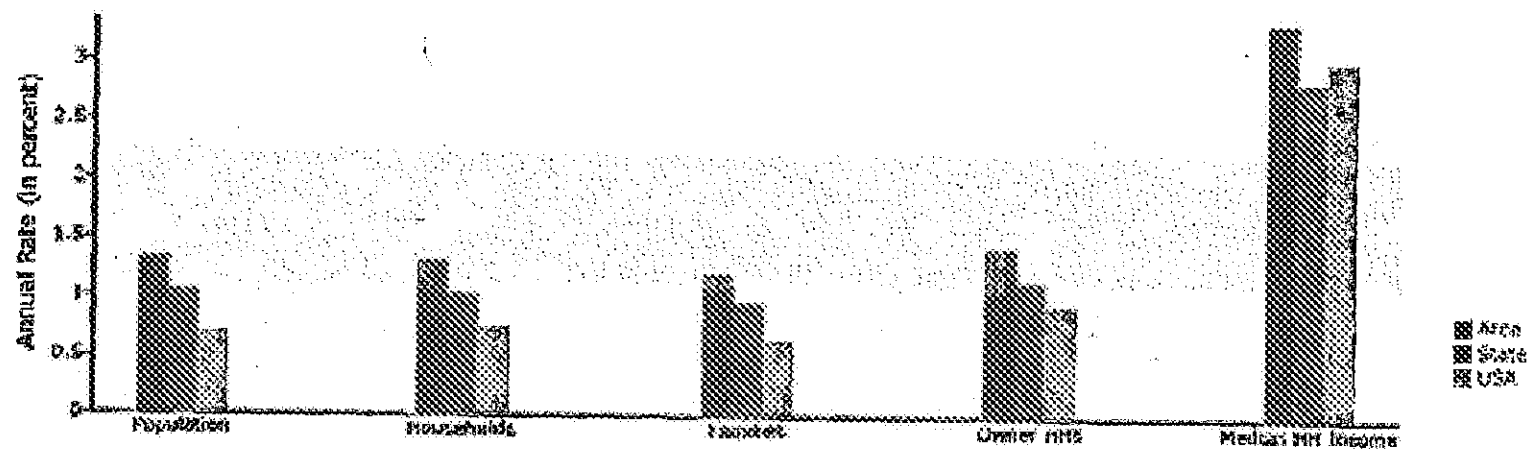


Demographic and Income Profile – Appraisal Version

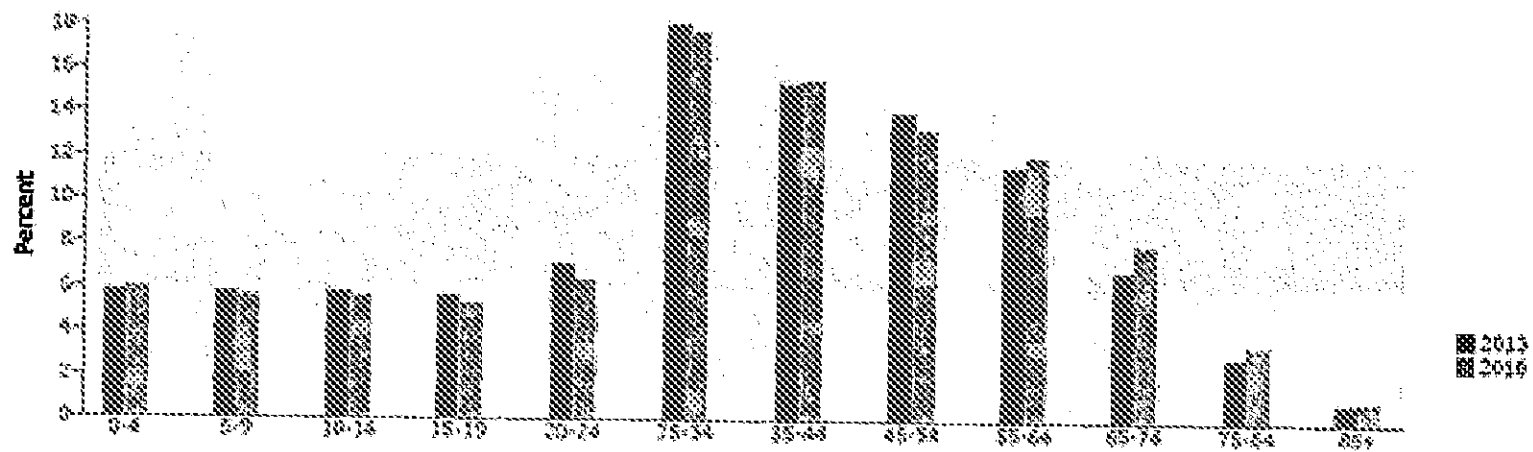
SUBJECT
Ringsi 1, 3 mile radii

Prepared by Larry Snyder
Updated: 08/04/2016
Demographic: 01/15/17 09:00

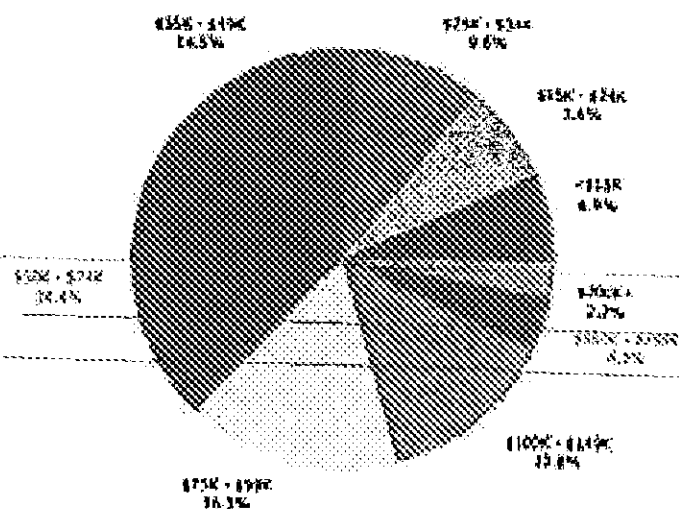
Trends 2013-2010



Population by Age



2013 Household Income



Source: U.S. Census Bureau, Census 2010 Summary file 1. Projections for 2013 and 2016.

AERIAL PHOTOGRAPH
PARCEL MAP

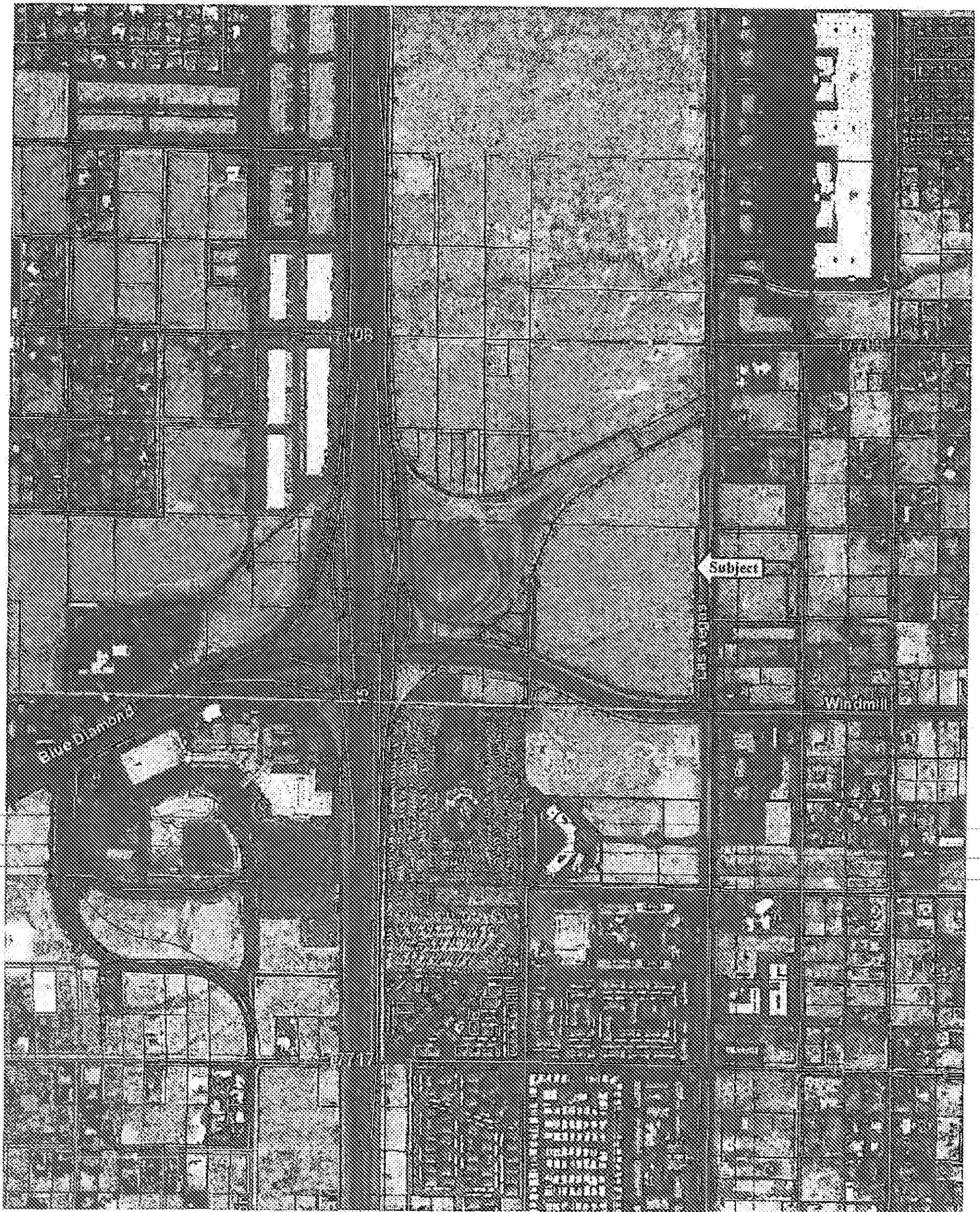
Valuation Consultants
File No. V-14-64

41

HARPER0000048

OEXH000080

PA01923



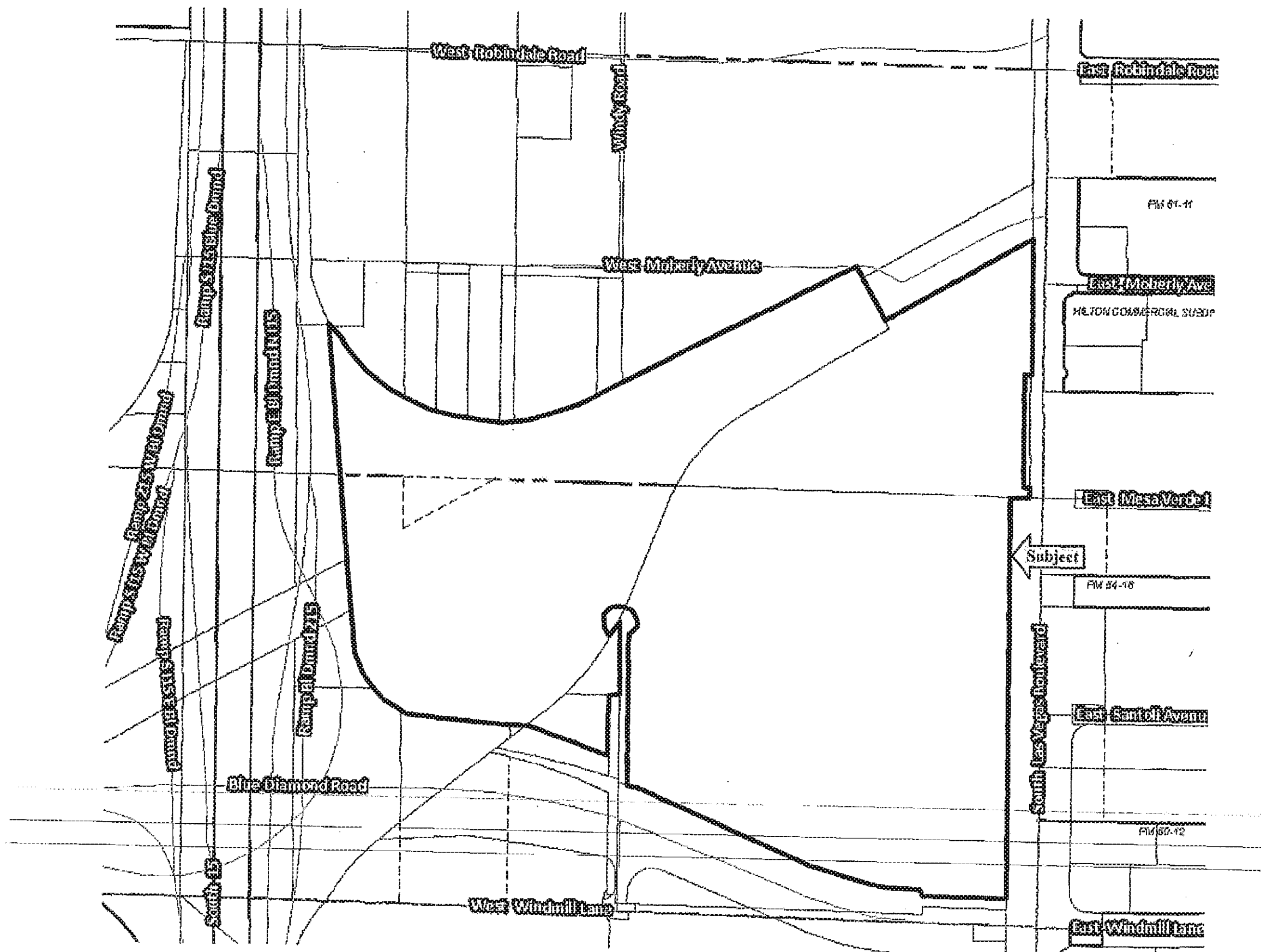
Valuation Consultants
File No. V-14-64

42

HARPER0000049

OEXH000081

PA01924



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 9, 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

Mr. Dylan T. Ciciliano, Esq.

November 3, 2014

Page iii

Extraordinary Assumptions

An extraordinary assumption is "something that is believed to be true for the sake of the appraisal but that may or may not in fact be true as of the effective date of the appraisal. Extraordinary assumptions are specific to the assignment at hand. If an extraordinary assumption ends up not being true, the results of the assignment will be affected." (Source: *The Appraisal of Real Estate, 14th Edition, 2013, Appraisal Institute, page 53*)

The final opinions of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and the Retrospective Just Compensation reported in this appraisal assignment is based on the following Extraordinary Assumptions:

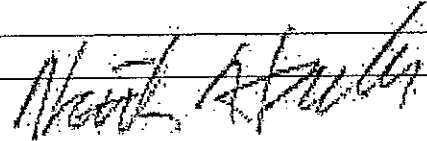
- 1) In this case it is an extraordinary assumption that the subject whole property as of the retrospective effective date is physically as it was observed on October 22, 2014 which was the last date of visitation and observation.
- 2) It is an extraordinary assumption that the Exhibit included in the Addenda of this report and titled "I-15 South Corridor Improvements Environmental Assessment Build Alternative Figure 10F" is an accurate depiction of the subject in the Before Condition.

If these extraordinary assumptions that are is directly related to this specific assignment as of the appropriate retrospective date of the assignment results are found to be false, the opinions or conclusions could be altered.

Thank you for the opportunity to complete this assignment. If I may be of further assistance, please contact me at your convenience.

Sincerely,

VALUATION CONSULTANTS



Keith Harper, MAI
Certified General Appraiser
License Number A.0000604-CG
State of Nevada
Expires: 3/31/16

HARPER000004

EXECUTIVE SUMMARY

Location: The subject property is located at the northwest corner of Blue Diamond Road and Las Vegas Boulevard South, Las Vegas, Clark County, Nevada 89123.

Assessor Parcel Nos.: 177-08-803-013, 177-08-702-002, 177-08-803-014, 177-08-803-001, and 177-08-803-010

Site Area: According to Clark County public records, the subject property contains a total of 66.63 net acres, or 2,902,403 square feet.

Use as of the Retrospective Date: Vacant Land

Census Tract: 28.37

Highest and Best Use: As Vacant: To hold this property until market conditions improve and then develop it with a major mixed-use resort or tourist related development.

Intended Use/User of Appraisal: The intended use of this appraisal is to assist Mr. Dylan T. Ciciliano, Esq. of Gordon Silver as well as any attorneys, paralegals, and others associated with Gordon Silver representing the property ownership by providing an opinion of just compensation. The appraisal is subject to the attorney work privilege. The intended user of this appraisal is Mr. Dylan T. Ciciliano, Esq. of Gordon Silver as well as any attorneys, paralegals, and others associated with Gordon Silver. This report has no other intended use or intended users other than what has been stated herein.

Dates of Opinion:

Date of Report:

November 3, 2014

Retrospective "Undivided Fee" Fair Market Value of the
Whole Property Before Acquisition: April 17, 2013

Retrospective Just Compensation: April 17, 2013

Interest Appraised:

Undivided Fee

Zoning:

H-1, Limited Resort and Apartment District, H-2, General Highway District, and R-E, Rural Estates Residential District [2 Units per Acre], Clark County

Dates of Property Visits:

October 27, 2014 – Date Photographs were Taken
October 22, 2014 – Date Keith Harper, MAI visited site

SUMMARY OF RETROSPECTIVE JUST COMPENSATION

Fair Market Retrospective Value Opinion Before Acquisition - Whole Property	\$99,945,000
Fair Market Retrospective Value Opinion of the Part Taken	\$ -0-
Fair Market Retrospective Value Opinion of the Remainder Before Acquisition	\$99,945,000
Fair Market Retrospective Value Opinion of the Remainder After Acquisition	\$89,950,500
Severance Damages	\$9,994,500
Special Benefits	\$ -0-

Calculation of Recommended Just Compensation:

Acquisition Area (Part Taken):	\$ -0-
Remainder Before Acquisition:	\$99,945,000
Less: Remainder After Acquisition:	<\$89,950,500>
Equals: Severance Damages:	\$9,994,500
Total Recommended Retrospective Just Compensation:	\$9,994,500

ROUNDED TO: **\$10,000,000**

Extraordinary Assumptions

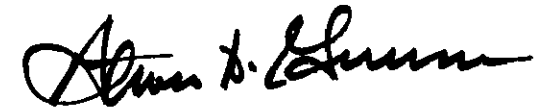
An extraordinary assumption is "something that is believed to be true for the sake of the appraisal but that may or may not in fact be true as of the effective date of the appraisal. Extraordinary assumptions are specific to the assignment at hand. If an extraordinary assumption ends up not being true, the results of the assignment will be affected." (Source: *The Appraisal of Real Estate, 14th Edition, 2013, Appraisal Institute, page 53*)

The final opinions of the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and the Retrospective Just Compensation reported in this appraisal assignment is based on the following Extraordinary Assumptions:

1) In this case it is an extraordinary assumption that the subject whole property as of the retrospective effective date is physically as it was observed on October 22, 2014 which was the last date of visitation and observation.

2) It is an extraordinary assumption that the Exhibit included in the Addenda of this report and titled "I-15 South Corridor Improvements Environmental Assessment Build Alternative Figure 10F" is an accurate depiction of the subject in the Before Condition.

If these extraordinary assumptions that are is directly related to this specific assignment as of the appropriate retrospective date of the assignment results are found to be false, the opinions or conclusions could be altered.



CLERK OF THE COURT

1 WILLIAM L. COULTHARD, ESQ. (#3927)
ERIC M. PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Flr.
Las Vegas, Nevada 89169
4 Telephone: (702) 385-6000
Facsimile: (702) 385-6001
5

ADAM PAUL LAXALT, ESQ.
6 Attorney General
DENNIS V. GALLAGHER, ESQ. (#955)
7 Chief Deputy Attorney General
dgallagher@ag.nv.gov
8 AMANDA B. KERN, ESQ. (#9218)
Deputy Attorney General
9 akern@ag.nv.gov
OFFICE OF THE ATTORNEY GENERAL
10 555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
11 Telephone: (702) 486-3420
Facsimile: (702) 486-3768
12 *Attorneys for the State*

DISTRICT COURT

CLARK COUNTY, NEVADA

13
14
15 FRED NASSIRI, individually and as trustee
16 of the NASSIRI LIVING TRUST, a trust
formed under Nevada law,

17 Plaintiffs,

18
19 vs.

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

23 Defendants.
24
25
26
27
28

Case No.: A672841

Dept. No.: XXVI

**REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT ON
PLAINTIFF'S RESCISSION CLAIM
BASED ON THE COURT'S 8/29/15
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT**

Date of Hearing: November 17, 2015

Time of Hearing: 9:30 AM

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

I.

INTRODUCTION

Lacking a coherent response to the State’s legal arguments, Nassiri resorts to outlandish rhetoric and ad hominem attacks to confuse the dispositive issues. He accuses the State of “misrepresenting the Court’s ruling,” “creating illusions,” “drawing false correlations between cases,” and “failing to comprehend the facts.” He also maligns the State’s earnest legal points as “vain,” “desperate,” and “untruthful.” But simply saying something does not make it true—no matter how many times Nassiri proclaims that he is “clearly” or “plainly” speaking the truth (which is an eye-popping 29 times). The State will not be dragged into a war of put-downs. And the Court shouldn’t be distracted or persuaded by these inappropriate tactics.

Instead, the Court should focus on the issues, which, in light of Nassiri’s opposition, boil down to three straightforward points of law:

(1) **Future Contingency.** The State’s plans and intentions in 2005 to later build a flyover at the Blue Diamond Interchange were—by definition—future contingencies. Nassiri’s entire argument rests on the contention that his mistake relates to the State’s plans and intentions in 2005 to later build a flyover at the Blue Diamond Interchange. His mistake, therefore, relates to a future contingency.

(2) **Materiality.** To ever justify rescission under Nevada law, a mistake must materially affect the agreed exchange of performances at the time the contract is made; an immaterial mistake cannot later become material upon the occurrence of a future event. Nassiri concedes that his mistake was immaterial when he signed the 2005 Settlement Agreement and didn’t become material until a flyover was constructed five years later. Thus, his mistake can never justify rescission.

(3) **Assumption of Risk.** *Land Baron* holds that parties to a contract separately assume the risk of mistake over foreseeable future events, which they fail to address in the contract. Despite drafting and agreeing to the 2005 Settlement Agreement, sophisticated land buyer Nassiri—and his team of professional real estate experts and attorneys—failed to address the foreseeable possibility that the State might further improve its nearby right-of-way. Accordingly, Nassiri assumed and bore the risk of his mistake.

For any one of these reasons, the State’s motion must be granted.

II.

ARGUMENT

1. **First and foremost, Nassiri's mistake relates to a future contingency.**

A. **Nassiri's opposition describes a mistaken belief about the occurrence or non-occurrence of a future event.**

“[A] contract may not be reformed or rescinded based upon a [] mistake of fact if the mistake relates to a mistaken belief, judgment, or expectation as to future, rather than past or present, facts, occurrences or events.” *Ryan v. Ryan*, 640 S.E.2d 64, 69 (W.Va. 2006) (applying the Restatement). The “mistake of fact cannot lie against a *future* event.” *Kruzich*, at 988 (applying the Restatement) (quotation omitted) (emphasis in original). It “must concern past or present facts, *not unexpected facts that occur after the document is executed.*” *Id.* (quotation omitted) (emphasis in original). “[T]he belief which is found to be in error may not be, in substance, a prediction as to a future occurrence or non-occurrence.” *Lenawee County Bd. Of Health v. Messerly*, 331 N.W.2d 203, 211 (Mich. 1982).

Nassiri argues that his belief in 2005 that the State wouldn't build a flyover in 2010 was not a mistaken “prediction of future events, but [a mistake about] NDOT's then present intent and plans” to later build a flyover. Opps., 14:19-20. While Nassiri may draw a distinction here, it's a distinction without a difference. In either case, Nassiri's mistake relates to a mistaken belief about the future.

He admits that his mistake in 2005 was being “unaware of the fact that NDOT would build a flyover at the Blue Diamond Interchange” in the future. Opps., 11:4-5. This is just another way of saying that he mistakenly believed that the Interchange wouldn't have a flyover in the future, or that he mistakenly predicted that the State wouldn't build a flyover in the future. It's six of one hand and half dozen of the other. No matter which way he cuts it, Nassiri repeatedly describes a mistaken belief about the occurrence or non-occurrence of a future event (i.e., the ultimate construction of the flyover). And simply put, a mistaken belief about the occurrence or non-occurrence of a future event cannot, as a matter of Nevada law, support a rescission claim.

1 **B. Even if the Court were to accept Nassiri's bald assertion that his mistake**
2 **doesn't relate to a mistaken belief about the future, summary judgment**
3 **would still be required because his mistake about "present intent and plans"**
4 **nevertheless relates to a supposed promise of future conduct.**

5 "The mistake doctrine does not apply to [] promises of future conduct." *Shear v.*
6 *National Rifle Ass'n of America*, 606 F.2d 1251, 1260 (D.C. Cir. 1979). In *Shear*, asserting a
7 mistake of fact, the plaintiff sought to rescind a commission agreement that was contingent on
8 the NRA approving a contract to sell real estate. "The supposed mistake of fact was the parties'
9 belief that the [NRA] Management Committee would unanimously recommend to [the NRA
10 Board of Directors] that the Board should approve the [purchase and sale contract]," which
11 ultimately didn't happen. *Id.* The D.C. Circuit Court upheld the lower court's decision to
12 dismiss the plaintiff's rescission claim because "the alleged mistake was the parties' belief that
13 the Management Committee would recommend the contract to the Board *in the future.*" *Id.*
14 (emphasis added). Relying on the Restatement of Contracts, the Court held that "[t]he mistake
15 doctrine does not apply to predictions or promises of future conduct." *Id.* (emphasis added).

16 The same problem exists here. Nassiri asserts that by showing him right-of-way plans
17 that didn't include a flyover, the State somehow promised him that it would never build a
18 flyover. Opps. 13:16-23. Even if this were true, which it is not, he'd still be conceding that his
19 mistake relates to a promise of future conduct (i.e., a promise to not build a flyover). But "the
20 mistake doctrine does not apply to predictions or promises of future conduct." *Id.* Thus, the
21 State's motion should be granted—even under Nassiri's opposition.

22 **C. In any event, the State's plans and intentions in 2005 to later build a flyover**
23 **at the Blue Diamond Interchange were subject to change and, therefore,**
24 **future contingencies.**

25 Plans change; intentions change; that's why they are—by definition—contingencies.
26 Merriam-Webster defines the term *contingency* as "an event that may but is not certain to
27 occur;" or "something liable to happen as an adjunct to or result of something else."
28 <http://www.merriam-webster.com/dictionary/contingency> (last visited on November 9, 2015).
 Black's Law Dictionary similarly defines it as "an event that may or may not occur; *a*
 possibility." *Black's Law Dictionary*, 362 (9th ed. 2009) (emphasis added).

1 In 2005, the future flyover was a contingency—an event that may or may not occur; *a*
2 *possibility*. It was something liable to happen if or when traffic demand warrants had been met,
3 funding was available, and the opportunity was right. Indeed, the only reason that the
4 opportunity was right in 2009 was because Las Vegas Paving included a flyover in its design-
5 build bid proposal, which was accepted. None of the other bids included the flyover, so it could
6 have been designed differently, built much later than 2009, or never at all.

7 Yes, the State intended and planned to eventually build a flyover. But even the best laid
8 plans often go awry. Traffic demand warrants may never have been met; funding may never
9 have become available; the State may have scrapped the flyover in favor of other projects; the
10 design-build contractor may not have included a flyover in its bid; or a different flyover design
11 could have been constructed. While Nassiri believes that the as-built flyover materially affects
12 the 2005 Settlement Agreement, it is entirely possible that a differently-designed flyover
13 wouldn't have. The State's plans and intentions in 2005 to later build a flyover could have been
14 mooted or changed by an infinite number of possibilities—and, in fact, they did change as a
15 result of Las Vegas Paving's 2009 design modifications. This is why the State's 2005
16 intentions and plans were, by definition, future contingencies.

17 Nassiri asserts that the State's argument "*is based on a faulty understanding of the*
18 *word 'contingency.'*" Opps., 13:1-3 (emphasis added). But despite challenging the State's
19 grasp and use of this straightforward concept, he never explains what the word supposedly
20 means. He merely concludes that, in 2005, "the flyover was more than a contingency that might
21 or might not happen in the future." Opps., 13:17-18. But this Court disagrees. It concluded
22 that "[p]rior to 2010, *NDOT might have chosen to not build the flyover at all.*" Trial Ruling,
23 12:26-27 (emphasis added). In other words—contrary to Nassiri's bald assertion—prior to
24 2010, the flyover was a contingency that *might or might not* happen in the future.

25 **D. Nassiri provides neither law nor logic to support his contrary assertions.**

26 Although Nassiri claims that the State's argument is somehow wrong, he never really
27 explains why. He attempts to distinguish the State's legal authority on this issue but doesn't
28

1 cite any of his own.¹ Apparently, there is not a single case, statute, or treatise that supports
2 Nassiri's conclusory assertion that his mistaken belief that the State wouldn't build a flyover *in*
3 *the future* somehow isn't a mistaken prediction of *future* events. It isn't surprising that Nassiri
4 couldn't unearth any legal support for his contentions, though, as his argument contradicts every
5 relevant case that the State has come across:

- 6 - *Chwialkowski v. Sachs*, 834 P.2d 405, 406 (Nev. 1992): holding that the plaintiff
7 "clearly released all of her claims against [defendant]," and her subjective intent not
8 to release those claims at the time of contracting wasn't "the type of unilateral
9 mistake which entitles a party to relief from a contract."
- 10 - *Home Savers, Inc. v. United Sec. Co.*, 741 P.2d 1355, 1356 (Nev. 1987): the subject
11 mistake related to the description and size of the property sold, and it materially
12 affected the agreement at the time the contract was made.
- 13 - *Tarrant v. Monson*, 619 P.2d 1210, 1211 (Nev. 1980): holding that a mistaken belief
14 that a lost ring wouldn't later be found related to a future event.
- 15 - *Kruzich v. Old Republic Ins. Co.*, 188 P.3d 983 (Mont. 2008): holding that failing to
16 predict that an injured worker would develop Parkinson's disease several years after
17 agreeing to settle and release his worker's compensation claim was not a mistake
18 supporting rescission because it related to a future event.
- 19 - *Consolidated Rail Corp. v. Portlight, Inc.*, 188 F.3d 93, 97 (3rd Cir.1999), citing
20 *Emery v. Mackiewicz*, 240 A.2d 68 (Pa. 1968); *Leyda v. Norelli*, 564 A.2d 244
21 (Pa.1989): citing with approval to two prior Pennsylvania cases that held "a party
22 who underestimates the future severity of her injuries will not be permitted to avoid
23 the consequences of a settlement agreement based on [] mistake," and concluding
24 that "[w]ere there not such a rule, the effectiveness of settlement agreements would
25 be greatly diminished."
- 26 - *Beals v. Tri-B Associates*, 644 P.2d 78 (Col. App. Ct. 1982): holding that even
27 though the plaintiff acquired real estate with the intent to later develop it, the fact
28 that he ultimately couldn't develop it was not the type of mistake justifying
rescission because the mistake related to "mistaken expectations as to the course of
future events;" noting that "[t]his rule is justified by the reality that parties to
commercial contracts rarely predict future events with total accuracy..., and a
contract functions primarily to insulate the parties from uncertainty and to allocate
the risk of future events."

¹ Even Nassiri's attempts to distinguish fall flat. He argues that "[t]he differences between Kassebaum and the present case are numerous and striking... [because] the flyover was more than a contingency that might or might not happen in the future." Opps., 13:16-18. He also contends that the Restatement rule doesn't apply to him because his mistaken belief that a flyover wouldn't be built in the future is, for some reason, not the type of mistaken belief that relates to the occurrence or non-occurrence of a future event. But as previously demonstrated, the Court's Trial Ruling refutes both of these arguments. Trial Ruling, 12:26-27 ("Prior to 2010, the State *might have chosen* to not build a flyover at all.").

1 These are just a few of the many cases that broach this topic. Before the Court were to accept
2 Nassiri's contrary argument, he should have to identify at least one case where a court in this
3 country has granted rescission based on a mistake about intentions and plans to do something in
4 the future. There isn't one.

5 **2. The State's motion should be additionally granted because Nassiri candidly admits**
6 **that his mistake didn't materially affect the agreed exchange of performances at**
7 **the time that he executed the 2005 Settlement Agreement,**

8 Nassiri has long straddled the fence when it comes to articulating his mistake.
9 Sometimes it's about the State's intent in 2005 to eventually build a flyover; sometimes it's
10 about the as-built flyover's alleged impact on his property in 2010. But by concluding—as a
11 matter of law—that Nassiri couldn't have filed his mistake-based rescission claim unless and
12 until the State actually chose to build a flyover in 2010, the Court has established that Nassiri's
13 mistake relates to the as-built flyover's alleged impact on his property. Since this mistake did
14 not exist at the time he executed the 2005 Settlement Agreement, the State moved for summary
15 judgment based on the Court's Trial Ruling.

16 In opposition, Nassiri maintains that his mistake still relates to the State's 2005 intent to
17 eventually build a flyover. He argues that while his mistake occurred in 2005, it didn't
18 materially affect the performances under the 2005 Settlement Agreement until the flyover was
19 actually designed and built in 2010. Opps., 12:6-18. According to Nassiri, this is why the
20 Court concluded (as a matter of law) that he could not file his rescission claim unless and until
21 the State chose to build the flyover—the Court apparently recognized that his mistake existed in
22 2005 but it just wasn't material at the time.

23 Nassiri's argument does not save his claim. On the contrary, it too requires summary
24 judgment in the State's favor, albeit for a separate but similar reason: a mistake that doesn't
25 materially affect the agreed exchange of performances *at the time the contract is made* can
26 never substantiate a claim for rescission. Even if the Court were to reject the State's argument
27 and accept Nassiri's, the required outcome on the State's motion would still be the same.²

27 ² Nassiri asserts a hodge podge of other claims and arguments that don't merit much discussion.
28 First, he claims that the State's motion replicates or "renews" a prior motion. But just as Nassiri
couldn't have been mistaken in 2005 about a fact that didn't exist until 2010, the State couldn't

1 A. **Under Nevada law, a mistake that is immaterial at the time of contracting**
2 **doesn't support rescission.**

3 Nevada follows the mistake rules set forth in the second Restatement of Contracts. *See*
4 *Home Savers, Inc. v. United Sec. Co.*, 741 P.2d 1355, 1356-57 (Nev. 1987) (adopting
5 Restatement (Second) of Contracts § 153 (1981)). In States following the Restatement, "to
6 relieve a party from liability on the contract, the mistake must relate to a **material** fact, past or
7 present, and not to a future contingency." *Kruzich v. Old Republic Ins. Co.*, 188 P.3d 983, 988
8 (Mont. 2008) (applying the Restatement) (quotation omitted) (emphasis added); *accord Tarrant*
9 *v. Monson*, 619 P.2d 1210, 1211 (Nev. 1980). In other words, an immaterial mistake cannot
10 later become material upon the occurrence of a future event; the mistake must relate to a
11 **material** fact that exists at the time the contract is made.

12 Yet, Nassiri's entire argument rests on a contrary assumption. He openly admits that his
13 mistake didn't relate to a **material** fact that existed at the time he executed the 2005 Settlement
14 Agreement; rather, it related to a immaterial fact that didn't become material until the flyover
15 was actually built five years later:

- 16 - **"Had NDOT never constructed the flyover there would never**
17 **have been a material impact on the performance."** Opps.,
18 3:21-23 (emphasis added).
- 19 - "[A] cause of action for rescission based on mistake does not
20 exist until a person or entity recognizes that a **material**
21 mistake was made." Opps., 12:6-7 (emphasis in original).

22 have moved for summary judgment based on the Court's Trial Ruling until the ruling actually
23 existed. Second, Nassiri wrongly contends that the Court's Trial Ruling should be "construed in
24 a light more favorable to him." Opps., 8:24-25. While it is true that on summary judgment the
25 **pleadings and evidence** is construed in a light most favorable to the nonmoving party, the
26 Court's Trial Ruling is neither a pleading nor evidence in support of Nassiri's claims. Finally,
27 Nassiri contends that the State "is judicially estopped from arguing that it did not decide to build
28 the Flyover until 2009." Opps., 6:12-13. But the State didn't decide to build the flyover until
2009, and it has never argued differently. While the State may have always intended to build **a**
flyover at some unknown point in the future, it didn't actually decide to follow through with
those intentions until it accepted Las Vegas Paving's design-build proposal for **the** flyover in
2009. The Court agrees. Contrary to Nassiri's argument that the State "committed to building
the [2010] Flyover prior to the execution of the [2005] Settlement Agreement" (Opps., 7:3-4),
the Court held that "[p]rior to 2010, the State might have chosen to not build a flyover at all."
Trial Ruling, 12:26-27. The State is not judicially estopped from requesting summary judgment
based on this express conclusion of law.

- “[I]t is clear that being ‘reasonably certain that the flyover would be built’ refers to the... realization that a *material* mistake occurred, and *not when the mistake actually occurs*. Opps., 12:8-10 (emphasis added).
- “[H]ad NDOT not built the flyover, Plaintiffs would likely not have been aware of the mistake *and the mistake would not have materially impacted the agreed exchange of performances*.” Opps., 12:16-18 (emphasis added).

Nassiri’s mistake only became material upon the occurrence of a future event (i.e., the design and construction of a flyover). And this kind of mistake doesn’t support rescission under the Restatement, which has been adopted as Nevada law.

B. An immaterial mistake doesn’t affect assent.

The reason that contracts are rescinded for mistakes is the same reason that contracts are rescinded due to negligent or fraudulent misrepresentations: there is no true assent. *See NOLM, LLC v. County of Clark*, 100 P.3d 658, 661 (Nev. 2004), citing Restatement (Second) of Contracts at § 166. In reality, it’s not the mistake that avoids the agreement; it’s the lack of assent to the contract’s terms, which is why the mistake must occur “at the time the contract was made.” *Home Savers*, 741 P.2d at 1356. If the mistake occurs *after* a party agrees to the contract, then it doesn’t really affect the party’s initial assent.

The same is true about the mistake’s effect on the agreed exchange of performances. If the mistake of fact doesn’t *materially* affect the agreed exchange of performances until after the performances are completed, then it doesn’t really affect the party’s initial assent to perform. And a mistake not materially affecting the parties’ initial assent to perform is not a mistake for purposes of rescission. If it were, a contract wouldn’t be worth the paper it’s written on; rescission could be achieved by anyone who became unhappy with a previously agreed-upon deal.

Nassiri and the State assented to an exchange of performances under the 2005 Settlement Agreement. Both parties performed. Nassiri was never “mistaken” about his deal until something that he didn’t like happened five years later. Whether he characterizes this future event as the “mistake” or as what made the mistake “material,” it doesn’t change his assent to the 2005 Settlement Agreement under the material facts existing at the time.

1 3. Finally, summary judgment in the State's favor on Nassiri's rescission claim is
2 separately required under *Land Baron*.

3 A. *Land Baron* is analogous and dispositive here.

4 Based on the Nevada Supreme Court's recent decision in *Land Baron Inv. v. Bonnie*
5 *Springs Family LP*, 356 P.3d 511, 517 (Nev. 2015), Nassiri assumed the risk of his mistake. In
6 response to this argument, Nassiri accuses the State of "draw[ing] a false correlation between
7 *Land Baron* and the present case." Opps., 15:18. In doing so, however, he ignores the
8 strikingly similar facts. Both cases involve a fully negotiated, arm's length agreement to
9 purchase real property; both plaintiffs are sophisticated and experienced land buyers; both were
10 assisted by expert real estate professionals and/or attorneys; both were given an ample
11 opportunity to perform due diligence; both freely agreed to the land deal; both drafted the
12 purchase agreement; and both made alleged mistakes about matters that were not addressed in
13 the contract.

14 Instead of even acknowledging these similarities, Nassiri asserts that the State "fails to
15 comprehend the facts of this case;" that "the [true] facts are clear;" and "that NDOT's [contrary
16 arguments] are mere distractions, not relevant to the issue at hand." Opps., 15:24-25, fn. 5. Of
17 course, he never explains what these *clear* facts are, or why the factual similarities between
18 *Land Baron* and the present case are not relevant to the issue of whether *Land Baron* bars his
19 claim. In his typical fashion, Nassiri simply proclaims that it is so.

20 Despite dismissing the *analogous* facts in a footnote, Nassiri accuses the State of
21 "ignoring the [] differences between this case and *Land Baron*. Opps., 15:25. He attempts to
22 distinguish *Land Baron* by arguing that while the seller in that case was not responsible for
23 providing water and access (i.e., the mistake), *the State "was in complete control of the facts*
24 *and circumstances surrounding the mistake—the building of the flyover."* Opps., 16:1-3
25 (emphasis added). Notably—in a moment of candor—Nassiri admits that his mistake was over
26 the actual construction of the flyover in 2010; not the State's preliminary plans and intentions in
27 2005, as he previously argued. In any event, Nassiri misses the point.
28

1 *Land Baron* is analogous and applicable not because of the specific mistake but because
2 the mistake related to a reasonably foreseeable future event, which the plaintiff could have
3 addressed in the contract but didn't. The same is true here. Although it was foreseeable that the
4 State might follow its statutory mandate and further improve the public right-of-way near his
5 property, Nassiri and his team of expert real estate professionals and attorneys failed to address
6 this future contingency in the purchase agreement. Under *Land Baron*, he, therefore, assumed
7 the risk of his mistake about this unaddressed issue.

8 **B. The Settlement Agreement's "as-is" provision is further proof that Nassiri
9 bore the risk of his mistake.**

10 The Settlement Agreement not only failed to provide for this—or any other—future
11 contingency, but it included an "as-is" clause. Settlement Agreement, ¶ 2.04. An "as-is"
12 provision is an "indication that the parties considered that, as between them, such risk as related
13 to the present [and future] condition of the property should lie with the purchaser." *Lenawee
14 County Bd. Of Health v. Messerly*, 331 N.W.2d 203, 211 (Mich. 1982); accord *Bill Stremmel
15 Motors, Inc. v. IDS Leasing Corp.*, 514 P.2d 654, 657 (Nev. 1973). "***By agreeing to purchase
16 something 'as is,' a buyer agrees to make his own appraisal of the bargain and accept the risk
17 that he may be wrong.***" *Prudential Ins. Co. of America v. Jefferson Associates, Ltd.*, 896
18 S.W.2d 156, 161 (Tex. 1995) (emphasis added); accord with *Stremmel Motors*, 514 P.2d at 657.

19 In *Messerly*, there was no question that both parties to the real estate transaction made a
20 mistake as the word is defined in the Restatement (Second) of Contracts. *Id.* at 208. But the
21 Michigan Supreme Court still refused to grant the purchaser's request to rescind the sale
22 contract because the purchaser had assumed the risk of mistake by accepting the property "as
23 is." *Id.* at 211. The Court held that "***[i]f the 'as-is' clause is to have any meaning at all, it
24 must be interpreted to refer to those defects which were unknown at the time that the contract
25 was executed.***" *Id.* (emphasis added).

26 Nassiri purchased the 24-acre exchange property "as-is." The State disagrees that the
27 future flyover is a defect in Plaintiff's property or a lawful basis to rescind the 2005 Settlement
28

1 Agreement. But even if it was, Nassiri accepted that risk by agreeing to purchase the property
2 “as-is.”

3 **C. The Court should reject Nassiri’s attempt to shift blame to the State.**

4 Nassiri argues that the State bore the risk of his mistake because “it never once
5 mentioned the flyover,” and because it showed him phase one right-of-way maps that he
6 mistook as an eternal depiction of the Blue Diamond Interchange without a flyover. Opps.,
7 15:19-20. He claims that his never-mentioned misconception somehow amounts to wrongdoing
8 by the State. Opps., 16:2-6. This argument fails for three main reasons.

9 **(1) *The State never told Nassiri that it wouldn’t build a flyover in the***
10 ***future.***

11 Nassiri’s claim that he relied on the State’s right-of-way map as a perpetual
12 representation of the Blue Diamond Interchange is belied by the Settlement Agreement, which
13 provides “that no promise or inducement has been offered except as herein set forth.”
14 Settlement Agreement, ¶ 2.19(iii). The State made no promises about the future improvement
15 of the Blue Diamond Interchange in the Settlement Agreement.

16 Even if the Court were to overlook Nassiri’s contrary acknowledgement in the
17 Settlement Agreement, Nassiri’s argument still fails under *Land Baron*. According to *Land*
18 *Baron*, to substantiate a claim for either intentional or negligent misrepresentation, parties must
19 show that they were affirmatively supplied with false information. 356 P.3d at 518. *Land*
20 *Baron* could not meet this burden because there was “no evidence that Bonnie Springs ever
21 *represented* that there would be *no impediment* to gaining access for a subdivision... or that
22 Bonnie Springs had *stated* that it would supply the property with water.” *Id.* (emphasis added).

23 To establish a misrepresentation in this case, Nassiri would have to show that the State
24 affirmatively *represented* or *stated* that there would be *no flyover* in the future. Like in *Land*
25 *Baron*, however, the State never promised Nassiri that it wouldn’t build a flyover in the future.
26 Nassiri himself argues that the State “never mentioned the flyover,” one way or the other.
27 Opps., 15:19-20. Nassiri cannot prove an affirmative misrepresentation. There wasn’t one.
28

1 (2) *Nassiri's mistake resulted from his own failure to perform due*
2 *diligence.*

3 Despite having months to evaluate the State's sale offer, Nassiri never once looked
4 into—or even asked about—the State's future highway improvement plans. While he faults the
5 State for never *telling him* about its preliminary plans for a future flyover, the State had no
6 reason to believe that he was unaware of *publicly-available* plans, which he possessed and
7 actually referenced during negotiations with the State. Nor did it have reason to know that
8 Nassiri would point to those preliminary plans a decade later as the basis for unwinding a fully
9 negotiated, arm's-length 2005 land deal.

10 Nassiri broadly cites to 6 pages of the Trial Ruling to argue that the Court already found
11 that he performed adequate due diligence into the *sale*. Opps., 16:16. But the Court made no
12 such ruling. Nor will it ever be asked to. While the Court concluded that Nassiri exercised
13 reasonable diligence to *discover his claim*—a finding with which the State disagrees—it never
14 held that he performed adequate due diligence into the sale. It doesn't matter what due
15 diligence Nassiri actually did in advance of *agreeing* to purchase the property; it only matters
16 that he was given the opportunity to do it.

17 Even so, Nassiri confuses his own due diligence with sitting back and waiting for the
18 State to bring him information that he may or may not have cared about:

19 Mr. Ciciliano: At the time you were negotiating the settlement,
20 would it have mattered to you if the project included a flyover?
21 In your professional capacity?

22 Mr. Chapman: It would have been something that we would have
23 *taken note of...*, but yes, we would have wanted to have known if
24 it included a flyover, *especially the one that eventually got built*
25 *there.*

26 Mr. Ciciliano: And why is that?

27 Mr. Chapman: Because it *may* have an impact on the property
28 which the owner *may* want to evaluate in deciding whether this is
 a proper settlement.

(5/6/15 Trial Transcr., 199:10-20) (emphasis added).

1 While Nassiri and his team *may* have wanted to *take note of* a flyover that wouldn't be
2 designed or built until five years after Nassiri agreed to the Settlement Agreement, the State
3 didn't know that. Nor could it have given him the yet-to-exist information that he wanted.

4 The whole point of the due diligence period was to allow Nassiri and his team to "take
5 note of" and "evaluate" any matters that may have affected Nassiri's *individual* decision to
6 accept the Settlement Agreement. This was an arm's-length transaction. The State didn't know
7 Nassiri's individual concerns. If Nassiri wanted to "take note of" the State's future
8 improvement plans, he could have looked; or asked. He did neither. Now he wants to say that
9 his failure to do so was a "mistake" justifying rescission of a 10-year-old land deal, and that it's
10 all the State's fault. It wasn't.

11 (3) *Nassiri confuses the difference between inquiry notice and non-*
12 *disclosure.*

13 Nassiri's argument that the State caused his mistake by failing to disclose publicly-
14 available information fails under *Land Baron*. In that case, the Nevada Supreme Court rejected
15 Land Baron's similar argument that Bonnie Springs withheld the facts surrounding access and
16 water problems because "those defects... were *public knowledge*, and were available to anyone
17 upon inquiry." *Land Baron*, 356 P.3d at 518 (emphasis added).

18 In his opposition, Nassiri claims that the State is trying to "rehash whether Plaintiffs
19 were on notice of the publicly available 2004 Environmental Assessment in the context of
20 mistake." Opps., 17:9-10. He contends that inquiry notice and constructive notice do not
21 preclude a mistake. Opps., 17:12-14, citing *Coleman Holdings Ltd. P'ship v. Eklund*, WL
22 428567 (Nev. 2015). The State never said that they did. Rather, the State's argument is that
23 Nassiri cannot shift the risk of his mistake to the State by claiming that the State failed to
24 disclose publicly-available information. This is the precise holding from *Land Baron*. And
25 Nassiri's irrelevant argument does not change that.
26
27
28

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

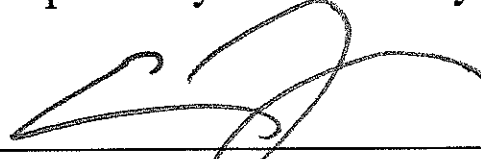
III.

CONCLUSION

When Nassiri's opposition is stripped of its ad hominem attacks and conclusory assertions, it establishes that his mistake relates to a future contingency—a mistaken belief about the occurrence or non-occurrence of a future event (i.e., whether or not the State's intent to build a flyover would ever come to fruition). This is not the type of mistake that could ever support rescission. Even if it was, Nassiri's rescission claim would separately fail either because his mistake did not relate to a *material* fact that existed at the time he executed the 2005 Settlement Agreement or because he bore the risk of his mistake under *Land Baron*. The State's motion should, therefore, be granted.

DATED this 12 day of November, 2015.

Respectfully submitted by:



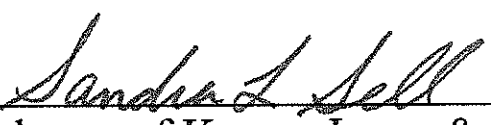
William L. Coulthard, Esq. (#3927)
Eric M. Pepperman, Esq. (#11679)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

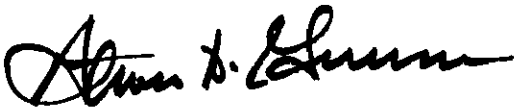
Adam Paul Laxalt, Esq. (#12426)
Dennis V. Gallagher, Esq. (#955)
Amanda B. Kern, Esq. (#9218)
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for the State

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

Certificate of Service

I hereby certify that on the 12th day of November, 2015, I served a true and correct copy of the above and foregoing **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S RESCISSION CLAIM BASED ON THE COURT'S 8/29/15 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT** to all parties, via the Court's e-filing service.


An employee of Kemp, Jones & Coulthard, LLP


CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

FRED NASSIRI, NASSIRI LIVING)
TRUST,)

CASE NO. A-12-672841

Plaintiffs,)

DEPT. NO. XXVI

vs.)

STATE OF NEVADA,)

Transcript of Proceedings

Defendant.)

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

TUESDAY, NOVEMBER 17, 2015

APPEARANCES:

For the Plaintiffs:

DYLAN T. CICILIANO, ESQ.
ERIC R. OLSEN, ESQ.

For the Defendant:

WILLIAM L. COULTHARD, ESQ.
ERIC PEPPERMAN, ESQ.
AMANDA B. KERN, ESQ.

RECORDED BY:

KERRY ESPARZA, DISTRICT COURT

TRANSCRIBED BY:

KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 TUESDAY, NOVEMBER 17, 2015 AT 10:09 A.M.

2

3 MR. OLSEN: Good morning, Your Honor. Eric Olsen
4 and Dylan Ciciliano for the plaintiffs.

5 MR. COULTHARD: Good morning, Your Honor. Bill
6 Coulthard and Eric Pepperman, Kemp, Jones, and Coulthard,
7 appearing on behalf of the State. Also present is Amanda
8 Kern from the Attorney General's Office, co-counsel for the
9 State, and Mr. Ed Miranda is an NDOT representative is also
10 in court today, Your Honor.

11 THE COURT: Okay. All right. So we have two
12 motions, one is a Motion to Strike on an Order Shortening
13 Time, which is moving to strike the damages, I guess, for
14 lack of a better term. And I -- so I don't know if Mr.
15 Ciciliano -- is that -- you're arguing that one?

16 MR. CICILIANO: That is, Your Honor.

17 THE COURT: Okay. Okay. And that's plaintiff's
18 expert, Keith Harper.

19 MR. CICILIANO: Good morning, Your Honor. I
20 think, -- and we'll make this short. Trial has already
21 commenced in this case. We already have had a well-defined
22 dispositive motion deadline. The State has filed three and
23 now a fourth dispositive motion. We've heard three of
24 them. We'll hear another one. We've also had a motions in
25 limine deadline. There's currently, I think, seven or

1 eight motions in limine pending that we need to reschedule.

2 But what's filed here is either a dispositive
3 motion -- another dispositive motion or another motion in
4 limine. One is to exclude testimony of experts, which
5 traditionally, courts hold our motions in limine. And the
6 second's to exclude evidence of damages, which, then again,
7 is a Motion for Summary Judgement and really there's no
8 dispute these are after the motion in limine deadline.
9 It's after the dispositive motion deadline.

10 And in April, all the parties said look, we're
11 ready for trial, and then NDOT comes forward and says we
12 want a bifurcated trial so that we can get findings of
13 facts and seek summary judgement again, and the Court gives
14 it, and now that it's time to go to trial, NDOT says:
15 Wait, we don't really want to hear this case. We don't
16 want to go to trial. We want more time.

17 And I think last hearing it was: Let's have this
18 trial now in the third quarter of '16, and Mr. Coulthard, I
19 think, said: Look, we have numerous more motions that we
20 want to file in this case to sort of get rid of things.
21 But the problem is, is there are these well-defined
22 deadlines. And those deadlines have passed, and, you know,
23 at some point it has to stop. At some point we have to
24 say: Look, here's what the deadlines are, and they're
25 done.

1 And our concern here is that every month, or every
2 two weeks, we're going to get a new motion and the State,
3 arguably, has an endless war chest that they can pound away
4 at these motions and hope to chip away and get some
5 grounds, but it prejudices Mr. Nassiri who is an individual
6 party. It burdens the Court's calendar, who has to hear
7 these same things over again, and so really what we need to
8 do is we need to look at the already pending motions in
9 limine. We need to say: Look, let's put these on
10 calendar, let's get them finished.

11 And, in fact, it was the State before Mr.
12 Nassiri's -- through counsel, said: Look, let's finish
13 briefing these motions in limine and get them done. And
14 NDOT said: We're not going to do it and go head and file a
15 motion to have your motion in limine granted for non-
16 opposition and we'll refute it because we shouldn't decide
17 these until after.

18 So now that it's after, they want to file new
19 motions and want to do new stuff, when really what we need
20 to do is just re-notice the other motions. We need to get
21 oppositions, replies on file and just proceed from there.

22 And really, NDOT, you know, it sort of half-
23 heartedly says: Look, the motion in limine dead -- this is
24 a motion in limine. It's not a dispositive motion, but
25 we've already briefed this in our motion in limine. We've

1 already raised it in our motions -- or our dispositive
2 motions. And so really, the question is: Well, what are
3 they seeking? Are just going to continue to sort of mull
4 this over, let NDOT reload and come back in here and have
5 these hearings, these two-hour marathon hearings, you know,
6 consecutively and continuously?

7 And the problem is, NDOT didn't ask permission to
8 file this new dispositive motion. They didn't ask
9 permission to extend the motion in limine deadline. And
10 now they're sort of saying: Well, Your Honor, because the
11 court date's moved out, everything's automatically moved
12 out. That's simply not true, and as Your Honor knows,
13 every one of your cases is queued on a five-week stack.
14 Inevitably, those cases get moved to new stacks, but that
15 doesn't mean that all the deadlines somehow just start
16 flying forward and continuing to move forward.

17 And, so, if we look at the standard for actually
18 extending these deadlines, it's excusable neglect. And
19 NDOT has no excusable neglect here and halfheartedly in the
20 motion they say: Well, we didn't really know any of this
21 stuff until the end of discovery.

22 Well they did. They -- during depositions they
23 asked Mr. Nassiri, and Mr. Olsen responded: This is our
24 damages. We're using Mr. Harper for both our contract
25 damages and our condemnation damages. At that time, NDOT

1 could have brought their motion. They simply just chose
2 not to. And that's not excusable neglect. And so just
3 because we have more time shouldn't mean that we have to
4 come to court once a week to argue things that could have
5 been raised before that are just repetitive and are really
6 just seeking to delay this even further.

7 And so, really, we need to head this off at the
8 pass. The Motion to Strike should be granted or,
9 alternatively, the Court needs to set guidelines and say:
10 Look, we're not hearing motions every week. We need to --
11 you know, we're ready for trial. You said you were ready
12 for trial. The only reason this is being delayed is
13 because of the calendar of the parties in the Court, and
14 we'll see you in April, or, I guess, June of next year.

15 THE COURT: Okay. Thank you.

16 MR. COULTHARD: Your Honor, I think -- I do take
17 some offense with the claim that the State is just churning
18 this action. In fact. Mr. Nassiri's a multi-millionaire
19 who connect -- who commenced this action against the State
20 of Nevada and is suing the State, depending on which damage
21 calculation or rescission calculation you look at, he's
22 suing the State for \$40,000,000. So, that's the context of
23 this litigation.

24 But we can't just consider this Motion to Strike
25 in a vacuum, Your Honor. I think you have to look at a

1 little bit of the history of this case and how we got here.
2 This case originally went -- we were set for a jury trial
3 in April -- April 27th, 2015. That was from a June, I
4 believe, 2004 trial setting. Motion in limines were filed.
5 The deadline was March 20th, 2015. And then after that
6 motion in limine filing deadline, we had hearings on
7 several Motions for Partial Summary Judgement on various
8 claims.

9 Importantly, as part of those Motion for Summary
10 judgement, after the motion in limines were filed, Your
11 Honor heard argument on the inverse condemnation claim, and
12 granted the State's Motion for Summary Judgement as to the
13 inverse condemnation claim. And that's important because
14 Mr. Harper, their damage expert, opined in his expert
15 report as an appraiser only as to the inverse condemnation
16 claim. And he confirmed that in his deposition that his
17 analysis of damages was based upon just compensation for
18 the inverse condemnation that was subsequent to our initial
19 filing of the Harper brief was dismissed.

20 Your Honor, following the granting of the Motion
21 for Summary Judgements, we came before you for a trial
22 setting. We couldn't go forward with the three-week jury
23 trial, so Your Honor allowed this case to be bifurcated
24 from the jury portion to the non-jury, equitable portion
25 and allowed the State to move forward with on the limited

1 issue of the statute of limitations. As part of that
2 order, Your Honor, you ordered all of us, the parties, to
3 meet and confer as to motion in limines. And only one of
4 the motion in limines, that motion dealing with the Motion
5 to Exclude John Terry [phonetic] as the PMK witness for the
6 State. Only that motion was relevant to the jury -- to the
7 non-jury portion of the case.

8 So the parties met and conferred and the parties
9 agreed that all of the motion in limines that had been
10 drafted and filed would be vacated and would be taken off
11 calendar. Importantly, Your Honor, they claimed prejudice
12 for having to oppose this Harper motion. Well, Mr. Nassiri
13 and his counsel never even responded or opposed the initial
14 Harper Motion in Limine, so where is the prejudice? It's
15 not as though they've opposed and now have to re-oppose.
16 They've never opposed it. Those were taken off calendar
17 and they haven't been responded to by Mr. Nassiri.

18 We move forward with the May trial, following the
19 trial, Your Honor entered its findings and conclusions in
20 late August, August 29th, and since that time, we're here
21 today on a renewed Motion for Summary Judgement based upon
22 the Court's findings and conclusions. That is a new
23 finding and conclusion that has changed the landscape and
24 supports our Motion for Summary Judgement.

25 Your Honor, our Motion to Exclude Damages, as to

1 Mr. Harper, was initially filed and then the landscapes
2 changed and we have brought two additional aspects to that
3 motion. The first is a really -- not a motion in limine
4 aimed at evidence, it's really a Motion for Sanctions to
5 Strike their Damage Claim, based upon Mr. Nassiri's failure
6 to comply with 16.1 and failure to timely disclose these.
7 So it's not really an evidentiary motion, it's a Motion to
8 Strike based upon sanctions, NRCP 37(c) is that motion

9 Additionally, the new aspect of the motion deals
10 with Mr. Harper's, again, subsequent to the filing of what
11 our initial motion, you dismissed the inverse condemnation.
12 That could not have been filed. That aspect of our motion
13 could not have been filed by the original March 20th
14 deadline, Your Honor, because you hadn't made that ruling
15 yet.

16 So, we now have a jury trial set for June of 2016.
17 That is eight months away, Your Honor. And I perceived
18 additional litigation in this case during the next eight
19 months and there is no bar by Your Honor that says we can't
20 come to court on issues that we believe are ripe for
21 adjudication.

22 So, Your Honor, our position is, I think that this
23 is really a Motion for Sanctions, but even if you determine
24 it is a motion in limine, Your Honor, under the local
25 rules, the EDCR 2.47, provides that all motion in limine

1 should be heard 14 days before trial. The -- we learned
2 some things in -- that we had not previously learned in the
3 original one-week trial in the equitable claims that --
4 evidentiary issues that I believe that the purpose of
5 motion in limines is manifest and we should -- when you set
6 your new jury trial setting, I would, if it comes out like
7 the last one did, then it would also have a deadline for
8 motion in limines, that those limine motions would be heard
9 14 days before trial, as contemplated under EDCR 2.47.

10 Your Honor, I think we -- even if you turn this
11 most recent motion, a motion in limine, I think you -- we
12 cited some of the benefits of a motion in limine in our
13 moving papers and I would refer you to page 6 of our
14 response. And hopefully, Your Honor, you have received and
15 our Opposition --

16 THE COURT: Yes.

17 MR. COULTHARD: -- to the Motion to Strike. I know
18 it was brought on in OST, we I didn't -- you haven't had it
19 very long, but we hopefully did get it across your desk,
20 Your Honor. But the purpose of motion in limines is, I
21 think, important for purposes of the upcoming jury trial.
22 I think those purposes warrant this Court still allowing
23 the parties to bring motion in limines. And the purposes
24 are outlined in the Nevada Practice Manual, and they
25 include:

1 To avoid bringing prejudicial matters before the
2 jury that may result in a mistrial.

3 Another purpose is to: Promote a smooth and
4 efficient trial by reducing interruptions for arguments
5 about complex evidentiary issues, which may require
6 careful consideration.

7 Another purpose is to: Provide for a better
8 informed decision on the evidence admissibility through
9 written points in authorities and fuller arguments
10 from counsel.

11 And finally: To increase the likelihood of
12 settlement by giving the parties advanced evidentiary
13 rulings.

14 Your Honor, I would submit that all of those bases
15 for motion in limines for the upcoming June 2016 trial
16 still exist. And to tie the parties hands and say you
17 can't bring issues before this Court based upon a March
18 2015 motion in limine deadline as to a bifurcated trial
19 where all the motions have been vacated, where they haven't
20 been fully responded to, unfairly ties these parties' hands
21 to present important evidentiary issues to this Court,
22 pretrial, so we understand going into this jury trial, what
23 the issues are, how the issues will be framed, and how to
24 properly defend against evidence, and to avoid the
25 potential for a mistrial in the jury trial, Your Honor.

1 So I find it ironic, given the fact that our
2 Motion to Strike Mr. Harper and their damage calculations
3 are based upon their failures to timely produce this
4 material, their failures to properly disclose their experts
5 opinions, and we get sandbagged during the last day of
6 discovery when he finally makes himself available for
7 deposition and says: Oops, I made a mistake in my report
8 and now I'm going to tell you about it in deposition the
9 last day, and then they can come in and say we're untimely
10 and this shouldn't be heard on the merits.

11 I would submit, Your Honor, that this Motion to
12 Strike is an effort by Mr. Nassiri to avoid the very real
13 prejudice that they have created because of their dilatory
14 actions. And I would encourage Your Honor to hear that
15 motion on its merits and then make a fully informed
16 decision.

17 THE COURT: Okay. Thanks.

18 MR. COULTHARD: Your Honor, if you have any
19 questions, I'm happy to answer them, but --

20 THE COURT: Thank you.

21 MR. COULTHARD: -- I thank you for your time.

22 THE COURT: Mr. Ciciliano.

23 MR. CICILIANO: Just real briefly, Your Honor.
24 You know, there's a couple things here. Contract damages
25 have never been an issue that have recently arisen. For

1 whatever reasons, contract claims have been around, you had
2 to have damages. They've known about this issue and they
3 simply sat on it. The same thing with Mr. Harper's
4 deposition. We're being told, well on the last possible
5 day for him to be deposed, you know, we finally find out
6 about this. Well, ironically, their expert was deposed two
7 weeks later. Mr. Nassiri was deposed later. There were
8 some things that happened in this litigation and NDOT
9 wasn't diligent in conducting discovery. We can brief all
10 that. The motions in limine, previously when they said,
11 look, they weren't responded to, I was shocked by that, and
12 I actually had to go back and check our files because they
13 were fully briefed and it was at NDOT's request that they
14 were taken off.

15 And, again, we have this rescission claim with:
16 You know, well we really just did this rescission because
17 no one really had time to do the full trial. If I recall,
18 however, there was an actual Motion to Bifurcate and NDOT
19 was, you know, rallying the battle cry: We need to have
20 this now because we have preferential trial setting, even
21 though we've dismissed the condemnation action.

22 And so really, our point is: It has to stop. You
23 know, you can't use the rules to your benefit and say:
24 Look, we want to take this out to the third quarter, as Mr.
25 Coulthard said today, so we can file a writ and claim we

1 don't have an adequate, speedy, remedy of law, and so we
2 can file more motions to try to chip more away. We need to
3 set this in stone, get ready for trial, and just move
4 forward.

5 THE COURT: Okay. Thanks. Well, at this point in
6 time, I do think we need to hear this motion on the merits.
7 I do think that there are portions of it that, I
8 understand, were probably not addressed in previous motions
9 because the original motion was, I believe, filed prior to
10 the dismissal and the inverse condemnation, and so we have
11 some issues, with respect to the damage calculations and
12 what they should be on, given where we are with the case
13 now. We need to know what those are, so we can set our
14 rules and we know what we're all playing with going
15 forward.

16 The -- typically in our orders request that
17 motions in limine be filed eight weeks prior to the trial
18 and heard no later than a week prior to trial or the first
19 day of the stack. So we'll send you an order setting a
20 jury trial in this one for that May stack, so there will
21 probably need to be some motions filed, or renewed, that
22 were previously filed, based on where we are now because
23 everything was filed with the previous posture of the case.

24 So I'm going to deny this motion. We'll hear the
25 Motion to Strike on its merits. And then we probably -- or

1 do need to have a discussion about where we are going in
2 preparation for trial because it was never my intention to
3 reopen discovery. I don't think that was ever anybody's
4 intention, but we do need to have our pretrial process
5 established so we know where we are going and what the plan
6 is going to be, if we we're going to get things heard and
7 how we're going to get ready for the final trial. So if
8 you have some proposals on that, Mr. Ciciliano, I'd be
9 happy to hear it.

10 MR. CICILIANO: I was just going to ask, Your
11 Honor, since this motion in limine, I think, as NDOT
12 recognizes, was somewhat briefed in their other motion in
13 limine, we have all these other motions in limine, we might
14 as well just consolidate this one with the others. Set the
15 same briefing schedule. I think Oppositions are due the
16 28th. We've had them for, I don't know, a year, if they're
17 -- ours are all briefed and ready to go. We should just
18 keep that same schedule, make the Oppositions due the same
19 time this one's due, make the Replies due, and then have
20 the same hearing date. I don't know that we need to re-
21 notice them.

22 THE COURT: Are there other motions that we need
23 to -- because right now, the only thing that is on calendar
24 for December 8th would be the Motion to Exclude Damage
25 Evidence related to breach of contract claims and Keith

1 Harper's report. That's the only thing that's calendared.
2 We don't have any other motions on calendar. So if you
3 want to set up some sort of plan or a schedule to hear all
4 of this on a certain date and, like, pick a day where all
5 of the motions can be heard, because it would really take a
6 day. We could do that. So if counsel wants to discuss
7 moving everything to a particular time and hearing
8 everything in, you know, sort of in an orderly fashion so
9 we can have an adequate amount of time to get everything
10 fully briefed and be prepared for a hearing, then --

11 MR. CICILIANO: Because -- and I think there's
12 five motions that are -- relate to experts, so might as
13 well handle the experts all at the same time.

14 THE COURT: Okay. Thank you.

15 MR. COULTHARD: Your Honor, those have been
16 vacated. They're not fully briefed. I'd like to go
17 forward with the motion, the renewed motion as to Harper.
18 If they -- and recognizing their time has now been cut
19 short if they haven't started an Opposition, I'm okay with
20 kicking Mr. Harper's -- the hearing on the 8th, out a week
21 or two, or into the first of January, but I don't -- I
22 think I -- we want to revisit -- I know we haven't filed
23 Replies. I'm -- I don't believe all the motions have been
24 fully briefed. Frankly, we haven't even looked at those
25 for a while. I hate to lump those together. I'd like to

1 go forward with Mr. Harper's now. It's properly noticed.
2 It's on calendar. If they need a little more time, we can
3 kick it even a week or 10 days, at the Court's convenience.

4 I know, actually, the 8th is right around the
5 corner, so -- but I don't want to lump everything together
6 and then have an omnibus motion limine hearing on that.
7 Frankly, it would probably make some sense for us to meet
8 and confer. We may want to rework the motions that have
9 been filed if they need updating. It's been awhile since
10 we've looked at them, Your Honor

11 THE COURT: Okay. All right. Well, with respect
12 to this particular motion, Mr. -- and with respect to Mr.
13 Harper, I do think it's a good plan, Mr. Ciciliano, to have
14 a plan and to know what motions are going to be re-noticed,
15 if there should be a meet and confer, and we can go
16 forward, then, with a -- like, as I said, I think we
17 probably need a day or at least half a day to -- of just
18 your own, not with other hearings pending, like the people
19 who are waiting for their pretrial for the next trial out
20 in the hallway right now, so you'd have a chance to do it.

21 So, I guess that's -- my question is, if, with
22 respect to this particular motion, if we go forward on
23 this, is this the request of the State, do you want to move
24 it a week in order to do that and then in the meantime you
25 could discuss with counsel and maybe you can all decide

1 that no, we want to move all of them, or no, we'll go
2 forward on this one and we'll --

3 MR. CICILIANO: Yeah, Your Honor, I think in light
4 -- I think that we want to discuss it with counsel, and it
5 has, you know, the time to respond. It's weird because
6 there is another argument or another motion in limine on
7 Harper, which is heavily referenced and so we really have
8 to file an Opposition to that one at the same time and
9 there's just -- there's a lot of moving parts, especially
10 dealing with this one. These are the two most substantive
11 motions limine, so we'd like the opportunity to confer with
12 opposing counsel and try to see whether or not we can just
13 hear a group of them.

14 THE COURT: Okay.

15 MR. COULTHARD: We -- I think what our intent was
16 when we did this is that the -- we updated the Harper
17 motion. I would withdraw it, not refile my original Harper
18 motion.

19 THE COURT: Correct.

20 MR. COULTHARD: It's the -- the one that's before
21 the --

22 THE COURT: So I think we need to discuss those
23 issues, but we move this to December 15th at -- we'll put
24 this at 10:30 on December 15th?

25 THE CLERK: Okay.

1 MR. CICILIANO: Would -- Your Honor, and here's
2 the problem, too. If they're withdrawing it, we need a
3 motion or a meet an confer, because there is -- there's a
4 less -- there's a less drastic solution here that I think -
5 - and so that's the weird thing. I mean, if we're --

6 THE COURT: Right. So we're giving you an
7 additional week to meet and confer on this particular
8 motion. But also, with respect to, you know, any other
9 motions that you are interested in refiling, I'm not saying
10 you have to have it all done at the same time, I'm just
11 saying we'll move this hearing one week. It may be that,
12 as you discuss all of these motions, you can come to some
13 sort of agreement on all the motions as to when you want
14 them heard, but right now they're telling me no, we want
15 this one heard as it's currently scheduled, but we can
16 either move it to the 15th or we can move it after the first
17 of the year. That's just a question of which is -- right
18 now, moving it a week is -- we can -- you know, we can
19 accommodate that, it's just a question of if you're going
20 to want more time than that. Then we lose some time around
21 the holidays with -- for hearing calendars being dark, and,
22 you know, we'd be looking at the 5th of January.

23 MR. COULTHARD: 15th works for the State, Your
24 Honor.

25 THE COURT: So it's either December 15th or January

1 5th would be the dates that we have open. So --

2 MR. CICILIANO: I have an all-day deposition that
3 day, Your Honor. I mean, that's --

4 MR. OLSEN: I think we both want to be available,
5 Your Honor, so that particular day doesn't work. That
6 timeframe -- sometime that week might work.

7 THE COURT: Well, that's -- we've now gone to one
8 calendar of civil and one calendar of probate, so that's
9 the calendar date that we have on the 15th, so the next
10 calendar date is the 5th of January.

11 MR. OLSEN: I don't -- that's fine with us.
12 That'd be better for us if --

13 MR. COULTHARD: That's acceptable to us.

14 THE COURT: Okay. So January 5th?

15 MR. OLSEN: Thank you, Your Honor.

16 THE COURT: And I'm not suggesting that you have
17 to have everything re-noticed and ready for that date.
18 That's just -- this one is all we're moving. And because
19 if you're going to set a bunch of more hearings, we'll
20 probably, as I said, need to give you a specific date when
21 we can hear them all.

22 MR. OLSEN: Right. We'll just -- we'll take the
23 opportunity to talk, but we'll plan on just that one
24 motion.

25 THE COURT: Okay.

1 MR. PEPPERMAN: And, Your Honor, on that note, if
2 I could request that there's a -- given the 5th is a long
3 way away, we get the Opposition in a shorter amount of
4 time. I mean, I'm happy to give them more than 10 days
5 from today, or something, but --

6 THE COURT: Right.

7 MR. PEPPERMAN: -- if the Reply is going to be due
8 the week before, that the week between Christmas and New
9 Year's, if I could, you know, have some time before
10 Christmas to work on it, I'd appreciate that.

11 MR. CICILIANO: And I think we'll work that out
12 because I -- I mean, we don't need more than 10 days from
13 today, I don't think.

14 THE COURT: Okay. All right. But I think that it
15 is clear -- I think Mr. Coulthard indicates that they're
16 not refiling the original Harper motion.

17 MR. CICILIANO: Well that's already briefed, so --

18 THE COURT: So it's just a question of how you
19 need to rework your Opposition --

20 MR. COULTHARD: Right.

21 THE COURT: -- the way the Harper motion is today.
22 Okay. All right.

23 MR. COULTHARD: Thank you, Your Honor.

24 THE COURT: Okay. So you can work that amongst
25 yourself what your schedule is going to be and then we'll

1 proceed then on that hearing on that time. Okay.

2 MR. COULTHARD: We'll prepare a draft order on
3 that. Thank you, Your Honor.

4 THE COURT: Okay. So then on -- next item is
5 Motion for summary Judgement on Rescission.

6 MR. PEPPERMAN: Yes, Your Honor. That's me.

7 Your Honor, this is the State's Motion for Summary
8 Judgement on the rescission claim only. Not asking you to
9 dismiss the whole case today, just the rescission claim,
10 and it's based on the Court's trial ruling related to the
11 statute of limitations, the bench trial. And, Judge, I
12 just want to reiterate that the hearing isn't about the
13 statute of limitations issue. The State, I think,
14 respectfully disagrees with the Court's decision on that,
15 but I think that's a disagreement for another day. We're
16 not here to dispute that. Today the Court's trial ruling
17 is binding on both the parties and the State is moving for
18 summary judgement based on that ruling.

19 This is not a new procedure. This is the
20 procedure that was approved in the *Watanabe Shuffle Master*
21 case. It's natural, when there's a limited bench trial on
22 a narrow issue, like in this case, it's highly possible
23 that the findings and conclusions, with respect to that
24 narrow issue, might also have a consequential effect on
25 other issues in the case. And that is exactly what

1 happened here. The findings and conclusions in the Court's
2 trial ruling may demonstrate or determine that in a series,
3 rescission claim was timely, but when they're applied to
4 other issues in the case, related to as rescission claim,
5 they require summary judgement for reasons that have
6 nothing to do with the statute of limitations.

7 And let me clarify the issue because I do believe
8 that Nassiri's Opposition confused it a little bit. The
9 State maintains that Nassiri was neither mistaken about the
10 State's flyover plans in 2005, nor could have been, given
11 that they're publicly disclosed in compliance with federal
12 law. But the issue today isn't about whether he made a
13 mistake. We're not disputing that at this point. It's not
14 relevant to this hearing or motion. For purposes of this
15 motion, assume that he did make a mistake and that his
16 mistake was being unaware that the State planned to later
17 build a flyover. That's the -- what's referenced in the
18 trial ruling and we're using what the trial ruling says to
19 apply it to other legal issues with the claim. So, assume
20 for the purposes of this motion that he made the mistake,
21 that he was unaware that the State planned to build a
22 flyover -- later build a flyover in 2005 at the time he
23 agreed to the settlement agreement.

24 The question today is whether his mistake supports
25 rescission of the agreement under Nevada law and it

1 doesn't. It doesn't for two reasons under the Court's
2 trial rule. First, it relates to a future contingency.
3 Now, Nevada follows the restatement of second on contracts
4 and the restatement of contracts that sets forth the rule
5 on a unilateral mistake. We all agree that the restatement
6 rules apply, that that's what Nevada has adopted, and
7 that's what Nevada law -- what Nevada law is. And what the
8 restatement says is that:

9 To justify rescission, the mistake must relate to
10 the existence or non-existence of material facts as
11 they exist at the time of contracting.

12 That is the rule. If it doesn't relate to an
13 existence or non-existence of a material fact at the time
14 of contracting, it does not support rescission. In other
15 words, the mistake cannot be based on a future contingency,
16 something that's going to happen in the future. And there
17 was some questions about what a future contingency really
18 means in the Opposition, and I think we addressed it in our
19 Reply that a future contingency, what it means is it's a
20 possibility. It's a future possibility. Contingency and
21 possibility are synonyms. It's something that might or
22 might not happen in the future. That's what a contingency
23 is. That's what a possibility is. It's something that may
24 happen. It's something that may not happen. We don't
25 know. That's why it's a contingency.

1 Again, Your Honor, there is no dispute on this
2 law. There's no dispute what -- that a future contingency
3 is a possibility, that it's something that might or might
4 not happen in the future, and that it doesn't justify
5 rescission. Nassiri doesn't argue that it does. He
6 doesn't say: No, a mistake can be based on a future
7 contingency and still support rescission. He doesn't make
8 that argument. His only argument in opposition is that his
9 mistake of not being aware that the State planned to later
10 build a flyover does not relate to a future contingency.
11 And I'll quote his Opposition, his argument. This is his
12 words:

13 At the time of the settlement agreement, the
14 flyover was more than a contingency that might or might
15 not happen in the future.

16 That's what he's saying. He's saying --

17 THE COURT: Isn't that what the State said? Well,
18 we were going to build it, we just needed to get the
19 funding and so it was -- we didn't know if we were going to
20 build it because we had to get the funding, so it was
21 dependent on when we get the funding. When we got the
22 funding, then it was dependent on who we hired to design it
23 and how they designed it, but we were going to build it.

24 MR. PEPPERMAN: Well, the State has always said --

25 THE COURT: So how is that a contingency?

1 MR. PEPPERMAN: -- that we planned to build it.
2 That we intended to build it. That we wanted to build it.

3 THE COURT: Okay.

4 MR. PEPPERMAN: But whether we would actually
5 build it was not a certainty in 2005. It wasn't a
6 certainty until we actually built it. What we were going
7 to build wasn't a certainty. When was it going to be
8 built? All those things were unknowns and it was always
9 possible that no matter how bad the State wanted to build
10 it, no matter how well their plans were laid out for -- to
11 eventually build it, plans change. That's what a
12 contingency is. It's a possibility. It's possible that
13 these plans will go forward. It's possible that the plans
14 won't go forward. It's possible that the plans will be
15 changed. That's why it's a future contingency.

16 And, Judge, you don't have to take my word for it.
17 You can take your own word for it, because the question in
18 this case is -- what it boils down to is whether the
19 flyover was something that might or might not happen in the
20 future. A contingency is something that might not -- might
21 or might not happen in the future. So that's the question:
22 Was the flyover something that might or might not happen in
23 the future? If it was, then it's a future contingency and
24 the claim fails. It's that simple

25 And so you don't need to take my word for it that

1 it was a future contingency. You just need to look at your
2 own trial ruling and what your trial ruling says is, quote:

3 Prior to 2010, NDOT might have chosen to not build
4 the flyover at all. If NDOT had not built the
5 flyover, then Mr. Nassiri could not have rescinded the
6 settlement agreement, therefore Mr. Nassiri cannot
7 rescind the settlement agreement as a matter of law
8 until it was reasonably certain that the flyover would
9 be built.

10 And that wasn't until 2010. Now you found that to
11 say: Hey, how could he have been on notice of this
12 mistake? How could he have -- his mistake been untimely
13 when he could have even have filed his cause of action
14 until 2010? Because the State could have just decided:
15 Hey, we're not going to build this flyover.

16 And -- so that's -- your words quoting page 12,
17 line 26 and 27 of your trial ruling:

18 Prior to 2010, NDOT might have chosen to not build
19 the flyover at all.

20 And you're absolutely right because no matter how
21 badly the State intended to build it, or how strong those
22 intentions were, or how -- you know, their -- how
23 voluminous their plans were, or any of that, the -- it
24 always could have been taken off. It always could have
25 fallen through. It could have never been built. They

1 could have decided against it. They could have changed
2 their mind. The flyover, if you recall, was always
3 contingent on traffic demands and funding. Funding could
4 have never been made available. Traffic demand warrants
5 could have never justified building the flyover. They
6 could have prioritized other projects in the city with the
7 limited budget. A number of things could have happened and
8 the State might not have built the flyover, which is
9 exactly what you recommend -- what you ruled.

10 And that fact, Your trial ruling saying that the
11 State might not have built it and it might have chosen not
12 to is exactly what makes it a future contingency. It might
13 have happened or it might not have happened. Yes it did
14 happen, but that is beside the point because it didn't
15 happen until 2010. The point in 2005 is that it was a
16 future contingency and what the law says is the mistake
17 that you make at the time of contracting cannot relate to a
18 future contingency. And that's exactly what Mr. Nassiri's
19 mistake relates to. It relates to --

20 THE COURT: I thought that the -- that what the
21 problem was here was that the State was in sole possession
22 of certain facts that they failed to disclose. And it
23 wasn't really his mistake, it was they didn't tell him
24 something.

25 MR. PEPPERMAN: Well that --

1 THE COURT: They sold him the property not telling
2 him that it was going to be altered in a significant
3 fashion.

4 MR. PEPPERMAN: And -- well, Judge, and that's
5 what I'm saying. This -- we're talking about a rescission
6 claim.

7 THE COURT: All right.

8 MR. PEPPERMAN: And his rescission claim is based
9 on a mistake. He asserted misrepresentation claims that we
10 had misrepresented and not told him something, and those
11 are the questions of fact, again, I'm not conceding that I
12 agree with the ruling, but in your summary judgement order
13 on the breach of contract claim, you said: There are
14 questions of fact regarding whether the State knew
15 something that he didn't, whether he would have paid less
16 than what he agreed to pay, and those are the questions of
17 fact, and they may relate to the breach of contract claim.
18 But they don't relate to the mistake based rescission
19 claim.

20 THE COURT: Okay.

21 MR. PEPPERMAN: All we're looking at is the
22 mistake. The mistake is: I didn't know you were going to
23 later build this. And that mistake relates to a future
24 contingency because the State might not have built it.

25 THE COURT: Okay.

1 MR. PEPPERMAN: That's plain and simple, the
2 bottom line. That's it. And that's what all the law in
3 front of you says.

4 And I'll just point -- direct your attention to a
5 couple of the many cases that we cited on this point. The
6 first one, and these are all restatement cases. States
7 that follow the restatement of contracts and the rescission
8 rules. *Ryan v. Ryan*, the West Virginia Supreme Court: A
9 contract may not be reformed or rescinded --

10 THE COURT: Can we move on? I have people waiting
11 for a pretrial conference. Can we just -- it's in the
12 brief. We're good to move on.

13 MR. PEPPERMAN: Fair enough. That's the issue on
14 the mistake. It doesn't relate to a future contingency.
15 It's over right there.

16 The other problem under the trial ruling is, by
17 saying he can't file his rescission claim until 2010 when
18 the flyover was actually built because the State might not
19 have ever built it, and you held that as a matter of law,
20 can't build it unless and until the flyover was actually
21 designed and built in 2010. If he couldn't file his
22 mistake based claim until 2010, then his mistake didn't
23 exist until 2010. It's the same thing in a personal injury
24 context. If I told you that you couldn't file a personal
25 injury claim until March 12th, 2010, the necessary

1 implication is, is that the injury didn't occur until March
2 12th, 2010. There's no other reason why you wouldn't be
3 able to file your claim. It's the right to relief didn't
4 exist. It's the same thing as true here.

5 Just briefly, Nassiri addresses the materiality of
6 the claim. He says: Oh, well we made the mistake. It
7 just wasn't material until the flyover built. It's the
8 same difference, Your Honor. The mistake has to relate to
9 a material fact. It's not material at the time of the
10 contract. It doesn't support rescission. So that's two
11 reasons, two separate reasons under the Court's trial
12 ruling that require dismissal.

13 The last reason is based on the Nevada Supreme
14 Court's recent decision of *Land Baron*. I won't waste the
15 Court's time recounting the facts, because I believe that
16 you were at least a layer on that case and are aware of the
17 facts and circumstances, although the mistake issues were
18 before you took over. But, basically *Land Baron* says that
19 in an arm's length real estate transaction, the parties are
20 responsible for addressing whatever future contingencies
21 that they feel may be -- they may be concerned about.
22 Okay? And if you don't address that, then you bear the
23 risk of that mistake. You can bring it up. Forget about
24 the flyover in this case. If he -- if Nassiri was
25 concerned about how something built near his property in

1 the public right of way was going to affect his property,
2 he could have raised it at the time of the contract. He
3 could have said: Hey, I want to make sure that I'm
4 protected, that even if it's not a flyover, you're not
5 going to build some 100-foot wall next to my property.
6 Anything. He didn't do any of that. He didn't address it,
7 and when it happened -- when something happens in the
8 future that he doesn't like, that he doesn't address, what
9 the law says, what *Land Baron* says is you can't claim that
10 that was a mistake. Because even if it was a mistake, you
11 bore the risk of it by failing to address it in the
12 contract.

13 Nassiri didn't address any construction near his
14 property, flyover, anything. And he -- as a result, and he
15 could have, and he not only didn't, he took the property
16 as-is, which we cite to the case law in the Reply that
17 says, hey, that's as big an indicator as you get that you
18 bear the risk of your mistakes, but that's the bottom line.
19 You don't redress it, you bear the risk of it. *Land Baron*
20 says it and that's a third reason why summary judgment is
21 required on this rescission claim and we'd ask that you
22 grant the motion on those three bases.

23 THE COURT: Okay. Thank you.

24 MR. OLSEN: Your Honor, I realize you have people
25 waiting so I'll be --

1 THE COURT: Okay.

2 MR. OLSEN: -- brief.

3 First of all, this wasn't a future contingency and
4 that's based upon your own findings. The findings of the
5 Court were for Mr. Terry's [phonetic] testimony. For
6 example: Flyover was always planned for the project.
7 That's a finding. Finding 12.

8 He even said you could -- I can tell an engineer,
9 although nobody else could in the courtroom, I know where
10 it's going to be, I know about how high it's got to be, I
11 can tell all that. But Mr. Nassiri couldn't tell that. We
12 went through this long discussion about how they kept
13 saying: Well, the flyover is always going to be part of
14 this part of this project. Always going to be part of this
15 project. Now they're saying: Well, you know, we're not
16 really sure. Something could have happened.

17 Unfortunately, the evidence and your findings say
18 -- found that by 2003 they knew they were going to
19 construct the flyover because the traffic counts warranted
20 it. As the Court said, they knew they were getting -- they
21 went into the next session of the legislature after the
22 settlement agreement was found -- was signed and got the
23 funding. They knew they were going to do it. It was not a
24 contingency. It was not, as the restatement talks about, a
25 prediction. It was something that they knew was going to

1 happen.

2 In fact, the argument -- closing argument was just
3 that. It was always going to be included. In fact, the
4 argument said -- at trial was, it would have been a
5 violation of federal law not to build it because it was in
6 the 2004 EA. I think the Court will recall that. So they
7 cannot say that this was a contingency, that it was a
8 prediction, that it was akin to the *Cassabaum* [phonetic]
9 case where the, you know, farmer's son didn't tell him he
10 was going to take a job because he didn't know because
11 things changed in the future. It's not like that. It
12 wasn't a contingency and the findings specifically say
13 that. So they're trying to not just argue from the
14 findings, they're trying to argue against the findings.

15 On this issue of materiality, and let me talk
16 about the language of the conclusions of law in that
17 paragraph 1, 2, and 3. The one that Mr. Pepperman was
18 reading for -- from was paragraph 3. This is under the
19 conclusions that the Court made, under the section titled
20 Mr. Nassiri was unaware of his claim until 2010 when the
21 flyover was built. What the Court's talking about there,
22 throughout the preceding two paragraphs, and in that
23 paragraph as well, is he couldn't bring his claim because
24 he didn't know about it. That's the sense of what the
25 Court is saying here.

1 By the way, what the language of paragraph 3
2 actually says is the Court finds that Mr. Nassiri could
3 have maintained an action for rescission before 2010, so
4 it's a little confusing but the point of that whole
5 paragraph is Mr. Nassiri couldn't -- because there was no
6 realization of the mistake until that happened. We are
7 arguing and the Court has found the mistake occurred in
8 2005. That's when it -- Mr. Nassiri said I wouldn't have
9 done this in 2005 if I'd known about the flyover. That was
10 his testimony. That's when the mistake occurred, but the
11 realization of that fact, he had no way to understand that
12 or realize that until 2010. How could he have brought his
13 claim before that? I -- that's my understanding of what
14 the Court was saying.

15 In that same vein, Mr. Pepperman used an example
16 of an injury case in talking about, you know, when the
17 injury occurs, but that's actually a great example. The
18 injury occur -- may occur on day one, but it may not
19 manifest itself until later. You may not realize the
20 extent of an injury or the nature of an injury until a
21 later time. And that's when your statute starts to run.
22 That's when you can bring the claim. In this case, you
23 know, the mistake occurred at one point until the behemoth
24 was in front of his property, Mr. Nassiri didn't realize it
25 and that was what the court ruled.

1 And let me just say one more thing about -- on the
2 third point about the case the Court is very familiar with,
3 the *Land Baron* case. It's a different case. First of all,
4 it was a mutual mistake case. There was no indication in
5 that case that either party knew about the lack of the
6 access or water rights. But what the Court said was --

7 THE COURT: Which were necessary things for
8 development.

9 MR. OLSEN: Right. But the Court said you know
10 you're in the desert. Undeveloped land in the desert, and
11 you know --

12 THE COURT: That you intend to develop.

13 MR. OLSEN: That you know you need these things,
14 unlike here. I mean, you know you need an access road, you
15 need the water. So you have the risk, at that time, the
16 burden of risk under that case did shift. Here, all the
17 information is in the possession of the State. The Court
18 ruled here that Mr. Nassiri conducted due diligence. He
19 had no reason to believe anything other than what was
20 presented to him, which looked like this. This is one of
21 the versions of what was presented to him. For this to be
22 akin to the *Land Baron* case, in *Land Baron*, you would have
23 had to have a map like this, provided by the seller that
24 said water here, access here. Because this is representing
25 what the after condition is. *Land Baron* is a different

1 case. They should have known. Neither party had the
2 information. Here, they were telling us something
3 different. They had the information. So, *Land Baron* is
4 not applicable.

5 The bottom line, Your Honor, is that the summary
6 judgement should be denied. The mistake was material at
7 the time in 2005, although he didn't realize it until 2010.
8 The building of the flyover was not contingent as they kept
9 saying, at a time when they were trying to prove we knew
10 about it, then they kept saying : Well, it was always
11 going to happen, you should have known. And *Land Baron*
12 doesn't apply. So, the motion should be denied and we can
13 move on to the rest of the trial.

14 THE COURT: Thank you. Okay. Mr. Pepperman.

15 MR. PEPPERMAN: Your Honor, there is reference to
16 the factual findings about the State's plans to build a
17 flyover. First of all, we're not disputing that we didn't
18 plan to build a flyover, but that doesn't affect the legal
19 issues that are raised in the State's motion. It doesn't
20 affect the fact that when your mistake relates to intent
21 and plans, they relate to a future contingency because the
22 plans might or might not happen. That is a legal point.
23 It doesn't matter what the State's intent was. It doesn't
24 matter how certain it was.

25 I mean, even Mr. Olsen said himself, they

1 acknowledge the funding wasn't available until after the
2 settlement agreement was entered into. Whether it's the
3 next legislative session or 100 legislative sessions down
4 the road, it's after the agreement. It's a future
5 contingency. The funding might or might not have been
6 available. The flyover might or might not have ever been
7 built. That is the legal reality of the Court's trial
8 ruling and a rescission claim that relates to a future
9 contingency fails as a matter of law. That's the only
10 point that you need to look at and you have nothing in
11 front of you that says differently.

12 There is not one single case that has been cited
13 to you that says a mistake can relate to an intent or plan
14 to do something in the future because it can't. Because
15 that's, by definition, a future contingency.

16 If you're going to deny the State's motion on this
17 legal issue about a future contingency, I'd urge you to
18 look at the case law and see what supports that decision,
19 other than bold assertions that: Oh, don't worry, it's not
20 a future contingency. What supports that? There's no case
21 that says it anywhere in the history of any court in this
22 country. And if there is and if I'm wrong, I'm happy to
23 see one, because it hasn't been produced yet.

24 The only cases that are in front of you, the only
25 law, the only statutes, the only rules are what's been

1 cited by the State, which all say that this type of mistake
2 relates to a future contingency because it's something that
3 might or might not happen in the future. It's an
4 expectation about something that is to occur. That is a
5 future contingency under any interpretation of the word.

6 And I'll -- again, I'll direct your attention,
7 Your Honor, to the Supreme Court -- West Virginia Supreme
8 Court case that we cited in our Reply, the *Ryan v. Ryan*
9 case, and it says:

10 A contract may not be reformed or rescinded based
11 upon a mistake of fact if the mistake relates to a
12 mistake in belief, judgement, or expectation as to
13 future rather than past or present facts, occurrences,
14 or events.

15 That is what we're talking about here. It's a
16 mistake related to the flyover, that the flyover would be
17 built. And it's an expectation. They're -- they've said
18 it. The trial ruling says it. We didn't expect you to
19 build flyover there. We didn't believe that a flyover was
20 going to be built right there. But the flyover wasn't
21 built until 2010, so it's a mistake as to an expectation in
22 the future. The flyover didn't exist -- it wasn't built
23 and constructed, existing on that property in 2005, and
24 they were just mistaken about it, or its visibility, or,
25 you know, whatever the hypothetical circumstance can be,

1 they were mistaken about something that was going to happen
2 in the future. That's a future contingency, plain and
3 simple. It's a legal issue. Legal issue. It -- there's
4 nothing to dispute that.

5 THE COURT: But the person who has the mistake
6 doesn't have any control over that contingency. The
7 contingency, if it is one, is solely under the control of
8 the party who is not disclosing it. That's the
9 distinction.

10 MR. PEPPERMAN: Exactly. But --

11 THE COURT: It's not a contingency for Mr.
12 Nassiri.

13 MR. PEPPERMAN: But that doesn't matter in the
14 law.

15 THE COURT: Mr. Nassiri saw no notice of it.

16 MR. PEPPERMAN: But that -- it doesn't matter in
17 the law who controls it. Doesn't matter if it's controlled
18 by the seller or the buyer or a third party. It's
19 something that we didn't know what was going to happen in
20 the future when we agreed to this contract.

21 THE COURT: Right. The only people who knew --
22 people -- the only entity that had any notice that this was
23 even a contingency is the State of Nevada. They control
24 the contingency. They controlled when they were going to
25 apply for the funding. They controlled whether the funding

1 was going to come though, because technically, if they
2 didn't get it, then it wouldn't get built. It was all
3 within the control of the State and the State never
4 disclosed this is a contingency that might or might not
5 happen.

6 MR. PEPPERMAN: And if the State had a contractual
7 obligation to disclose that, and they breached that, then
8 that is a potential breach of contract issue. A rescission
9 issue is separate.

10 THE COURT: Okay.

11 MR. PEPPERMAN: Rescission --

12 THE COURT: Well, it's totally different, and also
13 jut for the record, for me from *Land Baron*, which, you
14 know, I did take it over late in the case. The decision
15 had already been made on all those issues, but, as I
16 understood the law of that case, the problem there was it's
17 land purchased for development, where you, logically, are
18 going to need water and access. And there's a lot more to
19 that case than that, but this is where it ultimately came
20 down to at the Supreme Court, and there was interference at
21 the Water Board with trying to get the water rights, I mean
22 it was -- there was a lot that went into that case, but
23 that's what it boiled down to in the appeal was that, you
24 know, both parties were on equal footing there and it was -
25 -

1 MR. PEPPERMAN: Well, they weren't, Your Honor.

2 THE COURT: It was -- yeah.

3 MR. PEPPERMAN: Because it was held against the --

4 THE COURT: I wish they were.

5 MR. PEPPERMAN: It was held against the buyer
6 that: Hey, you're buying this property to develop it. You
7 should know what you want and what you need and you should
8 provide for that in the contract.

9 THE COURT: Because you're Randy Black and you
10 should know --

11 MR. PEPPERMAN: Because you're Randy Black and you
12 should know.

13 THE COURT: -- what it takes to build a
14 development.

15 MR. PEPPERMAN: Exactly.

16 THE COURT: That you're going to need water and
17 access because you're Randy Black.

18 MR. PEPPERMAN: And it is the same exact thing
19 here --

20 THE COURT: Yeah.

21 MR. PEPPERMAN: -- in the context of a piece of
22 property --

23 THE COURT: Yeah.

24 MR. PEPPERMAN: -- next to a public right of way
25 for the interstate. He's a sophisticated guy --

1 THE COURT: But it's nothing about the -- it's
2 nothing about the land he bought. It's what's going on on
3 the land that's adjacent to it. It's not about: We didn't
4 give you any water rights for that land when you bought it
5 from us, Mr. Nassiri, too bad. You should have looked at
6 that. Or we didn't give you any access across somebody
7 else's property when you bought it, that's just too bad,
8 Nassiri, you bought it.

9 He bought the land. He knew what it was because
10 he had the access. He was the adjacent property.

11 MR. PEPPERMAN: But, Your Honor --

12 THE COURT: But it's the question of what's going
13 on next to his property.

14 MR. PEPPERMAN: It's the same thing in *Land Baron*.

15 THE COURT: All right.

16 MR. PEPPERMAN: Because what they were saying was
17 the mistake was: Hey, we thought we could get water and
18 access from these third parties, but we couldn't. We were
19 -- we made a mistake about that. And the Supreme Court --

20 THE COURT: The third parties. Understand.

21 MR. PEPPERMAN: -- didn't address whether it was a
22 mistake. It didn't matter if it was mutual --

23 THE COURT: All right.

24 MR. PEPPERMAN: -- or unilateral --

25 THE COURT: Okay.

1 MR. PEPPERMAN: -- or what. All the Supreme Court
2 said was: Hey, you're buying this property. You should
3 have known or you should have provided for it in the
4 contract. If we can't get this water access, then we're
5 going to not close on the sale.

6 THE COURT: So Mr. Nassiri should have said: Okay
7 State, whatever you do in you right of way in the future,
8 it better not block my access, which is here in my -- it's
9 not really view.

10 MR. OLSEN: Visibility.

11 THE COURT: My Visibility. Visibility. That was
12 the word they used. Visibility, it wasn't view. The
13 visibility of my property from the freeway, which is a big
14 selling point for it, as -- for future development as, you
15 know, hotel, whatever it was for -- hotel, casino I think
16 is what it was zoned for, and that's part of the appraisal
17 for why I'm paying this kind of money. Whatever you do on
18 your property adjacent to it in you right of way should not
19 impact that at a future date because you choose, at some
20 point in time, to get the funding and to get the approval,
21 and to get something developed, and to get something
22 designed, and you select a design that's going to be a
23 certain kind of a design, as opposed to a different design
24 at a different location that was originally proposed.

25 I mean -- I'm sorry. I just don't see it. It

1 doesn't fit.

2 Mr. PEPPERMAN: Well, Your Honor, I think you're
3 being facetious, but that is exactly --

4 THE COURT: I'm not being facetious.

5 MR. PEPPERMAN: But that is exactly -- that's
6 exactly the point.

7 THE COURT: I think it -- I see it as a very
8 different case.

9 MR. PEPPERMAN: He should have -- if he was going
10 to be concerned about a neighbor building something, he
11 should have said in the contract: If I buy this property,
12 you need to agree not to do certain things that I'm
13 concerned about. The State didn't know that he would be
14 concerned about that. They didn't know -- they didn't --
15 the State doesn't believe the flyover would impacts his
16 property at all --

17 THE COURT: Okay.

18 MR. PEPPERMAN: -- or his visibility.

19 THE COURT: I think that's a question of fact,
20 ultimately. And that is the ultimate question of fact.

21 So, I'm going to deny it. I think that -- I don't
22 think they're entitled to summary judgement -- the State is
23 entitled to summary judgement as a matter of law. And I do
24 think there are questions of fact about all those issues.
25 Does it really affect his property? It may not. A jury

1 hearing this might say it -- you knew there was a freeway
2 there. The fact that there's this wall there now, it's
3 still -- there's always been a freeway so what's the big
4 difference? A jury has to hear all a that and, to me, it
5 just seems like it's this -- always an issue within the
6 State's control as to when -- they intended to do it as
7 soon as they could get the approval, as soon as they could
8 get the funding, as soon as they could get the design, as
9 soon as they could approve a design that would pass all the
10 muster. I mean, they always knew it was going to be there,
11 so I don't see it's a contingency at all. So --

12 MR. PEPPERMAN: Thank you for your time, Your
13 Honor.

14 THE COURT: Thank you very much.

15 MR. OLSEN: We'll prepare that order, Your Honor.

16 THE COURT: Thank you. And we'll see you, then,
17 on January 5th.

18 MR. OLSEN: Yes.

19 THE COURT: That's the next date. Okay.

20 MR. OLSEN: I think that's what we decided on.

21 THE COURT: January 5th. We'll see you then.

22 THE CLERK: Is this [indiscernible] pretty much
23 the same thing as [indiscernible]?

24 THE COURT: Yeah. There's -- I think that it
25 lists it as two separate things and I don't think it is. I

1 think Mr. Coulthard said it's one.
2 Defendant/Counterclaimant's Motion for Summary Judgement on
3 Plaintiff's Rescission Claim. That was this one today.
4 Okay wait a minute. Motion to Exclude Damage -- yeah. I
5 think it's all one thing. Defendant's Conclusions of Law -
6 - Plaintiff's Motion to Strike Defendant's Motion to
7 Exclude. That was that one.

8 MR. OLSEN: There were two motions on, is that
9 question?

10 THE COURT: There were three. It's listed as
11 three in master calendar. I just want to make sure we did
12 them all.

13 MR. OLSEN: I think they broke out one of the
14 easier.

15 THE COURT: The summary judgement rescission
16 claim, that's this one. That's been denied. Plaintiffs'
17 Motion to Strike the Defendant's Motion to Exclude Damages.

18 MR. COULTHARD: That was denied --

19 THE COURT: That was the one that --

20 MR. COULTHARD: That --

21 THE COURT: For some reason I think master
22 calendar broke it out as two different motions.

23 MR. CICILIANO: Because there's an and/or in the
24 title.

25 THE COURT: Oh. Plaintiff's Motion to Strike

1 Defendant's Motion to Exclude Damages Evidence Related to
2 Plaintiffs -- that's Motion to Strike the Damages is the
3 one that's out on the -- moved to the 5th. I don't know why
4 master calendar broke it out as two different motions.

5 MR. OLSEN: I think what they did was they took
6 ours -- because it's a title to our motion and it included
7 reference to their motion in the title. Maybe that's why.
8 But, in any event, --

9 THE COURT: Which was an and/or?

10 MR. OLSEN: -- that's been decided today. Both of
11 them decided, so --

12 THE COURT: Somehow they -- somehow they broke it
13 out into two separate motions. It was one.

14 THE CLERK: Okay. Thank you for your help.

15 THE COURT: It was one. There weren't three
16 motions on. Yeah. For some reason master calendar showed
17 -- because we have to account for everything that we did
18 here and for some reason that one -- I think that's an
19 error on master calendar's part. I think that was --
20 yeah, we're going to blame master calendar. I think that
21 was one motion.

22 MR. COULTHARD: So then just for clarification
23 then, the State's Motion to Exclude Damage Evidence Related
24 to Plaintiff's Breach of Contract Claims and/or Motion to
25 Strike Plaintiff's Expert Keith Harper, that was filed on

1 November 4th.

2 THE COURT: Correct.

3 MR. COULTHARD: That's been continued. Will be
4 heard on the merits and it'll be heard on --

5 THE COURT: January 5th.

6 MR. COULTHARD: -- January 5th. That's what we
7 understood, Your Honor.

8 THE CLERK: At 10:30, right? Is that what you
9 said?

10 MR. COULTHARD: 10:30.

11 THE COURT: Is 10:30 agreeable?

12 MR. COULTHARD: Great.

13 MR. OLSEN: That's fine.

14 THE COURT: Okay. All right. Thanks.

15 MR. COULTHARD: Thank you, Your Honor.

16 THE COURT: See you guys back here then. Happy
17 Holidays.

18 MR. COULTHARD: Happy holidays if we don't see you
19 before then. Thank you.

20

21 PROCEEDING CONCLUDED AT 11:08 A.M.

22 * * * * *

23

24

25

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

14

15

16

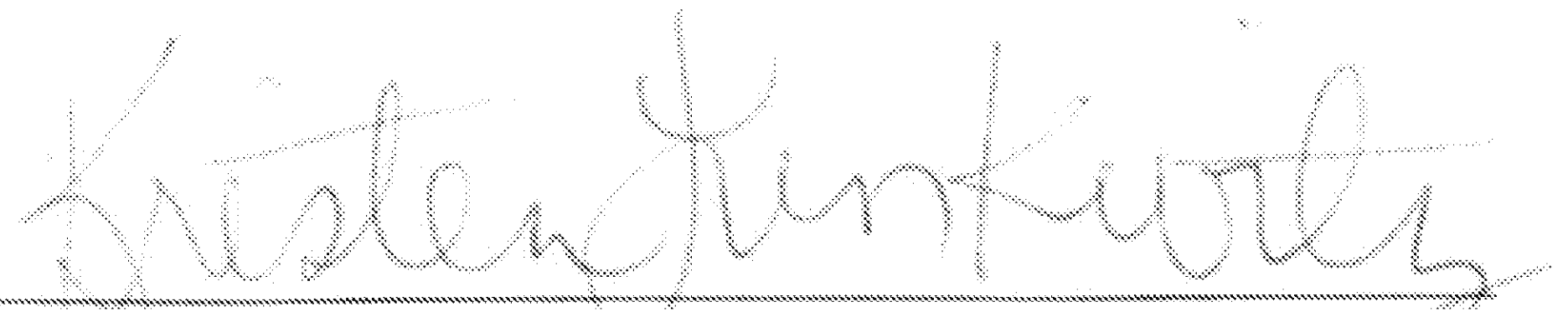
17

18

19

20

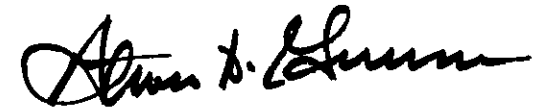
21

22 

23 KRISTEN LUNKWITZ

24 INDEPENDENT TRANSCRIBER

25



CLERK OF THE COURT

1 **OPPS**
2 GARMAN TURNER GORDON, LLP
3 ERIC R. OLSEN
4 Nevada Bar No. 3127
5 Email: eolsen@gtg.legal
6 DYLAN T. CICILIANO
7 Nevada Bar No. 12348
8 Email: dciciliano@gtg.legal
9 650 White Drive, Ste. 100
10 Las Vegas, Nevada 89119
11 Tel: (702) 796-5555
12 Fax: (702) 369-2666
13 Attorneys for Plaintiffs

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

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

13 Plaintiff,

14 vs.

15 STATE OF NEVADA, on relation of its
16 Department of Transportation; DOE
17 GOVERNMENT AGENCIES I-X, inclusive;
18 DOE INDIVIDUALS I-X; and DOE ENTITIES
1-10, inclusive,,
19

20 Defendants.

CASE NO. A672841
DEPT. XXVI

21 **OPPOSITION TO THE STATE'S MOTION TO EXCLUDE DAMAGES EVIDENCE**
22 **RELATED TO PLAINTIFF'S BREACH OF CONTRACT CLAIMS AND/OR MOTION**
23 **TO STRIKE PLAINTIFF'S EXPERT, KEITH HARPER, MAI**


24 Date of Hearing: January 5, 2016
25 Time of Hearing: 10:30 a.m.

26 Plaintiffs, Fred Nassiri, individually and as trustee of the Nassiri Living Trust
27 ("Plaintiffs"), by and through counsel, the law firm of Garman Turner Gordon, LLP, hereby
28 opposes the State's Motion to Exclude Damages Evidence Related to Plaintiff's Breach of
Contract Claims and/or Motion to Strike Plaintiff's Expert, Keith Harper, MAI (the
"Opposition").

1 This Opposition is made and based upon the following Memorandum of Points and
2 Authorities, any attachments thereto, and the papers and pleadings already on file herein.

3 Dated this 7th day of December 2015.

4 GARMAN TURNER GORDON, LLP

5 
6 ERIC R. OLSEN
7 Nevada Bar No. 3127
8 Email: eolsen@gtg.legal
9 DYLAN T. CICILIANO
10 Nevada Bar No. 12348
11 Email: dciciliano@gtg.legal
12 650 White Drive, Ste. 100
13 Las Vegas, Nevada 89119
14 Tel: (702) 796-5555
15 Fax: (702) 369-2666
16 Attorneys for Plaintiffs

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I.**

15 **SUMMARY OF ARGUMENT**

16 NDOT's Motion to Exclude Damages Evidence Related to Plaintiff's Breach of Contract
17 Claims and/or Motion to Strike Plaintiff's Expert, Keith Harper, MAI (the "Motion") is not about
18 prejudice but instead NDOT's attempt to make up for its own failures and conscious choices in
19 this case. In reality the Motion has nothing to do with NDOT being denied information, but
20 instead NDOT not wanting to go to trial. Plaintiffs have long maintained that their severance
21 damages are the same as their breach of contract damages. Plaintiffs disclosed their contract
22 damages. Even if Plaintiffs had not disclosed their contract damages, however, NDOT would not
23 be prejudiced, because Plaintiffs disclosed their severance damages and NDOT conducted
24 discovery into Plaintiffs' severance damages. The damages are the same and no additional
25 discovery would be helpful or necessary.¹

26 NDOT claims that it did not understand Plaintiffs damages until the end of discovery, but

27 ¹ Tellingly, NDOT seeks summary judgment on Plaintiffs' damages and not discovery to remedy
28 its so-called prejudice, despite knowing of Plaintiffs' contract damages since at least December
2014. Thus NDOT was not actually prejudiced but elected long ago to "swinging for the fences,"
i.e. seeking a dismissal of Plaintiffs' claim.

1 the stated reasons for this misunderstanding amount to an assortment of overt misstatements.

2 The first misstatement is that Plaintiffs did not disclose their damages. Plaintiffs
3 disclosed and supplemented their damages throughout litigation in accordance with the Nevada
4 Rules of Civil Procedure. There was no surprise as to the amount or magnitude of Plaintiffs'
5 damages.

6 The second misstatement is that NDOT could not conduct discovery into Plaintiffs
7 damages. The suggestion that Plaintiffs or their expert were unavailable for deposition until the
8 end of discovery is not based on reality. The reality is that NDOT did not even pursue discovery
9 until the waning days of discovery period. When NDOT requested depositions it received them.
10 It is not Plaintiffs fault that NDOT ignored the litigation for the better part of a year. In fact,
11 NDOT eventually deposed Plaintiffs on their damages. During those depositions, Plaintiffs—to
12 the extent there was any confusion—clarified their damages. That actual examination concluded
13 with the parties agreeing that NDOT could take another deposition of Plaintiff if it had further
14 questions on damages. NDOT did not take that opportunity. It does not want more discovery or
15 acknowledge its failures. NDOT does not want to go to trial, so it has elected (probably long
16 ago) to use this argument as a dispositive weapon.

17 Third, NDOT mischaracterizes expert, Keith Harper's, report. Harper calculated the
18 damage to Plaintiffs from NDOT's building of the flyover. Whether in the context of eminent
19 domain or a breach of contract, Harper's expert opinion considers the compensation needed to
20 place Plaintiffs in their original position. (NDOT's attempts to distinguish the damages are
21 illusory.) Thus, Harper's opinions will assist the jury in determining Plaintiffs' contract
22 damages.

23 Fourth, in an overzealous attempt to impune Plaintiffs and Harper's credibility, NDOT
24 stamps its feet one more time about an alleged a bait-and-switch by Plaintiffs and Harper that
25 prejudiced somehow prejudiced NDOT. In an attempt to rationalize its own alleged pre-
26 conceived assumptions and misunderstanding of Plaintiffs' case, NDOT claims that it hired
27 certain experts in reliance on an error in Harper's report. This story, however, does not match
28 the actual timeline and facts of the parties' dispute. NDOT retained and disclosed its experts

1 before ever receiving Harper's expert report. The person NDOT refers to as its primary "expert"
2 prepared his findings in March 2012, many months before litigation was even commenced.²
3 Moreover, there is absolutely no truth to the averment that Harper's mistake—referring to a
4 "group of maps" by the "title" contained on the first map—was a conspiracy between Plaintiffs
5 and Harper. In fact, that mistake did not impact Harper's analysis at all, but merely impacted the
6 words Harper used to describe the maps. NDOT's motion is directed at obtaining a dismissal of
7 Plaintiffs' causes of action and not a remedy of any discovery deficiency. Were it not so, NDOT
8 could have remedied any supposed prejudice by supplementing its own expert reports. Instead,
9 NDOT elected to turn its mistaken assumptions about the case into a weapon. Accordingly, the
10 Motion should be denied in its entirety.

11 II.

12 LEGAL ARGUMENT

13 A. Plaintiffs have timely disclosed damages for their contractual claims and NDOT had 14 the opportunity to conduct discovery as to those damages.

15 Nevada Rule of Civil Procedure 16.1 provides that Plaintiffs must provide "a
16 computation of any category of damages claimed by the disclosing party, making available for
17 inspection and copying as under Rule 34 the documents or other evidentiary matter . . . on which
18 such computation is based, including materials bearing on the nature and extent of injuries
19 suffered." The rationale for disclosures is clear, it provides a defendant with an understanding of
20 what is at stake, i.e. the amount of damages, and gives a defendant the opportunity to conduct
21 discovery into those damages. City & Cty. of San Francisco v. Tutor-Saliba Corp., 218 F.R.D.
22 219, 220-21 (N.D. Cal. 2003). The record is clear that Plaintiffs made timely disclosure of the
23 damages to Plaintiffs' property from NDOT's building of the flyover and that NDOT had the
24 opportunity to conduct discovery into Plaintiffs' damages.

25 NDOT argues that it had no idea that Plaintiffs would seek more than \$10,000,000 in
26

27 ² Mr. Sjoestrom's report ought to have been provided in document discovery well before expert
28 disclosures. This would likely have brought NDOT's false assumptions about Plaintiffs' claims
to light much earlier.

1 damages and that NDOT is prejudiced by being unable to conduct discovery. This is a
2 demonstrably false assertion. As conceded by NDOT, Plaintiffs disclosed that their “severance”
3 damages were \$10,000,000, and NDOT actually conducted discovery into Plaintiffs’ damages.
4 There is no prejudice because NDOT was always aware of the magnitude of the case and, in fact,
5 was able to, and did, conduct discovery into Plaintiffs’ damages.

6 **1. NDOT was aware that Plaintiffs contract and eminent domain damages**
7 **consisted of diminution in the value of Plaintiffs’ property that resulted from the**
8 **building of a flyover.**

9 NDOT alleges that Plaintiffs failed to disclose the damages necessary to place Plaintiffs
10 in the position they were prior to NDOT’s building of the flyover. It contends that Plaintiffs only
11 disclosed severance damages (the impact of NDOT’s building of the flyover on Plaintiffs’
12 property) and not contract damages (the impact of NDOT’s building of the flyover on Plaintiffs’
13 property). NDOT’s assertion is belied by the complaint, Plaintiffs’ disclosures, and
14 communications between the parties. Conspicuously absent from the Motion are the
15 communications wherein Plaintiffs expressly confirmed that Plaintiffs’ damages were the same
16 for both its inverse condemnation action and its breach of contract claim. Moreover, NDOT was
17 specifically aware of this fact before it deposed Harper and before it deposed Nassiri. NDOT’s
18 lack of candor on the subject may be forgetfulness, but is more likely an effort to create prejudice
19 where none actually exists.

20 Prior to filing their Complaint, Plaintiffs made a claim to the State Board of Examiners.
21 Therein, separate and apart from the Rescission, Plaintiffs demanded “compensation for the
22 diminution of value to [their Property] due to the loss of visibility from the new “fly over” at
23 Blue Diamond Road.” (See Letter to the State Board of Examiners, attached hereto as **Exhibit 1**,
24 at p.6-7)(emphasis added). Plaintiffs specifically identified that the damage equaled
25 \$6,000,000.00 (“Plaintiffs’ Pre-Trial Demand”). (Id. at p. 7).

26 Plaintiffs’ Amended Complaint, filed March 27, 2013, makes clear that NDOT’s building
27 of the flyover amounted to a breach of the settlement agreement that led to the impairment of the
28 Property’s visibility. (Amended Complaint at ¶ 15). Plaintiffs’ Amended Complaint also stated
that NDOT “breached its duty of good faith and fair dealing when it planned and began

1 construction on the 'fly over,' despite express representations to Plaintiffs that the Blue Diamond
2 Road Interchange would not include a 'fly over.'" (*Id.* at ¶ 59). Thus, Plaintiffs' Amended
3 Complaint specifically alleged that Plaintiffs sought monetary damages for NDOT's breach of
4 contract and breach of the duty of good faith resulting from the construction of the flyover.

5 Since its initial disclosures, Plaintiffs identified that its damages include Purchase Cost,
6 Interest Paid, Property Taxes, and Other Costs exceed \$35,000,000 in total. (*See* Plaintiffs Initial
7 Disclosure Pursuant to NRCP 16.1(a)(1), attached hereto in relevant parts as **Exhibit 2**).

8 On June 6, 2014, Plaintiffs notified NDOT that in addition to the damages above, they
9 had severance damages in the amount of \$5,996,700.00. (*See* Plaintiffs Second Supplement to
10 Initial Disclosure Pursuant to NRCP 16.1(a)(1), attached hereto in relevant parts as **Exhibit 3**).
11 Plaintiffs' third and fourth supplemental disclosure likewise make the same damages disclosure.

12 On November 3, 2014, Plaintiffs disclosed the expert report of Keith Harper. (*See* Keith
13 Harper Initial Expert Report, attached hereto in relevant part as **Exhibit 4**). Harper stated that
14 "with the loss of the exposure to and visibility from Interstate Highway 15, the right to see and to
15 be seen has been significantly impacted. This causes the remainder to not have the same physical
16 characteristics as the Whole Property in the Before Condition." (*Id.* at p. 76). His report also
17 found that Plaintiffs' property is "affected by the loss of exposure due to the flyover that has
18 been constructed along Blue Diamond Road and I-15." (*Id.* at 75). Harper opined that Plaintiffs'
19 property lost 10% of its value as a result of the building of the flyover. (*Id.* at 76). Harper then
20 concluded that, as of the filing of the complaint, Plaintiffs suffered \$10,000,000 in damages.
21 (*Id.* at 77).

22 On December 18, 2014, Plaintiff's updated their damage calculation from \$5,996,700 to
23 \$10,000,000, to reflect Mr. Harper's conclusion. (*See* Plaintiffs' Fifth Supplement to Initial
24 Disclosure Pursuant to NRCP 16.1(a)(1), attached hereto in relevant parts as **Exhibit 5**). This
25 same calculation was disclosed in Plaintiff's sixth, seventh, and eighth disclosure.

26 That same day, on December 18, 2014, NDOT's counsel, including Ms. Kaveh, Ms.
27 Kern, and Mr. Pepperman, contended in an email that "as it currently stands, the only breach of
28 contract damages alleged by Mr. Nassiri relate to rescission. . . . If you will not dismiss the

1 breach of contract claims in the absence of rescission, then we need to know your damages
2 computation immediately, as that information will also affect the scope of the depositions.” (See
3 Email between NDOT and Plaintiffs, attached hereto as **Exhibit 6**). In response, Plaintiff clearly
4 and unambiguously stated: “While rescission has been sought in the alternative, the value
5 determined by the severance, even if not compensable under inverse condemnation, would also
6 be a contract damage.” (Id.)(emphasis added). Thus, Plaintiffs clarified any ambiguity that may
7 have existed prior to the January 30, 2015 close of discovery.

8 NDOT took Keith Harper’s deposition after that, on January 15, 2015. (See Deposition of
9 Keith Harper, attached hereto in relevant part as **Exhibit 7**). At the deposition, Harper testified
10 that “in [his] opinion in this case or in reference to this property, the majority of the damages is
11 due to the loss--actually, all of it is due to the loss of the exposure, which would be . . . the
12 view.” (Id. at p. 47:13-23; see also id. at p. 54:5-8 (“the majority--and really, all of the damages
13 is due because of the visibility and the exposure issues and view issues that have been created by
14 the flyover and the construction”)). Thus, Harper testified to that same damages Plaintiffs seek
15 for breach of contract and breach of good faith.

16 On January 30, 2015, NDOT took Fred Nassiri’s deposition. (See Deposition of Fred
17 Nassiri, attached hereto in relevant part as **Exhibit 8**). NDOT specifically asked Nassiri what
18 Plaintiffs’ damages were, and Nassiri testified Plaintiffs’ damages were the decrease of value of
19 the property, loss of visibility, and additional taxes:

20 Q. So what do you understand your damages to be, sir, as a result of the flyover and as of,
21 you know, your -- your alleged breaches in this case?

22 A. Basically, the flyover damaged my property and took my visibility and signage
23 out, and there's a lot of income from that that has disappeared. All the interest I
24 paid all these years for the purchase of this property. Additional taxes that NDOT
25 charged me for that 7, 8, \$9 million extra. So that also leaked over to my -- rest
26 of my property. My -- my taxes went up. I -- I paid extra tax on that [indicating],
27 but I also pay extra tax on this [indicating]. And all the other assets I had to have
28 fire sale to keep up this loan. And my mental damage also.

(Id. at 244:15-245:4; see also id. at p. 110:3-16).

///

///

1 During Mr. Nassiri's deposition, NDOT recognized that Plaintiffs' contractual damages
2 were equal to the damages expressed by Mr. Harper:

3 MR. COULTHARD: Okay. And then for the damages for inverse
4 condemnation and breach of contract and breach of the implied, the -- the
5 contractual claims, is -- are your damages related to the damages as opined by
6 Keith Harper?

7 MR. OLSEN: Yes.

8 MR. COULTHARD: And that is the total damages for those claims?

9 MR. OLSEN: Yeah, other than punitive damages and those sort of extra
10 contractual damages that are claimed in the complaint.

11 (Id. at 254:3-13) (emphasis added).

12 Moreover, Mr. Coulthard spent a significant period of time exploring the nuances of
13 Plaintiffs' damages. (See id. at pp. 244-254). At the conclusion, the parties agreed that if NDOT
14 wanted to further explore Plaintiffs damages that they would re-depose Nassiri on the issue:

15 MR. OLSEN: With respect to the other issues, I can see, since we're
16 working from this document prepared -- when it was prepared, what I may need
17 to do with -- is send you some written discussion of the damages, and maybe it
18 will be part of a supplement so we're clear on the record what we've got.

19 If after you receive that you want to bring Mr. -- we would agree to Mr.
20 Nassiri coming back on that -- very brief on that issue as necessary. But I think
21 we can make it clear.

22 MR. COULTHARD: Okay. Yeah, if -- if need be, then that will -- and --
23 and you kept that on the record?

24 MS. COURT REPORTER: (Nods head.)

25 MR. COULTHARD: Perfect. So, okay, that's acceptable to me, then. I
26 need to get -- I need to understand exactly the damage and the damage model and
27 -- and -- and, if need be, if it's not clear and I feel I need to depose him on that
28 narrow issue, then we'll drag you back in on that.

MR. OLSEN: Okay.

MR. COULTHARD: Okay.

(Id. at p. 251:8-252:4)(emphasis added).

Consistent with those representations, Nassiri supplemented his NRCP 16.1 disclosures
to specifically state that his breach of contract damages are the exact same as his severance
damages:

///

	<u>CONTRACT</u>	
Compensatory Damages		\$10,000,000.00
Interest paid to NV State Bank (6/1/2005-2/28/2015)		\$15,984,088.38 x 10% = \$1,598,408.84
Property Taxes (including interest - tax years 2006 to 2012)		\$ 2,560,954.42 x 10% = \$ 256,095.44
Signage Opportunity Costs/Lost Income		\$ 337,500.00
	<u>TOTALS</u>	<u>\$12,192,004.28</u>

	<u>CONDEMNATION</u>	
Severance Damages		\$10,000,000.00
Interest paid to NV State Bank (6/1/2005-2/28/2015)		\$15,984,088.38 x 10% = \$1,598,408.84
Property Taxes (including interest - tax years 2006 to 2012)		\$ 2,560,954.42 x 10% = \$ 256,095.44
Signage Opportunity Costs/Lost Income		\$ 337,500.00
	<u>TOTALS</u>	<u>\$12,192,004.28</u>

(See Ninth Supplement to Plaintiffs' Initial Disclosures pursuant to NRCP 16.1, attached hereto as Exhibit 9).

Therefore, not only was it abundantly clear that Plaintiffs disclosed that its contract damages were equal to severance damages, but NDOT appreciated that fact and was able to conduct discovery into those facts. NDOT was in no way prejudiced, and it would be inappropriate to strike Plaintiffs damages.

2. Any delay in the disclosure of the damages was justified or harmless.

Even if Plaintiffs had not made timely disclosures—and they did—sanctions would not attached unless “a party that without substantial justification fails to disclose information required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless.” Nev. R. Civ. P. 37

In order to strike Plaintiffs' damages, the Court would have to determine that Plaintiffs' disclosures were neither justified nor harmless. In making such a determination, the Court must consider:

1) prejudice or surprise to the party against who the evidence is offered; (2) the ability of that party to cure the prejudice; (3) the likelihood of disruption of the trial; and (4) bad faith or willfulness involved in not timely disclosing the evidence.

1 Olaya v. Wal-Mart Stores, Inc., No. 2:11-CV-997-KJD-CWH, 2012 WL 3262875, at *3 (D. Nev.
2 Aug. 7, 2012). None of these factors are present here.

3
4 As set forth above, Plaintiffs regularly supplemented their NRCP 16.1 disclosures. While
5 Plaintiffs' severance/contract damages increased from \$6,000,000 to \$10,000,000, it was the
6 result of Plaintiffs' expert's opinion, which was timely disclosed. Thus, the supplement was
7 justified. There is no prejudice, no likelihood of disruption, and not any evidence of bad faith or
8 willfulness involved in Plaintiffs disclosure of contract damages.

9 Even assuming that NDOT is correct, and Plaintiffs disclosures as to contract damages
10 were insufficient prior to the Ninth Supplement, the late disclosure was harmless. Foremost,
11 there was no prejudice. It is without dispute that Plaintiffs timely disclosed that their severance
12 damages were \$10,000,000 and the basis for those damages. Plaintiffs also informed NDOT that
13 its damages would be the same for its contract damages by December 2014, prior to the close of
14 discovery and prior to NDOT's deposition of Harper and Nassiri. NDOT had the opportunity and
15 did conduct discovery into the basis of those damages. Accordingly, there will be no disruption
16 at trial. Nor was there is no evidence of bad faith or willfulness. Plaintiffs disclosed its expert
17 opinion and responded to NDOT's inquiries as to NDOT's damages. Thus, to the extent there
18 was any delay it was harmless.

19 As to prejudice, NDOT can identify no true prejudice. NDOT states that "Plaintiff
20 deprived the State of a meaningful opportunity to conduct discovery on these damages," that
21 Plaintiffs "refused to provide the state with any computation of his alleged contract damages,"
22 and that "the State could never have fathomed that Plaintiff would seek \$12 million in damages."
23 (Motion at pp. 4-6). NDOT's claims simply do not square with the facts and timeline of this case.
24 As set forth above, NDOT knew the magnitude of Plaintiffs' damages, as Plaintiffs' expert report
25 and NRCP 16.1 disclosures clearly set forth the amount of damages sought by Plaintiffs.
26 Furthermore, Plaintiffs contract and bad faith damage amounts are based on Harper's opinion
27 and NDOT conducted discovery into those opinions. Finally, Plaintiffs also never refused to
28 provide damages and responded to NDOT's inquiries, and NDOT never took the opportunity to

1 explore the issues any further, despite the invitation to do so.³

2 To drum up a prejudice argument, NDOT tries compare this case to the unpublished
3 Freemon v. Fischer, 281 P.3d 1173 (Nev. 2009). The case is inapposite. There the plaintiff failed
4 to disclose any expert opinion on damages at all. Id. at *1. When the defendant requested
5 information regarding damages and an expert report, the plaintiff simply failed to respond. Id. at
6 *3. After the defendant filed a motion in limine to exclude evidence of damages at trial, the
7 plaintiff disclosed an expert report. Id. Ultimately, the expert report was “not provided to
8 Fischer until . . . eight days after the motion in limine was filed, 342 days after the NRCP
9 16.1(a)(1)(C) deadline for damages computation, 101 days after the NRCP
10 16.1(a)(2)(C) deadline for disclosure of expert witness reports, and 34 days before the July 16
11 trial date.” Id. at *4. Moreover, the damages that plaintiff eventually disclosed were 25 to 40
12 times greater than the plaintiff’s deposition testimony. Id. at *5.

13 Freemon does not even approximate the facts here. Not only did Plaintiffs timely disclose
14 their expert report, but they made numerous supplemental disclosures. Moreover, even under the
15 facts in a light most favorable to NDOT, NDOT was unquestionably aware of Plaintiffs’
16 damages before the close of discovery and before they deposed Nassiri and Harper. NDOT also
17 deposed both witnesses at length about the damages. Freemon is in no way instructive in the
18 present case.

19 **3. At worst, the Court could allow for additional discovery.**

20 Even if the Court were to somehow find that NDOT’s position has any merit, the Court
21 could impose a far less drastic sanction. As stated above, it is telling that NDOT seeks the
22 harshest possible sanction, i.e. the dismissal of Plaintiffs claim, as opposed to the complained of
23 lack of discovery. (Of course, NDOT might look foolish asking for additional discovery some 11
24 months after Plaintiff’s offered to allow it.) While no sanction should attached, if the Court were
25

26 ³ Likewise, in a footnote NDOT seeks to exclude Nassiri003239-Nassiri3300. Of those
27 documents, a portion were authored by NDOT, and therefore no prejudice could attach. The
28 remaining documents were discussed during Nassiri’s deposition and/or were alternatively
produced previously and were reproduced in a more legible format. Thus, NDOT had the
opportunity to conduct discovery into the matter and no prejudice attaches.

1 inclined to avoid any hint of prejudice it could do so through allowing additional discovery,
2 rather the dismissal of claims.

3 In interpreting appropriate sanctions under NRCP 37's federal counterpart, FRCP 37,
4 courts consider: "(1) the public's interest in expeditious resolution of litigation; (2) the court's
5 need to manage its docket; (3) the risk of prejudice to the party seeking sanctions; (4) the public
6 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
7 sanctions." Boliba v. Camping World, Inc., No. 2:14-CV-01840-JAD, 2015 WL 3916775, at *1
8 (D. Nev. June 25, 2015)(citing Wendt v. Hostlnt'l, Inc., 125 F.3d 806, 814 (9th Cir.1997)).
9 Where evidence exclusion "amount[s] to dismissal of a claim, the district court [is] required to
10 consider whether the noncompliance involved willfulness, fault, or bad faith." R & R Sails, Inc.
11 v. Insurance Co. Of Penn., 673 F.3d 1240, 1247 (9th Cir.2012).

12 Here, trial will not occur until June 2016. Thus, there would be no delay from a less
13 drastic sanction, namely additional discovery. Certainly, there is no evidence of willfulness, fault
14 or bad faith that would necessitate something more, like the sought after an exclusion of
15 damages, i.e. a practical dismissal of Plaintiffs' contracts claims. Of course, before granting that
16 the Court should consider that NDOT and Plaintiffs agreed last January that if NDOT needed
17 more information, it could re-depose Mr. Nassiri. Plaintiffs feel quite confident, however, that
18 NDOT does not want discovery into Plaintiffs damages, because it already took discovery.
19 Indeed, Plaintiffs suspect that NDOT simply wants to avoid trial on the contract and bad faith
20 claims, and that this Motion was the anticipated mechanism to achieve that goal, as far back as
21 January. Accordingly, while no sanction should attach, granting limited additional discovery
22 would be a more appropriate alternative than that relief sought by NDOT's Motion.

23 **B. Harper's opinion is relevant to Plaintiffs' damages and should not be excluded.**

24 As an alternative to striking Plaintiffs' damages, NDOT requests that Harper's opinion be
25 stricken. NDOT offers two reasons why Harper's testimony should be stricken: 1) NDOT
26 misunderstood Harper's opinion and 2) Harper's opinion is not helpful to the jury. Both reasons
27 must be rejected, because Harper's opinion is not only consistent with Plaintiffs theory of the
28 case, but Harper's testimony is directly relevant to the question of damages.

1 **1. Harper's expert report is not prejudicial or misleading.**

2 NDOT charges that Harper's report misled NDOT. The alleged confusion is that NDOT
3 did not understand Plaintiffs were seeking damages for NDOT building a flyover. Instead,
4 NDOT had the erroneous notion that Plaintiffs sought damages based on the difference between
5 the design of flyover NDOT contemplated in 2008 and what was actually built in 2010. NDOT's
6 position is irreconcilable with the record. From the first phase of trial, this court understands
7 quite clearly, that Plaintiffs damages are based on the difference between what was shown to
8 them during settlement negotiations in 2005 and what was built in 2010. NDOT's misperception
9 is not based on the complaint, or discovery in this action. Instead, it seems to be based upon
10 NDOT's own assumptions predating the litigation.

11 NDOT's assumptions seem to have colored NDOT's reading of Harper's report. Harper
12 obtained a group of maps from a previous appraisal. The first map bears the name of NDOT's
13 conceptual 2008 Environmental Assessment flyover, and the next map says in clear bold
14 language "Before." Harper identified all the maps, including the "Before" map by the title on
15 NDOT's conceptual 2008 Environmental Assessment flyover. Nonetheless, Harper, unaware of
16 the mistake, testified that his report and opinion clearly contemplates that the before condition
17 was one where there was no flyover.

18 Furthermore, NDOT's position that it hired experts, including Sjostrom, based on the
19 Harper's mistake cannot be true based on the timeline of the case. NDOT hired Sjostrom in
20 March 2012, well before Plaintiffs filed their action, and NDOT disclosed his "expert" opinions
21 before it learned of Harper's opinion.

22 a. Plaintiffs case has always considered that the "before condition" was one
23 without a flyover.

24 The Complaint⁴ and Amended Complaint clearly set forth that Plaintiffs' allegation was
25 that NDOT never disclosed that it was building a flyover and that the building of any flyover was
26 a breach of the Settlement Agreement.

27 _____
28 ⁴ Even though the Complaint has been superseded, it demonstrates that Plaintiffs have
maintained the same position throughout litigation.

- 1 • In 2004, Plaintiffs, in connection with his purchase of the Exchange Property,
2 inquired with NDOT as to NDOT's plans for the Blue Diamond Interchange
construction. (Complaint at ¶ 15, Amended Complaint at ¶19)
- 3 • NDOT provided plans for the Blue Diamond Road Interchange. The plans
4 depicted that the 22.4 acre Exchange Property would benefit from enhanced 1-15
5 traffic flow and approximately 1,500 feet of visual 1-15 exposure. (Complaint at ¶
16; Amended Complaint at ¶20)
- 6 • The Blue Diamond Road Interchange Plans that NDOT provided Plaintiffs
7 disclosed and explained the construction to be performed at the Blue Diamond
Road Interchange, but did not include the "fly over" at the Blue Diamond Road
Interchange, as now constructed. (Complaint at ¶ 19; Amended Complaint at ¶23)
- 8 • The Blue Diamond Road Interchange "fly over" is contrary to plans shown to
9 Plaintiffs at the time of the transaction. (Complaint at ¶ 25, Amended Complaint
at ¶30)
- 10 • As the 1-15 visual exposure was a central consideration to this transaction,
11 Plaintiffs never would have purchased the Exchange Property from NDOT,
12 let alone for nearly \$24 Million if Plaintiffs had known that NDOT intended to
13 ever construct a "fly over" at Blue Diamond Road and destroy the property's
visibility from 1-15. (Complaint at ¶ 27, Amended Complaint at ¶32)(emphasis
added).
- 14 • Further, as a condition subsequent to Plaintiffs' purchase of the Exchange
15 Property, Defendant's presented Plaintiffs with the Blue Diamond Interchange
development plan. That plan reflected that the Exchange Property had in excess of
16 1,500 feet of visibility from 1-15. After Plaintiffs' purchase of the Exchange
Property, Defendant, by and through NDOT, changed the Blue Diamond Road
Interchange development plan, such that a "fly over" eliminated the Exchange
17 Property's 1,500 feet of visibility from I-15, which amounts to a breach of the
Settlement Agreement. (Complaint at p.8, ¶ 12; Amended Complaint at ¶50).
- 18 • Defendant's failed to disclose to Plaintiffs the Blue Diamond Road
19 Interchange plan that included the "fly over." (Complaint at p.9, ¶19,
Amended Complaint at ¶ 79)(emphasis added).
- 20 • Defendant breached its duty of good faith and fair dealing by failing to disclose
21 that it intended, contemplated, or that it was otherwise possible that NDOT
22 would construct a "fly over" at the Blue Diamond Road Interchange that
would obstruct Plaintiffs' ingress and egress to the Exchange Property and/or
visibility of the property from 1-15. (Complaint at p. 10, ¶ 28, p. 11 ¶ 39,
Amended Complaint at ¶58) (emphasis added).
- 23 • Defendant further breached its duty of good faith and fair dealing when it planned
24 and began construction on the "fly over," despite express representations to
25 Plaintiffs that the Blue Diamond Road Interchange would not include a "fly
over." (Complaint at p.10, ¶ 29, p. 12 ¶ 40, Amended Complaint at ¶59)
(emphasis added).
- 26 • To further entice Plaintiffs into purchasing the property, Defendant failed to
27 disclose that Defendant intended and/or contemplated the building of a "fly
28 over" that would significantly impact the visibility of the property from I-15,

1 which Defendant's appraisal identified as a significant feature of value.
2 (Amended Complaint at ¶89) (emphasis added).

3 There can be no doubt that Plaintiffs provided NDOT with ample notice that their claims related
4 to NDOT building any flyover, not just a flyover that differed from the 2008 "conceptual
5 flyover."

6 Plaintiffs maintained the same position during the course of litigation. On June 6, 2014,
7 seven months before the close of discovery and five months before the expert designation
8 deadline, Plaintiffs responded to interrogatories from NDOT. Therein, Plaintiffs made clear that
9 their claim was that NDOT had not previously disclosed that it would build any "flyover." (See
10 Plaintiffs' Responses to Interrogatories, attached hereto as **Exhibit 10**, at Interrogatories No. 5
11 and 7)("Undisclosed by NDOT to Plaintiffs was that at the time of the Settlement Agreement
12 NDOT intended to build the 'fly-over'"; NDOT provided Plaintiffs with diagrams illustrating
13 that the Blue Diamond Interchange. . . . not one included a "fly-over". . . . NDOT specifically
14 represented, by and through its agents, to Plaintiffs that it was not developing a "fly-over," by
15 giving Plaintiffs a plan for the Interchange that did not include the "fly-over").

16 b. NDOT's expert report(s) were prepared well before NDOT even saw Mr.
17 Harper's expert report.

18 Despite Plaintiffs making their position clear, NDOT did not perform additional
19 discovery prior to the expert deadline. Instead, it ignored the evidence before it and pursued its
20 own notions and assumptions of the premise of this case. While NDOT is quick to blame
21 Plaintiffs and Harper for NDOT's misconceptions, it is undeniable that the basis for NDOT's
22 expert reports was conceived well-before NDOT ever saw Harper's report.

23 NDOT's primary expert, Jack Sjostrom, prepared his report long before Plaintiffs even
24 filed their Complaint.⁵ On March 2, 2012—nine months before Plaintiffs even filed their
25 Complaint—NDOT's Assistant Chief Project Manager John Terry—who was also NDOT's
26 NRCP 30(b)(6) designee—emailed Sjostrom and directed him "to prepare information and
27 displays regarding the Nassiri property on the NE quadrant of I-15 and Blue Diamond Road."

28 ⁵ Again, Sjostrom's report was not a testifying expert's report at all, but pre-litigation evidence
that should have been produced in document discovery by NDOT early in this action

1 (See March 2, 2012, Email, NV_Nassiri014640-014641, attached to Plaintiffs' MIL to Exclude
2 Expert as Exhibit 3.). NDOT instructed their expert "to compare the visibility of the Nassiri
3 property from I-15 as it would have been with the EA design to how it is today." (Id.). Sjostrom
4 provided John Terry with his "Technical Memorandum" on March 20, 2012. (See Plaintiffs'
5 MIL to Exclude Expert as Exhibit 4).

6 Harper's report was not disclosed until November 11, 2014, a year and a half after
7 Sjostrom authored his report. Furthermore, NDOT did not disclose Sjostrom's report or Mr.
8 Nevin's report to Plaintiffs until November 11, 2014. To contend that Sjostrom relied on
9 Harper's opinion is a just untrue. The blame for NDOT's decision to do a wayward analysis falls
10 squarely on NDOT's shoulder, and it seems NDOT has never come to grips with that
11 responsibility.

12 c. NDOT's contention that Plaintiffs have engaged in a bait-and-switch or
13 "flipped flopped" is reckless, without evidence, and is reprehensible. The
14 record reflects that any typographical error by Mr. Harper was inadvertent and
a mere coincidence.

15 Support for NDOT's contention in its Motion of a bait-and-switch can be boiled down to
16 Harper's mistake in referring to four consecutive maps by the title contained only on the first
17 map. NDOT's presumes to tell the Court that Harper's report is actually an evaluation of the
18 damages between a conceptual flyover and as-built flyover. This Court has, however, seen the
19 pleadings and heard days of testimony stating a different claim. Consistent with Plaintiffs'
20 position, Harper's report compares the as-built flyover to the completely flyover-less landscape
21 shown to Mr. Nassiri at the time of the settlement. NDOT accuses Harper of "flip-flopping" at
22 his deposition and drastically changing his opinions in his supplement. (Motion at p. 16).
23 Nothing could be further from the truth.

24 Harper's report states that "it is an extraordinary assuming that the Exhibit included in the
25 Addenda of this report and titled 'I-15 South Corridor Improvements Environmental Assessment
26 Build Alternative Figure 10F' is an accurate depiction of the subject in the before condition."
27 (See Exh. 4 at HARPER000004). In the addenda, there are four consecutive maps starting at
28 HARPER0000091 and going through HARPER0000094. The first map of the Subject Property,

1 which states Attachment "A" has a title in the lower right hand corner of "I-15 South Corridor
2 Improvements Environmental Assessment Build Alternative Figure 10F." (Id. at
3 HARPER0000091). Superimposed on the top right hand corner are the words "Original Plan."
4 (Id.). That map shows a conceptual plan for a flyover. The second map of the Subject Property
5 is an aerial photo of the Subject Property prior to the construction of the "flyover." (Id. at
6 HARPER0000093).⁶ Superimposed on that map is "BEFORE." (Id.). Finally, the third map of
7 the Subject Property is an aerial photo of the Subject Property after the construction of the
8 "flyover." (Id. at HARPER0000094). Superimposed on that map is "AFTER." (Id.).

9 During his January 15, 2015, NDOT spent hours grilling Harper and accusing him of
10 wrongdoing. Throughout the onslaught and repetitive questioning, Mr. Harper's testimony was
11 simple and untarnished: Mr. Harper thought that HARPER0000093 was part of a series of maps
12 from HARPER0000091 and HARPER0000095 titled 'I-15 South Corridor Improvements
13 Environmental Assessment Build Alternative Figure 10F.' (See Harper Deposition, Exh. 7, at
14 p.180:8-16). He took HARPER0000091-HARPER0000095 from Tim Morse's previous
15 appraisal and assumed all the maps were part of the Environmental Assessment Build
16 Alternative Figure 10F. (Id. at p. 170:11-20; 85:6-86:5; 90:10-24 ("I believe[d] those four pages
17 [HARPER0000091-HARPER0000094] came out of that overall document. That's not a one-
18 page document. . . . So that led me to believe that this is just one map that's an attachment to the
19 overall document. As I stated earlier, I was not provided with that whole document.")). In his
20 mind, HARPER0000093 (the "BEFORE Condition Map") was clearly identified as the before
21 condition because it bore a sticker that says "BEFORE". (Id. at 80:16-81:1; 181:4-6).

22 Harper testified that under his extraordinary assumption he had to "in the before
23 condition, analyze and -- and value the property as if the project -- in this case, the Blue Diamond
24 flyover -- did not exist. (Id. at p.78:10-21). Also, Harper testified that when he referred to the
25 before condition as "I-15 South Corridor Improvements Environmental Assessment Build
26 Alternative Figure 10F" he was referring to HARPER0000093 (the "BEFORE Condition Map")

27
28 ⁶ HARPER0000092 is a fold out map and for purposes of this Opposition irrelevant.

1 and not HARPER0000091 (the "hypothetical flyover map"). (Id. at p. 90:1-7).

2 NDOT repeatedly questioned Harper as to why he referred to HARPER0000093 as "I-15
3 South Corridor Improvements Environmental Assessment Build Alternative Figure 10F" when
4 that was the title on HARPER0000091, Mr. Harper clearly stated:

5 There's no title on 93, but my understanding and from what I remember from Mr.
6 Morse's report, those pages all came out of that build alternative document----I'm
sorry, Environmental Assessment Document.

7 (Id. at p. 90:25-91:9).

8 Q: . . . why call it "I-15 South Corridor Improvements Environmental Assessment
9 Build Alternative Figure 10-F?"

10 A. It's a typographical error in my appraisal. I'll do a supplemental report after
this deposition. It's a mistake. I sincerely apologize."

11 Q. Why even include this depiction [HARPER0000091] in your report if you
12 didn't rely on it?

13 A. I did rely on it.

14 Q. Page HARPER000091, You relied on this depiction?

15 A: I relied on it from the fact that I wanted to show that these pages, the following
16 four pages, came from that Environmental Assessment report. That's the only
page that I was provided, 91, that states the source of it. That's why it's there.

17 Q. Why is stating the source of this document important to your appraisal?

18 A. I have to.

19 (Id. at p. 93:15-94:17).

20 Q. You just went to his addendum and saw two separate pictures depicting two
21 separate configurations of the intersection, pulled them both, titled your before
condition as the first one that you didn't rely on, and based your report on the
second picture without realizing Mr. Morse did the same thing?

22 A. I -- I did not. Because, again, I didn't rely on this document, 91, because I
23 knew that wasn't built. That wasn't the before condition. And let's don't beat the
24 dead horse. I made the mistake because, again, I thought that all these documents
25 came out of that Environmental Assessment. That's all I was trying to do. Is that
all of this together, these five pages, came out of that Environmental Assessment.
So I was trying to do a general extraordinary assumption and -- and I made a
mistake.

26 Q. Why not just pull the before picture that you used and not the other pages?

27 A. Because, again, I thought that they were all related and came out of that one
28 Environmental Assessment document, so I wanted to keep those together because
I relied on Page 93.

1 (Id. at p. 174:20-175:21). Unrelenting, NDOT attempted to force Mr. Harper into admitting that
2 he was changing his opinion; however, Mr. Harper's position did not change:

3 I can't be any clearer. I made a mistake. I sincerely apologize. In hindsight, here's
4 what I should have stated—and you're right. . . . I should have stated . . . : it is an
5 extraordinary assumption that the Exhibit included in the Addenda of this report
6 on Page 86 [HARPER0000093] is an accurate depiction of the subject in the
7 before condition. You know, again, it was my understanding that all of these
8 pages, all of these diagrams, all of these maps came out of that Environmental
9 Assessment. I screwed up by including the words Alternative Figure 10F. Again, I
10 sincerely apologize. I'm not trying to mislead anybody. I'm not—I'm under oath.

11 (Id. at 96:15-97:8).

12 As NDOT's badgering continued, the evidence remained the same, Harper's only mistake
13 was referring to HARPER0000093 as "I-15 South Corridor Improvements Environmental
14 Assessment Build Alternative Figure 10-F." That labeling error, however, did not impact his
15 analysis because he used HARPER0000093 as the "before" condition. (Id. at 104:17-105:18).
16 Harper made clear that he did not use HARPER0000091 as the before condition. (Id. at p.106:5-
17 10). Harper never considered the difference in visibility between HARPER0000091 (the
18 hypothetical flyover that was never built) and the current flyover. (Id. at p. 148:15-149:8).

19 NDOT attempted, over Harper's objection, to convince Harper that he was revising the
20 before condition:

21 Q. (By Mr. Pepperman) So looking at the before condition, your revised before
22 condition --

23 A. Sir, it's not revised. I find that misstating. I relied on that map marked
24 "before," Page 93. The only thing that needs to be revised is I need to take out
25 the words "Figure 10F." That's the only thing. I don't want to be made seem like
26 here at this deposition that I revised my analysis or something based on an
27 inclusion of the word "Figure 10F," because that is not true.

28 (Id. at p.108:6-15).

Q. Don't you think it's important, when you're doing a before and after
comparison appraisal and your opinion of damages is \$10 million, that you
accurately identify the before condition?

A. Eric, I'm sorry. I did not, in my mind and in my analysis, mistake the before
condition. The only mistake in this appraisal -- and, again, we can sit here
however long you want to do this -- is I included the words identifying that
document, that page, and it's a mistake. And it doesn't affect my opinion. . . .

Q. And as a basis for that, you say in your report that, if you look at the before

1 condition as depicted in Figure 10F compared to the as-built condition, there's a
2 \$10 million difference. Right? That's what it says right?

3 A. Yes.

4 Q. Okay.

5 A. But that's -- look, I know that you've made a mistake in your life. What I'm
6 sitting here under oath -- and look, I'm willing to go in front of a judge/jury with
7 egg on my face and say I made a mistake of misidentifying the wrong depiction.
8 What I'm telling you is, when I was sitting in my office completing this appraisal
9 report and coming to my opinion of \$10 million in just compensation, I did not
10 have 10F, that Page 91, in front of me. I had Page 93. . . . Not under the scope.
11 There wasn't a mistake done under the scope. There was just a mistake in the
12 publishing of the appraisal and that statement. The scope of work was very clear:
13 Give an opinion of value in the before and after condition, and if I think that
14 there's--what I feel like the just compensation should be. That was the clear
15 scope of work.

16 Q. If that's the scope, then what is the after condition?

17 A. How it's built today, the flyover.

18 (Id. at p. 161:23-165:1).⁷

19 As is clear from Mr. Harper's testimony, he always considered HARPER0000093 as the
20 BEFORE condition and he never used HARPER0000091. In other words, he compared the Blue
21 Diamond Interchange with no flyover, as shown to Nassiri in 2005, the flyover as built in 2010.
22 Any appearance to the contrary in his expert report was a simple mistake, a mistake NDOT knew
23 from Harper's deposition and would have readily discovered earlier had closely reviewed the
24 pleadings and discovery, or had it taken Harper's deposition prior to the end of discovery.

25 d. Harper provided a timely supplement to his report.

26 Under NRCP 26(e)(1), a party is under the duty to supplement its disclosures under
27 NRCP 16.1(a) "if the party learns that in some material respect the information disclosed is
28 incomplete or incorrect and if the additional or corrective information has not otherwise been

⁷ Likewise, the record reflects that counsel was equally oblivious to the mistake:

MR. CICILIANO: And I'll tell you right now, Eric, at least from my -- maybe this
puts it to rest -- I didn't recognize it. And I said in my head, What is she talking
about? What is Jack talking about? You've made it clear to me, and I think --
and he can testify to it -- but there's no conspiracy going on here. And to imply
that I somehow told him, Hey, you got to come up with a story, is not
appreciated. No one from my office has talked to him about it. So I don't know
if that puts anything to rest but. .

(Ex. 7, at p. 168:21-169:5).

1 made known to the other parties during the discovery process or in writing.” “With respect to
2 testimony of an expert from whom a report is required under Rule 16.1(a)(2)(B) the duty extends
3 both to information contained in the report and to information provided through a deposition of
4 the expert.” NRCp 26(e)(1). That supplementation can occur up to 30 days before trial. Id.; see
5 also NRCp 16.1(a)(3). Supplementation means correcting inaccuracies and supplementation is
6 not limited to the discovery period. Luke v. Family Care and Urgent Medical Clinics, 323 Fed.
7 Appx. 496, 500 (9th Cir.2009); Dayton Valley Investors v. Union Pacific R. Co., 2010 WL
8 3829219 (D.Nev. 2010). NDOT’s argument that Harper’s supplement was untimely is wrong.

9 Harper provided a supplement prior to trial that cured his typographical mistake. (See
10 Harper Supplemental Report, attached hereto as **Exhibit 11**). Therefore, Mr. Harper cured any
11 mistake.

12 While NDOT has relentlessly alleged a conspiracy and nefarious plan involving
13 Plaintiffs, its counsel, and Harper to mislead NDOT, there is no such evidence. Harper simply
14 made a mistake that went unnoticed. While this mistake might have fostered the pre-litigation
15 assumptions that led to Sjostrom’s pre-litigation analysis, there are no grounds to exclude
16 Harper’s testimony.

17 **2. Harper’s report will assist the trier of fact in assessing Plaintiffs’ damages.**

18 No one has disputed, nor could they, that Mr. Harper is an expert appraiser. Rather,
19 NDOT disputes that Harper’s opinion will aid the jury in determining Plaintiffs’ damages

20 Nevada Revised Statutes 50.275 provides that a person with “special knowledge, skill,
21 experience, training or education may testify [as an expert] to matters within the scope of such
22 knowledge.” Wright v. Las Vegas Hacienda, Inc., 102 Nev. 261, 263, 720 P.2d 696, 697 (1986).
23 To testify as an expert witness, the witness must satisfy three requirements: (1) he or she must be
24 qualified in an area of “scientific, technical or other specialized knowledge;” (2) his or her
25 specialized knowledge must “assist the trier of fact to understand the evidence or to determine a
26 fact in issue;” and (3) his or her testimony must be limited “to matters within the scope of [his or
27 her specialized] knowledge.” Hallmark v. Eldridge, 124 Nev. 492, 498, 189 P.3d 646, 650
28 (2008); see also Perez v. State, 129 Nev. Adv. Op. 90, 313 P.3d 862, 866 (2013); Higgs v. State,

1 126 Nev. ———, ———, 222 P.3d 648, 658 (2010).

2 “An expert's testimony will assist the trier of fact only when it is relevant and the product
3 of reliable methodology.” Hallmark v. Eldridge, 124 Nev. 492, 500, 189 P.3d 646, 651 (2008).

4 “If an expert's specialized knowledge will assist the trier of fact to understand the evidence or to
5 determine a fact in issue, the expert may testify to matters within the scope of such knowledge.”

6 Banks ex rel. Banks v. Sunrise Hosp., 120 Nev. 822, 837, 102 P.3d 52, 62 (2004). That
7 methodology can be based on the witness' practical experience. Cheyenne Const., Inc. v. Hozz,
8 102 Nev. 308, 311, 720 P.2d 1224, 1226 (1986). Furthermore, damages need not be proven with
9 mathematical exactitude. Frantz v. Johnson, 116 Nev. 455, 469, 999 P.2d 351, 360 (2000)

10 Harper's opinion is that the flyover blocks the visibility of Plaintiffs' property. (Harper
11 Deposition, Exh. 7, at p.60:24-61:4). To reach his opinion of value, Harper used a reliable
12 methodology:

13 I appraise a property in its before condition, looking at the characteristics of what
14 the property looked like and configuration and -- and, in this case, the views and
15 things, exposure along I-15, and then analyze the property. You know, come up
16 with a value of, in this case, the whole property before that -- I use the term
17 acquisition but, you know, before the construction and -- and what has taken place
18 along Blue Diamond, the flyover project. And then analyze the value of the
19 property in the after, taking into consideration the characteristics of the property
20 after the project has been built.

21 (Id. at p.64:25-65:13). The before condition—one without a flyover—was consistent with how
22 he had observed the property, hundreds if not thousands of times. (Id. at p. 52:1-7, 80:16-1, 92:2-
23 5). Harper's opinion is that after the flyover was built, the value of the Subject Property was
24 impacted:

25 there's a difference between the before and after condition. Because now, in the
26 after condition, it's much more of an obstruction and the frontage and exposure
27 and view of the subject from the main traffic lanes of I-15 are now much more
28 impacted . . . They were impacted in the before. And I'm sorry I didn't, you
29 know, take pictures. I've seen pictures from the old appraisals, and you can tell
30 the differences, you know, in the pictures from those appraisals . . . until [the
31 flyover] was built.

32 (Id. at p.117:7-118:2). He then concluded that the property experienced a loss of exposure based
33 on his personal observation of the “56 foot high flyover, the additional and higher retaining
34 walls, and all of that construction blocking the visibility and affecting the visibility to the subject

1 in the after.” (Id. at pp. 110:24-111:6; see also id. 121:8-23).

2 Harper’s concluded that Nassiri’s property value decreased by 10%, which is “the
3 difference between the value of the property in the before condition as compared to the value of
4 the property in the after condition.” (Exh. 4 at p.76; Exh. 7, at 124:13-20). That opinion is based
5 on the pairings and appraisals he reviewed and disclosed (see Exh. 4, at HARPER0000020),
6 “pairings and analysis that Mr. Morse had in his . . . 2012 appraisal, and . . . some pairings other
7 appraisers have done” (Exh. 7, at 127:11-21, 128:13-17), and his personal experience with
8 appraising properties on I-15 and US 95:

9 Q. You state, “Based on my research, it is my opinion that the remainder
10 property’s diminished in value by 10 percent.” Correct?

11 A. Correct.

12 Q. What is that opinion based on?

13 A. Again seeing the pairings and things and other appraisal reports. Also, Like I
14 said, I’ve done appraisals along I-15 over the years and 95 and talked to property
15 owners over the years that, because of the sound walls and the different aspects of
16 the construction where visibility to their properties have been about affected, that
17 those properties have — the value of those properties have also been affected, and
18 loss of rent or whatever the situation may be.

19 (Id. at 128:18-129:2). He also relied on his decades of experience:

20 I mean, you know, the word analysis is a pretty broad term and so, you know, I
21 use analysis in what I do as an appraiser, and part of that analysis is, over the
22 years, seeing other appraisers’ work and reviewing—and, I’m sorry, reading not
23 necessarily reviewing. And just, you know, my experience and knowledge and
24 everything that I’ve obtained over the years. I’ve been doing this a very long time.

25 (Id. at p. 130:17-131:18).

26 NDOT’s criticism that Harper’s opinion lacks any foundation or support. Harper
27 identifies parings in his report upon which he bases the value of the Property. (See Harper Expert
28 Report, Exh. 4, at HARPER0000060-HARPER0000076). Harper also identifies appraisals of the
Subject Property that he had reviewed. (See id. at HARPER0000020).

3. Harpers’ opinions are relevant to Plaintiffs contractual claims.

As yet another end around summary judgment, NDOT contends that Harper’s opinion
can only be applied to Plaintiffs now dismissed inverse condemnation claims. NDOT’s position,

1 however, demonstrates that it is lost in the weeds. NDOT states that “constitutional just
2 compensation” and “breach of contract damages” are “vastly different.” (Motion at p. 12:11-12).
3 While it is undeniable that these they are different legal concepts, both are intended to do the
4 same thing: place the injured in the same position they would have been but for a specific injury.

5 Damages for breach of contract and breach of the implied covenant of good faith and fair
6 dealing claim are both compensatory damages sounding in contract. Rd. & Highway Builders v.
7 N. Nev. Rebar, 128 Nev. Adv. Op. 36, 284 P.3d 377, 382 (2012); Hilton Hotels v. Butch Lewis
8 Productions, 109 Nev. 1043, 1046, 862 P.2d 1207, 1209 (1993). “It is well established that in
9 contracts cases, compensatory damages are awarded to make the aggrieved party whole and ...
10 should place the plaintiff in the position he would have been in had the contract not been
11 breached.” Rd. & Highway Builders; 128 Nev. Adv. 36, 284 P.3d at 1209; Hornwood v. Smith's
12 Food King No. 1, 107 Nev. 80, 84, 807 P.2d 208, 211 (1991); Cheyenne Const., Inc. v. Hozz,
13 102 Nev. 308, 312, 720 P.2d 1224, 1227 (1986); see also Andrew v. Century Sur. Co., No. 2:12-
14 CV-00978-APG, 2015 WL 5691254, at *3 (D. Nev. Sept. 28, 2015).

15 Comparatively, in eminent domain actions, the owner is entitled to recover “not only the
16 value of the land actually taken, but also the amount by which the remaining parcel is diminished
17 in value by virtue of the severance.” M & R Inv. Co. v. State ex rel. Dep't of Transp., 103 Nev.
18 445, 449, 744 P.2d 531, 534 (1987); Andrews v. Kingsbury Gen. Improvement Dist. No. 2, 84
19 Nev. 88, 436 P.2d 813 (1968); NRS 37.110. “Severance damages are damages awarded to
20 compensate for the difference between the value of the remainder property before and after the
21 taking.” Nevada Power Co. v. 3 Kids, LLC, 129 Nev. Adv. Op. 47, 302 P.3d 1155, 1157 (2013),
22 as modified (July 24, 2013). NRS 37.110 applies “where physical damage has occurred to
23 property as a result of construction of an improvement or where a property right which is directly
24 connected to the use or ownership of the property is substantially impaired or extinguished.”
25 Schwartz v. State, 111 Nev. 998, 1003, 900 P.2d 939, 942 (1995)

26 Accordingly, both severance and contract damages seek to place the aggrieved party in
27 the position they would have been had there been no injury. When the injury is the same, as it is
28 here, the building of a flyover, these different concepts converge to the same measure of

1 damages. Thus, while just compensation may be premised on a different legal theory than breach
2 of contract, in situations like the one here, where the alleged taking is also alleged in the
3 alternative to be a breach of contract, the compensatory damages would be the same.

4 Here, assuming that the building event was a taking and a breach of contract, Plaintiffs
5 measure of damages and the methodology used would be precisely the same. (See Declaration of
6 Keith Harper, **Exhibit 12**, at ¶8). Both would measure the amount of damages to Plaintiffs'
7 property caused by the building of the flyover.

8 As testified to by Harper, his report determines the amount of money necessary to place
9 Plaintiffs in the same position as if the flyover had never been built. (Exh. 7, at 119:20-200:60;
10 Exh. 4, at p. 10). In an eminent domain context, the taking was the property's view and visibility.
11 (Exh. 7, at p. 64:7-19). Thus, his opinion is the value of the property that has "been affected by
12 the flyover and the construction that has taken place." (Id. at p. 63:14-24; see also id. at 53:18-
13 54:16).

14 In calculating damages resulting from a breach of contract, the same methodology would
15 be used. (Exh. 12 at ¶ 8). To determine contract damages, one must determine the decrease in the
16 value of the property due to a loss of visibility resulting from the construction of the flyover.
17 (Id.). Necessarily, in this situation contract damages are equal to "just compensation," and both
18 seek to place Plaintiffs in the position they would be had the flyover not been constructed. (Id.).
19 Thus, as a result of the breach of contract, Plaintiffs' property decreased in value by 10%. (Id.).
20 Therefore, regardless of whether Harper was calculating "just compensation" or "contractual
21 damages," the value would be the same. As a result, Harper's calculation of damages remains
22 relevant to Plaintiffs' claims for breach of contract and breach of the covenant of good faith and
23 fair dealing.

24 **4. Contract damages extend to the reasonable damages caused by NDOT's breach.**

25 NDOT further argues that Harper's damage calculation should be excluded because it
26 considers damages to property Nassiri did not acquire from NDOT. Contractual damages include
27 damages that are the probable result of the breach. Hornwood v. Smith's Food King No. 1, 105
28 Nev. 188, 772 P.2d 1284, 1286 (1989) (quotation omitted); Andrew v. Century Sur. Co., ---

1 F.Supp.3d ----, 2015 WL 5691254, at *3 (D. Nev. Sept. 28, 2015); see also Restatement
2 (Second) of Contracts § 351(1) (1981). Whether injury to Plaintiffs remaining property was
3 foreseeable is a question of fact. In fact, NDOT well understood that the Exchange Property
4 added value to Plaintiffs entire property and directly profited from that fact by charging Plaintiffs
5 a very substantial premium for that assemblage value. Moreover, the Settlement Agreement was
6 entered into in the context of a condemnation action that touched and concerned the entire
7 property, such that damages from breach of that agreement would naturally flow to the entire
8 property. That being the case, it was reasonable for NDOT to anticipate that Plaintiffs' entire
9 property resulting from this settlement would be impacted by a loss of visibility caused by the
10 flyover.

11 **5. It is improper to look at damages as a share of the exchange value of the**
12 **Exchange Property.**

13 NDOT suggests that Plaintiffs' contractual damages should be excluded because they
14 approximate 40% of the value of the Exchange Property in 2005. The argument is *non sequitur*.
15 NDOT miscomprehends what damages entail. As stated, contract damages equal the amount of
16 money needed to place Plaintiffs in the same place they would had been had the flyover not been
17 constructed. In determining contract damages, the value of the view and visibility in 2005 is
18 unimportant. Likewise, it is irrelevant what Plaintiffs paid for the Exchange Property in 2005 or
19 what they would have paid for the Exchange Property in 2005 had they known of the flyover. It
20 is also irrelevant that the Property has appreciated. The Plaintiffs' position, supported by the
21 evidence is that absent the flyover, Plaintiffs' property would had been worth even more, and it
22 is that difference in value Plaintiffs are entitled to recover as contract damages.

23 The date on which damages are determined does relate to the date of breach. J.J. Indus.,
24 LLC v. Bennett, 119 Nev. 269, 276, 71 P.3d 1264, 1269 (2003). However, the Nevada Supreme
25 Court has found that "where special circumstances show proximate damages of an amount
26 greater than existed on the date of the breach, a date different than the time of breach may be
27 fixed for establishing damages." Cheyenne Const., Inc. v. Hozz, 102 Nev. 308, 312, 720 P.2d
28 1224, 1227 (1986); Fairway Builders, Inc. v. Malouf, Etc., 124 Ariz. 242, 603 P.2d 513, 526

1 (Ct.App.1979) (measure of the damages for breach of a construction contract as of the time of
2 trial). In the present case, special circumstances exist such that the date of damages should be the
3 date of the summons. Here, Plaintiffs began negotiations with NDOT upon discovering NDOT's
4 breach. NDOT insisted that Plaintiffs submit a claim to the board of examiners. After more than
5 a year of negotiations and administrative procedure, NDOT summarily refused Plaintiffs claim.
6 Accordingly, the delay in bringing litigation was the result of NDOT's actions.

7 Moreover, even if the Court were to determine that the date of damages is the date of
8 NDOT's breach in 2010, Harper's testimony is still relevant to the issue of damages. He opined
9 that the flyover decreased the value of Plaintiffs' property by 10%. That decrease in value would
10 hold true in 2010. (Exh. 12, at ¶9). Likewise, because Harper considered and relied upon Tim
11 Morse's 2010 appraisal, Harper can opine as to the value of that 10% in 2010. (Exh. 7, at p. 81:9-
12 23; 199:6-12; 127:14-128:12). Accordingly, even if the date of damages is 2010, Harper's
13 testimony is relevant to the determination of damages.

14 **III.**

15 **CONCLUSION**

16 Based on the foregoing, Plaintiffs respectfully request the Court deny NDOT's Motion.

17 Dated this 7th day of December 2015.

18 GARMAN TURNER GORDON, LLP

19 
20 ERIC R. OLSEN

Nevada Bar No. 3127

Email: eolsen@gtg.legal

21 DYLAN T. CICILIANO

22 Nevada Bar No. 12348

Email: dciciliano@gtg.legal

23 650 White Drive, Ste. 100

24 Las Vegas, Nevada 89119

Tel: (702) 796-5555

25 Fax: (702) 369-2666

26 Attorneys for Plaintiffs

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

KEMP, JONES & COULTHARD, LLP
William L. Coulthard, Esq.
w.coulthard@kempjones.com
Eric M. Pepperman, Esq.
e.pepperman@kempjones.com
Mona Kaveh, Esq.
m.kaveh@kempjones.com
3800 Howard Hughes Parkway, 17th Flr.
Las Vegas, Nevada 89169

OFFICE OF THE ATTORNEY GENERAL
Amanda B. Kern
Deputy Attorney General
akern@ag.nv.gov
555 E. Washington Avenue
Suite 3900
Las Vegas, NV 89101

Co-Counsel for Defendant

Rebecca Post, an employee of
GARMAN TURNER GORDON

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 9, part 1

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

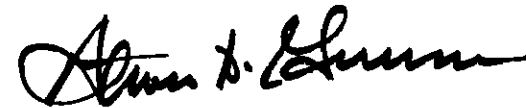
WILLIAM L. COULTHARD, ESQ.
Nevada Bar No. 3927
ERIC M. PEPPERMAN, ESQ.
Nevada Bar No. 11679
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway
17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
Facsimile: (702) 385-6001
Email: emp@kempjones.com

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



CLERK OF THE COURT

1 WILLIAM L. COULTHARD, ESQ. (#3927)
w.coulthard@kempjones.com
2 ERIC M. PEPPERMAN, ESQ. (#11679)
e.pepperman@kempjones.com
3 MONA KAVEH, ESQ. (#11825)
m.kaveh@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Flr.
5 Las Vegas, Nevada 89169
Telephone: (702) 385-6000
6 Facsimile: (702) 385-6001

7 ADAM PAUL LAXALT, ESQ.
Attorney General
8 DENNIS V. GALLAGHER, ESQ. (#955)
Chief Deputy Attorney General
9 dgallagher@ag.nv.gov
AMANDA B. KERN, ESQ. (#9218)
10 Deputy Attorney General
akern@ag.nv.gov
11 OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
12 Las Vegas, Nevada 89101
Telephone: (702) 486-3420
13 Facsimile: (702) 486-3768
Attorneys for the State
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,
23 inclusive; DOE INDIVIDUALS I-X; and
DOE ENTITIES 1-10, inclusive,

24 Defendants.
25

Case No.: A672841

Dept. No.: XXVI

**MOTION TO EXCLUDE DAMAGES
EVIDENCE RELATED TO PLAINTIFF'S
BREACH OF CONTRACT CLAIMS
AND/OR MOTION TO STRIKE
PLAINTIFF'S EXPERT, KEITH
HARPER, MAI**

Date of Hearing:

Time of Hearing:

26 Defendant State of Nevada, on relation of its Department of Transportation (the "State"),
27 by and through its counsel of record, Kemp, Jones & Coulthard, LLP, and the Office of the
28 Attorney General, hereby moves this Honorable Court to exclude Plaintiff's purported damages

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

evidence related to Plaintiff's breach of contract claims. This evidence, which consists almost entirely of the appraisal testimony of Plaintiff's lone expert witness, Keith Harper, MAI, should be excluded for each of the following separate and independent reasons:

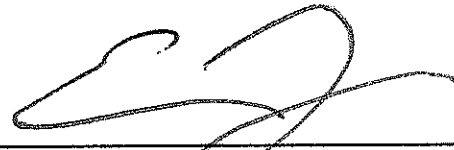
(1) The State was prejudiced by Plaintiff's failure to timely disclose a computation of his claimed contract damages during discovery;

(2) Harper's testimony is inadmissible because his opinions relate solely to Plaintiff's inverse condemnation claim, which has now been dismissed on summary judgment; and

(3) In addition to being irrelevant, Harper's expert appraisal report failed to disclose any opinions on contract damages, was prejudicially false and misleading as to his inverse condemnation opinions, and lacks any foundation for the valuation conclusions set forth therein.

DATED this 4 day of November, 2015.

Respectfully submitted by:



William L. Coulthard, Esq. (#3927)
Eric M. Pepperman, Esq. (#11679)
Mona Kaveh, Esq. (#11825)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169

Adam Paul Laxalt, Esq. (#12426)
Dennis V. Gallagher, Esq. (#955)
Amanda B. Kern, Esq. (#9218)
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for the State

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

NOTICE OF MOTION

TO: Plaintiff, Fred Nassiri, individually and as trustee of the Nassiri Living Trust; and

TO: Eric R. Olsen, Esq., and Dylan T. Ciciliano, Esq., his attorneys.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the State will bring the above-entitled **MOTION TO EXCLUDE DAMAGES EVIDENCE RELATED TO PLAINTIFF'S BREACH OF CONTRACT CLAIMS AND/OR MOTION TO STRIKE PLAINTIFF'S EXPERT, KEITH HARPER, MAI** on for hearing on the 08 day of DECEMBER 9:00A, 2015, at _____.m. in Department XXVI of the Eighth Judicial District Court, 200 South Third Street, Las Vegas, Nevada, or as soon thereafter as counsel may be heard.

DATED this 4 day of November, 2015.

Respectfully submitted by:



William L. Coulthard, Esq. (#3927)
Eric M. Pepperman, Esq. (#11679)
Mona Kaveh, Esq. (#11825)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169

Adam Paul Laxalt, Esq. (#12426)
Dennis V. Gallagher, Esq. (#955)
Amanda B. Kern, Esq. (#9218)
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for the State

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

A. Plaintiff Cannot Present Evidence Of His Claimed Breach Of Contract Damages Because He Failed To Provide A Mandatory Computation Of Those Damages At Any Time During The Year-Long Course Of Discovery.

The purpose of NRCP 16.1 is to facilitate the timely, efficient, and fair prosecution of a legal action. To this end, the Rule requires, *inter alia*, a plaintiff to provide the other parties with “[a] computation of any category of damages claimed, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter... on which such computation is based.” NRCP 16.1(a)(1)(C). This information must be disclosed at the outset of the case, “without awaiting a discovery request.” *Id.* A party that without substantial justification fails to timely provide a calculation of damages cannot, unless such failure is harmless, present evidence as to any category of damages not so disclosed. NRCP 37(c)(1); *Freemon v. Fischer*, 281 P.3d 1173, *5 (Nev. 2009) (affirming the exclusion of all damages evidence as an appropriate sanction for failing to timely disclose a computation of damages) (unpublished disposition).

1. Plaintiff violated the plain mandate of NRCP 16.1(a)(1)(C) by failing to disclose a computation of his claimed contract damages during discovery.

Discovery in this case stretched twelve months from February 2014 to January 2015. During this time, Plaintiff supplemented his NRCP 16.1 initial disclosures eight times. Seven of these eight supplements contained a computation of damages section. But that section only ever disclosed calculations for two categories of claimed damages: (i) rescission damages and (ii) inverse condemnation damages. (Ex. 1). *At no time during discovery did Plaintiff supplement his computation of damages to include a category of claimed breach of contract damages.* He admittedly did not disclose these damages, which Plaintiff now asserts exceed **\$12 million**, until he served his Ninth Supplement to his Rule 16.1 Initial Disclosures on March

1 3, 2015—more than a month *after* the discovery period closed.¹ Thus, Plaintiff violated the
2 plain mandate of NRCP 16.1(a)(1)(C) by failing to disclose a computation of his claimed
3 contract damages during discovery.

4 **2. There was no justification for Plaintiff's late disclosure.**

5 Plaintiff timely disclosed calculations for two of his three categories of claimed damages
6 (rescission and inverse condemnation). Yet, he inexplicably refused to provide the State with
7 any computation of his alleged contract damages—which relate to claims that the State has
8 repeatedly called into question. The State has argued from the outset that Plaintiff's breach of
9 contract claims fail as a matter of law. To this day, Plaintiff has *never* identified any
10 contractual duty or good faith obligation that the State breached by building the Flyover. Nor
11 can he articulate a cognizable damages theory. The property that Plaintiff aggressively sought
12 to acquire; that he (and his team of professionals) had months to perform due diligence on; that
13 he (and his legal counsel) drafted the purchase agreement for; and that he claims the State
14 tricked him into buying, is actually worth millions of dollars *more* than what Plaintiff originally
15 paid. Plaintiff's failure to timely disclose a computation of claimed contract damages was
16 inexcusable and unjustified, especially in light of the State's repeated arguments against these
17 claims.

18 **3. The State has been severely prejudiced by Plaintiff's late disclosure.**

19 By waiting until after the close of discovery to reveal his alleged contract damages,
20 Plaintiff deprived the State of a meaningful opportunity to conduct discovery on these damages,
21 which—based upon Plaintiff's untimely disclosure—incomprehensibly *exceed \$12 million*.
22 Impeding the opposing party's opportunity to conduct discovery concerning claimed damages
23 was the precise prejudice that justified excluding all of the plaintiff's damages evidence in
24 *Freemon*:

25
26
27 ¹ The State hereby moves to strike Plaintiff's Ninth Supplement (attached as Ex. 2), which, in
28 addition to the untimely computation of damages, belatedly discloses a never-before-identified
witness (Rogie Madlambayan), several new documents (Nassiri003239-3300), and two post-
expert deposition, post-close of discovery supplemental expert reports untimely produced by
Keith Harper (Harper002251-2578).

1 Based on the depositions of Freeman and his architect, Fischer
2 estimated Freeman's arguable damages to be \$8,000. In contrast,
3 Freeman's expert's report estimated that damages may be between
4 \$209,000 and \$340,000. *As discovery had closed, Fischer had no*
5 *opportunity to depose the expert or conduct other discovery*
6 *concerning the basis for this widely divergent damages*
7 *amount....* [T]he district court did not abuse its discretion in
8 adopting the discovery commissioner's recommendation to
9 exclude all evidence of damages as an appropriate sanction for
10 Freeman's discovery violations. 281 P.3d 1173, *5 (emphasis
11 added).

12 Similarly here, the State never could have fathomed that Plaintiff would seek \$12
13 million in damages for purchasing land that actually increased in value by millions of dollars
14 and, based upon Plaintiff's own promotional materials, has excellent visibility from I-15. Like
15 in *Freemon*, Plaintiff failed to disclose his claimed contract damages during the discovery
16 period, and the State had no opportunity to conduct discovery concerning the basis for
17 Plaintiff's absurdly unexpected computation of these damages. Thus, the State has been
18 severely prejudiced by Plaintiff's late disclosure of his breach of contract damages.

19 **4. Plaintiff should not be allowed to reverse his position regarding the**
20 **late disclosure of information required under Rule 16.1.**

21 During the 5/4/15 Bench Trial, Plaintiff objected to the State's request to admit a July
22 27, 1999, public informational handout on the ground that it was not timely disclosed. The
23 handout was given to attendees of the initial public informational meeting for the Blue Diamond
24 Project. It is a public record maintained in the public offices where items of its nature are kept.
25 While the State timely provided Plaintiff with each of the other public informational handouts
26 on the Blue Diamond Project, it inadvertently failed to produce the 7/27/99 handout during
27 discovery. The State realized its oversight while preparing for trial and immediately produced
28 the handout several weeks before trial was scheduled to begin.

Nevertheless, and despite Plaintiff admitting that he received the 7/27/99 handout in
1999, Plaintiff argued at trial that the handout should be excluded because the State did not
produce another copy to him during the discovery period:

Mr. Olsen: Well, Your Honor, first of all, this document wasn't
produced during the course of discovery. And we asked for all
relevant documents from the State, wasn't produced. You would

1 think if it was maintained in regular course, it would be
2 particularly available. It was not provided.

3 . . .
4 You can't lay the foundation, and as far as the discovery issue, the
5 problem with that is we were not—*we don't have the document*
6 *and were not able to question a witness about this document*
7 *during discovery and as far as that piece of it, that's our*
8 *concern.*

9 (Ex. 3, 5/4/15 Trial Transcr., 54:22-25; 60:22-25) (emphasis
10 added).

11 The Court accepted Plaintiff's rationale and refused to admit the handout because it was not
12 produced during the ordinary course of discovery:

13 The Court: [T]his is not a document that was produced in the
14 ordinary course of discovery, it was produced after the close of
15 discovery when it was discovered.... *So that's a problem in and*
16 *of itself, [] that the document was not produced in the ordinary*
17 *course of litigation.*

18 . . .
19 I don't believe this witness can lay a foundation to explain why
20 this is a public record if it was maintained in the records of NDOT
21 who's produced 17,000 pages and yet this wasn't produced, that it
22 is in fact a business record of NDOT.

23 (5/4/15 Trial Transcr., 90:6-9; 98:18-21) (emphasis added).

24 The same standard and reasoning should be applied against Plaintiff here. Plaintiff did
25 not disclose a computation of his claimed contract damages during discovery. Like the
26 excluded 7/27/99 public informational handout, it was not produced until *after* the close of
27 discovery. As explained by the Court, "that is a problem in and of itself." If the State could not
28 prove the foundation for a public record that was admittedly in Plaintiff's possession since 1999
but inadvertently not re-produced during discovery, then Plaintiff should likewise be precluded
from proving damages that were inexplicably never timely disclosed.

**B. Notwithstanding This Prejudicially-Late Disclosure, Plaintiff's Only Alleged
Damages Evidence Is Inadmissible.**

Plaintiff has gotten himself in a pickle. He never disclosed a computation of claimed
contract damages, and the *only* evidence that he ever produced in support of *any* compensatory
damages is the testimony of his appraisal expert, Keith Harper. But Harper's opinions are

1 limited to the claimed value of Plaintiff's *inverse condemnation damages*,² which have since
2 been dismissed on summary judgment. See 7/16/15 Order Granting Summary Judgment on
3 Plaintiff's Inverse Claim. Harper's testimony regarding Plaintiff's dismissed inverse damages
4 is now inadmissible because it will no longer assist the jury in understanding the evidence or
5 determining a fact in issue; it will only unfairly prejudice the State.

6 **1. Harper's testimony regarding Plaintiff's dismissed inverse**
7 **condemnation damages will not assist the jury in understanding the**
8 **evidence or determining a fact in issue.**

9 To be admissible, expected expert testimony must "assist the trier of fact in
10 understanding the evidence or determining a fact in issue." *Hallmark v. Eldridge*, 189 P.3d 646,
11 651 (Nev. 2008). "An expert's testimony will assist the trier of fact only when it is relevant."
12 *Id.* (citation omitted). "'Relevant evidence' means evidence having any tendency to make the
13 existence or non-existence of any fact that is of consequence to the determination of the action
14 more or less probable than it would be without the evidence." Harper's opinion regarding
15 constitutional just compensation damages will not assist the jury for several reasons.

16 **a. Harper's testimony is limited to Plaintiff's dismissed**
17 **inverse condemnation damages.**

18 Evidence of these highly unique, constitutional damages is not freely transferrable to
19 Plaintiff's separate and distinct contract claims at his whim. As Harper concedes, his testimony
20 was rendered irrelevant by the Court's order dismissing Plaintiff's inverse condemnation claim
21 on summary judgment. (Ex. 4, Harper Depo., 152:15-23) (acknowledging that if the Court rules
22 that Plaintiff's loss of visibility is not a compensable taking, it would be the equivalent of the

23 ² Q. Your opinion of value is an opinion of just compensation. Correct?

24 A. Yes.

25 Q. And you specifically define just compensation as, "*in an eminent domain action*, the
26 sum of money necessary to place the property owner back in the same position
27 monetarily as if the property had never been taken. Right?

28 A. Correct.

Q. *Your opinion is specific to just compensation as you define it in your report.*
Right?

A. Yes.

(Harper Depo., 199:20-200:6) (emphasis added).

1 “*judge throw[ing] my appraisal in the trash.*”) (Emphasis added). Dragging Harper’s appraisal
2 out of the trash will not assist the jury.

3 *b. Harper’s testimony relates to damages from a different decade*
4 *than Plaintiff’s claimed breach of contract damages.*

5 Plaintiff’s dismissed inverse claim sought just compensation for an alleged “taking”
6 based on his property’s value in **2013**. (Ex. 5, Harper Report, Harper00002-6). His contract
7 claims, however, seek damages based on an amount that the State allegedly “overcharged” him
8 in **2005**, when he agreed to purchase the exchange parcel for \$24 million. 3/27/13 Acompl., pp.
9 11-12; *see also* 7/26/15 Order (denying summary judgment as to Plaintiff’s contract claims
10 because “[t]here are questions of fact regarding... *whether Plaintiff would have paid less* than
11 the approximately \$24 million that he agreed to pay” had he foreseen that the Flyover would be
12 “reconfigured” in 2010) (emphasis added). While the State respectfully disagrees with the
13 Court’s ruling, and it expressly reserves its right to seek appellate review thereof, the Court’s
14 7/26/15 Order—and the findings of fact and conclusions of law set forth within it—are
15 presently binding on *both parties*. Accordingly, Harper’s testimony regarding **2013** damages—
16 that have since been dismissed—will not assist the jury in determining “whether Plaintiff would
17 have paid less than the approximately \$24 million that he agreed to pay” in **2005** to acquire the
18 exchange property.

19 *c. Harper’s opinion of just compensation includes damages to*
20 *42 acres of Plaintiff’s property that are not at issue under*
21 *Plaintiff’s contract claims.*

22 Harper’s opinion is based on an alleged diminution in value to Plaintiff’s *entire 66-acre*
23 *assemblage of property* as a result of the Flyover. (Ex. 5, Harper00002-6). Plaintiff’s contract
24 damages, however, do *not* relate to his entire 66-acre assembled parcel; they are limited to the
25 **24-acre exchange parcel** that he acquired as part of the 2005 Settlement Agreement on which
26 his contract claims are based. 3/27/13 Acompl., pp. 11-12. Plaintiff acquired his other 42 acres
27 in *separate transactions* that did not involve the State, and the State could never be forced to
28 pay breach of contract damages for any alleged injury to those 42 acres. Thus, Harper’s opinion
regarding damages to Plaintiff’s entire 66-acre parcel will not assist the jury in determining any

1 hypothetical contract damages to a unique 24-acre subset of Plaintiff's 66-acre assemblage. *See*
2 *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 542 (Nev. 2005) (recognizing "the
3 fundamental maxim that each parcel of land is unique.").

4 *d. Harper's \$10 million opinion of just compensation does not*
5 *translate dollar-for-dollar to Plaintiff's claimed contract*
6 *damages; the math simply does not add up.*

7 Plaintiff believes that the *exact amount* of his \$10 million in dismissed "taking"
8 damages is somehow still recoverable as a contract damage. *See* 4/6/15 Opps., 5:17-19 ("the
9 value [of damages] determined by the severance, even if not compensable under inverse
10 condemnation, would also be a contract damage."). He is wrong. Harper's \$10 million
11 conclusion is based on his view that Plaintiff's *entire 66-acre parcel* is worth *10%* less in *2013*
12 as a result of the Flyover. (Ex. 5, Harper00002-6). But when this same \$10 million opinion is
13 applied to the price that Plaintiff paid in *2005* to acquire only *24 of those 66 acres*, it amounts to
14 a *more than 40%* alleged diminution in value to the 24 acres occasioned by the construction of
15 the flyover. Permitting Plaintiff to present Harper's testimony regarding a *10%* diminution in
16 value as evidence of damages that would equate to a *more than 40%* diminution in value to the
17 24-acre "breach of contract" property will not assist the jury; it will mislead the jury and greatly
18 prejudice the State.

19 *e. Harper's opinion of just compensation relates to a specific*
20 *date of value (April 17, 2013) that has no bearing on Plaintiff's*
21 *claimed contract damages.*

22 "To assess compensation and damages [in an eminent domain action], the date of the
23 first service of the summons is the date of valuation." NRS 37.120(1). In this case, April 17,
24 2013, was the date of the first service of the summons. Plaintiff's counsel knowingly provided
25 Harper with this date, which was legally significant to Plaintiff's inverse claim, and instructed
26 him to use this specific date of value—and this date alone—to develop his opinion of just
27 compensation. (Ex. 4, Harper Depo., 21:14-22:15).

28 Harper did as he was told. He did *not* give an opinion of the property's value on any
other date; his 4/17/13 opinion of value *cannot* be applied to any other date; and he would need
to complete a whole new appraisal in order to determine the property's value on any other date:

- 1 Q. You're looking at the date of value as April 17, 2013.
2 Right?
3 A. Yes.
4 Q. If the court determines that any compensable loss should
5 have been valued as of a different date, would that impact
6 the reliability of your conclusions in this report?
7 A. Yes.
8 Q. How so?
9 A. *...We, as appraisers, appraise properties as of a specific
10 date of value... I can provide an opinion of value to a
11 lender and next week they may call and say, Hey, we
12 need it as of a different date. So it's a new appraisal
13 assignment.*
14 *...*
15 *If the date of value changes, I would have to do a new
16 analysis as of whatever the date of value is.*
17 *...*
18 Q. So could you state your [4/17/13] opinion as of a different
19 date of value, [if it were for example] a month off, to a
20 reasonable degree of probability?
21 A. No.

(Ex. 4, Harper Depo., 68:4-72:8) (emphasis added).

While the date of the first service of the summons may have been relevant to Plaintiff's now-dismissed inverse claim, it has no connection to Plaintiff's remaining contract claims. These claims allege that the State somehow breached the **2005** Settlement Agreement by building the **2010** Flyover. Based on his own allegations and arguments, there is no scenario in which Plaintiff would ever be entitled to breach of contract damages based on his property's value on a date anywhere near **April 17, 2013**. Harper's valuation opinion does not apply on any other date, so his testimony will not assist the jury in understanding the evidence or determining a fact at issue; it would be plain error for this Court to allow such inapplicable evidence to go to the jury.

2. Even if the subject property's value on April 17, 2013, had some tangential relevance to Plaintiff's remaining contract claims, which it does not, any such probative value would be substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury.

"Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury." NRS 48.035(1). Here, admitting Harper's opinion of just compensation as evidence of Plaintiff's contract damages would unfairly prejudice the State. It could force the State to pay

1 just compensation for a taking that never occurred, under an inverse condemnation claim that it
2 successfully defeated on summary judgment.

3 It could also result in a highly inflated damages verdict. While Harper's \$10 million just
4 compensation opinion equates to a 10% diminution in the subject property's 2013 value, that
5 number quadruples to 40% when applied to Plaintiff's contract claims over the 24-acre
6 exchange parcel. Moreover, a \$10 million award would reimburse Plaintiff nearly half of his
7 fully negotiated, agreed-upon purchase price for the exchange parcel, which has since
8 appreciated in value by millions of dollars. Such a windfall to Plaintiff (at the State's expense)
9 would be unfairly prejudicial to the State.

10 Allowing Harper to testify would also—in the most literal sense of the term—confuse
11 the separate issues of constitutional just compensation and breach of contract damages. These
12 forms of damages are vastly different. Just compensation for a taking is measured by the “sum
13 of money necessary to place the property owner in the same position monetarily as if the
14 property had never been *taken*.” NRS 37.120(3) (emphasis added). Breach of contract
15 damages, on the other hand, are determined by the amount of money needed “to make the
16 aggrieved party whole.” *Hanneman v. Downer*, 871 P.2d 279, 283 (Nev. 1994). By definition,
17 evidence of just compensation is not proof of a contract damage. And even if it was, awarding
18 Plaintiff his claimed inverse damages under his breach of contract claims would make him
19 much more than whole. Thus, Harper's testimony will only mislead the jury into believing that
20 Plaintiff's dismissed taking damages are still recoverable (down to the last penny) under his
21 separate and distinct contract claims.

22 **C. In Addition To Being Irrelevant, Harper's Testimony Should Be Excluded**
23 **Because: (1) He Failed To Disclose Any Opinion On Contract Damages, (2)**
24 **His Expert Report Was Prejudicially False And Misleading As To His**
Inverse Opinions, And (3) His Valuation Conclusions Lack Foundation.

25 Assuming *arguendo* that the Court does not exclude Harper's testimony for Plaintiff's
26 failure to timely disclose a computation of contract damages or as irrelevant, it should still
27 exclude it for any one of the following reasons:
28

1 **1. Harper failed to disclose any opinions on contract damages and**
2 **specifically denied having one.**

3 NRCP 16.1(a)(2)(A) requires a party “to disclose to other parties the identity of any
4 person who may be used at trial to present [expert testimony].” *Id.* This disclosure shall “be
5 accompanied by a written report prepared and signed by the witness.” NRCP 16.1(a)(2)(B).
6 The report shall include, *inter alia*, “a complete statement of all opinions to be expressed and
7 the basis and reasons therefor.” *Id.*

8 Harper’s expert report did not contain a statement of any opinions to be expressed
9 regarding Plaintiff’s claimed breach of contract damages. On the contrary, it expressly limited
10 Harper’s opinion to “the total Just Compensation for the subject property... as of April 17,
11 2013.” (Ex. 5, Harper000003). Harper then confirmed in his deposition that his opinions relate
12 solely to just compensation under Plaintiff’s now-dismissed claim for inverse condemnation and
13 do not apply to any other claims. (Ex. 4, Harper Depo., 199:20-200:6) (Q. Your opinion is
14 specific to just compensation [in an eminent domain action]. Right? A. Yes.). Harper failed to
15 disclose any opinions on Plaintiff’s claimed contract damages, and he should be precluded from
16 offering any opinions that were not previously disclosed. *See* NRCP 37(c)(1) (prohibiting a
17 party from presenting evidence at trial that was not properly disclosed); *see also Freeman*, 281
18 P.3d 1173, *5 (precluding expert testimony as to opinions that were not timely disclosed).

19 **2. Harper’s expert report was prejudicially false and misleading.**

20 A flyover connecting eastbound Blue Diamond to northbound I-15 was originally
21 conceived as part of the 2004 Blue Diamond Project and then later made part of the separate and
22 distinct 2008 I-15 South Project. Although a proposed flyover was studied and presented to the
23 public in conjunction with each of these projects, the State did not intend to actually build the
24 flyover until traffic demand warrants had been met and funding was available. These conditions
25 were satisfied in or around 2009, at which time the State elected to go forward with the 2008 I-
26 15 South Project pursuant to a design-build contract. The State awarded the contract to third-
27 party contractor Las Vegas Paving Corp., who modified the State’s existing conceptual flyover
28 design to save construction costs and improve roadway efficiency. The State ultimately

1 approved Las Vegas Paving's design, and construction of the long-planned flyover was
2 completed in 2011.

3 Harper disclosed his valuation opinions based on this design change in an appraisal
4 report dated November 3, 2014. (Ex. 4). His disclosed appraisal utilized a "before and after"
5 valuation methodology, comparing the subject property's appraised value on April 17, 2013,
6 under a defined "before" condition with the property's appraised value under a differently
7 defined "after" condition. *Id.* The only difference between Harper's defined "before" condition
8 and his defined "after" condition was the flyover's design. In his defined "before" condition,
9 Harper appraised the property as if the State had built the conceptual version of the flyover that
10 existed before Las Vegas Paving's modifications under the design-build contract. In his defined
11 "after" condition, Harper appraised the property under the existing, "as-built" flyover. Harper
12 essentially appraised Plaintiff's property "before and after" Las Vegas Paving redesigned the
13 flyover.

14 According to Harper's report, the value of Plaintiff's property on April 17, 2013, under
15 the existing Flyover (i.e., the "after" condition) was approximately \$90 million. *Id.* Also
16 according to his report, pursuant to the extraordinary assumption that the different, earlier
17 version of the Flyover had been hypothetically built (i.e., the "before" condition), the same
18 property on the same date would have been worth roughly \$100 million. *Id.* Harper attributed
19 this \$10 million difference to varying views of Plaintiff's property from I-15 under the "before"
20 and "after" conditions. In other words, he opined that the view of Plaintiff's property from I-15
21 would have been better if the earlier version of the Flyover had been built instead of the existing
22 one, and that Plaintiff's property would have been worth \$10 million more in that instance.

23 The State obviously relied on Harper's disclosed opinions and analysis when
24 designating its rebuttal experts. It designated expert engineer, Jack Sjostrom, in response to
25 Harper's opinion that the view of Plaintiff's property would have been \$10 million better in the
26 hypothetical "before" condition. Sjostrom performed a highly technical engineering analysis
27 that examined the subject property's visibility under the never-built, earlier version of the
28 Flyover, and he compared it to the property's current visibility with the existing "as-built"

1 Flyover. Based on the additional retaining walls needed to support the adjacent collector roads
2 under the earlier version's design, Sjostrom opined that the visibility of Plaintiff's property was
3 actually *better* under the existing "as-built" Flyover.

4 The State also designated Shelli Lowe, MAI in rebuttal to Harper. Lowe performed a
5 review of the disclosed opinions and analysis set forth in Harper's 11/3/14 Appraisal Report.
6 She opines that that there is simply no foundation for Harper's appraisal because he did not
7 engage in any engineering analysis that would allow him to form an opinion on the never-built
8 Flyover's impact on Plaintiff's view.

9 Lowe prepared an additional report to rebut Harper's valuation conclusion. Unlike
10 Harper's groundless comparison, Lowe relied upon Sjostrom's sophisticated engineering
11 analysis, which showed that the never-built version of the Flyover actually had a greater impact
12 on Plaintiff's view. Lowe, thus, concluded that under Harper's "before and after" appraisal,
13 Plaintiff's alleged visibility damages were actually \$0.

14 On January 15, 2015, the last day of discovery, Harper finally made himself available
15 for deposition. At his deposition, Harper revealed—for the very first time—that his nearly
16 three-month-old expert appraisal report was completely wrong. Even though his report
17 provided that he compared the value of Plaintiff's property under the existing Flyover against its
18 value under the hypothetical earlier planned-flyover version, Harper testified in deposition that
19 he was really comparing the property's value under the existing "as-built" Flyover against what
20 it would be worth if no Flyover had been built at all.

21 Harper called the contrary analysis in his disclosed report a "mistake." (Harper Depo.,
22 104:17-25) ("Yes, it is absolutely a mistake, and I sincerely apologize for making a mistake in
23 an appraisal report. I'm not perfect."). But while the State appreciates Harper's candid
24 admission of error, his apology does not cure the severe prejudice caused by his last-minute,
25 wholesale change of his previously-disclosed opinions.

26 Nor does it explain why Harper waited until his 1/30/15 deposition—on the last day of
27 discovery—to correct such a significant "mistake" in his nearly three-month-old report. Harper
28 acknowledged that there would be no way to know his "mistake" by reading his report. (Harper

1 Flyover. Based on the additional retaining walls needed to support the adjacent collector roads
2 under the earlier version's design, Sjostrom opined that the visibility of Plaintiff's property was
3 actually *better* under the existing "as-built" Flyover.

4 The State also designated Shelli Lowe, MAI in rebuttal to Harper. Lowe performed a
5 review of the disclosed opinions and analysis set forth in Harper's 11/3/14 Appraisal Report.
6 She opines that that there is simply no foundation for Harper's appraisal because he did not
7 engage in any engineering analysis that would allow him to form an opinion on the never-built
8 Flyover's impact on Plaintiff's view.

9 Lowe prepared an additional report to rebut Harper's valuation conclusion. Unlike
10 Harper's groundless comparison, Lowe relied upon Sjostrom's sophisticated engineering
11 analysis, which showed that the never-built version of the Flyover actually had a greater impact
12 on Plaintiff's view. Lowe, thus, concluded that under Harper's "before and after" appraisal,
13 Plaintiff's alleged visibility damages were actually \$0.

14 On January 15, 2015, the last day of discovery, Harper finally made himself available
15 for deposition. At his deposition, Harper revealed—for the very first time—that his nearly
16 three-month-old expert appraisal report was completely wrong. Even though his report
17 provided that he compared the value of Plaintiff's property under the existing Flyover against its
18 value under the hypothetical earlier planned-flyover version, Harper testified in deposition that
19 he was really comparing the property's value under the existing "as-built" Flyover against what
20 it would be worth if no Flyover had been built at all.

21 Harper called the contrary analysis in his disclosed report a "mistake." (Harper Depo.,
22 104:17-25) ("Yes, it is absolutely a mistake, and I sincerely apologize for making a mistake in
23 an appraisal report. I'm not perfect."). But while the State appreciates Harper's candid
24 admission of error, his apology does not cure the severe prejudice caused by his last-minute,
25 wholesale change of his previously-disclosed opinions.

26 Nor does it explain why Harper waited until his 1/15/15 deposition—on the last day of
27 discovery—to correct such a significant "mistake" in his nearly three-month-old report. Harper
28 acknowledged that there would be no way to know his "mistake" by reading his report. (Harper

1 Depo., 98:1-6). Yet, even after receiving Sjostrom and Lowe’s combined three rebuttal reports,
2 which all clearly address the disclosed analysis that Harper now claims was included in his
3 report by “mistake,” Plaintiff and/or Harper still did not notify the State of Harper’s “mistake”
4 or provide the State with an amended expert report reflecting his total change in opinion.³
5 Indeed, Sjostrom was deposed *before* Harper, and there was never even a whisper about any
6 “mistake” in Harper’s disclosed report—let alone one that would completely change Harper’s
7 opinions, rendering Sjostrom and Lowe’s rebuttal reports inapplicable to his “new” surprise
8 appraisal.

9 Regardless of Plaintiff’s and/or Harper’s true motive, the damage has been done. It
10 would be extremely prejudicial to permit Harper to change his disclosed opinions during his
11 deposition on the last day of discovery and allow Plaintiff to present those “new” opinions at
12 trial as if they were fairly-disclosed and adequately-rebutted. In reality, this result would leave
13 the State without any rebuttal to Harper’s new, but still faulty, opinions, as its experts both
14 responded to the “old” opinions that were “mistakenly” set forth in Harper’s expert report. The
15 State should not be punished as a result of Harper’s wholesale change in opinion on the last day
16 of discovery. Whether intentional or not, Harper’s expert report was prejudicially false and
17 misleading.

18 Plaintiff and Harper had a court-ordered deadline to submit his written expert report.
19 *See* 10/28/14 Stipulation and Order to Extend Expert Disclosure Deadline. Harper is not
20 allowed to submit a written appraisal report, wait until the State rebuts the opinions that are
21 actually disclosed in that report, and then “flip-flop” at his deposition and completely change
22 his extraordinary assumptions and opinions to suit Plaintiff’s ever-changing legal claims. Such
23 “trial by ambush” tactics are not allowed under NRCP 16.1, and Harper’s testimony should be
24 excluded under NRCP 37(c).

27 ³ As if it were business as usual, Plaintiff brazenly produced supplemental expert reports
28 reflecting Harper’s drastically-changed opinions as part of his untimely 3/3/15 Ninth
Supplement, which the State herein moves to strike in its entirety.

3. Harper's valuation conclusions lack any foundation whatsoever.

Under NRCP 16.1(a)(2)(B), an expert report shall include, *inter alia*, "a complete statement of all opinions to be expressed and the basis and reasons therefor," "the data or other information considered by the witness in forming the opinions," and "any exhibits to be used as a summary of or support for the opinions." *Id.*; see also *Hallmark v. Eldridge*, 189 P.3d 646 (Nev. 2008). Harper's report is totally devoid of this mandatory data and information, which is a basic requirement to establish the foundation for his opinions.

Rather than backing up his opinions with concrete data or analysis, Harper baldly asserted in his report that his \$10 million opinion of just compensation was supported by vague "research" that he supposedly conducted:

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. (Harper0000083).

Harper did not disclose his mysterious "pairings or indications in the market" or otherwise explain the reasons for his opinion. He simply concluded that "the remainder property is diminished by 10 percent" and the State should pay Plaintiff **\$10 million** for building the Flyover.

When asked during his deposition about the vague "research" that he conducted, Harper testified that he had driven by the subject property both before and after the flyover was built and, based on memory, determined the property would have been worth \$10 million more on April 17, 2013, if the Flyover was never constructed:

Q. If you're doing a before and after analysis, is it appropriate under the USPAP standards to state the property in the before condition is as it was when I drove by it around that time?

A. Absolutely.

Q. *That's a recognizable way to appraise property is to say, I've driven by this property before, I've driven by this property now, I think there's a difference, and I think that difference is worth \$10 million?*

A. Yes.

1 (Harper Depo., 91:24-93:11) (emphasis added).

2 Not only did Harper omit any analysis whatsoever in his expert report with respect to his \$10
3 million valuation opinion, he also blatantly violated NRCP 16.1(a)(2)(B) by failing to include in
4 his report “the data or other information considered [] in forming [his] opinions.” His testimony
5 should be excluded.

6 **II.**

7 **CONCLUSION**

8 Accordingly, and for all of the forgoing reasons, the State respectfully requests the
9 following relief:

10 (1) An order excluding all damages evidence relating to Plaintiff’s claims for breach
11 of contract and/or breach of the implied covenant of good faith and fair dealing as a sanction
12 under NRCP 37(c) for failing to disclose a computation of claimed contract damages during the
13 ordinary course of discovery;

14 (2) In the event that the Court does not strike all of Plaintiff’s damages evidence, an
15 order striking Plaintiff’s expert, Keith Harper, MAI, whose testimony is no longer relevant in
16 light of the Court’s order dismissing Plaintiff’s inverse claim on summary judgment, and whose
17 expert appraisal report failed to disclose any opinions on contract damages, was prejudicially
18 false and misleading as to the disclosed inverse condemnation opinions, and lacks any
19 foundation for the valuation conclusions set forth therein; and

20 ///


21 ///

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

1 (3) An order striking Plaintiff's improper Ninth Supplement to Initial Disclosures
2 Pursuant to NRCP 16.1(a)(1), which was untimely served on March 3, 2015—more than a
3 month after the close of discovery.

4 DATED this 4 day of November, 2015.

5 Respectfully submitted, by:

6 
7 William L. Coulthard, Esq. (#3927)
8 Eric M. Pepperman, Esq. (#11679)
9 Mona Kaveh, Esq. (#11825)
10 KEMP, JONES & COULTHARD, LLP
11 3800 Howard Hughes Parkway
12 Seventeenth Floor
13 Las Vegas, Nevada 89169
14
15 Adam Paul Laxalt, Esq. (#12426)
16 Dennis V. Gallagher, Esq. (#955)
17 Amanda B. Kern, Esq. (#9218)
18 OFFICE OF THE ATTORNEY GENERAL
19 555 E. Washington Avenue, Suite 3900
20 Las Vegas, Nevada 89101
21 *Attorneys for Defendant*
22
23
24
25
26
27
28

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

Certificate of Service

I hereby certify that on the 4th day of November, 2015, I served a true and correct copy of the above and foregoing **MOTION TO EXCLUDE DAMAGES EVIDENCE RELATED TO PLAINTIFF'S BREACH OF CONTRACT CLAIMS AND/OR MOTION TO STRIKE PLAINTIFF'S EXPERT, KEITH HARPER, MAI** to all parties, via the Court's e-filing service.

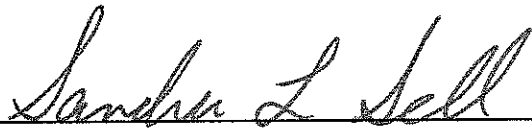

An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT 1

GORDON SILVER
ERIC R. OLSEN
Nevada Bar No. 3127
Email: eolsen@gordonsilver.com
DYLAN T. CICILIANO
Nevada Bar No. 12348
Email: dciciliano@gordonsilver.com
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Tel: (702) 796-5555
Fax: (702) 369-2666

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

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,

Counterclaimant,

vs.

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

Counterdefendants.

CASE NO. A672841
DEPT. XXVI

**PLAINTIFF'S EIGHTH SUPPLEMENT
TO INITIAL DISCLOSURES PURSUANT
TO N.R.C.P. 16.1(a)(1)**

Pursuant to Rule 16.1(a)(1) of the Nevada Rules of Civil Procedure, Fred Nassiri, an
individual and Nassiri Living Trust ("Plaintiff") hereby submits the eighth supplemental

No.	Date	Description	Bates No.
315.		Photographs of subject property	Nassiri003176- Nassiri003238
316.	1/15/2015	Declaration of Custodian of Records and 2 CD-ROMs from Parsons Transportation Group, Inc.	Not Bates Labeled
317.		Additional production by Chapman containing three maps.	Chapman003531- Chapman003533

Plaintiff reserves the right to supplement or modify this disclosure as it identifies during discovery additional categories of documents, electronically stored information, and tangible things in his possession, custody or control that may be used to support his claims or defenses. Plaintiff further reserves the right to object to the relevance or admissibility of any of the documents identified above.

III. COMPUTATION OF DAMAGES

Summary of Cost/Expenses – 24.42-acre Parcel Acquisition

Purchase Cost (24.42-acre parcel)	\$23,396,224.00
Interest paid to NV State Bank (6/1/2005-3/31/2012)	\$ 9,766,812.00
Property Taxes (Tax years 2006 to 2012)	\$ 1,845,454.00
Others (mapping, survey)	\$ 3,200.00
TOTALS	\$35,011,690.00

<u>Severance Damages</u>	\$9,994,500.00
--------------------------	----------------

IV. RULE 26(a)(1)(A)(iv) INSURANCE AGREEMENTS

Not applicable.

Nothing in this supplemental disclosure shall constitute a waiver of any claim, defense, or privilege, including, without limitation, the following: any claim or defense as to the sufficiency of the complaint; any applicable privilege, including the attorney-client privilege, the work product doctrine privilege, or any other privilege; and the right to object to discovery requests that seek material, documents or information that is not relevant or sufficiently probative to

1 justify the burden or expense of a response. Moreover, nothing in this supplemental disclosure
2 shall constitute an admission or concession on the part of Plaintiff with respect to any issues of
3 fact or law, including, but not limited to, the relevance, discoverability, or admissibility of any of
4 the information set forth herein. Plaintiff specifically reserves the right to challenge the
5 discoverability or admissibility of such testimony or information.

6 Dated this 20th day of January 2015.

7 GORDON SILVER



9 ERIC R. OLSEN

10 Nevada Bar No. 3127

11 DYLAN T. CICILIANO

12 Nevada Bar No. 12348

13 3960 Howard Hughes Pkwy., 9th Floor

14 Las Vegas, Nevada 89169

15 Attorneys for Plaintiffs

EXHIBIT 2

GORDON SILVER
ERIC R. OLSEN
Nevada Bar No. 3127
Email: eolsen@gordonsilver.com
DYLAN T. CICILIANO
Nevada Bar No. 12348
Email: dciciliano@gordonsilver.com
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Tel: (702) 796-5555
Fax: (702) 369-2666

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

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,

Counterclaimant,

vs.

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

Counterdefendants.

CASE NO. A672841
DEPT. XXVI

**PLAINTIFF'S NINTH SUPPLEMENT TO
INITIAL DISCLOSURES PURSUANT TO
N.R.C.P. 16.1(a)(1)**

Pursuant to Rule 16.1(a)(1) of the Nevada Rules of Civil Procedure, Fred Nassiri, an
individual and Nassiri Living Trust ("Plaintiff") hereby submits the ninth supplemental

1 disclosures¹ in the above-captioned action. Because formal discovery has just commenced in
2 this matter, the content of these disclosures is provisional and based on the limited information
3 reasonably available to Plaintiff at this time. These disclosures are subject to, and made without
4 waiving, Plaintiff's right to assert in these or any other proceedings any and all objections based
5 on the competency, relevancy, materiality, discoverability, privilege, work-product, use, or
6 admissibility as evidence, for any purpose, of any of these disclosures, or of the subject matter of
7 these disclosures or the individuals and documents identified herein. Plaintiff reserves the right
8 to supplement, amend, correct, or otherwise modify these disclosures as its investigation and
9 discovery in this matter are conducted.

10 **I.**

11 **INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION**

12 Plaintiff identifies the following individuals who may have discoverable information that
13 they may use to support its claims or defenses, excluding those individuals who may have
14 discoverable information that they may use solely for impeachment. Plaintiff has in good faith
15 listed the probable general subject matter of these witnesses' knowledge, but this general
16 description does not limit the subject areas of information that each witness may provide.

- 17 1. Fred Nassiri
18 c/o Gordon Silver
19 3960 Howard Hughes Pkwy., 9th Floor
20 Las Vegas, NV 89169

21 Fred Nassiri is expected to testify as to his knowledge of the facts and circumstances at
22 issue in the instant litigation. Mr. Nassiri will also testify to communications he had with NDOT
23 and the State, as well as with Las Vegas Paving Company. Mr. Nassiri will testify to his
24 knowledge of the Blue Diamond Interchange Project at the time of the purchase and when he
25 became aware of the fly-over. Mr. Nassiri will further testify to the impact that the "fly-over" has
26 had on the Subject property.

27
28 ¹ Supplemental information identified in bold

1 2. NRCP 30(b)(6) Person(s) Most Knowledgeable – Nassiri Living Trust
2 c/o Gordon Silver
3 3960 Howard Hughes Pkwy., 9th Floor
4 Las Vegas, NV 89169

5 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge
6 of the facts and circumstances at issue in the instant litigation.

7 3. NRCP 30(b)(6) Person(s) Most Knowledgeable - State of Nevada
8 c/o Office of the Attorney General
9 555 E. Washington Avenue, Suite 3900
10 Las Vegas, Nevada 89101

11 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
12 facts and circumstances at issue in the instant litigation. He or she will testify to

13 4. Gary H. Kent, General Appraiser
14 Gary H. Kent, Inc.
15 2950 S. Rancho Drive, Suite 200A
16 Las Vegas, NV 89102

17 Gary H. Kent is expected to testify as to his preparation of the Appraisal Report dated
18 August 30, 2004, and the factors that went into his valuation of the property.

19 5. Mark D. Mummey, General Appraiser
20 Gary H. Kent, Inc.
21 2950 S. Rancho Drive, Suite 200A
22 Las Vegas, NV 89102

23 Mark D. Mummey is expected to testify as to his preparation of the Appraisal Report
24 dated August 30, 2004, and the factors that went into his valuation of the property.

25 6. Patricia K. Springer
26 c/o Office of the Attorney General
27 555 E. Washington Avenue, Suite 3900
28 Las Vegas, Nevada 89101

 Ms. Springer is expected to testify as to his/her knowledge of the facts and circumstances
 at issue in the instant litigation.

 7. NRCP 30(b)(6) Person(s) Most Knowledgeable - Nevada
 Department of Transportation
 1263 S. Stewart Street
 Carson City, NV 89712

1 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
2 facts and circumstances at issue in the instant litigation, including the engineering of the Blue
3 Diamond Road Project, the planning and construction of the "fly-over," communications and
4 documents regarding or related to the Subject Property, and public meetings.

5 8. John Terry, PE
6 c/o Office of the Attorney General
7 555 E. Washington Avenue, Suite 3900
8 Las Vegas, Nevada 89101

9 Mr. Terry as the project manager of the I-15 South Design Build Project, he is expected
10 to testify as to his knowledge of the facts and circumstances at issue in the instant litigation,
11 including the engineering of the Blue Diamond Road Project, the planning and construction of
12 the "fly-over," communications and documents regarding or related to the Subject Property, and
13 public meetings.

14 9. Heidi A. Mireles
15 c/o Nevada Department of Transportation
16 1263 S. Stewart Street
17 Carson City, NV 89712

18 Heidi Mireles is expected to testify as to her knowledge as the Chief Right-of-Way Agent
19 for NDOT of the facts and circumstances at issue in the instant litigation, including but not
20 limited to NDOT's condemnation action against Plaintiffs and the subsequent Settlement
21 Agreement and purchase of the Subject Property.

22 10. Corey Newcome, PE
23 c/o Las Vegas Paving Corporation
24 3920 W. Hacienda Avenue
25 Las Vegas, NV 89118

26 Corey Newcome as a representative of Las Vegas Paving Company is expected to testify
27 as to his knowledge of the facts and circumstances at issue in the instant litigation. He is
28 expected to testify as to Las Vegas Paving Company's relationship with NDOT, as to
communications NDOT had with Las Vegas Paving Company regarding the Blue Diamond
Interchange, communications with Mr. Nassiri, Las Vegas Paving Company's construction of the
"fly-over" and Las Vegas Paving Company's lease of any portion of the Subject Property.

1 11. NRCP 30(b)(6) Person(s) Most Knowledgeable/Custodian of Records
2 Las Vegas Paving
3 c/o Las Vegas Paving Corporation
3920 W. Hacienda Avenue
Las Vegas, NV 89118

4 The Person(s) Most Knowledgeable and/or Custodian of Records are expected to testify
5 as to his/her knowledge of the facts and circumstances at issue in the instant litigation. He or she
6 is expected to testify as to Las Vegas Paving Company's relationship with NDOT, as to
7 communications NDOT had with Las Vegas Paving Company regarding the Blue Diamond
8 Interchange, Las Vegas Paving Company's communications with Mr. Nassiri, Las Vegas Paving
9 Company's construction of the "fly-over" and Las Vegas Paving Company's lease of any portion
10 of the Subject Property.

11 12. Gregory J. Walch, Esq.
12 Cotton Driggs et al.,
400 S. Fourth Street, Suite 300
13 Las Vegas, NV 89101

14 Gregory Walch is expected to testify as to his knowledge of the facts and circumstances
15 surrounding the NDOT settlement of its claims against Mr. Nassiri in Case No. 491334.

16 13. Carry Baird
17 c/o Stantec
7450 Arroyo Crossing Pkwy., Suite 10
18 Las Vegas, NV 89113

19 Carry Baird is expected to testify as to his knowledge of the facts and circumstances at
20 issue in the instant litigation and the construction and bidding of the Blue Diamond Interchange
21 Project.

22 14. NRCP 30(b)(6) Person(s) Most Knowledgeable – Stantec
23 7450 Arroyo Crossing Pkwy., Suite 10
Las Vegas, NV 89113

24 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
25 facts and circumstances at issue in the instant litigation and the construction and bidding of the
26 Blue Diamond Interchange Project.

27 ///

28 ///

1 15. Scott Cannon
2 c/o Las Vegas Paving Corporation
3 3920 W. Hacienda Avenue
4 Las Vegas, NV 89118

5 Scott Cannon is expected to testify as to his knowledge of the facts and circumstances at
6 issue in the instant litigation and the construction and bidding of the Blue Diamond Interchange
7 Project.

8 16. NRCP 30(b)(6) Person(s) Most Knowledgeable – Gary H. Kent, Inc.
9 2950 S. Rancho Drive, Suite 200A
10 Las Vegas, NV 89102

11 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
12 facts and circumstances at issue in the instant litigation, and the factors that went into his
13 valuation of the property.

14 17. NRCP 30(b)(6) Person(s) Most Knowledgeable – KJE Consulting Engineers
15 4222 E. Pinecrest Circle
16 Las Vegas, NV 89121

17 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
18 facts and circumstances at issue in the instant litigation, and the construction and bidding of the
19 Blue Diamond Interchange Project.

20 18. Ray Koroghli
21 2711 West Windmill Lane
22 Las Vegas, NV 89123

23 Ray Koroghli is expected to testify as to his knowledge of the facts and circumstances at
24 issue in the instant litigation. Mr. Koroghli is expected to testify as to his knowledge of the Blue
25 Diamond Interchange.

26 19. Timothy R. Morse
27 3140 S. Rainbow Blvd.
28 Las Vegas, NV 89146

29 Timothy R. Morse is expected to testify as to his preparation of any Appraisal Report on
30 the Subject Property and any and all impacts on the property of the “fly-over.”

31 ///

32 ///

33 ///

1 20. NRCP 30(b)(6) Person(s) Most Knowledgeable – Timothy R. Morse & Associates
2 3140 S. Rainbow Blvd.
 Las Vegas, NV 89146

3 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
4 facts and circumstances at issue in the instant litigation, and the Subject Property and any and all
5 impacts on the property of the “fly-over.”

6 21. Carol Lamb
 c/o Nevada Department of Transportation
7 1263 S. Stewart Street
 Carson City, NV 89712

8
9 Carol Lamb is expected to testify as to her knowledge of the facts and circumstances at
10 issue in the instant litigation.

11 22. Jon Bunch
 c/o Nevada Department of Transportation
12 1263 S. Stewart Street
 Carson City, NV 89712

13
14 Jon Bunch is expected to testify as to his knowledge of the facts and circumstances at
15 issue in the instant litigation, including the engineering of the Blue Diamond Road Project, the
16 planning and construction of the “fly-over,” communications and documents regarding or related
17 to the Subject Property, and public meetings.

18 23. Steve Cooke
 c/o Nevada Department of Transportation
19 1263 S. Stewart Street
 Carson City, NV 89712

20
21 Steve Cooke is expected to testify as to his knowledge of the facts and circumstances at
22 issue in the instant litigation, including the engineering of the Blue Diamond Road Project, the
23 planning and construction of the “fly-over,” communications and documents regarding or related
24 to the Subject Property, and public meetings.

25 ///

26 ///

27 ///

28 ///

1 24. Daryl James
2 c/o Nevada Department of Transportation
3 1263 S. Stewart Street
4 Carson City, NV 89712

5 Daryl James is expected to testify as to his knowledge of the facts and circumstances at
6 issue in the instant litigation, including the engineering of the Blue Diamond Road Project, the
7 planning and construction of the "fly-over," communications and documents regarding or related
8 to the Subject Property, and public meetings.

9 25. Julie Maxey
10 c/o Nevada Department of Transportation
11 1263 S. Stewart Street
12 Carson City, NV 89712

13 Julie Maxey is expected to testify as to her knowledge of the facts and circumstances at
14 issue in the instant litigation, including the engineering of the Blue Diamond Road Project, the
15 planning and construction of the "fly-over," communications and documents regarding or related
16 to the Subject Property, and public meetings.

17 26. Terri Brown
18 c/o Nevada Department of Transportation
19 1263 S. Stewart Street
20 Carson City, NV 89712

21 Terri Brown is expected to testify as to her knowledge of the facts and circumstances at
22 issue in the instant litigation, including the engineering of the Blue Diamond Road Project, the
23 planning and construction of the "fly-over," communications and documents regarding or related
24 to the Subject Property, and public meetings.

25 27. Andrea Reeves
26 c/o Nevada Department of Transportation
27 1263 S. Stewart Street
28 Carson City, NV 89712

29 Andrea Reeves is expected to testify as to her knowledge of the facts and circumstances
30 at issue in the instant litigation, including the engineering of the Blue Diamond Road Project, the
31 planning and construction of the "fly-over," communications and documents regarding or related
32 to the Subject Property, and public meetings.

1 28. Iyad Alattar
2 c/o U.S. Department of Transportation, Federal Highway Administration
3 705 North Plaza Street, Suite 220
4 Carson City, NV 89701

5 Iyad Alattar is expected to testify as to his knowledge of the facts and circumstances at
6 issue in the instant litigation, including the engineering of the Blue Diamond Road Project, the
7 planning and construction of the "fly-over," communications and documents regarding or related
8 to the Subject Property, and public meetings.

9 29. NRCP 30(b)(6) Person(s) Most Knowledgeable – Nevada Bureau of Land
10 Management
11 1340 Financial Blvd.
12 Reno, NV 89502

13 The Person(s) Most Knowledgeable is expected to testify as to his/her knowledge of the
14 facts and circumstances at issue in the instant litigation including but not limited to BLM's
15 involvement in the construction of the Blue Diamond Road project, as well as any associated
16 improvements on I-15, any and all environmental or road studies conducted by BLM, any public
17 meetings held, and any and all communications with NDOT regarding the Blue Diamond
18 Interchange.

19 30. Mary Jo Rugwell
20 c/o Nevada Bureau of Land Management
21 1340 Financial Blvd.
22 Reno, NV 89502

23 Mary Jo Rugwell is expected to testify as to her knowledge of the facts and
24 circumstances at issue in the instant litigation, including but not limited to BLM's involvement
25 in the construction of the Blue Diamond Road project, as well as any associated improvements
26 on I-15, any and all environmental or road studies conducted by BLM, any public meetings held,
27 and any and all communications with NDOT regarding the Blue Diamond Interchange.

28 ///

///

///

///

1 31. Julia Ervin Holonbok
2 c/o Nevada Department of Transportation
3 1263 S. Stewart Street
4 Carson City, NV 89712

5 Julia Ervin Holonbok is expected to testify as to her knowledge of the facts and
6 circumstances at issue in the instant litigation, including the engineering of the Blue Diamond
7 Road Project, the planning and construction of the "fly-over," communications and documents
8 regarding or related to the Subject Property, and public meetings.

9 32. Mark Slaughter
10 c/o Nevada Bureau of Land Management
11 1340 Financial Blvd.
12 Reno, NV 89502

13 Mark Slaughter is expected to testify as to his knowledge of the facts and circumstances
14 at issue in the instant litigation, including but not limited to BLM's involvement in the
15 construction of the Blue Diamond Road project, as well as any associated improvements on I-15,
16 any and all environmental or road studies conducted by BLM, any public meetings held, and any
17 and all communications with NDOT regarding the Blue Diamond Interchange.

18 33. Rudy Malfabon
19 c/o Nevada Department of Transportation
20 1263 S. Stewart Street
21 Carson City, NV 89712

22 Rudy Malfabon is expected to testify as to his knowledge of the facts and circumstances
23 at issue in the instant litigation, including the engineering of the Blue Diamond Road Project, the
24 planning and construction of the "fly-over," communications and documents regarding or related
25 to the Subject Property, his communications and meetings with Plaintiffs, and public meetings.

26 34. Ted P. Bendure
27 c/o U.S. Department of Transportation
28 705 North Plaza Street, Suite 220
 Carson City, NV 89701

 Ted P. Bendure is expected to testify as to his knowledge of the facts and circumstances
 at issue in the instant litigation, including the engineering of the Blue Diamond Road Project, the
 planning and construction of the "fly-over," communications and documents regarding or related

1 to the Subject Property, and public meetings regarding the Blue Diamond Road Project or
2 improvements to interstate 15.

3 35. Dennis Gallagher
4 c/o Nevada Department of Transportation
5 1263 S. Stewart Street
6 Carson City, NV 89712

7 Dennis Gallagher is expected to testify as to his knowledge of the facts and circumstances
8 at issue in the instant litigation, including the engineering of the Blue Diamond Road Project, the
9 planning and construction of the "fly-over," communications and documents regarding or related
10 to the Subject Property, his communications and meetings with Plaintiffs, and public meetings.

11 36. James M. Barker, Esq.
12 Corporate General Counsel
13 Las Vegas Paving
14 4420 S. Decatur Blvd.
15 Las Vegas, NV 89103

16 Mr. Barker is expected to testify as to his knowledge of the facts and circumstances
17 surrounding the Las Vegas Paving negotiations and settlement with Mr. Nassiri as it relates to
18 the Lease Agreement.

19 37. Karissa D. Vero (AG NV.gov)
20 Transportation Division
21 555 E. Washington Avenue, Ste. 3900
22 Las Vegas, NV 89101

23 Ms. Vero is expected to testify as to her knowledge of the facts and circumstances
24 surrounding the instant litigation, as well as meeting with Plaintiffs and NDOT.

25 38. Sara Martel
26 Department Records Manager
27 NV Department of Transportation, Adm. Services Division
28 1263 S. Stewart Street
Carson City, NV 89712

Ms. Martel is expected to testify as to her knowledge of NDOT's retention of documents
and in response to Plaintiffs' public information requests and NDOT's response to Plaintiffs'
request for production of documents.

///

///

1 39. Jeff Richter
2 Adm. Services Officer
3 NV Department of Transportation, Adm. Services Division
4 1263 S. Stewart Street
5 Carson City, NV 89712

6 Mr. Richter is expected to testify as to her knowledge of NDOT's retention of documents
7 and in response to Plaintiffs' public information requests and NDOT's response to Plaintiffs'
8 request for production of documents.

9 40. Bill Schneider
10 c/o Nevada Department of Transportation
11 1263 S. Stewart Street
12 Carson City, NV 89712

13 Bill Schneider is expected to testify as to his knowledge as the Chief Right-of-Way Agent
14 for NDOT of the facts and circumstances at issue in the instant litigation, including but not
15 limited to NDOT's condemnation action against Plaintiffs and the subsequent Settlement
16 Agreement and purchase of the Subject Property.

17 41. Keith Harper
18 Valuation Consultants
19 4200 Cannoli Circle
20 Las Vegas, NV 89103
21 Telephone: (702) 222-0018

22 See expert disclosure.

23 42. Mike Mixer
24 Colliers International
25 3980 Howard Hughes Pkwy. 1st Floor
26 Las Vegas, Nevada 89169

27 Mike Mixer is expected to testify as to his knowledge of the subject property.

28 43. Laura Fitzsimmons
 c/o Nevada Department of Transportation
 1263 S. Stewart Street
 Carson City, NV 89712

 Laura Fitzsimmons is expected to testify as to Ray Koroghli's purchase of the property
 and her involvement with the facts and circumstances surrounding the instant litigation.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

6
7

8
9

CATEGORIES OF DOCUMENTS IN PLAINTIFF'S POSSESSION

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

169

No.	Date	Description	Bates No.
		Environmental Assessment	
12.	12/12/2008	Letter from Carl F. Hagelman at Station Casinos to Rudy Malfabon re: Public Response to I-15 South Corridor Improvement	Nassiri00024-Nassiri00028
13.	12/3/2008	Letter from Matthew E. Woodhead at M Resort Spa Casino to Nevada Department of Transportation re: Environmental Assessment	Nassiri00029-Nassiri00030
14.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study	Nassiri00031-Nassiri00035
15.	4/30/2005	Letter from Charles Troiano at Image Design Group to Mr. James	Nassiri00036-Nassiri00044
16.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study	Nassiri00045-Nassiri00049
17.	4/30/2005	Letter from Charles Troiano at Image Design Group to Mr. James	Nassiri00050-Nassiri00051
18.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study with highlights	Nassiri00052-Nassiri00056
19.	11/18/2008	Letter from Nevada Department of Transportation with track changes	Nassiri00057
20.	12/2/2008	Letter from Matthew E. Woodhead to Nevada Department of Transportation re Environmental Assessment	Nassiri00058
21.	2/7/2012	Email from Christopher Young to Donald Nacquin re: I-15 South	Nassiri00059-Nassiri00060
22.	11/16/2004	Letter from Michael Chapman, Esq. to Kirby Gruchow Jr. re: Nassiri vs. NDOT	Nassiri00061
23.	8/27/2004	Letter from Michael Chapman, Esq. to Heidi Mireles re: Nassiri re: NDOT	Nassiri00062-Nassiri00064
24.	1/25/2005	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re: NDOT re: Nassiri	Nassiri00065-Nassiri00066
25.	1/20/2005	Letter from Timothy R. Morse to Michael Chapman, Esq.	Nassiri00067-Nassiri00070
26.	12/7/2004	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re: Nassiri v. NDOT	Nassiri00071
27.	12/7/2004	Letter from Gregory Walch, Esq. to Michael Chapman, Esq. re: State of Nevada vs. Fred Nassiri	Nassiri00072
28.	12/6/2004	Letter from Gregory Walch, Esq. to Michael Chapman, Esq.	Nassiri00073-Nassiri00074
29.	9/20/2011	Letter from Patrick Sheehan, Esq. to Corey Newcome re: Ground Lease Agreement	Nassiri00075-Nassiri00076
30.	4/28/2005	Settlement Agreement and Release of All Claims	Nassiri00077-Nassiri00090
31.	6/14/2005	First Amendment to Settlement Agreement	Nassiri00091-

No.	Date	Description	Bates No.
		and Release of All Claims	Nassiri00095
32.	8/7/2007	Email from Steven Sullivan to Patrick Sheehan and usavc@aol.com re: Nassiri Purchase Agreement	Nassiri00096
33.	8/7/2007	Agreement for the Purchase and Sale of Real Property	Nassiri00097- Nassiri00110
34.	11/17/2008	Settlement Agreement	Nassiri00111- Nassiri00121
35.	4/15/2010	Ground Lease Agreement	Nassiri00122- Nassiri00126
36.		Aerial Photographs	Nassiri00127- Nassiri00135
37.		Nevada Department of Transportation Notice – Terazza Neighborhood Meeting	Nassiri00136
38.		Transportation Notice Public Information Meeting I-15 South Design Build Project	Nassiri00137
39.		Transportation Notice Public Information Meeting for Cactus Avenue Interchange on I-15 Project	Nassiri00138
40.		Transportation Notice Public Information Meeting for cactus Avenue/I-15 Interchange and I-15 Intelligent Transportation Installation	Nassiri00139
41.		Transportation Notice Public Information Meeting I-15 South Design Build Project	Nassiri00140
42.		Transportation Notice Public Information Meeting for Cactus Avenue Interchange on I-15 Project	Nassiri00141
43.		Transportation Notice Public Information Meeting for cactus Avenue/I-15 Interchange and I-15 Intelligent Transportation Installation	Nassiri00142
44.		Transportation Notice	Nassiri00143
45.		Nevada Department of Transportation Notice	Nassiri00144- Nassiri00146
46.		Public Notice	Nassiri00147
47.		Transportation Notice Public Information Meeting for I-15 South Design Build Project	Nassiri00148- Nassiri00164
48.		Transportation Notice Public Information Meeting for I-15 South Design Build Project	Nassiri00165
49.		Affidavit of Publication	Nassiri00166- Nassiri0170
50.		Nevada DOT Terraza Neighborhood Meeting	Nassiri00171- Nassiri00177
51.	3/10/2009	Memo from State of Nevada to John Terry,	Nassiri00178-

No.	Date	Description	Bates No.
		Steve Cooke, Iyada Alattar, Daryl James, Carol Lamb and Jon Bunch from Julie Maxey re: Replacement Pages of Transcripts of Hearing	Nassiri00227
52.		Sign In Sheet	Nassiri00228- Nassiri00230
53.		Nevada DOT Terraza Neighborhood meeting	Nassiri00231- Nassiri00237
54.		I-15 South Design-Build Public Information Meeting	Nassiri00238- Nassiri00245
55.		Sign In Sheet	Nassiri00246- Nassiri00249
56.		12 Tips for Driving in Construction Zones	Nassiri00250- Nassiri00259
57.	5/3/2010	State of Nevada Memorandum From Julie Maxey re: Public Information Meeting Transcripts for I-15 South Design Build	Nassiri00260- Nassiri00292
58.	11/18/2008	Welcome Letter and comment form	Nassiri00293- Nassiri00295
59.		Public Information Meeting Potential Transportation Improvements	Nassiri00296- Nassiri00300
60.	10/2008	Environmental Assessment	Nassiri00301- Nassiri00515
61.	3/10/2009	State of Nevada Memorandum from Julie Maxey	Nassiri00516- Nassiri00565
62.		Sign In Sheets	Nassiri00566- Nassiri00568
63.		Nevada DOT Terraza Neighborhood Meeting	Nassiri00569- Nassiri00576
64.		I-15 South Design-Build Public Information Meeting	Nassiri00577- Nassiri00584
65.		Sign In Sheets	Nassiri00585- Nassiri00588
66.		12 Tips for Driving In Construction Zones	Nassiri00589- Nassiri00596
67.	4/6/2005	Letter from the Department of Transportation To Whom It May Concern	Nassiri00597- Nassiri00599
68.		Nevada DOT Transportation Notice Terazza Neighborhood Meeting	Nassiri00600
69.		Nevada DOT Transportation Notice Potential Transportation Improvements to the I-15 Corridor from Tropicana Avenue to Sloan Road	Nassiri00601- Nassiri00602
70.		Comment Form- Sydney J. Gordon	Nassiri00603
71.	11/21/2008	Email from Michael Nollsch to Patricia Brisbin re: Comment on I-15 Corridor Improvement	Nassiri00604
72.	12/8/2008	Email from Patricia Brisbin to Andrea	Nassiri00605-

No.	Date	Description	Bates No.
		Reeves re: Customer Comments from the Internet	Nassiri00611
73.	12/8/2008	Email from Patricia Brisbin to Andrea Reeves and John Terry Re: Customer Comments from the Internet	Nassiri00612- Nassiri00615
74.	12/4/2008	Email from Patricia Brisbin to Andrea Reeves re: I0-15 South Comments	Nassiri00616- Nassiri00617
75.	12/5/2008	Letter from Bryan L. Wright to Steve M. Cooke re: I-15 South Corridor Environmental Assessment	Nassiri00618- Nassiri00620
76.	12/12/2008	Letter from Carl Hagelman at Station Casinos to Rudy Malfabon re: Public Response to I-15 South Corridor Improvement	Nassiri00621- Nassiri00625
77.	12/2/2008	Letter from Matthew E. Woodhead at M Resort to Nevada Department of Transportation re: Environmental Assessment	Nassiri00626- Nassiri00627
78.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study Interstate 15 South	Nassiri00628- Nassiri00632
79.	4/30/2005	Letter from Charles Troianao at Image Design Group, LLC to Mr. James	Nassiri00633- Nassiri00634
80.	5/5/2005	Public Information Meeting	Nassiri00635
81.	Undated	Letter from Daryl N. James	Nassiri00636- Nassiri00637
82.	4/6/2005	Letter from the State of Nevada to Whom it May Concern	Nassiri00638- Nassiri00641
83.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study Interstate 15 South	Nassiri00642- Nassiri00646
84.	4/30/2005	Letter from Charles Troianao at Image Design Group, LLC to Mr. James	Nassiri00647- Nassiri00648
85.	Undated	Letter from George Olcott to Daryl N. James re: Intent to Study Interstate 15 South with highlights	Nassiri00649- Nassiri00653
86.		Transportation Notice Public Information Meeting I-15 South Design Build Project	Nassiri00654- Nassiri00656
87.	5/3/2010	State of Nevada Memorandum from Julie Maxey re: Public Information Meeting Transcripts for I-15 South Design Build	Nassiri00657- Nassiri00689
88.		Transportation Notice Public Information Meeting I-15 South Design-Build Project	Nassiri00690
89.		Affidavit of Publication	Nassiri00691- Nassiri00695
90.		Nevada DOT Terraza Neighborhood Meeting	Nassiri00696- Nassiri00704
91.		Comment Form – Sydney J. Gordon	Nassiri00705

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

No.	Date	Description	Bates No.
92.	10/26/2006	Analysis of a Las Vegas Events Center	Nassiri00706- Nassiri00724
93.	8/30/2004	Appraisal Report prepared by Gary H. Kent	Nassiri00725- Nassiri00875
94.		Clark County Real Property Information	Nassiri00876- Nassiri00877
95.		Assessor's parcels Map	Nassiri00878
96.	2/28/2010	Errata To Stipulation and Order to Amend Judgment and Final Order of Condemnation	Nassiri00879- Nassiri00902
97.		Fonsi Notice of Availability	Nassiri00903- Nassiri00904
98.	10/2008	Environmental Assessment	Nassiri00905- Nassiri01118
99.		I-15 South Design-Build Public Information Meeting	Nassiri01119- Nassiri01154
100.		Map	Nassiri01155
101.	Undated	Letter from Fred Nassiri to John Terry	Nassiri01156-
102.	9/30/2011	Letter from Eric R. Olsen to John Terry re: Nassiri- NDOT Blue Diamond Road/I-15 North	Nassiri01157- Nassiri01158
103.	8/30/2004	NDOT's Appraisal Report Summary	Nassiri01159- Nassiri01232
104.	12/7/2010	Email from Fred Nassiri to jterry@dot.state.nv.us re: the overpass	Nassiri01233
105.		Prospective Buyers Subject Site Information	Nassiri01234
106.		Blue Diamond Interchange 67-Acres	Nassiri01235
107.	8/30/2004	Appraisal prepared by Gary H. Kent	Nassiri01236- Nassiri01406
108.	11/16/2004	Letter from Michael Chapman, Esq. to Kirby Gruchow, Jr. Re: Nassiri v. NDOT	Nassiri01407
109.	12/6/2004	Letter from to Michael Chapman re: State of Nevada vs. Fred Nassiri	Nassiri01408- Nassiri01410
110.	12/7/2004	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re: Nassiri v. NDOT	Nassiri01411
111.	12/7/2004	Letter from Gregory Walch, Esq. to Michael Chapman, Esq. re: State of Nevada vs. Fred Nassiri	Nassiri01412
112.	12/27/2004	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re Nassiri re NDOT (with redaction log)	Nassiri01413
113.	1/25/2005	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re: NDOT re Nassiri	Nassiri01414- Nassiri01415
114.	1/20/2005	Letter from Timothy R. Morse to Michael Chapman, Esq.	Nassiri01416- Nassiri01419
115.	1/25/2005	Letter from Michael Chapman, Esq. to Gregory Walch, Esq. re: NDOT re: Nassiri	Nassiri01420- Nassiri01421

No.	Date	Description	Bates No.
116.	1/20/2005	Letter from Timothy R. Morse to Michael Chapman, Esq.	Nassiri01422-Nassiri01425
117.	4/15/2010	Ground Lease Agreement	Nassiri01426-Nassiri01430
118.	8/30/2011	Letter from KJE Consulting Engineers, Inc. to Fred Nassiri re: Site Visit to the construction yard located within APN 177-08-803-013	Nassiri01431-Nassiri01432
119.	9/1/2011	Letter from Fred Nassiri to Scott Cannon re: Ground Lease Agreement- Nassiri Living Trust and Las Vegas Paving Corp.	Nassiri01433
120.	9/20/2011	Letter from Patrick Sheehan, Esq. to Corey Newcome re: Ground Lease Agreement between Nassiri Living Trust and Las Vegas Paving Corp.	Nassiri01434-Nassiri01435
121.	6/14/2005	Copy of check from Fred Nassiri to Nevada State Bank in the amount \$200,000.00	Nassiri001436
122.	6/14/2005	Copy of cashier's check from NSB to Carolyn Chambers in the amount of \$100,000.00	Nassiri001437
123.	6/8/2005	Assignment and Release of All Claims re Carolyn Chambers and Elaine Greene in the amount of \$200,000.00	Nassiri001438-Nassiri001440
124.	6/8/2005	Quitclaim Deed for Carolyn Chambers and Elaine Green	Nassiri001441-Nassiri001451
125.	4/16/2005	Letter from Laura Fitzsimmons to Michel Chapman, Esq. and Greg Walch, Esq. re NDOT vs. Nassiri re settling the pending lawsuit	Nassiri001452-Nassiri001453
126.	8/27/2004	Letter from Michael Chapman, Esq. to Heidi Mireles at NDLOT re setting up meeting to discuss settlement	Nassiri001466-Nassiri001468
127.	9/23/2004	Letter from Michael Chapman, Esq. to Kirby Gruchow, Esq. at Santoro Driggs re: Nassiri vs. NDOT re thoughts on how to resolve case and reasonable solutions	Nassiri001469-Nassiri001470
128.	10/13/2004	Letter from Michael Chapman, Esq. to Kirby Gruchow, Esq. at Santoro Driggs re: Nassiri vs. NDOT re update on the departments progress in appraising the property	Nassiri001471-Nassiri001472
129.	11/16/2004	Letter from Michael Chapman, Esq. to Kirby Gruchow, Esq. at Santoro Driggs re: Nassiri vs. NDOT requesting an updated copy of Gary Kent's appraisal report	Nassiri001473
130.	12/6/2004	Letter from Greg Walch, Esq. at Santoro Driggs to Michael Chapman, Esq. re: State of Nevada vs. Nassiri Settlement Offer	Nassiri001474-Nassiri001476
131.	12/7/2004	Letter from Michael Chapman, Esq. to Greg Walch, Esq. at Santoro Driggs re State of Nevada vs. Nassiri re: requesting Kent's	Nassiri001477

No.	Date	Description	Bates No.
		appraisal and review appraisal	
132.	12/7/2004	Letter from Greg Walch, Esq. at Santoro Driggs to Michael Chapman, Esq. re: State of Nevada vs. Nassiri Settlement Offer and receipt of NDOTS proposal letter to resolve matter	Nassiri001478
133.	12/7/2004	Letter from Michael Chapman, Esq. to Greg Walch, Esq. at Santoro Driggs re State of Nevada vs. Nassiri re: receipt of NDOT'S proposal letter and parcel map	Nassiri001479
134.	12/28/2004	Letter from Greg Walch, Esq. at Santoro Driggs to Michael Chapman, Esq. re: State of Nevada vs. Nassiri Settlement Offer and NDOT's commitment not to dispose of the property prior to 1/31/2005	Nassiri001480- Nassiri001484
135.	1/25/2005	Letter from Michael Chapman, Esq. to Greg Walch, Esq. at Santoro Driggs re State of Nevada vs. Nassiri re: settlement proposal	Nassiri001485- Nassiri001486
136.	1/20/2005	Letter from Tim Morse to Michael Chapman, Esq. re completed research re vacant land assemblages and meeting with NDOT	Nassiri001487- Nassiri001490
137.	1/27/2005	Letter from Michael Chapman, Esq. to Greg Walch, Esq. at Santoro Driggs re: terms of the 1/25/2005 letter	Nassiri001491
138.	1/25/2005	Letter from Michael Chapman, Esq. to Greg Walch, Esq. at Santoro Driggs re: NDOT re Nassiri and letters transmits a settlement proposal	Nassiri001492- Nassiri001493
139.	1/20/2005	Letter from Tim Morse to Michael Chapman, Esq. re completed research re vacant land assemblages and meeting with NDOT	Nassiri001494- Nassiri001497
140.	4/13/2005	Email from Greg Walch, Esq. to Michelle Stone, Esq., Michel Chapman, Esq., Joe Ward, Liesl Freedman, Terry Thienhaus, Kirby Gruchow re Nassiri draft settlement	Nassiri001500- Nassiri001501
141.	4/18/2005	Letter from Michael Chapman, Esq. to Greg Walch, Esq. at Santoro Driggs re: NDOT re Nassiri and draft settlement agreement	Nassiri001502- Nassiri001505
142.	4/27/2005	Letter from Michael Chapman, Esq. to Greg Walch, Esq. at Santoro Driggs re: NDOT re Map, legal description, settlement agreement and judgment	Nassiri001506- Nassiri001507
143.	5/25/2005	Letter from Greg Walch, Esq. at Santoro Driggs to Michelle Stone, Esq. re: State of Nevada vs. Nassiri engineer's concern and property lines/easements	Nassiri001512- Nassiri001513
144.	5/25/2005	Letter from Michael Chapman, Esq. to Greg Walch, Esq. at Santoro Driggs re: NDOT vs. Nassiri re escrow closing and six issues outstanding	Nassiri001514- Nassiri001515
145.	5/25/2005	Letter from Fred Nassiri to Heidi Morales at	Nassiri001516-

No.	Date	Description	Bates No.
		NDOT re escrow closing and six outstanding issues	Nassiri001517
146.	5/25/2005	Letter from Greg Walch, Esq. to Michelle Stone, Esq. re: NDOT/Nassiri8 re engineer's concerns and property lines/easements	Nassiri001522- Nassiri001524
147.	5/31/2005	Email chain from Greg Walch to Susan Sampson, Michael Chapman, Heidi Mireles, Carla Burchard, and Michelle Stone re: executed original stipulated judgment and judgment and final order	Nassiri001525
148.	6/1/2005	Email from Greg Walch to Michael Chapman, Michelle Stone, Heidi Mires re merge question and amendment providing that the contract rights and obligation shall not merge the recording of the Property Deed	Nassiri001526
149.	6/1/2005	Email exchange between Michele Stone, Greg Walch, Susan Sampson, Michael Chapman, Heidi morels, Carla Buchard, Fred Nassiri and Kevin Bertonneau re: re closing escrow on 6/2/2005	Nassiri001527
150.	6/1/2005	Email from Greg Walch, Esq. to Michel Chapman, Michelle Stone, and Heidi Mireles re: merger question	Nassiri001528
151.	6/15/2005	Email from Michael Chapman, Esq. to Tammy Wolfe (Nassiri) and Ron Obser AND email exchange with Michael Chapman, Greg Walch, Tammy Wolfe and Ron Obser re: Nassiri and NDOT signature s on documents and escrow (REDACTED)	Nassiri001540
152.	11/21/2005	Fax coversheet from Michael Chapman, Esq. to Nancy Denman at Clark County Assessor's office and Ron Obser attaching stipulation and order to amend judgment	Nassiri001544- Nassiri001548
153.	9/26/2005	Oxford Financial Services Joint venture agreement with Dreamscape Development	Nassiri001594- Nassiri001596
154.	12/18/2008	Buyer's Final Settlement Agreement between Nassiri Living Trust and Alexandra Properties/Koroghli	Nassiri001597
155.	12/12/2008	Release in the Alexandra Property's vs. Nassiri matter	Nassiri001598- Nassiri001600
156.	12/12/2008	Settlement Agreement (signed) in the Alexandra Properties vs. Nassiri matter, Case No. A537215	Nassiri001601- Nassiri001611
157.	12/12/2008	Release signed by Fred Nassiri in the Alexandra Properties vs. Nassiri matter	Nassiri001612- Nassiri001613
158.	12/17/2008	Grant, Bargain, Sale Deed, recorded	Nassiri001614- Nassiri001623
159.	12/17/2008	Substitution and Partial Reconveyance, recorded	Nassiri001624- Nassiri001634
160.	12/17/2008	Grant, Bargain, Sale Deed, recorded	Nassiri001635- Nassiri001641

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

No.	Date	Description	Bates No.
161.	8/3/2005	Letter from NV Title to Nassiri, Inc. enclosing the final document package to include escrow instructions, escrow disclaimer, final closing statements, temporary easement deed, quit claim deed, judgment stipulated judgment, first amendment to settlement agreement, joint additional escrow instructions, Chambers and Green letter/check, quitclaim deed of Chambers and Green and ALTA title insurance	Nassiri001642
162.	5/12/2005	Escrow Instructions	Nassiri001643- Nassiri001649
163.	7/14/2005	Copy of check from Nevada State Bank to Fred Nassiri in the amount of \$4,810,000.00	Nassiri001650
164.	4/28/2005	Settlement Agreement (signed) between NDOT and Fred Nassiri in Case No. 491334	Nassiri001651- Nassiri001664
165.	5/8/2005	Escrow Disclaimer	Nassiri001665- Nassiri001666
166.	6/20/2005	Buyer/Borrower Statement, final	Nassiri001667
167.	6/17/2005	Temporary Easement Deed, recorded	Nassiri001668- Nassiri001672
168.	6/17/2005	Quitclaim Deed for Nassiri, recorded	Nassiri001673- Nassiri001677
169.	6/8/2005	Quitclaim Deed for Carolyn Chambers and Elaine Green	Nassiri001678- Nassiri001682
170.	6/29/2005	Judgment and Final Order of Condemnation, recorded	Nassiri001683- Nassiri001699
171.	6/29/2005	Stipulated Judgment, recorded	Nassiri001700- Nassiri001725
172.	6/14/2005	Letter from Greg Walch, Esq at Santoro Driggs to Carla Bruchard at Nevada Title re closing instructions	Nassiri001726- Nassiri001727
173.	6/14/2005	Letter from Greg Walch, Esq at Santoro Driggs to Carla Bruchard at Nevada Title re closing instructions and copy of check	Nassiri001728- Nassiri001733
174.	7/5/2005	Letter from Nevada Title to Nassiri, Inc. attaching Owner's Policy of Title Insurance	Nassiri001734- Nassiri001747
175.	8/3/2007	Letter from NDOT to Ronald Obser re investigation of the temporary easement	Nassiri001748
176.	6/14/2005	Temporary Easement Deed, recorded	Nassiri001749- Nassiri001753
177.	6/17/2005	Quitclaim Deed for Fred Nassiri, recorded	Nassiri001754- Nassiri001758
178.	1/11/2007	Resolution of Relinquishment of a portion of State Highway Right of Way, recorded	Nassiri001759- Nassiri001836
179.		Color photographs of overpass project	Nassiri001837- Nassiri001846
180.		Las Vegas Blvd and Blue Diamond Property Taxes Comparison and copies of Clark County Treasurer real property and	Nassiri001847- Nassiri001854

No.	Date	Description	Bates No.
		special taxes sheets	
181.	6/8/2011	Appraisal report prepared by Tim Morse - Parcel C \$32,400,000, Parcels A, B, D & E combined \$33,800,000.00; All five parcels \$66.630.000	Nassiri001855- Nassiri002000
182.	8/17/2009	Appraisal report prepared by Tim Morse - Parcel C \$45,400,000; Parcels A, B, D & E combined \$47,270,000.00; All five parcels \$93.280.000	Nassiri002001- Nassiri002117
183.	2/10/2010	Appraisal report prepared by Richard Smith - Market value as is- 1/14/2010 for 66.63 acres is \$100,000,000 and Market Value as is for January 14, 2010 for 30.27 acres is \$43.000.000	Nassiri002118- Nassiri002255
184.	10/24/2007	Appraisal report prepare by by Tim Morse - Parcel A \$122,000,000; Parcel B \$49,300,000; Parcel C \$158,800,000; Parcel D \$2,900,000; Parcels B&C Combined \$215,800,000; All parcels combined \$333.000.000	Nassiri002256- Nassiri002432
185.	6/26/2013	Valuation Report by Steve Evans at CBRE, Inc. - Valuation and Advisory Services- \$77.000.000	Nassiri002433- Nassiri002493
186.		Geological maps	Nassiri002494- Nassiri002497
187.	9/8/2006	Preliminary Geotechnical Exploration Report- Commercial Development	Nassiri002498- Nassiri002678
188.	4/6/2012	Summary Appraisal report prepared by Tim Morse for Eric Olsen for property valuation before the acquisition (the whole) \$79.956.000	Nassiri002679- Nassiri002816
189.		Blue Diamond Promotional Video	Nassiri002817
190.		Marketing Materials	Nassiri002818- Nassiri002828
191.		Listing Agreements	Nassiri002829- Nassiri002845
192.		Letters of Intent and Purchase Agreements	Nassiri002846- Nassiri002889
193.		Elevation map	Nassiri002890
194.		Loan Agreements (redaction)	Nassiri002891- Nassiri002952
195.		Nassiri Living Trust documents	Nassiri002953- Nassiri002954
196.		Property Tax paid on 24.42 acre parcel (APN # 177-08-803-013)	Nassiri002955- Nassiri002956
197.	2/3/2012	Email exchange between Karissa Vero to Eric Olsen, Jamie Zimmerman and Vicki Thomas re: Fred Nassiri	Nassiri002957- Nassiri002958
198.	2/3/2012	Email exchange between Karissa Vero to Eric Olsen, Jamie Zimmerman and Vicki Thomas re: Fred Nassiri	Nassiri002959- Nassiri002959
199.	2/9/2012	Email from Eric Olsen to Karissa Vero and	Nassiri002960-

No.	Date	Description	Bates No.
		Vicki Thomas re: Fred Nassiri	Nassiri002960
200.	2/9/2012	Email exchange between Karissa Vero to Eric Olsen, Jamie Zimmerman and Vicki Thomas re: Fred Nassiri	Nassiri002961- Nassiri002961
201.	2/9/2012	Nevada Department of Transportation Fee Schedule	Nassiri002962-002962
202.	2/2/2012	Letter from Gordon Silver to NDOT Records Officer and attached public records request form	Nassiri002963- Nassiri002964
203.	2/2/2012	Email exchange between Sara Martel to Bobbye Donaldson re: FW: public records request: public notice information for I-15 South DB	Nassiri002965- Nassiri002968
204.	2/21/2012	Public Records Request form	Nassiri002969- Nassiri002969
205.	2/21/2012	Letter from Gordon Silver to NDOT Records Officer and attached public records request form with public records request form	Nassiri002970- Nassiri002971
206.	1/27/2012	Email from Bobbye Donaldson to PublicRecordsRequests.dot.state.nv.us re: NDOT Records Officer - Public Records Request	Nassiri002972- Nassiri002972
207.	2/3/2012	Email exchange between Bobbye Donaldson, Sara Martel and Jamie Zimmerman re: Public Records Request: Public Notice Information for I-15 South DB	Nassiri002973- Nassiri002974
208.	3/1/2012	Email exchange between Bobbye Donaldson, Jeffrey Richter, Sara Martel and Jamie Zimmerman re: Public Records Request: Public Notice Information for I-15 South DB	Nassiri002975- Nassiri002977
209.	3/7/2012	Email exchange between Jeffrey Richter, Bobbye Donaldson, Sara Martel and Jamie Zimmerman re: Public Records Request: Public Notice Information for I-15 South DB	Nassiri002978- Nassiri002980
210.	2/2/2012	Email exchange between Rogie Madlambayan to Fred Nassir and Patrick Sheehan and James Barker re: LV Paving Settlement	Nassiri002981- Nassiri002982
211.	2/21/2012	Email exchange between Jeffrey Richter, Bobbye Donaldson, Sara Martel and Jamie Zimmerman re: Public Records Request: Public Notice Information for I-15 South DB	Nassiri002983- Nassiri002985
212.	2/21/2012	Email exchange between Jeffrey Richter, Bobbye Donaldson, Sara Martel and Jamie Zimmerman re: Public Records Request: Public Notice Information for I-15 South DB with copy of 2/3/2012 letter	Nassiri002986- Nassiri002990
213.	1/27/2012	Las Vegas Sun Article	Nassiri002991-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

No.	Date	Description	Bates No.
			Nassiri002992
214.	2/3/2012	Letter from Gordon Silver to NDOT Records Officer and attached public records request form with public records request form	Nassiri002993- Nassiri002994
215.	3/1/2012	Email from Jeffrey Richter to Bobbye Donaldson re: Public Records Request: Public Notices for I-15 South DB (Contract 3366DB)	Nassiri002995- Nassiri002995
216.	3/7/2012	Email exchange between Bobbye Donaldson, Jeffrey Richter, Sara Martel and Jamie Zimmerman re: Public Records Request: Public Notice Information for I-15 South DB (Contract 3366DB)	Nassiri002996- Nassiri002996
217.	4/4/2012	Email exchange between Rodolfo Malfabon to Fred Nassir re: Meeting	Nassiri002997- Nassiri002999
218.	5/8/2012	Email exchange between Rodolfo Malfabon to Fred Nassir re: Meeting	Nassiri003000- Nassiri003003
219.	6/13/2012	Email from Dennis Gallagher to Jeffrey Silver re: Fred Nassir/State of Nevada Correspondence	Nassiri003004- Nassiri003004
220.	7/5/2012	Email from Dennis Gallagher to Jeffrey Silver re: Fred Nassir/State of Nevada Correspondence	Nassiri003005- Nassiri003006
221.	7/17/2012	Email exchange between Dennis Gallagher, Jeffrey Silver, Eric Olsen and Vicki Thomas	Nassiri003007- Nassiri003009
222.	7/17/2012	Email exchange between Dennis Gallagher, Jeffrey Silver, Eric Olsen and Vicki Thomas	Nassiri003110- Nassiri003013
223.	2/9/2012	Email exchange between Bobbye Donaldson, Jeffrey Richter, Sara Martel and Jamie Zimmerman	Nassiri003014- Nassiri003016
224.	9/21/2012	Email exchange between Dennis Gallagher and Jeffrey Silver re: Nassiri Claim	Nassiri003017- Nassiri003109
225.	10/25/2012	Email from Jeffrey Silver to Dennis Gallagher re: Fred Nassiri Claim	Nassiri003019- Nassiri003019
226.	4/11/2013	Email from Eric Olsen to Dennis Gallagher, Jeffrey Silver, Vicki Thomas and Dylan Ciciliano re: Nassiri v. NDOT	Nassiri003020- Nassiri003020
227.	4/17/2013	Email exchange between Eric Olsen, Dennis Gallagher and Jeffrey Silver, Vicki Thomas, Dylan Ciciliano and Amanda Kern re: Nassiri v. NDOT	Nassiri003021- Nassiri003022
228.	11/12/2013	Nevada Secretary of State Notice of Filing LVBBB, LLC Articles of Organization	Nassiri003023- Nassiri003024
229.	11/12/2013	Articles of Organization for LVBBB, LLC	Nassiri003025- Nassiri003025
230.		Addendum to Articles of Organization of LVBBB, LLC	Nassiri003026- Nassiri003026
231.	11/12/2013	Certificate of Acceptance of Appointment of Registered Agent for LVBBB, LLC	Nassiri003027- Nassiri003027
232.	5/25/2012	Letter from Gordon Silver to Office of the	Nassiri003028-

No.	Date	Description	Bates No.
		Ex Officio Clerk of the State Board of Examiners	Nassiri003035
233.	11/13/2013	Recorded Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement by LVBBB, LLC	Nassiri003036- Nassiri003074
234.		Assessor's Parcel Map	Nassiri003075- Nassiri003075
235.		Public Information Meeting Notice for 3/24/2010	Nassiri003076- Nassiri003076
236.	3/24/2010	Nevada Department of Transportation Public Information Meeting pamphlet	Nassiri003093- Nassiri003092
237.		Aerial photograph of parcel Map	Nassiri003093- Nassiri003093
238.	2/3/2012	Email from Sara Martel to Bobbye Donaldson re: FW: Public Records Request: Public Notice Information for I-15 South DB	Nassiri003094- Nassiri003095
239.		Custodian of Records Declaration	Not Bates Labeled
240.		Privilege Log	Not Bates Labeled
241.	Various	Folder: 470 NASSIRI RE NDOT NDOT CORRESPONDENCE	Chapman00001- Chapman00200
242.	Various	Folder: NASSIRI FRED CORRESPONDENCE VOL. I	Chapman00200- Chapman00495
243.	Various	Folder: NASSIRI RE: NDOT CORRESPONDENCE VOL. II	Chapman00498- Chapman00893
244.	Various	Folder: 470 NASSIRI V. NDOT CORRESPONDENCE VOL. III	Chapman00894- Chapman01269
245.	Various	Folder: NASSIRI V. NDOT CORRESPONDENCE VOL 4 36H-C9	Chapman01270- Chapman01723
246.	Various	Folder: NASSIRI V. NDOT CORRESPONDENCE VOL 5 36H-C9	Chapman01724- Chapman01882
247.	Various	Folder: 470 NASSIRI V. NDOT MAPS 36H-C9	Chapman01884- Chapman01918
248.	Various	Folder: 470 NASSIRI V. NDOT CHAMBERS MATTER	Chapman01919- Chapman01930
249.	Various	Folder: NASSIRI V. NDOT PLEADINGS VOL I 36H-C9	Chapman01931- Chapman02316
250.	Various	Folder: NASSIRI V. NDOT NV TITLE CLOSING DOCS 36H-C9	Chapman02317- Chapman02393
251.	Various	Folder: NASSIRI V. NDOT FINAL CLOSING DOCUMENTS FOR NDOT	Chapman02394- Chapman02483
252.	Various	Folder: NASSIRI V. NDOT APPRAISAL GARY KENT 10-9-03	Chapman2483- Chapman2818
253.	Various	Folder: NASSIRI V. NDOT CLIENT DOCS RE. CLOSING	Chapman02819- Chapman02840
254.	Various	Folder: NASSIRI V. NDOT CLIENT DOCS	Chapman02841- Chapman02849
255.	Various	Folder: NASSIRI V. NDOT TITLE COMPANY DOCUMENTS	Chapman02850- Chapman03189
256.	Various	Folder: NASSIRI V. NDOT DOCS SENT TO GREG WALCH	Chapman03190- Chapman03218
257.	Various	Folder: NASSIRI V. NDOT SR-160-I15	Chapman03219-

No.	Date	Description	Bates No.
		EXCESS PROPERTY CD	Chapman03220
258.	Various	Folder: NASSIRI V. NDOT MEMO TO FILE	Chapman03221- Chapman03222
259.	11/21/2014	Privilege Log	Not Bates Labeled
260.		File Folder label	Chapman00001
261.	10/10/2003	Letter from Michael Chapman to Ray Koroghli	Chapman00002- Chapman00011
262.	10/27/2004	Fax coversheet from Michael Chapman to Steve Oxoby	Chapman01920 Chapman01920
263.		Privilege Log in Response to Subpoena Duces Tecum	Not Bates Labeled
264.	6/17/2005	Email from Wanda Tollison to <u>Michael@michaelchapman.com</u> re 05-05-0001-clb	Chapman003314
265.	6/17/2005	Email from Barbara Gracey to <u>Michael@michaelchapman.com</u> ; <u>hmireles@dot.state.nv.us</u> ; Greg Walch re: Nassiri/NDOT	Chapman003315
266.	6/17/2015	Letter from Kirby Gruchow to Carla Burchard re NDOT/Nassiri – Escrow Number 0505-0001-CLB	Chapman003316
267.	6/16/2015	Email from Barbara Gracey to <u>Hmireles@dot.state</u> ; <u>Michael@michaelchapman.com</u> ; Greg Walch re: NDOT v. Nassiri	Chapman003317
268.	6/16/2005	Letter from Kirby Gruchow to Carla Burchard re: NDOT/Nassiri – Escrow Number 0505-0001-CLB with attachments	Chapman003318- Chapman003364
269.	6/15/2005	Email from Greg Walch to Heidi Mireles and Michael Chapman re Joint Instruction	Chapman003365
270.	6/14/2005	Draft Letter from Greg Walch to Carla Burchard re NDOT/Nassiri – Escrow Number 0505-0001-CLB; Joint Escrow Instructions	Chapman003366- Chapman003367
271.	6/15/2005	Email exchange between Greg Walch to Michael Chapman; Heidi Mireles; Kirby Gruchow; Cindy Bostic re: Nassiri and NDOT	Chapman003368
272.	6/14/2005	Draft Letter from Greg Walch to Carla Burchard re NDOT/Nassiri – Escrow Number 0505-0001-CLB; Joint Escrow Instructions	Chapman003369- Chapman003370
273.	6/14/2005	Email exchange between Greg Walch to Michael Chapman; Heidi Mireles re: Quitclaim Deed and Joint Escrow Instructions with attachment	Chapman003371- Chapman003374
274.	6/14/2005	Draft Letter from Greg Walch to Carla Burchard re NDOT/Nassiri – Escrow Number 0505-0001-CLB; Joint Escrow Instructions	Chapman003375- Chapman003376
275.	6/13/2005	Email exchange between Greg Walch to Michael Chapman; Heidi Mireles, Kirby	Chapman003377- Chapman003382

No.	Date	Description	Bates No.
		Gruchow and Heather Kelley re: Exchange Property Quitclaim and Easement Revisions with attachments	
276.	6/14/2005	Draft Letter from Greg Walch to Carla Burchard re NDOT/Nassiri— Escrow Number 0505-0001-CLB; Joint Additional Escrow Instructions	Chapman003383- Chapman003384
277.	6/6/2005	Email exchange between Greg Walch, Michael Chapman and Heidi Mireles re: revised docs with attachments	Chapman003385- Chapman003397
278.	6/2/2005	Email exchange between Greg Walch, Michael Chapman and Heidi Mireles re document revisions	Chapman003398- Chapman003399
279.	6/2/2005	Email exchange between Greg Walch, Michael Chapman and Heidi Mireles re document revisions with attachments	Chapman003400- Chapman003404
280.	6/2/2005	Email exchange between Greg Walch, Michael Chapman and Heidi Mireles re document revisions with attachments	Chapman003405- Chapman003416
281.	6/2/2005	Email exchange between Greg Walch, Michael Chapman, Michele Stone and Kevin Bertonneau re: Survival	Chapman003417- Chapman003418
282.	6/1/2005	Email from Greg Walch to Michael Chapman, Michelle Stone and Heidi Mireles re: Survival	Chapman003419
283.	6/1/2005	Email exchange between Michelle Stone, Michael Chapman, Greg Walch, Susan Sampson, Carla Burchard, Fred Nassiri, Kevin Bertonneau re: NDOT/Nassiri	Chapman003420- Chapman003423
284.	6/1/2005	Email exchange between Greg Walch, Michelle Stone, Susan Sampson, Michael Chapman, Heidi Mireles, Carla Burchard, Fred Nassiri and Kevin Bertonneau re: NDOT/Nassiri	Chapman003424- Chapman003426
285.	5/31/2005	Email exchange between Michelle Stone, Greg Walch, Susan Sampson, Michael Chapman, Heidi Mireles, Carla Burchard, Fred Nassiri and Kevin Bertonneau re: NDOT/Nassiri	Chapman003427- Chapman003429
286.	5/31/2005	Email exchange between Michelle Stone, Greg Walch, Susan Sampson, Michael Chapman, Heidi Mireles and Carla Burchard re: NDOT/Nassiri	Chapman003430- Chapman003432
287.	5/16/2005	Email from Greg Walch to Michael Chapman, Susan Sampson and Heidi Mireles re: Exchange Property Deed and Easement (NDOT/Nassiri) with attachments	Chapman003433- Chapman003444
288.	4/28/2005	Email exchange between Greg Walch, Michael Chapman, <u>Nassiri@nassiri.com</u> ; Tammy Wolfe re: agreement	Chapman003445
289.	4/27/2005	Email from Greg Walch to Michael Chapman re: NDOT/Nassiri docs with attachments	Chapman003446- Chapman003478

No.	Date	Description	Bates No.
290.	4/26/2005	Email exchange between Greg Walch, Michael Chapman, Heidi Mireles, Joe ward, Terry Thienhau and Liesl Freedman re: Response to Nassiri Comments	Chapman003479- Chapman003484
291.	4/26/2005	Email exchange between Greg Walch, Michael Chapman, Heidi Mireles, Susan Singer, Joe Ward, Terry Thienhaus and Liesl Freedman re: Exchange Property and Legals and Diagram	Chapman003485- Chapman003489
292.	4/22/2005	Email from Greg Walch to Michael Chapman re: Update on Nassiri with attachment	Chapman003490- Chapman003503
293.	4/14/2005	Email exchange between Greg Walch, Michael Chapman, Nassiri@nassiri.com ; mstone@michaelchapmn.com and Kevin Bertonneau re: agreement	Chapman003504
294.	4/12/2005	Email from Greg Walch to Michelle Stone, Heidi Mireles, Joe ward, Liesl Freedman, Terry Thienhaus and Kirby Gruchow re: Nassiri draft settlement with attachments	Chapman003505- Chapman003526
295.	6/13/2005	Email exchange between Greg Walch and Michael Chapman re documents	Chapman003530
296.	11/3/2014	Keith Harper's report (previously produced)	Harper000001- Harper000152
297.	12/17/2014	Keith Harper's file materials	Harper000153- Harper002251
298.	1/5/2015	10 CD ROM'S produced by Las Vegas Paving along with a Declaration of Custodian of Records	None
299.	10/28/2013	Exclusive Authorization to Sell	Nassiri003096
300.	7/9/2014	Email from Joshua Smith to Rogie Madlambayan and Mike Mixer re: Colliers' Loopnet Ad – 66 acre LV Blvd. Property	Nassiri003097
301.		Broker Price Opinion	Nassiri003098- Nassiri003108
302.	03/08/2014	Letter from Fred Nassiri to Jess Medina re: Authorization and Compensation for Sales Transaction	Nassiri003109
303.		Road Maps, Pictures and DVD re: Las Vegas Blvd and Blue Diamond Rd Property	Nassir003110- Nassiri003126
304.	10/26/2012	Open Listing Agreement	Nassiri003127
305.		Non-Exclusive Agreement	Nassiri003128
306.		Open Listing Agreement	Nassiri003129
307.	09/24/2012	Non-Exclusive and Open Listing Agreement	Nassiri003130- Nassiri003131
308.	05/14/2014	Confidential letter from Fred Nassiri to Fely Quitevis re: Authorization to Sell/Sales Commission	Nassiri003132
309.	07/25/2013	Letter from Gregory Lansing to Fred Nassiri re: Offer to Purchase: 66 Acres NW/C Las Vegas Blvd. and Blue Diamond Road	Nassiri003133- Nassiri003135

No.	Date	Description	Bates No.
310.	10/26/2012	Non-Binding Indication of Interest – Steve Irwin’s Australia. Las Vegas	Nassiri003136- Nassiri003139
311.	9/9/2013	Letter from Frank Muscillo to Fred Nassiri enclosing draft agreement	Nassiri003140
312.		Draft Purchase and Sale Agreement from Australia Zoo Operations Pty. Ltd.	Nassiri003141- Nassiri003167
313.	12/20/2013	Agreement for the Purchase and Sale of Real Property and Joint Escrow Instructions	Nassiri003168- Nassiri003172
314.		3 videos on CD ROM	Nassiri003173- Nassiri003175
315.		Photographs of subject property	Nassiri003176- Nassiri003238
316.	1/15/2015	Declaration of Custodian of Records and 2 CD-ROMs from Parsons Transportation Group, Inc.	Not Bates Labeled
317.		Additional production by Chapman containing three maps.	Chapman003531- Chapman003533
318.	2/20/2015	Keith Harper’s supplemental report	HARPER002251- HARPER002404
319.	2/2/2015	Email from Scott Naftzger to Nassiri re: Billboard	Nassiri003239- Nassiri003240
320.		Color map	Nassiri003241
321.		2 aerial maps Fall 2004	Nassiri003242- Nassiri003243
322.		2 aerial maps Fall 2005	Nassiri003244- Nassiri003245
323.		2 aerial maps Fall 2006	Nassiri003246- Nassiri003247
324.		2 aerial maps Fall 2007	Nassiri003248- Nassiri003249
325.		2 aerial maps Fall 2008	Nassiri003250- Nassiri003251
326.		2 aerial maps Fall 2009	Nassiri003252- Nassiri003253
327.		2 aerial maps Fall 2010	Nassiri003254- Nassiri003255
328.		2 aerial maps Fall 2011	Nassiri003256- Nassiri003257
329.		Color map	Nassiri003258
330.	3/12/2015	Keith Harper’s supplemental report	HARPER002405- HARPER002578
331.	10/20/2009	Beyond CSS – From Statewide Corridor Planning to Project Level Implementation	Nassiri003259- Nassiri003300

Plaintiff reserves the right to supplement or modify this disclosure as it identifies during discovery additional categories of documents, electronically stored information, and tangible things in his possession, custody or control that may be used to support his claims or defenses.

Plaintiff further reserves the right to object to the relevance or admissibility of any of the documents identified above.

III. COMPUTATION OF DAMAGES

Summary of Cost/Expenses – 24.42-acre Parcel Acquisition

RECISSION

Purchase Cost (24.42-acre parcel)	\$23,396,224.00
Chamber's settlement	\$ 200,000.00
Interest paid to NV State Bank (6/1/2005-2/28/2015)	\$16,117,096.61
Property Taxes (including interest - tax years 2006 to 2012)	\$ 2,560,954.42
<u>TOTALS</u>	<u>\$42,274,275.03</u>

CONTRACT

Compensatory Damages	\$10,000,000.00
Interest paid to NV State Bank (6/1/2005-2/28/2015)	\$15,984,088.38 x 10% = \$1,598,408.84
Property Taxes (including interest - tax years 2006 to 2012)	\$ 2,560,954.42 x 10% = \$ 256,095.44
Signage Opportunity Costs/Lost Income	\$ 337,500.00
<u>TOTALS</u>	<u>\$12,192,004.28</u>

CONDEMNATION

Severance Damages	\$10,000,000.00
Interest paid to NV State Bank (6/1/2005-2/28/2015)	\$15,984,088.38 x 10% = \$1,598,408.84
Property Taxes (including interest - tax years 2006 to 2012)	\$ 2,560,954.42 x 10% = \$ 256,095.44
Signage Opportunity Costs/Lost Income	\$ 337,500.00
<u>TOTALS</u>	<u>\$12,192,004.28</u>

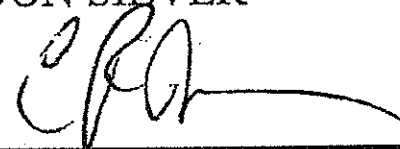
1 **IV. RULE 26(a)(1)(A)(iv) INSURANCE AGREEMENTS**

2 Not applicable.

3 Nothing in this supplemental disclosure shall constitute a waiver of any claim, defense, or
4 privilege, including, without limitation, the following: any claim or defense as to the sufficiency
5 of the complaint; any applicable privilege, including the attorney-client privilege, the work
6 product doctrine privilege, or any other privilege; and the right to object to discovery requests
7 that seek material, documents or information that is not relevant or sufficiently probative to
8 justify the burden or expense of a response. Moreover, nothing in this supplemental disclosure
9 shall constitute an admission or concession on the part of Plaintiff with respect to any issues of
10 fact or law, including, but not limited to, the relevance, discoverability, or admissibility of any of
11 the information set forth herein. Plaintiff specifically reserves the right to challenge the
12 discoverability or admissibility of such testimony or information.

13 Dated this 19th day of March 2015.

14 GORDON SILVER

15 

16 ERIC R. OLSEN

17 Nevada Bar No. 3127

18 DYLAN T. CICILIANO

19 Nevada Bar No. 12348

20 3960 Howard Hughes Pkwy., 9th Floor

21 Las Vegas, Nevada 89169

22 Attorneys for Plaintiffs


CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver hereby certifies that on the 19th day of March 2015, she served a copy of the **PLAINTIFF'S NINTH SUPPLEMENT TO INITIAL DISCLOSURES PURSUANT TO N.R.C.P. 16.1(a)(1)**, by placing said document in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Office of the Attorney General
Amanda B. Kern
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
Co-Counsel for Defendant

And by hand-delivery to:

Mona Kaveh
KEMP JONES COULTHARD LLP
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, NV 89169
Counsel for Defendant


Bobbye Donaldson, an employee of
GORDON SILVER

Description	Principal Amount (Nevada State Bank)	Interest Rate	Period	No. of Days	Interest Paid
24.4 acres Purchase - NDOT (NSB Payment to NV Title)	\$ 23,396,223.65	5.09%	06/01/05 - 06/22/05	22	\$ 72,775.25
Chambers' Settlement Claim	\$ 200,000.00	5.09%	06/14/05 - 06/22/05	9	\$ 254.50
	\$ 23,596,223.65	5.31438%	06/23/05 - 07/22/05	30	\$ 104,499.42
	\$ 23,596,223.65	5.48%	07/23/05 - 09/22/05	31	\$ 111,347.96
	\$ 23,596,223.65	5.83%	09/23/05 - 10/22/05	30	\$ 114,638.32
	\$ 23,596,223.65	6.05125%	10/23/05 - 11/22/05	31	\$ 122,955.17
	\$ 23,596,223.65	6.19%	11/23/05 - 12/22/05	30	\$ 121,741.77
	\$ 23,596,223.65	6.38%	12/23/05 - 01/22/06	31	\$ 129,635.03
	\$ 23,596,223.65	6.53%	01/23/06 - 02/22/06	31	\$ 132,682.88
	\$ 23,596,223.65	6.58063%	02/23/06 - 03/22/06	28	\$ 120,771.79
	\$ 23,596,223.65	6.81813%	03/23/06 - 04/22/06	31	\$ 138,537.38
	\$ 23,596,223.65	6.97%	04/23/06 - 04/30/06	8	\$ 36,547.93
	\$ 23,596,223.65	6.82%	05/01/06 - 05/31/06	31	\$ 138,575.38
	\$ 23,596,223.65	7.10906%	06/01/06 - 06/30/06	30	\$ 139,789.14
	\$ 23,596,223.65	7.33438%	07/01/06 - 07/31/06	31	\$ 149,027.05
	\$ 23,596,223.65	7.39063%	08/01/06 - 08/31/06	31	\$ 150,169.99
	\$ 23,596,223.65	7.33%	09/01/06 - 09/30/06	30	\$ 144,133.60
	\$ 23,596,223.65	7.32250%	10/01/06 - 10/31/06	31	\$ 148,785.66
	\$ 23,596,223.65	7.32%	11/01/06 - 11/30/06	30	\$ 143,936.96
	\$ 23,596,223.65	7.35%	12/01/06 - 12/31/06	31	\$ 149,344.43
	\$ 23,596,223.65	7.32063%	01/01/07 - 01/31/07	31	\$ 148,747.66
	\$ 23,596,223.65	7.32%	02/01/07 - 09/30/07	242	\$ 1,161,091.51
	\$ 23,596,223.65	7.12063%	10/01/07 - 10/31/07	31	\$ 144,683.87
	\$ 23,596,223.65	6.72%	11/1/07 - 11/30/07	30	\$ 132,065.11
	\$ 23,596,223.65	7.23625%	12/01/07 - 12/31/07	31	\$ 147,033.15
	\$ 23,596,223.65	6.60%	01/01/08 - 01/31/08	31	\$ 134,105.20
	\$ 23,596,223.65	5.1425%	02/01/08 - 02/29/08	29	\$ 97,749.00
	\$ 23,596,223.65	5.08625%	03/01/08 - 03/31/08	31	\$ 103,347.36
	\$ 23,596,223.65	4.70%	04/01/08 - 04/30/08	30	\$ 92,418.54
	\$ 23,596,223.65	4.72375%	05/01/08 - 05/31/08	31	\$ 95,981.74
	\$ 23,596,223.65	4.45563%	06/01/08 - 06/30/08	30	\$ 87,613.37
	\$ 23,596,223.65	4.46125%	07/01/08 - 07/31/08	31	\$ 90,648.01
	\$ 23,596,223.65	4.46%	08/01/08 - 08/31/08	31	\$ 90,622.61
	\$ 23,596,223.65	4.4856%	09/01/08 - 09/30/08	30	\$ 88,203.27
	\$ 23,596,223.65	6.7525%	10/01/08 - 10/31/08	31	\$ 137,203.85
	\$ 23,596,223.65	5.33125%	11/01/08 - 11/30/08	30	\$ 104,831.14
	\$ 23,596,223.65	4.66125%	12/01/08 - 12/31/08	31	\$ 94,711.80
	\$ 23,596,223.65	3.18625%	01/01/09 - 01/31/09	31	\$ 64,741.32
	\$ 23,596,223.65	3.16938%	02/01/09 - 02/28/09	28	\$ 58,166.42
	\$ 23,596,223.65	6.0%	03/01/09 - 08/31/09	184	\$ 723,617.53
	\$ 23,596,223.65	7.0%	09/01/09 - 09/30/09	30	\$ 137,644.64
	\$ 23,596,223.65	6.0%	10/01/09 - 05/31/10	243	\$ 955,647.06
	\$ 23,596,223.65	7.0%	06/01/10 - 08/31/10	92	\$ 422,110.22
	\$ 23,596,223.65	5.5%	09/01/10 - 09/30/13	1218	\$ 4,390,863.95
	\$ 23,596,223.65	9.71%	10/01/13 - 11/29/13	60	\$ 381,750.30
Refinance w/ABP Capital	\$ 23,596,223.65	12.25%	11/30/13 - 02/28/14	456	\$ 3,661,347.37
			Totals		
Ave. Interest for 3631 days =	6.77%		06/01/05 - 02/28/14	3630	\$ 16,117,095.61

<u>Description</u>	<u>Principal Amount</u> (Nevada State Bank)	<u>Interest</u> <u>Rate</u>	<u>Period</u>	<u>No. of</u> <u>Days</u>	<u>Interest Paid</u>
24.4 acres Purchase - NDOT (NSB Payment to NV Title)	\$ 23,396,223.65	5.09%	06/01/05 - 06/22/05	22	\$ 72,775.25
	\$ 23,396,223.65	5.31438%	06/23/05 - 07/22/05	30	\$ 103,613.69
	\$ 23,396,223.65	5.48%	07/23/05 - 09/22/05	31	\$ 110,404.18
	\$ 23,396,223.65	5.83%	09/23/05 - 10/22/05	30	\$ 113,666.65
	\$ 23,396,223.65	6.05125%	10/23/05 - 11/22/05	31	\$ 121,913.01
	\$ 23,396,223.65	6.19%	11/23/05 - 12/22/05	30	\$ 120,709.89
	\$ 23,396,223.65	6.38%	12/23/05 - 01/22/06	31	\$ 128,536.25
	\$ 23,396,223.65	6.53%	01/23/06 - 02/22/06	31	\$ 131,558.27
	\$ 23,396,223.65	6.58063%	02/23/06 - 03/22/06	28	\$ 119,748.14
	\$ 23,396,223.65	6.81813%	03/23/06 - 04/22/06	31	\$ 137,363.15
	\$ 23,396,223.65	6.97%	04/23/06 - 04/30/06	8	\$ 36,238.15
	\$ 23,396,223.65	6.82%	05/01/06 - 05/31/06	31	\$ 137,400.82
	\$ 23,396,223.65	7.10906%	06/01/06 - 06/30/06	30	\$ 138,604.30
	\$ 23,396,223.65	7.33438%	07/01/06 - 07/31/06	31	\$ 147,763.91
	\$ 23,396,223.65	7.39063%	08/01/06 - 08/31/06	31	\$ 148,897.16
	\$ 23,396,223.65	7.33%	09/01/06 - 09/30/06	30	\$ 142,911.93
	\$ 23,396,223.65	7.32250%	10/01/06 - 10/31/06	31	\$ 147,524.56
	\$ 23,396,223.65	7.32%	11/01/06 - 11/30/06	30	\$ 142,716.96
	\$ 23,396,223.65	7.35%	12/01/06 - 12/31/06	31	\$ 148,078.60
	\$ 23,396,223.65	7.32063%	01/01/07 - 01/31/07	31	\$ 147,486.89
	\$ 23,396,223.65	7.32%	02/01/07 - 09/30/07	242	\$ 1,151,250.18
	\$ 23,396,223.65	7.12063%	10/01/07 - 10/31/07	31	\$ 143,457.54
	\$ 23,396,223.65	6.72%	11/1/07 - 11/30/07	30	\$ 130,945.74
	\$ 23,396,223.65	7.23625%	12/01/07 - 12/31/07	31	\$ 145,786.91
	\$ 23,396,223.65	6.60%	01/01/08 - 01/31/08	31	\$ 132,968.54
	\$ 23,396,223.65	5.1425%	02/01/08 - 02/29/08	29	\$ 96,920.48
	\$ 23,396,223.65	5.08625%	03/01/08 - 03/31/08	31	\$ 102,471.40
	\$ 23,396,223.65	4.70%	04/01/08 - 04/30/08	30	\$ 91,635.21
	\$ 23,396,223.65	4.72375%	05/01/08 - 05/31/08	31	\$ 95,168.20
	\$ 23,396,223.65	4.45563%	06/01/08 - 06/30/08	30	\$ 86,870.76
	\$ 23,396,223.65	4.46125%	07/01/08 - 07/31/08	31	\$ 89,879.68
	\$ 23,396,223.65	4.46%	08/01/08 - 08/31/08	31	\$ 89,854.50
	\$ 23,396,223.65	4.4856%	09/01/08 - 09/30/08	30	\$ 87,455.67
	\$ 23,396,223.65	6.7525%	10/01/08 - 10/31/08	31	\$ 136,040.92
	\$ 23,396,223.65	5.33125%	11/01/08 - 11/30/08	30	\$ 103,942.60
	\$ 23,396,223.65	4.66125%	12/01/08 - 12/31/08	31	\$ 93,909.03
	\$ 23,396,223.65	3.18625%	01/01/09 - 01/31/09	31	\$ 64,192.58
	\$ 23,396,223.65	3.16938%	02/01/09 - 02/28/09	28	\$ 57,673.41
	\$ 23,396,223.65	6.0%	03/01/09 - 08/31/09	184	\$ 717,484.19
	\$ 23,396,223.65	7.0%	09/01/09 - 09/30/09	30	\$ 136,477.97
	\$ 23,396,223.65	6.0%	10/01/09 - 05/31/10	243	\$ 947,547.06
	\$ 23,396,223.65	7.0%	06/01/10 - 08/31/10	92	\$ 418,532.45
	\$ 23,396,223.65	5.5%	09/01/10 - 09/30/13	1218	\$ 4,353,647.28
	\$ 23,396,223.65	9.71%	10/01/13 - 11/29/13	60	\$ 381,750.30
Refinance w/ABP Capital	\$ 23,396,223.65	12.25%	11/30/13 - 02/28/14	456	\$ 3,630,314.04
			Totals		
Ave. Interest for 3631 days =	6.77%		06/01/05 - 02/28/14	3621	\$ 15,984,088.38

Opportunity Costs/Lost Income for Signage

	No. of Signs	Ave. Income Per Sign	Total Income 1/1/11 - 2/28/15 (50 months)
I-15 Frontage	3	\$ 2,250.00	\$ 337,500.00

Property Taxes Paid on 24.42-acre Parcel (APN #177-08-803-013)

<u>Tax Year</u>	<u>Property Taxes Paid</u>		<u>For Comparison Only</u>	
	<u>(24.42 Acres)</u>		<u>Property Taxes Paid</u>	
		<u>(30.65 Acres)</u>		
2006/2007	\$	235,513.24	\$	153,305.58
2007/2008	\$	254,354.30	\$	165,570.03
2008/2009	\$	274,702.64	\$	178,815.63
2009/2010	\$	296,678.85	\$	193,120.88 See Note
2010/2011	\$	130,973.17	\$	212,745.97
2011/2012	\$	109,249.10	\$	137,120.61
2012/2013	\$	120,785.43	\$	186,323.04
2013/2014	\$	50,724.44	\$	98,128.01
2014/2015	\$	49,003.26	\$	94,798.71
	\$	1,521,984.43	\$	1,419,928.46
for 3,630 days				
for 2,474 days	\$	1,038,969.99		
	\$	2,560,954.42		

Note: Due to the "inflated" purchase price and higher cost basis of the NDOT parcel, property taxes paid on the 24.42 acres were significantly higher than the 30.65 acres parcel. On a per acre basis, for the first four tax years above, the property taxes for the 24.42 acres were 92.6% higher than the 30.65 acres (considering this parcel is strategically located on the northeast corner of Las Vegas Blvd. and Windmill/Blue Diamond interchange).

1 **ROC**
GORDON SILVER
2 ERIC R. OLSEN
Nevada Bar No. 3127
3 Email: eolsen@gordonsilver.com
DYLAN T. CICILIANO
4 Nevada Bar No. 12348
Email: dciciliano@gordonsilver.com
5 3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
6 Tel: (702) 796-5555
Fax: (702) 369-2666
7 Attorneys for Plaintiffs

8
9 DISTRICT COURT
CLARK COUNTY, NEVADA

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

12 Plaintiff,

13 vs.

14 STATE OF NEVADA, on relation of its
15 Department of Transportation; DOE
GOVERNMENT AGENCIES I-X, inclusive;
16 DOE INDIVIDUALS I-X; and DOE ENTITIES
1-10, inclusive,,
17

18 Defendants.

CASE NO. A672841
DEPT. XXVI

RECEIPT OF COPY

19 A RECEIPT OF COPY of the Plaintiff's Ninth Supplement to Initial Disclosures
20 Pursuant to N.R.C.P. 16.1(a)(1), and accompanying CD is hereby acknowledged this 19th day of
21 March 2015.

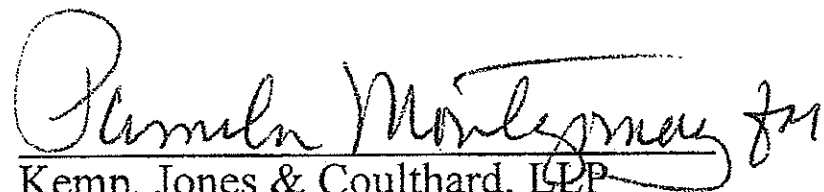
22
23 
24 Kemp, Jones & Coulthard, LLP
Mona Kaveh, Nevada Bar No. 11825
25 3800 Howard Hughes Pkwy., 17th Fl.
Las Vegas, NV 89169
26 Counsel for Defendant
27
28

EXHIBIT 3

1 Q Do you know, sir, based upon your preparation for trial, whether this
2 informational meeting document is a -- was kept by NDOT in the ordinary course of
3 business of preparing the 2004 environmental assessment?

4 MR. OLSEN: Objection; vague and ambiguous.

5 THE COURT: Overruled.

6 THE WITNESS: Yes.

7 BY MR. COULTHARD:

8 Q Yes, it was, sir?

9 A Yes.

10 Q Thank you. If you can take a look at the first page, does it commence
11 by saying initially thank you for attending this informational meeting? Very first
12 sentence. Welcome --

13 A Yeah. Yes.

14 Q Why don't you take a look at this document, just flip through it. What's
15 it appear to you -- what is this document?

16 A Just what it says it is, the informational packet that's handed out at
17 meetings --

18 Q Okay.

19 A -- just like they always are.

20 Q Okay. And --

21 MR. COULTHARD: Your Honor, I move to admit this document.

22 MR. OLSEN: Well, Your Honor, first of all, this document wasn't produced
23 during the course of discovery. And we'd asked for all relevant documents from the
24 State, wasn't produced. You would think it would be particularly -- if it was
25 maintained in regular course, it would be particularly available. It was not provided.

1 We had a request for production number 7 in our initial requests,
2 please produce any and all communications or documents provided by you to the
3 public at any public meetings regarding or relating to in any way to SR 160 Blue
4 Diamond Road interchange with Interstate 15 since 1999. Objection. This is
5 vague, ambiguous, overly broad and unduly burdensome. Really?

6 In addition, it seeks irrelevant documents and documents not
7 reasonably calculated to lead to admissible evidence. And then they produce some
8 documents, just not this one. They object to this document as irrelevant. They did
9 not produce this document. They were asked for this document.

10 On top of that, you -- think about what this is. It's offered as a
11 document telling people something that happened -- so they can say what
12 happened at a meeting. Clearly the document's prepared ahead of time. We don't
13 even know when it was prepared, right? Thank you for coming to this meeting.
14 They didn't type it up right there. So there's inadequate foundation, it wasn't
15 provided, it is hearsay on its face. Unlike the EA, they can't hide behind some sort
16 of obligation to provide it to the Federal Highway Transportation Board (sic).

17 THE COURT: Okay.

18 MR. COULTHARD: So I understand the objection to be that it was not
19 produced --

20 MR. OLSEN: It's one of them.

21 MR. COULTHARD: -- which is not correct and I think Mr. Olsen misspoke. It
22 was untimely produced, Your Honor, and we would acknowledge that. It was
23 produced -- I can get the exact date, but several weeks before trial so it has been
24 formally produced.

25 But so the issue as to untimely is was Mr. Nassiri prejudiced by the

1 arguably belated production of this document? Your Honor, I would suggest he
2 was not. And in fact, in his deposition he testified to the following -- and Your
3 Honor -- and I -- so I'd like to make an offer of proof, number one, that it had no
4 prejudice that Mr. -- because Mr. Nassiri acknowledges in his deposition that he
5 had this document. And I can find the cite. Question -- and this is from Mr.
6 Nassiri's January 30th, 2015 deposition, page 69: Question: So by August 10th,
7 1999, you had received the Blue Diamond Highway information package, correct?
8 Answer: Ron did. I did not.

9 Now my offer of proof and what we'll establish is that Ron Obser,
10 O-b-s-e-r, was Mr. Nassiri's employee, is a licensed real estate agent and broker
11 who was tasked with managing Mr. Nassiri's real estate department. So we know
12 that as of August 10th, 1999, Mr. Nassiri had this document via Mr. Obser, his real
13 estate manager.

14 And I -- and goes on: Question: And you at this point realized that
15 your parcel would be impacted by the alignment of the Blue Diamond overpass,
16 correct? Answer, and he states: I was only interested in the Blue Diamond Road --
17 what's going to happen in Blue Diamond. I did not know anything about anything
18 else.

19 But he had the document, Your Honor, and further my offer of proof
20 comes in on the next exhibit. And we can -- if we can switch over to the Elmo. It's
21 Exhibit 152 which is really the next in chronological order. It's an August 10th, 1999
22 letter and this is wherein the questions related to this document came up. But I
23 specifically -- he states -- now this is a letter, again, right about the time several --
24 well it's a week, 10 days after this informational meeting, August 10th, on Nassiri
25 letterhead to Daryl James who's the head of the -- is Chief of Environmental

1 Services. Dear Mr. James. My name is Fred Nassiri. The paragraph -- and I'll try
2 and blow it up for Your Honor. He states in his letter -- last sentence in the first
3 paragraph, quote: I am in receipt of the Blue Diamond Highway informational
4 package and I have the following questions and comments.

5 Okay, so I've got it in that letter where he had it in 1999 and I've got it
6 in his deposition he acknowledges it. So they had it in their possession. There's
7 absolutely no prejudice whatsoever for Mr. Nassiri, clearly not untimely and I
8 question Mr. Nassiri and his counsel why the heck didn't they produce it to us in this
9 litigation. We have a request for production on them.

10 The State has produced over 17,000 documents in this case. We
11 missed one, Judge. It turns out given the bifurcation and the present statute of
12 limitations, this is a pretty important document. But it's a public record. It's
13 maintained by a public agency. It was prepared pursuant to federal law in
14 compliance with the Code of Federal Regulation as the kickoff informational
15 package for the 2004 EA and I believe it should be admitted, Your Honor, and other
16 than it being extremely damaging to them, as you will see when you see the
17 balance of this document, they wouldn't fight -- be fighting so hard to keep it out.

18 THE COURT: Okay. Going to sustain the objection. So I'm not going to
19 admit it.

20 MR. COULTHARD: Your Honor, then I need to make a record and
21 understand --

22 THE COURT: Okay.

23 MR. COULTHARD: -- on what basis -- if it's a lack of foundation or --

24 THE COURT: Well there were two objections raised by Mr. Olsen. His first
25 objection that it was not produced in discovery --

1 MR. COULTHARD: Which is -- which I would like to clarify. That is an
2 incorrect objection, Your Honor. It was produced several -- I'd like to get the exact
3 date.

4 MR. OLSEN: I misspoke, Your Honor; after the close of discovery --

5 THE COURT: Correct.

6 MR. OLSEN: -- to be specific.

7 THE COURT: Correct.

8 MR. COULTHARD: It was produced by the State on April 16, 2015, Your
9 Honor. It was Bates stamped and produced as a supplemental production. So it
10 has been produced. They had it several weeks ago and they've had it in their
11 possession since 1999, and I don't believe we -- there's any prejudice and so I
12 guess I need to make a record on it because it is a key document, Your Honor, if
13 it's -- the other objection was -- that was the only objection.

14 THE COURT: No, Mr. Olsen did make a two-part objection. Thank you for
15 clarifying the record that it was not that it was never produced, it was untimely
16 produced after the close of discovery but prior to trial two -- more than little over two
17 weeks ago.

18 The second part, as I understood what Mr. Olsen was arguing, was
19 that where the previous Exhibit 27 where -- which was a -- sort of a retrospective
20 document -- in other words saying this is everything we've done in connection with
21 our environmental assessment, here's our historical record of our environmental
22 assessment. That's what Exhibit 27 is.

23 This -- the problem with this document is that it lacks some of those --
24 even though, you know, arguably 27 we -- I said yeah, I'm not necessarily saying
25 this is good for the truth of the matter asserted, it's just this is a public record. The

1 problem with this public record is that it's difficult to know when Mr. Stevens
2 prepared it because, as you pointed out yourself, Mr. Coulthard, it starts out with
3 thank you for attending this informational meeting so it was written at some point in
4 the future, dated July 27th, and apparently handed to people who came. So we
5 can't really determine that it in fact reflects what actually happened at that meeting
6 because it was written before the meeting.

7 MR. COULTHARD: Well I'll lay -- attempt to lay some foundation to object
8 that -- to address that objection, Judge, because --

9 THE COURT: Okay, so if you want to address -- if you want to address that
10 issue, then okay.

11 MR. COULTHARD: So his concern is the timing of the preparation of this --

12 THE COURT: Well that the -- that -- as I understood the objection, he said
13 this lacks the same -- I forget the word he used, something about the foundational
14 basis because just of the odd way that it's a prospective -- it's written before the fact
15 saying thank you for coming to people who haven't yet come to anything because it
16 hadn't happened yet, but it's dated the day that it's all supposed to happen. I mean
17 it's an odd document. I think you'll have to concede that.

18 MR. OLSEN: That essentially is what we're saying --

19 MR. COULTHARD: And I'm not --

20 THE COURT: And we'll let Mr. Olsen --

21 MR. COULTHARD: -- and I guess I don't understand the actual --

22 THE COURT: We'll let Mr. --

23 MR. COULTHARD: -- evidentiary rule objection, Your Honor.

24 THE COURT: Okay, we'll let Mr. Olsen state what the objection is to that --
25 just the foundational problems here --

1 MR. OLSEN: It's hearsay. It's being offered to say what happened at a
2 meeting when it was prepared before the meeting, clearly. It --

3 THE COURT: Right.

4 MR. OLSEN: To be used -- for this to be used to say what happened, it can't
5 be used for that purpose. Now they can offer -- they've been allowed to offer some
6 testimony from Mr. Terry, even though he never attended any of these meetings,
7 about generally what happens, but that's --

8 THE COURT: To be clear, he did not attend the meetings related to this part
9 of the project.

10 MR. OLSEN: Agreed.

11 THE COURT: We've let him testify based about his general knowledge of
12 what happened at similar meetings --

13 MR. OLSEN: Yes.

14 THE COURT: -- that he had been to about other projects.

15 MR. OLSEN: Correct. But in the --

16 THE COURT: So this specific project.

17 MR. OLSEN: -- in the instance of this document, this is a document
18 obviously prepared in advance of meeting being used to suggest what happened in
19 a meeting. It's hearsay. You --

20 THE COURT: By somebody who's not here to testify about it.

21 MR. COULTHARD: Judge --

22 MR. OLSEN: You can't lay the foundation, and as far as the discovery issue,
23 the problem with that is we were not -- we don't have the document and were not
24 able to question a witness about this document during discovery and as far as that
25 piece of it, that's our concern.

1 THE COURT: Okay.

2 MR. COULTHARD: -- the first page welcoming you but it is in fact a report of
3 the proposed activity so --

4 THE COURT: Okay. All right. So the -- so that's objection number one that
5 was raised and objection number two that was raised was that -- and to be clear,
6 Mr. Coulthard, this is not a document that was produced in the ordinary course of
7 discovery, it was produced after the close of discovery when it was discovered I
8 guess that it hadn't previously been produced. So that's a problem in and of itself is
9 that the document was not produced in the ordinary course of litigation. Your
10 response to that objection is that there's no prejudice to the plaintiff in this case
11 because the plaintiff or one of his agents or employees apparently had the
12 document and that in fact portions of the document were attached to
13 correspondence sent by the plaintiff to the defendant. So those are the, as I
14 understand, arguments against the prejudicial effect of not having produced it in the
15 ordinary course of discovery. Am I correct?

16 MR. COULTHARD: Well I guess I -- you know, I want to understand
17 specifically what the objection is and I understood it was authenticity and hearsay. I
18 think it's a self-authenticating document under 52.085 because while the letter may
19 not be a report, but it clearly is a compilation of what was the proposed project.
20 We've established that for the NDOT 1999. We have establish that it was kept and
21 maintain was -- that it was created by NDOT at or near that July 27th, 1999
22 meeting. We've established that it was kept in the public office where items of this
23 nature are kept and so it -- I believe it to be authentic.

24 And we did produce it and we also -- as to the prejudice, I addressed
25 that earlier when Mr. Nassiri testified he had it in August of 1999, so clearly no

1 prejudice to this camp that's had it and it's ironic that, you know, who cares what
2 was said at the meeting. I don't care what was said at the meeting. I'm not trying
3 to get in statements that was what was said at the meeting. What I'm trying to
4 document is what Mr. -- what was available in writing, a copy of this information, to
5 attendees of that meeting. We -- I will establish and I don't think they'll deny it, this
6 is the meeting Mr. Nassiri acknowledged he attended. So it was available to him.

7 As to hearsay, Your Honor, 51.135 is clearly applicable to this public
8 record and this public document. A memorandum, report, record or compilation of
9 data, in any form, of acts, events, conditions, opinions or diagnoses, made at or
10 near the time by, or from information transmitted by, a person with knowledge, all in
11 the course of regularly conducted activity, as shown by the testimony or affidavit of
12 the custodian or other qualified person -- in this case, Mr. Terry -- is not
13 inadmissible under the hearsay rule unless the source of information or the method
14 or circumstance of preparation indicates lack of trustworthiness.

15 Under 51.155 --

16 THE COURT: Right.

17 MR. COULTHARD: -- records, reports, statements or data compilations,
18 again in any form, of public officials or agencies are not inadmissible under the
19 hearsay rule if they set forth the activities of the official or agency, matters observed
20 pursuant to duty imposed by law -- we establish that this was done pursuant to the
21 federal rules -- or in civil cases and against the state in criminal cases, factual
22 findings resulting from an investigation made pursuant to authority granted by law,
23 unless the sources of information again lack trustworthiness.

24 So Judge, I mean there's a host of public record exceptions that we've
25 established that this document should be admitted. So again I, based upon that,

1 move to admit this document, Proposed Exhibit 3.

2 THE COURT: Okay.

3 MR. OLSEN: Your Honor --

4 THE COURT: Sure.

5 MR. OLSEN: -- I've said quite a few things. I will say one more thing.

6 Counsel referred to, as an example, matters observed that kind of -- as the
7 exception. This isn't -- this is a prospective document that says here's what we're
8 looking at, here's what you -- we think you should expect at a meeting, thank you
9 for coming. It's not a matter observed. That's the point. It is talking about what
10 something that they say is going to happen in the future. To the extent it is in the
11 record and suggest what actually happened, it's hearsay and it creates -- it is
12 untrustworthy to focus on that because it's representing something that had not
13 happened yet.

14 And for that to be in the record for all purposes in addition to -- well,
15 that's part of the hearsay objection, Your Honor. We object -- we continue to
16 object.

17 THE COURT: Okay.

18 THE WITNESS: Your Honor? Can I point something out to my attorney?

19 MR. COULTHARD: Briefly can --

20 THE COURT: Mr. Terry would like to talk to you --

21 MR. COULTHARD: Okay. Briefly because he --

22 THE COURT: -- Mr. Coulthard, briefly so --

23 MR. COULTHARD: -- he knows these documents better than me.

24 THE COURT: Okay, so we can do his --

25 [Colloquy between counsel and the witness]

1 MR. OLSEN: What -- I'm going to ask him what he asked him.

2 THE COURT: Uh-huh.

3 [Colloquy between counsel and the witness]

4 THE WITNESS: Thank you.

5 MR. COULTHARD: Thank you, Your Honor.

6 THE COURT: Okay. So we'll go back on the record.

7 Now, recent case law, Mr. Olsen, as you know, indicates that any time
8 counsel communicate with client, whether in deposition or trial, you're allowed to
9 know what they communicated.

10 MR. COULTHARD: I'm happy to -- he pointed me --

11 THE COURT: Okay.

12 MR. COULTHARD: -- to, Judge -- I understand and he is on -- in the middle
13 of his statement so as an officer of the court, I'm happy to disclose he pointed to me
14 to a public comment form that was in the EA and that shows as part of -- as part of
15 this proposed informational meeting, it contains a blank -- on page Bates 1720 --
16 17203, it contains a statement for the transcript of public meeting proceedings for
17 the July 27th, 1999 meeting. He pointed out to me that in Exhibit 27, the EA that
18 you have allowed in, in fact has July 27th, 1999 public comment information filled
19 out forms by people who got this handout, responded, gave it to the Nevada
20 Department of Transportation at this hearing, further evidence that this pamphlet
21 was in fact handed out at the informational meeting as we've argued.

22 And I'm -- and did I -- let me just ask if the Court has anymore
23 questions --

24 THE COURT: Sure.

25 BY MR. COULTHARD:

1 Q Mr. -- is that pretty much what you were trying to convey to me?

2 A Yes.

3 Q Thank you.

4 THE COURT: Okay. We have, as has been argued at length here and I
5 think we're -- a good record's been made, two problems with this document. The
6 first being it was not produced in the course of ordinary discovery which defendant
7 contends is irrelevant because there's no prejudice; it's something that's clearly was
8 in the possession of Mr. Nassiri. Okay, fine. Section -- the second thing is whether
9 this in fact is a -- kind of a public record that is self-authenticating and overcomes
10 the hearsay objection.

11 My problem with this is that where we have nobody who tells us the
12 context in which it's written -- I understand that Mr. Terry is -- has general
13 knowledge and understanding of how these things happen, but we don't have
14 anybody telling us why this was written this way and what was in fact attached to it
15 because Mr. Nassiri only produced a part of it.

16 And that's my problem here is that Mr. Nassiri attaches a portion of
17 this. Did he get the whole thing? Did he get only a portion of it? We don't have
18 any way of knowing from this witness. That's my problem with it is that for this
19 witness to lay the foundation for this document, I just -- I have a real problem with
20 whether he has sufficient foundation to lay -- to say that in fact this is a document
21 that was handed out. The EA doesn't tell us it was handed out in its entirety. I just
22 -- that's the problem I have with it is we don't have anything that tells us this is it,
23 this is what was handed out in July of 1999.

24 MR. COULTHARD: So the -- you're not allowing the document in --

25 THE COURT: Correct.

1 MR. COULTHARD: -- based upon --

2 THE COURT: Testimony of this witness. I don't think we have a sufficient
3 foundation from this witness to say that in fact Exhibit 3 in its entirety -- this packet,
4 Exhibit 3, was in fact in this format handed to people at that meeting.

5 MR. COULTHARD: Your Honor, I would renew my offer of proof then based
6 upon Mr. Nassiri's deposition testimony from January 30th, 2015 when I am
7 questioning him about his August 10th, 1999 letter and I state: Okay, and this letter
8 -- again the August 10th, 1999 letter -- at the last line of the first paragraph, which I
9 read to you earlier, states, quote: I am in receipt of the Blue Diamond Highway
10 information package and I have the following questions and comments. And my
11 question goes on: So by August 10th, 1999, you had received the Blue Diamond
12 Highway information package, correct? Answer by Mr. Nassiri: Ron did. I did not.
13 Question -- so but Ron we will -- who's not a proposed witness, is Mr. Nassiri's --
14 Ron Obser is his manager of his real estate department.

15 And so, Judge, clearly, they had this informational package in their
16 possession, was aware of it, was writing about it in August of 2010, so -- and you
17 know, this really comes back to the statute of limitations and the reason we have a
18 statute of limitations is because here I am now trying to get a document in from
19 1999 -- I'm prejudiced -- the State is prejudiced because you don't -- we don't have
20 a witness from 1999 that I'm aware of that's been deposed that attended that
21 meeting other than Mr. Nassiri and Mr. Obser. And so you won't allow a document
22 in when I'm prejudiced because they waited as many years as they did to bring this
23 claim and I don't think that's fair and I don't think it's right. I think this is a public
24 record and we've got four of these, Your Honor, so you're going to be --

25 THE COURT: Okay.

1 MR. COULTHARD: -- dealing with these as we move forward but -- I would
2 renew my request and we'll -- I'll run at it again with Mr. Nassiri. I understand and I
3 belabored this and I thank you for your patience but --

4 THE COURT: Okay.

5 MR. COULTHARD: -- I'm assuming I haven't turned you around --

6 THE COURT: As I've said, I don't -- I'm not saying that I don't think there's
7 somebody who can lay a foundation. I'm simply saying I don't think this witness,
8 based on his general knowledge, has sufficient foundation for this document.

9 MR. COULTHARD: To tell us whether it's a true and correct document?

10 THE COURT: In fact a public record produced at the time as it purports to
11 be.

12 BY MR. COULTHARD:

13 Q Mr. Terry, in your capacity as Chief Engineer, Assistant Director of
14 NDOT, are you familiar with the document retention policy of the Nevada
15 Department of Transportation?

16 A Yes.

17 Q And did you and your team help provide records related to the Blue
18 Diamond project and provide them to my office?

19 A Yes.

20 Q Okay. Do you believe, based upon your review of this document, this
21 is an NDOT public record that was prepared at or about 1999 for purposes of the
22 informational meeting?

23 A Yes.

24 Q And do you believe that it's been maintained by NDOT in some form or
25 fashion to be able to produce it and have it in this litigation as Proposed Exhibit 3?

1 A Yes.

2 Q Do you believe it has been maintained in the same form or fashion as it
3 was in 1999 when it was handed out at the July 1999 meeting?

4 MR. OLSEN: Objection; lack of foundation. I mean --

5 THE COURT: Yeah, I mean --

6 MR. COULTHARD: Okay, I'm going to move to -- again based upon the
7 foundation I believe we have laid now three times --

8 THE COURT: Okay. Mr. Olsen doesn't even have to state his response to
9 this because I know what it's going to be. It's going to be --

10 MR. OLSEN: Thank you, Your Honor.

11 THE COURT: -- then why wasn't it produced in the ordinary course of
12 discovery. That's our problem.

13 MR. COULTHARD: We missed it, Judge.

14 THE COURT: Got it.

15 MR. COULTHARD: We produced 17,000 --

16 THE COURT: I understand.

17 MR. COULTHARD: -- plus documents and until --

18 THE COURT: And we've got them here. Thank you.

19 MR. COULTHARD: -- until the statute of limitations issue became a
20 bifurcated key trial, you know, we found it at that point and produced it. It doesn't --

21 THE COURT: I understand.

22 MR. COULTHARD: -- it doesn't impact the authenticity. It impacts the
23 timeliness of the production only, which then turns to the issue of prejudice which
24 then turns to the issue that their own client has acknowledged he had it --

25 THE COURT: Right. And I understand.

1 MR. COULTHARD: -- since 1999.

2 THE COURT: In weighing the prejudice --

3 MR. COULTHARD: Why didn't Mr. Nassiri produce it to us?

4 THE COURT: I understand in weighing the prejudice, your position is Mr.
5 Nassiri knew the -- about this document, he had it all along, the prejudice is to the
6 State in not being able to use this document. I understand. But it doesn't
7 overcome my problems because I have said numerous I just don't think this witness
8 is the proper witness -- if this gets in, he's not the one --

9 MR. COULTHARD: And so we have a --

10 THE COURT: So it's without prejudice --

11 MR. COULTHARD: -- clear record then --

12 THE COURT: Yeah.

13 MR. COULTHARD: -- you're sustaining -- you're not allowing the document
14 in based upon -- I need to know --

15 THE COURT: I don't believe that --

16 MR. COULTHARD: -- exactly what evidentiary rule.

17 THE COURT: I don't believe that this -- if this issue -- if the issue is this is
18 admissible as a business record, I don't believe this witness can lay a foundation to
19 explain why this is a public record if it was maintained in the records of NDOT
20 who's produced 17,000 pages and yet this wasn't produced, that it is in fact a
21 business record of NDOT. There may be other reasons why this document could
22 come in through other witnesses. I'm just saying that if it's being proposed through
23 this witness as a business record, that's the problem I have with it.

24 MR. COULTHARD: Okay.

25 THE COURT: It sort of begs the question why wasn't it produced if it's a

EXHIBIT 4

1 wanted to engage me to do the appraisal.

2 Q. And the proposal was to be based on how much
3 it would cost or the proposal of the appraisal work
4 that you would do?

5 MR. CICILIANO: Objection to form.

6 THE WITNESS: Well, kind of both. You know,
7 Mr. Nassiri obviously wanted to know what my appraisal
8 fee would be. And then, you know, at that meeting we
9 discussed the scope of work. So I got a good, clear
10 understanding of what the scope of the assignment was.
11 You know, that it was a retrospective back to
12 April 17th, 2013, and, you know, the nature of the --
13 of the appraisal assignment itself.

14 Q. (By Mr. Pepperman) So about the scope of the
15 appraisal, it was -- it was a retrospective appraisal
16 to April 17th, 2013?

17 A. Correct. Provide a opinion of the just
18 compensation as of April 17th of 2013.

19 Q. Why April 17th, 2013?

20 A. It was my understanding that that's when it
21 was the date of take was established through the, I
22 believe, the serving or the -- and, again, I apologize,
23 I don't know all the correct legal terms. But I
24 believe that that's when it was -- I was provided a
25 document. There was some serving -- service on that

1 date that created that as the date of value.

2 Q. So you were provided with the date of value.

3 Correct?

4 A. Correct.

5 Q. You didn't do anything to come up with it on
6 your own?

7 A. No.

8 Q. Did you offer any opinion on whether this
9 would be the correct date of value for the appraisal
10 assignment that you were given?

11 A. Absolutely not.

12 Q. You just took the date they gave you and
13 appraised the property as of that retrospective date.
14 Correct?

15 A. Yes, that was part of the scope of work.

16 Q. What else was included in the scope of work
17 that you were given?

18 A. Basically to provide an opinion of the market
19 value of the whole property and then the just
20 compensation based on the damages, if I felt like there
21 were any damages.

22 Q. Anything else part of the scope of the
23 appraisal assignment that you were given?

24 A. No. Well, I guess I was told and I was
25 provided with -- subsequent with the documents and

1 discussed, you're looking at the date of value as
2 April 17th, 2013. Right?

3 A. Yes.

4 Q. If the court determines that any compensable
5 loss should have been valued as of a different date,
6 would that impact the reliability of your conclusions
7 in this report?

8 A. Yes.

9 Q. How so?

10 A. Well, I would like to think that either the
11 court or the clients would come back to me and ask me
12 to provide another appraisal as of that date. I get
13 another appraisal fee. But, yes, I mean, we -- we --
14 I'm sorry. Trying to lighten the mood here.

15 We, as appraisers, appraise properties as
16 of -- of specific date of value. So, I mean, even in
17 lender work, you know -- I mean, I can provide an
18 opinion of value to a lender and next week they may
19 call and say, Hey, we need it as of a different date.
20 So it's a new appraisal assignment. Per USPAP, it is
21 considered a new assignment with a new scope of work
22 and the date of value is part of that scope of work.

23 Q. So if the date of value changed, would you be
24 able to state your opinion of just compensation in this
25 appraisal report to a reasonable degree of probability?

1 A. I don't know that I fully understand your
2 question. If the date of value changes, I would have
3 to do a new analysis as of whatever that date of value
4 is.

5 Q. And if you did a new analysis -- or I'm
6 sorry -- if you didn't do a new analysis, would you be
7 able to say, Well, I still think that my opinion of
8 just compensation in this report is still a number -- a
9 value that would be more probable than not?

10 MR. CICILIANO: Objection. Calls -- or
11 incomplete hypothetical. Calls for speculation.

12 THE WITNESS: I would never do that.

13 Q. (By Mr. Pepperman) So if the date of value
14 changed --

15 A. I'm sorry. I'm sorry. I don't mean to step
16 on you. I just want to make sure the record's clear.

17 If I'm in a court of law under oath and a
18 judge asks me and I can state on the record that I
19 haven't done the analysis, you know, I would probably
20 try to explain to the judge that I can't really do it.

21 I have testified in court cases where the
22 judge has said, Sit here -- you know, one particular
23 time, from my memory, you know, the judge said, Hey,
24 you know, if it is a -- six months later -- I don't
25 remember what it was, six months later, a year later --

1 what would your opinion of value be? And after I said,
2 I would have to go and do the appraisal, the judge
3 said, No, you sit here and figure it out. So I did an
4 appraisal on the fly, so to speak.

5 But, you know, I -- outside of that, you
6 know, if you sitting here today said, Mr. Harper,
7 what's your opinion of this subject property as of
8 January 15th, 2015, I need your opinion of just
9 compensation, I would not answer that and I could not
10 answer that.

11 Q. Would it matter if the date changed just by a
12 small amount?

13 MR. CICILIANO: Objection to the term small
14 amount.

15 THE WITNESS: Yeah.

16 Q. (By Mr. Pepperman) For example, a week. What
17 if, you know -- what if the judge determines that the
18 date of value in this case is April 10th, 2013. If I
19 were to ask you, Could you state your conclusion of
20 just compensation to a reasonable degree of probability
21 as of April 10th, 2013, what would your answer be?

22 MR. CICILIANO: Objection. Calls for
23 speculation. Incomplete hypothetical. Asked -- that's
24 good.

25 THE WITNESS: Yeah. I mean, you know, again,

1 appraisal's not an exact science. Within a few days,
2 one way or the other, it's probably -- my opinion would
3 probably still be \$10 million. But, you know, even if
4 it's a month one way or the other, I would prefer to be
5 able to go back to my office and do some research and
6 see if anything happened within that month.

7 I mean, as we all know, we've been on a
8 roller-coaster ride in the Las Vegas valley with real
9 estate values over the last, you know, seven, eight
10 years and even before that, you know. So, yeah,
11 it's --

12 Q. (By Mr. Pepperman) And let's just assume that
13 the date of value was off by a month, changed by a
14 month. Without going back to your office and doing
15 some research and doing an update, would you be able to
16 state that your conclusion in this report is the same
17 conclusion as of that different date to a reasonable
18 degree of probability?

19 MR. CICILIANO: Objection. Calls for
20 speculation. Incomplete hypothetical. Assumes facts
21 not in evidence.

22 THE WITNESS: I obviously don't want to
23 violate USPAP or provide any sort of opinion of an
24 appraised value as of a different date. But, you know,
25 I mean, I guess the way I'd answer that is the market

1 was fairly stable in this portion of 2013. It wasn't
2 fluctuating significantly one way or the other.

3 Q. (By Mr. Pepperman) So could you state your
4 opinion as of a different date of value, a month off,
5 to a reasonable degree of probability?

6 MR. CICILIANO: Objection. Calls for
7 speculation. Assumes facts not in evidence.

8 THE WITNESS: No.

9 MR. PEPPERMAN: Let's take another quick
10 break.

11 (A brief recess was taken from 12:07 p.m.
12 until 12:33 p.m.)

13 Q. (By Mr. Pepperman) Mr. Harper, we were
14 talking about your before and after valuation process.
15 So if I can direct your attention to HARPER000083 of
16 Exhibit 3.

17 A. Okay.

18 Q. So your opinion of the market value on the
19 date of value before acquisition is that the property
20 was worth \$99,945,000. Right?

21 A. Correct.

22 Q. And then you did the value -- developed a
23 value opinion of the part taken, and you determined
24 that was \$0. Right?

25 A. Yes.

1 rendering any of that sort of opinion. Correct?

2 A. Correct. We discussed that, that it's only
3 exposure and visibility.

4 Q. Is it your expert opinion, sir, that a loss
5 of visibility is a compensable injury under Nevada law?

6 MR. CICILIANO: Objection. Calls for a legal
7 conclusion.

8 THE WITNESS: I'm not giving a legal opinion
9 that it's under Nevada law. I just am giving an
10 opinion that, because of the nature of the construction
11 and the difference between the before and after, that
12 the value of the property is impacted. I'm obviously
13 not here -- you know, if a judge ruled that it's not
14 compensable, then --

15 Q. (By Mr. Coulthard) If the judge rules that a
16 loss of visibility is not a compensable injury, then
17 the -- how would that impact your opinions?

18 A. Well, again, if a judge makes a ruling on any
19 of my appraisals and says -- and I think we discussed
20 this earlier -- that -- you know, I mean, if a judge
21 throws my appraisal in the trash, so to speak, in my
22 layman terms, that -- you know, it probably has been
23 done at some point in my career.

24 Q. In your investigation as an expert in this
25 case, did you review any Nevada controlling case law to

1 I've given you an opinion -- my opinion as a licensed
2 real estate appraiser that I think the property's been
3 damaged and the just compensation is \$10 million. What
4 happens from this point forward, I don't care.

5 Q. (By Mr. Pepperman) And as I understand the --
6 what question you were asked, you were told if the
7 judge does, in fact, say it's not a compensable injury,
8 and you -- even if you disagreed with it, your opinion
9 as to how the property's been damaged would remain the
10 same. Right?

11 MR. CICILIANO: Objection. Misstates
12 testimony. The question was whether or not it changes
13 the -- affects the -- the change in the value would
14 differ.

15 Q. (By Mr. Pepperman) Would your -- would your
16 opinion of value change?

17 A. No.

18 Q. Okay.

19 A. Absolutely not.

20 Q. And your opinion of value is an opinion of
21 just compensation. Correct?

22 A. Yes.

23 Q. And you specifically define just compensation
24 as, in an eminent domain action, the sum of money
25 necessary to place the property owner back in the same

1 position monetarily as if the property had never been
2 taken. Right?

3 A. Correct.

4 Q. Your opinion is specific to just compensation
5 as you define it in your report. Right?

6 A. Yes.

7 MR. PEPPERMAN: Okay. Thank you. That's it.

8 (Whereupon, the deposition concluded at 4:07
9 p.m.)

10 / / / / /

11 / / / / /

12 / / / / /

13 / / / / /

14 / / / / /

15

16

17

18

19

20

21

22

23

24

25

EXHIBIT 5

Valuation Consultants

4200 Cannoli Circle
Las Vegas, NV 89103
Phone (702) 222-0018
Fax (702) 222-0047

November 3, 2014

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

RE: 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.

Dear Mr. Ciciliano:

As requested I, Keith Harper, MAI, has completed an appraisal of the tract of land referenced above. According to Clark County public records, the subject property contains a total of 66.63 net acres, or 2,902,403 square feet. The subject is further identified as Clark County Assessor's Parcel Numbers as follows:

No.	Assessor Parcel No.	Address	Acreage
1	177-08-803-013	N/A	24.34
2	177-08-702-002	N/A	11.04
3	177-08-803-014	N/A	30.27
4	177-08-803-001	N/A	0.31
5	177-08-803-010	N/A	0.67
	Total		66.63

The purpose of this appraisal is to form opinions of the following valuation scenarios:

- Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and Just Compensation as of April 17, 2013

The property was visited on October 27, 2014 by Eric C. Greene who took the photographs presented in the attached report. I, Keith Harper, MAI visited the property on October 22, 2014 and walked and drove portions of the property. However, I have been asked to provide a retrospective value opinion of the whole property before acquisition and the just compensation as of April 17, 2013. It is noted that I did not physically visit the subject property on April 17, 2013. I have visited the immediate area on several occasions during the time frame of April 17, 2013 in the course of my appraisal work. I have also observed the property on many occasions since I moved to Las Vegas in March of 1992. The pictures in this report are considered representative of the property as of the effective date. It should be noted that Clark County Assessor's Parcel Number 177-08-803-013 was previously improved as the Blue Diamond Road and Interstate 15 Interchange. As of the date of my

HARPER000002

Mr. Dylan T. Ciciliano, Esq.

November 3, 2014

Page ii

last property visit the improvements were still in place. It has been reported to me that the previous owner, Nevada Department of Transportation (NDOT), has agreed to remove all the improvements.

To develop the opinions of the retrospective values, I have performed an Appraisal Report as defined by the 2014-2015 Edition of the *Uniform Standards of Professional Appraisal Practice* (USPAP). This is an appraisal report, which is intended to comply with the reporting requirements set under Standards Rule 2-2 (a) of the 2014-2015 Edition of USPAP for an Appraisal Report. I am not responsible for unauthorized use of this report.

The intended use of this appraisal is to assist Mr. Dylan T. Ciciliano, Esq. of Gordon Silver as well as any attorneys, paralegals, and others associated with Gordon Silver representing the property ownership by providing an opinion of just compensation. The appraisal is subject to the attorney work privilege. The intended user of this appraisal is Mr. Dylan T. Ciciliano, Esq. of Gordon Silver as well as any attorneys, paralegals, and others associated with Gordon Silver. This report has no other intended use or intended users other than what has been stated herein.

It should be noted that this appraisal report is intended solely for the intended use and intended users for presentation for a possible legal action in the jurisdiction of the District Court, Clark County, Nevada. The specific case is Case No. A672841, Department No. XXVII.

After considering all of the available facts and subject to the underlying assumptions and limiting conditions contained herein, I am of the opinion that the Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition and the Just Compensation, as of April 17, 2013, are as follows:

VALUE IDENTIFICATION	DATE OF VALUE	VALUE OPINION
Retrospective "Undivided Fee" Fair Market Value of the Whole Property Before Acquisition	April 17, 2013	\$99,945,000*

FINAL OPINION OF THE JUST COMPENSATION

After analyzing the subject property and the market data, the total Just Compensation for the subject property, considering severance damages and special benefits to the remainder property, as of April 17, 2014, is as follows:

TEN MILLION DOLLARS

\$10,000,000*

*These value opinions are based on the definition of value as defined in NRS 37.009, 6., that stipulates that the property has a "reasonable time to find a purchaser".

HARPER000003

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 8, 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

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

III.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the State's Motion for Summary Judgment on Plaintiff's Prayer for Rescission is DENIED without prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each of the Court's findings of fact is to be considered as a conclusion of law, and each of the Court's conclusions of law are to be construed as a finding of fact, as may be necessary or appropriate to carry out this Order.


IT IS SO ORDERED.

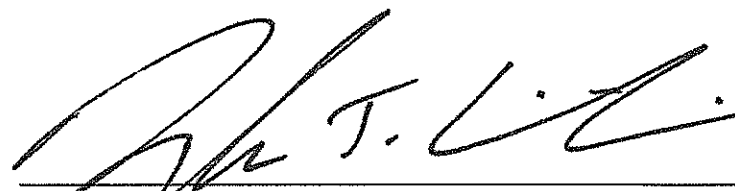
DATED this 13 day of July, 2015.


DISTRICT COURT JUDGE

Submitted by:

Approved as to form and content:


William L. Coulthard, Esq. (#3927)
Eric M. Pepperman, Esq. (#11679)
Mona Kaveh, Esq. (#11825)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Flr.
Las Vegas, Nevada 89169


Eric R. Olsen, Esq. (#3127)
Dylan T. Ciciliano, Esq. (#12348)
GARMAN TURNER GORDON
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Attorneys for Plaintiff

Adam Paul Laxalt, Esq. (#12426)
Dennis V. Gallagher, Esq. (#955)
Amanda B. Kern, Esq. (#9218)
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for the State

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

III.
ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the State's Motion for Summary Judgment on Plaintiff's Prayer for Rescission is DENIED without prejudice.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each of the Court's findings of fact is to be considered as a conclusion of law, and each of the Court's conclusions of law are to be construed as a finding of fact, as may be necessary or appropriate to carry out this Order.

IT IS SO ORDERED.

DATED this _____ day of _____, 2015.

DISTRICT COURT JUDGE


Submitted by:



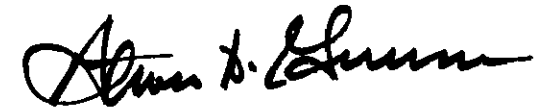
William L. Coulthard, Esq. (#3927)
Eric M. Pepperman, Esq. (#11679)
Mona Kaveh, Esq. (#11825)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Flr.
Las Vegas, Nevada 89169

Adam Paul Laxalt, Esq. (#12426)
Dennis V. Gallagher, Esq. (#955)
Amanda B. Kern, Esq. (#9218)
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for the State

Approved as to form and content:



Eric R. Olsen, Esq. (#3127)
Dylan T. Ciciliano, Esq. (#12348)
GARMAN TURNER GORDON
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Attorneys for Plaintiff



CLERK OF THE COURT

1 WILLIAM L. COULTHARD, ESQ. (#3927)
w.coulthard@kempjones.com
2 ERIC M. PEPPERMAN, ESQ. (#11679)
e.pepperman@kempjones.com
3 MONA KAVEH, ESQ. (#11825)
m.kaveh@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Flr.
5 Las Vegas, Nevada 89169
Telephone: (702) 385-6000
6 Facsimile: (702) 385-6001

7 ADAM PAUL LAXALT, ESQ. (#12426)
Attorney General
8 DENNIS V. GALLAGHER, ESQ. (#955)
Chief Deputy Attorney General
9 dgallagher@ag.nv.gov
AMANDA B. KERN, ESQ. (#9218)
10 Deputy Attorney General
akern@ag.nv.gov
11 OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
12 Las Vegas, Nevada 89101
Telephone: (702) 486-3420
13 Facsimile: (702) 486-3768
Attorneys for the State

DISTRICT COURT

CLARK COUNTY, NEVADA

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

19 Plaintiffs,

20 vs.

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

24 Defendants.

Case No.: A672841

Dept. No.: XXVI

**ORDER (1) DENYING IN PART AND
GRANTING IN PART MOTION TO
CONFIRM THAT THE MAY 4, 2015,
TRIAL ON PLAINTIFF'S CLAIMS FOR
THE EQUITABLE REMEDY OF
RESCISSION WILL PROCEED AS A
BENCH TRIAL OR, IN THE
ALTERNATIVE, MOTION TO
BIFURCATE, AND (2) DENYING
PLAINTIFF'S COUNTERMOTION
PURSUANT TO NRCP 39(c) FOR AN
ADVISORY JURY**

Date of Hearing: April 7, 2015

Time of Hearing: 9:30 a.m.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

1 This matter having come on for hearing on April 7, 2015, at 9:30 a.m., as to Defendant
2 the State of Nevada, on relation of its Department of Transportation's (the "State"), Motion to
3 Confirm that the May 4, 2015, Trial on Plaintiff's Claims for the Equitable Remedy of
4 Rescission will Proceed as a Bench Trial or, in the Alternative, Motion to Bifurcate (the
5 "Motion"), and Plaintiff Fred Nassiri, individually and as trustee of the Nassiri Living Trust's
6 ("Plaintiff") Countermotion Pursuant to NRCP 39(c) for an Advisory Jury (the
7 "Countermotion"), with the State being represented by Kemp, Jones & Coulthard, LLP, and the
8 Office of the Attorney General, and Plaintiff being represented by Gordon Silver. This Court
9 having reviewed the papers and pleadings on file herein and having heard argument of counsel;
10 and with good cause appearing and there being no just reason for delay, the Court hereby makes
11 the following order:

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the State's Motion
13 is DENIED, in part, and GRANTED, in part. The State's request to confirm the May 4, 2015,
14 trial as a bench trial is DENIED. The State's alternative request to bifurcate the trial is
15 GRANTED, in part. The trial currently scheduled on May 4, 2015, shall proceed as a bench
16 trial on the limited issue of whether Plaintiff's unilateral mistake-based rescission claim is
17 barred by the applicable statute of limitations.

18 ///

19 ///

20 ///

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff's
Counter-motion is DENIED.

IT IS SO ORDERED.

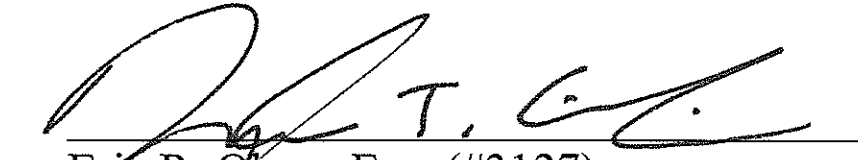
DATED this 13 day of July, 2015.


DISTRICT COURT JUDGE

Submitted by:

Approved as to form and content:




Eric R. Olsen, Esq. (#3127)
Dylan T. Ciciliano, Esq. (#12348)
GARMAN TURNER GORDON
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Attorneys for Plaintiff

William L. Coulthard, Esq. (#3927)
Eric M. Pepperman, Esq. (#11679)
Mona Kaveh, Esq. (#11825)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Flr.
Las Vegas, Nevada 89169

Adam Paul Laxalt, Esq. (#12426)
Dennis V. Gallagher, Esq. (#955)
Amanda B. Kern, Esq. (#9218)
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for the State

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff's
2 Counter-motion is DENIED.

3 **IT IS SO ORDERED.**

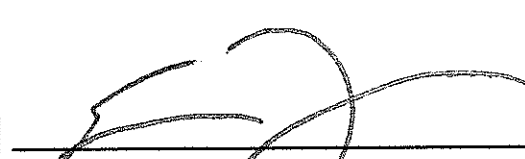
4 DATED this _____ day of _____, 2015.


5
6 

7 _____
8 DISTRICT COURT JUDGE

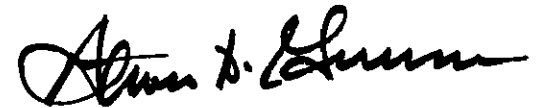
9 Submitted by:

10 Approved as to form and content:

11 
12 _____
13 William L. Coulthard, Esq. (#3927)
14 Eric M. Pepperman, Esq. (#11679)
15 Mona Kaveh, Esq. (#11825)
16 KEMP, JONES & COULTHARD, LLP
17 3800 Howard Hughes Parkway, 17th Flr.
18 Las Vegas, Nevada 89169

19 
20 _____
21 Eric R. Olsen, Esq. (#3127)
22 Dylan T. Ciciliano, Esq. (#12348)
23 GARMAN TURNER GORDON
24 650 White Drive, Suite 100
25 Las Vegas, Nevada 89119
26 Attorneys for Plaintiff

27 Adam Paul Laxalt, Esq. (#12426)
28 Dennis V. Gallagher, Esq. (#955)
29 Amanda B. Kern, Esq. (#9218)
30 OFFICE OF THE ATTORNEY GENERAL
31 555 E. Washington Avenue, Suite 3900
32 Las Vegas, Nevada 89101
33 Attorneys for the State



CLERK OF THE COURT

1 **FFCL**
2 GARMAN TURNER GORDON LLP
3 ERIC R. OLSEN
4 Nevada Bar No. 3127
5 Email: eolsen@gtg.legal
6 DYLAN T. CICILIANO
7 Nevada Bar No. 12348
8 Email: dciciliano@gtg.legal
9 650 White Drive, Suite 100
10 Las Vegas, Nevada 89119
11 Tel: (725) 777-3000
12 Fax: (725) 777-3112
13 Attorneys for Plaintiffs

8
9
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

15 Plaintiffs,

16 vs.

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

22 Defendants.

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

25 Counterclaimants,

26 vs.

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

Counterdefendants.

CASE NO. A672841
DEPT. XXVI

**PLAINTIFFS' PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
JUDGMENT**

26 The above-captioned matter was tried before the Court on May 4, 2015, May 5, 2015,
27 May 6, 2015, May 7, 2015, May 8, 2015, and May 19, 2015, on the narrow issue of whether
28 Plaintiffs' prayer for rescission was barred by the applicable statute of limitations. Plaintiffs

1 Fred Nassiri, an individual; Nassiri Living Trust ("Plaintiffs") were represented by Eric R. Olsen,
2 Esq. and Dylan T. Ciciliano, Esq. of the law firm of Garman Turner Gordon LLP (formerly of
3 Gordon Silver); Defendant State of Nevada ("NDOT") was represented by William L. Coulthard,
4 Esq. and Eric M. Pepperman, Esq. of the law firm of Kemp, Jones & Coulthard, LLP.

5 The Court having considered the record, all witness testimony, exhibits admitted into
6 evidence at trial, and after weighing all of the evidence before the Court, considering the
7 arguments of counsel including objections raised by both parties;

8 HEREBY FINDS, CONCLUDES, AND ADJUDGES AS FOLLOWS:

9 **I.**

10 **FINDINGS OF FACT**

11 The Court makes the following findings of fact:

12 This action arises from a Settlement Agreement entered into by and between NDOT and
13 Nassiri on April 28, 2005 (the "Settlement Agreement") (Trial Exhibit ("Tr. Exh.") 87) and
14 amended June 2, 2005 (the "First Amendment") (Tr. Exh. 104). The Settlement Agreement and
15 First Amendment resolved the August 31, 2004, Complaint in condemnation brought by NDOT
16 in the Eighth Judicial District Court, Clark County, Nevada, Case Number A491334, to acquire
17 approximately 4.81 acres of property (the "Condemned Property") owned by Mr. Nassiri. NDOT
18 sought the acquisition of the Condemned Property for the stated purpose of reconstructing and
19 realigning Blue Diamond Road at Interstate I-15 (the "Blue Diamond Interchange"). Based on
20 the proposed realignment, the Blue Diamond Interchange was to be moved from the north to the
21 south of Mr. Nassiri's property. Prior to the realignment, the Blue Diamond Interchange was
22 located in part on 24.42 acres of property that was contiguous to the north of Mr. Nassiri's
23 property (the "Exchange Property"). As a result of the Settlement Agreement, NDOT acquired
24 the Condemned Property and Mr. Nassiri acquired the Exchange Property.

25 **A. There is no evidence that a flyover was discussed during public meetings.**

26 1. On or about July 7, 1999, NDOT provided public notice of an "Intent to Study
27 Letter" that indicated NDOT intended on improving the Blue Diamond Interchange, which
28 included the realignment of Blue Diamond Road. The letter also provided notice of a public

1 meeting on July 27, 1999. (Tr. Exh. 1).

2 2. Mr. Nassiri briefly attended the July 27, 1999, meeting and, on or about August
3 10, 1999, he sent a letter to NDOT describing his concerns regarding the project. (Tr. Exh. 27, at
4 NV_Nassiri001969-NV_Nassiri001970). The letter attached a map prepared by NDOT titled
5 "Conceptual Improvements for SR-160 (Blue Diamond Road) (For Discussion Purposes Only)
6 Preliminary Subject to Revision." The map included a roadway that NDOT representative John
7 Terry identified at trial as a flyover, albeit north of the flyover that was eventually built. Mr.
8 Nassiri testified that in 1999 he was unaware the map contained a flyover and was unaware of
9 the physical characteristics of that proposed structure.

10 3. On February 1, 2000, NDOT sent another "Intent to Study Letter" that indicated
11 State intended on improving the Blue Diamond Interchange, including the realignment of Blue
12 Diamond Road, and provided notice of a public meeting on February 23, 2000. (Tr. Exh. 5).
13 There was no evidence Mr. Nassiri attended.

14 4. Mr. Nassiri sent NDOT a comments form on March 7, 2000. (Tr. Exh. 7). In that
15 form, Mr. Nassiri identified his concern about the realignment of the Blue Diamond Interchange
16 moving to the north and impacting his property. He also expressed concern about his property
17 having right turn/left turn access to SR 160, Blue Diamond Road. (Id.)

18 5. NDOT held a third public meeting on May 7, 2002, concerning the Blue Diamond
19 Interchange. (Tr. Exh. 12). The notice of public meeting included a description of the purpose
20 and need of the Blue Diamond Interchange. (Id. at NV_Nassiri003586). That description did not
21 mention any flyover. Mr. Nassiri may have attended the meeting.

22 6. On or about July 24, 2003, in an internal memorandum, NDOT's Surplus
23 Property Committee approved the disposal of the Exchange Property. (Tr. Exh. 17). NDOT's
24 approval was based on the condition that NDOT would retain sufficient property to build a future
25 flyover. (Id.)

26 7. On July 28, 2003, NDOT held a fourth public meeting regarding the
27 reconstruction and realignment of the Blue Diamond Interchange. (Tr. Exh. 19). NDOT contends
28 that it provided a handout to all meeting attendees. (Tr. Exh. 18). The handout identified that the

1 realignment and reconstruction of the Blue Diamond Interchange would occur in three phases.
2 None of the descriptions of these phases included a mention of any flyover. (Id.)

3 8. The only NDOT witness to testify regarding the public meetings at issue in this
4 action was John Terry, NDOT's Assistant Director of Engineering. Mr. Terry was not present at
5 any of the public meetings in question and did not have knowledge of what actually occurred at
6 the meetings. He testified that all of NDOT's public meetings during that time period were "open
7 forum," meaning that NDOT did not make a presentation to the public but made employees
8 available to answer the questions of individuals, if asked. Mr. Terry testified that it was NDOT's
9 practice and procedure from 1999 to 2005 to have proposed designs on large poster boards for
10 the public to view at the public meetings. He also testified that this method of presentation was
11 later changed as a result of litigation against NDOT. Mr. Terry, however, was unaware of what
12 NDOT actually displayed on the poster boards at the aforementioned meetings.

13 9. On May 19, 2004, NDOT held a meeting, not on the Blue Diamond Interchange
14 project. (Tr. Exh. 38). There, NDOT argues, it provided the public with copies of the 2004
15 Environmental Assessment, an environmental document required by federal regulations.¹

16 10. There is no direct evidence that NDOT discussed the flyover at any of the public
17 meetings.

18 **B. NDOT had planned a flyover since 1999 but did not disclose a flyover to Mr. Nassiri**
19 **during the negotiation of the Settlement Agreement.**

20 11. No later than 1999, NDOT began planning the reconstruction and realignment of
21 the Blue Diamond Interchange. According to NDOT, the reconstructed and realigned Blue
22 Diamond was always to include a flyover from eastbound Blue Diamond Road to Interstate I-15
23 North when traffic demands warranted and funding was available.

24 12. Mr. Terry, through deposition testimony, confirmed that there was always a
25 flyover planned for the Blue Diamond project.

26 13. Although Mr. Terry stated that the precise configuration of the flyover was

27 ¹ Notably, by this time Mr. Nassiri was engaged in in-person meetings with NDOT regarding the design of the I-15
28 interchange.

1 unknown prior to its ultimate design in 2009, he testified that based on his years of experience
2 with road engineering, he could estimate the general location of the proposed flyover. He also
3 knew that any proposed flyover would have to have sufficient clearance over Blue Diamond
4 Road and he could, therefore, approximate its height.

5 14. Beginning in 2002, Mr. Nassiri met with NDOT and its engineers regarding the
6 Blue Diamond Interchange realignment. Mr. Nassiri and NDOT discussed the Condemned
7 Property² and Mr. Nassiri informed NDOT that he would be interested in acquiring the Exchange
8 Property after the Blue Diamond Interchange was built.

9 15. Mr. Nassiri and Michael Chapman's testimony was that at or about the same time
10 Mr. Nassiri hired the engineering firm Carter Burgess to determine the physical area of the
11 Condemnation Property. Mr. Nassiri testified that he wanted to make sure NDOT was not
12 attempting to acquire more of his property than it needed to realign the Blue Diamond
13 Interchange. Carter Burgess assigned former NDOT employee Mr. Steve Oxoby to assist Mr.
14 Nassiri. Mr. Oxoby's services to Mr. Nassiri were limited to calculating the land area and meets
15 and bounds of the Condemnation Property and Exchange Property, and his services did not
16 pertain to his prior employment with NDOT.

17 16. In a February 3, 2003 internal email, titled "SR 160 Blue Diamond Interchange-
18 Flyover," NDOT Engineer Frank Csiga told other NDOT agents that he had spoken with the
19 NDOT's Assistant Director of Engineering Susan Martinovich about the need for the flyover at
20 the Blue Diamond Interchange. (Tr. Exh. 158). Ms. Martinovich had "agree[d] that if the
21 flyover is needed prior to the design year, [NDOT] should cover it in the EA, show it at the
22 informational meeting, and acquire the necessary right-of-way now, especially if it means we
23 don't have to go back and hit a property owner twice." (*Id.*). They agreed that the fly-over "will
24 definitely be needed much earlier than the design year." (*Id.*).

25 17. By June 2003, NDOT had confirmed that traffic volumes necessitated the
26 building of a flyover. (Tr. Exh. 156).

27
28 ² NDOT did not give formal notice that it was condemning the Condemned Property, until late 2003.

1 18. NDOT obtained an appraisal for the Condemned Property on October 1, 2003, in
2 which it valued the condemned property at \$23 per square foot. (Tr. Exh. 23). Because the “after-
3 condition” is central to the valuation, the appraisal discussed the realignment of the Blue
4 Diamond Interchange, but it did not mention any flyover. (Id.).

5 19. NDOT formally reviewed and approved the appraisal. (Tr. Exh. 26). NDOT’s
6 formal review stated that Mr. Nassiri’s property was visible from I-15 and that the site was ideal
7 for “on-premise trade signage.” (Id. at Chapman000883). NDOT also stated that after the
8 reconstruction and realignment of the Blue Diamond Interchange Mr. Nassiri’s property “will
9 sustain its exposure from I-15 . . . thereby retaining its visibility.” (Id. at Chapman000885). The
10 review did not mention any flyover. NDOT provided both the appraisal and review to Mr.
11 Nassiri.

12 20. By January 2004, NDOT had created engineering design files for the flyover and
13 kept those files with the designs of the Blue Diamond Interchange. (Tr. Exh. 155).

14 21. On or about April 4, 2004, NDOT completed the 2004 Environmental
15 Assessment, a federally mandated study of the impacts of the realignment and reconstruction of
16 the Blue Diamond Interchange on the environment. (Tr. Exh. 27). The 2004 Environmental
17 Assessment discusses a future flyover. (Id.). Mr. Terry’s testimony was that the 2004
18 Environmental Assessment would have been available at public libraries and certain NDOT
19 offices. There is no evidence, however, that the 2004 Environmental Assessment was ever
20 mailed or provided to Mr. Nassiri or his agents.

21 22. While NDOT argued that Trial Exhibit 28 was a distribution list for the 2004
22 Environmental Assessment, NDOT presented no evidence that Trial Exhibit 28 was an actual
23 distribution list or that it was the distribution list for the 2004 Environmental Assessment.
24 Furthermore, Trial Exhibit 28 contains an incorrect address for Mr. Nassiri.

25 23. On April 6, 2004, NDOT made an offer to purchase the Condemnation Property
26 from Mr. Nassiri. (Tr. Exh. 29). Mr. Nassiri’s counsel, Mr. Champan, responded to NDOT’s
27 proposal on April 19, 2004, and requested that NDOT’s Director and “other NDOT decision-
28 makers” meet with Mr. Nassiri to discuss the purchase of the Condemnation Property and the

1 Exchange Property. (Tr. Exh. 32).

2 24. NDOT's director of Right-of-Way Heidi Mireles, NDOT engineers and an
3 Attorney General representing NDOT met with Mr. Nassiri, Mr. Oxoby, and Mr. Chapman on
4 May 28, 2004. Mr. Nassiri and Mr. Chapman's unrefuted testimony was that the purpose of the
5 May 28, 2004, meeting was to discuss the proposed realignment and reconstruction of the Blue
6 Diamond Interchange. Mr. Chapman testified that there were specific discussion as to what Blue
7 Diamond Interchange's ultimate configuration would look like. Mr. Chapman testified that Ms.
8 Mireles presented maps for the proposed realigned and reconstructed Blue Diamond Interchange
9 so that Mr. Nassiri could assess his condemnation damages. (See Trial Exhibit 43). Mr. Chapman
10 and Mr. Nassiri provided unchallenged testimony that NDOT did not mention any flyover during
11 the May 28, 2004, meeting and did not provide Mr. Nassiri with any maps or plans depicting any
12 flyover.

13 25. On July 22, 2004, NDOT's board of directors pursuant to NRS 408.503
14 authorized NDOT to bring an action in condemnation against Mr. Nassiri to acquire the
15 Condemnation Property for the reconstruction and realignment of the Blue Diamond
16 Interchange.

17 26. On August 30, 2004, NDOT appraised the "Exchange Property". (Tr. Exh. 55).
18 The appraisal expressly stated that it purported to consider the final configuration of the Blue
19 Diamond Project. The drawings and descriptions in it did not include any flyover. NDOT's
20 appraiser Gary Kent appraised the Exchange Property in the "after condition, presuming
21 reconstruction and realignment of the State Route 160/Interstate 15 interchange." (*Id.* at pps. 1,
22 55-57A, 59, 64 and 68). That appraisal contains two maps titled the NDOT Project Map, which
23 shows the realignment SR160 and I-15 interchange but no "fly-over." (*Id.* at pp. 55, 56). The
24 appraisal also contains two maps titled "Subject Property Site Plan in the After Condition,"
25 which shows the realignment SR160 and I-15 interchange but no flyover. (*Id.* at pp. 57, 57A).

26 27. Even though the appraisal supposedly considered the final configuration of the
27 Blue Diamond Project for purposes of valuing the property, it omitted any reference to, or
28 depiction of a flyover. Mr. Kent also specifically noted that the Exchange Property benefited

1 from its visibility to Interstate 15:

- 2 • “does and will include direct visibility and presumed frontage on the easterly most
3 portion of the Interstate 15 right-of-way.” (Id. at p.59).
- 4 • “The subject property, in the after condition, will have good visibility from . . .
5 Interstate 15.” (Id. at p.64).
- 6 • “[T]he subject property, in the after condition,. . . would include and/or benefit
7 from direct visibility along the Interstate 15 right-of-way.” (Id. at p.68).

8 Kent determined that as of August 16, 2004, the Exchange Property would have a value in the
9 after condition of \$22,650,000.00, with a 46% assemblage premium. (Id. at p.2). The appraised
10 value per square foot was identical to the Condemned Property.

11 28. NDOT’s filed its condemnation complaint, Case No. A491334, (the
12 “Condemnation Action”) on September 1, 2004. (Tr. Exhs. 57-59).

13 29. On December 6, 2004, NDOT made Mr. Nassiri an offer to settle the
14 Condemnation Action that specifically included an exchange of the Condemnation Property for
15 the Exchange Property. (Tr. Exh. 65). Under the proposal, NDOT would receive the
16 Condemnation Property and Mr. Nassiri would receive the Exchange Property and Mr. Nassiri
17 would pay to NDOT an additional \$17 million. (Id.).

18 30. In the Condemnation Action, NDOT and Mr. Nassiri prepared a joint case
19 conference report pursuant to NRCP 16.1, which was filed with the Court on or about December
20 22, 2004. (Tr. Exh. 68). NDOT then made the “construction plans” for the reconstruction and
21 realignment of the Blue Diamond Interchange available to Mr. Nassiri and his counsel for their
22 review. (Id. at Chapman0002147). Mr. Chapman reviewed the construction plans. It is
23 undisputed that the construction plans shown to Mr. Chapman did not include any flyover.
24 NDOT did not produce the 2004 Environmental Assessment.

25 31. Mr. Nassiri accepted NDOT’s December 6, 2004, settlement offer on January 27,
26 2005. (Tr. Exh. 71).

27 32. Subsequent to Mr. Nassiri’s acceptance, Mr. Chapman created the first draft of
28 the Settlement Agreement and NDOT’s counsel, Mr. Walsh, prepared and made substantive
changes to the remaining and final drafts of the Settlement Agreement.

1
2 33. During the negotiations of the Settlement Agreement, NDOT prepared a "Sketch
3 Map" of the Blue Diamond Interchange. (Tr. Exs. 175, 176 at Chapman003491). The Sketch
4 Map did not depict any flyover. According to Mr. Chapman, NDOT prepared the sketch map as
5 a representation of the Blue Diamond Interchange in the after-completed condition. He further
6 testified that the Sketch Map was to be included in the Settlement Agreement and Quit Claim
7 deed.

8 34. NDOT and Mr. Nassiri executed the Settlement Agreement on April 28, 2005.
9 (Tr. Exh. 87).

10 35. Pursuant to the terms of the Settlement Agreement, NDOT obtained a two-year
11 easement over the Exchange Property to realign and reconstruct the Blue Diamond Interchange.
12 (Id. at §§ 1.01; 2.06).

13 36. Mr. Nassari eventually recognized that the boundaries of the Exchange Property
14 were incorrect and that it should be 24.42 acres, not the 24.41 acres reflected in the Settlement
15 Agreement. Accordingly, the Settlement Agreement was amended.

16 37. On June 1, 2005, NDOT prepared a revised Sketch Map that identifies the
17 Exchange Property to be 24.42 acres. (Tr. Ex. 95). The next day, NDOT provided a revised legal
18 description of the Exchange Property and a revised sketch map to Mr. Nassiri. (Tr. Exhs. 97-98).
19 The Sketch Map did not include any flyover.

20 38. When NDOT provided the First Amendment to the title company it apparently
21 omitted the Sketch Map. The First Amendment, signed June 14, 2005, redefines the Exchange
22 Property to be 24.42 acres. (Tr. Ex. 104). The Settlement Agreement calls for the inclusion of a
23 "diagram" of the Exchange Property. (Id. at § 2.02). Mr. Chapman provided the unrefuted
24 testimony that Tr. Ex. 95 was the revised Sketch Map that the parties agreed to include with the
25 First Amendment, and the Court so finds.

26 39. By Fall 2006, NDOT had realigned and reconstructed the Blue Diamond
27 Interchange. The completed project did not include any flyover.

28 40. On August 3, 2007, NDOT notified Mr. Nassiri that it had completed the Blue

1 Diamond Interchange realignment and that it would be releasing its easement over the Exchange
2 Property.

3 **C. NDOT did not construct the Flyover until 2010.**

4 41. On May 5, 2005, NDOT published a notice of potential transportation
5 improvements to the I-15 Corridor (the "Interstate South Corridor Improvement Project"). (Tr.
6 Ex. 89). There is no evidence that Mr. Nassiri received notice of any meetings concerning the
7 Interstate South Corridor Improvement Project.

8 42. Mr. Terry testified that during the 2007 legislative session, the next session,
9 NDOT acquired the funding for the Interstate South Corridor Improvement Project. That funding
10 was use, in part, to construct the flyover.

11 43. In October 2008, NDOT completed the 2008 Environmental Assessment ("2008
12 EA") for the Interstate South Corridor Improvement, a project that included a flyover at the Blue
13 Diamond Interchange. (See Tr. Exh. 113). The depicted flyover was located north of the
14 presently built flyover.

15 44. NDOT sent out requests for proposal on the Interstate South Corridor
16 Improvement Project. The request NDOT sent provided bidders with necessary and optional
17 components of the project. A flyover connecting eastbound Blue Diamond Road with I-15 north
18 was an optional build design of the Interstate South Corridor Improvement Project, even though
19 NDOT had already decided a flyover would be part of the interchange.

20 45. On June 30, 2009, NDOT awarded Las Vegas Paving Corp. a design build
21 contract pursuant to NRS Chapters 338 and 408. (Tr. Exh. 118). The design build contract was
22 signed on September 10, 2009. (Tr. Exh. 120). Las Vegas Paving Corp.'s bid included a flyover.

23 46. Las Vegas Paving Corp. approached Mr. Nassiri in April of 2010 to obtain a lease
24 on the Exchange Property. (Tr. Exh. 125). Mr. Terry testified that the Exchange Property was a
25 federally acceptable staging area for construction of the flyover because it was the site of the
26 previous Blue Diamond interchange.

27 47. NDOT, by and through Las Vegas Paving Corp., did not begin constructing the
28 Flyover until 2010. The Flyover constructed in 2010 is located south of the route proposed by

1 NDOT in the 2008 Environmental Assessment.

2
3 48. Mr. Nassiri's testified that he was unaware of any flyover until construction was
4 underway in 2010. He also testified that he did not know what the term flyover meant until after
5 its completion.

6 49. Mr. Nassiri brought the present action on November 30, 2012.

7 **II.**

8 **CONCLUSIONS OF LAW**

9 The Court makes the following conclusions of law:

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. Great Am. Ins. Co.
12 v. Gen. Builders, Inc., 113 Nev. 346, 356, 934 P.2d 257, 264 (1997); Bergstrom v. Estate of
13 DeVoe, 109 Nev. 575, 577, 854 P.2d 860, 861 (1993). Absolute and literal restoration is not
14 required, all that is required is that the parties are returned as "reasonably possible and demanded
15 by the equities of the case" to their original position. Mackintosh v. California Fed. Sav. & Loan
16 Ass'n, 113 Nev. 393, 407, 935 P.2d 1154, 1163 (1997). Potential grounds for contract rescission
17 include fraud in the inducement, mutual mistake, unilateral mistake, duress or undue influence.
18 See Great Am. Ins. Co., 113 Nev. at 356, 934 P.2d at 264; Oh v. Wilson, 112 Nev. 38, 39, 910
19 P.2d 276, 277 (1996). Generally, a unilateral mistake is grounds for the rescission of a contract
20 or release if the "other party had reason to know of the mistake or his fault caused the mistake."
21 In re Irrevocable Trust Agreement of 1979, In re Irrevocable Trust Agreement of 1979, 130 Nev.
22 Adv. Op. 63, 331 P.3d 881, 885 (2014); Oh v. Wilson, 112 Nev. 38, 39-40, 910 P.2d 276, 277-78
23 (1996).

24 A claim for rescission based in mistake is subject to a 3-year statute of limitations. NRS
25 11.190(3)(d). The statute of limitations begins to run when "the claimant discovers, or
26 reasonably should have discovered, the material facts for the action, including the damages."
27 Brady Vorwerck v. New Albertson's, 130 Nev. Adv. Op. 68, 333 P.3d 229, 232 (2014), *reh'g*
28 *denied* (Nov. 10, 2014). Therefore, to maintain a claim for rescission, Mr. Nassiri must have

1 discovered the material facts relating to his claim for rescission after November 30, 2009, three
2 years prior the filing of his complaint.

3 **A. Mr. Nassiri was unaware of his claim until 2010 when the flyover was built.**

4 1. At the time he entered into the Settlement Agreement, Mr. Nassiri contends that
5 he was unaware of the fact that NDOT would build a flyover at the Blue Diamond Interchange.
6 The Court concludes that NDOT, which has the burden of proof on this issue, failed to establish
7 that Mr. Nassiri was actually aware NDOT would build the flyover prior to November 30, 2009.
8 NDOT failed to establish that it discussed the flyover at any public meetings. NDOT submits that
9 materials it made available at public meetings contained diagrams of the flyover, but the Court
10 concludes that a two-dimensional overhead diagram depicting a flyover, without any descriptive
11 attributes, does not provide actual notice of the flyover's appearance or impact. While Mr. Terry,
12 as a road design expert, may be able to testify to the probable dimensions and heights of a
13 flyover by looking at a two-dimensional diagram, the Court concludes that ordinary citizens do
14 not have the same knowledge or expertise. Moreover, Mr. Nassiri testified that he was unable to
15 decipher the existence or characteristics of a flyover in the diagrams presented to him by NDOT
16 even at the time of trial. He further testified that he was unaware of the flyover until December
17 2010 after NDOT had begun constructing a substantial retaining wall for the flyover.

18 2. The Court further concludes that no information provided to Mr. Nassiri during
19 the condemnation process put him on notice of a flyover. On the contrary, NDOT's NRCP 16.1
20 disclosures in the Condemnation Action and documents it provided to Mr. Nassiri, or his counsel
21 during negotiations of the Settlement Agreement specifically did not include any documents,
22 diagrams or maps to that showed or mentioned any flyover. It is also undisputed that while
23 NDOT made construction plans available to Mr. Nassiri, those construction plans did not contain
24 any flyover. Thus, there is no evidence that Mr. Nassiri knew or was ever told about the flyover
25 until he observed the flyover himself in December 2010.

26 3. Furthermore, the Court ^{finds} ~~seriously doubts~~ that Mr. Nassiri could have maintained
27 an action for rescission of the Settlement Agreement prior to 2010. For the statute of limitations
28 to run on rescission, all material elements necessary for Mr. Nassiri's claim for rescission must

1 have existed. Brady Vorwerck, 130 Nev. Adv. Op. 68, 333 P.3d at 232. While NDOT has
2 established that it always intended on building the flyover, the final element was not present until
3 construction. NDOT did not even retain a contractor to build the flyover until mid-2009 and the
4 flyover was not actually constructed until 2010. Prior to 2010, NDOT might have chosen to not
5 build the flyover at all. If NDOT had not built the flyover, then Mr. Nassiri could not have
6 rescinded the Settlement Agreement. Therefore, Mr. Nassiri could not rescind the Settlement
7 Agreement, as a matter of law, until it was reasonably certain that the flyover would be built.
8 Moreover, there is no evidence that Mr. Nassiri was aware of the design build contract, or Las
9 Vegas Paving Corp.'s flyover plans, until Las Vegas Paving Corp. began constructing the flyover
10 in 2010. Therefore, the Court concludes that Mr. Nassiri did not have actual knowledge of the
11 flyover or his alleged "mistake" until 2010, well after the November 2009 reference date for the
12 statute of limitations.

13 **B. The statute of limitations was tolled until Mr. Nassiri discovered or should have**
14 **discovered the material facts of his claim.**

15 Even if the cause of action existed prior to 2010, a statute of limitations does not begin to
16 run under the discovery rule until "the claimant discovers, or reasonably should have discovered,
17 the material facts for the action, including the damages." Brady Vorwerck v. New Albertson's,
18 130 Nev. Adv. Op. 68, 333 P.3d 229, 232 (2014), *reh'g denied* (Nov. 10, 2014); Wagner v.
19 Chevron U.S.A., Inc., 281 P.3d 1228 (Nev. 2009)³; Bemis v. Estate of Bemis, 114 Nev. 1021,
20 1028, 967 P.2d 437, 442 (1998); Merck & Co. v. Reynolds, 559 U.S. 633, 644 (2010)
21 (recognizing a cause of action accrues when a plaintiff discovers through reasonable diligence
22 that a complete and present cause of action exists)

23 "When the plaintiff knew or in the exercise of proper diligence should have known of the
24 facts constituting the elements of his cause of action is a question of fact for the trier of fact."
25 Siragusa v. Brown, 114 Nev. 1384, 1391, 971 P.2d 801, 806 (1998); Day v. Zubel, 112 Nev. 972,
26 977, 922 P.2d 536, 539 (1996). "Mere ignorance as to reasonably accessible information will not
27

28 ³ Unpublished, but cited by Defendant.

1 delay or stop accrual of a discovery-based statute of limitation **if** the fact finder determines that
2 **the party failed to exercise diligence.”** Wagner v. Chevron U.S.A., Inc., 281 P.3d 1228 (Nev.
3 2009). Therefore, the overriding question when analyzing the discovery rule is whether Mr.
4 Nassiri exercised reasonable diligence.

5 As a caveat to this, however, the statute of limitations is also tolled when a party relies
6 upon another party’s false representations; even when the reliance is negligent. El Pollo Loco,
7 Inc. v. Hashim, 316 F.3d 1032, 1040 (9th Cir. 2003)(quoting Storage Servs. v. Oosterbaan, 214
8 Cal.App.3d 498, 508, 262 Cal.Rptr. 689 (Cal.Ct.App.1989); see also Van Meter v. Bent Constr.
9 Co., 46 Cal.2d 588, 595, 297 P.2d 644 (Cal.1956) (negligent reliance should not bar equitable
10 relief where plaintiff relied in good faith upon defendant's false representations); see also TRW
11 Inc. v. Andrews, 534 U.S. 19, 29 (2001) (recognizing that if an agency conceals an offending
12 action that the “generally applicable discovery rule and the misrepresentation exception would
13 operate to toll the statute of limitations until the concealment is revealed”).

14 4. The Court concludes that Mr. Nassiri exercised reasonable diligence but,
15 nonetheless, did not discover his claim until 2010.

16 **1. Mr. Nassiri exercised reasonable diligence prior to executing the Settlement**
17 **Agreement.**

18 NDOT argues¹ that by virtue of its holding public meetings regarding the Blue Diamond
19 Interchange the public—including Mr. Nassiri—was on notice of a future flyover. NDOT further
20 argues² that had Mr. Nassiri been diligent he would have discovered other publically available
21 information referencing a flyover. NDOT ~~implicitly argues~~ ^{took the position} that Mr. Nassiri was on inquiry
22 notice from 1999 forward and, therefore, should have brought his action for rescission within
23 three years after the signing of the Settlement Agreement in 2005.

24 The determination of diligence is a factual one that requires that the Court analyze the
25 specific facts and circumstances of a case. Diligence, however, does not require that a person
26 avail themselves of all accessible information. In fact, the discovery rule will delay the accrual of
27 a discovery-based statute of limitation if the fact finder determines that the party exercised
28 diligence, even when the plaintiff was ultimately ignorant of reasonably accessible information.

1 Siragusa, 114 Nev. at 1394, 971 P.2d at 807; Wagner, 281 P.3d 1228 (Nev. 2009).

2 *It appears to the Court that*
3 ~~Importantly~~, the information cited to by NDOT was publically available but not in the
4 public record by way of recording. Unlike the case of real property transactions, and
5 encumbrances, where a properly recorded instrument constitutes constructive notice of its
6 contents to the world, the “publicly available documents” here were not “recorded” with the
7 county or against the property. Instead one would have to seek out the informational handouts
8 and environmental documents at public libraries and, upon request, from NDOT’s offices. See
9 generally Allen v. Webb, 87 Nev. 261, 272, 485 P.2d 677, 684 (1971). Even when courts have
10 considered the investigation of public records, courts stop short of requiring a plaintiff to
11 continuously scour recorded ~~records~~ *documents* to unveil a cause of action. See e.g. Techni-Graphic Servs.,
12 Inc. v. Majestic Homes, Inc., No. 2:02CV923DAK, 2005 WL 357208, at *2 (D. Utah Feb. 11,
13 2005); Amini v. Bank of Am. Corp., No. C11-0974RSL, 2012 WL 398636, at *6 (W.D. Wash.
14 Feb. 7, 2012).

15 *Even if Nassiri was on* *that does not equate*
~~NDOT also seems to equate being on inquiry notice with discovery. That is not the law.~~
16 “Inquiry notice” refers to the point where the facts would lead a reasonably diligent person to
17 investigate further, but that is not necessarily the point at which he would have discovered facts
18 constituting a claim. Merck & Co. v. Reynolds, 559 U.S. 633, 651 (2010). The limitations period
19 cannot start before “discovery” can take place. Id.

20 ~~Again, NDOT seems to argue~~ *argued* that Mr. Nassiri was on inquiry notice during the period
21 after the state formally expressed its intention to condemn his property, in August 2003,
22 including during the Condemnation Action. ~~As for the period before that~~ *test of red he* Mr. Nassiri acted as a
23 reasonable adjoining land owner should; he investigated the Blue Diamond Interchange as it
24 effected his property, specifically the amount of property to be taken and access to his property.
25 The record reflects that Mr. Nassiri attended at least the initial meeting and sent NDOT
26 correspondence requesting that he be apprised of any developments and plans. At that time, maps
27 created by NDOT were expressly preliminary and for discussion purposes only.

28 Later, Mr. Nassiri began direct meetings with NDOT’s engineering department

his There is the
concerning is property. NDOT provided no evidence at trial that any flyover was discussed at
those meetings. On the other hand, internal emails between NDOT's engineers, NDOT's
Director of Engineering ~~made it clear~~ ^{confirmed} that NDOT ~~would~~ ^{planned to} construct the flyover and that NDOT
needed to acquire the right-of-way for the flyover immediately. (Tr. Exh. 158). By June 2003,
NDOT had confirmed that traffic volumes ~~would eventually~~ ^{would eventually} necessitate ~~the~~ ^{the} building of a flyover. (Tr. Exh. 156).
Furthermore, by 2004, NDOT had created engineering files for the design of the flyover. (Tr.
Exh. 155). While NDOT was unsure when it would begin construction of a flyover, according to
Mr. Terry it specifically accommodated a flyover in the design of the realigned Blue Diamond
Interchange.

^{In August 2003,}
At the same time NDOT was internally planning the flyover and acquiring the right-of-
way necessary to build the flyover, NDOT formally ~~expressed~~ ^{advised} Mr. Nassiri, ~~in August 2003,~~ ^{of} its
intention to acquire the Condemned Property. Assuming Mr. Nassiri was still on some kind of
inquiry notice, the question is whether he acted with reasonable diligence at that time.

^{Obtained an appraisal}
On October 1, 2003, NDOT ~~appraised~~ ^{obtained an appraisal} the Condemned Property. Despite ~~knowing~~ ^{NDOT's knowledge} that it
would build a flyover, the appraisal omitted the flyover from the project's after-condition and
NDOT's review specifically noted that Mr. Nassiri's property would continue to benefit from its
exposure from I-15. Immediately thereafter, NDOT made an offer to purchase the Condemned
Property at the appraised value. After receiving the appraisal, Mr. Nassiri hired Mr. Chapman to
commence negotiations with NDOT. In May 2004, Mr. Nassiri and Mr. Chapman met with
NDOT's right-of-way director Ms. Mireles. ~~The unrefuted testimony is~~ ^{was unrefuted} that the purpose of that
meeting was for Mr. Nassiri and Mr. Chapman to discuss with NDOT's its planned development
of the Blue Diamond Interchange. They also discussed NDOT making the Exchange Property
available to Mr. Nassiri. At that meeting, NDOT presented maps and diagrams to Mr. Nassiri
and Mr. Chapman ~~that depicted what NDOT represented was~~ ^{depicting} the "after condition" of the Blue
Diamond Interchange. The record is unrefuted that ~~NDOT did not say or show them any~~ ^{the flyover was}
~~not discuss at the meeting nor was any document provided~~ ^{the flyover was}
~~document indicating an interest in building a flyover.~~ ^{the flyover.}

NDOT formally commenced an action to condemn the Condemnation Property. In
mandatory NRCP 16.1 disclosures NDOT was required to provide all relevant documents and

1 NDOT made available to Mr. Nassiri the purported "construction plans" of the Blue Diamond
2 Interchange to meet that requirement. Mr. Nassiri's counsel reviewed those plans. It is
3 undisputed that the construction plans provided did not show any flyover. Mr. Nassiri's counsel
4 also requested all documents related to the realignment. In response, NDOT disclosed no
5 communications, plans, or maps that depicted any type of flyover. NDOT also failed to produce
6 the 2004 Environmental Assessment during litigation. (If the 2004 Environmental Assessment
7 was material, as NDOT argues, it should have been produced by NDOT in the Condemnation
8 Action.)

9 Only after having numerous meetings and receiving a number of maps, diagrams, and
10 plans from NDOT did Mr. Nassiri enter into the Settlement Agreement with NDOT. During the
11 negotiations of the Settlement Agreement and First Amendment, NDOT continued to provide
12 Mr. Nassiri with diagrams of a realigned and reconstructed Blue Diamond Interchange that did
13 not include any flyover.

14 NDOT contends that Mr. Nassiri did not exercise diligence. It suggests that Mr. Nassiri
15 done so, he would have discovered documents at the library or at NDOT's offices that showed a
16 flyover. NDOT's position is unpersuasive. Mr. Nassiri, and his counsel, actively engaged NDOT
17 in negotiations and discovery regarding the after-condition of Blue Diamond Interchange. He
18 had numerous meetings with high ranking NDOT officials, including NDOT engineers and its
19 Chief of Right-of-Way. During those meetings, NDOT's proposed plan for the Blue Diamond
20 Interchange were the topic of discussion. Based on the evidence, a flyover was never mentioned
21 by NDOT. Mr. Nassiri received appraisals (including NDOT's review) for the Condemned
22 Property that stated his remaining property would maintain its visibility to Interstate-15 in an
23 after-condition that excluded the flyover. The Exchange Property was similarly valued at the
24 same price as the Condemned Property. Mr. Nassiri, by and through his counsel, reviewed
25 NDOT's actual construction plans, for the Blue Diamond interchange, which did not include any
26 flyover.

27 5. The Court concludes, that reasonable diligence did not require Mr. Nassiri to seek
28 out and review every available document in the public sphere to determine whether they

1 contradicted the documents provide by NDOT in negotiation and discovery. Despite Mr.
2 Nassiri's lengthy discussions with NDOT, and receipt and review of documents during litigation
3 it is undisputed that Mr. Nassiri never learned of flyover. He satisfied his duty of reasonable
4 diligence.

5 6. The Court also concludes, despite NDOT's position, that Mr. Nassiri was not
6 required to seek out the 2004 Environmental Assessment, or the public meeting materials
7 relating to it, in order to satisfy any reasonable diligence requirement. By that time, NDOT had
8 met with Mr. Nassiri and engaged in discovery. Yet, at no time did NDOT provide those
9 documents to Mr. Nassiri. It is unclear why, if those environmental documents were material,
10 NDOT failed to produce them pursuant to NRCP 16.1, or even reference them in maps and
11 diagrams given to Mr. Nassiri during litigation and the settlement negotiations.

12 7. Additionally, the Court concludes NDOT's argument that Mr. Nassiri had some
13 obligation to review NDOT's previous planning documents is unpersuasive. The Settlement
14 Agreement was entered into in the context of a condemnation. Under the United States
15 Constitution, Nevada Constitution, and NRS Chapter 37, the State has certain duties and
16 obligations with respect to land owners and the award of just compensation. The State has
17 consistently advocated, and the Nevada Supreme Court has agreed, that NDOT cannot face
18 liability based on mere plotting or planning of a project at a "vague and distant future time."
19 Sproul Homes of Nevada v. State ex rel. Dep't of Highways, 96 Nev. 441, 443, 611 P.2d 620,
20 621 (1980); Santa Fe Pac. Trust, Inc. v. City of Albuquerque, 335 P.3d 232, 240 (NM Ct. App.
21 2014) *cert. granted* (Aug. 29, 2014); Sederquist v. City of Tiburon, 590 F.2d 278, 282 (9th Cir.
22 1978). A government entity does not become liable for a project until its "activities have gone
23 beyond the planning stage." Buzz Stew, L.L.C. v. City of N. Las Vegas, 124 Nev. 224, 229, 181
24 P.3d 670, 673 (2008). Courts have similarly recognized that preliminary planning actions such as
25 public meetings and publications reflecting uncertainty cannot create liability, otherwise "the
26 process of community planning would either grind to a halt, or deteriorate to publication of
27 vacuous generalizations regarding the future use of land." Sproul Homes of Nevada, 96 Nev. at
28 443, 611 P.2d at 621 (1980); see also Joseph M. Jackovich Revocable Trust v. State, Dep't of

1 Transp., 54 P.3d 294, 295 (Alaska 2002).

2 8. NDOT argues that public meetings, plan proposals, and planning documents
3 dating back to 1999 provide all material facts that give rise to Mr. Nassiri's claim and that Mr.
4 Nassiri could not have acted diligently unless he reviewed all preliminary documents. NDOT
5 cannot have it both ways. It cannot both assert that these preliminary planning documents do not
6 create liability, while at the same time arguing that the documents give rise to all the facts
7 constituting Mr. Nassiri's claim. The Court concludes that reasonable diligence does not require
8 a landowner to seek out or rely on an environmental document for purposes of assessing NDOT
9 design plan, especially when, like there, the landowner is engaged in direct discussions with the
10 landowner regarding NDOT's proposed interchange design. Because preliminary plans and
11 proposals are not actionable, diligence does not require that Mr. Nassiri seek out and review
12 prior plans and proposals, especially in light of the fact that Mr. Nassiri had numerous
13 negotiations with NDOT regarding its planned design of the Blue Diamond Interchange and that
14 none of those discussions mentioned any flyover. Moreover, during the negotiations of the
15 Settlement Agreement the evidence is unrefuted that NDOT did not disclose or discuss the
16 flyover with Mr. Nassiri. To the contrary, NDOT provided Mr. Nassiri and his counsel with
17 maps and diagrams that depicted that the Blue Diamond Interchange's after-condition would not
18 include a flyover.

19 9. Therefore, the Court concludes that Mr. Nassiri's diligence prior to the execution
20 of the Settlement Agreement and First Amendment tolled the statute of limitations under the
21 discovery rule.

22 **2. Mr. Nassiri exercised reasonable diligence until he discovered his cause of**
23 **action in 2010.**

24 After the closing of the Settlement Agreement and First Amendment, NDOT began to
25 reconstruct and realign the Blue Diamond Interchange. By fall 2006, NDOT had ceased
26 construction on the Blue Diamond Interchange. At that time, the Blue Diamond Interchange
27 looked like the diagrams and plans that NDOT had produced and shown Mr. Nassiri in 2004 and
28 2005, as well as the sketch maps that were to accompany the Settlement Agreement and First

1 Amendment.

2 The Settlement Agreement also called for a two-year easement. In July of 2007, Mr.
3 Nassiri asked NDOT whether it had completed the reconstruction and realignment of the Blue
4 Diamond Interchange and whether it would release the temporary easement created by the
5 Settlement Agreement across the Exchange Property. (Tr. Exh. 110). On August 3, 2007, NDOT
6 notified Mr. Nassiri that no longer needed the temporary easement and that it would be releasing
7 the easement. (Tr. Exh. 111).

8 10. The Court concludes that any doubt that Mr. Nassiri might have had about
9 NDOT's intent for the Blue Diamond interchange would reasonably have been satisfied by
10 NDOT's actual building of the Blue Diamond Interchange consistent with the plans and
11 diagrams provided during the Condemnation Action and settlement negotiations, as well as the
12 confirmation by release of the easement that construction was complete. Based on NDOT's
13 communications with Mr. Nassiri, it was reasonable for him to assume that the Blue Diamond
14 Interchange had been completed.

15 In 2007, NDOT sought funding from the Nevada legislature to construct the Interstate
16 South Corridor Improvement Project. There is no evidence that Mr. Nassiri was provided notice
17 of any public meetings regarding the Interstate South Corridor Improvement Project or the 2008
18 Environmental Assessment. Likewise, in 2009, when NDOT selected Las Vegas Paving Corp. as
19 the design builder of the Interstate South Corridor Improvement Project, there is no evidence that
20 Mr. Nassiri was or should have been aware that Las Vegas Paving Corp.'s proposed project
21 would include a flyover at the Blue Diamond Interchange.

22 It was not until April of 2010 when Las Vegas Paving Corp. approached Mr. Nassiri to
23 obtain a lease on the Exchange Property that Mr. Nassiri would have been aware that Las Vegas
24 Paving Corp. intended on improving the Blue Diamond Interchange. (Tr. Exh. 125). At best, the
25 property lease put Mr. Nassiri inquiry notice of NDOT's actions in April of 2010.

26 11. Mr. Nassiri was, therefore, not on inquiry notice of NDOT's reconstruction of the
27 Blue Diamond Interchange, and the statute tolled, until April 2010 well after the November 30,
28 2009 start date for Mr. Nassiri's claims. NDOT failed to submit any other evidence that would

1 suggest that Mr. Nassiri would or should have been aware of NDOT's intent to build a flyover
2 after production of plans in the Condemnation Action prior to April of 2010.

3 12. The Court concludes that NDOT had intended on constructing a flyover at the
4 Blue Diamond Interchange beginning no later than 1999. During the Condemnation Action,
5 NDOT was generally aware of the size and dimensions of the flyover based on technical
6 specifications and general roadway design. At the time Mr. Nassiri entered into the Settlement
7 Agreement, he was unaware that NDOT had intended on constructing a flyover at the Blue
8 Diamond Interchange.

9 13. Furthermore, the Court concludes that Mr. Nassiri did not learn of NDOT's intent
10 to construct the flyover until December 2010, and was on inquiry notice no earlier than April
11 2010.

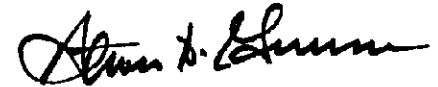
12 14. The Court concludes that based on the circumstances of the case, Mr. Nassiri
13 exercised diligence in investigating NDOT's intent in 2005 when he executed the Settlement
14 Agreement.

15 15. Despite his diligence, Mr. Nassiri did not discover NDOT's plan to construct a
16 flyover until December 2010. Therefore, the statute of limitations was tolled pursuant to the
17 discovery rule until December 2010. Mr. Nassiri brought his claim for rescission on November
18 30, 2012, less than three years after learning of his cause of action. Based thereon, the Court
19 concludes that, Mr. Nassiri's claim for rescission is not barred by the applicable statute of
20 limitations.

21 IT IS SO ORDERED, ADJUDGED, AND DECREED.

22 Dated this 28th day of July, 2015.

23
24 
25 DISTRICT COURT JUDGE GLORIA J.
26 STURMAN
27
28



CLERK OF THE COURT

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.

CASE NO. A672841
DEPT. XXVI

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER**

The above-captioned matter was tried before the Court on May 4, 2015, May 5, 2015, May 6, 2015, May 7, 2015, May 8, 2015, and May 19, 2015, on the narrow issue of whether Plaintiffs' prayer for rescission was barred by the applicable statute of limitations. Plaintiffs Fred Nassiri, an individual; Nassiri Living Trust ("Plaintiffs") were represented by Eric R. Olsen, Esq., and Dylan T. Ciciliano, Esq., of the law firm of Garman Turner Gordon LLP (formerly of Gordon Silver); Defendant State of Nevada ("NDOT") was represented by William L. Coulthard, Esq., and Eric M. Pepperman, Esq., of the law firm of Kemp, Jones & Coulthard, LLP.

The Court having considered the record, all witness testimony, exhibits admitted into evidence at trial, and after weighing all of the evidence before the Court, considering the

1 arguments of counsel including objections raised by both parties;

2 HEREBY FINDS, CONCLUDES, AND ADJUDGES AS FOLLOWS:

3 I.

4 **FINDINGS OF FACT**

5 The Court makes the following findings of fact:

6 This action arises from a Settlement Agreement entered into by and between NDOT and
7 Nassiri on April 28, 2005 (the "Settlement Agreement") (Trial Exhibit ("Tr. Exh.") 87) and
8 amended June 2, 2005 (the "First Amendment") (Tr. Exh. 104). The Settlement Agreement and
9 First Amendment resolved the August 31, 2004, Complaint in condemnation brought by NDOT
10 in the Eighth Judicial District Court, Clark County, Nevada, Case Number A491334, to acquire
11 approximately 4.81 acres of property (the "Condemned Property") owned by Mr. Nassiri. NDOT
12 sought the acquisition of the Condemned Property for the stated purpose of reconstructing and
13 realigning Blue Diamond Road at Interstate I-15 (the "Blue Diamond Interchange"). Based on
14 the proposed realignment, the Blue Diamond Interchange was to be moved from the north to the
15 south of Mr. Nassiri's property. Prior to the realignment, the Blue Diamond Interchange was
16 located in part on 24.42 acres of property that was contiguous to the north of Mr. Nassiri's
17 property (the "Exchange Property"). As a result of the Settlement Agreement, NDOT acquired
18 the Condemned Property and Mr. Nassiri acquired the Exchange Property.

19 A. **There is no evidence that a flyover was discussed during public meetings.**

20 1. On or about July 7, 1999, NDOT provided public notice of an "Intent to Study
21 Letter" that indicated NDOT intended on improving the Blue Diamond Interchange, which
22 included the realignment of Blue Diamond Road. The letter also provided notice of a public
23 meeting on July 27, 1999. (Tr. Exh. 1).

24 2. Mr. Nassiri briefly attended the July 27, 1999, meeting and, on or about August
25 10, 1999, he sent a letter to NDOT describing his concerns regarding the project. (Tr. Exh. 27, at
26 NV_Nassiri001969-NV_Nassiri001970). The letter attached a map prepared by NDOT titled
27 "Conceptual Improvements for SR-160 (Blue Diamond Road) (For Discussion Purposes Only)
28 Preliminary Subject to Revision." The map included a roadway that NDOT representative John

1 Terry identified at trial as a flyover, albeit north of the flyover that was eventually built. Mr.
2 Nassiri testified that in 1999 he was unaware the map contained a flyover and was unaware of
3 the physical characteristics of that proposed structure.

4 3. On February 1, 2000, NDOT sent another "Intent to Study Letter" that indicated
5 State intended on improving the Blue Diamond Interchange, including the realignment of Blue
6 Diamond Road, and provided notice of a public meeting on February 23, 2000. (Tr. Exh. 5).
7 There was no evidence Mr. Nassiri attended.

8 4. Mr. Nassiri sent NDOT a comments form on March 7, 2000. (Tr. Exh. 7). In that
9 form, Mr. Nassiri identified his concern about the realignment of the Blue Diamond Interchange
10 moving to the north and impacting his property. He also expressed concern about his property
11 having right turn/left turn access to SR 160, Blue Diamond Road. (Id.)

12 5. NDOT held a third public meeting on May 7, 2002, concerning the Blue Diamond
13 Interchange. (Tr. Exh. 12). The notice of public meeting included a description of the purpose
14 and need of the Blue Diamond Interchange. (Id. at NV_Nassiri003586). That description did not
15 mention any flyover. Mr. Nassiri may have attended the meeting.

16 6. On or about July 24, 2003, in an internal memorandum, NDOT's Surplus
17 Property Committee approved the disposal of the Exchange Property. (Tr. Exh. 17). NDOT's
18 approval was based on the condition that NDOT would retain sufficient property to build a future
19 flyover. (Id.)

20 7. On July 28, 2003, NDOT held a fourth public meeting regarding the
21 reconstruction and realignment of the Blue Diamond Interchange. (Tr. Exh. 19). NDOT contends
22 that it provided a handout to all meeting attendees. (Tr. Exh. 18). The handout identified that the
23 realignment and reconstruction of the Blue Diamond Interchange would occur in three phases.
24 None of the descriptions of these phases included a mention of any flyover. (Id.)

25 8. The only NDOT witness to testify regarding the public meetings at issue in this
26 action was John Terry, NDOT's Assistant Director of Engineering. Mr. Terry was not present at
27 any of the public meetings in question and did not have knowledge of what actually occurred at
28 the meetings. He testified that all of NDOT's public meetings during that time period were "open

1 forum,” meaning that NDOT did not make a presentation to the public but made employees
2 available to answer the questions of individuals, if asked. Mr. Terry testified that it was NDOT’s
3 practice and procedure from 1999 to 2005 to have proposed designs on large poster boards for
4 the public to view at the public meetings. He also testified that this method of presentation was
5 later changed as a result of litigation against NDOT. Mr. Terry, however, was unaware of what
6 NDOT actually displayed on the poster boards at the aforementioned meetings.

7 9. On May 19, 2004, NDOT held a meeting, not on the Blue Diamond Interchange
8 project. (Tr. Exh. 38). There, NDOT argues, it provided the public with copies of the 2004
9 Environmental Assessment, an environmental document required by federal regulations.¹

10 10. There is no direct evidence that NDOT discussed the flyover at any of the public
11 meetings.

12 **B. NDOT had planned a flyover since 1999 but did not disclose a flyover to Mr. Nassiri**
13 **during the negotiation of the Settlement Agreement.**

14 11. No later than 1999, NDOT began planning the reconstruction and realignment of
15 the Blue Diamond Interchange. According to NDOT, the reconstructed and realigned Blue
16 Diamond was always to include a flyover from eastbound Blue Diamond Road to Interstate I-15
17 North when traffic demands warranted and funding was available.

18 12. Mr. Terry, through deposition testimony, confirmed that there was always a
19 flyover planned for the Blue Diamond project.

20 13. Although Mr. Terry stated that the precise configuration of the flyover was
21 unknown prior to its ultimate design in 2009, he testified that based on his years of experience
22 with road engineering, he could estimate the general location of the proposed flyover. He also
23 knew that any proposed flyover would have to have sufficient clearance over Blue Diamond
24 Road and he could, therefore, approximate its height.

25 14. Beginning in 2002, Mr. Nassiri met with NDOT and its engineers regarding the
26 Blue Diamond Interchange realignment. Mr. Nassiri and NDOT discussed the Condemned

27 ¹ Notably, by this time Mr. Nassiri was engaged in in-person meetings with NDOT regarding the design of the I-15
28 interchange.

1 Property² and Mr. Nassiri informed NDOT that he would be interested in acquiring the Exchange
2 Property after the Blue Diamond Interchange was built.

3 15. Mr. Nassiri and Michael Chapman's testimony was that at or about the same time
4 Mr. Nassiri hired the engineering firm Carter Burgess to determine the physical area of the
5 Condemnation Property. Mr. Nassiri testified that he wanted to make sure NDOT was not
6 attempting to acquire more of his property than it needed to realign the Blue Diamond
7 Interchange. Carter Burgess assigned former NDOT employee Mr. Steve Oxoby to assist Mr.
8 Nassiri. Mr. Oxoby's services to Mr. Nassiri were limited to calculating the land area and meets
9 and bounds of the Condemnation Property and Exchange Property, and his services did not
10 pertain to his prior employment with NDOT.

11 16. In a February 3, 2003 internal email, titled "SR 160 Blue Diamond Interchange-
12 Flyover," NDOT Engineer Frank Csigá told other NDOT agents that he had spoken with the
13 NDOT's Assistant Director of Engineering Susan Martinovich about the need for the flyover at
14 the Blue Diamond Interchange. (Tr. Exh. 158). Ms. Martinovich had "agree[d] that if the flyover
15 is needed prior to the design year, [NDOT] should cover it in the EA, show it at the
16 informational meeting, and acquire the necessary right-of-way now, especially if it means we
17 don't have to go back and hit a property owner twice." (Id.). They agreed that the fly-over "will
18 definitely be needed much earlier than the design year." (Id.).

19 17. By June 2003, NDOT had confirmed that traffic volumes necessitated the
20 building of a flyover. (Tr. Exh. 156).

21 18. NDOT obtained an appraisal for the Condemned Property on October 1, 2003, in
22 which it valued the condemned property at \$23 per square foot. (Tr. Exh. 23). Because the "after-
23 condition" is central to the valuation, the appraisal discussed the realignment of the Blue
24 Diamond Interchange, but it did not mention any flyover. (Id.).

25 19. NDOT formally reviewed and approved the appraisal. (Tr. Exh. 26). NDOT's
26 formal review stated that Mr. Nassiri's property was visible from I-15 and that the site was ideal
27

28 ² NDOT did not give formal notice that it was condemning the Condemned Property, until late 2003.

1 for "on-premise trade signage." (Id. at Chapman000883). NDOT also stated that after the
2 reconstruction and realignment of the Blue Diamond Interchange Mr. Nassiri's property "will
3 sustain its exposure from I-15 . . . thereby retaining its visibility." (Id. at Chapman000885). The
4 review did not mention any flyover. NDOT provided both the appraisal and review to Mr.
5 Nassiri.

6 20. By January 2004, NDOT had created engineering design files for the flyover and
7 kept those files with the designs of the Blue Diamond Interchange. (Tr. Exh. 155).

8 21. On or about April 4, 2004, NDOT completed the 2004 Environmental
9 Assessment, a federally mandated study of the impacts of the realignment and reconstruction of
10 the Blue Diamond Interchange on the environment. (Tr. Exh. 27). The 2004 Environmental
11 Assessment discusses a future flyover. (Id.). Mr. Terry's testimony was that the 2004
12 Environmental Assessment would have been available at public libraries and certain NDOT
13 offices. There is no evidence, however, that the 2004 Environmental Assessment was ever
14 mailed or provided to Mr. Nassiri or his agents.

15 22. While NDOT argued that Trial Exhibit 28 was a distribution list for the 2004
16 Environmental Assessment, NDOT presented no evidence that Trial Exhibit 28 was an actual
17 distribution list or that it was the distribution list for the 2004 Environmental Assessment.
18 Furthermore, Trial Exhibit 28 contains an incorrect address for Mr. Nassiri.

19 23. On April 6, 2004, NDOT made an offer to purchase the Condemnation Property
20 from Mr. Nassiri. (Tr. Exh. 29). Mr. Nassiri's counsel, Mr. Chapman, responded to NDOT's
21 proposal on April 19, 2004, and requested that NDOT's Director and "other NDOT decision-
22 makers" meet with Mr. Nassiri to discuss the purchase of the Condemnation Property and the
23 Exchange Property. (Tr. Exh. 32).

24 24. NDOT's director of Right-of-Way Heidi Mireles, NDOT engineers and an
25 Attorney General representing NDOT met with Mr. Nassiri, Mr. Oxoby, and Mr. Chapman on
26 May 28, 2004. Mr. Nassiri and Mr. Chapman's unrefuted testimony was that the purpose of the
27 May 28, 2004, meeting was to discuss the proposed realignment and reconstruction of the Blue
28 Diamond Interchange. Mr. Chapman testified that there were specific discussions as to what

1 Blue Diamond Interchange's ultimate configuration would look like. Mr. Chapman testified that
2 Ms. Mireles presented maps for the proposed realigned and reconstructed Blue Diamond
3 Interchange so that Mr. Nassiri could assess his condemnation damages. (See Trial Exhibit 43).
4 Mr. Chapman and Mr. Nassiri provided unchallenged testimony that NDOT did not mention any
5 flyover during the May 28, 2004, meeting and did not provide Mr. Nassiri with any maps or
6 plans depicting any flyover.

7 25. On July 22, 2004, NDOT's board of directors, pursuant to NRS 408.503,
8 authorized NDOT to bring an action in condemnation against Mr. Nassiri to acquire the
9 Condemnation Property for the reconstruction and realignment of the Blue Diamond
10 Interchange.

11 26. On August 30, 2004, NDOT appraised the "Exchange Property". (Tr. Exh. 55).
12 The appraisal expressly stated that it purported to consider the final configuration of the Blue
13 Diamond Project. The drawings and descriptions in it did not include any flyover. NDOT's
14 appraiser Gary Kent appraised the Exchange Property in the "after condition, presuming
15 reconstruction and realignment of the State Route 160/Interstate 15 interchange." (Id. at pps. 1,
16 55-57A, 59, 64 and 68). That appraisal contains two maps titled the NDOT Project Map, which
17 shows the realignment SR160 and I-15 interchange but no "fly-over." (Id. at pp. 55, 56). The
18 appraisal also contains two maps titled "Subject Property Site Plan in the After Condition,"
19 which shows the realignment SR160 and I-15 interchange but no flyover. (Id. at pp. 57, 57A).

20 27. Even though the appraisal supposedly considered the final configuration of the
21 Blue Diamond Project for purposes of valuing the property, it omitted any reference to, or
22 depiction of a flyover. Mr. Kent also specifically noted that the Exchange Property benefited
23 from its visibility to Interstate 15:

- 24 • "does and will include direct visibility and presumed frontage on the easterly most
25 portion of the Interstate 15 right-of-way." (Id. at p.59).
- 26 • "The subject property, in the after condition, will have good visibility from . . .
27 Interstate 15." (Id. at p.64).
- 28 • "[T]he subject property, in the after condition,. . . would include and/or benefit
from direct visibility along the Interstate 15 right-of-way." (Id. at p.68).

1 Kent determined that as of August 16, 2004, the Exchange Property would have a value in the
2 after condition of \$22,650,000.00, with a 46% assemblage premium. (Id. at p.2). The appraised
3 value per square foot was identical to the Condemned Property.

4 28. NDOT's filed its condemnation complaint, Case No. A491334, (the
5 "Condemnation Action") on September 1, 2004. (Tr. Exhs. 57-59).

6 29. On December 6, 2004, NDOT made Mr. Nassiri an offer to settle the
7 Condemnation Action that specifically included an exchange of the Condemnation Property for
8 the Exchange Property. (Tr. Exh. 65). Under the proposal, NDOT would receive the
9 Condemnation Property and Mr. Nassiri would receive the Exchange Property and Mr. Nassiri
10 would pay to NDOT an additional \$17 million. (Id.).

11 30. In the Condemnation Action, NDOT and Mr. Nassiri prepared a joint case
12 conference report pursuant to NRCP 16.1, which was filed with the Court on or about December
13 22, 2004. (Tr. Exh. 68). NDOT then made the "construction plans" for the reconstruction and
14 realignment of the Blue Diamond Interchange available to Mr. Nassiri and his counsel for their
15 review. (Id. at Chapman0002147). Mr. Chapman reviewed the construction plans. It is
16 undisputed that the construction plans shown to Mr. Chapman did not include any flyover.
17 NDOT did not produce the 2004 Environmental Assessment.

18 31. Mr. Nassiri accepted NDOT's December 6, 2004, settlement offer on January 27,
19 2005. (Tr. Exh. 71).

20 32. Subsequent to Mr. Nassiri's acceptance, Mr. Chapman created the first draft of
21 the Settlement Agreement and NDOT's counsel, Mr. Walsh, prepared and made substantive
22 changes to the remaining and final drafts of the Settlement Agreement.

23 33. During the negotiations of the Settlement Agreement, NDOT prepared a "Sketch
24 Map" of the Blue Diamond Interchange. (Tr. Exhs. 175, 176 at Chapman003491). The Sketch
25 Map did not depict any flyover. According to Mr. Chapman, NDOT prepared the sketch map as
26 a representation of the Blue Diamond Interchange in the after-completed condition. He further
27 testified that the Sketch Map was to be included in the Settlement Agreement and Quit Claim
28 deed.

1 34. NDOT and Mr. Nassiri executed the Settlement Agreement on April 28, 2005.
2 (Tr. Exh. 87).

3 35. Pursuant to the terms of the Settlement Agreement, NDOT obtained a two-year
4 easement over the Exchange Property to realign and reconstruct the Blue Diamond Interchange.
5 (Id. at §§ 1.01; 2.06).

6 36. Mr. Nassari eventually recognized that the boundaries of the Exchange Property
7 were incorrect and that it should be 24.42 acres, not the 24.41 acres reflected in the Settlement
8 Agreement. Accordingly, the Settlement Agreement was amended.

9 37. On June 1, 2005, NDOT prepared a revised Sketch Map that identifies the
10 Exchange Property to be 24.42 acres. (Tr. Ex. 95). The next day, NDOT provided a revised legal
11 description of the Exchange Property and a revised sketch map to Mr. Nassiri. (Tr. Exhs. 97-98).
12 The Sketch Map did not include any flyover.

13 38. When NDOT provided the First Amendment to the title company it apparently
14 omitted the Sketch Map. The First Amendment, signed June 14, 2005, redefines the Exchange
15 Property to be 24.42 acres. (Tr. Ex. 104). The Settlement Agreement calls for the inclusion of a
16 “diagram” of the Exchange Property. (Id. at § 2.02). Mr. Chapman provided the unrefuted
17 testimony that Tr. Ex. 95 was the revised Sketch Map that the parties agreed to include with the
18 First Amendment and the Court so finds.

19 39. By fall 2006, NDOT had realigned and reconstructed the Blue Diamond
20 Interchange. The completed project did not include any flyover.

21 40. On August 3, 2007, NDOT notified Mr. Nassiri that it had completed the Blue
22 Diamond Interchange realignment and that it would be releasing its easement over the Exchange
23 Property.

24 **C. NDOT did not construct the Flyover until 2010.**

25 41. On May 5, 2005, NDOT published a notice of potential transportation
26 improvements to the I-15 Corridor (the “Interstate South Corridor Improvement Project”). (Tr.
27 Ex. 89). There is no evidence that Mr. Nassiri received notice of any meetings concerning the
28 Interstate South Corridor Improvement Project.

1 42. Mr. Terry testified that during the 2007 legislative session, the next session,
2 NDOT acquired the funding for the Interstate South Corridor Improvement Project. That funding
3 was used, in part, to construct the flyover.

4 43. In October 2008, NDOT completed the 2008 Environmental Assessment ("2008
5 EA") for the Interstate South Corridor Improvement, a project that included a flyover at the Blue
6 Diamond Interchange. (See Tr. Exh. 113). The depicted flyover was located north of the
7 presently built flyover.

8 44. NDOT sent out requests for proposal on the Interstate South Corridor
9 Improvement Project. The request NDOT sent provided bidders with necessary and optional
10 components of the project. A flyover connecting eastbound Blue Diamond Road with I-15 North
11 was an optional build design of the Interstate South Corridor Improvement Project, even though
12 NDOT had already decided a flyover would be part of the interchange.

13 45. On June 30, 2009, NDOT awarded Las Vegas Paving Corp. a design build
14 contract pursuant to NRS Chapters 338 and 408. (Tr. Exh. 118). The design build contract was
15 signed on September 10, 2009. (Tr. Exh. 120). Las Vegas Paving Corp.'s bid included a flyover.

16 46. Las Vegas Paving Corp. approached Mr. Nassiri in April of 2010 to obtain a lease
17 on the Exchange Property. (Tr. Exh. 125). Mr. Terry testified that the Exchange Property was a
18 federally acceptable staging area for construction of the flyover because it was the site of the
19 previous Blue Diamond interchange.

20 47. NDOT, by and through Las Vegas Paving Corp., did not begin constructing the
21 Flyover until 2010. The Flyover constructed in 2010 is located south of the route proposed by
22 NDOT in the 2008 Environmental Assessment.

23 48. Mr. Nassiri testified that he was unaware of any flyover until construction was
24 underway in 2010. He also testified that he did not know what the term flyover meant until after
25 its completion.

26 49. Mr. Nassiri brought the present action on November 30, 2012.

27 ...

28 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

CONCLUSIONS OF LAW

The Court makes the following conclusions of law:

Rescission is an equitable remedy which totally abrogates a contract and which seeks to place the parties in the position they occupied prior to executing the contract. Great Am. Ins. Co. v. Gen. Builders, Inc., 113 Nev. 346, 356, 934 P.2d 257, 264 (1997); Bergstrom v. Estate of DeVoe, 109 Nev. 575, 577, 854 P.2d 860, 861 (1993). Absolute and literal restoration is not required, all that is required is that the parties are returned as “reasonably possible and demanded by the equities of the case” to their original position. Mackintosh v. California Fed. Sav. & Loan Ass'n, 113 Nev. 393, 407, 935 P.2d 1154, 1163 (1997). Potential grounds for contract rescission include fraud in the inducement, mutual mistake, unilateral mistake, duress or undue influence. See Great Am. Ins. Co., 113 Nev. at 356, 934 P.2d at 264; Oh v. Wilson, 112 Nev. 38, 39, 910 P.2d 276, 277 (1996). Generally, a unilateral mistake is grounds for the rescission of a contract or release if the “other party had reason to know of the mistake or his fault caused the mistake.” In re Irrevocable Trust Agreement of 1979, In re Irrevocable Trust Agreement of 1979, 130 Nev. Adv. Op. 63, 331 P.3d 881, 885 (2014); Oh v. Wilson, 112 Nev. 38, 39-40, 910 P.2d 276, 277-78 (1996).

A claim for rescission based in mistake is subject to a 3-year statute of limitations. NRS 11.190(3)(d). The statute of limitations begins to run when “the claimant discovers, or reasonably should have discovered, the material facts for the action, including the damages.” Brady Vorwerck v. New Albertson's, 130 Nev. Adv. Op. 68, 333 P.3d 229, 232 (2014), *reh'g denied* (Nov. 10, 2014). Therefore, to maintain a claim for rescission, Mr. Nassiri must have discovered the material facts relating to his claim for rescission after November 30, 2009, three years prior the filing of his complaint.

A. Mr. Nassiri was unaware of his claim until 2010 when the flyover was built.

1. At the time he entered into the Settlement Agreement, Mr. Nassiri contends that he was unaware of the fact that NDOT would build a flyover at the Blue Diamond Interchange. The Court concludes that NDOT, which has the burden of proof on this issue, failed to establish

1 that Mr. Nassiri was actually aware NDOT would build the flyover prior to November 30, 2009.
2 NDOT failed to establish that it discussed the flyover at any public meetings. NDOT submits that
3 materials it made available at public meetings contained diagrams of the flyover, but the Court
4 concludes that a two-dimensional overhead diagram depicting a flyover, without any descriptive
5 attributes, does not provide actual notice of the flyover's appearance or impact. While Mr. Terry,
6 as a road design expert, may be able to testify to the probable dimensions and heights of a
7 flyover by looking at a two-dimensional diagram, the Court concludes that ordinary citizens do
8 not have the same knowledge or expertise. Moreover, Mr. Nassiri testified that he was unable to
9 decipher the existence or characteristics of a flyover in the diagrams presented to him by NDOT
10 even at the time of trial. He further testified that he was unaware of the flyover until December
11 2010 after NDOT had begun constructing a substantial retaining wall for the flyover.

12 2. The Court further concludes that no information provided to Mr. Nassiri during
13 the condemnation process put him on notice of a flyover. On the contrary, NDOT's NRCP 16.1
14 disclosures in the Condemnation Action and documents it provided to Mr. Nassiri, or his
15 counsel, during negotiations of the Settlement Agreement specifically did not include any
16 documents, diagrams or maps that showed or mentioned any flyover. It is also undisputed that
17 while NDOT made construction plans available to Mr. Nassiri, those construction plans did not
18 contain any flyover. Thus, there is no evidence that Mr. Nassiri knew or was ever told about the
19 flyover until he observed the flyover himself in December 2010.

20 3. Furthermore, the Court finds that Mr. Nassiri could have maintained an action for
21 rescission of the Settlement Agreement prior to 2010. For the statute of limitations to run on
22 rescission, all material elements necessary for Mr. Nassiri's claim for rescission must have
23 existed. Brady Vorwerck, 130 Nev. Adv. Op. 68, 333 P.3d at 232. While NDOT has established
24 that it always intended on building the flyover, the final element was not present until
25 construction. NDOT did not even retain a contractor to build the flyover until mid-2009 and the
26 flyover was not actually constructed until 2010. Prior to 2010, NDOT might have chosen to not
27 build the flyover at all. If NDOT had not built the flyover, then Mr. Nassiri could not have
28 rescinded the Settlement Agreement. Therefore, Mr. Nassiri could not rescind the Settlement

1 Agreement, as a matter of law, until it was reasonably certain that the flyover would be built.
2 Moreover, there is no evidence that Mr. Nassiri was aware of the design build contract, or Las
3 Vegas Paving Corp.'s flyover plans, until Las Vegas Paving Corp. began constructing the flyover
4 in 2010. Therefore, the Court concludes that Mr. Nassiri did not have actual knowledge of the
5 flyover or his alleged "mistake" until 2010, well after the November 2009 reference date for the
6 statute of limitations.

7 **B. The statute of limitations was tolled until Mr. Nassiri discovered or should have**
8 **discovered the material facts of his claim.**

9 Even if the cause of action existed prior to 2010, a statute of limitations does not begin to
10 run under the discovery rule until "the claimant discovers, or reasonably should have discovered,
11 the material facts for the action, including the damages." Brady Vorwerck v. New Albertson's,
12 130 Nev. Adv. Op. 68, 333 P.3d 229, 232 (2014), *reh'g denied* (Nov. 10, 2014); Wagner v.
13 Chevron U.S.A., Inc., 281 P.3d 1228 (Nev. 2009)³; Bemis v. Estate of Bemis, 114 Nev. 1021,
14 1028, 967 P.2d 437, 442 (1998); Merck & Co. v. Reynolds, 559 U.S. 633, 644 (2010)
15 (recognizing a cause of action accrues when a plaintiff discovers through reasonable diligence
16 that a complete and present cause of action exists)

17 "When the plaintiff knew or in the exercise of proper diligence should have known of the
18 facts constituting the elements of his cause of action is a question of fact for the trier of fact."
19 Siragusa v. Brown, 114 Nev. 1384, 1391, 971 P.2d 801, 806 (1998); Day v. Zubel, 112 Nev. 972,
20 977, 922 P.2d 536, 539 (1996). "Mere ignorance as to reasonably accessible information will not
21 delay or stop accrual of a discovery-based statute of limitation if the fact finder determines that
22 the party failed to exercise diligence." Wagner v. Chevron U.S.A., Inc., 281 P.3d 1228 (Nev.
23 2009). Therefore, the overriding question when analyzing the discovery rule is whether Mr.
24 Nassiri exercised reasonable diligence.

25 As a caveat to this, however, the statute of limitations is also tolled when a party relies
26 upon another party's false representations; even when the reliance is negligent. El Pollo Loco,

27
28 ³ Unpublished, but cited by Defendant.

1 Inc. v. Hashim, 316 F.3d 1032, 1040 (9th Cir. 2003)(quoting Storage Servs. v. Oosterbaan, 214
2 Cal.App.3d 498, 508, 262 Cal.Rptr. 689 (Cal.Ct.App.1989); see also Van Meter v. Bent Constr.
3 Co., 46 Cal.2d 588, 595, 297 P.2d 644 (Cal.1956) (negligent reliance should not bar equitable
4 relief where plaintiff relied in good faith upon defendant's false representations); see also TRW
5 Inc. v. Andrews, 534 U.S. 19, 29 (2001) (recognizing that if an agency conceals an offending
6 action that the “generally applicable discovery rule and the misrepresentation exception would
7 operate to toll the statute of limitations until the concealment is revealed”).

8 4. The Court concludes that Mr. Nassiri exercised reasonable diligence but,
9 nonetheless, did not discover his claim until 2010.

10 **1. Mr. Nassiri exercised reasonable diligence prior to executing the Settlement**
11 **Agreement.**

12 NDOT argued that by virtue of its holding public meetings regarding the Blue Diamond
13 Interchange the public—including Mr. Nassiri—was on notice of a future flyover. Further, that
14 had Mr. Nassiri been diligent he would have discovered other publically available information
15 referencing a flyover. Therefore, NDOT argued, Mr. Nassiri was on inquiry notice from 1999
16 forward and, therefore, should have brought his action for rescission within three years after the
17 signing of the Settlement Agreement in 2005.

18 The determination of diligence is a factual one that requires that the Court analyze the
19 specific facts and circumstances of a case. Diligence, however, does not require that a person
20 avail themselves of all accessible information. In fact, the discovery rule will delay the accrual of
21 a discovery-based statute of limitation if the fact finder determines that the party exercised
22 diligence, even when the plaintiff was ultimately ignorant of reasonably accessible information.
23 Siragusa, 114 Nev. at 1394, 971 P.2d at 807; Wagner, 281 P.3d 1228 (Nev. 2009).

24 It appears to the Court that the information cited to by NDOT was publically available
25 but not in the public record by way of “recording.” Unlike the case of real property transactions,
26 and encumbrances, where a properly recorded instrument is a matter of public record, and
27 constitutes constructive notice of its contents to the world, the “publicly available documents”
28 here were not “recorded” with the county or against the property. Instead one would have to

1 seek out the informational handouts and environmental documents at public libraries and, upon
2 request, from NDOT's offices. See generally Allen v. Webb, 87 Nev. 261, 272, 485 P.2d 677,
3 684 (1971). Even when courts have considered the investigation of public records, courts stop
4 short of requiring a plaintiff to continuously scour recorded documents to unveil a cause of
5 action. See e.g. Techni-Graphic Servs., Inc. v. Majestic Homes, Inc., No. 2:02CV923DAK, 2005
6 WL 357208, at *2 (D. Utah Feb. 11, 2005); Amini v. Bank of Am. Corp., No. C11-0974RSL,
7 2012 WL 398636, at *6 (W.D. Wash. Feb. 7, 2012).

8 Even if Mr. Nassiri were on inquiry notice, that would not equate to "discovery."
9 "Inquiry notice" refers to the point where the facts would lead a reasonably diligent person to
10 investigate further, but that is not necessarily the point at which he would have discovered facts
11 constituting a claim. Merck & Co. v. Reynolds, 559 U.S. 633, 651 (2010). The limitations period
12 cannot start before "discovery" can take place. Id.

13 NDOT argued that Mr. Nassiri was on inquiry notice during the period after the state
14 formally expressed its intention to condemn his property, in August 2003, including during the
15 Condemnation Action. Mr. Nassiri testified that he acted as a reasonable adjoining land owner
16 should; he investigated the Blue Diamond Interchange as it affected his property, specifically the
17 amount of property to be taken and access to his property. This evidence was uncontroverted.
18 Further, the record reflects that Mr. Nassiri attended at least the initial meeting and sent NDOT
19 correspondence requesting that he be apprised of any developments and plans. At that time, maps
20 created by NDOT were expressly preliminary and for discussion purposes only.

21 Later, Mr. Nassiri began direct meetings with NDOT's engineering department
22 concerning his property. NDOT provided no evidence at trial that any flyover was discussed at
23 those meetings. On the other hand, internal emails between NDOT's engineers, NDOT's
24 Director of Engineering made it clear that NDOT would construct the flyover and that NDOT
25 needed to acquire the right-of-way for the flyover immediately. (Tr. Exh. 158). By June 2003,
26 NDOT had confirmed that traffic volumes necessitated the building of a flyover. (Tr. Exh. 156).
27 Furthermore, by 2004, NDOT had created engineering files for the design of the flyover. (Tr.
28 Exh. 155). While NDOT was unsure when it would begin construction of a flyover, according to

1 Mr. Terry it specifically accommodated a flyover in the design of the realigned Blue Diamond
2 Interchange. It was not clear from the testimony that the Right of Way director with whom Mr.
3 Nassiri and his counsel negotiated were on notice of the planned flyover. Finally, even if the
4 planned flyover was common knowledge, the design and location of the flyover was purely
5 theoretical until years later when the design was completed.

6 In August 2003, while NDOT was internally planning the flyover and acquiring the right-
7 of-way necessary to build the flyover, NDOT formally advised Mr. Nassiri of its intention to
8 acquire the Condemned Property. Assuming Mr. Nassiri was still on some kind of inquiry notice,
9 the question is whether he acted with reasonable diligence at that time.

10 On October 1, 2003, NDOT obtained an appraisal of the Condemned Property. Despite
11 NDOT's knowledge that it would build a flyover, the appraisal omitted the flyover from the
12 project's after-condition and NDOT's review specifically noted that Mr. Nassiri's remaining
13 property would continue to benefit from its exposure from I-15. Immediately thereafter, NDOT
14 made an offer to purchase the Condemned Property at the appraised value. After receiving the
15 appraisal, Mr. Nassiri hired Mr. Chapman to commence negotiations with NDOT. In May 2004,
16 Mr. Nassiri and Mr. Chapman met with NDOT's right-of-way director Ms. Mireles. Testimony
17 was unrefuted that the purpose of that meeting was for Mr. Nassiri and Mr. Chapman to discuss
18 with NDOT's its planned development of the Blue Diamond Interchange. They also discussed
19 NDOT making the Exchange Property available to Mr. Nassiri. At that meeting, NDOT
20 presented maps and diagrams to Mr. Nassiri and Mr. Chapman depicting the "after condition" of
21 the Blue Diamond Interchange. The record is unrefuted that the flyover was not discussed at the
22 meeting, nor was it depicted on any of the documents provided at that time.

23 NDOT formally commenced an action to condemn the Condemnation Property. In
24 mandatory NRCP 16.1 disclosures NDOT was required to provide all relevant documents and
25 NDOT made available to Mr. Nassiri the purported "construction plans" of the Blue Diamond
26 Interchange to meet that requirement. Mr. Nassiri's counsel reviewed those plans. It is
27 undisputed that the construction plans provided did not show any flyover. Mr. Nassiri's counsel
28 also requested all documents related to the realignment. In response, NDOT disclosed no

1 communications, plans, or maps that depicted any type of flyover.⁴

2 After numerous meetings Mr. Nassiri and NDOT entered into the Settlement Agreement.
3 While negotiating the Settlement Agreement and First Amendment, NDOT provided Mr. Nassiri
4 with diagrams of a realigned and reconstructed Blue Diamond Interchange which did not include
5 any flyover.

6 NDOT argued that Mr. Nassiri did not exercise diligence, suggesting that had he done so
7 he would have discovered documents at the library or at NDOT's offices that showed a flyover.
8 The Court does not find NDOT's argument persuasive. The Court finds, however, that Mr.
9 Nassiri, and his counsel, actively engaged with NDOT in negotiations regarding the after-
10 condition of Blue Diamond Interchange. These meetings included high ranking NDOT officials,
11 including NDOT engineers and its Chief of Right-of-Way. During these meetings, NDOT's
12 proposed plan for the Blue Diamond Interchange was the topic of discussion. Based on the
13 evidence, a flyover was never mentioned by NDOT. Mr. Nassiri received appraisals (including
14 NDOT's review) for the Condemned Property that stated his remaining property would maintain
15 its visibility to Interstate-15 in an after-condition that excluded the flyover. The Exchange
16 Property was similarly valued at the same price as the Condemned Property. Mr. Nassiri, by and
17 through his counsel, reviewed NDOT's actual construction plans for the Blue Diamond
18 interchange, which did not include any flyover. Indeed, the flyover had yet to be designed.

19 5. The Court concludes, that reasonable diligence did not require Mr. Nassiri to seek
20 out and review every available document in the public sphere to determine whether they
21 contradicted the documents provide by NDOT in negotiation and discovery. Despite Mr.
22 Nassiri's lengthy discussions with NDOT, and receipt and review of documents during litigation,
23 it is undisputed that Mr. Nassiri never learned of the flyover. He satisfied his duty of reasonable
24 diligence.

25 6. The Court also concludes, despite NDOT's position, that Mr. Nassiri was not
26

27 ⁴ NDOT did not produce the 2004 Environmental Assessment during litigation so the evidence was
28 excluded. NDOT argued the 2004 EA was material evidence of notice, however, it could not be considered.

1 required to seek out the 2004 Environmental Assessment, or the public meeting materials
2 relating to it, in order to satisfy any reasonable diligence requirement. By that time, NDOT and
3 Mr. Nassiri had met to negotiate a settlement of the litigation, yet at no time did NDOT provide
4 the 2004 EA or reference it in the maps and diagrams given to Mr. Nassiri during litigation and
5 the settlement negotiations.⁵

6 7. Additionally, the Court is not persuaded by NDOT's argument that Mr. Nassiri
7 had some obligation to review NDOT's previous planning documents. The Settlement
8 Agreement was entered into in the context of a condemnation. Under the United States
9 Constitution, Nevada Constitution, and NRS Chapter 37, the State has certain duties and
10 obligations with respect to land owners and the award of just compensation. The State has
11 consistently advocated, and the Nevada Supreme Court has agreed, that NDOT cannot face
12 liability based on mere plotting or planning of a project at a "vague and distant future time."
13 Sproul Homes of Nevada v. State ex rel. Dep't of Highways, 96 Nev. 441, 443, 611 P.2d 620,
14 621 (1980); Santa Fe Pac. Trust, Inc. v. City of Albuquerque, 335 P.3d 232, 240 (NM Ct. App.
15 2014) *cert. granted* (Aug. 29, 2014); Sederquist v. City of Tiburon, 590 F.2d 278, 282 (9th Cir.
16 1978). A government entity does not become liable for a project until its "activities have gone
17 beyond the planning stage." Buzz Stew, L.L.C. v. City of N. Las Vegas, 124 Nev. 224, 229, 181
18 P.3d 670, 673 (2008). Courts have similarly recognized that preliminary planning actions such as
19 public meetings and publications reflecting uncertainty cannot create liability; otherwise "the
20 process of community planning would either grind to a halt, or deteriorate to publication of
21 vacuous generalizations regarding the future use of land." Sproul Homes of Nevada, 96 Nev. at
22 443, 611 P.2d at 621 (1980); see also Joseph M. Jackovich Revocable Trust v. State, Dep't of
23 Transp., 54 P.3d 294, 295 (Alaska 2002).

24 8. NDOT argued that Mr. Nassiri could not have acted diligently unless he reviewed
25 all preliminary documents, including documents available for viewing at public meetings, plan
26 proposals, Environmental Assessments and planning documents dating back to 1999. The Court

27
28 ⁵ Nor was the 2004 EA timely produced in the NRCP 16.1 disclosures in the instant litigation.

1 concludes that reasonable diligence does not require a landowner to seek out documents such as
2 the Environmental Assessment for a subsequent phase of a project when, like here, the NDOT
3 and the landowner are engaged in direct discussions regarding a different phase. Because
4 preliminary plans and proposals are not actionable, diligence does not require that Mr. Nassiri
5 seek out and review prior plans and proposals, especially in light of the fact that the location and
6 design were not finalized until the design build phase of the flyover project. The Court finds that
7 nothing in the materials Mr. Nassiri was provided during the negotiation of the settlement of the
8 condemnation action related to his parcel would have put him on notice of the flyover. To the
9 contrary, the maps and diagrams provided by NDOT to Mr. Nassiri and his counsel which
10 purported to depict the Blue Diamond Interchange's after-condition did not include a flyover.

11 9. Therefore, the Court concludes that Mr. Nassiri's diligence prior to the execution
12 of the Settlement Agreement and First Amendment tolled the statute of limitations under the
13 discovery rule.

14 **2. Mr. Nassiri exercised reasonable diligence prior to discovering his cause of**
15 **action in 2010.**

16 After the closing of the Settlement Agreement and First Amendment, NDOT began to
17 reconstruct and realign the Blue Diamond Interchange. By fall 2006, NDOT had ceased
18 construction on the Blue Diamond Interchange. At that time, the Blue Diamond Interchange
19 looked like the diagrams and plans that NDOT had produced and shown Mr. Nassiri in 2004 and
20 2005, as well as the sketch maps that were to accompany the Settlement Agreement and First
21 Amendment.

22 The Settlement Agreement also called for a two-year easement. In July of 2007, Mr.
23 Nassiri asked NDOT whether it had completed the reconstruction and realignment of the Blue
24 Diamond Interchange and whether it would release the temporary easement created by the
25 Settlement Agreement across the Exchange Property. (Tr. Exh. 110). On August 3, 2007, NDOT
26 notified Mr. Nassiri that no longer needed the temporary easement and that it would be releasing
27 the easement. (Tr. Exh. 111).

28 10. The Court concludes that Mr. Nassiri reasonably assumed that the Blue Diamond

1 Interchange had been completed at the time of the construction easement. That construction was
2 completed, and the Interchange appeared consistent with the plans and diagrams provided during
3 the Condemnation Action and settlement negotiations. The Court does not believe a reasonable
4 land owner would have necessarily followed the efforts of NDOT in 2007 to obtain funding from
5 the Nevada Legislature to construct the Interstate South Corridor Improvement Project. There is
6 no evidence that Mr. Nassiri was provided notice of any public meetings regarding the Interstate
7 South Corridor Improvement Project, or the 2008 Environmental Assessment. Likewise, in 2009,
8 when NDOT selected Las Vegas Paving Corp. as the design builder of the Interstate South
9 Corridor Improvement Project, there is no evidence that Mr. Nassiri was or should have been
10 aware that Las Vegas Paving Corp.'s proposed project would include a flyover at the Blue
11 Diamond Interchange.

12 In April of 2010 Las Vegas Paving Corp. approached Mr. Nassiri to obtain a lease on the
13 Exchange Property which was notice to Mr. Nassiri that Las Vegas Paving Corp. intended on
14 improving the Blue Diamond Interchange. (Tr. Exh. 125).

15 Mr. Nassiri was, therefore, not on inquiry notice of NDOT's reconstruction of the Blue
16 Diamond Interchange, and the statute tolled, until April 2010. Based on filing of his Complaint
17 in this action Mr. Nassiri must have been on notice of his claims no later than November 30,
18 2009. During the Condemnation Action, NDOT knew of long term plans, when traffic counts
19 supported construction, to build a flyover of a general size and dimensions based on the existing
20 roadway design and right of way, although the location of the flyover changed over time. At the
21 time Mr. Nassiri entered into the Settlement Agreement with NDOT, he was unaware that NDOT
22 intended on constructing a flyover at the Blue Diamond Interchange.

23 11. Furthermore, the Court concludes that Mr. Nassiri was on inquiry notice no
24 earlier than April 2010 that NDOT had contracted with Las Vegas Paving to construct a flyover.
25 Further, the nature of the flyover and its impact on Mr. Nassiri's property was not discovered
26 until December, 2010.

27 12. The Court concludes that based on the circumstances of the case, Mr. Nassiri
28

1 exercised diligence in investigating NDOT's intent in 2005 when he executed the Settlement
2 Agreement.

3 13. Despite his diligence, Mr. Nassiri was on inquiry notice of NDOT's plans to
4 construct a flyover no earlier than April, 2010, and did not actually discover the design of the
5 flyover and its impact on his land until December 2010. Therefore, the statute of limitations was
6 tolled pursuant to the discovery rule until December 2010. Mr. Nassiri brought his claim for
7 rescission on November 30, 2012, less than three years after learning of his cause of action.
8 Based thereon, the Court concludes that, Mr. Nassiri's claim for rescission is not barred by the
9 applicable statute of limitations.

10 IT IS SO ORDERED, ADJUDGED, AND DECREED.

11 Dated this 27 day of August, 2015.



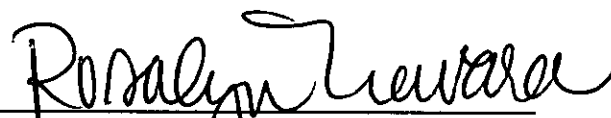
DISTRICT COURT JUDGE GLORIA J. STURMAN

14
15 **CERTIFICATE OF SERVICE**

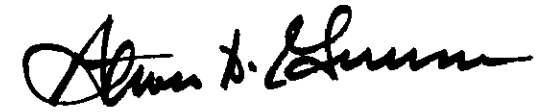
16 I hereby certify that on or about the date signed, a copy of this Order was electronically
17 served and/or placed in the attorney's folders maintained by the Clerk of the Court and/or
18 transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper
parties as follows:

19 Eric R. Olsen
20 Garman Turner Gordon LLP
21 650 White Drive, Suite 100
Las Vegas, NV 89119

22 William L. Coulthard
23 3800 Howard Hughes Pkwy 17th Fl
Las Vegas, NV 89109



25 Rosalyn Navara,
26 Judicial Executive Assistant



CLERK OF THE COURT

1 WILLIAM L. COULTHARD, ESQ. (#3927)
ERIC M. PEPPERMAN, ESQ. (#11679)
2 e.pepperman@kempjones.com
KEMP, JONES & COULTHARD, LLP
3 3800 Howard Hughes Parkway, 17th Flr.
Las Vegas, Nevada 89169
4 Telephone: (702) 385-6000
Facsimile: (702) 385-6001
5

ADAM PAUL LAXALT, ESQ.
6 Attorney General
DENNIS V. GALLAGHER, ESQ. (#955)
7 Chief Deputy Attorney General
dgallagher@ag.nv.gov
8 AMANDA B. KERN, ESQ. (#9218)
Deputy Attorney General
9 akern@ag.nv.gov
OFFICE OF THE ATTORNEY GENERAL
10 555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
11 Telephone: (702) 486-3420
Facsimile: (702) 486-3768
12 *Attorneys for the State*

DISTRICT COURT

CLARK COUNTY, NEVADA

13
14
15 FRED NASSIRI, individually and as trustee
16 of the NASSIRI LIVING TRUST, a trust
formed under Nevada law,

17
18 Plaintiffs,

19 vs.

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

23 Defendants.
24

Case No.: A672841
Dept. No.: XXVI

**MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFF'S RESCISSION CLAIM
BASED ON THE COURT'S 8/29/15
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT**

Date of Hearing:

Time of Hearing:

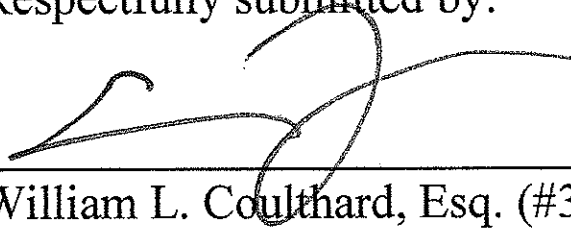
25 Defendant/Counterclaimant State of Nevada, on relation of its Department of
26 Transportation (the "State"), by and through its counsel of record, Kemp, Jones & Coulthard,
27 LLP, and the Office of the Attorney General, hereby moves this Honorable Court to enter
28

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

1 summary judgment in the State's favor on Plaintiff's Rescission Claim. This motion is made
2 and based on the Court's August 29, 2015, findings of fact, conclusions of law, and judgment
3 regarding the State's statute of limitations defense (the "Trial Ruling"), the Nevada Supreme
4 Court's recent decision in *Land Baron Investments, Inc. v. Bonnie Springs Family Limited*
5 *Partnership*, 131 Nev., Adv. Op. 69 (September 17, 2015), the attached memorandum of points
6 and authorities, the pleadings and papers on file herein, and any oral argument that the Court
7 may hear.

8 DATED this 12 day of October, 2015.

9 Respectfully submitted by:

10 

11 William L. Coulthard, Esq. (#3927)

12 Eric M. Pepperman, Esq. (#11679)

13 Mona Kaveh, Esq. (#11825)

14 KEMP, JONES & COULTHARD, LLP

15 3800 Howard Hughes Parkway, 17th Flr.

16 Las Vegas, Nevada 89169

17 Adam Paul Laxalt, Esq. (#12426)

18 Dennis V. Gallagher, Esq. (#955)

19 Amanda B. Kern, Esq. (#9218)

20 OFFICE OF THE ATTORNEY GENERAL

21 555 E. Washington Avenue, Suite 3900

22 Las Vegas, Nevada 89101

23 *Attorneys for the State*

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

NOTICE OF MOTION

TO: Plaintiff, Fred Nassiri, individually and as trustee of the Nassiri Living Trust; and

TO: Eric R. Olsen, Esq., and Dylan T. Ciciliano, Esq., his attorneys.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the State will bring the above-entitled **MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S RESCISSION CLAIM BASED ON THE COURT'S 8/29/15 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT** on for hearing on the 17 day of November, 2015, at 9:30 a.m. in Department XXVI of the Eighth Judicial District Court, 200 South Third Street, Las Vegas, Nevada, or as soon thereafter as counsel may be heard.

DATED this 12 day of October, 2015.

Respectfully submitted by:



William L. Coulthard, Esq. (#3927)
Eric M. Pepperman, Esq. (#11679)
Mona Kaveh, Esq. (#11825)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169

Adam Paul Laxalt, Esq. (#12426)
Dennis V. Gallagher, Esq. (#955)
Amanda B. Kern, Esq. (#9218)
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for the State

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

While the Court has recently ruled that Plaintiff's rescission claim is not time-barred, its findings of fact and conclusions of law in support of that Trial Ruling require that summary judgment be entered in favor of the State. The Court's Trial Ruling establishes that Plaintiff's alleged "mistake" neither occurred at the time of contracting nor relates to the existence or non-existence of a material *fact* that existed at the time of contracting, as required by Nevada law. Rather, as confirmed by the Court's Trial Ruling, Plaintiff's so-called "mistake" involved a contingent and discretionary *choice* by the State to ultimately build the Flyover, which was not made until several years *after* Plaintiff executed the 2005 Settlement Agreement. This "mistake" cannot substantiate Plaintiff's rescission claim as a matter of law, regardless of its timeliness. Even if it could, the Nevada Supreme Court's recent decision in *Land Baron v. Bonnie Springs* holds that Plaintiff bore the risk of his mistake. Accordingly, partial summary judgment is now required on Plaintiff's rescission claim despite this Court's decision on the statute of limitations issue.

II.

STATEMENT OF FACTS

This matter came before the Court on May 4, 2015, for a limited bench trial on the timeliness of Plaintiff's claim to rescind the 2005 Settlement Agreement. The Court rendered its Trial Ruling on August 29, 2015, concluding that Plaintiff's rescission claim was not barred by the statute of limitations.¹ The Court reasoned that Plaintiff's claim was "timely-filed" because the facts giving rise to Landowners' cause of action did not exist until the Flyover was fully designed, and construction was underway, in 2010:

¹ The State expressly reserves all rights for appellate review of the Court's Trial Ruling.

1 *[T]he Court finds that Mr. Nassiri could [not] have maintained*
2 *an action for rescission of the [2005] Settlement Agreement*
3 *prior to 2010....* NDOT did not even retain a contractor to build
4 the Flyover until mid-2009 and the flyover was not actually
5 constructed until 2010. Prior to 2010, NDOT *might* have *chosen*
6 to not build the flyover at all. *If NDOT had not built the flyover,*
7 *then Mr. Nassiri could not have rescinded the Settlement*
8 *Agreement.* Therefore, Mr. Nassiri could not rescind the
9 Settlement Agreement, *as a matter of law*, until it was reasonably
10 certain that the flyover would be built.

11 Trial Ruling, 12:20-13:2 (emphasis added).

12 The State strongly disagrees with the Court's overall Trial Ruling, and it disputes nearly
13 each and every one of the Court's individual findings of fact and conclusions of law. Despite
14 these disagreements, however, the State does not seek reconsideration of the Court's Trial
15 Ruling. Rather, the State requests partial summary judgment on Plaintiff's rescission claim
16 pursuant to the Court's Trial Ruling, which is a procedure affirmed by the Nevada Supreme
17 Court. *See Awada v. Shuffle Master, Inc.*, 173 P.3d 707, 712 (Nev. 2007) (holding that the
18 district court did not abuse its discretion by applying its findings of fact and conclusions of law
19 from a separate limited bench trial to remaining claims on summary judgment).

20 II.

21 ARGUMENT

22 A. The Court's Trial Ruling Establishes That Plaintiff's Alleged "Mistake" Did 23 Not Occur At The Time He Entered The 2005 Settlement Agreement.

24 The first—and most basic—requirement of a claim for rescission on the ground of
25 mistake is that the mistake *must* occur at the time the contract is made. *Home Savers, Inc. v.*
26 *United Sec. Co.*, 741 P.2d 1355, 1356-57 (Nev. 1987) (adopting Restatement (Second) of
27 Contracts § 153 (1981)). While the claim may not accrue *for statute of limitations purposes*
28 until sometime after the mistake occurs (i.e., when the plaintiff *discovers* the facts constituting
the mistake), it nevertheless exists from the moment the mistake is made. NRS 11.190(3)(d).
The *discovery* rule for the *accrual* of the cause of action does not change the time that the
mistake occurred, which must have been at the time the contract was formed. *Home Savers*,
741 P.2d at 1356.

1 Here, the Court found that Plaintiff could not have *discovered* the facts constituting his
2 alleged mistake until 2010, when the Flyover was actually designed and “it was reasonably
3 certain that the flyover would be built.” Trial Ruling, 12:28-13:1. To this end, the Court
4 determined that *Plaintiff could not have even maintained a rescission claim based on his*
5 *alleged mistake prior to 2010* because, before then, “NDOT *might* have *chosen* to not build the
6 flyover at all.” *Id.* at 12:26-27(emphasis added). According to the Trial Ruling, “[i]f NDOT
7 had not built the flyover, then Mr. Nassiri could not have rescinded the Settlement Agreement.”
8 *Id.* at 12:27-28.

9 These findings foreclose any possibility that Plaintiff will be able to establish the
10 elemental requirement that his alleged “mistake” occurred at the time he entered the 2005
11 Settlement Agreement. By concluding that Plaintiff could not have brought his rescission claim
12 unless and until the State actually chose to build the Flyover in 2010, the Court has determined
13 that the mistake underlying his claim did not occur in 2005. The “mistake” and the “claim” are
14 inextricably intertwined, such that the mistake cannot exist without the ability to bring the
15 claim. If Plaintiff’s mistake had occurred in 2005, then he could have “maintained an action for
16 rescission of the Settlement Agreement prior to 2010,” which the Court held he could *not* do.

17 Because the Court held that Plaintiff could *not* file his claim to rescind the Settlement
18 Agreement, “*as a matter of law*, until it was reasonably certain that the flyover would be built
19 [in 2010],” it equally follows that Plaintiff’s “mistake” did not exist, as a matter of law, until
20 that same time. Accordingly, the Court’s Trial Ruling establishes that Plaintiff’s alleged
21 “mistake” did not occur at the time the parties entered the 2005 Settlement Agreement, which is
22 a requisite element of his rescission cause of action, and summary judgment on this claim is
23 required in the State’s favor.

24 ///

25 ///

1 **B. The Court’s Trial Ruling Further Confirms That Plaintiff’s Alleged**
2 **“Mistake” Does Not Relate To The Existence Or Non-Existence Of A**
3 **Material Fact That Existed At The Time Of Contracting.**

4 “To justify rescission because of a unilateral mistake, the mistake must relate to the
5 existence or non-existence of a material fact as it *exists* at the time of the agreement, *not to a*
6 *future contingency.*” *Kassebaum v. Kassebaum*, 42 S.W.3d 685, 695 (Mo. 2001) (emphasis
7 added); *accord Tarrant v. Monson*, 619 P.2d 1210, 1211 (Nev. 1980) (“[A] mistake is a state of
8 mind not in accord with the *facts... [a]t the time the [] contract was formed.*”) (Emphasis
9 added). Uncertainty about the future is not the same thing as a mistake of fact. A mistaken
10 belief that a future event would or would not occur is not a “mistake” for purposes of rescission.
11 Restatement (Second) of Contracts, § 151, Comment A. “*One who is uncertain assumes the*
12 *risk that the facts will turn out unfavorably to his interests.*” *Tarrant*, 619 P.2d at 1211
13 (emphasis added).

14 Here, the Court specifically found that Plaintiff’s only “mistake” in 2005 was being
15 “*unaware of the fact that NDOT would build a flyover at the Blue Diamond Interchange*” at
16 some point in the future. Trial Ruling, 11:27 (emphasis added). But this *fact* did not exist at the
17 time that Plaintiff entered into the 2005 Settlement Agreement. While the State may have
18 *intended* in 2005 to eventually build a Flyover at the Blue Diamond Interchange, nobody knew
19 how any Flyover would look, how it would allegedly affect Plaintiff’s property, if at all, or even
20 whether it would actually ever be built. As acknowledged and confirmed by the Court’s Trial
21 Ruling, none of *these facts* existed until mid-2009 at the earliest:

22 NDOT did not even retain a contractor to build the flyover until
23 mid-2009 and the flyover was not actually constructed until 2010.
24 *Prior to 2010, NDOT might have chosen to not build the flyover*
25 *at all.* If NDOT had not built the flyover, then Mr. Nassiri could
26 not have rescinded the Settlement Agreement. Therefore, *Mr.*
27 *Nassiri could not rescind the Settlement Agreement, as a matter*
28 *of law, until it was reasonably certain that the flyover would be*
29 *built.*

30 Trial Ruling, 12:25-13:1 (emphasis added).

31 In 2005, whether a Flyover would be built was nothing more than a future contingency.
32 Plaintiff did not have a mistaken belief regarding the existence or non-existence of a material

1 fact that existed in 2005; he (like the State) was simply uncertain about the ultimate
2 construction and appearance of a future Flyover that may or may not have ever been built.
3 While Plaintiff complains that these uncertain facts turned out unfavorably to his interests,² he
4 bore that risk. Plaintiff could have sought to include terms in the 2005 Settlement Agreement
5 that addressed the possibility that the State might further improve its public right-of-way near
6 his property but chose not to.³ Instead, he bargained with conscious uncertainty regarding
7 future construction contingencies, which does not equate to a mistake of fact.

8 Plaintiff's mistaken belief in 2005 that the Flyover would or would not be built is not a
9 "mistake" for purposes of rescission, and his failure to address future uncertainties at the time of
10 contracting is not a valid reason to rescind the underlying 2005 Settlement Agreement. *See*
11 Restatement (Second) of Contracts, § 151, Comment A. If it were, Nevada's courts would be
12 clogged with "mistaken" litigants looking to unwind deals any time they subjectively believed
13 that unknown facts at the time of contracting failed to turn out in their favor. The Court's Trial
14 Ruling concludes that Plaintiff's alleged mistake relates to a future contingency, not the
15 existence or non-existence of a material fact as it existed at the time of the Settlement
16 Agreement as required by Nevada law, and partial summary judgment is required in the State's
17 favor on Plaintiff's rescission claim.

20 ² The State disagrees that any uncertainties in 2005 about the ultimate construction and
21 appearance of the Flyover turned out unfavorably to Plaintiff's interests. Plaintiff's own expert
22 appraiser agrees that the subject property is worth millions of dollars more than what Plaintiff
23 paid the State to acquire it under the 2005 Settlement Agreement. Although he has repeatedly
24 told this Court that the Flyover destroys the visibility of his property from I-15, Plaintiff is
25 simultaneously telling the rest of the world through his marketing materials that the Property
26 has excellent visibility from I-15. Plaintiff's property has never enjoyed completely
27 unobstructed views from I-15. There were certain minimal blind spots before the Flyover was
28 constructed, and there are certain minimal blind spots today. But the several-story hotel and
casino that is intended to be built on this property will hardly be invisible because of the
Flyover. Like the rest of the similar properties on Las Vegas Boulevard, traffic on the I-15 will
still be able to see the improvements for miles in both directions. A three-second blind spot
while passing the Flyover is meaningless, and the State does not waive or concede any
arguments on these issues.

³ It certainly was not incumbent on the State to provide such terms without Plaintiff even
asking.

1 **C. Plaintiff's Rescission Claim Also Fails Under The Nevada Supreme Court's**
2 **Recent Decision In *Land Baron v. Bonnie Springs*.**

3 **1. *Land Baron* involved facts, claims, and legal arguments that are**
4 **strikingly similar to those present in this case.**

5 In 2004, Land Baron contracted to purchase land for \$17,190,000 from Bonnie Springs
6 to build a residential subdivision. *Id.* at 3. The property was located beyond the outskirts of
7 Las Vegas and was surrounded largely by undeveloped land. *Id.* Prior to executing the
8 purchase agreement, Land Baron confirmed Bonnie Springs' title to the property but did not
9 inquire into water or access rights or do any other due diligence. *Id.* Land Baron drafted the
10 purchase agreement, which did not mention access or water rights or make the contract
11 contingent upon its ability to secure access, water, or any other utility necessary for the planned
12 subdivision. *Id.*

13 After ultimately failing to secure the water and access necessary to support a
14 subdivision, Land Baron filed suit against Bonnie Springs. It asserted claims for, *inter alia*,
15 breach of contract, breach of the implied covenant of good faith and fair dealing, intentional
16 misrepresentation and non-disclosure, and rescission on the ground of mistake. *Id.* at 5-6.
17 Bonnie Springs filed counterclaims of its own. *Id.* at 6.

18 The case was originally before Judge Herndon but was transferred to Judge Delaney.
19 Judge Delaney granted Bonnie Springs' motion for summary judgment on the access and water
20 rights issues. *Id.* She "found that *Bonnie Springs had no contractual duty to provide notice of*
21 *water rights issues or help secure water rights for the subject property, and that the burden*
22 *was on Land Baron to secure water rights.*" *Id.* (emphasis added). Judge Delaney denied
23 Land Baron's competing motion for summary judgment regarding mutual mistake. *Id.* "The
24 court found that *there was no mutual mistake because the parties did not know, at the time of*
25 *the agreement, whether there were sufficient access and water rights to support a subdivision*
26 *on the property, and it assigned the risk of that mistake to Land Baron.*" *Id.* (emphasis
27 added).
28

 Following these rulings, the case was transferred—coincidentally—to this Court. It
proceeded to trial on Bonnie Springs' counterclaims and resulted in a verdict in favor of Bonnie

1 Springs. *Id.* at 7. Land Baron appealed several issues, including Judge Delaney’s summary
2 judgment rulings, which involved facts, claims, and legal arguments that are indistinguishable
3 from those present in this case.

4 **2. The Nevada Supreme Court’s resulting opinion in *Land Baron***
5 **establishes that Plaintiff Nassiri bore the risk of his alleged mistake**
6 **in this case.**

7 Land Baron argued on appeal that “it was entitled to summary judgment on its rescission
8 claim because both Land Baron and Bonnie Springs mistakenly believed there would be
9 sufficient access and water rights for a subdivision on the property, giving rise to a mutual
10 mistake that would render the contract voidable.” *Id.* at 9. The Nevada Supreme Court rejected
11 this argument because Land Baron bore the risk of the alleged mistake:

12 If the party is aware at the time he enters into the contract “that he
13 has only limited knowledge with respect to the facts to which the
14 mistake relates but treats his limited knowledge as sufficient,” that
15 party will bear the risk. Restatement (Second) of Contracts §
16 154(b) (1981). *Moreover, if the risk is reasonably foreseeable*
17 *and yet the contract fails to account for that risk, a court may*
18 *infer that the party assumed that risk. United States v. Winstar*
19 *Corp.*, 518 U.S. 839, 905–06, (1996); *see also Tarrant v. Monson*,
20 619 P.2d 1210, 1211 (Nev. 1980) (“*One who is uncertain*
21 *assumes the risk that the facts will turn out unfavorably to his*
22 *interests,*” and where the party bargains “with conscious
23 uncertainty,” there cannot be mutual mistake).

24 *Here, we need not determine whether Land Baron and Bonnie*
25 *Springs shared a mistaken assumption about the certainty of*
26 *procuring access and water rights because Land Baron bore the*
27 *risk of mistake, foreclosing any possibility of rescinding the*
28 *contract based on a mutual mistake.* Land Baron is a
sophisticated and experienced land buyer and developer, and in
this instance, it contracted to purchase property that was well
beyond the outskirts of Las Vegas, surrounded by land that was
mostly undeveloped, flanked by dirt roads, and only a few
minutes away from Red Rock Canyon, a well-known
conservation area. *Land Baron also drafted the contract and its*
amendments. Yet, despite including a section for contingencies,
Land Baron failed to include language to address the possibilities
that a narrow gravel road may not provide sufficient access to a
subdivision, or that water may not be available to support a
neighborhood complete with large homes and horse pastures. *At*
best, this was a significant oversight for this type of project, and
it can be fairly inferred that by failing to provide for such
contingencies, Land Baron assumed the risk of mistake as to
these issues. Winstar Corp., 518 U.S. at 906.

1 Land Baron argues that Bonnie Springs assured it that water, at
2 least, would not be a problem. However, Land Baron points to no
3 evidence (as opposed to Land Baron's assertions) that Bonnie
4 Springs ever actually made such a statement and thus fails to
5 show a genuine issue of material fact. ***Rather, the record***
6 ***indicates that Land Baron entered into the contract without***
7 ***conducting any due diligence, hoping that it could procure***
8 ***water, access, and any other utility necessary to obtain***
9 ***development permits.*** A hope that things will work out is not the
10 same as a reasonable belief in a set of facts, and Land Baron
11 assumed the risk by proceeding with the contract despite having
12 limited knowledge of the actual conditions as to water and access.
13 Thus, rescission is not appropriate on the grounds of mutual
14 mistake.

15 *Id.* at 9-10 (emphasis added).⁴

16 The same is true here. Like in *Land Baron*, Plaintiff is a sophisticated and experienced
17 land buyer;⁵ he contracted to purchase property; he drafted the contract and its amendment; and,
18 even though Plaintiff was acquiring property immediately adjacent to public right-of-way, and
19 the State Department of Transportation's primary function is to improve such right-of-way for
20 the public good, Plaintiff (and his team of professionals) failed to perform any due diligence
21 into the Department's future construction plans or include language in the contract to address
22 the possibility that the Department might later construct additional improvements. Plaintiff not
23 only failed to consider or address these matters, he expressly "accepted full responsibility" for
24 his agreement and acquired the property "without warranty, 'as-is,' 'where-is,' and 'with all
25 faults.'" Settlement Agreement, ¶¶ 2.19(vi) and 2.04(a).

26 Even if Plaintiff had inquired into the State's public plans for an eventual Flyover, his
27 knowledge with respect to the Flyover still would have been limited. In 2005, nobody knew
28 how the future Flyover would look, how it would ultimately affect nearby property, if at all, or
even whether it would ever come to fruition. *See* Trial Ruling, 12:25-13:1 ("Prior to 2010..., it

24 ⁴ Although *Land Baron* involved an alleged mutual mistake, the points of law discussed therein
25 apply equally to the doctrine of unilateral mistake. It is well-settled under Nevada law, and
26 conceded by Plaintiff, that rescission of an agreement is ***not*** permitted on the ground of any
27 mistake (mutual or unilateral) where the party attempting to rescind bore the risk of the alleged
28 mistake. *Tarrant*, 619 P.2d at 1211 (rejecting plaintiff's claim on the ground of ***unilateral***
mistake because plaintiff bore the risk of the mistake).

⁵ Not only is Plaintiff a sophisticated and experienced real estate buyer, but he was also assisted
in this matter by a team of professionals, including lawyers, engineers, real estate appraisers,
and other real estate experts.

1 was [not] reasonably certain that the flyover would be built.”). Moreover, regardless of whether
2 Plaintiff was aware of the State’s *preliminary plans* for an eventual Flyover, it was nevertheless
3 foreseeable that the State would further improve its right-of-way in the future. Yet Plaintiff
4 failed to account for this contingency in the contract. As in *Land Baron*, Plaintiff proceeded
5 with the contract despite having limited knowledge regarding future construction within the
6 State’s right-of-way and, accordingly, it is inferred that Plaintiff assumed the risk of mistake as
7 to this issue.

8 **3. Plaintiff’s misrepresentation argument does nothing to change the**
9 **dispositive effect of *Land Baron*.**

10 Plaintiff has consistently argued that he did not bear the risk of his mistake (or that the
11 State caused his mistake) because the State supposedly misrepresented, either intentionally or
12 negligently, that there would *never* be a Flyover connecting eastbound Blue Diamond to
13 northbound I-15.⁶ A similar contention was raised in *Land Baron*. There, Land Baron argued
14 that the district court erred by denying its motion for summary judgment on its mistake-based
15 rescission claim because “Bonnie Springs misrepresented, either intentionally or negligently,
16 Land Baron’s ability to obtain access or water rights.” *Id.* at 11. The Nevada Supreme Court
17 rejected this argument, holding that Nevada law required Land Baron to show that Bonnie
18 Springs actually “supplied Land Baron with false information” to substantiate its
19 misrepresentation claims, which Land Baron could not do:

20 At the threshold, to establish a claim for either intentional or
21 negligent misrepresentation, Land Baron must show that Bonnie
22 Springs supplied Land Baron with false information. *Barmettler*
23 *v. Reno Air, Inc.*, 956 P.2d 1382 (Nev. 1998). ... *Land Baron*
24 *has provided no evidence that Bonnie Springs ever represented*
25 *that there would be no impediment to gaining access for a*
26 *subdivision..., or that Bonnie Springs had stated that it would*
27 *supply the property with water.*

28 *Id.* at 11-12 (emphasis added).

⁶ Plaintiff originally asserted a misrepresentation cause of action, which this Court dismissed at the outset under NRCP 12(b)(5). See 10/16/13 Order Granting in Part Defendant’s Motion to Dismiss. Since then, Plaintiff has repeatedly sought to recast his dismissed claims of misrepresentation as support for his rescission claim.

1 This same infirmity exists here. Plaintiff does *not* argue that the State ever *represented*
2 *that there would be no Flyover*—in the future. Nor does he argue that the State supplied him
3 with any false information. His misrepresentation argument rests entirely on the *absence* of a
4 representation. He contends that the State never raised the possibility that a Flyover might be
5 built in the future during negotiations over the Settlement Agreement, and that the State’s
6 *silence* somehow amounts to an affirmative misrepresentation that no Flyover would ever be
7 built. Plaintiff cannot simply reverse his prior, longstanding position on this issue to suit his
8 needs (as he has repeatedly done in the past) because his argument is memorialized in the
9 Court’s Trial Ruling:

10 In May 2004, Mr. Nassiri and Mr. Chapman met with NDOT’s
11 right-of-way director Ms. Mireles.... At that meeting, NDOT
12 presented maps and diagrams to Mr. Nassiri and Mr. Chapman
13 depicting the “after condition” of the Blue Diamond Interchange.
14 The record is unrefuted that *the flyover was not discussed at the*
15 *meeting, nor was it depicted on any of the documents provided*
16 *at that time.*

17 ...

18 While negotiating the Settlement Agreement and First
19 Amendment, NDOT provided Mr. Nassiri with diagrams of a
20 realigned and reconstructed Blue Diamond Interchange which did
21 not include any flyover.

22 ...

23 *Based on the evidence, a flyover was never mentioned by*
24 *NDOT....* Mr. Nassiri, by and through his counsel, reviewed
25 NDOT’s actual construction plans for the Blue Diamond
26 interchange, which did not include any flyover. *Indeed, the*
27 *flyover had yet to be designed.*

28 Trial Ruling, 16:15-17:8 (emphasis added). Plaintiff’s misrepresentation argument does nothing
to change the dispositive effect of *Land Baron*, and summary judgment in the State’s favor is
required.

4. Any non-disclosure argument likewise fails to change the required
outcome under *Land Baron*.

Although Plaintiff continually accuses the State of misrepresentations regarding the
Flyover, his charge is really one of non-disclosure (i.e., he was unaware that a Flyover might be
built because the State allegedly failed to disclose the possibility). This same argument,
however, was also rejected by the Nevada Supreme Court in *Land Baron*.

1 In its attempt to unwind the purchase agreement, Land Baron similarly argued that
2 “Bonnie Springs knew, and did not disclose, that the property could not be supplied with
3 adequate water [or access].” *Id.* at 12. The Nevada Supreme Court rebuffed this argument,
4 however, because the allegedly withheld facts were generally discoverable by Land Baron:

5 *Nondisclosure arises where a seller is aware of materially*
6 *adverse facts that “could not be discovered by the buyer” after*
7 *diligent inquiry. Mackintosh v. Jack Matthews & Co., 109 Nev.*
8 *628, 633, 855 P.2d 549, 552 (1993). “[W]hen the defect is patent*
9 *and obvious, and when the buyer and seller have equal*
10 *opportunities of knowledge,” a seller cannot be liable for*
11 *nondisclosure. Collins v. Burns, 103 Nev. 394, 397, 741 P.2d 819,*
12 *821 (1987). Liability for nondisclosure is generally not imposed*
13 *where the buyer either knew of or could have discovered the*
14 *defects prior to the purchase. (Citation omitted).*

15 The record makes clear that Land Baron could have, and did,
16 discover the facts surrounding the difficulty or impossibility of
17 obtaining sufficient water and access for a subdivision on the
18 property. *Those defects arose from government regulations,*
19 *were public knowledge, and were available to anyone upon*
20 *inquiry. Thus, even if Bonnie Springs had known about these*
21 *facts and not disclosed them, there would still be no viable*
22 *nondisclosure claim because the facts were discoverable and*
23 *Land Baron had an “equal opportunit[y]” to discover, and did*
24 *discover, those facts before closing. Collins, P.2d at 821.*

25 ...
26 Moreover, *water rights are public information that can be*
27 *accessed through the Nevada District of Water Resources’*
28 *(NDWR) website....*

Id. at 6 (emphasis added).

19 This Court is faced with an equally-clear record, precluding any argument by Plaintiff
20 that he did not bear the risk of his alleged mistake on the ground of non-disclosure. First, as
21 acknowledged by the Court in its Trial Ruling, the State could not have withheld in 2005 the
22 *fact* that it *would* later build the Flyover because this *fact* did not exist in 2005. *See Trial*
23 *Ruling, 12:25-13:1 (“Prior to 2010..., it was [not] reasonably certain that the flyover would be*
24 *built.”).*

25 Assuming *arguendo* that the State could somehow fail to disclose a fact that did not yet
26 exist, which it could not have, any nondisclosure argument still fails under *Land Baron*. As in
27 *Land Baron*, every piece of information that the State had in 2005 about a future Flyover was
28 equally available to Plaintiff. The State’s 2005 intentions and preliminary plans regarding an
eventual Flyover were *public knowledge* by virtue of the State’s federally-mandated public

1 disclosure process under the National Environmental Policy Act (“NEPA”). *See State v. Eighth*
2 *Jud. Dist. Ct. (“Ad America”), 351 P.3d 736, 744 (Nev. 2015) (“[T]he reason there was **public***
3 ***knowledge** of Project Neon’s anticipated need for Ad America’s property was **because NEPA***
4 ***required disclosure of the plans and the opportunity for public comment.**”)* (Emphasis added).

5 Moreover, like the water rights in *Land Baron*, the State’s highway improvement plans
6 are *public information* that—pursuant to federal law—could have been accessed in 2005 at the
7 Enterprise Public Library or at any one of the State’s offices. These facts are confirmed by the
8 Court’s Trial Ruling:

9 *It appears to the Court that the information cited to by NDOT*
10 *was **publicly available** but not in the public record by way of*
11 *“recording.” Unlike the case of real property transactions, and*
12 *encumbrances, where a properly recorded instrument is a matter*
13 *of public record, and constitutes constructive notice of its contents*
14 *to the world, the “publicly available documents” here were not*
15 *“recorded” with the county or against the property. Instead one*
16 *would have to seek out the informational handouts and*
17 *environmental documents at public libraries and, upon request,*
18 *from NDOT’s offices.*

19 Trial Ruling, 14:23-15:2 (emphasis added).⁷ Regardless of its decision on the statute of
20 limitations issue, the Court’s Trial Ruling plainly establishes that the State’s preliminary
21 Flyover plans were publicly available for discovery in 2005, and that Plaintiff had an equal
22 opportunity to discover those plans “at public libraries and [] NDOT’s offices.” Accordingly,
23 any nondisclosure argument advanced by Plaintiff in lieu of his misrepresentation assertion fails
24 to change the required outcome under *Land Baron*, which is summary judgment in the State’s
25 favor on the ground that Plaintiff bore the risk of his alleged mistake.

26 ///

27 ///

28 ⁷ The State strongly disagrees that publicly disclosing its future highway improvement plans pursuant to *federal law* fails to establish constructive notice of those plans absent “recording” them with the county recorder, which is *not* a requirement under NEPA. *See Ad America*, 351 P.3d at 744. It again expressly reserves all rights for appellate review of the Court’s Trial Ruling.

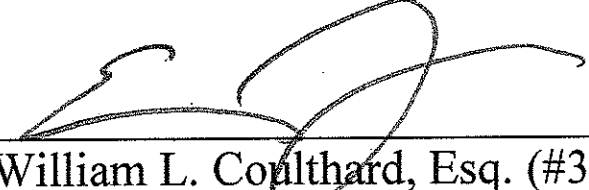
III.

CONCLUSION

The Court ruled that Plaintiff's claim to rescind the 2005 Settlement Agreement on the ground of unilateral mistake was not barred by the statute of limitations. Its findings of fact and conclusions of law in support of that ruling, however, require summary judgment on Plaintiff's rescission claim for separate reasons. In finding Plaintiff's claim timely, the Court held that "Mr. Nassiri could [not] have maintained an action for rescission of the Settlement Agreement prior to 2010..., as a matter of law." Trial Ruling, 12:20-13:1. In so ruling, the Court has established that Plaintiff's alleged "mistake" both did not occur at the time of contracting and relates to a future contingency, not the existence or non-existence of a material fact as required by Nevada law. While this was true before the *Land Baron* opinion, there can be no doubt after the Nevada Supreme Court handed down its decision in that very similar case. Thus, notwithstanding its statute of limitations decision, the Court's Trial Ruling separately requires partial summary judgment in the State's favor on Plaintiff's rescission claim.

DATED this 12 day of October, 2015.

Respectfully submitted by:

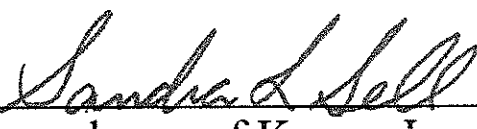

William L. Coulthard, Esq. (#3927)
Eric M. Pepperman, Esq. (#11679)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

Adam Paul Laxalt, Esq. (#12426)
Dennis V. Gallagher, Esq. (#955)
Amanda B. Kern, Esq. (#9218)
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for the State

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

Certificate of Service

I hereby certify that on the 2nd day of October, 2015, I served a true and correct copy of the above and foregoing **MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S RESCISSION CLAIM BASED ON THE COURT'S 8/29/15 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT** to all parties, via the Court's e-filing service.


An employee of Kemp, Jones & Coulthard, LLP


CLERK OF THE COURT

OMSJ
GARMAN TURNER GORDON LLP
ERIC R. OLSEN
Nevada Bar No. 3127
Email: eolsen@gtg.legal
DYLAN T. CICILIANO
Nevada Bar No. 12348
Email: dciciliano@gtg.legal
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
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.

///

///

///

CASE NO. A672841
DEPT. XXVI

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3
4

5
6
7
8
9

10
11
12

14

15

15
16
17
18
19

21

22

23

24

25

26

27

28

1 NDOT neglected to inform Plaintiffs that it would build a flyover at the Blue Diamond and I-15
2 interchange (the “Blue Diamond Interchange”). As was clearly demonstrated at trial, at the time
3 of the Settlement Agreement, NDOT had imminent plans to construct a flyover and despite
4 Plaintiffs’ reasonable inquiries NDOT never informed Plaintiffs of those plans. In fact, NDOT
5 provided plans showing no flyover.

6 In a dramatic about-face, the entire premise of the Renewed Motion is that the Court
7 should conclude that the flyover was not contemplated until after 2005. As the Court will recall,
8 however, NDOT went to great lengths at trial to establish that from 1999 to 2005 it actively
9 planned and developed the flyover. Paradoxically, in order to accept the Renewed Motion’s
10 premise, the Court would have to not only disregard its findings of fact, but it would also have to
11 disregard all of the evidence presented by NDOT to establish that prior to 2005 NDOT had
12 decided to build a flyover at the Blue Diamond Interchange, that its engineers and directors knew
13 the general layout of that flyover, and that NDOT was actively designing and planning for the
14 flyover.

15 NDOT’s attempts to exploit the FFCL are also flawed. The Court clearly found that by
16 the time the Settlement Agreement was executed, NDOT had decided it would build a flyover
17 and began planning for that project. The Court also found that Plaintiffs could not have brought
18 its cause of action for rescission until they were reasonably certain that a material mistake
19 occurred. As the Court has found, while it is patently clear that Plaintiffs were mistaken as to
20 NDOT’s intent to build a flyover, it is also clear that Plaintiffs were not aware of that mistake
21 until 2010 when NDOT actually began construction of the flyover. Had NDOT never constructed
22 the flyover there would never have been a material impact on the performance or notice of a
23 mistake.

24 II

25 STATEMENT OF RELEVANT FACTS

26 In its latest, and most desperate, attempt to reargue the rescission claim, NDOT’s selects
27 one or two findings of the Court, out of context, and chooses to ignore the majority of the
28 findings of fact and conclusions of law actually made by the Court. When considering the

1 entirety of the FFCL, and the Court's unequivocal determination, it is obvious that the Renewed
2 Motion lacks any merit.

3 **A. NDOT always intended on constructing the Flyover as part of the Blue Diamond**
4 **Project.**

5 The Court found that "no later than 1999, NDOT began planning the reconstruction and
6 realignment of the Blue Diamond Interchange. According to NDOT, the reconstructed and
7 realigned Blue Diamond was always to include a flyover from eastbound Blue Diamond Road to
8 Interstate I-15 North when traffic demands warranted and funding was available." (FFCL at ¶
9 11).

10 In fact, NDOT's only witness Mr. Terry, "confirmed that there was always a flyover
11 planned for the Blue Diamond project." (*Id.* at ¶ 12)

12 While the flyover was not precisely designed until 2009, the Court recognized that based
13 on Mr. Terry's experience and training as an engineer, "he could estimate the general location of
14 the proposed flyover. He also knew that any proposed flyover would have to have sufficient
15 clearance over Blue Diamond Road and he could, therefore, approximate its height." (*Id.* at ¶
16 13).

17 In fact, by no later than 2003, two years prior to the Settlement Agreement, NDOT had
18 decided to construct a flyover. (*Id.* at ¶¶ 16-17). At that time, NDOT had already determined that
19 traffic demands warranted a flyover. (*Id.*). Consequently, it included the flyover in the 2004
20 Environmental Assessment. (*Id.*; see also Trial Transcript, Day 1, attached here in pertinent parts
21 as **Exhibit 1**, at p. 36:8-13; 40:3-10).).

22 The Court further found that "by January 2004, NDOT had created engineering design
23 files for the flyover and kept those files with the designs of the Blue Diamond Interchange."
24 (FFCL at ¶ 20). It unequivocally concluded that prior to the execution of the Settlement
25 Agreement, "NDOT knew of long term plans, when traffic counts supported construction, to
26 build a flyover of a general size and dimensions based on the existing roadway design and right
27 of way." (FFCL at p. 20:18-20).

28 Moreover, the Court found that "at the time Mr. Nassiri entered into the Settlement

1 Agreement, he was unaware that NDOT had intended on constructing a flyover at the Blue
2 Diamond Interchange.” (Id. at p 20:20-22).

3 **B. NDOT’s position has always been that the Flyover was not a contingency but an**
4 **inevitability.**

5 The Renewed Motion states that “Plaintiff’s so-called ‘mistake’ involved a contingent
6 and discretionary choice by the State to ultimately build the Flyover, which was not made until
7 several years after Plaintiff executed the 2005 Settlement Agreement.” (Renewed Motion at p.
8 4:9-11; 7:26-27 (“In, 2005, whether a Flyover would be built was nothing more than a future
9 contingency.”)). In the many prior attempts to obtain this same relief, NDOT has stated the
10 opposite position. NDOT’s argument in the Renewed Motion also directly contradicts its
11 position at trial, NDOT’s own testimony, and the evidence adduced at trial.

12 As found by the Court, the construction of the flyover was never a contingency to NDOT.
13 By no later than 2003, two years prior to the Settlement Agreement, NDOT had decided to
14 construct a flyover. (FFCL at ¶¶ 16-17). Consequently, it included the flyover in the 2004
15 Environmental Assessment. (Id.). Mr. Terry “confirmed that there was always a flyover planned
16 for the Blue Diamond project.” (Id. at ¶ 12).

17 In addition to the express findings of fact and conclusions of law, NDOT argued at the
18 trial itself that by no later than 1999 it was a foregone conclusion that the Blue Diamond
19 Interchange would include a flyover:

20 This Blue Diamond Project prompted the 2004 eminent domain action against
21 plaintiff, Mr. Nassiri, and importantly, the Blue Diamond Project always
22 included, and you’ll see it throughout -- as early as 1999 throughout 2008 through
23 all the public notices that you heard about during trial, it included a proposed
design for a future eastbound Blue Diamond to northbound 1-15 flyover ramp to
be constructed when traffic demand warrants have been met and funding is
available

24 (Closing Argument, attached hereto as **Exhibit 2** at p. 5:11-16). NDOT did not contend that the
25 flyover was discretionary but instead stated that “it was always just a question of timing.” (Id. at
26 p. 7:8-10).

27 ///

28 ///

1 In fact, NDOT argued that it would be a violation of federal law if it did not build the
2 flyover:

3 Mr. Terry testified that to not build the flyover would violate the 2004 EA and
4 require an amended EA. NDOT always intended to build a future eastbound and
5 northbound 1-15 flyover when traffic demands warrant and funding was
6 available. That was clear from going back to 1999.

7 (Id. at p. 27:25-28:3; see also id. 55:23-56:1-9).

8 When NDOT cites to the FFCL in making the argument in its moving papers, of course,
9 it deliberately omits the preceding sentence, which concludes that “NDOT has established that it
10 always intended on building the flyover.” (FFCL at p. 12:12:24).

11 II.

12 ARGUMENT

13 A. NDOT is judicially estopped from arguing that it did not decide to build the Flyover 14 until 2009.

15 NDOT insisted on a bifurcated trial, and at that trial fervently asserted that it always
16 intended on building the flyover. In fact, NDOT relied upon this position to argue that the statute
17 of limitations had run on Plaintiffs’ cause of action. Through its witnesses, not only did NDOT
18 establish that it always intended on building the flyover (FFCL at p. 12:12:24), but NDOT also
19 established that in 2003 it decided that it would build the flyover (Id. at ¶¶ 16-17). Furthermore,
20 NDOT claimed and argued that once it included the Flyover in the 2004 EA, it had no choice but
21 to build the Flyover. (Closing Arguments at p. 27:25-28:3). The positions that it took and it
22 established at trial, wildly contrasts its current position that a Flyover was merely discretionary.

23 Judicial estoppel prevents a party from taking contradictory positions by “‘intentional
24 wrongdoing or an attempt to obtain an unfair advantage.’ ” NOLM, LLC v. County of Clark, 120
25 Nev. 736, 743, 100 P.3d 658, 663 (2004) Judicial estoppel may apply when:

26 (1) the same party has taken two positions; (2) the positions were taken in judicial
27 or quasi-judicial administrative proceedings; (3) the party was successful in
28 asserting the first position ...; (4) the two positions are totally inconsistent; and (5)
the first position was not taken as a result of ignorance, fraud, or mistake.

Id.

///

1 When it suited NDOT's efforts to defeat Plaintiffs' claim on the grounds of the statute of
2 limitation, NDOT successfully argued that not only had it intended on building the Flyover since
3 1999 but that it actually committed to building the Flyover prior to the execution of the
4 Settlement Agreement. The Court agreed with NDOT and entered consistent findings of fact.
5 (FFCL at p. 12:12:24; ¶¶ 16-17). The Court, however, disagreed with NDOT that Plaintiffs had
6 notice of NDOT's intent and plans and consequently found that the statute of limitations had not
7 run.

8 Now, in sixth iteration of its attempt to dismiss Plaintiffs claims, NDOT asserts that it, in
9 fact, did not have a plan or commit to building the flyover until after the Settlement Agreement
10 was executed. In doing so, NDOT argues that it did not even know that it was going to build the
11 Flyover until after the Settlement Agreement. This expedient and direct about-face in position—
12 which is contradicted by the record and the FFCL—was clearly made to obtain an advantage.
13 Judicial estoppel, however, prevents exactly that. Defendant cannot be permitted to argue that
14 NDOT “always planned on building the Flyover,” and when that argument succeeds but
15 backfires on it, completely change its argument to NDOT “had no idea whether it would build
16 the Flyover.” Thus, judicial estoppel warrants that the Renewed Motion be denied.

17 **B. The Court clearly ruled that the mistake of fact existed at the time the Settlement**
18 **Agreement was executed.**

19 In the State of Nevada, “a unilateral mistake occurs when one party makes a mistake as to
20 a basic assumption of the contract, that party does not bear the risk of mistake, and the other
21 party has reason to know of the mistake or caused it.” In re Irrevocable Trust Agreement of
22 1979, 130 Nev. Adv. Op. 63, 331 P.3d 881, 885 (2014); Home Savers, Inc. v. United Sec. Co.,
23 103 Nev. 357, 358-59, 741 P.2d 1355, 1356-57 (1987).

24 In its haste to achieve a tactical advantage, NDOT stumbled over the Court's finding that
25 Plaintiffs' mistake occurred prior to the execution of the Settlement Agreement.

26 ///

27 ///

28 ///

1 The Court clearly and unambiguously found that:

2 During the Condemnation Action, NDOT knew of long term plans, when traffic
3 counts supported construction, to build a flyover of a general size and dimensions
4 based on the existing roadway design and right of way, although the location of
5 the flyover changed over time. At the time Mr. Nassiri entered into the Settlement
6 Agreement, he was unaware that NDOT had intended on constructing a flyover at
7 the Blue Diamond Interchange.

8 (FFCL. at p 20:18-22). As referenced above, NDOT itself firmly established that its building of
9 the Flyover was an inevitability, not a mere contingency.

10 The Court did, in fact, establish that the mistake of fact was present at the time the
11 Settlement Agreement was executed. The Court's *actual* finding precludes the entry of summary
12 judgment.

13 **C. NDOT's tries to manipulate the Court's FFCL to create a finding that is**
14 **inconsistent with the FFCL as a whole.**

15 The alleged genesis of the Renewed Motion is the FFCL number three under the heading
16 "Mr. Nassiri was unaware of his claim until 2010 when the flyover was built." (FFCL at p. 11).
17 NDOT alleges that that finding of fact precludes any argument that Plaintiffs mistake existed at
18 the time the Settlement Agreement was executed. As such, NDOT transparently attempts to
19 manipulate the Court's own findings.

20 Importantly, when considering summary judgment "the pleadings and other proof must
21 be construed in a light most favorable to the nonmoving party." Wood v. Safeway, Inc., 121 Nev.
22 724, 732, 121 P.3d 1026, 1031 (2005). While NDOT purposely fails to discuss that the Court
23 established that Plaintiffs' mistake occurred prior to the execution of the Settlement Agreement
24 (FFCL. at p 20:18-22), NDOT improperly requests that the Court implicitly read the FFCL so
25 that it is internally inconsistent, e.g. that the mistake arose both before and after the Settlement
26 Agreement was executed. When construing the Court's order in the light more favorable to
27 Plaintiffs, no such reading is possible.

28 ///

///

///

1 When discussing the issue of when Plaintiffs had notice of the Flyover, the Court made
2 the finding that NDOT now seizes upon:

3 Furthermore, *the Court finds that Mr. Nassiri could have maintained an action*
4 *for rescission of the Settlement Agreement prior to 2010.* For the statute of
5 limitations to run on rescission, all material elements necessary for Mr. Nassiri's
6 claim for rescission must have existed. Brady Vorwerck, 130 Nev. Adv. Op. 68,
7 333 P.3d at 232. *While NDOT has established that it always intended on*
8 *building the flyover*, the final element was not present until construction. NDOT
9 did not even retain a contractor to build the flyover until mid-2009 and the flyover
10 was not actually constructed until 2010. Prior to 2010, NDOT might have chosen
11 to not build the flyover at all. If NDOT had not built the flyover, then Mr. Nassiri
12 could not have rescinded the Settlement Agreement. Therefore, Mr. Nassiri could
13 not rescind the Settlement Agreement, as a matter of law, until it was reasonably
14 certain that the flyover would be built. Moreover, there is no evidence that Mr.
15 Nassiri was aware of the design build contract, or Las Vegas Paving Corp.'s
16 flyover plans, until Las Vegas Paving Corp. began constructing the flyover in
17 2010. Therefore, the Court concludes that Mr. Nassiri did not have actual
18 knowledge of the flyover or his alleged "mistake" until 2010, well after the
19 November 2009 reference date for the statute of limitations.

20 (FFCL at p. 12:20-13:6)(emphasis added).

21 **1. NDOT's reading of the FFCL is contradicted by the FFCL itself.**

22 Under NDOT's reading, this paragraph means that there was no mistake in 2005, because
23 "the fact that NDOT would build a flyover at the Blue Diamond Interchange at some point in the
24 future . . . did not exist at the time that Plaintiff entered into the 2005 Settlement Agreement."
25 (Renewed Motion at p. 7:14-19). NDOT then erroneously concludes that whether a flyover
26 would be constructed or how it would be constructed was completely unknown by anyone until
27 mid-2009. (*Id.* at p. 7:19-20). NDOT goes so far as to say that Plaintiffs "(like the state) was
28 simply uncertain about the ultimate construction and appearance of a future Flyover that may or
may not have ever been built." (*Id.* at p. 8:1-2). However, NDOT materially misrepresents the
Court's ruling. One can say this, because NDOT's own witness rebuts the position.

In the Renewed Motion, NDOT manages to contradict the FFCL, its own witness's
testimony, and its counsel's argument. NDOT seems to claim that the Flyover was of an ethereal
design. As stated above, however, the Court expressly found that at the time of the Settlement
Agreement, "NDOT knew of long term plans [in the future] to build a flyover of a general size
and dimensions based on the existing roadway design and right of way;" and that Plaintiffs were
unaware of that NDOT intended on constructing a Flyover. (FFCL. at p 20:18-22). In fact, when

1 NDOT quotes the scrutinized section, it omits the preceding sentence that unequivocally states
2 that “*NDOT has established that it always intended on building the flyover.*” (*Id.* at 12:23-24
3 (emphasis added); see also *id.* p. 4, ¶ 12; p. 5, ¶¶ 16-17; p. 15:28-16:2). Likewise, the Court has
4 already addressed NDOT’s attempts to claim that no one knew what the ultimate construction
5 and appearance of the Flyover would be. While exactitudes may have been unknown, the Court
6 found that NDOT would have known the general location, size and dimension of the Flyover.
7 (FFCL at p. 4:13-24; 20:18-22). To wit, at the time of the Settlement Agreement, NDOT had
8 already created engineering design files for the flyover that it kept with designs of the Blue
9 Diamond Interchange. (FFCL at p. 6, ¶ 20).

10 Even NDOT has previously contradicted its present position. At trial, NDOT argued that
11 the Flyover had been an inevitability since 1999, the question was not whether it would be built
12 but when it would be built. (Closing Argument at p. 5:11-16; 7:8-10). In fact, NDOT argued
13 based on Mr. Terry’s testimony that after it prepared to 2004 Environmental Assessment, NDOT
14 had to build the Flyover. (*Id.* at p. 27:25-28:3; see also *id.* 55:23-56:1-9).

15 These findings conclusively establish that a mistake existed at the time of the Settlement
16 Agreement and, under the summary judgment standard, they certainly preclude a contrary
17 determination that a mistake did not exist at the time of the Settlement Agreement, as a matter of
18 law. To find otherwise would require the Court to disregard the FFCL’s other findings and the
19 evidence of the case, something that would be impermissible on a motion for summary
20 judgment. Thus, the Renewed Motion must be denied.

21 **2. NDOT’s reading of the scrutinized section is inconsistent with the language of**
22 **the section itself.**

23 NDOT’s proffered reading of the scrutinized section is urged without giving the slightest
24 consideration to surrounding findings. In the language leading up to that section of the FFCL, the
25 Court, citing to the recently decided Brady Vorwerck v. New Albertson's, recognizes that the
26 statute of limitations begins to run “when the claimant discovers, or reasonably should have
27 discovered, the material facts for the action, including the damages.” (FFCL at p. 11)(internal
28 citations omitted). The Court then properly concludes that “to maintain a claim for rescission,

1 Mr. Nassiri must have discovered the material facts relating to his claim for rescission after
2 November 30, 2009, three years prior the filing of his complaint.” (Id.).

3 Under the subsection, “Mr. Nassiri was unaware of his claim until 2010 when the flyover
4 was built,” the Court first discusses what Plaintiffs’ alleged mistake was: Plaintiff “was unaware
5 of the fact that NDOT would build a flyover at the Blue Diamond Interchange.” (FFCL at p.
6 11:26-27). The Court concludes that NDOT failed to demonstrate Mr. Nassiri was actually aware
7 that NDOT would build a Flyover prior to November 30, 2009. (FFCL at p. 11:26-12:11). Then,
8 Court states that at no time during the condemnation process did NDOT put Mr. Nassiri or his
9 counsel on notice of the Flyover. (Id. at p. 12:12-19).

10 Only after stating Plaintiff was unaware NDOT would build a flyover, and that NDOT
11 did not put Plaintiff on notice of during the just compensation/condemnation process does the
12 Court address the scrutinized section. The Court begins with “furthermore,” which indicates an
13 additional reason to conclude that Plaintiffs had no notice, not the sole reason. The Court then
14 makes the finding that Plaintiffs “*could have maintained an action for rescission of the*
15 *Settlement Agreement prior to 2010.*” (Id.).¹ This directly contradicts NDOT’s position that the
16 Court found that Plaintiffs **could not** have maintained an action.

17 The Court, citing to Brady Vorwerck, then concludes that for the statute of limitations to
18 run “all material elements necessary for Mr. Nassiri’s claim for rescission must have existed.”
19 (FFCL at p. 12:22-23). The Restatement of Contracts provides that:

20 Where a mistake of one party at the time a contract was made as to a basic
21 assumption on which he made the contract has a material effect on the agreed
22 exchange of performances that is adverse to him, the contract is voidable by him
23 if he does not bear the risk of the mistake under the rule stated in § 154, and
24 (a) the effect of the mistake is such that enforcement of the contract would be
unconscionable, or
(b) the other party had reason to know of the mistake or his fault caused the
mistake.

25 Restatement (Second) of Contracts § 153 (1981). Thus, before the statute of limitations begins to
26

27 ¹ From Plaintiffs’ proposed findings of fact and conclusions of law, the Court changed “seriously doubts” to “finds,”
28 which affirmatively changes the meaning of the sentence to mean that the “Court finds that Mr. Nassiri could have
maintained an action for rescission of the Settlement Agreement prior to 2010.”

1 run, Plaintiffs must have had knowledge that they made a mistake and that the mistake had “a
2 material effect on the agreed exchange of performances.” Id.; Brady Vorwerck, 130 Nev. Adv.
3 Op. 68, 333 P.3d at 232 (holding that the statute of limitations does not begin to run until “the
4 claimant discovers, or reasonably should have discovered, the material facts for the action,
5 including the damages.”); see also FFCL at p. 11.

6 Plainly, a cause of action for rescission based on mistake does not exist until a person or
7 entity recognizes that a *material* mistake was made. When considering the following legal
8 authority, which refers to the discovery of a cause of action, it is clear that being “reasonably
9 certain that the flyover would be built” refers to the notice of the cause of action, i.e. the
10 realization that a material mistake occurred, and not when the mistake actually occurs.

11 While the scrutinized section does consider when NDOT contracted with Las Vegas
12 Paving Corp. to design and construct the flyover, that question is relevant to determining when
13 Plaintiffs should have discovered that a Flyover was being constructed and do not support an
14 argument that no mistake occurred until then. This is consistent with the next sentences, which
15 state that there is no evidence to show Plaintiffs were aware of the design build contract until the
16 flyover was under construction in 2010. (FFCL at p. 13:2-6). Likewise, had NDOT not built the
17 Flyover, Plaintiffs would likely not have been aware of the mistake and the mistake would not
18 have materially impacted the agreed exchange of performances.² Clearly, in context, the FFCL’s
19 consideration of when and how the Flyover was constructed is goes to Plaintiffs’ notice and
20 cannot be interpreted as a determination that a mistake did not occur until the Flyover was
21 constructed.

22 **3. NDOT’s reference to “future contingency” is misplaced.**

23 The mistake at hand relates to NDOT’s intent at the time of the Settlement Agreement.
24 Despite its own evidence that NDOT intended and planned to build a Flyover, NDOT attempts to
25 create the illusion that the Flyover was not a serious consideration at the time of the Settlement
26 Agreement. This illusion is easy to dispel.

27 ² The Court need not consider a situation where knowledge of a mistake did not coincide with a material effect on
28 the exchange of performances.

1 NDOT's insistence that its building of a Flyover was a contingency as of 2005, and
2 therefore not a mistake, is based on a faulty understanding of the word "contingency." In support
3 of their argument, NDOT cites to a state court case from Missouri, Kassebaum v. Kassebaum, 42
4 S.W.3d 685, 695 (Mo. Ct. App. 2001).³ The case is completely inapposite to this action. There,
5 the plaintiffs and defendants (son and wife, and father and mother) agreed that son would buy the
6 family farm. (Id. at 690-691). Eventually, after agriculture prices fell, the son stopped working
7 on the farm and got another job, but continued to make payments on the farm. (Id.; id. at 694-
8 95). The father sought rescission of the purchase agreement because the son was no longer a
9 farmer. (Id.). Even though both parties assumed at the time of contracting that son would always
10 operate the farm, exclusive of another job, the court found that the son did not know that he
11 would have to get a second job in the future and, therefore, have no obligation to disclose that
12 contingency to his father. (Id.). The court also found that public policy prevented rescission
13 because the son still retained the property, would begin working the farm if prices recovered, and
14 had made all payments to his family. Therefore, the father was not unilaterally mistaken for
15 purposes of rescission.

16 The differences between Kassebaum and the present case are numerous and striking. For
17 one, at the time of the Settlement Agreement, the Flyover was more than a contingency that
18 might or might not happen in the future. According to NDOT itself, the Flyover was an
19 inevitability that was being actively planned for and designed. The only question was how soon
20 they would build the Flyover—the funding for which NDOT secured right after the Settlement
21 Agreement. Second, NDOT specifically discussed the after condition of the Blue Diamond
22 Interchange with Plaintiffs, as part of the condemnation/just compensation process, and
23 specifically omitted any reference to a Flyover from the discussions and materials. NDOT even
24 expressly valued the Condemned Property and Exchange Property with the assumption that a
25 Flyover would never be built. Thus, while Kassebaum considers an uncertain change in
26 circumstances, this action concerns NDOT's knowledge that it would certainly build a Flyover,

27
28 ³ The case has not been subsequently cited to for that proposition in Missouri or otherwise.

1 and its failure to advise Plaintiffs of the same. In addition, NDOT used the disparate knowledge
2 to exact a higher purchase price for the exchange property. Therefore, Kassenbaum clearly does
3 not aid NDOT in its renewed attempt.

4 Likewise, NDOT's reliance on comment "a." of § 151 of the Restatement (second) of
5 Contracts is misplaced. While NDOT claims comment a. states that "belie[f] that a future event
6 would or would not occur is not a 'mistake' for purposes of rescission," the comment actual
7 states that "a party's prediction or judgment as to events to occur in the future, even if erroneous,
8 is not a mistake." Restatement (Second) of Contracts § 151 (1981), comment a. NDOT cannot
9 claim that the kind of prediction or judgment addressed by comment a. is what occurred here.
10 The types of predictions the commenter had in mind are discussed in the illustrations to the
11 comment. For instance: if a party purchases stock under the prediction that the company's
12 production will increase the next year, no mistake exists when the company's production
13 declines. (See id. at illustration b.)

14 To be certain, the "predictions" referenced in the comment did not exist here. If
15 Plaintiffs, for example, had sought rescission in 2008 because they believed land values would
16 increase over time but did not, that would be a prediction for which rescission could not be had.
17 Here, however, Plaintiffs seek rescission because at the time of the Settlement Agreement,
18 NDOT intended, actively planned, and got approval to build a Flyover, yet failed to disclose
19 those facts to Plaintiffs. As such, the mistake was not as to a prediction of future events, but of
20 NDOT's then present intent and plans.

21 **D. Land Barron does not warrant dismissal of Plaintiffs claim.**

22 NDOT asserts that the decision in Land Baron Inv. v. Bonnie Springs Family LP, 131
23 Nev. Adv. Op. 69, 356 P.3d 511, 514 (2015) supports a dismissal of Plaintiffs' claim for
24 rescission. As a threshold issue, NDOT's states that the "facts, claims, and legal arguments . . .
25 are strikingly similar to those present in the case." These statements are simply not true.⁴

26 The Court well knows that Land Baron Inv. is about a land developer's contemplated

27 ⁴ NDOT frequently has employed hyperbole to make false correlations between cases. Just because a case has an
28 outcome desired by NDOT does not mean that the case shares similar facts with this matter.

1 purchase of land from a third party. In 2004, while the sale was pending, Land Baron discovered
2 that access to the land was limited and water was scarce. (Id. at 514-15). Over a period of three
3 years, while the parties extended escrow, Land Baron struggled to secure access or water. (Id. at
4 515). Eventually, Land Baron failed to make a payment to extend escrow, and Bonnie Springs
5 terminated escrow and kept prior payments as liquidated damages. (Id.). Land Baron sued *inter*
6 *alia* for rescission.

7 In dismissing its claim, the district court found that there was no mutual mistake “because
8 the parties did not know, at the time of the agreement, whether there were sufficient access and
9 water rights to support a subdivision on the property, and it assigned the risk of that mistake to
10 Land Baron.” Id. at 516. The Supreme Court concurred that Land Baron bore the risk of mistake
11 because, by entering into the contract, it would know that water and access was difficult given
12 the properties location in an undeveloped desert. Id. at 517. The purchase agreement did not
13 address water or access. Id. In addition, the court also found that there was no evidence Bonnie
14 Springs made any representations that water or access existed, and that Land Baron did not
15 conduct any due diligence. Id. at 518. Therefore, Land Baron did not have a “reasonable belief in
16 a set of facts, and Land Baron assumed the risk by proceeding with the contract despite having
17 limited knowledge of the actual conditions as to water and access.” Id.

18 NDOT attempts to draw a false correlation between Land Barron and the present case.
19 While the Land Baron case does involve purchase of real property, that is where the similarity
20 ends. NDOT asserts that the cases are nearly identical because Plaintiff was a sophisticated and
21 experienced land buyer, he contracted to purchase property, he drafted the contract, and he failed
22 to perform any due diligence into the Department’s future construction plans. (Renewed Motion
23 at p. 11:9-18). Despite sitting through a week of trial and having received the Court’s lengthy
24 FFCL, NDOT still fails to comprehend the facts of the case.

25 Conveniently⁵, NDOT ignores the clear differences between this case and Land Baron. In
26

27 ⁵ For purposes of this opposition, Plaintiffs will not address NDOT’s false allegations about Nassiri’s sophistication
28 and who drafted the contract, although they do not concede these baseless arguments. The facts are clear and
NDOT’s allegations are mere distractions, not relevant to the issue at hand.

1 Land Baron, Bonnie Springs, the seller, was not responsible for drolling out water or providing
2 access—the alleged subject of the mistake. Here, NDOT was in complete control of the facts and
3 circumstances surrounding the mistake—the building of the Flyover. Bonnie Springs did not
4 control Land Baron’s access to water or the property. Here, NDOT is the party who controlled
5 and planned the future of the Blue Diamond Interchange. Moreover, the entire Condemnation
6 Action and the Settlement Agreement is the result of NDOT’s redevelopment of the Blue
7 Diamond Interchange. While water and physical access was not relevant to the purchase
8 agreement, NDOT’s future plans and intent not only begat the Settlement Agreement but dictated
9 the terms of the Settlement Agreement itself, including the value of the properties.

10 Moreover, Bonnie Springs made no representations whatsoever regarding the mistake
11 and Land Baron performed no due diligence into the issue of access or water. While NDOT
12 argues that Plaintiffs never inquired into NDOT’s plan and **failed to perform any due diligence**,
13 the Court has already rejected that argument and found that Plaintiffs “actively engaged with
14 NDOT in negotiations regarding the after-condition of Blue Diamond Interchange” (FFCL at p.
15 17:9-10). The Court also expressly found that Plaintiffs satisfied any duty of reasonable diligence
16 prior to entering into the Settlement Agreement. (*Id.* at pp. 14:10-19:13). The unescapable facts
17 for NDOT is that at the time of the Settlement Agreement 1) it was actively planning to construct
18 a Flyover—something that would impact the Exchange Property—and 2) despite Plaintiffs
19 substantial inquiries into the future of the Blue Diamond Interchange, NDOT never once
20 mentioned the Flyover, instead presenting after condition diagrams with no Flyover. In such a
21 scenario, there is no basis for the conclusion that Plaintiffs somehow assumed the risk that
22 NDOT would, contrary to its constitutional duties to provide just compensation, not disclose its
23 plans or that NDOT would misrepresent its plans.

24 NDOT’s insistence that it never supplied Plaintiffs with false or misleading information
25 can only be based on delusion or wishful thinking. The Court has already determined what was
26 and was not presented to Plaintiffs by NDOT. As was unrebutted at trial and found by the Court,
27 the purpose of pre-Settlement Agreement meetings between NDOT and Plaintiffs were to
28 “discuss [NDOT’s] planned development of the Blue Diamond Interchange.” (FFCL at p. 16:16-

1 18). It is also unrefuted that NDOT presented Plaintiffs with maps of the supposed after
2 condition of the property, none of which ever showed a Flyover. (Id. at p. 16:19-22). While
3 NDOT attempts to draw a fine line between misrepresentation and willful omission, the facts as
4 they exist, unrebutted are that NDOT met with Plaintiffs to discuss the future Blue Diamond
5 Interchange and failed to inform Plaintiffs of the Flyover, which NDOT testified was an
6 inevitability and mandated. NDOT did in fact make representations regarding the future of the
7 Blue Diamond Interchange that were false and misleading, as opposed to Land Baron where
8 there was no evidence in the record of any representations.

9 Finally, NDOT's makes an effort to rehash whether Plaintiffs were on notice of the
10 publically available 2004 Environmental Assessment in the context of mistake. NDOT
11 essentially asks the Court, after trial, briefing, argument, supplemental briefing, and detailed
12 findings and conclusions, to change its mind. The Nevada Supreme Court has affirmed that
13 "inquiry and constructive notice do not preclude mistake and are appropriately considered in the
14 context of risk of mistake." Coleman Holdings Ltd. P'ship v. Eklund, No. 59323, 2015 WL
15 428567, at *2 (Nev. Jan. 29, 2015). The Court, in painstaking detail, found that NDOT's
16 argument regarding notice was unpersuasive and that Plaintiffs performed all reasonable
17 diligence that the duty of inquiry demanded. Plaintiffs in fact inquired and had high level
18 discussions with NDOT, including the head of right-of-way, whereat NDOT failed to disclose
19 the Flyover. Any risk of mistake was shifted to NDOT when it failed to disclose its true
20 intentions.

21 The Nevada Supreme Court has recently reinforced the notion that the Court may assign
22 the risk of mistake to any party when it is reasonable to do so, even when there is an innocent
23 misrepresentation. Coleman Holdings Ltd., No. 59323, 2015 WL 428567, at *2 (citing
24 Restatement § 154 (indicating that courts may assign the risk of mistake when it is reasonable to
25 do so); *see also Mitchell v. Boyer*, 237 Mont. 434, 774 P.2d 384, 386 (Mont.1989) (holding that a
26 seller's innocent misrepresentations of property restrictions justified mutual mistake and
27 rescission)). Here, if Plaintiffs were forced to bear the risk of mistake, the Court would implicitly
28 hold that NDOT has no duty of disclosure or candor to a landowner, even in connection with a

1 condemnation. Such a notion would contradict constitutional principles mandating that when
2 NDOT makes representations to a landowner regarding its proposed projects that the risk of
3 mistake (i.e. that NDOT makes an incomplete or false disclosure) reside with NDOT not the
4 citizen. Thus, summary judgment must be denied.

5 Based on the Court's findings alone, the Court must conclude that Nassiri did not bear the
6 risk that NDOT was misrepresenting its future plans for the Blue Diamond Interchange or that it
7 failed to disclose its true intent. Accordingly, the denial of the Renewed Motion is required.

8 **IV**

9 **CONCLUSION**

10 The Plaintiffs are informed that NDOT intends to seek a writ of this Court's decision and
11 believes this sixth effort to dispose of rescission is brought merely to set the table for that writ.
12 As has been the case with NDOT's other numerous and duplicative attempts at disposing of this
13 claim, however, the Renewed Motion should be denied.

14 Dated this 29th day of October, 2015.

15 GARMAN TURNER GORDON LLP

16 /s/ Dylan T. Ciciliano
17 ERIC R. OLSEN
18 Nevada Bar No. 3127
19 DYLAN T. CICILIANO
20 Nevada Bar No. 12348
21 650 White Drive, Suite 100
22 Las Vegas, Nevada 89119
23 Tel: (725) 777-3000
24 Attorneys for Plaintiffs
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 29th day of October 2015, he caused a copy of the foregoing **OPPOSITION TO MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S RESCISSION CLAIM BASED ON THE COURT'S 8/29/15 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT** to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system addressed to:

KEMP, JONES & COULTHARD, LLP
William L. Coulthard, Esq.
w.coulthard@kempjones.com
Eric M. Pepperman, Esq.
e.pepperman@kempjones.com
Mona Kaveh, Esq.
m.kaveh@kempjones.com
3800 Howard Hughes Parkway, 17th Flr.
Las Vegas, Nevada 89169

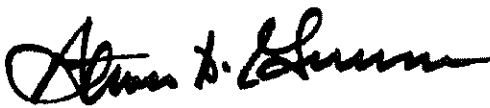
OFFICE OF THE ATTORNEY GENERAL
Amanda B. Kern
Deputy Attorney General
akern@ag.nv.gov
555 E. Washington Avenue
Suite 3900
Las Vegas, NV 89101

Co-Counsel for Defendant

/s/ Dylan T. Ciciliano
An employee of GARMAN TURNER
GORDON LLP

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FRED NASSIRI,

Plaintiff,

vs.

STATE OF NEVADA,

Defendant.

CASE NO. A-12-672841-C

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

MONDAY, MAY 4, 2015

TRANSCRIPT OF PROCEEDINGS

BENCH TRIAL - DAY 1

APPEARANCES:

For the Plaintiff:

ERIC R. OLSEN, ESQ.
DYLAN T. CICILIANO, ESQ.

For the Defendant:

WILLIAM L. COULTHARD, ESQ.
ERIC PEPPERMAN, ESQ.
MONA KAVEH, ESQ.
AMANDA B. KERN, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 MR. OLSEN: Leading --

2 THE COURT: -- answer the question.

3 MR. OLSEN: It's leading as well, Your Honor.

4 THE WITNESS: What was -- I'm sorry, I lost the question.

5 MR. COULTHARD: Sure, let me rephrase

6 THE COURT: I -- technically no.

7 BY MR. COULTHARD:

8 Q Is it fair to say, sir, that in April of 2004 a -- the Nevada Department of
9 Transportation had proposed a future eastbound SR 160 to northbound I-15 flyover
10 ramp to be constructed when traffic demand warrants have been met and funding is
11 available?

12 MR. OLSEN: Leading.

13 THE WITNESS: Yes.

14 THE COURT: I --

15 MR. OLSEN: Objection; leading.

16 THE COURT: Technically it is a -- that was a leading question, but
17 overruled. He's already answered it.

18 BY MR. COULTHARD:

19 Q Okay, and your response, sir?

20 A Yes.

21 Q Thank you. Now the proposed description talks about the various
22 phases in the second to last paragraph, correct?

23 A Yes.

24 Q Okay. And if you could just generally tell the Court what phase one of
25 this project entailed.

1 that blowup, Figure 2 -- is that also contained in the April 2004 public record?

2 A Yes.

3 Q And does that Figure 2 delineate the proposed I-15/SR 160 Blue
4 Diamond Highway interchange as described in the 2004 environmental assessment
5 written description as we looked at?

6 A Yes.

7 Q And does this proposed I-15/SR 160 Figure 2 depict a proposed right
8 of way -- excuse me, a proposed flyover connecting eastbound Blue Diamond
9 traffic with northbound I-15 traffic?

10 A Yes, and --

11 Q And if --

12 A -- and it labels it as such.

13 Q If you can, sir, if you could step off the witness stand and with the
14 Court's indulgence --

15 THE COURT: Sure.

16 Q -- just highlight -- hopefully this has some ink in it -- for the Court the
17 beginning and end of the eastbound connection to northbound I-15.

18 A (Witness complies.)

19 Q Okay. And is there a notation, sir -- and you've highlighted it for the
20 Court on Exhibit 27 board and we might have you actually do one -- but is there a
21 designation if someone -- or a key on this map if someone's taking a look at this
22 map that they can tell what that roadway configuration is?

23 A Yes, it's labeled.

24 Q Okay. And for the record, what does the key or the designation state?

25 A East to northbound flyover.

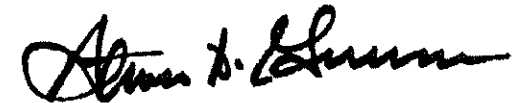
1 THE COURT: Sure.
2 MR. COULTHARD: -- but that didn't happen so --
3 THE COURT: Okay.
4 MR. COULTHARD: -- I'll try and pick it up and move --
5 THE COURT: Yeah, like I said, this last one went pretty quickly but -- not five
6 minutes but still went pretty quickly.
7 MR. COULTHARD: I think we're --
8 MR. OLSEN: Yes.
9 MR. COULTHARD: -- we're definitely making some headway, Judge.
10 MR. OLSEN: I think we've pretty much covered the issues.
11 THE COURT: Yeah. Okay.
12 MR. COULTHARD: Thank you.
13 MR. PEPPERMAN: Thank you.
14 MR. OLSEN: Thank you, Your Honor.
15 THE COURT: All right, then I will see everybody tomorrow afternoon.

16 [Proceeding concluded at 4:48 p.m.]
17 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
18 proceedings in the above-entitled case to the best of my ability.

19
20 
21 Tracy A. Gegenheimer, CER-282, CET-282
22 Court Recorder/Transcriber
23
24
25

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FRED NASSIRI,

Plaintiff,

vs.

STATE OF NEVADA,

Defendant.

CASE NO. A-12-672841-C

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

TUESDAY, MAY 19, 2015

TRANSCRIPT OF PROCEEDINGS
BENCH TRIAL - CLOSING ARGUMENTS

APPEARANCES:

For the Plaintiff:

ERIC R. OLSEN, ESQ.
DYLAN T. CICILIANO, ESQ.

For the Defendant:

WILLIAM L. COULTHARD, ESQ.
ERIC PEPPERMAN, ESQ.
MONA KAVEH, ESQ.
AMANDA B. KERN, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 the basis that they are time barred under the applicable statute of limitations.

2 So turning to the PowerPoint, I think our starting place for all of this
3 and the historical starting place in this case is the Blue Diamond Highway Project.
4 And this was a significant highway project that was designed to widen and realign
5 the Blue Diamond Highway. Importantly, it was a phase project and it required the
6 State to acquire approximately four acres of Mr. Nassiri's property and through the
7 realignment of the highway and moving the highway from the preexisting alignment
8 to the realignment just south, it created approximately 24 acres of excess or surplus
9 property that was then defined as the exchange property in a settlement
10 agreement.

11 This Blue Diamond Project prompted the 2004 eminent domain action
12 against plaintiff, Mr. Nassiri, and importantly, the Blue Diamond Project always
13 included, and you'll see it throughout -- as early as 1999 throughout 2008 through
14 all the public notices that you heard about during trial, it included a proposed design
15 for a future eastbound Blue Diamond to northbound I-15 flyover ramp to be
16 constructed when traffic demand warrants have been met and funding is available.

17 From 1999 there's quite a bit of history, but ultimately in 2005 -- fast
18 forward to 2005 the parties enter into a settlement agreement and that settlement
19 agreement is a key document in this case and it effectively resolved the 2004
20 condemnation action and importantly it resolved that condemnation action through
21 a stipulated final judgment that was entered in July of 2005 and that's Exhibit 106.
22 Also part of that settlement agreement the State acquired the four acre strip of
23 Nassiri property for the realigned road for \$4.81 million and this was the fair market
24 value amount that was in the Gary Kent appraisal and it included not only the take,
25 but if you recall it included in excess of \$500,000 of severance damage for the

1 opening, but these are plaintiff's alleged mistakes and these are excerpts from his
2 most recent March 2015 opposition to the State's motion for summary judgment on
3 rescission. And they acknowledged that the mistake here, the mistake, the
4 unilateral mistake they're talking about is that plaintiff's were unaware that NDOT
5 intended on building a flyover, and we have the respective citations in the
6 PowerPoint.

7 The mistake again is defined at the time of the settlement agreement,
8 plaintiffs were unaware that NDOT intended on building a flyover. And those are
9 their words and intent is important because the State, beginning as early as 1999,
10 published its intent to build a flyover and it was always just a question of timing.

11 And then finally, plaintiffs did not have notice of the flyover and they
12 mistakenly believed that NDOT would not build a flyover. So that's the -- that's their
13 own alleged mistake.

14 The applicable law is under NRS 11.190(3) -- subsection (3)(d) and it
15 provides that an action for relief on the grounds of mistake is subject to a three-year
16 statute of limitations. And that claim can accrue upon the discovery of facts
17 constituting the mistake and this case involves the discovery rule.

18 And you saw a little bit about -- and you saw some give and take and
19 some pull -- push and pull related to the discovery rule in this case, Your Honor,
20 and the discovery rule really is designed to balance the equities between the public
21 policies of stability and finality with the plaintiff's ability to understand and
22 reasonably discover their cause of action before they're time barred.

23 And we saw some of that and specifically we had a challenge -- the
24 State in this case had the challenge of presenting evidence that was some
25 evidence as old as 15 years ago, late 1999, and we didn't have NDOT employees

1 you -- if you recall that document -- actually it's two slides back, but we'll -- I'll show
2 you that after this slide.

3 But this is the -- actually the public information handout for the
4 February 23rd, 2000 meeting. And this did come into evidence. This came in as
5 Exhibit 6 and what does it tell you? Now this is the handout that's given to the
6 attendees and available to each of the participants and we know Mr. Nassiri or Mr.
7 Obser were present and it says, under the project description, the proposed
8 improvements will include constructing a new interchange at I-15, including an
9 eastbound to northbound flyover ramp. Well that's the flyover that they're mistaken
10 -- they allege they're mistaken about. Again, that's out of Exhibit 6, Bates stamp
11 7150 under the project text description.

12 But that's not all this handout did. It included three diagrams all
13 showing east to northbound flyovers, and each of these was on a board and this is
14 the Exhibit 6 that Mr. Terry spent some time marking up in orange. Again, the
15 exhibit -- Figure 2a which flows -- this is the same Figure 2a, nearly identical if not
16 identical to the 1999 diagram attached to Mr. Nassiri's prior letter from August of
17 '99. Shows the flyover, shows the east to northbound flyover.

18 And the additional documents actually blow these sections up and if
19 you recall looking at Exhibit 6, Mr. Terry also marked these up. But the flyover
20 begins in this left-hand corner in orange, SR-160 to Pahrump, so you're coming
21 connecting eastbound with the flyover. You do the match line also on the next
22 Exhibit 6, Bates stamped 17160, it ties in the balance of the flyover and then it -- if
23 you recall, it circles -- so it shows it here.

24 But then on the larger area, if you see the oval, it picks up and
25 enlarges it and if there's any question about what this roadway configuration is, be

1 way to show the area of land. That was the purpose that was mentioned in the
2 December 6th letter of intent letter and followed through throughout, and when you
3 look at the settlement agreement, that was the purpose of the map; to define the
4 area and that's why right of way was preparing the map because they were in
5 charge of acquisition and disposal of land. I think it included also management.
6 That was right of way's role. They weren't roadway designers, so we know they
7 were prepared by right of way to show the land.

8 We also established that no NDOT representative said here's this
9 sketch map and this is all we'll ever build. I beat that dead horse through every
10 witness. Through Mr. Chapman and through Mr. Nassiri, I said no one ever told
11 you that and they all had to acknowledge no representative ever said here's this
12 map, this is all we're going to ever build.

13 The maps correctly show the project, Your Honor. They show the
14 realigned Blue Diamond Highway Phase 1. When they did that survey and they
15 were doing this transaction, they correctly showed the roadway. They weren't
16 supposed to show future roadway configurations on a survey map, they were
17 showing area, and they correctly showed what was built as part of the Blue
18 Diamond Highway Phase 1 which is the project that acquired the take from Mr.
19 Nassiri's property.

20 John Terry I asked specifically and did Heidi Mireles ever represent
21 that this sketch map is -- if you recall, Heidi Mireles was the chief of right of way
22 involved in the discussion with Team Nassiri. Mr. Terry testified Heidi Mireles never
23 would and did not have the authority to promise this was the final roadway build
24 out.

25 Further Mr. Terry testified to not build the flyover would violate the

1 2004 EA and require an amended EA. NDOT always intended to build a future
2 eastbound and northbound I-15 flyover when traffic demands warrant and funding
3 was available. That was clear from going back to 1999.

4 So I believe, Your Honor, that the State has established that Mr.
5 Nassiri had notice of this flyover in his hands going back to August of 1999.
6 There's the original Nassiri letter with the flyover in is hand. He saw it again at the
7 February 23rd, 2000 information package. It disclosed the flyover. The April 2004
8 environmental assessment again discloses the flyover. And finally the October
9 2008 environmental assessment discloses the flyover.

10 And interestingly enough, Mr. Nassiri actually relies upon the October
11 2008 environmental assessment in his complaint and cites it and acknowledges it in
12 paragraph 24 of his complaint that he was aware of it. So again, four years before
13 the statute's a year time barred.

14 So notice equals knowledge, Your Honor, in this state. He clearly had
15 notice. Mr. Nassiri's claim is time barred. It's time barred under the applicable
16 statute of limitations. An action for relief on the grounds of mistake is subject to a
17 three-year statute of limitations. He's deemed to have notice that NDOT intended
18 to build a flyover as early as 1999.

19 Your Honor, respectfully, this claim is time barred and this Court -- we
20 would request that this matter be dismissed. Thank you, Your Honor.

21 THE COURT: Okay. Thank you. Mr. Olsen.

22 MR. OLSEN: Yes, Your Honor. Let me -- give me a second to
23 (indiscernible) in order and I'll --

24 MR. COULTHARD: Thank you.

25 MR. OLSEN: I don't have a TV show so I'm going to move this up a bit.

1 diligence. All he was really looking at was value. Well, you know what? If that's
2 the case, shame on him and shame on his group of professional consultants who
3 were obligated under and notified to look at the -- all aspects under the exclusive
4 look. Go look -- go use your civil engineer. Go use your attorney. Go use your
5 appraiser or your real estate brokers and do your own homework. They were on
6 notice of a quit claim deed and I believe that heightens their obligation to go do
7 the -- their homework.

8 So we also heard that we don't know what went on at any of these
9 public hearings. Well, that's not true. We do know what was handed out. We
10 know that there was public handouts, Exhibit 6, we looked at that. That was from
11 the February 2000 meeting had three diagrams of a flyover, had a project
12 description of a flyover. We know that got handed out. We know what the May
13 15th, mid-May 2004 EA approval. We looked at that handout. I think it's Exhibit 39.
14 It is. Exhibit 39, May 19th, 2004. We know the EA was present. We know the
15 handout at that meeting referenced the description of the flyover and had three
16 maps of the flyover in it. We looked at those maps, Your Honor. So we do know
17 that happened.

18 Your Honor also took judicial notice of what happens at those meetings
19 when you took judicial notice of the Federal Code of Regulations, I believe it's
20 Exhibit 154 --

21 THE CLERK: 151.

22 MR. COULTHARD: 151, thank you.

23 And that spells out what the State has to do at these meetings.
24 Reasonable notice to the public has to occur, which we know occurred, and
25 explanation at the public hearing of the following information as appropriate.

1 Number -- A, the project's purpose, need and consistency of the goals and
2 objections of any local urban planning, the project's alternatives and major design
3 features, the flyover was always an alternative and a major design feature. And
4 then it goes on, the social, economic, environmental and other impacts. But clearly
5 we have testimony that the State complied with these federal obligations and they
6 couldn't have approved the EAs without complying with them. So we do know what
7 occurred and it's -- what occurred is consistent with the Federal Rules and
8 Regulations. So when he tells you we don't know what happened, that's just not
9 correct.

10 The sketch map, again, very creative argument but I think you have to
11 look at the four corners of the contractual agreement. The sketch map, the only
12 time it's referenced in both the settlement agreement, the prior correspondence and
13 the amendment, it is specifically referencing the area of land that it's defining. And I
14 actually have that amendment. I had that amendment.

15 When the sketch map is referenced, and if you recall the first
16 amendment to the settlement agreement all that really did is it adjusted the land
17 area by -- we went from like 24.41 to 24.42 acres. A very small discrepancy. And it
18 references in section 2.02. Exchange property legal description. The exchange
19 property shall be the 1,063,570 square feet set forth in the legal description and
20 diagram attached hereto as Exhibit A1 and incorporated herein by this reference.
21 The legal description set forth in Exhibit A1 shall be attached to and incorporated
22 into the quit claim deed and the exchange property easement.

23 Judge, again, it is an area map to show the actual square footage,
24 nothing more, nothing less, certainly no reference in the settlement agreement or
25 the amended settlement agreement that says, oh, yeah, and by the way, the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

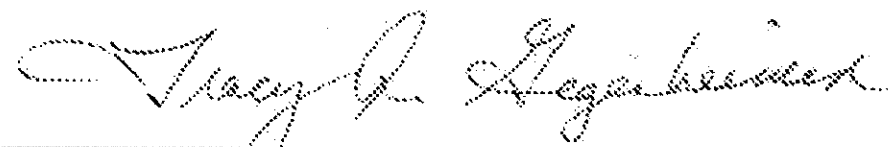
THE COURT: Thanks very much.

MR. COULTHARD: -- get out of your hair. Thank you, Your Honor.

THE COURT: And thanks for rearranging your travel so we could do this today. Yes.

[Proceeding concluded at 4:15 p.m.]

ATTEST: We hereby certify that we have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of our ability.



Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber



Patricia M. Noell, CET-362
Transcriber