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.	Case No. 70098

APPENDIX VOLUME 13, part 1

TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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CLERK OF THE COURT

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

WEDNESDAY, APRIL 1, 2015

TRANSCRIPT OF PROCEEDINGS - SEE PAGE 2

APPEARANCES:

For the Plaintiff: ERIC R. OLSEN, ESQ.
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For the Defendant: WILLIAM L. COULTHARD, ESQ.
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RECORDED BY: KERRY ESPARZA, COURT RECORDER

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TRANSCRIPT OF PROCEEDINGS

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

DEFENDANT/COUNTERCLAIMANT STATE OF NEVADA'S MOTION FOR PREFERENTIAL TRIAL SETTING ON FOUR-WEEK STACK SET TO BEGIN ON APRIL 27, 2015 ON ORDER SHORTENING TIME

STATE'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFF'S CLAIM FOR INVERSE CONDEMNATION

Wednesday, April 1, 2015 at 10:29 a.m.

THE COURT: -- in Nassiri versus the State of Nevada, which is 672841. I'll have everybody state appearances for the record and then we can discuss how we're going to approach them.

MR. COULTHARD: Good morning, Your Honor. Bill Coulthard, Eric Pepperman, Mona Kaveh and Amanda Kern on behalf of the State of Nevada on relations to its Department of Transportation.

THE COURT: Okay.

MR. OLSEN: Morning, Your Honor. Eric Olsen and Dylan Ciciliano on behalf of the plaintiffs. Mr. Nassiri may be joining us --

THE COURT: Oh great.

MR. OLSEN: -- in progress.

THE COURT: Okay, no problem. We have a number of motions. I know that there was a request that maybe we consider the preferential setting and do our calendar call today, so go ahead and maybe do that first and then we can move into the substantive motions which I think are all filed, Mr. Coulthard, by your office.

MR. COULTHARD: That's correct, Your Honor, there's --

THE COURT: Okay. All right, so let's do the preferential setting issue?

MR. COULTHARD: Thank you, Your Honor. I think Mr. Pepperman actually is going to take the --

THE COURT: Okay.

MR. COULTHARD: -- take the lead on that and given the fact that our motions are dispositive motions, I would only preface this argument by it is being made in the alternative and --

THE COURT: Sure.

MR. COULTHARD: -- obviously, if our motions are granted, the preferential trial setting, it will be moot.

THE COURT: Sure.

MR. COULTHARD: Thank you, Your Honor.

THE COURT: Understood. Okay.

Mr. Pepperman, hi.

MR. PEPPERMAN: Thank you, Your Honor. I'll be brief with this because we do have some more substantial issues on your plate today so -- our motion's fairly simple. The -- this is an eminent domain action. It was filed in an inverse condemnation claim. The NRS 37.055 is very clear that these type of matters take precedent over all other matters. I understand that there was a firm setting on your trial stack coming up. Obviously, we're not asking to take precedence over any firm settings or any other matters of public interest or have -- or allow priority setting, but in terms of all the other regular cases, the statute's pretty clear that we get to take priority over those cases, and very briefly addressing some of the arguments in opposition about this statute only inuring to the benefit of landowners, it's simply not the case. The State has a very keen interest in resolving this as quickly as possible. We've incurred a lot of fees and costs so far and would like it to be resolved.

Second, the suggestion that it's strategic to want to go to trial on the trial setting that we've had for almost a year is -- I don't put much credence in that. Obviously, there's -- you know, we're just asking to go on the trial stack that we're -- we were set on and we'd ask that the Court allow us to do so under the statutory scheme of NRS 37. Thank you.

THE COURT: Thank you.

Mr. Olsen or Mr. Ciciliano, go ahead.

MR. OLSEN: Your Honor, Your Honor gets to control your calendar. The fact that they cite to this statute doesn't change that. They -- first of all, the policy -- they've had -- they -- you know, when you look at condemnation cases and I guess they're acknowledging now this is a condemnation case and that they get to invoke the statute, but condemnation cases, the State already has the property and it's in the -- the interest of the landowner in getting compensation for the property is the policy behind this firm setting statute, one.

Two, when it's convenient to them, they cite to the statute after two -- more than two years of this case going on, so our position is simply although I made reference to feeling a bit squeezed here given the lateness of the motion filings, it's up to the Court to control its calendar and again, the statute doesn't change that.

THE COURT: Okay. The -- I think we can accommodate a preferential setting, possibly. Here's the problem. It really is -- there is actually technically two cases on this stack and just, you know, for your information, we've -- because we're doing more probate now, our stacks are only four weeks long with the open weeks on either side of the stack for evidentiary hearings and probate cases. So -- because we've got less actual, you know, civil litigation cases.

So the problem we have on this particular stack is we do have a case involving an 83-year-old defendant that gets a preferential setting and we have one other condemnation case which is DKB versus Clark County. That's a flood control district case and it's Mr. Mansfield and Mr. Padgett's office is representing the plaintiff and Mr. Mansfield representing the flood control district. They've not been

in, in several months. They were kind of ready to go, we did a bunch of hearings back in the fall, but we -- they weren't able to go to trial in the fall so this was the setting we gave them. So I haven't seen them in a few months. I don't know if they're going to go. If they go, then I'm not sure how much time they need.

The PI case involving the 83-year-old, that's set for April 27th. It's going to go. And, you know, unless they come in tomorrow and tell us something, but, you know, so we'll know more tomorrow, but subject to those two cases and I just don't know how much time they're going to take up of this four-week stack or how much time you think you would need on the stack yourselves. As I said, we -- I just don't know about that flood control case, how long they're going to need.

MR. OLSEN: Your Honor, to -- and I think Mr. Coulthard and I have talked a little bit about the time for this case.

THE COURT: All right.

MR. OLSEN: We're thinking it could be up to three weeks.

I think, Bill, is that -- two for certain?

Let's -- see one of the problems with these motions is -- I mean, if one or more motions are granted, it could change the timeframe, but --

THE COURT: Right. So as it stands now --

MR. OLSEN: -- but we've talked about it possibly being that long. What we could --

THE COURT: The full case.

MR. OLSEN: I don't know what the Court's -- we're never opposed to getting a -- some certainty by getting a firm setting. I don't know what the Court's calendar looks like --

THE COURT: Now how about your --

MR. OLSEN: -- further out.

THE COURT: -- witnesses? Are they pretty much all local or?

MR. OLSEN: I think so.

MR. PEPPERMAN: Our witnesses are available on the April trial stack so we have some flexibility there.

And to be clear, Your Honor, we're not asking for a firm setting today. We're just asking to take precedence over the other cases that may be ahead of us in --

THE COURT: Right.

MR. PEPPERMAN: -- in time.

THE COURT: Right.

MR. PEPPERMAN: So --

THE COURT: And the two that I mentioned are older, so --

MR. PEPPERMAN: Correct.

THE COURT: -- technically, you know, they -- if they both go, then they'll probably take up the whole stack. But other than that, we --

MR. PEPPERMAN: And --

THE COURT: -- I understand you'd be entitled to go.

MR. PEPPERMAN: Okay, so maybe the way we handle it is to grant our motion to give us preference over other --

THE COURT: Correct. Yeah. Oh yeah, absolutely.

MR. PEPPERMAN: -- non-public cases and then we'll appear tomorrow and then, you know, the chips will fall where they may based on those other two cases.

THE COURT: Right. And if you want to send somebody down just to observe and find out if there is any time left and then we can -- if you know if there

are future stacks that might be available, I mean really -- probably looking at the fall. September, October, and it just would be a question of where we could put you on one of those stacks.

Because when they took away all those cases to give us more time to do probate, they unfortunately didn't take away any cases that had trials set. So it's kind of a problem. Now they took away a bunch of newer cases and we still have these cases that are ready to go to trial that we're trying to figure out when we can get them all to go so, you know, we'll try to make this work, but I think you're entitled to the preference. Absolutely would give it to you. It's just a question with respect to the two that are already on this stack. If both go -- you know, I mean, if the 83-year-old guy is not well and can't go to trial in couple of weeks, that frees up a week. I -- but the problem is the other one and you might want to talk to Mr. Mansfield or Mr. Padgett, find out what's going on with their condemnation case. I haven't seen them in several months so we'll find out tomorrow.

MR. PEPPERMAN: Okay.

THE COURT: But that was a flood control, a culvert or a ditch or something. And I don't think they were going to take as long maybe as you guys were, but, you know, if it works out that they don't -- that they -- I have no idea. If they're not going to go, then, you know, might be that we could, you know, give you the balance of this stack subject to everybody being available.

MR. PEPPERMAN: Understood, Judge.

THE COURT: Okay.

MR. PEPPERMAN: Thank you. We can address it tomorrow.

THE COURT: Great. All right, so if you're still going to come in tomorrow, then that'll be great. So we'll grant that as far as a preference and we'll just try to

find out when we can actually put you where you can go given the fact that you need three weeks on a stack. Okay? So that's great.

All right, now the -- I don't know which order you want to take them in, Mr. Coulthard, inverse condemnation or the other causes of action. Which is your preference?

MR. COULTHARD: I think the inverse --

THE COURT: Okay.

MR. COULTHARD: -- Your Honor, if it's appropriate and --

THE COURT: Sure.

MR. COULTHARD: -- with -- if I will I'll work from the --

THE COURT: We'll do inverse condemnation first.

MR. COULTHARD: -- work from the podium a little. There are --

THE COURT: Okay, sure.

MR. COULTHARD: I may use the Elmo throughout a little bit of this and -- and, you know, I guess I don't want to get discouraged with the -- discussing the preferential trial setting before our dispositive motions because I do think that this is a case, given the issues as they have been framed in the motions -- in both motions for summary judgment, that summary judgment is appropriate in favor of the State and the discussions related to a trial date will be moot. And I'm hopeful that we're able to persuade Your Honor of that through our -- both our moving papers and our arguments today.

THE COURT: Sure.

MR. COULTHARD: I guess I would start out by thanking Your Honor and your staff for dealing with this -- these pleadings because they're -- they were thick and it's a lot of paper and a lot of factual history related to the Blue Diamond State

Highway Route 160 and I-15 which we did go through so there is a lengthy and protracted factual history. However, when you look at the claims as they now have been narrowed, I believe, through the pleadings, we -- the facts that are important for Your Honor to make the legal determinations that I -- that you, I believe with all due respect, have the obligation to make, these are legal issues before Your Honor and the facts that have been cited, while nice to frame the history of this, are not triable issues of fact, material issues of fact that would preclude Your Honor from granting the summary judgment motions.

So specifically as to the inverse condemnation, Your Honor, we I think were last in front of you in June of 2013 on our motion to dismiss and we moved to dismiss the inverse condemnation claims to the extent that they were based upon the allegation that the I-15 Blue Diamond flyover eliminates the view and visibility to Mr. Nassiri's property from I-15. And the basis of our motion to dismiss was the controlling case law and the controlling Nevada Supreme Court case of *Probasco*, which essentially states that depravation of view alone is not a basis of a viable inverse condemnation claim. And that under that law under -- which is still good law, it's a 50-year-old case and it's precedent in the State of Nevada, the -- you needed actual taking of a portion of Mr. Nassir's property for construction of the flyover or you need an expressed written negative easement for view and visibility.

And we cited this case in our moving papers and Your Honor in your order acknowledged *Probasco* was controlling and stated in our -- in your order that depravation of view alone does not support an inverse condemnation action. And we've cited that order in our statement of undisputed facts at paragraph 20, page 11 of our moving papers.

And we understood, Your Honor, you know, you were faced with a

motion to dismiss and that's a fairly liberal standard and in fairness to Mr. Nassiri, you allowed these -- Mr. Nassiri and his counsel to go and do discovery, try and prove up and I think the order said and the transcript we cited to go find out, try to prove something else, something more in discovery. Well we've been a year and a half in discovery. We've had tens of thousands of pages of documents, primarily documents that are in the public domain that NDOT has related to the I-15 and Blue Diamond projects. We've exchanged those. We've had numerous witnesses deposed. We've had extensive written discovery and now discovery's closed. And we have renewed our motion for summary judgment, again based upon *Probasco* in part and also based upon the written settlement agreement that was entered into in April of 2005.

And certainly, again, Your Honor, they -- the response of Mr. Nassiri was 25 pages of factual statements that are really I think are arguments, but they're really -- those facts are not in dispute, nor are they material issues of fact that go to the *Probasco* legal test. So -- and frankly, I don't believe there are any triable issues of material fact which preclude this Court from dealing with the motion for summary judgment.

This Court, as I mentioned earlier, I think has a duty to address the legal issues and the purpose of inverse condemnation. The first step of that is to determine whether there has been a take; was there a taking in this case, and then is there an express negative easement.

And case law is clear -- we've cited that, Your Honor -- that the -- whether a taking has occurred is purely a legal question for this Court and that's important because you need to look at the facts and then say okay, is there a legal taking that can support this claim, and that is -- we've cited *Mullen versus Clark*

County. That is a question of law for the Court, so we're squarely putting it on Your Honor.

That is not ever -- even if we were standing in trial arguing to a jury as the trier of fact, the determination as to whether there was a taking is Your Honor's and so -- and that is the first step that we need to do under the *Probasco* analysis. So again, with all due respect, I think that that's your decision so triable issues of fact don't bear on that legal determination.

So the way I understand their inverse condemnation claim and they -- again, it's been a challenge for us in this case because it's been somewhat of a moving target and -- and we mentioned that in our pleadings and -- but I think the case has been narrowed.

But one of the issues I need to touch on, which I believe now when I look at these pleadings has been abandoned by Mr. Nassiri and his counsel, is that the alleged flyover -- the flyover that was built in 2010 allege -- is not allege, excuse me, but it allegedly impacted the access to Mr. Nassiri's property and we heard those arguments in the motion to dismiss and we heard those rumblings in discovery and -- but I believe now we have established that the access was not impaired by the flyover. The flyover was built entirely within the I-15 right of way, had no negative impact whatsoever on access off of either Blue Diamond or Las Vegas Boulevard which is -- which Mr. Nassiri's property has access to.

In our moving papers we cited -- we had an argument as to access that said essentially their access argument is fatally premature under controlling case law. And that controlling case law is *Williamson versus Hamilton Bank* and more recently a case that we were involved in, Mr. Pepperman and myself, *City of North Las Vegas versus Fifth and Centennial*, and we cited that case, but that -- the

Nevada Supreme Court confirmed what the United States Supreme Court did in the *Williamson versus Hamilton Bank* that a -- an access claim, a claim for inverse condemnation and impact to access is not ripe until a plaintiff landowner avails itself of the local government's development application process.

In other words, they need to file an application -- Mr. Nassiri needs to file an application with the -- with NDOT as to this SR-160 for an encroachment permit and an access permit to his property and/or Clark County for an access permit along Las Vegas Boulevard and he did not do that.

THE COURT: So --

MR. COULTHARD: He acknowledged he did not do that.

THE COURT: In the deposition where plaintiff's expert says there's possibly eight different places where you could access, they've never actually applied --

MR. COULTHARD: That actually --

THE COURT: -- for any of them?

MR. COULTHARD: That actually that expert opinion is the State's expert.

THE COURT: Oh State's expert --

MR. COULTHARD: The only expert in this case is Mr. Harper, excuse me. Keith Harper is their expert appraiser and he actually acknowledges that he considered the access good.

As the marketing materials of Mr. Nassiri show, they market this property as having good access. He -- Mr. Nassiri acknowledged that he had not filed an application as required under both U.S. Supreme Court and Nevada Supreme Court cases and we've cited that in our brief.

And Mr. Harper concludes there's good access and Mr. Harper importantly is the -- is the only expert -- the appraiser expert is the only expert for

Mr. Nassiri's and conversely the State went out and got a traffic engineer, Mr. Accurit (phonetic), had him evaluate the viable points of access along both Blue Diamond and Las Vegas Boulevard and he found there were eight access points.

So access has not been significantly impacted. It has not been -- it has not changed one bit because of the construction of the flyover and he's never applied. So it's -- number one, it's fatally premature and it's clear that under the Nevada Supreme Court case of *Linnecke*, if a landowner has free and convenient access to the property and his means of ingress and egress are not substantially interfered with, he has no cause for complaint. That's *Linnecke*, 468 P.2d at page 9 and 10 and that's Nevada Supreme Court case.

And again, so we argue, number one, they were premature, number two, they have not lost any points of access, it has not been substantially interfered with, and they failed to respond, Your Honor, in their opposition to either of those arguments, so I believe that their failure to -- well I don't believe, I know that the -- that our local rules provide if they don't respond to arguments raised in the motion for summary judgment, that it is deemed meritorious and our motion should be partially granted at a minimum as to the access issues that we've been defending now for a year and a half.

THE COURT: That be without prejudice?

MR. COULTHARD: It would be absolutely with prejudice, Your Honor. Discovery's done. They haven't responded to that section. They don't have a viable response. I mean, the fact of the matter is they haven't availed themselves of the permitting process which is a prerequisite to filing this claim and their own expert says they have good access, as does Mr. Nassiri.

So it's premature. They haven't submitted the access plan. They

didn't respond to that in our opposition, and I believe that at a minimum that portion of their inverse claim has either been abandoned or should be dismissed summarily at this point.

So, Your Honor, that leaves what now I believe the case is dealing with or the inverse condemnation claim and that is that the Nassiri's -- Mr. Nassir's view or visibility from I-15 has been negatively impacted because of the construction of the flyover.

THE COURT: If I can just clarify what we're talking about --

MR. COULTHARD: Sure.

THE COURT: -- when we talk about view. Are we saying that -- I think this was being marketed -- I wasn't sure if it was casino -- I think it's zoned casino.

MR. COULTHARD: It's -- I think it's C-2 out there --

THE COURT: Yeah.

MR. COULTHARD: -- along highway frontage.

THE COURT: So were they saying view from the property out in -- like out and it's blocked by the I-15 or are they saying -- from I-15 you can't see it? So if they're putting some sort of commercial property there, you wouldn't see it because it's blocked by the wall?

MR. OLSEN: I can address that if you want, Your Honor.

MR. COULTHARD: Well I -- I don't believe their --

THE COURT: We'll get to Mr. Olsen, yeah.

MR. COULTHARD: I don't believe their complaint is clear, but I understand after deposing Mr. Nassiri that his big complaint is that the flyover has blocked visibility to his site from traffic along I-15.

THE COURT: So people looking for whatever might be built on there --

MR. COULTHARD: Is that --

MR. OLSEN: That's accurate, Your Honor.

MR. COULTHARD: Yeah.

THE COURT: So whatever might be built on there, people passing by on the freeway would not be able to see it --

MR. OLSEN: That's the crux --

THE COURT: -- whatever commercial use it was put to because it's commercial.

MR. OLSEN: Yes, Your Honor.

MR. COULTHARD: Of course we don't have a view of visibility expert that says this --

THE COURT: Okay.

MR. COULTHARD: -- so it's really only --

THE COURT: Yeah.

MR. COULTHARD: -- the self-serving statements of --

THE COURT: Okay --

MR. COULTHARD: -- Mr. Nassiri.

But be that as it may, I think that -- importantly, Your Honor, then if that's all that's left of their inverse condemnation, which I believe that's all that's left. The access issue is -- they haven't opposed it. It goes away. The only thing -- the only claim left -- the only portion related to the inverse condemnation is that we've negatively impacted their view of the property or the visibility from I-15 to the subject site.

There's only two ways under *Probasco* that that claim survives, Your Honor, and they cannot substantiate either of those. They have to have proof of a

partial taking or severance of plaintiff's property for the construction of this flyover, and they don't. They don't -- then they don't have that and it's a fiction to -- for them to assert that any portion of the property that was condemned in 2004 was taken for the flyover. And I've got a series of maps, but I did bring one blowup that I'd like to, if I may, show --

THE COURT: Yeah, we have the little --

MR. COULTHARD: -- first to counsel --

THE COURT: Right here we have a --

MR. COULTHARD: I think this is Exhibit D to our -- C or D to our reply brief.

THE COURT: Right. We have a --

MR. COULTHARD: And -- sure.

THE COURT: -- easel if you need --

MR. COULTHARD: Well I'll just hold it up and then I'll set it down --

THE COURT: -- or okay. Sure --

MR. COULTHARD: -- here, but --

THE COURT: -- against the wall.

MR. COULTHARD: -- what this map depicts, it shows the four acres of property that was condemned for realignment of SR-160. This is the 2004 Nassiri property and it shows the realigned SR-160 Blue Diamond Highway. The flyover is constructed entirely within the preexisting right of way of I-15 and Blue Diamond, and you can see on this map, it actually shows the preexisting highway alignment. Blue Diamond used to cross underneath --

THE COURT: Right.

MR. COULTHARD: -- I-15 and you can see the old roadway configuration.

THE COURT: It had a loop.

MR. COULTHARD: All of this pork chop area --

THE COURT: Right.

MR. COULTHARD: -- was preexisting flyover to the take.

And here is the ramp that he is complaining about. It connects eastbound SR-160 traffic, someone traveling east on Blue Diamond, allows them to flyover and connect into northbound I-15. This is the flyover that he's complaining about and this is the property that was taken by the State in the 2004 condemnation. So it is virtually impossible for him to say and suggest as he has in his moving papers that any portion of the 2004 condemnation property was used for the flyover.

And we've got a series of maps and I -- and we addressed this because I got to tell you, when I say this has been a moving target, that's a new theory. That was not advanced by anyone until the lawyers followed -- filed their opposition to the motion for summary judgment, because I think they knew they needed it. To withstand a *Probasco* challenge, they needed to show and they needed to argue -- and in fact they did argue: In fact, the evidence is clear that NDOT took a portion of plaintiff's land associated with the construction of the flyover. And that's from the opposition, page 26, lines 9 through 10. And I would suggest that is absolutely false and incorrect and it's a fiction and no portion of Mr. Nassiri's property was taken for construction or used for construction of that flyover.

The best evidence, Your Honor, because again, we hadn't heard this argument till the opposition, we cited and I'll go through these maps if you -- if I may and use the Elmo. But there's a series of maps attached to -- that I think address this argument and demonstrate that it's not possible. NDOT had all of the right of way preexisting from the late 1950's and early '60s and we attached those prior

deeds and where we acquired the right of way within which the flyover was built.

And if I can -- I guess I'll turn it this way. I'm not sure I'm on autofocus, Judge, so I don't know if this -- oh there you go.

THE COURT: There we go.

MR. COULTHARD: So -- again, I apologize. This is a -- it's a small map, but what it's designed to show and it sort of reflects in pink -- what it does reflect in pink is the right of way previously acquired by NDOT and you can see -- barely see and I apologize and maybe I can get this a little bigger. If I do, I can't really work on it.

Oops, sorry, Your Honor. Figure this out.

MR. OLSEN: Is this attached to the --

MR. COULTHARD: It's Exhibit --

MR. OLSEN: -- reply because I've never seen it --

MR. COULTHARD: It's Exhibit A to our reply.

And if you look at the actual exhibit in the pleadings, you can see the red line. That's the -- that depicts the flyover. It pretty much follows the center of the right of way, but everything shown in pink is prior existing right of way obtained by NDOT unrelated to Mr. Nassiri.

MR. OLSEN: Your Honor, I'm just -- I know it's not trial, but I'm going to object. I've never seen that. I don't know who prepared it. I don't know what it depicts.

THE COURT: Hmm. Okay. All right, so --

MR. COULTHARD: Well we -- I think we laid the foundation through the -- our moving papers and it is motion practice, but we did -- again, we didn't know this was going to be their argument, so we came up with historic public records that have been filed with the county recorder that show that it's false.

We've got the deeds behind Exhibit B to our reply that show from 1959 these are the acquisitions of the right of way for I-15 and Blue Diamond intersection. A series of these deeds that show no, we didn't acquire this property for construction of the flyover from Mr. Nassiri, we've owned it for a number of years.

Exhibit C again shows a little different view of it but pretty much what's on the blowup. It shows Mr. Nassiri's property and the four acre take from the 2004 condemnation down here, the flyover here. And it shows the right of way post sale of the surplus property that demonstrates, again this flyover, the as-built condition is entirely within I-15 right of way.

THE COURT: Okay, and it's the flyover is that vacant area?

MR. COULTHARD: Flyover is right here, Your Honor.

THE COURT: And then the vacant area to it --

MR. COULTHARD: Down here --

THE COURT: -- down there is --

MR. COULTHARD: -- well then the hash lines show the existing -- the new right of way after the sale of the surplus property to Mr. Nassiri. Again that flyover was completely in preexisting right of way owned by Nevada Department of Transportation which again then shows that Mr. Nassiri cannot establish that a partial taking or severance of plaintiff's property for construction of the flyover. And again, I kind of go back to this is our final map, Exhibit D, that clearly shows the distance between the take and the construction of the flyover.

So it's an undisputed fact that the flyover was built entirely within NDOT's right of way. No portion of Mr. Nassiri's property was taken for the flyover and it was originally pled that way.

Your Honor, under the amended complaint, paragraph 42, they pled this case as without a physical taking of his land. That's in their amended complaint. Now they advance this new theory which Mr. Harper, their one expert, under questioning in his deposition acknowledged -- he states -- when asked this very question, was any portion of Mr. Nassiri's property taken for construction of the flyover, he states: I'm very aware -- quote, his answer is: I'm very aware that the construction that has taken place is within the State's right of way.

Question: And when you developed a value opinion of the, quote, part taken and you determined that was zero, right?

Answer: Yes.

Question: And that's because there was no actual physical portion of plaintiff's property taken?

Answer: Correct.

So their own expert, their own damage expert, Mr. Harper, acknowledges it. There's not a triable issue of fact. They can't meet that first element of *Probasco*. No portion of Nassiri's property was used for the flyover.

So -- but, Judge, accept it as true for purposes of this argument only. Assume that they're correct that this 2004 condemnation property was used for the flyover. What do we know about the 2004 condemnation?

We know, Your Honor, it's uncontested that the parties settled it and they entered into a settlement agreement that released and resolved that claim. The settlement agreement would control that take if that was in fact the truth, and it provides -- Exhibit B to our moving papers provides for a full and final -- and that's the -- the settlement agreement is in two places, Your Honor, Exhibit B to the motion for inverse -- motion for summary judgment as to inverse condemnation and

also I believe it's Exhibit Q to our breach of contract. But that settlement agreement would control the resolution of the 2004 condemnation and they're now arguing for the very first time that that 2004 condemnation is the basis of their inverse claim.

Well if that's the case, Judge, we know they fully resolved it. Paragraph 1.04 that settlement agreement provides for a full and final resolution of the 2004 condemnation action. The State paid $4.81 million for that four acres, the four acres used to realign the property. There's an acknowledgement in the settlement agreement that Mr. Nassiri was paid in full satisfaction of all of his claims. There's an acknowledgment it was a compromise settlement under 2.19(i) and Mr. Nassiri released all claims known and unknown under the settlement agreement, including claims for -- additional claims for severance that he now wants to argue.

So he resolved the 2004 in full, released any and all known, unknown claims, including claims for severance damages -- he resolved them and settled them as part of the 2004 settlement agreement. So he can't get another claim. He's released those based upon that 2004 take and that's what he's trying to do.

Simply put, if their argument's correct, Your Honor, then he's already received his compensation and you've got to dismiss that claim based upon the settlement agreement. Not only do you have to dismiss it based upon the settlement agreement, but that take, that 2004 take was resolved through a final judgment of condemnation.

And, Your Honor, that final judgment of condemnation has res judicata, claim preclusion impacts, and to the extent Mr. Nassiri seeks additional compensation, it's barred under res judicata and claim preclusion because we have the final judgment.

So assuming their facts are correct for argument purposes, you shift to the settlement agreement and the final decision of condemnation and they're precluded from bringing the claim that they now are bringing. So they lose that way, Judge.

But that's just the first element of *Probasco* and the second element is that there needs to be an express covenant as to viewer visibility. In the -- and the case law states that in the absence of a physical taking or severance, which is the case here, plaintiff must prove he acquired a right to view or visibility by expressed covenant.

And, Your Honor, we cited *Probasco*, we cited the cases leading up to it. Your Honor's well aware that Nevada has expressly repudiated the doctrine of implied negative easements in the context of eminent domain cases.

So what's undisputed in this case, Your Honor, for purposes of the motion for summary judgment. And again, I think Your Honor has not only the obligation as the Judge to make a legal determination as to whether there's a take, but the second legal determination for Your Honor is, is there a contractual provision that -- as to duty and secondly, is there a contractual provision in that agreement that creates an expressed easement. That's a legal determination for Your Honor; read and review that settlement agreement and is there a contractual expressed view and visibility easement and there is not. And they all -- everyone knows there's not. Everyone in this case knows that.

We have the plain language in the contract and there's no view or visibility. In fact, the opposite is true. In fact, the State of Nevada under that settlement agreement under subsection I believe it's 2.08 -- 2.09, had a reservation expressly -- and I want to get that -- and I'll -- actually I'll address this in more detail

in the breach of contract argument so they overlap a little when we roll into the settlement agreement, but NRS -- under the settlement agreement, 2.14, there's a reservation.

So we're on the issue, Judge, did the State give Mr. Nassiri an expressed easement for view and visibility. No, they did not. In fact, what they did is they reserved the right under section 2.14, entitled NRS 408: NDOT shall have the right to adapt and improve the whole or any part of the property in accordance with the provisions of NRS Chapter 48 (sic), including but not limited to NRS 4008.487 (sic).

THE COURT: How is the property defined?

MR. COULTHARD: So --

THE COURT: Is the property the original take or the exchange property?

MR. COULTHARD: That's a good question, Judge, and it's not defined in the settlement agreement, the -- and I've looked for that. It's a -- it's capitalized in this provision, but it's not defined. So I believe it's -- and it's what Nevada Department of Transportation is. It reserved the right to do any and all improvements within its right of way and/or within -- any and all improvements within the four acre take for the roadway realignment that they were paying 4.8 million for.

So we certainly didn't grant a -- an expressed negative easement for viewing and visibility and in fact, reserved under this provision which under NRS 408 which is really the NDOT enabling statutes, we reserved the right to do anything to adapt and improve the whole or any part of their property in accordance with 408, so the -- there's no negative easement and we reserve the right to build these things.

But further, Judge, when you consider whether there's express

negative easement or covenant, you need to look at how the land was transferred, how the surplus property was transferred by the State to Mr. Nassiri, and that was done via quit claim deed. And that quit claim deed, which is -- it is an obligation of the State -- when they do convey property, it's a statutory requirement they transfer via quit claim deed.

But importantly, that deed states that grantor, the State in this case, makes, quote, no warranty, express or implied, of any kind with respect to any matter affecting the property. And that specifically is dealing with the surplus property that was conveyed via that quit claim deed and I deposed Mr. Chapman, Michael Chapman, and I'm sure Your Honor knows Mr. Chapman. He's a fine eminent domain lawyer, knows his way around this area of law, actually worked and represented the State of Nevada as an Assistant Attorney General for 10 or more years during his career. He actually represented Mr. Nassiri in the 2004 condemnation.

I took his deposition in this case and I specifically asked him whether or not there was an expressed easement granted by the State to Mr. Nassiri and he said no, there wasn't. He looked at the settlement agreement, he acknowledged it was never part of the discussions, clearly knows how to get one of those if he -- if he's asking for one. Wasn't part of the deal and he acknowledged it and we have that in our undisputed facts at paragraph 28.

Mr. Harper, their one expert, again the appraiser, confirmed that there was no expressed covenant. He was asked during deposition:

Question: Are you aware of any documents that include an expressed covenant by the State to restrict its use of the property within its right of way on Blue Diamond and I-15?

Answer, quote: I'm not.

Question: You're not saying that Mr. -- and I'm skipping down a little bit to shorten this a little bit. Question: You're not saying that Nassiri had a negative easement over the State's property, right?

Answer: No, I have not seen any document that stated there was any sort of easement between Nassiri, the State or any other parties.

Uncontested fact, Your Honor. No expressed covenant. The second element of *Probasco* they don't meet.

Again I -- Judge, I -- *Probasco* is dispositive in this case, and we've cited it and it's clear that the dispositive appellate question in *Probasco* was very similar to the case that we're dealing with today and the Nevada Supreme Court states: The dispositive appellate question is whether an abutting property owner possesses a right to compensation for interference with his claimed implied negative easement of light, air and view by an overpass placed on the street in circumstances where none of the owner's real property was taken for that overpass.

And the court went on to state: We have expressly repudiated the doctrine of implied negative easements in the context of eminent domain. Neither constitution nor statute contemplates compensation for that which does not exist.

They finally conclude: The infringement upon an abutting owner's light, air and view over a public highway should be similarly regarded unless such an owner has acquired a right to light, air and view by expressed covenant.

There is no expressed covenant. It's an undisputed fact. And Your Honor can read that contract. That contract and -- specifically says that we've reserved the right to do things we want to do in our right of way for necessary

improvements to the roadway.

So where does that leave us, Judge? We know that summary judgment should be granted on the impairment of access issue. They didn't oppose it. They didn't meet the prerequisites to filing their access applications with the development authorities. There's no evidence of a physical take or land for the flyover. Can't be, based upon the distance of the take of the four acres so the *Probasco* number one element fails. And there's no expressed easement for view or visibility in the four corners of the written settlement agreement.

And that written settlement agreement contains an integration provision which you've -- I'm sure you've seen our arguments on that issue in the breach of contract and I'll -- I won't argue both of those now or show you that, but in the breach of contract portion of the motion, there's an -- a big part of the argument is there's an integration provision. You're -- they're -- you're not allowed to go outside of the four corners of the document. The parol evidence rule precludes them from it. The integration provision in the settlement agreement says this is the entire agreement. In that entire agreement there is no expressed covenant for viewer visibility and that surplus property was transferred via quit claim deed with no express or implied easements. It was transferred as-is, where-is.

So I think, Judge, the key facts support Your Honor -- in fact, with all due respect, dictate that Your Honor follow *Probasco* and dismiss his claim for an implied negative easement for view and visibility.

You have been very gracious, Your Honor, because you've afforded them a year and a half to try and prove up, and I'm here again a year and a half later after incurring significant expenses in the defense of this and in the discovery and despite your accommodations, they can't prove either element of -- as required

under *Probasco* to go forward with this claim.

There's been no physical taking of land for the construction of the flyover and there's no expressed easement, Your Honor. I think you need to dismiss their claim for inverse condemnation based upon the Nevada controlling case law and the undisputed facts and I suggest that it is a legal determination for you to do to determine whether there's a take or not and determine whether there is a contractual -- within the four corners, whether there's an expressed easement, and there's not.

So again, I kind of -- it's a roundabout way of saying this is a motion for summary judgment, but the onus is on Your Honor to make these legal determinations as to a take and the contractual provisions. So with that, Your Honor, thank you for your patience.

THE COURT: Thank you.

MR. COULTHARD: I'll just reserve a little bit of rebuttal.

THE COURT: Sure. Absolutely.

MR. COULTHARD: Thank you.

THE COURT: Mr. Olsen.

MR. OLSEN: Thank you, Your Honor. I think it's interesting that Mr. Coulthard acknowledged the admitted shift over time not -- not for the first time, by the way, in our opposition, but admitted shift over time of the basis for the inverse condemnation claim and then continued to talk about *Probasco* ad nauseam.

Probasco would -- if the taking was as we originally thought in 2010 when the flyover was built, I would say we have a problem because there is no written easement and *Probasco* would require that in a view case.

By the way on the issue of access, there is an access problem. The

access problem is talked about by their own expert, Mr. Accurit. There's no never likely -- likely going to be a left-in, left-out of the property onto Blue Diamond. However, they are correct that that right, that test to see if we can get that access has never been undertaken by Mr. Nassiri, for the obvious reasons. The property is in a state of flux and it's, you know, impaired and can't be sold, but on that basis, the fact that it's not ripe, we would concede the access issue goes away. Not that it isn't impaired, but that we aren't ripe.

So to your question of whether it's with prejudice, I think that once that claim is ripe, if it becomes ripe --

THE COURT: Because the State doesn't really control that. You have to apply to Clark County.

MR. OLSEN: That's correct.

THE COURT: To develop a property --

MR. OLSEN: That's my understanding, although I'm not sure if that's a state highway right there. I don't know a hundred percent, but I think the county determines --

MR. COULTHARD: I think just so we're clear record, I didn't mean to interrupt, but State Highway 160 --

THE COURT: Right.

MR. COULTHARD: -- NDOT would control the --

THE COURT: Right.

MR. COULTHARD: -- encroachment permits into these -- and then along Las Vegas Boulevard --

THE COURT: Right, it's --

MR. COULTHARD: -- it would be the county.

THE COURT: -- the county. Yeah.

MR. OLSEN: The taking took place back in 2004. I think Mr. Coulthard mentioned that was our position that -- so *Probasco* really doesn't come into play.

Probasco is about a -- something that happens, you know, where you're really seeking inverse condemnation down the road. We brought the claim that way because you don't have -- you have the option -- can't really open -- reopen their complaint for condemnation, so I think it's sort of morphed into what the reality is and that is the taking incurred in 2004. It is the view into the property as we discussed that is at issue, the view that was completely obscured after the planned flyover was built.

I noticed that in this motion and also I think in respect to at least in the reply and the other motion, the State seems to have abandoned their effort to split the settlement in two. The fact is the settlement was all one. It was a settlement of a condemnation claim which included the exchange property and although the State, as counsel pointed out, paid us -- paid Mr. Nassiri $4 million, Mr. Nassiri paid $24 million for this piece of property that was not as promised, was not a piece of property that had a view, a view that the State in their own appraisal valued, a view that Ms. Morales, the chief of right of way, told implicitly when she told Mr. Nassiri the property would be enhanced by this project that was -- had value. They took that value --

THE COURT: So again, just as I said -- it's a little bit vague. I know you -- I know neither counsel were involved in this and didn't write this agreement but -- so talks about property, but it's not real clear what property they're talking about. The settlement document -- there's an exchange property that NDOT owned, the 24.41 acres, which Mr. Nassiri purchased from the State for $24 million and they took

from him four acres for which they paid him 4.8. So he nets out paying them 20 million. But it just --

MR. OLSEN: He nets out paying, yes, about 24 million.

THE COURT: It just wasn't clear when they talk about property that the -- what the exchange property was.

MR. OLSEN: Yes, Your Honor, I'm actually putting up an exhibit. This one is -- you got it on there?

MR. CICILIANO: Yeah.

MR. OLSEN: This is the map -- one of the two maps that's directly associated -- this one is Exhibit -- think this is 46. One of the two maps associated with the settlement agreement. This is the second map, and despite their dispute about the maps being part of the settlement that we'll get to probably in the other motion, you know this one is part of it because this second map resulted from a discrepancy in the metes and bounds, and in fact there's a 1/100th of an acre difference in the acreage in this map from the other. So this is the result of not only the settlement agreement but the amendment to it and this reflects the property as it was ultimately exchanged.

I show this to Your Honor just so you can be clear about, you know, what property's what and I actually have a color picture that I'll show you as well but -- again, this is one of the diagrams that was shown to Mr. Nassiri and represented to Mr. Nassiri as the project that was going to be built for which they needed the -- his land and they were abandoning this other land.

The -- as Mr. Coulthard said, the pork chop portion in this picture is the exchange property and Mr. Nassiri's land was in the corner here on Las Vegas Boulevard and the new Blue Diamond.

I'll show the Court just so we're -- so the Court's clear, here's a color photo similar to I think what's in the blowup, although I can't see the blowup. It depicts the outline of the former right of way, the pork chop, and it shows what actually was built. This is an aerial photograph and this is what was built initially completed by 2006. This was what was represented as the project, the Blue Diamond project to Mr. Nassiri.

In fact, the Blue Diamond project looked like this. This is what was ultimately built and completed in 2010. This includes the flyover -- the 60-foot flyover that runs from Blue Diamond, swings around abutting the property, and then goes onto northbound I-15.

You can't tell -- what you can't see from this vantage is the, I don't know, 15 or 20-foot wall Mr. -- along the exchange property that Mr. Nassiri acquired. What you can see, of course, from this perspective is the difference between a 30-foot simple overpass, which is what was planned, promised, built, and then a 60-foot flyover which was completed in 2010.

To give you a perspective of what that looks like from the ground, that's what it looks like from the travel -- the right-hand travel lane of the I-15 post completion.

What happened back in 2004 is contrary to the State's manual and there's some complaint about using a 2011 manual. Hopefully for trial we're getting -- we'll get the version that was in place at the time, but I don't think the manual statement under 5.351 that acquisitions shall be conducted to the end result that the property owners receive just compensation isn't in the old version because that's what the constitution requires. It requires just compensation and Mr. Nassiri didn't receive just compensation back in 2004 because he wasn't told, as we saw

from that first map I showed you, about a flyover. What he was told was that the project for which he was -- his property was being condemned and for which, as a part of that settlement, that he received some property that was going to be abutting this project. He was told it was going to abut this.

There's no question that the Blue Diamond project included a flyover and the State has acknowledged that. I don't think -- they don't really argue against that's the -- the 30(b)(6) witness of the State and other documents show that in fact there was a flyover that was part of the plan.

Not only in the deposition but he also -- there was also a -- Exhibit 11 is a memo in which NDOT says internally acquire the necessary right of way now, especially if it means we don't have to go back and hit the property owner twice.

So there was clearly an understanding on the State's part of the I-15 Blue Diamond interchange including a flyover. There was also clearly no disclosure of that in a settlement negotiation where -- understand where Mr. Nassiri, to try to settle this condemnation, was acquiring a piece of property as part of the -- as an exchange which the State itself, its own internal appraiser said had view value.

They knew they were going to take that value away, yet that was not raised and he was not compensated for that back in 2004 and it's compensable -- visibility is compensable. We cited the authority for that and it may not be compensable under *Probasco* after the fact with no taking without a written easement, but at the time of this taking it was a compensable element.

Mr. Chapman said, you know, we would have considered that. Mr. Nassiri said if I knew --

THE COURT: In negotiating down how much Mr. Nassiri was willing to pay for the property.

MR. OLSEN: Yes, Your Honor. That's the idea that that will be built in -- and he was asked about this in deposition. We don't have that testimony, I don't think, but he was essentially asked, you know, would you have done this without the -- with a flyover coming. He said no. At a minimum -- that was his testimony. At a minimum, you would be given the -- you need to have the opportunity to pay less for a piece of property which we know is worth less. I mean, the opinions of Mr. Harper state clearly it's worth less.

There would have been a different negotiation back in 2004, obviously. You're paying 24 million net for a piece of property because everybody agrees has visibility from the freeway and it really doesn't. It's subject to this plan that's not disclosed to you? I meant that's really the way to look at it, subject to a plan you don't know about. You're going to have a different negotiation and that has value, a value which is established by Mr. Harper's testimony.

So he didn't receive -- he didn't receive all this severance damages. That's the point. He's entitled both statutorily and under the constitution to just compensation. You can't say the compensation was just when this huge factor wasn't factored in.

Now we'll get to -- we can get to the -- there's an argument about what Mr. Nassiri had access to, public knowledge and all that that's really part of the other motion, but I anticipate -- I'll anticipate that here Mr. Nassiri -- he -- there is a document from 1999 which has a letter which has a map on it which has some indication of a flyover that's different than this but it's a flyover. His testimony was I don't -- that was never something I paid attention to.

There is a 2004 environmental assessment document which they point in the other motion as saying well this is out in the public. Well, when someone is

sitting down and negotiating with anybody, but certainly the State of Nevada, in a condemnation proceeding under which there's a constitutional obligation to provide just compensation, to suggest that he has an obligation to go out and search the public records to see if the State is lying when they present this to him, this exhibit -- there's no authority for that and it's just simply not the law.

So if you go back to that timeframe and you look at what happened, that's when the taking occurred. *Probasco* is not an issue. The issue is what happened back in 2004 that was undisclosed.

I think it's funny, and I'm jumping ahead a little bit on this, that the whole within the right of way argument, I -- yes, the flyover is within the right of way, just like a 500-foot wall if they built it would be -- I mean, if you -- if you listen to their argument if you can make this thing 500 feet tall and be the same -- they have the same rights, but the issue is what was -- given the fact that visibility is compensable at the outset, you have to be able to assess all of those damages at the outset, those potential severance damages. Mr. Nassiri was denied that opportunity. He needs to be given the opportunity to do that now before a jury.

One other thing with respect to the citation of 2.14 of the contract and the contract itself, first of all, under 2.14, certainly the -- that that is -- that paragraph does not absolve the State of Nevada from complying with the eminent domain statutes. The discussion about visibility impairment should have been had obviously before the document was signed, but certainly -- and certainly was something signed without knowledge. That's the whole point. Mr. Nassiri wasn't told what they knew and that is that visibility was going to be blocked to some extent.

And so you can't look to that section and say well, you know, he had a

knowing waiver of rights. There's no -- there's no knowing release. Specifically, and the State acknowledges, they didn't tell him about -- they didn't tell him about the flyover they had planned all along.

So, Your Honor, the inverse condemnation claim, with the exception of access as we talked about --

THE COURT: Right.

MR. OLSEN: -- needs to be -- remain and left to the jury to determine --

THE COURT: So the inverse condemnation theory is that when the State sells you property, they have knowledge the element of the value of the property will be gone. There's a taking at that time which you're not aware of because you don't know about it. They sold you property that in its condition in 2004 was worth $24 million because it was a great location, had a good view. They knew that was all going to be gone and you're just going to have this landlocked piece of property that nobody can see and you may or may not be able to get out of. So that's the taking?

MR. OLSEN: No, that's partly correct, Your Honor, except keep in mind that the condemnation -- there's that other piece of the property. The whole property is impaired. So really --

THE COURT: So when you say the other piece of property, you mean the corner, the four acres that they took on the corner to realign Blue Diamond?

MR. OLSEN: Well our property is much larger than -- let me show you this, Your Honor. This is a little different diagram that's been -- let me put this way. I think we can see it. This kind of shows all the properties.

THE COURT: Right.

MR. OLSEN: The 24.42 acres -- and this timeframe on this is obviously after

the original Blue Diamond interchange was built, that realignment, and before the flyover construction. Mr. Nassiri owned all along --

THE COURT: The corner.

MR. OLSEN: -- this property here so that's --

THE COURT: Correct.

MR. OLSEN: -- 30 acres. It's actually the larger piece.

THE COURT: Right, and they took the little corner of that.

MR. OLSEN: And they took -- on this piece here. They took a piece that's more than -- and it's four acres, it's actually a swath that enabled this to go through here. And the 24.42 acres is what he acquired. So --

THE COURT: So the assemblage is a total of over 65 --

MR. OLSEN: Over 65 acres or so.

THE COURT: -- acres that he owns --

MR. OLSEN: Yeah.

THE COURT: -- right there.

MR. OLSEN: So the taking is really with respect to this whole piece. On the one hand, there's a taking before there's a settlement. On the other hand, because this is all put together as part of one settlement agreement, it's really a taking at that time as to this piece too. The valuation Mr. Harper's given a $10 million loss just for the -- just for the visibility, the value of that taking is as to this entire green area.

THE COURT: Okay. So it's not just the pork chop, it's --

MR. OLSEN: No.

THE COURT: -- the whole 65 acres, the --

MR. OLSEN: It is as to the whole thing. So again, clearly there's a

condemnation action filed as to this piece. Compensation needed to be paid and frankly, that compensation would affect the entire agreement which includes buying or exchanging for the -- the pork chop.

So, Your Honor, I -- and I just -- I think it's very clear, and we'll get to this I'm sure again, it's the State that Mr. Nassiri's dealing with and not just the fact that it's the State but it's the State that has the obligation statutorily and constitutionally to justly compensate and that didn't happen. So we would ask that this issue be presented to the jury and let them determine --

THE COURT: Okay.

MR. COULTHARD: Thank you, Judge. I have flashbacks of the motion to dismiss argument. A lot of tap dancing by Mr. Olsen and I -- and he's a fine lawyer, Judge, but he's made some acknowledgements, he's stated some things that when you look at the controlling case law in this, their inverse condemnation claim should be dismissed for summary judgment.

Now, your question -- and he stated a couple of times and I wrote it down, the taking in -- occurred in 2004, and the State misrepresented something to Nassiri, didn't disclose something.

Your Honor, if you recall at the very -- at the motion to dismiss, you did in fact dismiss with prejudice his negligent misrepresentations and his intentional misrepresentations because they're tort-based claims and the State, for its discretionary decision to design and build that flyover, is immune from those tort-based claims under NRS 41. But he wants to bootstrap those same arguments, you didn't disclose, you didn't -- you misrepresented something to me and I didn't get everything I bargained for in the 2004 settlement. Well, you know, you're represented by extremely -- let me back up.

Mr. Nassiri, in his deposition, admitted that he was a sophisticated businessman, that he essentially is a real estate entrepreneur. That is his business, real estate. He hires Michael Chapman who is a former Assistant Attorney General who worked for -- was counsel of record for 10 years for the Nevada Department of Transportation and specializes in eminent domain law. That was part of the Nassiri team.

He had Mr. Steve Oxoby who was a 30-year -- a former 30-year employee with NDOT who had left NDOT in 2003, gone to work for Carter Burgess. He was on the Nassiri condemnation team in 2004.

And finally they had Mr. Keelbah (phonetic) who's with Mr. Morse's -- Tim Morse's office as a professional appraiser. That's the Nassiri team in 2004 and -- so and he stands up here and he says it would have been a different negotiation.

Well, Judge, I -- not sure I was effective in my argument. I said assume that in fact it is part of the 2004 and he -- then what happens, you got to follow the terms of the settlement agreement. If this take which he admitted in his argument occurred -- he says the take occurred in 2004. Two important points. They didn't buy and didn't close on the pork chop piece of surplus property until June of 2005.

This is the -- a copy of the quit claim deed that is attached to our moving papers. This is -- was recorded. Well it's dated June 14th, 2005 is when it was executed, page 2. And again, this is the quit claim deed for the pork chop property. They didn't buy it until June of 2005.

So if he's claiming damages for a 2004 take related to the pork chop surplus property, it's -- it doesn't work that way. He didn't own the property till June of 2005 and under the express terms of the written deed, page 2, grantee accepts

the property as-is, where-is with all faults, including but not limited to any and all easements, encroachments, utilities or other encumbrances whether or not of record.

He took it as-is, where-is, so if his 2004 take is -- it's a year before he owns the pork chop property --

THE COURT: But I thought Mr. --

MR. COULTHARD: -- and then he takes it as-is. How can he claim that he was damaged --

THE COURT: But I think Mr. Olsen's theory is that the -- it's part of this whole 65 acre assemblage that he was putting together, this gigantic parcel that he overpaid essentially for the pork chop wanting to add that to his other, you know, 30 plus acres that he had over there in the other -- on the corner, but that got him closer to the freeway. But it's not worth the $24 million because he wasn't told it was going to be impaired in this way.

MR. COULTHARD: Right. And --

THE COURT: So that means it's a -- the taking is as to his original assemblage, his original 30 plus acres that he should have gotten --

MR. COULTHARD: And should have -- then he should have cut a better deal. That's what he's really arguing.

THE COURT: Got -- should have got a better deal, yes.

MR. COULTHARD: He's an unhappy buyer.

THE COURT: So that's the contract --

MR. COULTHARD: The recession hit, Judge. He paid too much for this property, the recession hit, every landowner in this Valley felt the negative impacts, and he's unhappy.

Well, Judge, that doesn't rise to the level of an inverse condemnation claim. The Nassiri team that negotiated the settlement agreement was a sophisticated group of very competent people and when they settled that case, they memorialized it under the terms of the settlement agreement and release of all claims.

If his argument is correct that the taking occurred in 2004, it would have been a different acknowledgement, it would have been a different negotiation, I think you have to look at the terms and conditions of the settlement agreement, again that was entered into in April of 2005. Talks about the two parcels. I call it surplus. They call it exchange. It doesn't really matter. The two agreements, the two deals, both the four acre settlement of the 2004 condemnation and the sale of the -- purchase and sale of the surplus property occurred and is subject to the written terms and conditions of this settlement agreement.

So let's see what Mr. Nassiri and his lawyers did under the Nassiri release first. Nassir hereby -- and this is paragraph 2.09 of Exhibit B to the settlement agreement: Nassiri hereby releases and forever discharges; one, the lawsuit or any matters asserted therein. Now this is the 2004 condemnation lawsuit. It is a defined term earlier in the agreement. Dismisses -- releases and forever discharges the lawsuit or any matters asserted therein, or which could have been asserted therein or its subject matter, including but not limited to any claim related to the location on the property of a public highway and necessary incidents thereto and any claims for any severance damages to the remainder of Nassiri's property, and the physical condition of the exchange property as of the execution date of matters affecting title or claim.

So he released any and all known and unknown claims and he wants

you to believe that well, it would have been a different discussion had we known. And we'll get into that, but I think you need to look at the acknowledgements under paragraph 2.19 made by -- signed by Mr. Nassiri, signed by Mr. Chapman. The acknowledgements, Your Honor, are pretty telling.

2.19 subsection 2: That the release contained herein extend and apply to any and also cover and include all unknown, unforeseen, unsuspected and unanticipated injuries, claims, damages, losses and liabilities, if any, arising from the matters addressed herein. So he dismissed his unknown, unforeseen claims. If he really didn't know about this flyover, he dismissed them.

Number 3, little 3, i: That no promise or inducement has been offered except as herein set froth.

Number 4: That this settlement is in good faith and is equitable.

Number 5: That this agreement is executed without reliance upon or statement or representation by any party or its representatives concerning the nature and extent of the claim damages or legal liability therefor. That this agreement and the releases set forth herein have been carefully read in their entirety.

Goes on, subsection 8: That in entering into this agreement and the settlement releases that are encompassed herein, the parties are acting freely and voluntarily and without influences, compulsion or duress of any kind from any source.

And importantly, Judge, he wants just tell you that well this is misrepresentation and had we known what was going on, might have been a different deal. Well there's an integration provision, section 2.20: This agreement constitutes the entire agreement by and between the parties and supersedes and

replaces any and all previous agreements entered into or negotiated between the parties.

Now that's important, Judge, because he wants to show you these maps that aren't attached to this settlement agreement that -- for the proposition that these maps dictate what the State can build and what they can't build. Well those maps don't say that. They don't -- this settlement agreement doesn't say here's a map attached and this is all you can build. No, it doesn't say that. In fact, it reserves the right for NDOT to do anything under 408, express reservations, and any amendment, Judge, is -- has to be in writing signed by each of the parties.

Now -- and they got $4.81 million under this settlement agreement from the State, so they -- they're -- if it's truly related to 2004 taking, they've resolved it under the four corners of this settlement agreement and then also under res judicata under the final judgment of condemnation, Judge. So I think this is a case, Judge, that is absolutely appropriate for summary judgment.

Finally, Judge, I think -- I do want to touch very briefly on the notice, whether there was notice about this flyover, and just walk you through one of the exhibits and it's Exhibit B to our breach of contract motion and it is a document that is an environmental assessment, dated April 2004, done collectively by the Highway -- by the Federal Highway Administration and the Nevada Department of Transportation related to this very project.

It's dated April 2004, but it's a four-year -- four to five-year project -- process to get an environmental assessment done. And this was available and these project documents, based upon this evidence we have, was sent to Mr. Nassiri in 1999. In as early as July of 1999, he had project documents and was attending public meetings related to this.

So the proposed action and description on page 2 describes the project, reconstruction at the interchange of SR-160 and I-15. Importantly, it specifically mentions -- if I can get this lined up, Judge. Middle of the second paragraph. 2004 public record. After five years of public hearings on this, it states, quote: This project will also include a proposed design for a future eastbound SR-160 to northbound I-15 flyover ramp to be constructed when traffic demand warrants have been met and funding is available. That's the flyover that he's complaining about. That's the flyover he tells you would be -- it may have been a different negotiations had he known about it. This is a public document specifically to this project that discloses the flyover.

Not only that, it includes a diagram. Figure 2 attached to this 2004 EA, figure 2, proposed I-15, SR-160 interchange. And I've highlighted it. And I'll blow it up a little so you can see it specifically states east to northbound flyover, right? And points at the flyover that he's complaining about. I've highlighted in yellow.

Now, that changed. The location a little bit got pushed south and moved a little farther south about 800 feet south when they did the design build and actually built it in 2008 but it's on there.

So importantly, these EAs, Judge -- and this really goes to notice. These EAs are the beginning of a decision making process and they set four public informational meetings. The first one was held in July of 1999. Another was held in February of 2000, another in May of 2002, and finally July 28th, 2003. We know from the backup information they provide that Mr. Nassiri attended three of these public information meetings.

Here's the first one. And this is part of the EA, page B2. NDOT records all the landowners who attend these meetings.

And, Judge, I've been to some of these meetings. They bring out blowout -- blowups like this and have big boards with all of the proposed improvements, and this proposed EA and the proposed project's discussed.

July 27th, 1999, Mr. Nassiri's there. In fact, they quote him and Mr. Nassiri follows up that meeting -- and this is part of Exhibit B, page B38, right out of the EA. Mr. Nassiri has a -- sends a letter to Mr. Daryl James at NDOT, dated August 10th, 1999. Introduces himself: My name is Fred Nassiri. I'm in receipt of the Blue Diamond Highway information package and have the following questions and comments. And he talks about the realignment. He's interested in obtaining access. He's making those concerns known.

The last paragraph's pretty telling. He says -- if I can get it on there for you. To close, I am very interested in coordinating entrances to my site with this project and would like to be updated with the design and construction schedules. As well I would like to discuss your future plans for the right of way or the possibility of purchasing the abandoned parcel from NDOT highlighted in pink with the realignment of Blue Diamond Road. I believe the realignment will benefit the entire area. Signed by Mr. Nassiri.

Highlighted in pink in the attached letter that went with this to NDOT, as he wants to tell you he didn't know about, didn't understand what it was, is the same exhibit. It shows -- we'll blow it up a little more -- east to northbound flyover highlighted, shows that flyover. Mr. Nassiri's 1999 letter has the flyover on it. He had this in his possession in 1999.

Importantly, the key also says: For discussion purposes only, preliminary subject to revision. Well ultimately when they built it, they did revise it a little bit. So that's a -- in July of 1999.

Now we've got another meeting. I mentioned the four meetings. Mr. Nassiri, based upon the public record, attended three of them. Public informational meeting, February 23rd, 2000, Fred Nassiri.

A letter from March 2000 filled out a comments by Mr. Nassiri. Name, Fred Nassiri, his property. Do you support the project? Yes. Comments: I had an opportunity to look -- I have had an opportunity to look at the proposed layout for the widening of SR-160 that was presented at the February 23rd, 2000 informational meeting. He goes on with again wanting some access, the -- you know, the ability to potentially acquire land, and at the end he says: To close, I'm in support of this project and want to continue to be involved with this project. Signed Mr. Nassiri, 3/7/2000.

Finally, May 7th, 2002, again, pubic informational meeting number three, Fred Nassiri's in attendance.

Another letter to him acknowledging -- another letter from Mr. Nassiri to Daryl James, May 23rd, 2002, part of the EA, Your Honor, B94 -- page B94 in that exhibit: I attended the public hearing on May 7th, 2002 regarding the SR-160 projects. My main interest is the modification of SR-160 to I-15 interchange and particularly the alignment of SR-160 as it crosses my property on its way to tie into Windmill.

When he tells you that we didn't give him notice, he's asking you to ignore the number of meetings he attended, three, the -- his own letter which attaches a map from 1999 showing a flyover and the public records and information that show as early as 2000 -- as early as 1999 and memorialized in a 2004 public EA related to this, that the project will also include a proposed design for a future SR-160 to northbound I-15 flyover ramp to be constructed when traffic demands

warrants have been met and funding is available. All of that, Judge, is pre-entry of the Nassiri team into the settlement agreement.

Your Honor, I think time has come for this witch-hunt by Mr. Nassiri to seek additional just compensation for a 2004 take that he fully resolved has -- it's ended, Judge, and it needs to end. The State does not pay just compensation for loss of view or visibility when they build the flyover entirely within their right of way. It's contrary to *Probasco*, it's contrary to Nevada Supreme Court law, and Your Honor, you should dismiss that inverse condemnation with prejudice.

THE COURT: Okay.

MR. COULTHARD: Thank you, Judge.

MR. OLSEN: Your Honor, there are a couple of things that came up new. I mean, we can address those in the next motion, but there couple --

THE COURT: Yeah, because I think that we probably close right into the second motion which is, you know, number of causes of action are alleged in the complaint. I don't know if they were in the alternative or intended as, you know, separate basis for possible recovery, but the -- those are all the other contract tort-based claims.

I don't know if -- I don't know, Mr. Pepperman, if you were going to address those or --

MR. PEPPERMAN: I'm not, Your Honor.

THE COURT: -- Mr. Coulthard?

MR. PEPPERMAN: I just had one brief point to make on the inverse claim that the State would like to make sure is on the record before the Court, if that's acceptable.

MR. OLSEN: Well I'd --

MR. COULTHARD: He keeps me honest.

THE COURT: Okay, then certainly Mr. Olsen --

MR. OLSEN: I'd object, Your Honor, but -- well, that's --

THE COURT: Sure. Well we'll let you have -- have anything in response that you have to say that Mr. Pepperman wants to add, certainly you can respond to it, Mr. Olsen.

MR. PEPPERMAN: And it's in supplement to what Mr. Coulthard said because the claim fails for all of those reasons, but -- and this relates to a question that you raised to -- regarding Mr. Olsen's argument and as I understand the argument, it is that the plaintiff is entitled to additional severance damages from the 2004 condemnation action as a result of the flyover because he supposedly overpaid for the surplus parcel that was exchanged for the condemnation piece as an offset so to speak.

Well, that argument relies entirely on the assumption that plaintiff would have been entitled to severance damages for the flyover in 2004 related to the flyover's impact to the condemnation piece, but the condemnation piece and all of plaintiff's existing property in 2004 was not abutting the flyover. So not only under -- under *Probasco* there was no partial severance of any portion of his property in 2004 to build the flyover, whether he knew about it or not. Even if you ignore that, even if you said forget that, let's look at the condemnation and the severance damages that would have been available to him in that condemnation action and the flyover wouldn't have been part of that because it's an alleged interference with view and a view is a right of abutting property owner. And that's in *Probasco* and that's in the California case of *Simmons* that *Probasco* relies on.

Plaintiff's property was -- did not abut the I-15. It was -- other people

owned property between his property and the I-15. There was state right of way. And then you get to the I-15 and then that's where the flyover was built.

So even if you overlook the fact that there's no taking of his property and you wanted to follow his logic down the rabbit hole and say okay, what would you have been entitled to in 2004, he wouldn't have been entitled to severance damages for the flyover anyways so his whole argument is based on an incorrect assumption.

THE COURT: Thank you.

Okay, anything further, Mr. Olsen?

MR. OLSEN: I was going to ask Mr. Ciciliano if he had anything to add, but -- no, Your Honor, I think we can reserve -- I won't even bother with that one, but we can reserve --

THE COURT: Okay, just move --

MR. OLSEN: -- on the other issues.

THE COURT: -- then to the next motion for summary judgment and we'll discuss at the end.

MR. OLSEN: Yes, Your Honor.

THE COURT: Okay, great.

MR. COULTHARD: Your Honor, do you want to just keep rolling --

THE COURT: Yeah.

MR. COULTHARD: -- at this juncture or do you need a break or anything --

THE COURT: Does anybody want a brief break before we keep going?

MR. COULTHARD: -- let me know, so let me just get my notes together here.

THE COURT: I'm assuming it's not going to take another hour and a half

because we've pretty much talked about all of it, Mr. Coulthard.

MR. COULTHARD: Yeah, we talked quite a few of the issues, Your Honor, so this is a -- I think another -- well this is our motion for summary judgment as to the -- what we termed the breach of contract claims.

THE COURT: Right.

MR. COULTHARD: There are --

THE COURT: And there's one tort --

MR. COULTHARD: -- three; breach of contract, breach of the implied covenant of good faith and fair dealing, and tortious breach of the implied covenant of good faith and fair dealing, and we addressed each of those in our motion for summary judgment.

So again, this is a claim that has morphed and has been a moving target and very difficult for the State to understand and to address, but I think the pleadings actually now have narrowed this claim down quite a bit and I guess it's sort of like the access issue.

It's important for us to address -- there's a bunch of portions of the prior allegations that are contained in that complaint that we've addressed in our moving papers that were not responded to, and those include, number one, refusing to disclose its independent 2004 appraisal of the surplus property during negotiations. They say that's a breach. Conveying the surplus property by quit claim deed instead of warranty. They say that's a breach in their complaint. And failing to disclose that its offered sales price for the surplus parcel, excuse me, included a premium assemblage value, thereby charging plaintiff approximately eight million over and above the appraised value of the surplus property.

Well, discovery I think has ferreted out those claims. They're bogus,

for lack of a more eloquent term, and I believe Mr. Olsen, because of the briefings, has abandoned those last three theories.

So what are we left with on the breach of contract claim? And their breach essentially is that NDOT had a duty, via NRS 37.110 and its right of way manual and these maps that weren't attached or included in the settlement agreement, to not build a flyover I-15 eastbound. And that's I think again what we've really come -- narrowed this breach down to is we never disclosed the flyover and we built the flyover.

And again, I walked through some of that evidence, but I would ask the Court to take a look at Exhibit B, which is again the environmental assessment which shows -- and I won't go through it again, but the 2004 environmental assessment that shows the State did in fact disclose not to just Mr. Nassiri but to all -- the entire public and any interested landowners, they got copies of this and they got copies of the project and Mr. Nassiri's own 1999 letter shows that he had a copy of the proposal to build a flyover. He had that as early as 1999.

So in fact, the evidence shows that the flyover had been disclosed and he was at three different meetings in -- from '99 to 2002 where the flyover and all the improvements to the intersection were disclosed. So Mr. Nassiri was actively involved in and supporting the Blue Diamond property, attended the July 1999 meeting, February 23rd, 2000, May 7th, 2002, and the EA shows that.

So I stood before you at the -- in the motion to dismiss, Your Honor, and I argued where is the contractual duty to support their breach and they have failed to point to any contractual duty within the four corners of the settlement agreement that supports their claims. And they have failed to do that throughout and they failed to do it in their opposition, their moving papers.

So, Your Honor, this and I -- I want to make -- again I think is a unique motion for summary judgment because it's not about triable issues of material fact and whether they exist, this is a legal determination by Your Honor to determine whether or not there is a duty or a preclusion under the terms and conditions of a written settlement agreement that preclude the State from building this flyover.

And when you look at that and determine by reviewing the settlement agreement is there a legal duty that precludes it, the answer is no, there isn't. You have to look at the four corners of this settlement agreement. There's an integration clause in it and you have to look at the four corners of the quit claim deed. Parol evidence is not something we can talk -- we can evaluate.

And when you look at the four corners of the settlement agreement, Your Honor, one of the linchpins to a breach of contract, I'm sure Mr. Olsen is aware of that, is a legal duty that gets breached. So where is it? It's not in there.

In fact, as I mentioned, the opposite's true. NDOT reserved the right to adapt and improve the whole or any part of the property in accordance with Chapter 408. And so there's no contractual duty to protect Mr. Nassiri's view or visibility, there's no contractual duty not to build the flyover, and we know that it was publicly noticed as early as 1999.

So what do they do, Your Honor, then the -- recognizing they need a duty and -- and, Your Honor, this is brand new, this is -- this new alleged -- there's not a witness who testified to this, other than the last deposition of Mr. Chapman and I have -- I know Mr. Chapman. I've worked with him both across the aisle and in other cases. I respect his abilities as a lawyer, but he came in after discovery has closed and testified to some things that I believe were designed to protect his interest as against concerns or claims by Mr. Nassiri. And some of these

arguments that they rely so heavily upon now are advanced for the very first time in Mr. Chapman's deposition after discovery is closed and okay, this duty outside of the four corners of the contract. It's crazy what they try and -- how they try and bootstrap a duty.

They look at NRS 37.110. Well, Your Honor, that is an inapplicable statute. That discusses the types of evidence that are allowed to be presented at the time of trial or an evidentiary hearing as to just compensation. There is not a legal duty in 37.110 that -- that statute does not create a legal duty. It deals with evidence. So take a look at that.

What's the next thing they look at? They use our right of way manual. Well it's 2011 right of way manual. It wouldn't surprise me if a 2004 earlier version may have similar directions for and -- and guidance for NDOT employees when they're dealing with right of way negotiations and settlement negotiation.

But, Judge, this is a case where the State had filed an eminent domain action and was actively engaged in litigation against Mr. Nassiri so -- and that manual that gives right of way agents directions for negotiating right of ways does not create a duty that falls into the four corners of this settlement agreement. Nice try, creative, but just as the map that they wanted they talk about -- and I wrote down his claims. I'm not sure I can find what he said the map -- and they've been very careful when they talked about these maps and rightfully so. I believe -- find my notes. Is that yours?

I wrote it down, Your Honor. And we're talking about the maps he showed, he says one or two maps associated with the settlement agreement. That was the term and I highlighted it, I quoted it.

The maps aren't attached to the settlement agreement and aren't

referenced in the settlement agreement. There's four exhibits that are referenced in that settlement agreement. Those exhibits include a map showing the exchange property and when you look at -- that's in paragraphs 1.03. Talks about NDOT owns 24.41 acres of land generally located which land is more particularly described in the legal description attached hereto as Exhibit 1 and incorporated herein by reference, the exchange property. Nassiri desires to purchase the exchange property from NDOT.

That's arguably the only map that -- the only reference to a map. The other is a stipulated judgment. The other exhibits in the four corners of this agreement, they are that exchange property designation, a stipulated judgment which went before Judge Denton and was ultimately filed with the District Court, the quit claim deed, and the construction easement for work on I-15, a two-year construction easement unrelated to this litigation. There is no reference to a project map and more importantly, there is no reference that says this project map is all the State can ever build in its right of way. This intersection can only ever look like the map that he wants you to rely on. That's not in the four corners of the agreement. Nice try.

So what do they have for duty that their argument duty all come from outside the statute, 37.110, the map, and finally the manual. Well, Judge, those don't create a legal duty within the four corners of this agreement. And I went through some of the acknowledgements in the settlement agreement. I won't put them again -- up again, but 2.19, there's been no inducement or promise that has been offered except as herein set forth. Number five, that this agreement is executed without reliance upon any statement or representation by any party or its representatives. Those are found in 2.19, approved and -- by Mr. Nassiri, approved

by Mr. Chapman, and finally 2.20, integration, states: This agreement constitutes the entire agreement between the parties and supersedes and replaces any and all previous agreements entered into or negotiated between the parties.

You can't pull an unrelated statute, a manual, an unrelated map or a map outside the four corners into this document and make it a contractual duty. Just the parol evidence precludes you from doing that, Your Honor, precludes them from doing that, the integration clause and it is essentially -- again, they're trying to imply a negative easement.

So, Your Honor, there is no legal duty that's been breached, there is no -- and I can assure you if the -- if there was a duty in this written contractual agreement, they would have pointed to it, highlighted it and had it ready to go, and there' s -- so there's no duty not to build the flyover so there can be no breach for building the flyover.

And again, I think it's a legal issue for this Court to determine whether there is a legal duty by reading the contract. Again, not your typical oh there's material issues of fact. No. It's a legal duty.

They're trying to imply a negative easement, it violates *Probasco*, and I think that the contractual claims, Your Honor, finally and -- and again, I point to this release provision. These contractual claims were also released by Mr. Nassiri under 2.09. Nassiri release. He hereby releases and forever discharges the 2004 condemnation action or any matters asserted therein or which could have been asserted therein or its subject matter, including but not limited to any claims related to location on the property of a public highway and necessary incidents thereto. He released that claim.

So, Your Honor, I think it's also time barred, I mean through the -- and

we hit on that -- the issue of the time bar in our moving papers. I'm not sure they -- I mean, I think their response is well we didn't know about it, but we've shown now through public records that they had access to this material and we actually provided a supplemental brief in support of the statute of limitations argument on the breach of contract claim. I apologize for the late filing of it, but I would ask the Court to take a look at that. You know, I think that clearly says hey, if it's out there in the public domain, Mr. Nassiri has an obligation to consider that. He knew about this as early as 1999. It's a six year statute of limitations on breach of contract. It's time barred.

We also cited -- so breach of contract, you need a duty, you need to show we breached it. They failed to do that, Your Honor. You can't go outside the four corners. That's the breach of contract we've -- also the time bar issue.

Breach of the implied covenant of good faith and fair dealings, we -- and the way I understand that claim now reviewing their opposition is that, again, we failed to disclose the State would ever eventually build a flyover. Well, that's not correct and I've shown you the 2004 EA where we did disclose it.

But we also then cited *Nelson versus Heer*, and that's a pretty instructional case and really the -- Mr. Nassiri didn't have a response to that. But that was a buyer and seller of real property and they failed to disclose water damage that happened to the property some four years earlier in that transaction. And Mr. Nelson sued Mr. Heer for a failure to disclose breach of the implied covenant of good faith and fair dealing, much like the claims Nassiri's asserted, failure to disclose a flyover, breach of the implied covenant of good faith and fair dealing.

The Nevada Supreme Court took a look at that and -- and I quote,

quote: Heer asserted that Nelson breached the covenant of good faith and fair dealing by failing to disclose the prior water damage. Nelson, however, did not have a duty under the contract to disclose the water damage. Since Nelson bore no contractual duty to disclose the water damage, Nelson's omission did not constitute an arbitrary or unfair act that worked to Heer's disadvantage.

Well we disclosed all of this in 2004. When you look at this settlement agreement, there's no contractual provision that says you have to disclose you may build a flyover in the first place so -- at some time in the future when traffic warrants it.

Under *Nelson versus Heer*, we didn't have a specific contractual duty, just like the water damage in that case, and the court said you can't have an implied covenant of good faith and fair dealing without a contractual duty. So that -- I mean, the fact that there's no duty, that claim should be dismissed in its entirety also on summary judgment.

Rolling to the last one, Judge, and I really appreciate you and your staff's patience. The tortious breach on the implied covenant of good faith and fair dealing. Again, they haven't pointed to a duty, but there are also requirements for this tortious breach that there is reliance or a fiduciary duty.

Again, this is a -- Mr. Chapman admitted during deposition that this was an arm's length transaction and that was the question I asked him and we put it in or pleadings, was this an arm's -- yeah, this was an arm's length. Was it heavily negotiated? Yes, it was heavily negotiated. All you need to do is look at the mountain of paperwork going back and forth, the negotiations related to the settlement of the condemnation and acquisition of the surplus property.

So the terms were heavily negotiated and so in that case in that --

those circumstances and we've cited case law in our pleadings, there is no element of reliance and we've also stated that there -- there is no fiduciary duty between the State and Mr. Nassiri in this situation.

They're in litigation. They've got Nassiri's -- Mr. Nassiri has a team of lawyers, experts, civil engineers and appraisers, the same sort of team that NDOT had, and they're arm's length negotiating. No fiduciary duty -- and the case law is clear there's no fiduciary duty between the State and Mr. Nassiri in a situation like this and we've cited it and they didn't have a response to -- so they really -- I think these are kind of a non-responded-to claim that should be granted, but importantly, I think it's a tort-based claim.

Tortious breach of the implied covenant of good faith is a tort-based claim and I think Your Honor was, again, very cautious at the motion to dismiss and you said well I'm not sure I don't -- we -- a lot of arguments and you said well I'm not sure and that'll be something, you know, if this turns out to be a tort-based claim, then the State's immune under NRS 41.032.

The decision to design and construct the flyover is a discretionary decision which the State has immunity for, so I think it's -- there's reliance -- there's no reliance or fiduciary duty shown in this case. It was an arm's length transaction, the terms were heavily negotiated, and it's a tort claim that the State enjoys immunity under 41.032. So that claim, Your Honor, should likewise be adjudicated via summary judgment.

And so, Judge, I think I then kind of get back to where we started this morning is that's the balance of their case and I think it's ripe for adjudication by this Court. There are legal determinations that Your Honor has to make and when you do look at all the evidence in front of you, uncontested evidence, it's pretty clear this

-- it's time for this case to be dismissed on summary judgment and I thank you for your time and reserve a brief rebuttal, Your Honor. Thank you.

THE COURT: Thank you.

Mr. Olsen.

MR. OLSEN: Let me touch on a couple of things that were asserted and it's a little bit out of order but I'll get back to wrapping this up.

First of all, when counsel looked through the list -- I think it's in 2.19 -- of acknowledgements by the parties in the settlement agreement, one of them he actually read it, but he kind of glossed over it, is there's an express provision, an express provision which binds the parties to the agreement to good faith and they -- they make the statement that the transaction was equitable, that this agreement was equitable. It's expressly in the -- there's an implied covenant, but there's an expressed covenant the State is acting in good faith. Breach of that is a breach of the contract, first of all.

Secondly, what was the contract the -- the evidence is that although the maps -- the two maps that we've looked at, including this second one which was specifically generated to match up to the amendment because of the metes and bounds issue, Mr. Chapman testified that these were part of the agreement -- they're not only presented to Mr. Nassiri and to his team as it were, but they're part of the agreement. That's unrebutted.

There is no testimony from the 30(b)(6) witnesses on this topic or from Ms. Morales who was with -- was the chief right of way agent I think at the time was involved in this. That's unrebutted, Mr. Chapman's testimony that the maps were part of the agreement.

Factually, I think it's sort of a distraction, but I want to make sure, you

know, because these things -- some things are said at these hearings that sort of sits in the Court's mind as perhaps being true. The meetings that Mr. Nassiri attended. The testimony about that is there's -- there was a representation made that Mr. Coulthard's been to these meetings and they always present all sorts of things and they cover all these issues.

The evidence is absolutely lacking that the flyover was ever discussed at any of these public meetings. There's no such evidence and Mr. Nassiri's testimony is that he was never made aware of it, there was no such discussion -- by the way, when you're at trial, you'll see that there's -- even though his name appears on two or three of the meetings, I think there's a question as to whether he went to all three, but it's a factual issue, one, what he learned, not a motion for summary judgment -- not subject to a motion for summary judgment.

Number two, there's absolutely no evidence as to what was presented at the various meetings. Not even from the 30(b)(6) witness who supposedly was prepared to address these topics.

Okay, breach of contract. What was the breach, besides breaching the duty of good faith by failing to disclose, during or after at any time before 2010 before it's constructed, the existence of the plan and then existence of the flyover.

Effectively in addition to that breach of duty of good faith, what the State failed to do is provide the property that it promised to provide. What it provided instead was a property subject to its known plans to build a flyover that would impair the view of the property and it failed to deliver that unbeknownst to Mr. Nassiri at the time, of course, which brings me also to the statute of limitations argument that which, you know, damages weren't incurred until the flyover was built. Right. I mean, damages were incurred until the view was blocked. The other

elements, unbeknownst to him, occurred earlier in 2005, but in 2010 that's when the damages arose so you can dispense with the statute of limitations arguments.

What was promised, just to be clear, there's constitutional mandate that says you have to provide just compensation. The settlement was intended to do that and has to do that. It didn't do that. They didn't deliver that -- you know, you got a pot here, you've got property coming in from us, property coming in from them, money coming in to one big settlement, but the goal is and the mandate is just compensation. That's not what occurred and what they put into the pot on their end was impaired property. What we put into the pot on our end was more than that property was worth and it didn't take into consideration the damage done to our existing property which even perhaps not abutted directly to the freeway, abutted to the right of way.

And, you know, factually, and this is in the documents, Mr. Nassiri was expressly told by Ms. Morales that his property would benefit from the interchange. He had a belief, as you can see from his letter, that -- letters that realigning Blue Diamond so it looked like this, instead of the pork chop area, made sense. It's a 90 degree angle. It's great. Everybody would support that. What he didn't know and didn't support was blocking the view of his property, especially property he just paid $24 million for.

Again, I've mentioned the express duty to act in good faith. You know, building the view blocking flyover obviously was not an act of good faith and -- and I don't -- this skips ahead a little bit to the immunity issue. We're not saying that the State didn't have discretion whether to build a flyover. The State didn't have discretion whether or not to inform Mr. Nassiri that it was building a flyover. The State which is inherently although not a fiduciary, it doesn't have to be. It has to be

in a special relationship undoubtedly that exists with the State and especially in the context of a just compensation process. But, you know, the duty of good faith was certainly present both in express and implied terms, pardon me.

What the State did provide was a map like this one which -- again, this is the version that was expressly modified and reflected in the amended -- amendment to the agreement, but again, it shows no flyover, shows what was going to be -- what was built, and just so you're clear, again referring back to the pictures, there's an overpass here which is still present. It's a flat, normal overpass with lights and turns and all that. Very, very innocuous to the eye.

In fact, I can show the Court what that actually looked like before. Yeah. You can see what -- turn your screen a little bit so I can see what's -- yeah, you can see after was -- the realignment was built in 2006, that's what the interchange, the beneficial interchange looked like and we already looked at what it looks like today.

And I won't belabor this, Your Honor, but -- and Mr. Nassiri's property is to the right.

By the way, this business about Mr. Nassiri being a sophisticated businessman, first of all, that's a factual issue and I also think that once the Court sees Mr. Nassiri testify, that will be -- reasonable minds could certainly differ on his level of sophistication.

THE COURT: Okay, which is the flyover and which is the -- we -- actually we see an airplane flying over, but which is the flyover and which is the original 2006 overpass --

MR. OLSEN: The lower one which is slightly further away is the original --

THE COURT: Overpass.

MR. OLSEN: -- deck and the closer --

THE COURT: And is it still used?

MR. OLSEN: -- the higher one is the --

THE COURT: I try to avoid this intersection. It's crazy. So which -- is it still in use, or is it just there?

MR. OLSEN: I'm sorry?

THE COURT: Is it still used by traffic?

MR. OLSEN: Yes. Yes, the -- the normal overpass? Yeah, what you can do, you can cross it on eastbound -- sorry, westbound Blue Diamond. You can also -- if you get off the freeway going south at Blue Diamond, you can take a left and you're going back across this original overpass and there's a left turn signal there to get back onto the freeway.

So it is in use and it functions -- you know, I -- and I'm not traffic engineer, I'm not going to critique the flyover, but the overpass certainly functions. I've been on it. The flyover is designed as a way to get from the -- pardon, eastbound Blue Diamond traffic to avoid all that traffic on the deck I guess and go straight to the freeway.

You can also tell if you look at this picture, the lowest of these things constructed here is actually an access road which was part of the -- pardon me, flyover piece too.

This one may give you -- this is closer to the picture that I had put up of the preexisting gives you a little bit of a sense of depth. I don't know if you can see that, but the exit ramp obviously is here. The flyover which I think Mr. Coulthard said its original configuration or one of the configurations they talked about was about 800 feet north of this. It would have been to the north side of the Blue

Diamond overpass. Now it goes south which is, you know, directly in view of the property. So you can see the pylons for this, the bridge piers are just to the south of the existing Blue Diamond Road, pardon me.

You know, and I don't think there's any doubt now because they've shown you documents that we couldn't figure out for a long time if they -- if the Blue Diamond -- if the flyover was in or out if they were acknowledging -- they seem to be acknowledging now that it did in fact was part of the plans. And that's good because the testimony that came out from the 30(b)(6) witness -- the witnesses of the State was very clearly that it was planned well before the Blue Diamond realignment for which Mr. Nassiri's property was condemned.

And these maps -- the maps that we were looking at, they're important. I mean, Mr. Chapman testified that -- in his deposition -- the purpose of the maps was actually to show the rest of the project and to allow the plaintiff to assess severance damages. He said that on page 50 his deposition. That was specifically part of the process.

He also said that the purpose was to show the rest of the project as it would affect the settlement. That's his testimony in deposition page 76. Yet the -- neither the maps nor any of the people involved for the State mentioned the flyover, so Mr. Nassiri wasn't in fact able to understand and assess the project and how it might assess -- affect his settlement.

Specifically with respect to the duty issue, there was a -- some arguments made about that. Look there's a duty here to act in good faith and to act -- and to -- and you're saying effectively as the State this is an equitable settlement when they knew at the time or they had reason to know at the time it wasn't because they had this undisclosed problem with the property.

And it wasn't a question of when -- whether it was going to happen, it was a question of when. They applied for the money in the next legislative session. This settlement was made in -- finalized in June or so of '05. They applied in the next session of the legislature for the money, so it was just a question of when this thing was going to be constructed, not whether.

And again, they used -- the State used that money to build this flyover and you can't tell -- again, you can't tell from this picture exactly the -- you don't have the perception -- the depth perception, but the flyover is 60 feet above the freeway. And there's also some other things built to the -- adjoining the property, including I think I made reference to a -- I'm not sure how tall that the wall is, but it's a 15 or 20-foot wall that abuts directly to the pork chop property.

Anyway, with regard to the duty issue beyond good faith, Mr. Coulthard was critical of the -- our reference to NRS 37.110. That section does talk about court proceedings and providing all of the information to the court necessary to assess the situation and frankly, you know, this case didn't go to a trial. What you had instead was a resolution of the case. It's hard to imagine, and we think it's certainly implied, that if there's an obligation to provide all this information to a court or master or -- it's not just limited to the court, someone making determinations, the similar -- same duty would inure to the benefit of the defendant who happens to instead participate willingly and in good faith in a settlement.

The manual. Again, the manual that the right of way people at NDOT use says things like the acquisition shall be conducted to the end result that the property owner receives just compensation. That's section 5.351. It says also the agent must explain the acquisition thoroughly with the use of exhibits, drawings and plans. That's section 5.357. Well that's -- they did that and that's what -- that's

what those drawings were, the maps that I've showed you. They have an obligation to and they did show us maps. They just weren't maps that indicated any kind of a flyover in the future.

Now, on this issue about the -- we've cited to the 2011 version of that, that manual. The 30(b)(6) witness was asked about whether the manual was changed and his testimony it hasn't changed in any significant way. We hope to get that at trial -- have it produced at trial, but he said it's the same manual it was certainly on these topics so that hasn't changed. They've always had or for a long time had or at least for the relevant period had that obligation to disclose what they did not disclose here.

So again, they didn't deliver what they promised deliver -- to deliver. They didn't act in good faith as an express contractual matter. Similarly, for the implied covenant really the same issues. NDOT -- and I have to add this to it too. I mean, NDOT knew the exchange property had value because of the visibility. NDOT knew the visibility was compensable. It knew those things. That's undoubted and undisputed. It also knew that it was going to when it built this thing block the valuable view that it got paid money for.

I already touched on -- so again, it's bad faith, certainly passes muster for purposes of legal duty and continuing on to trial. I've talked about the tortious -- tortious bad faith claim. Again, it's not about having discretion to build the thing, it's about having discretion to not tell us about it.

The claims have morphed. That's why we have discovery, but I will tell you the claim -- the basic claim -- this basic claim was in the amended complaint and what we said way back at that point -- that was filed in 2013. I think the original said the same thing.

Defendants presented plaintiff with the Blue Diamond interchange development plan. The plan reflected that the exchange property had in excess of 1,500 feet of visibility from I-15. This is paragraph 50 of the complaint, if you're interested.

After plaintiff's purchase of the exchange property, defendant, by and through NDOT -- at this time we said changed the plan; we didn't realize they knew the plan the whole time -- such that a flyover entirely eliminated the exchange property's 1,500 feet of visibility from I-15. That's always been a part of the complaint. That's always been the crux. That's always been the thing that we want to take to a jury so we can ask the jury whether the State of Nevada can engage in the actions it engaged in.

No one's going to debate whether or not the actual flyover -- this design is good, bad or indifferent to the general public, whether it served the general public. That's not the point here. We would probably lose that case if we tried to show that it wasn't beneficial overall. But what's important is to focus on the transaction, the transaction that was a resolution of a condemnation in which there were different components placed and one of those was this property that wasn't what it was purported to be. So, Your Honor, we'd ask that the motions be denied.

THE COURT: Okay. Thanks.

Mr. Coulthard.

MR. COULTHARD: Just very briefly, Your Honor. Again, thank you for your patience and your attention today. Started out on the response with the -- again said the map, the map is part of the agreement and that's unrebutted and he cited to Mr. Chapman's testimony.

Unrebutted? Are you kidding me? The map that he says is part of the

agreement violates the integration clause under the four corners of the agreement, violates the acknowledgement that no outside promises or representations has been made to induce the parties to enter into their settlement agreement, and violates the parol evidence rule.

Unrebutted? Those are clear legal mandates that preclude the map from somehow morphing and becoming part of this agreement.

And, Judge, it's important that no one in this has said -- he hasn't said it in his opposition at any time, we haven't said -- he didn't argue it. No one has asserted that the settlement agreement is vague or ambiguous and case law in the State of Nevada is clear where a written contract is clear and unambiguous on its face, extraneous evidence, such as the map, cannot be introduced to explain its meaning.

So, Judge, they are -- there are three reasons, if not more, that I can give you right there that this was -- this map is not part of the agreement and -- then he says there's no evidence that the flyover was disclosed or discussed. Well, they just want to ignore the 2004 EA, Exhibit -- the environmental assessment which clearly shows that a flyover was disclosed not just to Nassiri, but to the general public beginning in 1999 and Mr. Nassiri had a copy of the flyover and sent it back with his request to acquire the surplus property.

You know, he had an engineer, he had a lawyer. These guys knew how to read and understand that map. To assume that Mr. Nassiri -- that our -- that we didn't disclose -- the State didn't disclose forces this Court to ignore the public records from the 2004 environmental assessment.

You know, he tells you that we failed -- and I wrote this down, failed to deliver land as promised under the contract that had good visibility and, Judge,

when we delivered that land, we delivered it under the terms and conditions of the quit claim deed and that specifically says as-is, where-is, no expressed or implied warranties -- the exact language.

When he tells you that we failed to deliver the land, that's just not true. We delivered the land, the entirety of the land via quit claim deed which was the contractually mandated and statutorily mandated way that the State had to do it and that the grantee accepts the property as-is, where-is and with all faults, including but not limited to any and all easements, encroachments -- that's not the language.

Think -- it's very last sentence of the first paragraph: Grantor makes no warranty, express or implied, of any kind with respect to any matter affecting the property. We had an obligation to transfer via quit claim deed under that written contract. We satisfied that obligation. For them to stand before the Court and argue that we failed to deliver land that has good visibility violates the terms and conditions of the quit claim deed and the settlement agreement.

So -- and then he says and, you know, I -- hey, all real estate developers have suffered in this Valley for a number of years. Things are on the upswing the last couple of years which is great, but he argues that we put into the pot impaired property.

Well, Judge, this -- if this is ever a case about buyer's remorse, this is certainly the case. When you take property as-is, where-is with no -- subject to no warranty, express or implied, of any kind with respect to any matter affecting the property, you can't then come back and say you gave me impaired property and you didn't give me the view you supposedly promised me.

Judge, as to the tortious breach of good faith and fair dealing, I think Mr. Olsen admitted was not a fiduciary duty and they haven't pointed to any case

law related to the special relationship in a situation like this. I mean, these were litigants that had their own lawyers. The State had a lawyer and Mr. Nassiri had Mr. Chapman. This was a negotiated settlement agreement that resolved the entirety of the case and all further claims and causes of action were resolved, including future severance damage claims were resolved under the terms and conditions of the settlement agreement when the State paid $4.81 million to resolve this. To suggest otherwise is disingenuous, violates the terms and conditions of the settlement agreement, and I've not heard any response how the underlying judgment of condemnation doesn't create a claim preclusion bar.

You don't get two bites at the apple. You don't get to settle a case and then say oops, I should have got more money later. When you resolve a case, you do it based upon the terms and conditions of the settlement agreement. That's why we memorialize things -- deals like this in a written contract.

Finally, says we failed to disclose the flyover. Again, really having to ignore the evidence of the public disclosures and the meetings that Mr. Nassiri was at. He said there was no evidence whatsoever in the record that the -- that the flyover was ever disclosed at those meetings and I would suggest in fact there is evidence if I could put my hands on that EA, which is Exhibit B, specifically page -- again, I'm -- and I'll pull it up on Elmo, but they talk about all the comments and these EAs record all the comments by the people who were at those hearings and page B-7 again has -- we have Mr. Nassiri at this meeting comment -- page B-7 and this is from the July 1999 first informational meeting. We got Mr. Nassiri comment: Mr. Nassiri noted that all options presented would affect his 50-acre parcel. He also requested full access to his property.

One more -- and then it's got the State's response. One more line

down, what does it say? Again, Mr. Olsen questioned was there any evidence or record that the flyover was ever discussed. Well, Mr. Olcott -- right after Mr. Nassiri, same meeting: Mr. Olcott expressed concerns about the safety and access of the center lane position of the northbound I-15 flyover for large heavy vehicles, commercial trucks, and smaller passenger vehicles and the intersection control at Industrial Road.

So he's talking about northbound flyover for large heavy trucks. That was the design center lane configuration originally under the 2004 EA, so we know that at a meeting where Mr. Nassiri was present, Mr. Olcott talked about the flyover at this same public hearing so there is evidence that it was discussed and disclosed.

Your Honor, I think -- again, I think that when you look at Mr. Nassiri's August 10th, 1999 letter that he sends the State, page 2 of that letter where he marks up the property in pink, which is here in the surplus, it's not colored here, that's the property that's shaded that he wants to acquire which has a letter from Mr. Nassiri to the State shows east to northbound flyover, shows the flyover, the preliminary sketch subject to revision. Mr. Nassiri clearly was on actual notice of a flyover being constructed as early as 1999.

Finally, Judge, the point about whether -- when this flyover was built, what project it was built under, I think at the end of the day I don't -- I mean, how important it is. Clearly in 2004 we acknowledge and the EA shows that a project included -- the project included a proposed design for a flyover, but it was not until 2009 as part of the I-15 south design build program when the final configuration of that flyover was designed. Traffic warrants didn't demand it yet and it wasn't done until -- wasn't built until two projects later.

I don't know that that's critical for your analysis. I don't think it is, but that's the -- I -- on the -- in the papers you'll see the design changed. In 2004 it was a center lane flyover as shown on Mr. Nassiri's map. Ultimately when it was built in 2010, it was a right-hand lane access to the flyover and the configuration changed a little bit, but at all times everyone knew and I believe Mr. Nassiri knew but certainly it's in the public domain that there was a flyover planned for this intersection.

So, Judge, I think the four corners of this settlement agreement control, the breach of contract claims and -- and any and all severance claims out of the 2004 were fully and finally resolved via the settlement, and this is the case because of the releases, the integration clause is ripe for summary judgment determination by the Court and the State should not be forced to incur the additional cost and expenses associated with a trial of claims that were released and given up. They didn't show you a duty, Judge, under this contract and without it, their breach claims fail. Thank you, Your Honor.

THE COURT: Okay --

MR. OLSEN: Your Honor, may I just say two things and I'll let him respond very briefly?

THE COURT: Briefly, uh-huh.

MR. OLSEN: Just so the Court's clear, the EA, the environmental assessment from 2004 and the one from 2008, just to be clear, those aren't sent to the adjoining landowners. So there's no evidence -- he didn't really say this, but it may be out in the public domain but they aren't sent to the people who are interested. They're just generally publicly available, that's one.

Two, the reference in the EA to Mr. Olcott's comments, it refers to

Exhibit B40. If you look at that, B40 is a letter. It isn't some sort of notes he made at a meeting necessarily, it's a letter that was expressed concerns, not confirming that he was at a meeting at all.

THE COURT: Understood. Okay.

MR. OLSEN: That's all I have. Thank you.

THE COURT: Thank you.

Anything based on that -- Mr. Coulthard, anything further?

MR. COULTHARD: Just very briefly when he says there's no evidence that the EA and this project plans were sent to Mr. Nassiri, in fact, if you look at Exhibit C to our motion to -- on this breach -- on these breach claims, in fact, there is a -- a July 7th, 1999 Department of Transportation letter on a -- sent regarding an intent to study SR-160 Blue Diamond Highway, and it puts him on notice the proposed improvements consisting -- consist of realigning and widening existing roadway to six travel lanes, three in each direction from Las Vegas Boulevard to Industrial Road and along the present alignment from Industrial Road to Rainbow. Proposed improvements include reconstructing the existing interchange at I-15 and constructing a grade separation at the Union Pacific Railroad. And then tells you the potential areas of impact.

Now this letter specifically went notifying Mr. Nassiri of a public informational meeting for Tuesday, July 7th -- July 27th, 1999. It attaches to this, which is again part of the EA, it attaches mailing list, intent to study -- SR-160 Blue Diamond Highway, Mailing List - Intent to Study. It shows everyone it go -- gets mailed to and lo and behold on page Department dash 026 Bate number, who do we mail it to -- who did the State mail this to in 1999? Fred Nassiri at his address.

So for them to tell you that there's no evidence in the record that this

intent to study and these plans went to Mr. Nassiri is just untrue based upon the written documents that are attached --

MR. OLSEN: Your Honor, that's not what I said. I said the '04 and the '08 EA. That's all I said.

THE COURT: Yeah, that's what I understood you to say, Mr. Olsen.

MR. OLSEN: Yeah.

THE COURT: Yes. Okay.

MR. COULTHARD: Well -- okay.

THE COURT: The --

MR. COULTHARD: Thank you, Your Honor.

THE COURT: With respect to these motions, taking them in the order in which they are presented, on the motion for summary judgment on the eminent domain claim, I think at one point Mr. Olsen said he -- the State's conceded this is an eminent domain case. I don't think they did -- I don't think it is. I -- this is not an eminent domain case. This is a breach of contract case.

The eminent domain motion presented essentially issues of law. I don't think there's any questions of fact on eminent domain. I don't think eminent domain applies here. The -- because I do think *Probasco* is controlling. He didn't own this property, he bought it as part of the -- his negotiations for the condemnation of his other four acres from his bigger assemblage, but he overpaid based on what we was either represented or not understood about that when he was negotiating to settle the other part of the case.

I don't think this has anything to do with eminent or inverse condemnation on his -- the surplusage or whatever the -- the transfer, whatever you want to call that little parcel there, the pork chop part. I just don't think eminent

domain applies there. He -- there -- we have no taking.

I would state on the access issue that's why I specifically ask if that's premature and I do think it is, that's without prejudice, because until he knows there's no access to that property, he doesn't have a claim there and just having raised it here doesn't mean he's foreclosed from raising it in the future because the whole point is you don't know that there's no access. So that's not a ripe claim so I think that part is -- summary judgment's granted on his issue about access without prejudice, but with respect to the view, I think that's totally a *Probasco* issue. I think that motion for summary judgment has to be granted.

There's -- he didn't have a right to inverse condemnation with respect to the view. And I don't think it applies as to the other portion of the total of 65 acres. He doesn't have any inverse condemnation rights there that he wasn't negotiating for taking -- compensated for at the time. The problem is he didn't -- this configuration whether they knew there was going to be a flyover or not, it changed, it moved. Maybe he knew about it, maybe he didn't. I think those are all questions of fact. That's why I think it's a contract case.

And I think that with respect to the second motion, the breach of contract motion, I'm going to deny that in part but grant it in part. The breach of contract claims, I think there is a duty. I think it's in the -- it's in the settlement agreement.

We have statute of limitation problems here. I understand that, but those are questions of fact and we just have to determine that based on when did he -- when did that claim accrue. I think -- his argument is didn't accrue until they actually built that flyover and I saw what it did to my property. The State's argument is no, you knew it as soon as 1999. So that's a problem we've got there

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.	Case No. 70098

APPENDIX VOLUME 12, part 3

TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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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
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Hearing Transcript (4-1-15 Hearing on the State's MPSJ on Nassiri's Inverse Claim and Contract Claims)	13	PA02460-2540
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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

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

you shouldn't allow them to do an end run around controlling Nevada Supreme Court case law and your prior granting of summary judgment.

You know, Judge, if the breach of contract damage model is not allowed, as we believe under Rule 37 it should not be, that isn't -- it's not the end of their case. They still have this breach of contract rescission claim. So, it's not the death nail to their case but, Judge, saying these damages, repackaging your damages, in contrary to everything the expert has said, a year after discovery, is not fair. It's not right and it's an end run around the law.

And, you know, Judge, I appreciate -- I know you have to get to another commitment, so let me just check my notes real quick.

Judge, I think at the end of the day, again, whether it was sloppiness, whether it was a bait and switch, whether they realized they had a problem, I don't know. But the end of the day, there is some real prejudice to the State because we didn't get their damage computations -- understand these damage computations until after discovery was closed. It violates the intent, the spirit intent, and the mandate of 16.1 and 37, and I would suggest, Your Honor, that it would be a violation of Your Honor's discretion not to strike these reports in this

untimely disclosed breach of contract damage model given the circumstances and the facts and circumstances of this case. Your Honor, if you don't have any questions or want me to touch on anything, --

THE COURT: Thanks.

MR. COULTHARD: -- I'll pass the microphone and reserve a brief rebuttal.

THE COURT: Thanks.

MR. COULTHARD: Thank you.

MR. OLSEN: I'm not sure how much time I have, Your Honor, since it's --

THE COURT: 11:45.

MR. OLSEN: 11:45.

THE COURT: Right.

MR. OLSEN: I'll try to be really brief.

THE COURT: Okay. Well, the issues really are the 16.1 issue. The 16.1 issue, paragraph 1(c) in the drafter's notes is:

> Paragraph 1(c) is intended to apply to special damages, not general or other intangible damages.
>
> A party can always testify to their damages. Mr. Nassiri can get up on the stand and say I've been paying, you know, interest on this thing for however long I've been paying interest on it. He can talk about his damages.

Mr. OLSEN: He can also testify to the value, by

the way, Your Honor. A [indiscernible] can testify to the value. Let me just briefly say there is plenty -- there is Mr. -- contrary to the moving papers, expressly in Mr. Harper's opinion, he states that he determined at 10 percent. It wasn't just 10,000,000, it was 10 percent impairment based upon the visibility. That's his conclusion.

THE COURT: Well, that is in another issue that, you know --

MR. OLSEN: No. The reason I'm bringing that up is because even if you didn't have an opinion as to the exact value as of whatever date they claimed is appropriate, Mr. Nassiri can testify to that.

By the way, there's evidence, and Mr. Harper had reviewed the appraisals. That's part of his statement in his report. There -- we know the value in 2005. Right? Because there were appraisals in the purchase. There were appraisals from 2010. There's his appraisal as of 2013. By the way, the value of 100,000,000 did not change between 2010 and 2013. So, just --

THE COURT: So, that's where the 10,000,000 came from? 10 percent of 100,000,000 is --

MR. OLSEN: Yeah. And I can -- well, no. It's 10 percent, yes. And then the value that he determined as of that date was 100,000,000. In Mr. Harper's report, at his

page 76, which is bate stamp Harper83, he says:

It is my opinion the remainder of the property is diminished in value by 10 percent.

Yes. It ends up being 10,000,000 but it would be 10 percent of, you know, if you took the value of the property, take the 24,000,000 to pay the 2005, it'd be 2.4, but let me just quickly -- I've got to talk just for a second about the whole bait and switch issue.

It's not a bait and switch. Here's what it is. Back in 2012, before there was any Complaint filed, there was a discussion about a comparison of flyovers. It came up. No doubt about it. And they took that in 2012 and Mr. Terry went to Mr. Sjostrom, who was already getting paid by the State, and said why don't you compare -- run some numbers on this and run a comparison and let me know what you think about the visibility.

Of course, we never, ever got that until he was disclosed as an expert in 2012, but they had -- my point here is they had this in their mind. This is what the case is about. It's not in the Complaint. If you read our page 14 of our Opposition it goes through a list of paragraphs and none of those paragraphs talk about -- the difference is the existence of any flyover. We had a trial on that and the Court heard testimony about it. In fact, we're comparing what was represented to Mr. Nassiri at the time

of the sale and what was built in 2010.

That was cleared up in the interrogatory answers -- our answers to their interrogatories which we served on -- in June 2014. That is our Exhibit 9. It was made specifically clear there. If there was any doubt based on the Complaint that the comparison being made is a comparison of a flyover-less, so to speak, intersection and one that contains a monstrous flyover. Interrogatory number 5, in part, says, in our answer:

> It was specifically contemplated that the visibility of the property would not be impaired by any flyover. Undisclosed by NDOT to plaintiffs was that at the time of the settlement agreement, NDOT intended to build a flyover and thereby impaired the subject property's visibility to 1-15.

And we know that's true. That testimony came out. But that was made clear in the middle of June 2014. There's another -- the next interrogatory has a similar answer where it says:

> Nothing in the diagrams impaired visibility of the property. Not one included a flyover. NDOT knew but failed to disclose that it had plans to build the flyover in the event funds became available.

So, they had the opportunity -- they knew the position from the Complaint and from that document. They

had the opportunity to do discovery and they didn't do it. And it may have been they just were so focused on their world view, including Mr. Sjostrom's report, they didn't really read it. It may be that was a strategy. Keep in mind -- and they claim -- when I took Sjostrom's deposition, this also came up. Ms. Lowe, in her report, her rebuttal report, noted: I don't think that Mr. Harper is comparing one flyover to another. So, this was clearly no.

Briefly on the report, and let me just say generally, Mr. Coulthard is correct. 16.1, if you have a harmless failure to disclose, then it's not a violation. It's harmless for a number of reasons. One, they had the information. Two, and this is just on all of it, both the theory of the flyover that damages, the visibility damages, and the disclosure of the damage calculations, this is all harmless because they had the ability to do discovery. They chose not to. We even had a discussion about taking further discovery on damages and they elected not to. When you look -- now, briefly to the issue of Mr. Harper's report. And the before and after issue and the 10F issue.

Mr. Harper's typographical error, misunderstanding, whatever you want to call it, isn't in what he was doing or what he was comparing in his analysis. That doesn't affect his analysis. If you look at his

report, and this goes to that assumption he made, and if you look at our exhibit, that's our Exhibit 4, there are packet -- at his page 84 or Harper bates 91. There are five maps.

His testimony was that he was referring to -- he used 10F because he considered -- he thought that 10F was this group of maps. And he fixed that and they got that supplement and he testified about it, of course, but if you look at the third map and he testified about this. The one he used as the before condition is the one on page 93 that's marked before. It says before and it is the diagram that doesn't contain any flyover. The one that is on page 94 is the after and that is the 60-foot monster flyover. He testified that that's what I was comparing. I wasn't comparing -- I called it 10F but I wasn't comparing that page 91 with page 95, I was comparing the one marked before. And he got these from another source. By the way, if you look at them they all have the same binding on the side. It's a photocopy but, you know, these are from the same source.

So, it was clear that that was what we compared and to the extent -- and that's what we wanted to compare because it is in our discovery responses. To the extent there was any issue, he made it clear at the deposition. They just -- and they had an opportunity, by the way. They

could have asked to somehow supplement, do another report, whatever. They didn't do that because I think they made a decision that they were going to stick with -- as a strategy, stick with the Sjostrom report and the idea that we were comparing two different flyovers when, in fact, the only expert opinion we offered compared no flyover and the flyover.

So, there's no prejudice here. I think the prejudice is self-inflicted in the sense that they had blinders on. They knew from discovery responses and then they had an opportunity to take that discovery.

Let me just talk briefly, because I know the Court has to go, about the issue of disclosure of the calculation and severance versus contract damages. There's a statement made in the, I think, in the Reply, that the State never fathomed that Mr. Nassiri was asking for $12,000,000. You know, the fact is they knew, initially, the damage disclosures calculations were 6,000,000. After Mr. Harper's report they went up to 10. They knew that the magnitude of the damages was in that range.

They obviously raised the issue that they wanted to argue in December and still want to argue today that: Hey, you don't have a damage disclosure that's -- you know, a separate damage disclosure, therefore your case should be dismissed. Your claim on damages for contract and, I

guess, for bad faith too, although they don't mention it specifically.

That was clarified. We said that's not our position and then information -- Mr. Nassiri was asked at length in his deposition about damages. Not just the portion they cited, he was asked at length about what his damages were and it wasn't attached as an exhibit, but I can tell you there was a sheet of paper that contained some of these other damages that was discussed at the deposition.

And then it was made very clear what he was seeking for. It was made very clear that there were both -- there was both a 10,000,000 calculation for damages. That was made clear certainly by the subsequent disclosure, the 9th supplement.

And in the deposition, by the way, Mr. Nassiri -- I had a colloquy with Mr. Coulthard and we discussed what plans position was on damages and then the discussion was specifically: We're going to get you that information. If you have additional -- in specific written form, if you have additional questions, we can do depositions. We can do discovery. They were invited to do that. They elected not to do that. They had the opportunity.

So, to the extent that that error was made, it was harmless. To the extent there wasn't a specific

disclosure, it was harmless. The damages, as the Court has noted, they were claiming are impairment of the visibility but the same damages for contract bad faith as were for inverse condemnation. How else would you measure it? I mean, that's what he's -- that's what Mr. Nassiri is saying.

THE COURT: Well, Mr. Coulthard's point is that you can't get that in an inverse condemnation, how can you get it in the breach of contract? It's a totally different claim.

MR. OLSEN: Well, it's a different claim. It's the same measure of damages.

THE COURT: Right. Does it say you can't get it for the --

MR. OLSEN: *Probasco* doesn't apply to contract damages.

THE COURT: Okay. Right.

MR. OLSEN: That was -- I think that's pretty clear

THE COURT: Okay.

MR. OLSEN: Anyway, they had the opportunity. Mr. Coulthard, in the deposition, said if it's not clear then we give them the information. And I feel we need to redepose him --

THE COURT: Because the argument is that it's a

breach of contract claim, meaning he paid a certain amount for property, that it wouldn't have been worth as much if he had known that there was this impairment to visibility and --

MR. OLSEN: Correct. And the damages --

THE COURT: So, he wouldn't have paid that much for it. It's a breach of contract claim.

MR. OLSEN: And the actual damage didn't occur. The measurement of that, it didn't occur until the thing was built.

Now, let me just say real quickly, Your Honor, they talk about the -- again, the transactions as though they're two separate things, the condemnation and the sale. That's how they get to this issue about well -- and I think it's a less important issue to them, but they mention it. Well, you can't apply the 10 percent to the entire property but keep in mind, Your Honor, this was one transaction and this is a transaction in which the State charged a premium of over 40 percent to Mr. Nassiri because he owned the property that they were condemning on the other side.

So, once again, they try to segregate these two things out, but the damages -- and by the way, the appraisals that came into evidence in -- from 2004, I think, talked about the fact there was visibility advantages to even the original property. But you can't

segregate out the two.

Let me just close and this is a little rushed but I know the Court's got to be some place. I think it's -- two things are important. One, I think the State made a choice. We're now in January 2016. They made a choice back as early as June 2014 and certainly by a year ago that they were going to go with a certain strategy and that was to attack Mr. Harper, rather than doing the discovery to -- or supplementing their reports to combat this issue that, in fact, what Mr. Nassiri was seeking was the difference between no flyover and a flyover.

THE COURT: Okay. Thanks.

MR. OLSEN: And I'll leave it at that except to say they had the opportunity long ago to avoid any kind of prejudice and they elected not to take it.

THE COURT: Okay.

MR. COULTHARD: Just very briefly, a couple of points.

This 10 percent impairment on land argument, that's -- and applying it to a different date, well, that's not what Mr. Harper did in his appraisal report. He did -- he followed the State methodology, appraised the property to a specific date, with and without a flyover, contrary to his extraordinary assumption, and now they want to just take that and apply it to a different year? Apply it to

2005 values? Well, Mr. Harper says in -- and I a read the deposition transcript. He says you can't do it. If the date of value is one month off, you have to go do a new appraisal report. So, he -- you can't apply the 10 percent to any date. At least that was the original testimony during discovery.

You know, the issue before the Court is, you know, are you going to forgive Mr. Nassiri and his counsel's failure to produce a computation of damages as required under 16.1? You know, they talk about the State made a choice. No. the State relied upon the 16.1 disclosures, relied upon the written report prepared by Mr. Harper that he was comparing the 10F originally planned flyover with the as built. And not until the very last day of discovery did we learn that this was -- that's not his opinion and he completely rewrote his opinion, moved away from his extraordinary opinion, and then spent the day trying to fix it.

So, we didn't make a choice, Mr. Harper made -- and Mr. Nassiri made a choice to pursue rescission, not breach of contract.

The typographical error, that didn't become -- they talk about we are supposed to know that I was a typographical error from these other things. Well, we relied upon Harper's report and got three rebuttal experts

to rebut that specific -- those specific opinions. The last day in discovery he moves away from it. Is that typographical report so obvious? If it was so obvious, why didn't these counsel point it out to us when they produced the report?

I asked Mr. Harper during -- we asked him during his deposition and he said: Well, I would have told you guys -- and we put that in our brief. I would have told you about this error prior to the deposition if I'd known you were going to make such a mountain out of a mole hill.

I can tell you, we went into that deposition with rebuttal expert reports in hand to his as-written as-disclosed opinions and he flip flopped on us for whatever reason and that's not a choice that the State made. Mr. Nassiri failed to comply with 16.1. It wasn't an obvious typographical error.

And, finally, Judge, you said it again today and you said it when you denied the Motion for Summary Judgment as to breach of contract. And you, in the findings and conclusions, and we cited that in our report, and you mentioned it again today, maybe Nassiri paid more than he should have for this property had he known about a flyover. And so we're going to let them talk -- there are triable issues of fact as to whether Mr. Nassiri paid too much in 2005 for this property. That is the law of this case and

the measure of damages that we have had no evidence on. What they are coming in and saying is: We lost view and visibility and -- which is not allowed. Not a compensable damage under any theory of law in the state of Nevada.

I acknowledge *Probasco* was an inverse condemnation case. But you cannot -- and I don't guarantee a lot, but I am pretty certain that the Nevada Supreme Court will not stand for Mr. Nassiri repackaging his inverse condemnation damages for a loss of view and visibility into a breach of contract using the same methodology, the same now disclosed 10 percent, and allowing a view and visibility contract damage compensation award. It's not authorized in this state under any theory and Mr. Nassiri's changing course, which he's done throughout this case, should not prejudice the State. And, Your Honor, you should hold the line just as you did with the July 27th, 1999 non-produced evidence. This was not timely produced. We were prejudiced and it should not be allowed. Thank you, Your Honor.

THE COURT: Okay. All right. Well, we've fully argued it. We're going to be back on January 19th for another motion, so I'll take a look at it and give you a decision then, but I have got to go.

...

...

...

MR. COULTHARD: Thank you so much, Your Honor.

MR. OLSEN: Thank you, Your Honor.

MR. COULDHARD: Thank you for your patience.

PROCEEDING CONCLUDED AT 12:04 P.M.

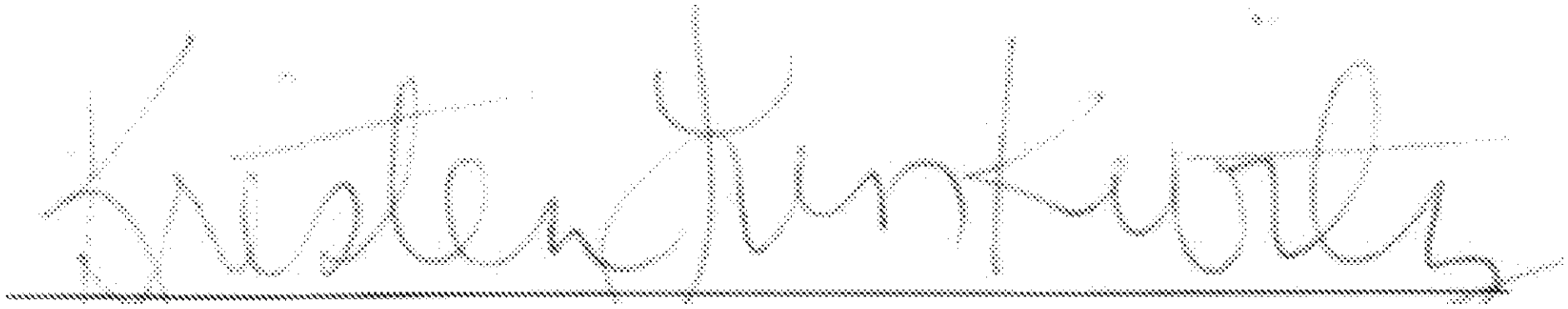
* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

FRED NASSIRI, NASSIRI LIVING TRUST, Plaintiffs,	)	CASE NO. A-12-672841
	)	DEPT. NO. XXVI
vs.	)	
STATE OF NEVADA, Defendant.	)	**Transcript of Proceedings**

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF: 1) JACK SJOSTROM, 2) ALAN NEVIN, AND 3) SHELLI LOWE; CHAMBERS DECISION ON MOTION TO EXCLUDE DAMAGES

TUESDAY, JANUARY 19, 2016

APPEARANCES:

For the Plaintiffs:	ERIC R. OLSEN, ESQ. DYLAN T. CICILIANO, ESQ.
For the Defendant:	WILLIAM L. COULTHARD, ESQ. ERIC PEPPERMAN, ESQ.
RECORDED BY:	KERRY ESPARZA, DISTRICT COURT
TRANSCRIBED BY:	KRISTEN LUNKWITZ

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

TUESDAY, JANUARY 19, 2016 AT 10:45 A.M.

THE COURT: 672841.

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

MR. PEPPERMAN: Good morning, Your Honor. Eric Pepperman and Bill Coulthard for the State.

MR. OLSEN: Your Honor, we do have a PowerPoint, although I'm going to, just in case from the last time, I'm going to hand counsel and the Court a copy of the slides.

THE COURT: Okay.

MR. OLSEN: If I may approach?

THE COURT: All right. Thanks.

[Pause in proceedings]

MR. OLSEN: Your Honor, it's our Motion --

THE COURT: Okay.

MR. OLSEN: -- in Limine to Exclude the Expert Testimony of Three Experts. Actually, expert -- two experts and one a portion of the testimony, that being Ms. Lowe.

As the Court knows from trial, in the settlement of the condemnation case, NDOT represented that it was going to build and realign Blue Diamond Road with an interchange that did not include the flyover. We've had a lot of testimony about that with findings and facts

concerning that. If you look at the slide, that's the before condition. As plaintiff argues it, and it's plaintiffs' expert, Mr. Harper, that's his starting point. That is the promise -- the representative intersection as-built, in 2007, I think, with no flyovers. The after condition is that next picture. The after condition with the as-built flyover, completed in 2010.

Our position, of course, is that the material breach was in building the after condition and that the 60-foot flyover that blocked the visibility and caused damage. That's our case. And the Court knows that from the trial we had already. Our case isn't about comparing a never built interim plan flyover with the flyover that's depicted in the after condition.

The problem with Mr. Sjostrom, in particular, and with Mr. Nevin, we'll talk about him, is they talk about something completely different. A different comparison in both instances. Ms. Lowe relies on Mr. Sjostrom to a large extent, although there's a portion -- she actually did an analysis on the comparison we're looking at. That analysis she can talk about. But both the visibility report and the rebuttal report that she did, to the extent that it addresses another comparison, can't come in.

Now, NDOT, interestingly in their Opposition, admits that the State's experts no longer squarely rebut

Mr. Harper's opinions. They actually say that. The problem is, Mr. Sjostrom and Mr. Nevin's opinions never were a rebuttal. They were both prepared and generated before there was ever a Harper report. And Ms. Lowe's, to the extent it relies on Sjostrom, was certainly not a rebuttal report. Indeed, her visibility report, although produced as rebuttal, absolutely should have been an initial report. One must anticipate certain issues if you're going to have an expert and that's your initial duty to go forward that report. The opinions of Mr. Sjostrom and Mr. Nevin are irrelevant because they don't make the right comparison. They should be excluded and Ms. Lowe's limited to the portion of her opinions which addresses the actual comparison Mr. Harper did and to his methodology. We acknowledge that, you know, she can talk about his methodology.

Now, again, Mr. Sjostrom's report is not a rebuttal, despite the way they've -- the claims made by the State. It was generated in 2012 as a technical memorandum in which he was asked to describe any variance from the as-built flyover to what was cleared in the 2008 EA. Again, that's not our case. Our case is no flyover versus 60-foot flyover.

What he's -- what he's doing, really, is comparing something built with something that never existed, was

never talked about, is not part of our case. That's not helpful to the jury. It's irrelevant and all it can do is absolutely cause confusion. So, that testimony, anything in Mr. Sjostrom's report, his testimony in its entirety, has to be excluded because we are not arguing for damages based upon a never built, 15 percent completed diagram, as compared to what was actually built, rather what was represented in the settlement which is the before condition you've seen here.

Mr. Nevin's testimony, his expert opinion was not rebuttal either because it was generated before Mr. Harper's. So, to the extent -- there's this argument about having, you know, not having a rebuttal to Mr. Harper from these guys. They didn't have a rebuttal. They weren't -- under a mistake, the mistake that's been pointed out in Mr. Harper's report, they came up with their own reports ahead of time.

Now, Mr. Nevin is described by himself as a real estate economist and demographer. I don't know what that is. I know what it isn't. It isn't an appraiser. It isn't someone who's qualified to give an opinion of value of property. Mr. Nevin relies on some information that Colliers, the brokers, had provided with respect to value. But Colliers, in their own deposition testimony, said: You know, the material you're looking at is pitch material.

You know, it's advertising the property. It isn't a valuation of property. You can't use it for that.

So, we certainly can't rely on that and he has no ability to value the property on his own. He's just simply not qualified to do it. Again, I don't know. There may be a case in which he's qualified to do something but not this case. He has no -- so, he can't assume a value and he has no other basis for his opinion that the value of the property increased. So, there's that problem.

The more important problem is he compares -- slightly differently than Sjostrom, but he compares the wrong things. Mr. Nevin says that the realignment itself and the assemblage, he mentions the assemblage, creates synergistic value for, I think, the area and Mr. Nassiri's property. But we're not comparing the pre-realignment property. We're not comparing the property when Blue Diamond cut across it at an angle. That may well have -- the realignment of the property may well have improved the value of that location. It probably did but that's not the comparison we're making. We're comparing the realigned that when the settlement occurred, then you have the before condition. The realignment has -- this is what's coming and this is where we start. We presume the realignment and the assemblage. The harm came after that.

The problem with Mr. Nevin is he talks about this

whole block, the realignment through the building of the flyover. He doesn't testify -- he doesn't opine as to what value the flyover, the 60-foot flyover, added. He just says: Well, you know, this whole thing added value in Mr. Nassiri, therefore, benefitted.

Again, he may have benefitted from the realignment and they settled a case, a condemnation case based upon the realignment. But unless you say, yeah, the flyover added X amount of value, then your testimony -- your opinion is about the wrong thing. And they don't add anything, but again, confusion. I can only imagine the confusion in a jury's mind when they're having these different kinds of time frames thrown at them, whereas we know we're going to have to make clear we have a before, and we have an after, and that's the measurements. So, Mr. Nevin's testimony is irrelevant and confusing, potentially, to the jury.

Ms. Lowe's is a little different, as I mentioned initially, but it's interesting. You know, we've had all of the discussion ad nauseam about Mr. Harper at our last hearing, you know, his nomenclature in his report, and changing his opinion, which he didn't really do. He just clarified it. You know it -- you know how you know that? You know how you know there wasn't a change? In Ms. Lowe's own report, she picked up on the fact there was some confusion between the 10F description and the before

labeled picture. That map. So, she went ahead and did both analyses. If you look at page 13 through 18 of her report, she actually did both analyses.

So, to the extent she did analyze the actual before and after that Mr. Harper had in his report, used in his report, and he cleared up the nomenclature, you know, problem, confusion, with his supplemental report. So, that was, I think, clear from his deposition, certainly clear from his supplemental report. Ms. Lowe had already seen this. I don't know if the State hasn't read her report lately.

So, to the extent, she actually did an analysis of the correct comparison, no flyover to the final flyover, she can testify about that and she can testify about his methodology -- Harper's methodology. But she can't testify about the comparison that we're not making, comparison between the so-called 10F, the never built 15 percent complete plan versus the final plan. And she can't certainly testify about anything that relies on Sjostrom because he's making the wrong comparison. So, the visibility -- the visibility report, both was -- should have been initial and it relies on false comparison. So, that needs to be excluded.

I think it's fairly simple, Your Honor. I know there's always some reluctance to eliminate an expert but

the problem here is they have experts that are just talking about things that are not relevant and although the case, as I said, is pretty straightforward, the timelines are critical, as the Court knows from the initial trial. And if we have any confusion about what it is we're comparing, brought on by some expert testimony which is really coming out of left field, that just is a recipe for confusion and trouble.

So, both as to Nevin, and Mr. Sjostrom, and to the extent Ms. Lowe relies on Sjostrom, we have to eliminate that from this case and then try the case, put the experts on who really can talk about value and the methodology -- or criticize the methodology, and allow the jury to reach a conclusion based upon what's really relevant in the case.

THE COURT: Thank you.

MR. OLSEN: Thank you.

MR. PEPPERMAN: Judge, if I could approach, I actually have a binder of some exhibits?

THE COURT: Okay. All right. And you've got one for Mr. Olsen?

MR. PEPPERMAN: I do. Yes.

THE COURT: Thank you.

MR. PEPPERMAN: Judge, let me first address the timeline of the disclosures. Nassiri argues in his argument about whether the experts were disclosed as part

of initial or rebuttal deadline, is really just a red herring here. Nassiri disclosed an expert on loss of visibility damages and we disclosed experts on the same topic. The experts rebut each other. Regardless of when they were disclosed, they talk about the same issues, the same topics. As Mr. Olsen even said himself that we anticipate the issues based on the claims that are disclosed to us, and we disclose experts, and they rebut each other, and they go against each other whether or not they're disclosed as part of a rebuttal deadline. So, that really has no bearing on the issues before the Court.

This motion, I think, has a lot in common with the motion we were here two weeks ago on in arguing to exclude Harper for many reasons including because he changed the entire basis of his disclosed appraisal during his deposition. Now, just to put this into context, Your Honor, because they keep calling it nomenclature, typographical error of some sort. In Harper's disclosed report he identifies Figure 10F, Built Alternative Figure 10F as his before condition, which includes the -- what I call, the EA flyover. The State's earlier design of the flyover. The design that existed since 1999. And during his deposition, Harper said that his before condition was wrong; that it wasn't 10F with the flyover, that it was something else that included no flyover at all.

This total change in the foundation of his opinion is not a harmless typographical error. And the best proof that it wasn't a harmless typographical error is because we're here today and Nassiri is asking the Court to strike the State's experts because they address the issues that are actually disclosed in Harper's report, which now suddenly are, quote:

Completely irrelevant to this case.

It's not right, just on the face of it. It's not right. It's not fair. But it gets even worse because I've sat here and heard, in two separate hearings now, and in several pages of briefing, that this whole mess is somehow the State's fault. They -- Nassiri blames the State and actually argues that the State should have known that when Harper identified figure 10F as the before condition very clearly in his appraisal report that we should have known he really meant something different.

And you keep hearing the State had blinders on, and we formed these wrong assumptions about Nassiri's claims based on some sort of bias, and we should have known that the report misidentifies the before condition, but Harper's change in opinion during his deposition didn't just change from his expert report. It represented an entire shift in Nassiri's 5-year-old theory in this case. The State didn't form any assumptions about Nassiri's

claims. It has no reason to characterize his claims one way or another. As the rules contemplate, the State relied on the information that Nassiri provided to it and it responded to the claims as Nassiri described them since 2010 when this whole thing first started.

They keep pointing to the 2005 and what Nassiri knew about the flyover in 2005 but that's not what's at issue today, here, on this matter. What's at issue is what he knew when he first complained to the State in 2010 and how he described his complaints to the State beginning in 2010.

And if you look at the first exhibit in the exhibit binder, you see an attachment and it's Figure 10F of the Environmental Assessment Built Alternative Figure 10F which shows the flyover, the original plan for a flyover. This is the attachment that was attached to the ground lease that Nassiri entered with Las Vegas Paving in April of 2010, so, the -- Las Vegas Paving, the design builder, could perform the construction at the interchange. So, Las Vegas Paving shows him this map that with the property and shows him that this is the flyover and Nassiri knows they're building a flyover right there.

Now, they didn't build this flyover which is the basis for his complaints later on but in April 2010, more than six months before Nassiri ever contacted the State and

said, hey, you damaged my property with this flyover, he knows about this flyover that's being built at the interchange. He doesn't say anything. He doesn't complain. He doesn't say: Hey, you told me there wasn't -- you didn't tell me there was going to be a flyover here. He accepts it, and he's fine with it, and it's not until December 2010 when he realizes the flyover is bigger than he anticipated. It's something different than what he believed was being built that he finally comes and says: Hey, you told me you were building this one flyover on this ground lease map and you built something else and that has caused me damages.

And I know there's been some issues with whether he knew what he's looking at when he had these maps. You know, Nassiri testified he's not an engineer and he didn't know this stuff, even though he had plenty of engineers working with him, and could have, and did, for all I know, ask these engineers for advice. But we know that he understood that the ground lease map that he possessed in April 2010 contained a flyover because, in 2011, he accuses the Las Vegas Paving of breaching that ground lease. And if you look at tab 2, this is the demand letter from Nassiri's separate counsel to Las Vegas Paving complaining about different breaches. And I've highlighted the relevant part which says:

Finally, it appears that the improvements being made to the interchange --

That's the flyover. That's the only really improvement being made.

Are far greater than represented by you and will cause Mr. Nassiri substantial damages such that he would have never have allowed you to use the property had he known about the extent of these improvements.

Las Vegas Paving wasn't around in 2005. This is -- they're talking about 2010. You told us this is what you're going to build and you've built something different, a design change. The previous design, the EA flyover to the as-built flyover. And that's what he's telling the State during the same time, the exact same thing.

And that's why, in 2012, the State commissioned the Sjostrom memo, the technical analysis, to compare the visibility or view of Nassiri's property under the flyover, the earlier EA flyover as if it had been built versus the one that's actually been built. Why else would the State pay thousands of dollars to professional engineering firm to compare Nassiri's view under the EA flyover versus the as-built flyover? It's because that's what Nassiri was telling the State. The design change. I'm upset with the design change.

And, so, Nassiri continued to pursue his design

change claim in 2012 because in May he submitted his Administrative Claim to the State Board of Examiners talking about this. And if you look at tab 3, I have an excerpt from Mr. Olsen's letter, his Administrative Claim to the State Board of Examiners talking about Nassiri's complaints, under NDOT changes the Blue Diamond Interchange Construction plans:

> And constructs a flyover at Blue Diamond Road that significantly diminishes the value of the property.
>
> Again, I highlighted it: Importantly, the plans that NDOT provided for disclosure and explanation of the construction to be performed at that location did not include the new flyover at Blue Diamond Road as now constructed.
>
> And so, he -- there's a footnote there. Footnote A:
>
> See diagram. Figure 10F.

Attached is Exhibit 7. If you flip to tab 4, here we are. He's Exhibit 7 to the Administrative Claim. This is what they're saying you told me you were going to build. It's figure 10F, the same thing that Las Vegas Paving showed them, The same thing he was complaining about.

So, everything's the design change. Even in this Administrative Claim they're saying: You told us you're building the EA flyover, you built something different.

Also attached to that Administrative Claim was an appraisal by Tim Morris. This was the basis for the damages they were requesting in that claim. So, Mr. Morris says in his appraisal, which is attached, which is under tab 5:

> The intended use of this appraisal is to assist by recommending the compensation due to the owner of the property based on the change in exposure/visibility of the subject from Interstate 15 as the result of the difference between the proposed interchange and the as-built interchange at Blue Diamond Road and Interstate 15.

Next page he talks about what is the proposed interchange.

> According to Mr. Fred Nassiri and all of his negotiations with NDOT and their representatives, the proposed interchange was identified as Build Alternative Figure 10F which includes the flyover.

He contains, in the addendum, a copy of the exhibit which is the same exhibit that we looked at as part of the ground lease which is the same exhibit Mr. Olsen refers to as the before property -- as the before condition in his Administrative Claim and it's the same EA flyover that Morris uses in his appraisal as the before condition.

Then we get the Complaint, the Amended Complaint,

and there's a lot of different paragraphs that I can point you to, but I attached the page with paragraph 87. And if you look at, beginning at line 15, it reads, quote:

> Furthermore, had NDOT, through its agent, Las Vegas Paving, not misrepresented the nature and configuration of the flyover in April 2010, plaintiffs would have taken action to object as a citizen and purchaser from the State or to obtain relief from the courts to change or halt these altered plans.

In other words, you told me in April 2010 you were building the EA flyover. You changed the plans without telling me. You -- I'm upset by the new flyover and, had I known you were going to build this new flyover, I would have done something to stop it, therefore I am damaged by it.

So, even in their Complaint they're saying it's the nature and configuration of the flyover. And that's what we're relying on and believing and that Harper's report is consistent with all of this. He used the same before condition as Morris, the ground lease map, which showed the EA flyover. Why would the State think that Harper's before condition was a mistake? It was consistent with everything else that we had seen or known. There was never one peep about a no flyover versus flyover analysis at this point. That didn't come until Harper's deposition.

Why would it respond to anything other than what was disclosed in Harper's report? It wouldn't. But, honestly, as much as what the State was -- or what Nassiri was telling the State about his case, which you just saw a lot of it, equally important was what he wasn't telling the State.

So, as they sit here today they say: Well, Harper's appraisal contained a mistake and we fixed it in the supplemental report two months after the close of discovery. Okay? The better question to ask is: Why didn't they correct it before then? Why didn't they correct it as soon as that -- as the mistake was made? Why did they allow it to go so long to get to the point of his deposition if this was such an obvious mistake, and the State should have known it, and their claim was always no flyover versus flyover, and it was clear as day? Why didn't they ever once say, hey, by the way, Harper made a mistake, or, you know, you're looking at this the wrong way, we don't meant to say this, our claim relates to a no flyover versus flyover analysis? They never did that.

They produced Harper's mistake in report on 11 -- on November 3rd, 2014. No mention of his mistake until the deposition. They received Sjostrom's report the same day, which they tell you today is totally irrelevant and out of left field and they have no idea why he would compare the

before and after as the EA versus as-built flyover, yet they don't mention anything. They don't say a thing. They don't say a thing about Harper's mistake. They don't clarify their claims.

Then they received Shelli Lowe's rebuttal reports. Same thing. Totally relies on an EA versus as-built flyover. No mention of mistake.

And then the kicker, which is attached as Exhibit 7, is Mr. Sjostrom is deposed. Mr. Sjostrom is deposed on January 9th, 2015, six days before Harper's deposed on January 15th, and changes his entire opinion.

Now, they're telling you that their claim always related to the no flyover versus flyover analysis and the State should have known this and it was clear as day. And our experts are irrelevant because they opine about the EA flyover versus the as-built flyover analysis and it's all our fault for just designating experts on this irrelevant topic. But in Sjostrom's deposition, Mr. Olsen took the deposition and he specifically asked Mr. Sjostrom about his understanding of Nassiri's claims in 2012. And he says:

Back in March 2012, when --

THE COURT: What page are we looking at?

MR. PEPPERMAN: I'm sorry?

THE COURT: What page?

MR. PEPPERMAN: Oh, I'm sorry. It's page 15 of

the deposition, lines 4 through 18.

THE COURT: Great. Thank you.

MR. PEPPERMAN: And he says: Back in 2012, when you actually prepared this analysis, did Mr. Terry from the State mention Mr. Nassiri or the landowner?

Answer: He mentioned that there was a landowner named Nassiri. Yes.

Question: And did he further describe why? What specifically Mr. Nassiri was raising a concern? Is it what you just described? The wall height?

Answer: Yeah. That the wall was taller than he, Nassiri, expected it to be and that John Terry wanted something that represented what the walls would have looked like if the EA flyover would have been built versus what the walls look like that were built.

And Mr. Olsen doesn't clarify that, well, you know, that's not what our claims are about. He doesn't ask him any questions about whether, you know, he did any analysis on the no flyover versus flyover. He doesn't nudge Mr. Coulthard, who was sitting there next to him, defending the deposition and say: Hey, you know our claims relate to no flyover versus flyover analysis?

He took the deposition, 101-page transcript deposition. He, you know, does his best to poke holes in Mr. Sjostrom's analysis. He spends a lot of time on

whether his opinions differ if you're looking out from the property or looking into the property under his analysis. There's no hint in the 101-page deposition transcript -- and you don't need to read it because I read it yesterday and I can represent it to you. But if you want to, you have it. There's not one hint about a no flyover versus flyover analysis or that Sjostrom's report is totally irrelevant, which is what they're telling you today and in their motion. It just doesn't add up. It's just -- they don't -- it's not congruent.

And even if it was congruent, that should have been at least another indicator to say: Hey, our expert made a mistake that you guys are relying on, wholesale relying on it, and let us know. But they didn't do that because I don't think they even knew it because it wasn't until six days later when Harper gave his deposition and changed his opinion. And then from that point on, suddenly it was everything was about no flyover versus flyover. The design change was: What are you talking about? We don't know what you're talking about with this design change. Our claim always related to the no flyover versus flyover.

Well, it's just not true. Show me one place in the record that demonstrates that all the materials I just went through with you was wrong. It doesn't exist. This is the history. This is what we're dealing with. This is

the facts and they changed their claim. They changed it when Harper changes opinion. The entire 5-year theory, what's been told to the State for five years in pre-litigation, and in Administrative Claims, and Complaints, and formal Complaints, and expert disclosures, it's all the same until we get to Harper's deposition. And then suddenly it all changed.

Now, we both produced experts on the design change claim because that was their claim. There was nothing that: Oh, our experts are wrong or your experts are wrong. No suggestion to say: Hey, just so you know, there's some miscommunication here. Which this is a pretty darn big miscommunication. And now they want to change it. They want to change it all and they want to strike our experts.

Again, Judge, it's not right. You know, we -- in this case it's no secret that we haven't exactly seen eye to eye on a lot of the legal issues, which, it happens. But this isn't about a legal interpretation or a legal issue. This is about fairness. This is about what's right and allowing them to change their claim on -- after the close of discovery on the last day of discovery and just catch the State off guard, exclude the State's experts, act like this has been their claim all along when they gave no notice or disclosure of these claims that they'd be suing for millions and millions of dollars based on claims they

never even disclosed, that they never gave the State an opportunity to do discovery on and rebut and squarely understand what it is they were defending against. It's just wrong. It's not fair and it's an improper litigation tactic. It's totally belied by the disclosure rules which has been held enforceable against the State and, in this instance, it should be held enforceable against Nassiri. And, for that reason, it's exactly why Harper shouldn't be able to testify as we asked you two weeks ago. And his change in testimony certainly shouldn't be the basis to exclude the State's experts.

But, Judge, even if Harper is allowed to testify, the State's experts are still relevant. Okay? They are relevant even though -- and Mr. Olsen said it and I agree with him, they don't squarely rebut Mr. Harper's opinions anymore because Mr. Harper changed his opinions. But they still represent the State's theory of the case. They're still relevant to what our -- the State's case hasn't changed ever. It's been the same. We did nothing wrong by building this flyover.

Now, we're defending against a claim that we breached the acknowledgement of good faith in the contract and -- by building this flyover, changing the design, however you want to characterize the claim, and we've built and we, you know, breached the implied covenant and, you

know, we've done this horrible thing to Mr. Nassiri by improving the transportation in a way that the State was totally allowed. Nothing restricted them from doing it. And suddenly we're being sued for millions of dollars for bad faith.

Well, the -- no matter what Nassiri wants to say is relevant or not, were entitled to tell our story from beginning to end, which is: We planned this flyover from the get-go, we publicly disclosed it in compliance with federal law. Whether he knew about it then or not doesn't matter. We did -- we honored our obligations. We disclosed it. It was out there for anyone who wanted to see it to see it. We disclosed it again in 2008 in the same federally compliant manner. We accepted a design build proposal that was, you know, head and shoulders above any other proposal that modified the design of the flyover that we had disclosed. We accepted that proposal. The modifications did not require any different disclosures and they did not impact any property -- Nassiri's property or anyone else's property in any meaningful way. And that's what the Sjostrom analysis demonstrates. That's what Shelli Lowe opines about. That's what Alan Nevin opines about, although he does start earlier when he talks about the realignment. It starts there and it goes to the plan flyover, which was always part of the realignment project.

And then it goes on to the design change, and how it doesn't impact, and that it actually benefitted the area from point A, which is the realignment, to point B, which is the ultimate construction of the interchange as it exists today.

And we're allowed to show that we did those things and took those steps in compliance with law, in good faith, without any intention to harm Mr. Nassiri or anyone else and to carry out the State's function as improving Nevada's highways and roadways.

THE COURT: Well, assuming all that's correct, under *Hallmark* analysis, a couple questions. One was I was little confused about Mr. Sjostrom. I mean, was he, like, an internal guy and they're naming him as an expert? Or -- I just didn't understand where he came from and how we go through the whole *Hallmark* analysis that, you know, what are his qualifications and, you know, can he testify about this stuff. I mean, I -- that was my question about him.

MR. PEPPERMAN: Well, just for the Court's information, he was with Parsons Engineering in 2012, who is a third party engineering firm.

THE COURT: A consultant?

MR. PEPPERMAN: And they -- you know, NDOT contracted with the Parsons and -- on other matters and they asked Mr. Sjostrom to perform the analysis in this

matter.

THE COURT: Okay.

MR. PEPPERMAN: Mr. Sjostrom has since left Parsons Engineering firm and he's with a different engineering firm, so he's not a State employee. He's a third party consultant who is retained as an expert.

THE COURT: Okay.

MR. PEPPERMAN: He's a professional engineer --

THE COURT: I mean, I guess my question was, was he dealing with -- was he a consultant on this project all along? Or was he specifically retained for -- we've got -- somebody's raised this question. We need a third party outsider to take a look at it and give us this analysis. I wasn't clear on what was the context of him coming in with his analysis.

MR. PEPPERMAN: He did work on different NDOT projects through Parsons. And I think he testified in his deposition that he had some involvement between -- I don't -- it wasn't in 2005 with the planning or anything, but by 2010 he had some involvement with the engineering work that was being done.

THE COURT: Well, because I'm just trying to clarify, you know. Doctors, uniquely, can testify as experts in their own cases. But a party cant testify as an expert in their own case. They're just like, you know,

knowledgeable percipient witnesses. I just want to clarify his, you know, standing.

MR. PEPPERMAN: For that purpose he's a consultant. He is a third party. He's not a --

THE COURT: Okay. All right. And then, an issue that Mr. Olsen raised was this idea that Mr. Nevin made up his own specialty. You know, what's a real estate demographer, in other words?

MR. PEPPERMAN: Well --

THE COURT: Is that really a recognized specialty, such that that person is entitled to the designation, quote, expert?

MR. PEPPERMAN: Well, yes, Your Honor. I think it is -- you know, we've used Mr. Nevin in several other cases and have never had an issue saying he's not an expert in his field or his field isn't a qualified field of some sort.

THE COURT: Is it a field that the person can be an expert in?

MR. PEPPERMAN: Yeah. He's an economist, and works in commercial real estate and development, and he constantly does these economic predictions on the viability of developing land in certain uses. And that's what he does in this case is all he's saying is --

THE COURT: In his day job, his analysis is used

by people who invest in real estate or pursue real estate opportunities to determine if the economics will pencil out for them to make their investment in a property?

MR. PEPPERMAN: Yes. And, for example, like in this case, you know, the use of what the property is zoned for. If the realignment or the flyover or anything with a change somehow, you know, made it more difficult to access the property or more problematic such that it wouldn't be feasible to, you know, use it as a commercial development. And he does those types of forecasts and analysis to say: Hey, this is a good location. It's going to be -- you're going to benefit from this, this, and this. Or this is a bad location for this type of business for this reason.

And that's what he's saying in this case is, this, ultimately this realignment, which included the flyover, was great for people in the area and that the flyover was part of it and it -- the intersection needs it for safety and roadway efficiency purposes, which is why it was planned. And the -- ultimately, Nassiri benefitted from the realignment.

THE COURT: But really, how can he testify about that? I mean, he's not an engineer. How can he testify about that?

MR. PEPPERMAN: Well, he testifies about the --

THE COURT: I mean, I guess I'm just trying to --

assuming he's allowed to testify, then, you know, what is he allowed to testify about? Because, with all due respect, he seems to opine about an awful lot that doesn't have to do much with economics.

MR. PEPPERMAN: Well, he talks about the impact -- the benefit of the property and the uses of the property under the realignment, which includes the flyover. And his opinion is that this property is better off as it exists today, even with the flyover, than it was before the realignment.

THE COURT: Is that an economic -- is that an expert opinion of an economist or is that his personal opinion of -- I don't know. I mean it just doesn't sound like it's an expert opinion to me.

MR. PEPPERMAN: It's from a point --

THE COURT: It seems like it's a very subjective --

MR. PEPPERMAN: It's from the point of view of a commercial real estate developer who -- that's the market. That's who Nassiri is marketing this property to. And he's going to say: Hey, he's selling this property to -- he's marketing this property for sale for commercial uses. If I'm buying this property, as an expert real estate developer who advises on these type of matters, I'm going to look at it and say this is a benefit. I'm looking at

this as good. If I'm looking at it in the before and after, I'm fine buying this in the before condition or the after condition.

THE COURT: Okay.

MR. PEPPERMAN: So, that's his expertise is to say that and he's not going to give an opinion of value. He's not going to give any engineering opinions about, you know, what the flyover is or, you know, the difference in view or visibility. All he's going to say is, you know, as he says in his report: Mr. Nassiri is marketing this property for hundreds of millions of dollars as, you know, in a real estate developer and purchaser standpoint, economically, given the interchange, you know, I -- that's in the range of what a reasonable -- you know, what is reasonable and what's, you know, typical on the market under these circumstances.

THE COURT: Okay.

MR. PEPPERMAN: So that's what he's going to say.

THE COURT: Anything else, Mr. Pepperman?

MR. PEPPERMAN: Just on this last point about how --

THE COURT: Okay.

MR. PEPPERMAN: -- the State's expert's allowing them to give their -- testify in support of the State's case and the State's defense and their version of this

story will only add confusion, but, Your Honor, I would submit that flip flopping on an entire theory of a case at the end of discovery is what adds -- is what has made this matter confusing, and the State shouldn't be punished for it, and the State doesn't deserve to be punished for it because the State did nothing wrong. They relied on the disclosures. They relied on the claims. They defended this case as we've defended any other case and, you know, my experience -- and the only abnormal thing about this circumstance is Nassiri's total change in theory and he's trying to blame the State for it, and again, it's not right, Judge.

THE COURT: Okay.

MR. PEPPERMAN: Thank you.

THE COURT: Thank you, Mr. Pepperman. Mr. Olsen.

MR. OLSEN: Your Honor, the reason I talked about the timeline is because I knew, if not the entirety of the argument, but most of it was going to be a rehashing of the same thing we heard about Mr. Harper last time. The same argument about changing, and bait and switch, and all these arguments that have been thrown out there before.

Here's -- the first simple fact is, neither Sjostrom nor Nevin -- nobody relied on Harper. Harper hadn't -- that's the point. They couldn't rely on something they had never seen. They didn't rely on

Harper's mistake. They didn't know about his mistake.

Sjostrom, who was working for Parsons who was on the project -- just so we're clear, Your Honor, they're not a third party. They are as much of the project as Las Vegas Paving was. He was -- I -- you can correct me if I'm wrong. I don't think he received an extra nickel for this. This technical memorandum was prepared in 2012. He was there. John Terry said: Why don't you take a look at this comparison for me? He wasn't retained as an expert.

THE COURT: All right. So, that's kind of what my question is. Assuming that it's useful, it's not relying on any inappropriate information. I mean, he's clearly qualified. I mean, I don't think anybody disputes his qualification, but just this question of if you're a -- maybe not a party, but if somehow you are somehow part of the analysis or the construction project itself, can you then opine as an expert about how reasonable it all was? I mean, that was kind of -- it's a different question I think than what anybody else was addressing. I was just kind of trying to figure out is he properly considered an expert or is he just a percipient witness?

MR. OLSEN: And, Your Honor, frankly --

THE COURT: Because, I mean, it makes a difference on how the jury's informed about what his opinion is. I mean, is he -- is the jury informed, as part of our

analysis of this whole thing, we ask one of our consultants on the project to make an analysis for us and here's the analysis he made for us and he's a percipient witness? Or, is he -- is a jury instructed this guy is an expert, which he is, and you should consider his opinion as an expert's opinion?

MR. OLSEN: And, Your Honor, that's --

THE COURT: That's really the issue for me.

MR. OLSEN: Okay. And our anticipation --

MR. PEPPERMAN: And if I may be heard on that question, also, Your Honor.

THE COURT: Yeah. Absolutely.

MR. OLSEN: Our anticipation is we think it's irrelevant so it should be stricken entirely.

THE COURT: Okay. Well, you can probably see I'm not going that way, but whatever.

MR. OLSEN: Well, Your Honor, I urge you to reconsider --

THE COURT: Okay.

MR. OLSEN: -- based on what I'm going to tell you.

THE COURT: Okay.

MR. OLSEN: Because I think that the potential for confusion here is enormous. And Sjostrom -- look. He didn't rely on anything, anything except what --

THE COURT: It seemed to predate.

MR OLSEN: -- except what he was told in 2012 by John --

THE COURT: Right.

MR. OLSEN: -- by John Terry. That's 100 percent [indiscernible].

THE COURT: Right. It's like, to me -- I just, with all due respect, I just -- I didn't view this as this problem of, you know, is he really going to be a good witness because he was relying on Mr. Harper's bad opinion? He predates all that because he was kind of in house already. Even though he is a third party and hired externally, he's more of a percipient witness, isn't he? Isn't that really what the issue is?

MR. OLSEN: He was a guy who was there and available to Mr. Terry because he was working on the project.

THE COURT: Okay.

MR. OLSEN: Parsons was doing engineering on this project at the time. So, Mr. Terry approached him and said: Take a look at this issue.

THE COURT: Yeah. Mr. Coulthard wants to be heard on that. So, we'll let him be heard after you finish and then you get the final word. But he does want to be heard on that because, to me, that seems to be kind of a big

issue here is, is how is -- I think Mr. -- I understand you're saying he should be allowed to testify. I think he should but my question was is he an expert or is he a percipient witness? It was something nobody seemed to really address.

MR. OLSEN: Well, and what I was going to say, Your Honor, is we were kind of reserving that. I mean, I'm glad you brought it up. We were kind of reserving that in anticipation that hopefully he wouldn't ever be testifying, but --

THE COURT Okay. I think he's gonna.

MR. OLSEN: We will be attacking him on a number of things.

THE COURT: Right.

MR. OLSEN: And that's one of them. And that kind of goes to this whole point. And maybe I haven't been clear on this in the past. The whole point about the fact that the Sjostrom report should have been produced in discovery, pursuant to 16.1, because he was more -- it was more like a medical record, as you pointed out. It was a guy who was working on the project who was asked to do a thing that we had -- make a comparison we had no knowledge of. And it was never produced. He was designated two and a half years later or three years later as an expert. So, rather than seeing it early on, we never saw it until he

was designated as an expert.

And let me just address briefly, because I don't want to go combat a half hour of non sequitur with another half hour of non sequitur, but this whole issue about what happened before, whether it's Nevin, or Sjostrom, or the State's view, what happened -- what was discussed in 2010 is irrelevant. The interrogatory, we pointed this out before, there are a number of paragraphs in the Amended Complaint and there are interrogatories, particularly interrogatory number 7 from June of 2014, which we read at the time of the argument about Mr. Harper being excluded.

We read it into the record. There was a disclosure. It was made clear what the position was of Mr. Nassiri with respect to what we were comparing. We were comparing representations made of a flyover-less intersection with what was ultimately built. And this Court has already made findings. There was no notice to Mr. Nassiri. Mr. Nassiri was unaware at the time he signed as of 2005, signed the agreement, of a flyover.

You also know from his testimony he couldn't pick a flyover out of a diagram. We looked at dozen of them and he couldn't pick them out whether it was the one attached to Las Vegas Paving or it was one of the ones from the 1999 hearing -- public hearing.

So, you have this discussion about what the State

came to believe in 2012 or 2010, but then you have the reality of what was available to the State in response to their own discovery telling them what the case was about. The problem with Sjostrom is he's going to talk about -- he can only talk about what's in his report. And all that's in his report is something that is not relevant to our claim and that's going to lead to confusion.

This whole thing about: Well, he supports -- he can support our defense against bad faith. How? By telling the jury: Well, we could have built something that wasn't as bad. I mean, I'm sorry, we could have built something that was worse but we didn't do it? That's good faith? I mean, that's nonsense.

And the whole issue about the progression of time, they can lay out the progression of the project but they can't give an opinion about what part of the project is better or worse than what, you know, than what was built. That's the problem. Not the timeline. It's this guy offering an opinion about what it means because that's not what the case is about.

Now, with respect to Mr. Nevin, again, Your Honor. It's interesting because his qualifications, what he's being offered for, just changed today. Now, aparrently he is being offered as a developer who is going to opine about, I guess, whether he would like the property? I

don't know what he is going to opine about now.

He was described as a real estate economist and demographer, which implies some sort of credentials of some kind. Irrelevant, because as counsel admitted, he starts with a pre-alignment and he doesn't opine that pre-alignment was worth X to the property and flyover was worth Y. He says this whole chunk of development benefitted the property in some way that he can't -- he doesn't -- he does opine about value, by the way, but he doesn't have any basis for coming up with a value

So, how can you possibly have -- avoid confusion when we're talking about a starting point of after the realignment and a flyover-less intersection? It just creates this confusion about -- he's just going say: Well, I think it's beneficial to Mr. Nassiri without any kind of basis in talking about the different timeline, one that is not an issue.

And, look, the issue -- I also have to say this about Ms. Lowe and I'll leave it at this. They didn't talk about Ms. Lowe, but one of the things that I want to reiterate when they're talking about not knowing of the change of the client's damage theory, not knowing it from the Amended Complaint, not knowing it, I guess, from the interrogatories. Ms. Lowe, the only rebuttal witness, the only person who looked at Harper's report before she

prepared one, said: Ehh. It seems to say this in the report, it seems to say this 10F thing but there's a before picture so I'm going to do this analysis, too.

So, they got their analysis. They got their expert. That's the only expert they need. That's the only expert that should be allowed and she can't possibly be allowed to testify on visibility which lies 100 percent on Sjostrom, which was a late submitted initial report and is cumulative on top of that, if Sjostrom testifies, but, also, she gave them what they needed. She gave them -- I don't think it's very good, but she gave them the analysis of the same thing that Mr. Harper analyzed. And she has critiqued his report. She can testify about that.

So, they have the only person that's relevant whether it's to -- rebutting our claim or their defense against good faith. So, Your Honor, we think they should all be excluded with exception of a limitation on Ms. Lowe. And, again, we can -- I'll respond to Mr. Coulthard on the issue of Mr. Sjostrom.

THE COURT: Okay. Thanks. Mr. Coulthard.

MR. COULTHARD: Thank you, Your Honor. You know, this is -- and I'm sure it's not lost on the Court, this is an important motion.

THE COURT: Okay.

MR COULTHARD: This a Motion to Strike three of

our defense experts.

We certainly understand our foundational obligations and the obligations under *Hallmark*. Are these individuals qualified to render expert opinions and will their testimony assist the triers of fact with issues in the case? And we believe they will. And in support of both their qualifications and disclosing their expert opinions, we've met the mandates of NRCP 16.1.

Your specific question addressed: Is Mr. Sjostrom a percipient witness and/or a -- an expert? And, Your Honor, two years ago, 16.1 was modified to address the so-called treating physician category. And percipient witnesses who are experts in their field -- arguably, if you want to ask them expert opinions beyond just what they did, you have an obligation to produce a report. As -- and timely produce it as an expert report. And that's what we did with Mr. Sjostrom.

We did not have an obligation to produce his report until we made a decision to use him as an expert in this case. If he was merely a consultant helping us and assisting us, we wouldn't have produced his report. But we timely produced his report as an initial expert in compliance with 16.1 arguments. And, so, that to me, is the end of the analysis.

But then, Judge, the issues we're really talking

about today really go to weight and credibility of these experts versus admissibility. And, Your Honor, this is a case where the State has its theories of a defense in this case and we should be allowed to put on our theory of the case. And our theory of the case is essentially that beginning as early as 1999, when the first homeowner -- when the first area meeting and area property owner's notifications were sent out as part of the meetings for the 2004 EA notice -- notification of the 10F flyover, the EA flyover was given, we went through a detailed timeline and we believe that notice binds Mr. Nassiri. And the real complaint in this case is the modification from the 10F, properly noticed in compliance with state and federal law, to the design build. And that's what these -- to the modifications when they went forward in 2010 and finally built it.

That's what our theory of the case is and we believe, through cross-examination, we will be able to establish that Mr. Nassiri knew, as early as 1999, based upon his own correspondence, that there was going to be a flyover. And he did not have a concern, and Mr. Pepperman showed you those documents, in 2010 with a flyover being built, it wasn't until the design build walls were up that he had a concern. And that is the theory of our case and that's what these witnesses go to, Your Honor. We've

properly disclosed them. We will lay the foundation for them. And if we can't, Your Honor as the gatekeeper can say: Sorry, they are not properly before the Court. It's not relevant to your theory of the case.

But to have this based upon a determination now at this stage of the proceedings, I would suggest, Your Honor, that it is completely inappropriate. These experts are not in the situation where Harper was -- where Mr. Harper has wholesaled, changed his position during his deposition, and his -- if you recall, his entire expert report was based upon inverse condemnation damages that they want to use now for a breach of contract. Major differences between our Motion to Strike and their noncompliance with 16.1 versus our three experts that have properly, timely disclosed that go to the weight, Your Honor.

So, you can't simply lump these all together and say all experts are in -- you really need to look at our challenges to Harper and I would request the Court take a good, hard look on -- at this and allow the State to properly present what we believe is an appropriate defense. Thank you, Your Honor.

THE COURT: Thank you. And Mr. Olsen, concluding words.

MR. OLSEN: Concluding words are, Your Honor, --

THE COURT: Yes.

MR. OLSEN: -- I understand and expect that counsel is going to argue both the Harper Motion, the theory that -- you know, three or four other motions and the words that are intended to address Mr. Sjostrom. However, let me respond just in two seconds.

THE COURT: Okay.

MR. OLSEN: They're not going to be able -- permitted, hopefully, permitted to re-litigate the case we've already tried, with respective notice from 1999. Hopefully, that's understood. Sounds like we'll have to file an additional motion.

Secondly, I want to make sure, to correct counsel, a 10F is something that was generated in 2008. That's a misidentification of -- we looked at variations of flyover maps that Mr. Nassiri couldn't identify but there are variations different from 10F, certainly different from the ultimate view destroying flyover and, again, this whole -- the suggestion of prejudice --

THE COURT: Well, it's not so much view as visibility. Which I think are different concepts.

MR. OLSEN: Visibility, Your Honor.

THE COURT: View, I think we all understand you can't really see for view.

MR. OLSEN: Yeah.

THE COURT: But it's this concept of your selling

somebody commercial property with visibility from a freeway which is no longer visible from the freeway.

MR. OLSEN: And, Your Honor, can I just say, and we'll get to this, I guess, when Sjostrom is going to testify, he doesn't analyze. He analyzes it from the property, not from the freeway.

THE COURT: Right. I did hear --

MR. OLSEN: So, that's something we'll have to address at the time.

THE COURT: We hadn't talked about that but I did see that. I did see that.

MR. OLSEN: That may go to weight but we'll take our shot at that.

In any event, Your Honor, we -- our grave concern is that allowing these people to testify -- and, look, they've made their argument many times about the change in the case but they had the opportunity to see the case and Ms. Lowe understood what one of the evaluations was. The problem was -- the problem is, if you throw that all up to the jury, it's not going to be helpful to the jury. It's going to be confusing to the jury. And that is, again, why we think that these witnesses should be stricken.

THE COURT: Thank you.

MR. PEPPERMAN: Your Honor, if I could just clarify one thing for the record.

THE COURT: Okay.

MR. PEPPERMAN: The Court's comment that the State was selling commercial property with visibility from the freeway that isn't really visible from the freeway, just for the record, that is their theory. The contract said nothing about visibility. There was nothing discussed about visibility. No allotment of visibility. It's a lump sum offer of sale price that Nassiri agreed to with no condition --

THE COURT: It was in the appraisal.

MR. PEPPERMAN: What's that?

THE COURT: I thought it was in the appraisal.

MR. PEPPERMAN: The appraisal -- the appraiser said that they didn't have -- that NDOT used for its own benefit of saying, hey, this is what we want for the property, said that the property has good visibility from the freeway.

THE COURT: Yeah.

MR. PEPPERMAN: And that's my second point. The second point is that you said: That isn't really visible from the freeway. That, again, is their position. That is not the evidence or facts in this case. The facts, and the reality, and the State's position is that there's still great visibility to this property.

THE COURT: Okay.

MR. PEPPERMAN: You could see it coming from miles down the 15 and there's a blind spot where the flyover is and that -- there was blind spots before the flyover. There were blind spots with the flyover. It doesn't negatively impact the visibility.

THE COURT: Okay.

MR. PEPPERMAN: Which is exactly why Nassiri is marketing the property for hundreds of millions of dollars more than what he spent for it.

THE COURT: Okay.

MR. PEPPERMAN: So, just for the record. Thank you.

MR. OLSEN: I won't respond to counsel's closing, Your Honor.

THE COURT: Okay. Thank you. Thank you, Mr. Olsen, appreciate that.

Taking the motions in the order in which -- the one that's before us today and I told you I'd give you a ruling on Harper, also.

So, looking at the motions before us today which is the Sjostrom, Nevin, and Shelli Lowe Motion. My question about Shelli Lowe, isn't -- didn't she retire? I seem to remember her sitting in here saying I testified -- I've testified in this courtroom every month this year but I'm retiring. Is she?

MR. COULTHARD: She is retired from actually writing --

THE COURT: Doing any new ones.

MR. COULTHARD: She is not doing active appraisal work.

THE COURT: Okay.

MR. COULTHARD: However she is doing litigation consulting and expert testimony consulting.

THE COURT: Okay. I just remembered her saying that being in --

MR. COULTHARD: We drug her out of retirement to assist.

THE COURT: Okay. Yeah. I just didn't know. I wanted to make sure she was available because I just remember her in here testifying and saying: But I'm retiring like next month or something. I didn't know what that meant. Okay.

So, with respect to Ms. Lowe, highly qualified. I don't think anybody disputes her qualifications as an appraiser. She did an excellent report. The reports technically don't come in themselves. I didn't see any issues, with respect to Ms. Lowe, that needed to be limited or excluded. I think she is a well qualified expert with opinions that meet *Hallmark* in every aspect and I think she should be allowed to testify in her entirety.

Mr. Nevin, I found him kind of interesting. And I'm -- like I said, I'm not really sure that this -- of this area of expertise that he holds himself out in is really an area of expertise that's recognized, but I think that goes to weight, as was argued by Mr. Coulthard, and I think it's just up to them to try to establish what it is he's testifying about because, again, I'm not entirely clear. If his testimony is: I would have bought it. I'm not sure you need to be an expert for that and I don't think that qualifies. If his testimony is an economic analysis that a developer would rely on in determining whether I would pay X price for that because the numbers don't pencil out long term, that's economic analysis. If he's got some economic analysis for us, then okay. But I think, at this point, it's a question of: At the time of trial, reserving the right to challenge opinions as either expert opinions or something that's he's really qualified to testify about. Because I think, in large, the challenge is going to the weight of his testimony. But some of this I did have a concern about. It's just like, I don't think that's an expert opinion. But I guess it's a question of whether they even ask at the time of trial whether it can come in.

So, I would reserve that one for trial because I think that he -- I understand the concept of an economic --

real estate economist and demographer being valuable to developers who would look at property and say: Is this -- do the numbers pencil out on me paying X dollars for this property because of the following factors? If that's the way it's presented, then I think there is probably some value there. His personal opinion as to whether he would have paid X price for it or not, I don't think is. So, that's kind of my problem with it, is --

MR. PEPPERMAN: And, Your honor, I meant the former.

THE COURT: Right. And so as long as we approach it in the *Hallmark* way, I think he's okay. But again, it's going to depend -- be reserved for proper objections at the time of trial. I think a lot of it goes to weight but there -- I do have to agree with Mr. Olsen. I had some problems with his testimony. I just don't think it's expert opinions. I think it's just, you know, the kind of thing that maybe a party could testify about. I felt like my damages were X. He doesn't get to say that. You know, as an expert you don't get to testify about what you think your damages are. And I kind of thought that's where he was headed. And I, you know, I just had some concerns about the scope of his testimony. But generally I think he's probably admissible. We'll reserve any objections at the time of trial. You can traverse him all then but it's,

you know, as Mr. Coulthard said, we know what *Hallmark* says and we're going to have to comply with it.

The report itself isn't going to come in so maybe some of those concerns, Mr. Olsen, you know, that I share with you, are going to be irrelevant. But anyway, so, I think he should be allowed to testify but I just want to go on record as saying I had some questions about him.

Mr. Sjostrom is an entirely different issue. I think he is totally unrelated to Harper because it all predates Harper. He was doing an analysis at the time that Mr. Terry asked him to do because he was a consultant for Mr. Terry on the project itself. And -- so that, to me, I just was like: Why is he being named as an expert when he's really -- he was a percipient witness? He was a consultant at the time but I think he certainly qualifies as an expert. I don't think anybody can dispute it. He's an expert.

And I -- so, I guess, again, that would just be my question is: How is he being presented at the time of trial? Is he being presented with expert opinions that are within the scope and were properly identified? Mr. Coulthard's argument, under 16.1 that you mentioned, Mr. Olsen, is that until we knew we needed this issue -- to have an expert on this issue, it wasn't necessary to identify him because it wasn't really an issue for us in

discovery that we felt we needed to disclose, however just like a treating physician, this is a -- this is our ongoing consulting engineer and, if we look at him under 16.1 as it's been analyzed in *Fiesta Palms*, he then became the kind of an expert who we had this internal report from him that says what have you done in connection with the project, we disclosed it, and he just happens to be an expert because, just like a doctor is an expert, he has those credentials and qualifications.

So, yes he is our expert. He happens to be internal, but it's not percipient witness testimony. It's expert witness testimony that we timely identified. I understand Mr. Olsen's concern about him that: Well why wasn't he disclosed earlier? And I guess I will take Mr. Coulthard's representation that we didn't know we needed him until -- even though his opinion isn't based on anything Mr. Harper said, it was -- predates all that. Until that issue comes up with that report we didn't know we needed an expert. We happened to have this already in our files because this was something done in connection with our project. So, we disclosed it because he's an expert. He qualifies. He can testify.

So, again, I think a lot of it goes to weight because it wasn't really done, challenging any expert opinion that the plaintiff put forward. It predates it.

And as long as -- like I said, I just I have some questions about whether -- what are his expert opinions and when is he a percipient witness versus an expert? And that's kind of, for me, the concern that I have about him is that I don't think it is appropriate to cloak a percipient witness with expert status where he's really just a percipient witness. And so that, again, I think is appropriate for time of trial if his opinion really is one -- it's just as a percipient witness then he -- it should not be held out to the jury as you can take this guy as an expert when he is just another percipient witness who happens to have expert credentials. A lot of the people -- pretty much everybody on their side is going to be testifying has some sort of a degree, so they're all -- they all have expertise. But if they're just percipient witnesses and that's all they are, then calling them an expert's a problem for me.

So, again, taking Mr. Coulthard to his word that he knows *Hallmark* and he will lay a proper foundation for all of his witnesses before he has them designated as an expert, I think that's when we do it is at the time of trial to see what it is they present him as being an expert on and what they qualify him as. And that's, I think, more appropriately done for trial rather than totally excluding him in this case preliminary. I have, as I said, I think

you understand what my problems are.

So, again, I think it's reserved for the time of trial because that's -- I see that as a problem with him is how do we parse out his percipient witness hat from his expert witness hat?

MR. OLSEN: Your Honor, can I ask you a point of clarification on Ms. Lowe?

THE COURT: Yeah.

MR. OLSEN: Is the Court, in denying the motion, ruling that the visibility report was timely? And we've argued that that's really an initial opinion. I just want to be clear on what the Court's ruling.

THE COURT: I am -- this is -- I think Mr. Coulthard's *Fiesta Palm* analogy that while this may have been something that was technically in the -- done in connection with the project, it wasn't done in connection with -- I guess here's the thing: It's with this -- in the context of the final flyover, the way it's built, and so the question is: Were they required to give you everything, with respect to that flyover as it was constructed, under 16.1 initially? Initial disclosure? Or was Mr. Coulthard's argument is: When you -- when it became clear that this was something that Mr. Nassiri was pursing, then we realized we had something internally that is relevant to that and would qualify as an expert opinion,

even though the guy is technically a consultant of ours. He had an opinion that qualifies as an expert opinion.

MR. OLSEN: Let me clarify, Your Honor, I think I may have misspoken. Now, I'm talking about Ms. Lowe. She issues a separate visibility opinion.

THE COURT: Right.

MR. OLSEN: That relies on Mr. Sjostrom.

THE COURT: Right.

MR. OLSEN: But Mr. Sjostrom's on the same topic, was disclosed as an initial opinion.

THE COURT: Right.

MR. OLSEN: She offers it as a rebuttal opinion when it's really the same thing, just with the imprimatur of an appraiser on it if it's the same thing.

THE COURT: See, and that --

MR. OLSEN: Clearly, they're testifying that -- they're arguing they not only anticipated but believed from 2010 that these were issues. So I just want to make sure.

THE COURT: Right.

MR. OLSEN: I'm not really --

THE COURT: I don't have any problems with Ms. Lowe at all. My problem is with Mr. Sjostrom. And that, you know, at the time of trial can they establish that this is really an expert opinion or is it really a percipient opinion? I think she can rely on it because an expert can

rely on anything. So, she's okay. My problem is with Mr. Sjostrom. Is he an expert or is he a percipient witness?

MR. OLSEN: And I appreciate that, your Honor. My only question now --

THE COURT: Yes.

MR. OLSEN: -- is whether the disclosure of her visibility opinion, as a rebuttal only, if you're ruling that that's all right?

THE COURT: Oh, I see. I see. Okay.

MR. OLSEN: Are you ruling that that was acceptable? Because I just want to make sure we are clear on the record.

THE COURT: I -- yes. Given -- okay. This is given the analysis Mr. Coulthard's given us which is that under 16.1 we didn't have to disclose this. With the *Fiesta Palm* analysis now saying that, you know, when somebody's -- and, you know, this is an engineering versus medical, but when somebody is technically your treating physician or your project engineer and they come up with an opinion in the course of their duties, those are just like their ongoing treatment or their ongoing engineering that somehow states an expert opinion, it needs to be disclosed at an appropriate time. And that's when they determined this needs to be disclosed because this really is in the nature of an expert opinion.

Like I said, I think at the time of trial we have to rule on whether he gets to testify as an expert or a percipient -- or just a percipient witness. Ms. Lowe, I think, is entitled to rely on it. And that's why I don't have a problem with Ms. Lowe, in general, and all of her opinions. I think she's entitled to rely on that no matter when it was disclosed because that's what she is. She's --

MR. OLSEN: Understood. The only reason I raised it, Your Honor, is because we weren't able to rebut --

THE COURT: Yeah.

MR. OLSEN: -- that opinion because it was disclosed as rebuttal.

THE COURT: Yeah. I understand.

MR. OLSEN: That's -- I just wanted to be clear.

THE COURT: Yeah. And so I just hope that clear that I'm -- it's the unique nature of how the disclosures were made in this particular case that I think she can rely on the information she obtained from Mr. Sjostrom. The question is whether Mr. Sjostrom just comes in and testifies as a percipient witness or whether we call him an expert at the time of trial. I think she's entitled to rely on his opinion, or his -- I shouldn't use the word opinion. His analysis.

MR. OLSEN: Thank you, Your Honor.

THE COURT: Because I don't know -- I don't want

to call it a report. It's his analysis. And once it's been disclosed, she can rely on it.

Okay. So, then this gets us to Mr. Harper. Mr. Harper is an interesting situation. It's -- I appreciate Mr. Coulthard's very careful clarifying that even though with respect to the State's witnesses, it all goes more to weight than to admissibility. I -- he told me when we had the argument, and he told me again today, it's a different analysis with respect to Mr. Harper. The motion that we heard on the 5th. With all due respect, I don't think it is. I don't.

If Mr. Harper made an improper assumption from which his report is arguably flawed, I think it goes to the weight of his testimony and they may want to distance themselves from the 10F opinion but I still think he can be questioned about it. I think it comes in. I don't think it means he can't testify at all. I think it all goes to the weight of his testimony, ultimately.

So, that would be my ruling. I would deny that motion. I think all that comes in as it goes to the weight and credibility of his opinions and he can certainly be cross-examined about it and should be allowed to testify.

MR. COULTHARD: Your Honor, just so you are clear, because it's been several weeks since we had that argument.

THE COURT: Okay.

MR. COULTHARD: Mr. Harper testified his expert opinions were limited solely to inverse condemnation.

THE COURT: Yes. Right. Oh -- the other issue. Yeah.

MR. COULTHARD: That is flat out his testimony. However, what they are doing now is switching gears. The inverse condemnation has been dismissed. And this is Mr. Harper who said, if the judge says view and visibility is not compensable, because at the time I deposed him, the motions for summary judgment on that claim were pending. You had not yet determined view and visibility under an inverse condemnation claim was not compensable. I asked him in that deposition: If the judge grants that Motion for Summary Judgment given that your opinion is limited to inverse condemnation, what does that do to your report? He said: You could throw the report in the trash.

THE COURT: Right.

MR. COULTHARD: Those were his words.

THE COURT: Okay.

MR. COULTHARD: So, Judge, they didn't comply with 16.1 for their breach of contract damages on any -- under any set of circumstances. So, you are allowing them to run afoul of 16.1 completely by not disclosing a computation of damages, timely disclosing, and/or an expert who gave a damage opinion.

THE COURT: Right.

MR. COULTHARD: So that the prejudice to the State is incredibly far, excessive, and unfair and I think that -- I think we are left with no alternative but to pursue recourse with the Nevada Supreme Court and/or Intermediate Appellate Court on this on a writ issue.

THE COURT: Okay.

MR. COULTHARD: Because this is clearly trial by ambush, Your Honor, and greatly prejudices the State.

THE COURT: Okay. All right. So, well thank you for clarifying it.

So, there was, let me see, I'm looking for -- and I know -- you may not have brought this with you, Mr. Olsen, there was an exchange -- I can't remember if it was letter or e-mails. E-mails, maybe?

MR. CICILIANO: It's probably e-mails.

MR. OLSEN: It was e-mails in December, Your Honor.

THE COURT: E-mails.

MR. OLSEN: I don't have them, but they're attached to the other papers.

MR. CICILIANO: December 19th.

THE COURT: I think is -- I think December 19th, 2014 e-mails?

MR. CICILIANO: That would be the date.

THE COURT: Mr. Ciciliano's e-mails indicating, basically -- it's the same analysis. Even -- I mean, I appreciate what Mr. Harper said. You could certainly -- like I said, goes to weight. You can certainly challenge them with it. I think that with respect to whether plaintiff, through his counsel, had identified what their contract damages were, for the record that's Exhibit 6 to the Opposition, and I think there's another one, Mr. Ciciliano. I remember this one. The one where you say it. The -- let me see -- what damages Mr. Nassiri is currently seeking? Please get back to us and then I think there was --

Mr. CICILIANO: I think the later one you're referring to is a conversation between Mr. Olsen and Mr. Coulthard during Mr. Nassiri's deposition, but that is the e-mail.

THE COURT: Okay. And, yeah, because there was two place. There was another place in here where there was a discussion about it and I think both times it was said. Same or similar analyses. I forget what language it was.

MR. COULTHARD: Well, I mean I guess is it your position, Your Honor, that that e-mail then complies with 16.1 because, I mean, there are stringent requirements for experts under 16.1 so parties aren't unfairly prejudiced by surprise, which is what we're faced with, a $10,000,000

breach of contract analysis that was never disclosed until the ninth supplement in March 2015, --

THE COURT: Okay.

MR. COULTHARD: -- some six to eight weeks after discovery had closed.

THE COURT: I'm trying to find that one.

MR. OLSEN: And, Your Honor, just as Mr. Ciciliano pointed out, there's e-mails. There's a discussion on the record in the deposition.

THE COURT: Right.

MR. OLSEN: A colloquy, as well as that disclosure in March, well in advance of the trial.

THE COURT: Right. So, and for the record, that was Exhibit 8. The ninth supplement that you mentioned, Mr. Coulthard, the ninth supplement was where it was all broken down. This was before the motions were granted with respect to certain other claims. So, they laid them all out on March 19th, 2015. So, at that point in time, I think that the State was on notice and you could have certainly saw it.

MR. PEPPERMAN: And, Judge, --

THE COURT: Yeah.

MR. PEPPERMAN: -- you understand that the March supplement was almost two months after the close of discovery?

THE OCURT: Correct. Yeah. Yes.

MR. PEPPERMAN: So, the March -- or the December 19th, 2014 e-mail, which was three -- approximately three weeks before the close of discovery, --

THE COURT: Right.

MR. PEPPERMAN: -- just for the order and for the record, are you saying that that constitutes compliance with the disclosure of computation of damages under 16.1?

THE COURT: I'm saying I think you were on notice.

MR. COULTHARD: Pardon?

THE COURT: You're on notice.

MR. COULTHARD: You're on notice. Thank you.

THE COURT: Of how they were going to calculate their damages. And, yes, they didn't give you a nice formal calculation until March 19th in the ninth supplement, but that you are on notice that they were looking at contract damage claims too and looking at similar analyses or similar bases for damages.

MR. OLSEN: How would you like the orders prepared, Your Honor? I don't know if you're finished.

THE COURT: Okay. I think each side should prepare their own.

MR. PEPPERMAN: Well, Your Honor, also I have another -- I'm sorry to interrupt but I just have another clarification on this Harper order. You know, the change

in testimony or the change in opinion in his deposition was one basis.

THE COURT: Right

MR. PEPPERMAN: The no computation of damages was one basis.

THE COURT: Yes.

MR. PEPPERMAN: And then we also argued at length about the relevance of his opinions because the inverse damages were dismissed and then namely that the -- his opinion of $10,000,000 relates to damages to the entire 66-acre parcel, which they're going to present as evidence of damages related to breaching the contract related to the 24-acre parcel.

THE COURT: Exactly.

MR. PEPPERMAN: So, is that --

THE COURT: Seems like you've got some good cross-examination there, Mr. Pepperman, already written.

MR. PEPPERMAN: But is it, for the sake of the record, are you finding that that $10,000,000 opinion of damage to 66 acres is also relevant to the 24 acre parcel?

THE COURT: I'm saying however they want to present it, you've got grounds for cross-examination because I think it goes to the weight of his opinion. And you can cross-examine him on how he made his calculations and how it applies because you've already got Mr. Coulthard

getting him to say: Throw it in the trash, it doesn't have any relevance. We'll let it in. It's up to the jury to determine, you know, how does he extrapolate that opinion to $10,000,000, with respect to the -- I don't know. Is it the pork chop? Is that the --

MR. OLSEN: The pork chop is my term, Your Honor.

THE COURT: Yeah. But is that we're calling it? So it -- I think it all goes to weight and you can cross-examine him on how do you extrapolate that?

MR. OLSEN: We all have the ability to object to relevancy, I think, with some of these issues.

THE COURT: Correct.

MR. OLSEN: It's not per se relevance which you deny in the motions.

THE COURT: But I do think that, as has been indicated, they're going to probably want to seek some intervention here, so I -- the answer to your question, I think, is that each side should prepare motions on their -- orders on their own motions even though you may not have won on them. I -- rather than going with who wins because that's -- they want to take that up. So, I just, you know, they can write their Harper Order, you can write yours on these -- the three experts today. Exchange them, we'll file them, and when are we back? We're back --

MR. OLSEN: Very well, Your Honor.

THE COURT: We're back in a couple of weeks. Aren't we back in a couple of weeks?

MR. OLSEN: I'm not aware of anything soon.

THE COURT: Do we have something?

MR. CICILIANO: I think we'll give you some reprieve.

MR. OLSEN: If you miss us, we can --

THE COURT: Oh yeah. I don't know. I guess nothing. I guess this was it until the 5th of May. Okay. So, we'll -- we may see you, but we may not.

MR. OLSEN: There may be other motions, Your Honor. I can't rule that out but I appreciate your time today.

THE COURT: If they get their writ granted then, yeah, it's all moot. But we'll see you back here for the trial. We are going to mark, for the record, the binder that Mr. Pepperman gave us, that'll be Court's Exhibits and then the PowerPoint copies, that'll be also Court's Exhibit. So, it should all be here. Is there anything else that we need to make sure you've got a complete record?

MR. OLSEN: I don't think so today.

MR. COULTHARD: No. Thank you very much, Your Honor, for your patience today.

THE COURT: Okay. All right. We'll mark all that

and you can -- it'll all be in the file bin.

MR. COULTHARD: Thank you very much.

THE COURT: Thanks.

PROCEEDING CONCLUDED AT 12:13 P.M

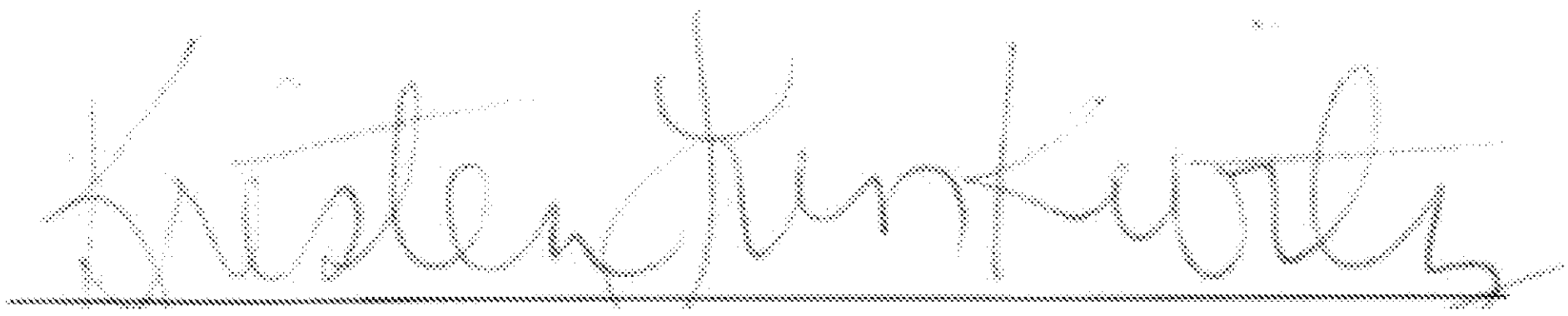
* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

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. No.: XXVI

ORDER DENYING DEFENDANTS' 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: 01/05/16

Time of Hearing: 10:30 AM

This matter came on for hearing on January 5, 2016, at 10:30 AM as to the above-entitled motion, and it came on for the court's decision on January 19, 2016, with Plaintiff Fred Nassiri, individually and as trustee of the Nassiri Living Trust ("Plaintiff"), being represented

by Garman Turner Gordon, LLP., and with the State of Nevada, on relation of its Department of Transportation (the "State"), being represented by Kemp, Jones & Coulthard, LLP, and the Office of the Attorney General. This Court having reviewed the papers and pleadings on file herein and having heard argument of counsel; and with good cause appearing and there being no just reason for delay,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Exclude Damages Evidence Related to Plaintiffs' Breach of Contract Claims and/or Motion to Strike Plaintiffs' Expert Keith Harper, MAI, is hereby DENIED for the reasons stated on the record during the hearings of January 5, 2016, and/or January 19, 2016.

IT IS SO ORDERED.

DATED this 2nd day of ~~February~~ March, 2016.

DISTRICT COURT JUDGE

Submitted by:

William L. Coulthard 2-8-16

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

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. No.: XXVI

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' RESCISSION CLAIM BASED ON THE COURTS 08/29/15 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Date of Hearing: 11/17/15

Time of Hearing: 10:30 AM

This matter came on for hearing on November 17, 2015, at 10:30 AM as to the above-entitled motion, with Plaintiff Fred Nassiri, individually and as trustee of the Nassiri Living Trust ("Plaintiff"), being represented by Garman Turner Gordon, LLP., and with the State of

Nevada, on relation of its Department of Transportation (the "State"), being represented by Kemp, Jones & Coulthard, LLP, and the Office of the Attorney General. This Court having reviewed the papers and pleadings on file herein and having heard argument of counsel; and with good cause appearing and there being no just reason for delay,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants Motion for Summary Judgment on Plaintiffs' Rescission Claim Based on the Court's 08/29/15 Findings of Fact, Conclusions of Law and Judgment, is hereby DENIED for the reasons stated on the record.

IT IS SO ORDERED.

DATED this 2nd day of March, 2016.

DISTRICT COURT JUDGE

Submitted by:

William L. Coulthard, Esq. (#3927) 2-8-16
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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.	Case No. 70098

APPENDIX VOLUME 12, part 2

TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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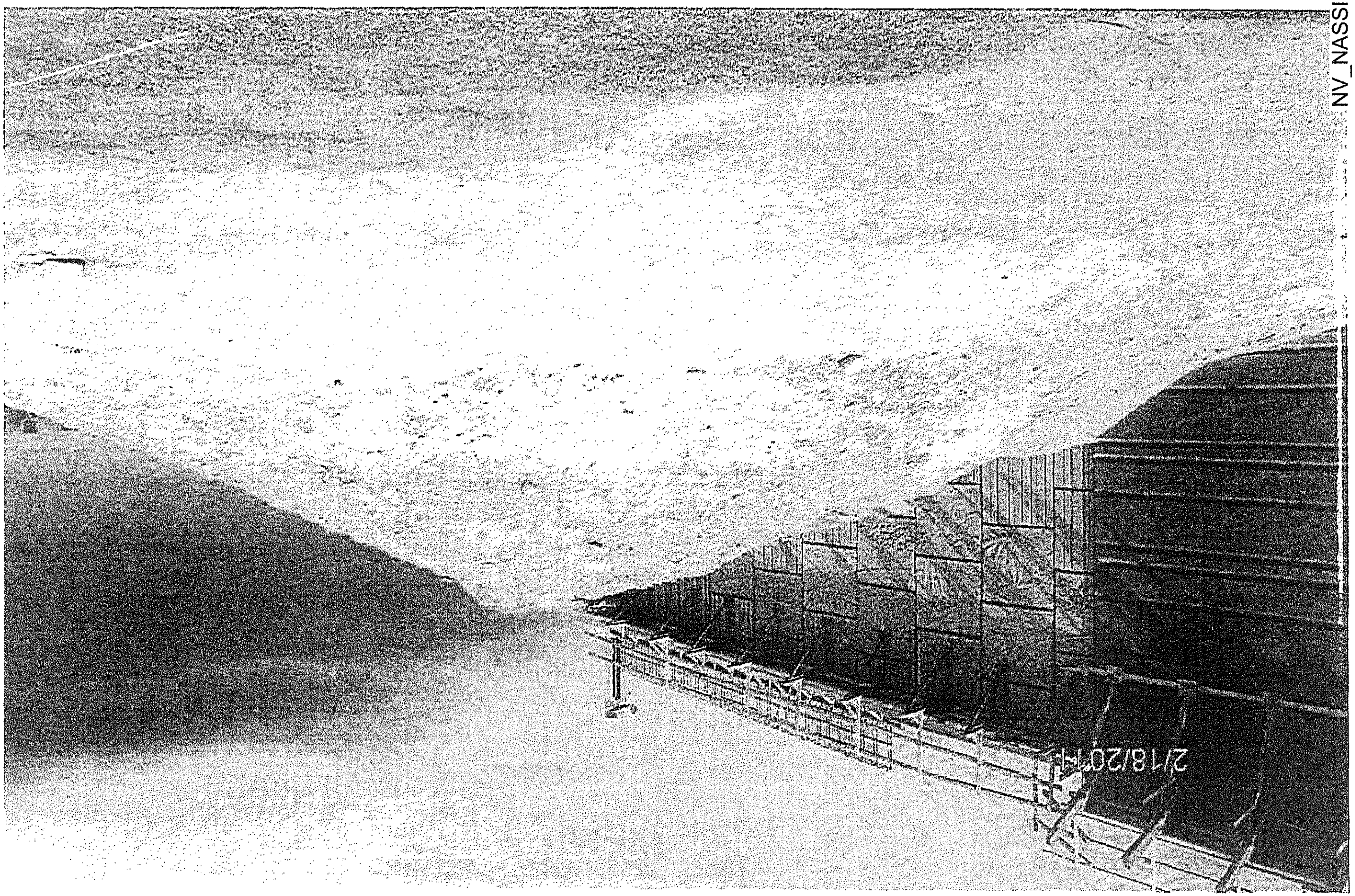
ATTORNEYS FOR PETITIONER

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

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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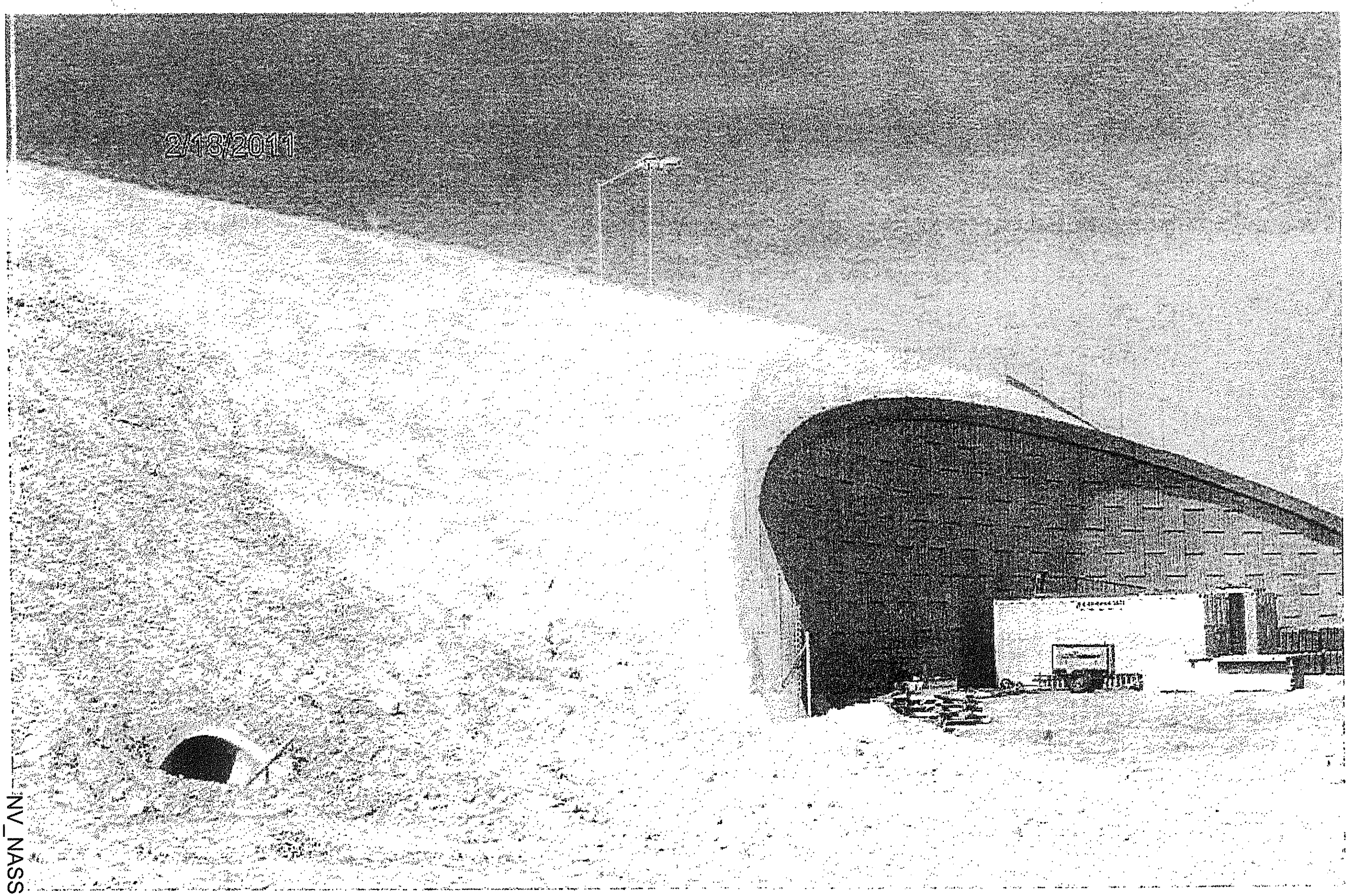

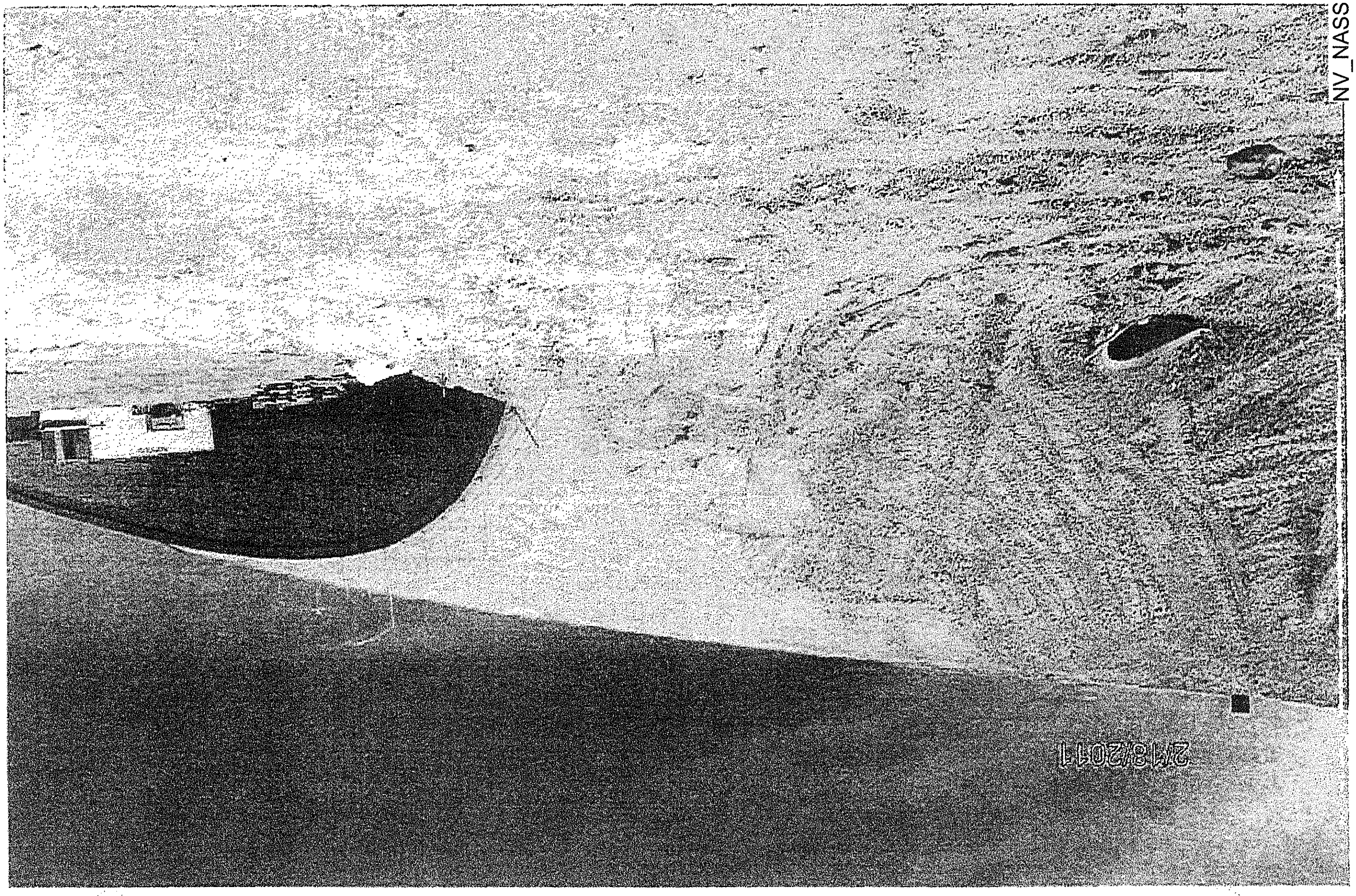

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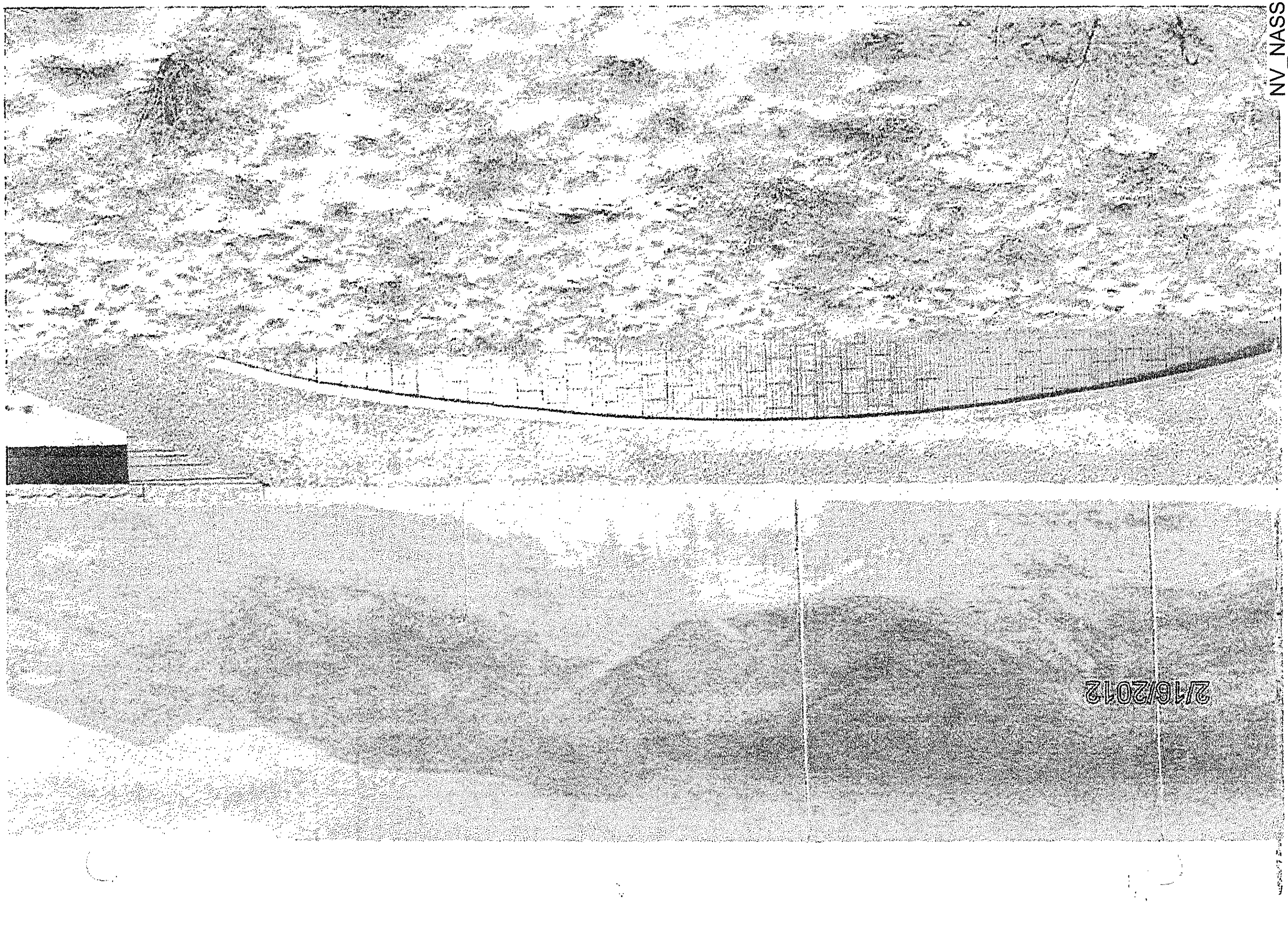

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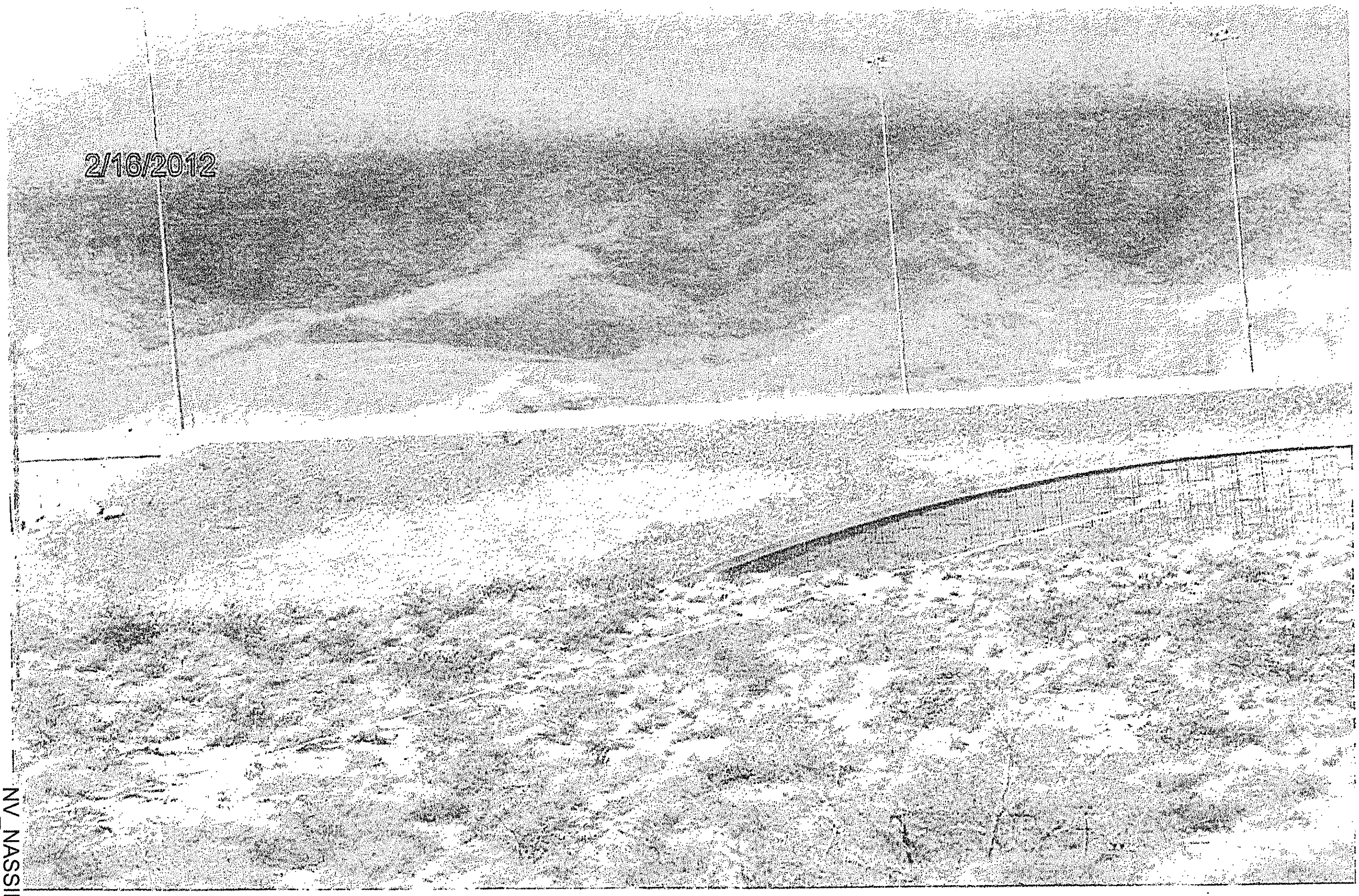

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EXHIBIT 9

NV_NASSIRI000957

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APPRAISAL REPORT

Timothy R. Morse
& associates

REAL ESTATE APPRAISERS AND CONSULTANTS

SUMMARY APPRAISAL REPORT

of
Five Vacant Land Parcels

OWNED BY

Nassiri Living Trust
Fred Nassiri, Trustee

LOCATED

At the Northwest Quadrant of Las Vegas Boulevard South and Blue Diamond Road (Windmill Lane)
Las Vegas, Clark County, Nevada 89123

for the purpose of

DEVELOPING AN OPINION OF MARKET VALUE (RETROSPECTIVE)

as of
March, 2010

DATE OF REPORT

April 6, 2012

PREPARED FOR

Eric R. Olsen, Esquire
Gordon Silver
3960 Howard Hughes Parkway, 9th Floor
Las Vegas, Nevada 89169

APPRAISAL COMPLETED BY

Timothy R. Morse & Associates
3140 S. Rainbow Boulevard, Suite 402
Las Vegas, Nevada 89146

Timothy R. Morse
& associates

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April 6, 2012

Eric R. Olsen, Esquire
Gordon Silver
3960 Howard Hughes Parkway, 9th Floor
Las Vegas, Nevada 89169

File No. 12-172

Re: Five vacant land parcels located at the northwest quadrant of Las Vegas Boulevard South and Blue Diamond Road (Windmill Lane), Las Vegas, Clark County, Nevada 89123.

Dear Mr. Olsen:

In compliance with your recent request and authorization, we have inspected and appraised the above referenced property. Attached to this letter of transmittal is the appraisal report.

This is a summary appraisal report which complies with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a summary appraisal report. It has been prepared in compliance with the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation. The report is also intended to comply with the Uniform Standards for Federal Land Acquisitions except as they conflict with Nevada Law. In consideration of the appraisal problem to be solved, we have determined and performed the scope of work necessary to develop credible assignment results.

The following pages contain descriptions of the subject property and the comparable data. The subject of this report is five Assessor's parcels. The purpose of this appraisal is to develop an opinion of recommended compensation as part of a claimed inverse condemnation resulting from a change in exposure/visibility of the subject from Interstate 15. The value is of the fee simple estate interest.

The appraisers have been engaged by Eric R. Olsen, Esquire of Gordon Silver on behalf of the Nassiri Living Trust, Fred Nassiri, Trustee (the clients). In that regard, the intended users are Mr. Olsen and/or any authorized representatives of Gordon Silver and Fred Nassiri. It is understood that the report will be used by Mr. Olsen in litigation. The intended use is to assist by recommending the compensation due to the owner of the property based on the change in exposure/visibility of the subject from Interstate 15 as the result of the difference between the proposed interchange and the "as built" interchange at Blue Diamond Road and Interstate 15. The depth of discussion contained in the attached report is specific to their needs and for the above stated use. Use of this report by anyone other than the stated intended user or for any other use than the stated intended use is prohibited. We are not responsible for its unauthorized use.

According to Mr. Fred Nassiri, Trustee of the Nassiri Living Trust (property owner), in all of his negotiations with the Nevada Department of Transportation (NDOT) and their representatives, the proposed interchange was identified as "Build Alternative Figure 10F". Contained in the Addenda of this report is an exhibit prepared by the Nevada Department of Transportation.

It is an extraordinary assumption of this report that the exhibit in the Addenda labeled:

I-15 South Corridor Improvements
Environmental Assessment
Build Alternative
Figure 10F

is an accurate depiction of the subject in the "before condition".

Use of this extraordinary assumption might have affected the assignment results.

No hypothetical conditions were employed in this report. We have appraised the property within the past three years.

As a result of the analysis and conclusions of the available market data, subject to the definitions, certification, general/extraordinary assumptions and limiting conditions as set forth in the attached report, we have developed an opinion of the value of the fee simple estate interest in the subject property, with a conclusion of "recommended compensation" as of March, 2010 (retrospective) as follows:

Concluded Value of the Property Appraised Before the Acquisition (the Whole):		$79,956,000
Less Concluded Contributory Value of the Acquisition (Part Taken) as Part of the Whole:		($ -0-)
Equals Concluded Value of the Remainder as Part of the Whole (Before the Take):		$79,956,000
Concluded Value of the Remainder as Part of the Whole (Before the Take):	$79,956,000	
Less Concluded Value of the Remainder After the Acquisition (After the Take, Disregarding Special Benefits):	($73,959,300)	
Equals Concluded Severance Damages:	$ 5,996,700	
Concluded Value of the Remainder After the Acquisition (After the Take, Considering Special Benefits):	N/A	
Less Concluded Value of the Remainder as Part of the Whole (Before the Take):	N/A	
Equals Special Benefits:	$ -0-	
Concluded Contributory Value of the Acquisition (Part Taken) as Part of the Whole:		$ -0-
Plus Concluded Severance Damages:		$5,996,700
Recommended Compensation for Acquisition (Rounded):		**$6,000,000**

Finally, the aforementioned opinion of market values rendered herein is predicated on an appropriate reasonable "exposure time" concluded to have been less than two years, that would have been associated with the hypothetical sale of the subject property, assuming a hypothetical sale to have occurred on the effective date of valuation, if professionally marketed on a local and regionalized basis, and also assuming the asking price to have been reasonably similar to our concluded market value opinion. This is the amount of time that the property would have needed to be exposed on the market to produce the indicated market value opinion. This indicated reasonable exposure time is based upon actual sales in the market, as well as discussions with local real estate brokers and individuals active in the market.

Further, our opinion of an appropriate "marketing time" associated with the subject is considered to be commensurate with the exposure time on the market.

THIS LETTER MUST REMAIN ATTACHED TO THE REPORT IN ORDER FOR THE PREVIOUSLY INDICATED VALUE OPINION TO BE CONSIDERED VALID.

Thank you for giving us the opportunity of appraising this property for you. If you have any questions or comments pertaining to the report or the valuation, please contact our office.

Sincerely,

Timothy R. Morse, MAI
Certified General Appraiser
State of Nevada License No. A.0000005-CG
Expiration Date: 04/30/13

John H. Kiehlbauch, Associate
Certified General Appraiser
State of Nevada License No. A.0000141-CG
Expiration Date: 05/31/13

JHK:mde

TABLE OF CONTENTS

CERTIFICATION

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

1. The statements of fact contained in this report are true and correct.

2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions and conclusions.

3. We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved. Any specified interest has not affected the impartiality of the opinions and conclusions. Although the appraisers own an interest in several properties in the Las Vegas Valley, it has not influenced their impartiality.

4. We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

5. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.

6. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.

7. Our analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation and the State of Nevada relative to appraisal reporting requirements.

   This report also complies with the Uniform Appraisal Standards for Federal Land Acquisitions, except as they conflict with Nevada Law.

8. We have made a personal inspection of the property that is the subject of this report.

9. No one provided significant professional assistance to the persons signing this certification.

10. The reported analyses, opinions and conclusions were developed, and the report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.

11. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

12. As of the date of this report, I, Timothy R. Morse, MAI, have completed the requirements under the continuing education program of the Appraisal Institute.

13. As of the date of this report, I, John H. Kiehlbauch, have completed the Standards and Ethics Education requirement of the Appraisal Institute for Associate Members.

14. This report is not conditioned upon a specific value or a value within a given range. Employment and compensation are not based upon the approval of a loan. Further, future employment prospects were not based upon a specified value or value range.

15. Our State Registration Certification has not been revoked, suspended, cancelled, or restricted.

16. We have performed services, as appraisers, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

Appraiser _____ Date: April 6, 2012

Timothy R. Morse, MAI
Certified General Appraiser
State of Nevada License No. A.0000005-CG

Appraiser _____ Date: April 6, 2012

John H. Kiehlbauch, Associate
Certified General Appraiser
State of Nevada License No. A.0000141-CG

ASSUMPTIONS AND LIMITING CONDITIONS

1. No responsibility is assumed for legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated in this report.

2. The property is appraised free and clear of any or all liens and encumbrances unless otherwise stated in this report.

3. Responsible ownership and competent property management are assumed unless otherwise stated in this report.

4. It is assumed that all pertinent information supplied by our client, current ownership, and/or other third parties is accurate. The appraisers assume no responsibility for independently verifying this information. If the client of this report has any questions regarding this information, it is their responsibility to seek whatever independent verification is deemed necessary.

5. All engineering is assumed to be correct. Any plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.

6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.

7. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless otherwise stated in this report.

8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless nonconformity has been stated, defined, and considered in this appraisal report.

9. It is assumed that all required licenses, certificates of occupancy, or other legislative or administrative authority from any local, state, or national governmental, or private entity or organization have been or can be obtained or renewed for any use on which the value opinions contained in this report are based.

10. Any sketch in this report may show approximate dimensions and is included to assist the reader in visualizing the property. Maps and exhibits found in this report are provided for reader reference purposes only. No guarantee as to accuracy is expressed or implied unless otherwise stated in this report. No survey has been made for the purpose of this report.

11. It is assumed that the utilization of the land is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless otherwise stated in this report.

12. The appraisers are not qualified to detect hazardous waste and/or toxic materials. Any comment by the appraisers that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or

other potentially hazardous materials may affect the value of the property. The appraisers' value opinions are predicated on the assumption that there is no such material on or in the property that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. The appraisers' descriptions and resulting comments are the result of the routine observations made during the appraisal process.

13. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.

14. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraisers, and in any event, only with proper written qualification and only in its entirety.

15. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers, or the firm with which the appraisers are connected) shall be disseminated to the public through advertising, public relations, news sales, or other media without prior written consent and approval of the appraisers.

This appraisal report is subject to the following extraordinary assumptions and hypothetical conditions:

1. According to Mr. Fred Nassiri, Trustee of the Nassiri Living Trust (property owner), in all of his negotiations with the Nevada Department of Transportation (NDOT) and their representatives, the proposed interchange was identified as "Build Alternative Figure 10F". Contained in the Addenda of this report is an exhibit prepared by the Nevada Department of Transportation. It is an extraordinary assumption of this report that the exhibit in the Addenda labeled:

I-15 South Corridor Improvements
Environmental Assessment
Build Alternative
Figure 10F

is an accurate depiction of the subject in the "before condition".

2. There are no hypothetical conditions contained in this report.

Use of this extraordinary assumption might have affected the assignment results.

THE ACCEPTANCE AND/OR USE OF THE APPRAISAL REPORT BY THE CLIENT OR ANY THIRD PARTY CONSTITUTES ACCEPTANCE OF THE GENERAL/EXTRAORDINARY ASSUMPTIONS AND/OR LIMITING/HYPOTHETICAL CONDITIONS SET FORTH IN THE PRECEDING PARAGRAPHS. THE APPRAISERS' LIABILITY EXTENDS ONLY TO THE SPECIFIED CLIENT, NOT TO SUBSEQUENT PARTIES OR USERS. THE APPRAISERS' LIABILITY IS LIMITED TO THE AMOUNT OF THE FEE RECEIVED FOR THE SERVICES RENDERED.

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

PROPERTY LOCATION:	The subject consists of five Assessor's parcels. For purposes of this analysis, we will refer to them in the report as Parcels A, B, C, D, & E. All parcels combined, due to their size, represent both the northwest corner of Las Vegas Boulevard and Blue Diamond Road (Windmill Lane) and the northeast corner of Interstate 15 and Blue Diamond Road (windmill Lane).
TAX ASSESSOR'S PARCEL NOS.:	
Parcel A:	177-08-803-013
Parcel B:	177-08-702-002
Parcel C:	177-08-803-014
Parcel D:	177-08-803-001
Parcel E:	177-08-803-010
CENSUS TRACT NO.:	2809
OWNER OF RECORD:	Nassiri Living Trust, Fred Nassiri, Trustee
LAND SIZE:	
Parcel A:	24.34 Net Ac.
Parcel B:	11.04 Net Ac.
Parcel C:	30.27 Net Ac.
Parcel D:	.31 Net Ac.
Parcel E:	.67 Net Ac.
Total:	66.63 Net Ac.
ZONING:	Parcel D is zoned H-2 (General Highway Frontage) and Parcel E is zoned R-E (Rural Estates Residential – 2 d.u./ac.) and H-2 (General Highway Frontage) The remaining parcels are hard zoned H-1 (Limited Resort and Apartment District). All five parcels are in the Gaming Enterprise District. Parcels B, C, D, & E are Mixed Use District 1. Parcel A is Mixed Use District 2. Parcel A is also located in the Airport Environs 65 db zone.
MASTER PLAN:	C-T (Commercial Tourist) within the Enterprise Land Use Plan, Clark County
FLOOD ZONE:	The subject is not in a 100-year flood zone.
EXISTING IMPROVEMENTS:	Parcel A was previously improved as an interchange for Blue Diamond Road and Interstate 15. At the date of inspection, the majority of improvements were still in place; however, the previous owner (NDOT) has agreed to remove all improvements. Accordingly, we have considered this parcel as vacant.

HIGHEST AND BEST USE:	Hold in speculation of future development.
PURPOSE OF APPRAISAL:	To develop an opinion of recommended compensation as part of a claimed inverse condemnation resulting from a change in exposure/visibility from Interstate 15.
INTENDED USE OF THE APPRAISAL:	To assist in litigation.
INTENDED USERS OF THE APPRAISAL:	The intended users of this report Gordon Silver, its officers, administrators, employees, and the property owner.
INTEREST APPRAISED:	Fee simple estate interest.
TYPE OF APPRAISAL REPORT:	Summary appraisal report
DATE OF INSPECTION:	February 2, 2012
DATE OF VALUATION:	March, 2010 (retrospective)
DATE OF REPORT:	April 6, 2012

RECOMMENDED COMPENSATIONS:

Concluded Value of the Property Appraised Before the Acquisition (the Whole):		$79,956,000
Less Concluded Contributory Value of the Acquisition (Part Taken) as Part of the Whole:		($ - 0 -)
Equals Concluded Value of the Remainder as Part of the Whole (Before the Take):		$79,956,000
Concluded Value of the Remainder as Part of the Whole (Before the Take):	$79,956,000	
Less Concluded Value of the Remainder After the Acquisition (After the Take, Disregarding Special Benefits):	($73,959,300)	
Equals Concluded Severance Damages:	$ 5,996,700	
Concluded Value of the Remainder After the Acquisition (After the Take, Considering Special Benefits):	N/A	
Less Concluded Value of the Remainder as Part of the Whole (Before the Take):	N/A	
Equals Special Benefits:	$ - 0 -	
Concluded Contributory Value of the Acquisition (Part Taken) as Part of the Whole:		$ - 0 -
Plus Concluded Severance Damages:		$5,996,700
Recommended Compensation for Acquisition (Rounded):		**$6,000,000**

OPINION OF REASONABLE EXPOSURE TIME/MARKETING TIME: Less than 24 months.

EXHIBIT D

Terry, John M

From: Fred Nassiri [nassiri@nassiri.com]
Sent: Tuesday, December 07, 2010 4:13 PM
To: Terry, John
Subject: Re the overpass

John Terry,P.E.,
Assistant Chief Project Management.
123 E Washington Avenu
LasVegas Nevada 89125-0170
Mr John Terry,

It was nice to meet you on December 1st 2010. As per our conversation, I explained to you my concerns regarding the new overpass that has been constructed by NDT. As I showed you by driving to the site, you saw the way the overpass completely blocks my visibility from the freeway and completely blocks my signage from the freeway. I explained that I paid $24,000,000.00 for the 24 acres of land, approximately $9.000.000.00 more than the appraised value so I can keep my visibility and signage from the freeway. Based on the number that you mentioned NDT of 250,000 cars that travel on I -15 daily. My entire deal with NDT was based on signage and visibility so I could not believe that NDT would change their plan and completely block my visibility and my signage without telling me anything about the change of plans. This new overpass with a height of over 60 feet completely dug a hole on my property not only blocked the 24 acres but also completely blocked my visibility on the rest of my property in the front. As I am the adjoining property owner to the freeway, NDT never called or advised me as to its change to the plans. As you saw and agreed that my visibility as well as my signage is gone forever. After our meeting you mentioned that you will look into this matter and will get back to me.This change of plan by NDT has devaluated my property and damaged my entire site. Knowing that in good faith I paid top prices for this acquisition,that puts me in terrible financial difficulty. I hope and that you could come up with a reasonable evaluation hopefully with a solution to this matter. As I know after our meeting that you are a reasonable man. And I hope that you can come up with a solution that is workable for all parties. In the past I have been very cooperative with NDT and did my best to be a good citizen. On the mean time I hope this note finds you well

Sincierely
Fred Nassiri

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

FRED NASSIRI, NASSIRI LIVING TRUST, Plaintiffs,	)	CASE NO. A-12-672841
	)	DEPT. NO. XXVI
vs.	)	
STATE OF NEVADA, Defendant.	)	**Transcript of Proceedings**

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

DEFENDANT'S MOTION TO EXCLUDE DAMAGES EVIDENCE RELATED TO PLAINTIFFS' BREACH OF CONTRACT CLAIMS AND/OR MOTION TO STRIKE PLAINTIFFS' EXPERT, KEITH HAPRER, MAI

TUESDAY, JANUARY 5, 2016

APPEARANCES:

For the Plaintiffs: ERIC R. OLSEN, ESQ.
DYLAN T. CICILIANO, 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.

TUESDAY, JANUARY 5, 2016 AT 11:01 A.M.

MR. COULTHARD: Good morning, Judge.

THE COURT: Good morning.

MR. COULTHARD: Will Coulthard and Eric Pepperman, and also Amanda Kern, appearing on behalf of the State. We do -- we have prepared, because of the length of the motions, and the issues, and sort of to help keep the -- keep me, and the Court, and the arguments on track, we did prepare a PowerPoint.

THE COURT: Okay.

MR. COULTHARD: We just need a minute to hook that up.

THE COURT: All right.

MR. COULTHARD: If -- with the Court's indulgence, --

THE COURT: Sure.

MR. COULTHARD: -- if you want to take, maybe, a quick break?

THE COURT: We'll take a quick break.

MR. COULTHARD: Thank you, Judge.

THE COURT: I do need to leave at 11:45.

MR. COULTHARD: 11:45?

THE COURT: Yes.

MR. COULDHARD: We'll move fast.

THE COURT: Is 45 minutes enough time?

[Recess taken at 11:02 a.m.]

[Hearing resumed at 11:08 a.m.]

MR. COULTHARD: Make our appearances, I'm happy to do that.

THE COURT: Let's do that.

MR. COULTHARD: Again, Your Honor, Bill Coulthard and Eric Pepperman of Kemp, Jones and Coulthard, appearing on behalf of the State. Also present in court is Amanda Kern, Deputy Attorney General, on behalf of the State.

THE COURT: Okay.

MR. OLSEN: And, Your Honor, Happy New Year.

THE COURT: Thanks.

MR. OLSEN: It's Eric Olsen, appearing on behalf of the plaintiff, along with my associate, Dylan Ciciliano.

THE COURT: Thank you.

MR. COULTHARD: Your Honor, this is the State's Motion to Exclude Damage Evidence and then, which all of the contractual damage evidence is the initial motion and/or in the alternative, and to a lesser extent, a Motion to Strike Mr. Nassiri's Expert Appraiser, Keith Harper.

THE COURT: And that would be in the entirety? Because I think that -- I don't know. It seemed to me, and I, again, am not speaking for Mr. Olsen, that the argument was that, at a minimum, some of what he's got to say is

relevant, it's just it's in a different context but it's still relevant evidence. So, you shouldn't exclude the witness because there's nothing wrong with the witness, himself. The witness is qualified. I didn't see any challenge to the witness being qualified, but it's just a question of his testimony is not appropriate to the topic that he was originally detained on.

MR. COULTHARD: Well, yeah.

THE COURT: But, arguably, it might be appropriate to another topic.

MR. COULTHARD: I think the starting point, Your Honor --

THE COURT: Because it didn't seem to me that it was entirely new testimony.

MR. COULTHARD: Well, I think what we really are challenging at the outset is Mr. Nassiri's failure to comply with the mandatory requirements of Nevada Revised Statute -- Nevada Rules of Civil Procedures 16.1(a)(1)(c) which requires parties to produce, quote:

> A document setting forth a mathematical computation totaling up their damages for each category of special damages claimed.

That is really the starting point for the Motion to Exclude. And that's the starting point for litigation and the fairness in litigation. We want to make sure that

it's -- the litigation is efficient, it's timely, and that the parties have a fair opportunity to understand the allegations and the damage claims for each of the categories of special damages.

This motion, Your Honor, importantly, is limited only to their claimed categories of contractual damages. 16.1 is a mandatory requirement. A computation of any category of damage claimed must be produced and it must be produced at the outset of the case and it must be disclosed without awaiting for a discovery request.

The basis of our Motion to Strike is NRCP 37(c)(1), which provides that:

> 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.

So, the basis is 16.1 and 37(c)(1), which is effectively the sanction rule that says if you don't produce a computation of damages under 16.1, for each category, and were talking about the category of contractual damages, they cannot present evidence as to any category of damages not so disclosed, unless it's harmless. And I can assure you, and we'll get into, that is -- there is harm. And so, that's the starting point.

And then to put this in the framework of this case. This discovery stretched for 12 months, from February 2014 until January 15th of 2015, is the 12-month period of time. Mr. Nassiri and his counsel did 16.1 initial disclosures and beginning in their second supplement to the 16.1, they disclosed a computation of damages. And they disclosed a computation of damages seven times from the second to the eighth 16.1.

The important thing about those disclosures, they only disclosed their rescission damage claim of initially 35,0000,000 and then up to 42,000,000 for a rescission, the equitable claim of rescission, and their inverse condemnation damages.

Nassiri -- Mr. Nassiri has -- and his counsel, admitted in their Opposition that at no time during discovery did they provide a computation of damages to include a breach of contract compensatory formula. They didn't do it. They didn't do it until their ninth supplement to the 16.1 which wasn't produced until March 3rd, 2015, six weeks after -- a month -- I think it's six weeks, after the discovery had closed. And, so, Nassiri finally disclosed his alleged $12,000,000 damages and claimed breach of contract damages after discovery was closed, in violation of 16.1 and 37.(c)(1) [phonetic] comes into play.

They violated this mandate. They failed to provide their breach of contract damage claims. 37 dictates -- Rule 37. Unless such failure is harmless -- Your Honor, and I would suggest unless that failure is harmless that then they are not -- they cannot present evidence as to any category of damages not so disclosed.

The untimely disclosure of the contract damages has greatly prejudiced the State. It's deprived the State of a meaningful opportunity to conduct discovery as to these alleged breach of contract monetary compensatory damages. We cited *Freemon versus Fischer* 281 P3d. 1173, a Nevada 2009 unpublished Nevada Supreme Court decision in support of this, that *Freemon*, and I'm quoting, quote:

> As discovery has closed, Fischer had no opportunity to depose the expert or conduct other discovery concerning the basis for the widely divergent damages amount. The District Court did not abuse its discretion in adopting the Discovery Commissioner's report, excluding all evidence of damages as an appropriate sanction for discovery violations.

I would submit the *Freemon* rationale is entirely applicable to Nassiri's breach of contract, monetary damage claim. And, Your Honor, I would suggest this is a fairness issue for the state of Nevada and it is -- the fairness is based upon precedent you set in the earlier trial.

And we went through this in our pleading but you'll recall how hard I worked during that week long initial statutory -- or statute of limitations trial, to admit the July 27th, 1999 public information handout. I believe it was Proposed Exhibit 152 and we -- this is a document that was admittedly received by Mr. Nassiri in 1999. If you recall, he then wrote the August 1999 letter that had the diagram with the flyover in it. It was in his -- so we established it was in his possession in 1999. He responded to that handout. It was a key document. It was inadvertently not produced during discovery. It was produced a couple of weeks before the trial and it was a public record. Mr. Olsen objected, and we cited that objection on page 7 of our moving papers, and the objection and the -- and we fought pretty hard and I made offers of proof on this and -- but the objection really came down to, and I quote Mr. Olsen:

> We don't have it and were not able to question a witness about this document during discovery.

The Court listened to a lengthy argument. I made multiple offers of proof and ultimately you ruled in your -- when you sustained the objection and precluded that document from coming in, you ruled:

> This is not a document that was produced in the ordinary course of discovery so that is a problem in

and of itself.

You, Your Honor, held the line on this, despite my best efforts, you refused to admit it and I would suggest what is good for the goose, and Mr. Nassiri as to that document, is good for the State in this case. It's good for the gander. You need to hold the line on this belated, untimely breach of contract damage calculation. Treat these parties fairly and you cannot allow the late disclosed damage model and it needs to be excluded. Their breach of contract damages under controlling case law, under Rule 37, they admitted they did not disclose this computation. That's what the rule requires.

Now, there's a lot of talk about this e-mail. Well, in three weeks before the close of discovery, my office sent a letter saying: Hey, you guys have really only been pursuing rescission. You've never given us a monetary computation of damages as required under 16. Are you going to dismiss that claim?

And they write back in an e-mail. And this is the only communication as to damages. There's no computation, no 16.1 done timely. They write back and say: Oh, our inverse condemnation damage model is the same as our breach of contract. Those two damage models. A consequential breach of contract and inverse. They're the same.

Well, not only is that completely contrary to the

law and common sense, it violates 16.1 because we never got the computation of damages.

And, Your Honor, I -- this is -- it's important. They say we had the opportunity to conduct discovery during the deposition of Mr. Harper and Mr. Nassiri. Well, Mr. Nassiri, during his deposition, and I took his deposition. Spent the day with him. He punted on damages. He said: Oh yeah, I had emotional distress and I lost a lot of money but you need to talk to Mr. Harper who is their one damage expert.

Mr. Harper, during his deposition, he said -- back up on Harper a little. He is an appraiser, Your Honor. And he was engaged to perform an inverse condemnation damage model and he used the State method, which I'm sure Your Honor is familiar with. He did the before evaluation, and he did the after, and he came up with a severance damage. And I specifically asked him, in his deposition, and we got that report and they timely produced that report. It's the only report they've produced, the expert damage report, and it was specifically limited to an inverse condemnation damage claim.

And they -- attached is Exhibit 5 to our moving papers is actually the transmittal letter to Gordon Silver, which we didn't get until we got -- did his deposition. Dated November 3rd, 2014. It's Harper0002 and this was

produced at the very last day of discovery, January 15th, is when Harper was deposed. And I can't say the circumstances. I don't recall if it was his availability, ours, but at the end of the day, that day we had his -- we took his deposition.

But in -- a month and a half prior to that, November 3rd, Mr. Harper sends a transmittal letter to Mr. Ciciliano and says in it:

> The purpose of this appraisal is to form opinions of the following valuation scenarios.
>
> And he goes on: Retrospective undivided fee market value of the whole property before acquisition and just compensation as of April 17th, 2013.

And he talks about the intended use of the appraisal and the intended use of the appraisal is to assist counsel at Gordon and Silver by providing an opinion of just compensation. Page 2 of that Exhibit 5:

> Final opinion of the just compensation, $10,000,000.

And then he talks about the before and after conditions, which I'll get into in a bit, but in the actual appraisal too, he says:

> The intended use of this appraisal is to assist counsel of Gordon and Silver, as well as any other attorneys associated with Gordon and Silver,

representing the property ownership by providing an opinion of just compensation.

That's all he did. An inverse severance damage to provide a report of just compensation. And I asked him about that in his deposition. And I said to him:

Your opinion of value is an opinion of just compensation. Correct?

Yes.

And you specifically define just compensation, and I go through the statutory definition as in his report.

In an eminent domain action, the sum of money necessary to place the property owner back in the same position monetarily, as if the property had never been taken. Right?

Answer: Correct.

Question. And this is important, Your Honor:

Your opinion is specific to just compensation as you define it in your report. Right? Yes.

His report is limited to just compensation report. That's what he testified to at the time of his deposition. Now, he's gone -- attempts through this declaration they've attached to Exhibit 12 to these Opposition papers a year later, in December, he now suggests that -- he didn't suggest, he now says: Oh, my formula of inverse condemnation -- I'm not a lawyer but my formula is

applicable to breach of contract.

Well, where is the case law to support that? And he did disclose it, as required under 16.1. His opinions in his written report, his expert report, and his deposition were limited to inverse condemnation. So, discovery closes.

Six weeks later, in March, we finally get a computation and we've had no opportunity to cross Mr. Nassiri, cross Mr. Harper on it, talk to any other third parties, or do any discovery into that new computation and that's prejudice, Your Honor.

So, you know, I could tell you, Your Honor, this is an opportunity where the Court needs to hold the line, enforce 16.1 on really two bases. They never gave us a computation as required under 16.1 and they never gave us an expert report or expert testimony on the breach of contract damages as required under 16.1. So, those two basis's under NRCP 37(c)(1):

> A party without substantial justification fails to timely provide a calculation of damages cannot, unless such failure is harmless.

And I would submit the inability to conduct discovery, just as Mr. Olsen asserted as to the July 1999 letter that Your Honor didn't let in, is applicable for the State. We didn't have the opportunity to understand this.

Discovery was closed when they finally produced it.

Cannot, unless failure is harmless, present evidence as to any category of damages not so disclosed.

They cannot present a calculation of monetary breach of contract damages because they didn't produce it until March 3rd, 2015, after discovery had closed.

So, Your Honor, that is really the primary basis of our Motion to Exclude. They failed to produce that and then on the second part of the motion, and really if you follow the rules, follow NRCP 37, follow *Freemon*, you don't even need to get to the second part of the Harper issues that I think are foundational issues. But, as an alternative remedy, Your Honor, I'll run through those and all try and move fast.

So, we did touch on the issue that his opinion was only limited to the inverse condemnation. So, it's a surprise. They sandbagged us. They -- he did a bait and switch. Whatever you call it, it violates the spirit and intent of 16.1, and he admitted it was only as to just compensation. This isn't something we're making up.

And if the -- another point, and I can tell you, I have to give Mr. Harper a little bit of credit because I asked him -- at the time he was being deposed, the Motion for Summary Judgment as to inverse condemnation was pending

with the Court. The inverse claim was still alive at that point in time and I said him and I want to get it in front of me. Well, Judge, I'll just paraphrase, but I asked him: Well, if the Court determines that view and visibility is not a compensable -- without an expressed easement, which is *Probasco*, without it -- and you recall the inverse condemnation claims, and the law in Nevada is without an expressed easement or a contractual right to protect view and visibility, view and visibility is not a compensable injury. And I asked him: Well if the Court determines in the pending motions for summary judgment that view and visibility is not a compensable event, what's that do? Doesn't that undermine your report?

He said: You can -- that would -- the Judge can throw my appraisal in the trash. That is a quote from Mr. Harper. If the inverse condemnation claim is dismissed, which it was, the judge can throw my appraisal in the trash.

Well, Your Honor, I would suggest you follow what Mr. Harper admitted. In fact, throw that appraisal report in the trash because it's only applicable to inverse condemnation claims, which is now not before the Court.

So, the starting point for looking as to whether to exclude Mr. Harper's testimony is: Are his opinions of just compensation even relevant in this case? I would

submit no. They are not. Claims for inverse condemnation are no longer before the Court. They will not go to the jury. This -- his opinions of just compensation will not assist the trier fact as to any relevant inquiry they need to do. That is -- by his own words, throw the report in the trash. It is not relevant because he didn't opine on that.

So, Your Honor, there's multiple other problems. And the before and after condition, and that's what appraisers do when they come up with severance damage. They do a before and after. And whether it was intentional, whether it was sloppy, whether it was a typographical error, as Mr. Harper testified to in his deposition, his before condition in that appraisal report was the before condition of the environmental assessment planned flyover in the EA, figure 10F. If you recall that, that tied back to the 1999 notices, and 2000 notices, all the way from '99 to 2004, the flyover. And that flyover moved, went through the design build. Mr. Harper's before condition in his report was figure 10F, the originally planned flyover. That was in his written report. That is what was given to Gordon and Silver in November. Six weeks before his deposition, actually more like two months before his deposition, he writes in his transmittal letter to Gordon and Silver:

On his extraordinary assumption -- he had two. Only two. The extraordinary assumption was his date of valuation, was from April 2013 and the second one:

> It is an extraordinary assumption that the exhibit included in the addendum of this report entitled I-15 South Corridor Improvement Environmental Assessment Build Alternative Figure 10F.

That's the flyover that was throughout five years of EAs records, Environmental Assessment records:

> Is an accurate depiction of the subject in the before condition.

That is in his transmittal letter in November -- on November 3rd of 2014. He's not deposed until January 15th and there was no word from Gordon and Silver that that was an issue and his appraisal report, when it's finally produced, it's produced in end of November, or November 15th. I think it's in --

MR. PEPPERMAN: Same day.

MR. COULTHARD: Okay. It was approved at that same time in early November 2014, those extraordinary assumptions are in his appraisal report and he says in the next paragraph, after his extraordinary assumptions he says:

> If these extraordinary assumptions that are/is directly related to the specific assignment as of the

approximate retrospective date of the assignment result are found to be false, the opinions or conclusions could be altered.

Well, they were found to be false. He testified. He showed up in his deposition and said: Oops I made a typo. The before condition was no flyover. The after condition was the as built and he completely changed his position. And it's outrageous to me that he did it. But we were -- we had to do it. The last day of discovery I tried to understand why and he says it was a typographical error.

So, then they -- but, Judge, the prejudice. Before his deposition, 30 days after the initial report was done in early November, the State got that appraisal, relied on his before condition and what did the State do? They went and engaged two new rebuttal experts, Alan Nevin and Shelli Lowe, who did rebuttal reports saying actually the before, as Mr. Harper has opined, the 10F (e)(a) flyover is -- has worse visibility than the as built and that is the evidence as to the comparison of the before condition in his expert report, the 10F, as disclosed -- as publicly disclosed by NDOT for years in the EA, that flyover has more of a visual impact than the as built and they -- and we also did a rebuttal report. Mr. Sjostrom produced it which was done when Mr. Nassiri originally

complained to the State about this in 2012. We produced that report. That is an actual engineering analysis that says: 10F compared to the as built, your visibility is better, Mr. Nassiri.

So prejudice to the State? Yeah. We have three rebuttal experts now who opine to opinion by Mr. Harper that he completely abandoned in his deposition that says it was a typographical error. Oh, and the prejudice now, we've also been hit with a Motion to Strike those three rebuttals. So, there's some real prejudice the State is faced with if you allow the testimony of Mr. Harper.

So, moving past the completely changing his extraordinary assumptions, then let's look at his damage model. So, he then takes his -- let me find my notes, Your Honor.

So, he now has produced an -- and I think we've got to step back, Judge, because this is pretty important here to understand and there's a lot of issues with his appraisal report. He uses this appraisal report. He values the entire 66 acres and asserts that the entire 66 acres were damaged under a breach of contract. Well, if your recall, Judge, we only -- the State only sold 23 acres so he's used 40 some odd acres more than the State sold than their breach of contract theory. He also used a date of valuation, Your Honor, and this is pretty important

because he used the date of valuation of April 17th, 2013, which is the date that Mr. Nassiri served the State with its Summons in the inverse condemnation action. So, they used that statutory date of valuation, April 17th, 2013, which I would submit is arguably appropriate in an inverse condemnation claim. Well, that has now been dismissed.

But, so -- think about this, Judge. April 17th, 2013, he wants to now use as his breach of contract damage evaluation date. How the heck? That is so inappropriate, Judge. The contract's dated 2015. The construction of the as built flyover began in 2009 and 2010. What the heck is he using an April 17th, 2013 date of valuation to come up with a breach of contract damage calculation? It's -- there's no support in the law for that, whatsoever.

So, his date is wrong. And I asked him about that in his deposition and what does he tell you? I can -- what he testified to in his deposition a year ago is completely contrary to what he put in his Exhibit 12 in his new declaration. He's -- I believe completely flip flopped on his testimony. And so -- and I'll tell you why. Because in the disposition I asked:

> You're looking at a date of value as of April 17th, 2013. Right?
>
> Answer: Yes.
>
> If the Court determines that any compensable loss

should have been valued at a different date, would that impact the reliability of your conclusions in this report?

Answer: Yes.

And it goes on.

How so?

Well, we as appraisers, --

And I'm quoting -- and this is from page 11 of our moving papers of the Motion:

> We, as appraisers, appraise properties as of a specific date of value. I can provide an opinion of value to a lender and next week they call and say hey, we need it as of a different date. So, it's a new appraisal assignment. If the date of value changes, I would have to do a new analysis as of whatever the date of value is.

That's Mr. Harper's testimony in January of 2015. And I go on. Question:

> So, could you state your April 17th, 2013 opinion as of a different date of value a month off to a reasonable degree of probability?

Answer: No.

So, I asked him if it's a one month change, can you, as an expert appraiser, state this value to a reasonable degree of probability. His answer is no.

We're not talking about a month, Judge, we're talking about April 17th, 2013 to giving him the benefit of the doubt that it's 2009 or 2010 when the flyover was being built when Mr. Nassiri says he finally figured out there was going to be a flyover there. That's almost four years. That's three years. Not a month.

And if you go from the 2005 date of contract, you're nine -- eight years off, Judge. So, for him to try and rely -- and so then the reason I get into this now is his declaration -- he states in his declaration that: Well, you can just use the math I used in my appraisal and I came up with a 10 percent value and you can use this 10 percent value anytime, at any date of value.

Well, bologna, Judge. It's not what he testified to under oath and he shouldn't be allowed to change his position a year after he's been deposed in a declaration in response to this. And it just belies credibility -- his credibility, and lacks foundation, and it's disingenuous, and it was never disclosed to us.

So -- but I want to step back because there's a pretty big issue, Judge, and this is something you should not lose sight of. And I think, really, in preparation -- in our motions, we kind of got down in the [indiscernible] and we didn't focus on this issue.

Judge, what they are really doing is -- or

attempting to do and the Court shouldn't allow it, is they are doing an end run around *Probasco*, which is the controlling case law that says view and visibility -- loss of view and visibility is not a compensable damage in the state of Nevada. Now, *Probasco* wasn't an inverse condemnation. But the case law on that says view and visibility is not a compensable injury, and you said that in your findings and conclusions, and you granted summary judgment in favor of the State on that basis, following *Probasco*.

Well, Judge, Harper's affidavit says, and it's Exhibit 12, page 8, quote:

> To determine those contract damages, you would determine the decrease in the value of the property due to a loss of view and visibility resulting from the construction of the flyover.

Judge, he is doing an end run and Mr. Nassiri and his counsel are trying to do an end run around *Probasco* and he is saying: Well, if inverse condemnation loss of view and visibility isn't allowed, well damage -- contract damages -- contract liability should be for loss of view and visibility. And oh yeah, by the way, they're the same monetary damage.

Well, Judge, under *Probasco* view and visibility are not compensable in inverse or breach of contract and

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.	Case No. 70098

APPENDIX VOLUME 12, part 1

TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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ATTORNEYS FOR PETITIONER

Document Description	Volume Number	Bates Number
Amended Complaint	1	PA00015-054
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DISTRICT COURT

CLARK COUNTY, NEVADA

FRED NASSIRI, individually and as trustee of the NASSIRI LIVING TRUST, a trust formed under Nevada law, Plaintiffs, 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. No.: XXVI **REPLY TO NASSIRI'S OPPOSITION TO 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 5, 2016 Time of Hearing: 10:30 AM

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I.

STATEMENT OF RELEVANT FACTS

The State seeks to exclude Nassiri's evidence of contract damages because he never produced a computation of those damages during discovery and because his evidence primarily consists of irrelevant expert testimony that wasn't disclosed in an expert report. Nassiri blames the State for these failures, arguing that the State should have known that he'd seek more than $12 million in contract damages under the $24 million Exchange Property transaction, and that the State should've predicted that his expert (Harper) would change the entire basis for his disclosed opinions during his deposition (on the last day of discovery). He even audaciously suggests that the State would've had more time to conduct discovery on Harper's newly disclosed opinions if the State hadn't waited until the end of discovery to take Harper's deposition. Although Nassiri's arguments are absurd, a brief statement of the facts and history surrounding his claims and disclosures will help the Court to resolve the present dispute.

A. Nassiri's Contract with Las Vegas Paving Corp. ("LVP")

The key to untangling Nassiri's knot of unfounded factual assertions lies in his dealings with LVP. On April 15, 2010, Nassiri and LVP entered into a Ground Lease (Ex. A), which allowed LVP to use a portion of Nassiri's property as a staging area in connection with its construction of the I-15 South Design-Build Project, including the As-Built Flyover. To identify the staging area, the parties attached an overhead depiction of the Blue Diamond/I-15 interchange—including its surrounding areas—and outlined the relevant portion of Nassiri's property in red. *See* Attachment "A" to Ex. A.

For their depiction, the parties used the 2008 I-15 South Corridor Improvement Environmental Assessment (EA) Build Alternative Figure 10f, which showed a Flyover. *See id.* It didn't display plans for the As-Built Flyover, but it depicted the earlier version of the Flyover (the "EA Flyover") that was conceived in 1999 and studied as part of both the 2004 EA for the Blue Diamond Project and the 2008 EA for I-15 South Corridor Improvement Project.

Despite recognizing that the Ground Lease Map showed the EA Flyover, Nassiri didn't express any shock or surprise. He never voiced any concern over the Flyover until he realized

that LVP was building a ***different*** version of the Flyover than the one depicted in the Ground Lease Map. In his subsequent meetings and communications with the State about the Flyover, his complaints emphasized the ***design change*** from the EA Flyover to the As-Built Flyover that was ultimately constructed.

During this same time period, a dispute arose between Nassiri and LVP over the Ground Lease. In a September 20, 2011, demand letter, Nassiri accused LVP of breaching the Ground Lease by, *inter alia*, misrepresenting its construction plans for the Flyover in the Ground Lease Map:

> ***Finally, it appears that the improvements being made to the interchange are far greater than represented by you*** and will cause Mr. Nassiri substantial damages such that he would have never allowed you to use the property had he known about the extent of these improvements. (Ex. B) (emphasis added).

At the time, the Flyover was the only significant "improvement being made to the interchange." Thus, Nassiri's allegations against LVP were consistent with what he'd told the State: that he expected the EA Flyover to be built and was upset by the ***change*** to the As-Built Flyover.

B. Nassiri's Claim to the State Board of Examiners

On May 29, 2012, Nassiri submitted an administrative claim to the State Board of Examiners. (Ex. C). His threefold reasons for damages were (1) that the State had exposed him to costly litigation by conveying the 24-acre Exchange Property by quitclaim deed, (2) that the State charged him a hidden assemblage premium on the Exchange Property's purchase price, and (3) that the design change from the EA Flyover to the As-Built Flyover diminished the value of not only the 24-acre Exchange Property but his entire 66-acre assemblage of land. Ex. C, NV_Nassiri000736-38. Nassiri did ***not*** assert a breach of contract claim or otherwise contend that any of these reasons for damages amounted to a breach of the 2005 Settlement Agreement. *See* Ex. C.

Nor did he request ***any*** measure of contract damages related to the Flyover. He limited his damages demand to either rescission of the Exchange Property transaction or a combination of compensatory damages, consisting of: (i) constitutional severance damages related to the design change and "***new***" Flyover's alleged impact on his ***entire 66-acre assemblage*** of

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property, (ii) compensation in connection with his alleged "***overpayment*** for the Exchange Property (including the additional interest and property taxes resulting therefrom)," and (iii) various land-use concessions. Ex. C, NV_Nassiri000740-42 (emphasis added).

1. Nassiri's Design Change Claim

To illustrate his design change claim, Nassiri attached two separate depictions of the Blue Diamond/I-15 interchange—one to show how he thought the interchange would look and one to show how it actually looked. Ex. C, NV_Nassiri000738-39, fn. 8 and fn. 9. To show how it actually looked, he attached a series of 2012 pictures of the As-Built Flyover. Ex. C, NV_Nassiri000950-56. ***To exemplify how he thought the interchange would look, Nassiri attached a copy of the 2008 EA's Build Alternative Figure 10f, which—consistent with his prior communications with the State, claims against LVP, and overall course of conduct—included the EA Flyover***. Ex. C, NV_Nassiri000948-49.

Notably, this copy of the Figure 10f diagram was ***different*** than the copy attached to the Ground Lease. So, it's not like Nassiri simply copied a diagram that was already in his possession; he thoughtfully considered his claim, sought out a diagram that accurately depicted how he believed the interchange would look, and attached a map that included the EA Flyover.

2. Nassiri's Damages Model under His Design Change Claim

To evidence his claimed design change damages, Nassiri attached an April 6, 2012, Appraisal Report prepared by Timothy Morse, MAI. In his Appraisal, Morse made clear that Nassiri—and his attorneys—specifically asked him to recommend compensation related to the ***design change*** from the EA Flyover to the As-Built Flyover:

> The intended use [of this Appraisal] is to assist by recommending the compensation due to the owner of the property based on the ***change in exposure/visibility of the subject from Interstate 15 as the result of the difference between the proposed interchange and the "as built" interchange*** at Blue Diamond Road and Interstate 15.
>
> . . .
>
> ***According to Mr. Fred Nassiri, Trustee of the Nassiri Living Trust (property owner), in all of his negotiations with the Nevada Department of Transportation (NDOT) and their representatives, the proposed interchange was identified as "Build Alternative Figure 10F."*** Contained in the Addenda of

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> this report is an exhibit prepared by the Nevada Department of Transportation.
>
> It is an extraordinary assumption of this report that the exhibit in the Addenda labeled: I-15 South Corridor Improvements Environmental Assessment Build Alternative ***Figure 10F is an accurate depiction of the subject in the "before condition."*** Ex. C, NV_Nassiri000960-61 (emphasis added).

Thus, as confirmed by Morse's Appraisal, Nassiri's pre-lawsuit claims related to the ***design change*** from the EA Flyover (i.e., the Flyover depicted in Build Alternative Figure 10f) to the As-Built Flyover.

C. Nassiri's Complaint in this Case

Not like he could, but Nassiri didn't waiver on his design change claim when he filed this lawsuit. On the contrary, virtually all of the facts from above—including LVP's supposed representation that the EA Flyover would be built—were alleged in Nassiri's complaint and subsequent amended complaint:

> On March 24, 2010, NDOT held a public meeting on the I-15 South improvements. A review of meeting materials reveals that NDOT, and its agent Las Vegas Paving, discussed and presented a ***new*** "flyover" at the Blue Diamond Road Interchange.
>
> Three weeks later, on April 15, 2010, [] Las Vegas Paving entered into a Ground Lease Agreement with Plaintiffs to use a portion of the Subject Property as storage and staging area for I-15 construction. ***At that time, Las Vegas Paving provided, and incorporated into the Agreement, a diagram of the Blue Diamond Road Interchange improvements. That diagram, however, did not depict the "fly over" that [was] actually planned at that time…*** Las Vegas Paving, NDOT's agent, clearly knew of the plans for an obstructing "fly over" [as opposed to the non-obstructing EA Flyover] because Las Vegas Paving was the "design and build" contractor for the entire I-15 corridor [] project, which included the Blue Diamond Interchange.
>
> The Blue Diamond Road Interchange "fly over" is contrary to plans shown to Plaintiffs in April 2010…. ***Plaintiffs [] relied on the plans in taking or refraining from taking action, including action to object to the changed and damaging construction, or to seek judicial relief to alter or halt the planned construction.***
> …
>
> ***Furthermore, had NDOT, through its agent Las Vegas Paving, not misrepresented the nature and configuration of the "fly over" in April 2010, Plaintiffs would have taken action to object.***

ACompl., ¶¶ 25-26, 30, 87 (emphasis added).

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Of course, the "diagram" attached to the Ground Lease Agreement was ***Build Alternative Figure 10f***, which shows the EA Flyover. It's also the same diagram that Nassiri attached to his administrative claim to illustrate how he thought the interchange would look. And it's the same diagram that Morse identified as the "proposed interchange" under his Appraisal. While the State contends that Nassiri was well-aware of its publicly-disclosed plans for a Flyover as early as 1999, there can be no dispute that he was certainly aware of the EA Flyover by the time that he entered into the Ground Lease in 2010, which is exactly why his amended complaint expressly relates to the "***nature and configuration of the Flyover***" as a result of the design change—not the construction of ***any*** Flyover.

D. The Expert Disclosures

On November 3, 2014, Nassiri served his initial expert disclosure. Even though he'd previously commissioned the Morse Appraisal, he didn't designate Morse as his expert. Instead, he designated Harper as his lone expert. Based on the forgoing facts, however, it didn't come as a surprise when Harper disclosed an Appraisal Report that was similar to Morse's Appraisal in many ways: (i) they both ***purported*** to use the exact same "before and after" comparative methodology, (ii) they both identified the exact same "proposed interchange," which included the EA Flyover, as their "before" condition, (iii) they both relied on the exact same extraordinary assumption that Build Alternative Figure 10f accurately depicted that "proposed interchange," and (iv) they both contained no opinions regarding contract damages.

The only difference between the two is that while Morse confirmed this information in his deposition, Harper testified that it was all included in his report as some sort of "typographical error." Despite saying in his report that he was comparing the change in exposure/visibility of Nassiri's property as a result of the difference between the EA Flyover and the As-Built Flyover, Harper claimed in his deposition that he was really comparing the visibility as a result of the difference between the As-Built Flyover vs. no Flyover at all.

E. Harper's 12/7/15 Declaration

In its motion, the State seeks to exclude Harper from offering opinions that were never disclosed in his report. To respond, Nassiri, on December 7, 2015, asked Harper to provide a

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declaration, which—unbelievably—attempts to offer even more undisclosed opinions and actually contradicts Harper's sworn deposition testimony. *See* Ex. 12 to Opps. Although he is neither a lawyer nor expert on legal remedies, and despite testifying under oath that his appraisal should be "throw[n] in the trash" if the Court determined that Nassiri's loss of visibility wasn't a compensable taking—which is exactly what the Court determined—Harper now opines that his appraisal can be applied to Nassiri's contract claims because his severance damages and contract damages are somehow the same. *Id.*, ¶ 7.

In his declaration, Harper also attempts to change his disclosed appraisal methodology:

> My determination that the value of [Nassiri's] property decreased by 10% as a result of the loss of view and visibility would hold true during different time periods as well. The decrease of 10% was calculated by using historical data and comparative sales that spanned from 2007 to 2013. To a reasonable degree of professional certainty, the Property would have also experienced a 10% decrease in value in 2010. *Id.*, ¶ 9.

But, in his disclosed appraisal, Harper didn't appraise a diminution in value. Using a specific date of value (4/17/13), he appraised Nassiri's property in both the before condition ($100 million) and in the after condition ($90 million). His valuation conclusion is the difference between those two values ($10 million). While it happens to reflect a 10% diminution in value, that number could change if the property values changed.

For example, if Harper applied his before and after appraisal methodology to a 2010 date of value, he might appraise the before condition at $80 million and the after condition at $74 million. This would result in a $6 million difference—or a 7.5% diminution in value (not 10%, as declared by Harper under penalty of perjury). Coincidentally, using a March 2010 date of value, this is exactly what Morse concluded in his appraisal of Nassiri's same property.

Not only is Harper wrong, but this is the ***second time*** that he's tried to change the entire basis of his disclosed appraisal methodology to suit Nassiri's ever-changing claims. As the Rules contemplate, the State relied on Harper's ***disclosed*** opinions in developing its trial defense. It would be extremely prejudicial and simply unfair if the Court were to allow Harper to utterly transform his opinions after discovery and leave the State virtually defenseless to his $10 million valuation conclusion.

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II.

ARGUMENT

A. This Court should exclude Nassiri's alleged evidence of contract damages as a sanction for his admitted failure to provide a computation of those damages during discovery.

Nassiri admits that he never disclosed a computation of $12 million in claimed contract damages until his Ninth Supplement—more than ***two months*** after the close of discovery. Opps., 9:12-13. But he asks the Court to excuse this prejudicially-late disclosure for a number of flawed reasons, which should all be rejected.

1. Nassiri's computations of rescission damages and severances damages don't cover his claimed contract damages, which are a separate category of damages, requiring a separate computation.

Nassiri first argues that it shouldn't matter that he failed to disclose a computation of his claimed contract damages because he disclosed computations of his claimed rescission and severance damages, so "[t]here was no surprise as to the amount or magnitude of [his] damages." Opps., 3:2-5. He misses the point.

Under Nevada law, Nassiri was required to disclose "[a] computation of ***any category*** of damages claimed…." NRCP 16.1(a)(1)(c) (emphasis added). To quote from his own case law, the reason that a computation of ***each category*** of damages is required is "to enable each of the [] Defendants in [the] case to understand the contours of its potential exposure and make informed decisions as to settlement and discovery." *City and County of San Francisco v. Tutor Saliba Corp.*, 218 F.R.D. 219, 221 (N.D. Cal. 2003) (cited by Nassiri at 4:21). Whether Nassiri disclosed other categories of damages, or whether the State knew that Nassiri seeks an absurdly large amount of money, is irrelevant. The State was still entitled to know the basis and contours of his claimed ***contract damages*** during discovery.

Nassiri next argues that the State should've gleaned from his administrative claim, amended complaint, and other disclosures that his contract damages were the same as his claimed severance damages. As courts have repeatedly held, however, "[t]he plaintiff cannot shift to the defendant the burden of attempting to determine the amount of the plaintiff's alleged damages." *Jackson v. United Artists Theatre Circuit, Inc.*, 278 F.R.D. 586, 593 (D. Nev. 2011).

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Moreover, Nassiri's same argument has already been squarely rejected by the Nevada Supreme Court. *See Walters v. Meeks*, WL 4527714 (Nev. 2011) (unpublished disposition). In *Walters*, the Nevada Supreme Court held that NRCP 16.1(a)(1)(C) requires parties to produce "***a document setting forth a mathematical computation totaling up their damages for each category of special damages claimed***." *Id.* at *1 (emphasis added). Providing individual bits of information, without an actual "***document*** containing calculations computing the total damages claimed for each category of special damages," is not enough. *Id.* Like in *Walters*, Nassiri never disclosed a document containing calculations computing his contract damages, and his reliance on vague allegations and separate disclosures is not enough.

Even if it were, as the above statement of facts demonstrates, Nassiri's administrative claim, amended complaint, and other disclosures never hinted that his claimed contract damages would be the same as his alleged constitutional severance damages. Nassiri's argument to the contrary belies this Court's summary judgment order, which plainly describes the question on Nassiri's contract damages as "***whether Plaintiff would have paid less*** than the approximately $24 million that he agreed to pay" for the Exchange Property had he foreseen that the Flyover would be "***reconfigured***" in 2010. 7/26/15 Order (emphasis added). Nassiri never argued that he was entitled to alleged severance damage to his ***entire 66-acre assemblage*** as a breach of contract damage; he argued that his contract damages related to the amount he would have paid for the ***24-acre Exchange Property*** had he known that the Flyover would later be redesigned—an amount that he still hasn't revealed.

2. The severe prejudice caused by Nassiri's untimely disclosure isn't cured by the State's discovery on Nassiri's disclosed severance damages, which—based on that discovery—the State successfully moved to dismiss.

Nassiri next contends that his failure to disclose his claimed contract damages during the discovery period "was justified or harmless." Opps., 9:18. Offering no sensible justification, Nassiri's argument really boils down to harm. He asserts that his late disclosure didn't prejudice the State because he disclosed a computation of his claimed severance damages and, on December 19, 2014, he informed the State that his severance and contract damages were

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somehow the same. Opps., 10:11-13. Nassiri's argument doesn't help him; it actually makes the State's point about Nassiri's prejudicially late disclosure.

On December 18, 2014—less than a month before the close of discovery—***the State*** emailed Nassiri about his intention to go forward with his contract claims because he hadn't disclosed any contract damages:

> ***As it currently stands, the only breach of contract damages alleged by Mr. Nassiri relate to rescission.*** If Mr. Nassiri decides that he does not want rescission, then we believe that those claims should be dismissed.... If you will not dismiss the breach of contract claims in the absence of rescission, ***then we need to know your damages computation immediately***. Ex. 6 to Opps., OEXH000192 (emphasis added).

In his 12/19/14 response, Nassiri—for the first time ever—indicated his belief that "the value determined by the severance, even if not compensable under inverse condemnation, would also be a contract damage."[1] Ex. 6 to Opps., OEXH000192.

The State strongly disputes the accuracy of this statement, which misstates the law and neither qualifies as a disclosure nor satisfies Nassiri's obligations under NRCP 16.1(a)(C). But even assuming otherwise, it still doesn't cure the severe prejudice caused by Nassiri's untimely disclosure.

When Nassiri first revealed his groundless damages theory, there were barely more than ***three weeks*** left during discovery. Although Harper hadn't yet been deposed, all expert disclosure deadlines had long passed. Thus, while Nassiri baldly argues (at 10:18) that "NDOT can identify no true prejudice" resulting from his late disclosure, the State had: (i) no opportunity to conduct written discovery, (ii) no opportunity to conduct third-party discovery, (iii) no opportunity to disclose an expert on Nassiri's claimed contract damages (which exceed $12 million), and (iv) no opportunity to disclose rebuttal opinions on this new, novel topic.[2]

---

[1] Tellingly, Nassiri didn't disclose his position until the State brought it up. And even then, he waited three more months before supplementing his NRCP 16.1 computation of damages.

[2] It's puzzling how Nassiri can argue that the State wasn't prejudiced by Harper completely changing the basis for his disclosed opinions, while simultaneously moving to strike the State's experts for rebutting those disclosed opinions (as opposed to Harper's new, post-deposition opinions).

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To Nassiri, this prejudice doesn't count because the State was able to depose Harper about his opinions on Nassiri's contract damages. Opps., 11:16-17. But when the State actually questioned Harper on the subject, he completely denied having any opinions on Nassiri's claimed contract damages and specifically limited his testimony to Nassiri's claimed inverse condemnation damages. Harper Depo., 199:20-200:6; 152:15-123 (Q. Your opinion is specific to just compensation [in an eminent domain action]. Right? A. Yes.); *see also* Harper Depo., 152:15-23 (acknowledging that if the Court ruled that Plaintiff's loss of visibility is not a compensable taking, which is exactly what the Court ruled, it would be the equivalent of the "***judge throw[ing] my appraisal in the trash***.") (Emphasis added).

Harper's testimony denying any opinion on contract damages did nothing to help the State understand the contours of its potential exposure and make informed decisions about Nassiri's contract claims. And his 12/7/15 declaration, contradicting this sworn deposition testimony, doesn't change a thing.

3. Nassiri completely ignores the fact that he took the <u>exact opposite</u> position regarding prejudice during the limited bench trial.

In its motion, the State argues that Nassiri shouldn't be allowed to reverse his position regarding the late disclosure of information required under Rule 16.1. Mot., 6:14-15. It reminds the Court that Nassiri successfully argued to exclude the 7/27/99 public informational handout, which the State inadvertently failed to disclose during discovery. Mot., 6:23-7:17. Nassiri not only avoids the State's argument but attempts to convince this Court that the State wasn't prejudiced by his failure to disclose $12 million in alleged contract damages, when he previously claimed to have been prejudiced by the State's failure to disclose a public document, which he had in his possession and was substantially similar to three other handouts that were all admitted into evidence. The rules should be enforced equally against the parties and—like the State's evidence—Nassiri's damages evidence should be excluded.

4. Reopening discovery is not a feasible option.

Smelling trouble, in lieu of excluding his contract damages, Nassiri asks the Court to reopen discovery. There are numerous problems with his request. It would effectively require a

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"do over" on discovery and dispositive motion practice, with less than 6 months before trial. Pretrial motions are due in slightly more than four months, and reopening discovery to allow new expert disclosures, new rebuttal disclosures, and additional depositions simply can't be accomplished. Tens, if not hundreds, of thousands of dollars in prior attorney's fees, expert expenses, and deposition costs have already been incurred in connection with discovery on Nassiri's ***disclosed*** claims and damages, and the State shouldn't be forced to incur more as a result of Nassiri's rule violations.

Excluding Nassiri's evidence of ***contract damages*** will not terminate this case. Under the Court's prior rulings, his rescission claim will still go forward. And rescission is what he's sought from the outset. Nassiri never alleged breach of contract damages; he never cared enough about them to disclose them; and he only seeks to preserve them now because his inverse condemnation claim was dismissed. The Court shouldn't consider reopening discovery in this case.

B. Even if the Court doesn't sanction Nassiri by striking his damages evidence, Harper's opinion of severance damage must still be excluded as irrelevant.

1. As the above statement of facts demonstrates, Harper's expert report was prejudicial and misleading.

The parties agree on two facts: (1) that in his disclosed appraisal report, Harper identified a "before condition" that included the EA Flyover, and (2) that during his deposition, Harper changed his "before condition" from one that included the EA Flyover to one that contained no Flyover at all. Because the State's experts rebut Harper's ***disclosed opinion***, which purported to compare the EA Flyover to the As-Built Flyover, Harper rendered their rebuttal opinions inapplicable to his new opinion by changing his "before condition" during his deposition (on the last day of discovery).

The State argues that Harper shouldn't be allowed to disclose an opinion, have the State's experts rebut that opinion, completely change it on the last day of discovery, and still testify. In his opposition, Nassiri asks the Court to ignore this bait and switch and let Harper tell the jury that the State should pay Nassiri $10 million—***without rebuttal from the State's experts***. He argues that it's the State's own fault that it disclosed experts based on Harper's

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disclosed opinions and should've known that when Harper said that "[i]t 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***," that what he was really referring to was an unidentified aerial photo a few pages behind Figure 10F. Simply put, it would defy any notion of reason or fairness if the Court were to accept this argument.

a. Nassiri's argument that his "case has always considered that the 'before condition' was one without a flyover" is belied by the facts.

Nassiri contends that he's always maintained that his claims relate to "the building of ***any*** Flyover." Opps., 13:25 (emphasis added). He points to several out-of-context allegations in his complaint as purported proof. What he carefully doesn't cite to, however, is any of his many allegations that reveal the truth about his ***2012*** claims: that, at least as of ***2010***, they related to the "nature and configuration of the Flyover;" not the fact that any Flyover was built at all. *See, e.g.*, Acompl., ¶ 87 ("***NDOT, through its agent Las Vegas Paving, misrepresented the nature and configuration of the "fly over" in April 2010***") (emphasis added).

Nassiri's confusion seems to spawn from an apparent disconnect between his attorneys, Mr. Olsen and Mr. Ciciliano. Mr. Olsen, a partner in his law firm, engaged Morse. Ex. C, NV_Nassiri000960. Mr. Olsen was very clear about the appraisal assignment, which was confirmed by Nassiri himself:

> Q, Where did you get this page that says "Build Alternative Figure 10f"?
>
> A. Mr. Kiehlbauch [associate appraiser] gave it to me. I believe he got it from Mr. Nassiri.
>
> …
>
> Q. This Figure 10f, it depicts a flyover. Right?
>
> A. Yes.
>
> Q. And it was your understanding that Mr. Nassiri was concerned that the flyover that was actually built was different from the flyover depicted in this Figure 10f?
>
> A. Yes.

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> Q. And he was asking you to perform an appraisal about the difference in value if [the State] had built the proposed flyover in 10f versus the flyover that [the State] actually built. Right?
> A. Yes.
>
> (Morse Depo., 57:11-58:20).

Morse did as requested. He then transmitted his appraisal to Mr. Olsen, who presumably reviewed it before submitting it to the State with Nassiri's administrative claim and using it as the basis for his requested severance damages related to the ***design change***.

While Mr. Olsen engaged Morse, Mr. Ciciliano—the associate assigned to the case—engaged Harper. Ex. 4 to Opps. Unlike Morse, Harper wasn't given any instructions on the proper "before condition" to use in his appraisal:

> Q. Was it your understanding that [no Flyover was] the before condition that Nassiri and his counsel wanted you to use in this case?
>
> A. No, there was no discussion of that whatsoever.
> …
>
> Q. You were not given any instruction on the before condition?
>
> A. No.
> …
>
> Q. Nassiri's counsel never gave you - - identified the before condition. Right?
>
> A. That's correct.
>
> (Harper Depo., 157:9-13; 166:20-22; 169:23-170:1)

Then, when Harper identified the wrong "before condition" in his report, no one from Nassiri's side seemed to notice—or cared enough to tell the State:

> Q. In your letter of November 3rd, 2014, to Mr. Ciciliano, you state your extraordinary assumption that the before condition is… Build Alternative Figure 10f. Right?
>
> A. Right.
> …
>
> Q. So when you made that statement, did you hear from counsel that you're not supposed to use [Figure 10f] as your before condition; you're supposed to use the before condition as if no flyover was ever built?

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A. No.

Q. Did anyone on behalf of Nassiri contact you and say… you're referencing the wrong document as the before condition, it should be this other document?

A. They did not.

Q. Did they ever discuss the before condition with you after you transmitted your report?

A. No.

(Harper Depo., 158:15-159:23).

Even after reading Lowe and Sjostrom's reports, which both pertained to the disclosed Figure 10f comparison, no one advised the State about the supposed error. The State is not responsible for any confusion between Nassiri's attorneys.

At bottom, Nassiri gave the State every reason to believe that his claims related to the design change from the EA Flyover to the As-Built Flyover. In his pre-lawsuit communications with the State, Nassiri expressed concern over the design change. In his Amended Complaint, he alleged claims over the "nature and configuration" of the As-Built Flyover. In his expert disclosure, he asserted damages based on the difference in his property's value as an alleged result of the design change. Contrary to his argument now, Nassiri's case considered that the "before condition" was one with the EA Flyover; that is, until Harper's deposition. At that point, everything changed. Suddenly, his case was about the construction of ***any*** Flyover. But the true facts and history can't be erased. Nor should they be ignored.

b. Nassiri's argument about the timing of Sjostrom's expert report is a red herring.

As established above, Nassiri's pre-lawsuit complaints always pertained to the design change from the EA Flyover to the As-Built Flyover. *See* Ex. D, 12/7/10 Email (complaining that the "***new*** overpass [i.e., the As-Built Flyover] with a ***height of over 60 feet***" obstructed his property's visibility). In 2012, while looking into Nassiri's expressed concerns over the design change, the State commissioned Professional Engineer Jack Sjostrom from the Parsons Engineering firm to perform a technical engineering analysis, comparing the visibility of

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Nassiri's property under the EA Flyover with its visibility under the new, As-Built Flyover with a height of over 60 feet:

> Q. Back in [March] 2012 when you actually prepared this [analysis], did Mr. Terry mention Mr. Nassiri or the landowner?
>
> A. He mentioned that there was a landowner named Nassiri—yes.
>
> Q. And did he further describe why—what specifically Mr. Nassiri was raising as a concern? Is it what you just described, the wall height?
>
> A. Yeah, that the wall was taller than he [Nassiri] expected it to be, and that John [Terry] wanted something that presented what the walls would have looked like if the EA [Flyover] had been built versus what the walls look like that were built.
>
> Sjostrum Depo., 15:4-18 (Ex. 5).

Based on the additional retaining walls needed to support the adjacent collector roads under the EA Flyover, Sjostrom opined that Nassiri's view was actually ***better*** under the As-Built Flyover condition.

The State explained to Nassiri that his concerns over the ***design change*** were unfounded, but he refused to hear it. Nassiri continued to pursue his design change claim—first through his administrative claim and then in the present lawsuit. So, the State designated Sjostrom as an expert and produced his 2012 report in this case.

In rebuttal of Harper, the State also designated Shelli Lowe, MAI. Largely relying on Sjostrom's engineering analysis, which determined that Nassiri's view was actually better under the As-Built Flyover, Lowe concluded that Nassiri's alleged severance damages based on the design change were $0.

Because its experts rebut Harper's ***disclosed appraisal*** comparing the EA Flyover to the As-Built Flyover (as opposed to his new appraisal comparing the As-Built Flyover to no Flyover), the State doesn't have an expert who's disclosed opinions regarding the many flaws in Harper's new appraisal. If the Court allows Harper's bait and switch to stand, it'll effectively allow Harper to testify without rebuttal from the State's experts. This would be extremely

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prejudicial to the State, who did nothing but assume that Nassiri would follow Nevada's strict expert disclosure rules.

Without even mentioning Lowe's report, Nassiri argues that the State wouldn't be prejudiced because "Sjostrom prepared his report long before [Nassiri] even filed his complaint." Opps., 15:22-23. But the date on which the State's experts prepared their reports doesn't matter. What matters is that they ***disclosed*** those reports based on Harper's disclosed opinions. If Harper had disclosed a different opinion, or if Nassiri had designated additional experts, the State might not have designated Sjostrom—or it might've used his report differently. The point, however, is that the State designated its experts based on Nassiri's stated claims and expert disclosures, which all pertained to the design change from the EA Flyover to the As-Built Flyover. Allowing Nassiri to change course now would be extremely prejudicial to the State and shouldn't even be considered.

c. Harper's total change of opinion during his deposition (on the last day of discovery) wasn't a "typographical error."

In his report, Harper expressly states that his opinion of value is based on the change in visibility of Nassiri's property as a result of the difference between the interchange depicted in "Build Alternative Figure 10f," which includes the EA Flyover, and the existing interchange, which includes the As-Built Flyover. He doubles down on this statement by saying that "it is an ***extraordinary assumption*** that the Exhibit included in the Addenda of this report and titled 'I-15 South Corridor Improvements [EA] Build Alternative Figure 10f' is an accurate depiction of the subject in the before condition." As explained by Harper, "if [his] extraordinary assumption is wrong…, then it would affect or could affect [his] results." Harper Depo., 78:24-79:2.

Well, Harper's extraordinary assumption was wrong. Although the State had no way to know it, when Harper said that Figure 10f was an accurate depiction of his "before condition," he was really referring to a different addenda photo, which is neither identified nor referenced anywhere in his report. Nassiri explains that Harper believed that the lone map titled "Build Alternative Figure 10f", which he copied from Morse's appraisal, was really comprised of a series of several pages that included the different addenda photo and a third aerial photo of the

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interchange. Opps., 17:11-16. According to Nassiri, in Harper's mind, the never-referenced addenda photo "was clearly identified as the before condition because it bore a sticker that said 'Before.'" Opps., 17:19-21. None of this makes any sense.

It's baffling how Harper's "before condition" can be depicted in ***three different*** maps over four separate pages in Harper's report. Even if this explanation was somehow true, however, the State had no way to know that when Harper identified Figure 10f as his "before condition," he was really referring to a completely different map that was part of more maps that he copied from Morse's appraisal (which, by the way, used the same identified Figure 10f as his before condition). Even Harper concedes this point. Harper Depo., 162:10-12 ("And, yes, if I had been in [Lowe's] shoes and gotten my appraisal, I would have done the exact same thing that she's done [and responded to the disclosed opinions].")

Despite repeatedly recognizing their mistake, neither Nassiri nor Harper seem to grasp the severity of this situation:

> Q. The error was brought to your attention by [Lowe] in her rebuttal report. Right?
>
> A. Correct.
>
> …
>
> Q. And, at that point, did you realize that you had made a mistake in referencing the wrong document as the before condition?
>
> A. … ***Believe me, if I would have known that we would have spent so much time on this one little issue, I would have corrected the appraisal. I just didn't—I never would have imagined this mountain being made out of a molehill. It's amazing to me.***
>
> (Harper Depo., 161:6-22).

This is not a molehill issue. Harper changed ***the entire basis for his disclosed opinions*** during his deposition. He gutted the opinions of the State's rebuttal experts, who foolishly responded to Harper's disclosed opinions. Nassiri nonchalantly asks the Court to write it all off as some sort of "typographical error." The Court shouldn't punish the State for Nassiri's mistake. Nassiri—and Nassiri alone—should bear that burden. Harper must not be allowed to testify.

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2. Harper's testimony that he drove by the subject property and pulled a valuation out of thin air won't assist the jury.

To realize this, the Court need only look to Morse's appraisal. Despite appraising a noncompensable injury, Morse followed USPAP standards. He did not vaguely claim to "have researched the market" or rely on his memory from driving by the subject property several years before his appraisal report. Only Harper did that. Nassiri's attempt to justify this appraisal methodology falls well short of the standards set forth in *Hallmark*. Accordingly, Harper's testimony will not assist the jury.

3. Harper's opinion of severance damages is flat-out meaningless to any conceivable measure of contract damages.

a. Nassiri provides no relevant support for his assertions.

Nassiri absurdly argues that, because severance and contract damages are both compensatory in nature, then they are measured identically. Opps., 24. He contends that "in situations like the one here, where the alleged taking is also alleged in the alternative to be a breach of contract, the compensatory damages would be the same." Opps., 25:2-3. Of course, Nassiri doesn't cite to any case, statute, treatise, or other legal authority in support of these assertions. Rather, he exclusively relies on the improper 12/7/15 Declaration by Harper, who wrongly concludes that "[Nassiri's] contract damages would be equal to [his opinion] of just compensation." Ex. 12 to Opps., ¶ 8. The Court shouldn't ignore logic, reason, and fairness in favor of Harper's groundless, eleventh-hour declarations, which contradict his prior sworn testimony.

b. Nassiri can't recover alleged damages to property that wasn't conveyed as part of the 2005 Settlement Agreement.

Even if Nassiri could recover constitutional just compensation under his contract claims—which he can't—Harper's valuation conclusion includes damages to not only the 24-acre Exchange Property but Nassiri's entire 66-acre assemblage, which includes 42 acres of property that were not at issue in the 2005 Settlement Agreement. Although Nassiri contends that he can still recover damages to his other ***42 acres*** of property as backdoor, consequential damages related to the alleged breach of the Settlement Agreement, his argument lacks merit.

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Under Nevada law, contract damages "are intended to place the nonbreaching party in as good a position as if the contract had been performed." *Colorado Environments, Inc. v. Valley Grading Corp.*, 779 P.2d 80, 84 (Nev. 1989). By asking to present evidence on damages related to 42 acres of property that aren't part of the contract at issue, he's asking to be placed in a ***better*** position than if the Flyover had never been built. He's attempting to take advantage of an alleged breach of contract over 24 acres of his property and recover constitutional just compensation for 42 additional acres, which this Court has already held that he isn't entitled to receive.

Moreover, contract damages are limited by the loss naturally flowing from the breach and which was reasonably foreseeable as the probable result of the breach when the contract was made. Nev. Pattern Jury Instruction 13CN.46. Damages to ***42 acres*** of property that were not part of the Settlement Agreement don't flow from any breach of that contract. If someone else owned that property, he or she wouldn't be entitled to any damages related to the Flyover. And the same is true with respect to Nassiri.

Additionally, Nassiri didn't acquire at least some of those 42 acres until ***after*** he and the State entered into the Settlement Agreement. Thus, even if damages could flow to Nassiri's separate property, which they can't, it wasn't reasonably foreseeable that the State could be held liable for damaging property that Nassiri didn't own at the time of contracting.

Harper distinguishes none of this. He simply throws out a $10 million lump sum damages conclusion and Nassiri seeks to present it as evidence, regardless of the circumstances. If 24 acres are at issue, his damages are $10 million. If 66 acres are at issue, his damages are $10 million. If 58, 60, 62, or 64 acres are at issue, his damages are $10 million. While Nassiri may overlook the potentially multi-million-dollar damages difference based on the total number of acres at issue, the Court shouldn't.

Nor should it allow Nassiri to prevail on arguments that contradict the Court's orders in this case. Nassiri asserts that, "[i]n determining contract damages, the value of the view and visibility in 2005 is unimportant" and the amount that he paid for the Exchange Property in 2005 is "irrelevant." Opps., 26:17-19. But the Court has already ruled otherwise, determining

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that—in this case—the question of contract damages is "***whether Plaintiff would have paid less*** than the approximately $24 million that he agreed to pay" in 2005 had he foreseen that the Flyover would be "reconfigured" in 2010. 7/26/15 Order (emphasis added). There can be no dispute; Harper's opinion of severance damages is irrelevant to this question and must be excluded.

4. Everything else aside, Harper's valuation opinion relates to a very specific date of value (4/17/13) that, by Harper's own admission, simply can't be applied to any other dates.

Even ignoring the countless other problems above, at most, Harper would still only be able to testify about the 66-acre assemblage's value as of April 17, 2013. A valuation opinion as to any other date would—under USPAP—require him to conduct a whole new appraisal. Harper Depo., 69:2-4 ("If the date of value changes, I would have to do a new analysis as of whatever that date of value is."). Unless Nassiri's claimed contract damages were to somehow accrue on this specific date, which is legally impossible, Harper's testimony is irrelevant.

Although Nassiri has ***never*** identified the precise date on which the State allegedly breached the 2005 Settlement Agreement, he concedes that it wasn't on April 17, 2013—or even on a date within ***three years*** of April 17, 2013. Yet despite recognizing that this date has no connection to his claimed contract damages, he brazenly asks the Court to let him present evidence of those damages as of this irrelevant date.

Nassiri offers no basis in logic or law for allowing him to unilaterally pick the date on which his alleged damages are measured. He contends that "where special circumstances show proximate damages of an amount greater than existed on the date of the breach, a date different than the time of breach may be fixed for establishing damages," which is the case here. Opps., 26:27:3, quoting *Cheyenne Const., Inc. v. Hozz*, 720 P.2d 1224, 1227 (Nev. 1986). He is wrong.

Cheyenne Const. merely held that the ***cost to cure*** a certain constructional defect could be measured ***at the time of trial***. 720 P.2d at 1227. Its holding is expressly limited to the "measure of damages for ***breach of a construction contract***." *Id.*, citing *Fairway Builders, Inc. v. Malouf, Etc.*, 603 P.2d 513, 526 (Ariz. Ct. App. 1979) (emphasis added). Even if it weren't,

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damages in *Cheyenne Const.* were measured as of ***the time of trial***, not the date that the summons was served. If that case justified measuring damages on a different date of value here—which it doesn't—it offers no support for selecting the date on which Nassiri was finally able to comply with Nevada's rules regarding service of process on the State.

Moreover, the reason that *Cheyenne Constr.* measured breach of contract damages as of the date of trial was because the damages were proximately caused by the need to ***cure a constructional defect***. And the cost to cure that defect was higher at the time that the plaintiff ***proved his claim*** (i.e., the time of trial). It wasn't a random date that just happened to fit in with the plaintiff's ever-changing claims and disclosures.

Unlike *Cheyenne Constr.*, Nassiri's claimed contract damages aren't proximately greater as of April 17, 2013. Other than the possibility that his property's value was higher on April 17, 2013, than on the alleged date of breach, there is nothing about this particular date that actually ***caused*** Nassiri's claimed contract damages to increase. Its relevance is limited to Nassiri's eminent domain claim, which has since been dismissed.[3] Nassiri's failure to disclose his contract damages—or produce any relevant evidence of those damages—is not a "special circumstance" allowing him to cherry pick the date used to measure his claimed contract damages.

Finally, in a last ditch effort to save Harper's irrelevant testimony—Nassiri argues that Harper's opinion that the Flyover diminished his property's value by 10% on April 17, 2013, "would hold true in 2010." Opps., 27:9-10. Even though he didn't designate Morse as an expert, Nassiri contends that "because Harper considered and relied upon Morse's 2010 appraisal [which Harper denied during his deposition], Harper can opine as to the value of that 10% in 2010." Opps., 27:10-11.

---

[3] The reason that just compensation is generally valued as of the date of service is because that is the date on which the property owner (and the world) knows that the property will be taken. *See Manke v. Airport Authority of Washoe County*, 710 P.2d 80, 81 (Nev. 1985). This principle doesn't logically apply in a breach of contract case.

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At the risk of overusing the term "absurd" to describe Nassiri's arguments, this one may top them all. Nassiri never even hinted that he'd seek damages at trial based on his property's alleged value in 2010. Nor did he disclose any expert opinions on the topic. If Nassiri intended on presenting evidence of millions of dollars in damages as of 2010, the State was entitled to know about it, conduct discovery on it, and designate experts to rebut it.

Even ignoring this gross prejudice to the State, as demonstrated in Section I(E) above, the laws of mathematics prove that Harper's happenstance 10% diminution in value would ***not*** hold true in 2010 and, in fact, it differs from the 7.5% diminution in value found by Morse's 2010 appraisal. For this reason alone, it cannot be applied to anyone else's opinion regarding the property's value on any date.

This is especially true with respect to Morse's appraisal. Nassiri chose not to designate Morse as an expert. He went with Harper. He cannot now mix and match Harper and Morse's two different opinions—neither of which is relevant to his claimed contract damages—to come up with one expert opinion that suits his needs. Nassiri made his claims; he disclosed his evidence; and Harper's 4/17/13 appraisal is no longer relevant.

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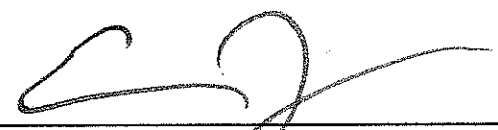
III.

CONCLUSION

Nassiri never disclosed a computation of claimed contract damages. As a sanction, he should be precluded from offering any evidence on those damages. In the alternative, and at a minimum, the irrelevant and prejudicial testimony of Keith Harper, MAI should be excluded.

DATED this 29 day of December, 2015.

Respectfully submitted, by:



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Certificate of Service

I hereby certify that on the 29th day of December, 2015, I served a true and correct copy of the above and foregoing **REPLY TO NASSIRI'S OPPOSITION TO 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.

Sandra L Sell

An employee of Kemp, Jones & Coulthard, LLP

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EXHIBIT A

Ground Lease Agreement

THIS LEASE AGREEMENT IS entered into on April 15, 2010 by and between **Nassiri Living Trust, Fred Nassiri Trustee (Landlord) and Las Vegas Paving Corporation,** a Nevada Corporation, (Tenant).

Tenant hereby agrees to lease from Landlord, and Landlord hereby agrees to lease to Tenant the Property as described below situated in, Clark County, Nevada, according to the following terms and conditions:

PROPERTY: The Tenant will utilize a Fourteen and 81/100 (14.81) acre portion of the Property known as APN# 177-08-803-013 area outlined in Red on Attachment "A" (the Site). Tenant will additionally utilize a portion of the paved access road along referenced APN# for Ingress / Egress to Las Vegas Boulevard. (Tenant agrees to fence the Property to confine use area).

USE: Tenant will occupy the site for the purpose of storing and staging equipment and/ or materials for the project known as I-15 South Corridor Improvements (the Project).

TERM of LEASE: The term of the lease shall be for 24 months.

LEASE TERMINATION: This lease may be terminated by either party upon sixty day (60) written notice by the terminating party to the other party.

SECURITY DEPOSIT: Tenant shall deposit with Landlord upon execution of this lease a security deposit in the amount of Ten Thousand Dollars ($10,000). The security deposit may not be used for or applied to rent payment. Landlord shall return security deposit, less any damages, 30 days after final Property turn over Tenant move-out.

MONTHLY RENT: Tenant agrees to pay monthly rent in the amount of Ten Thousand Dollars ($10,000) per month. Monthly rent shall be due and payable in advance on or before the 5th day of each month. A late charge of eight percent (8%) of the monthly rent shall be assessed for rent payments received after the 6th day of the month plus interest shall accrue on all amounts due at 10% until paid.

PAYMENT ADDRESS: All deposits and rent payments shall be made payable to and shall be mailed or delivered to the following address: Nassiri Living Trust – 6590 Bermuda Road – Las Vegas, NV 89119.

TENANT ADDRESS: Las Vegas Paving - 3920 West Hacienda Ave. - Las Vegas, NV 89118.

LANDLORD IMPROVEMENTS: Landlord shall deliver the Property in an "As Is" condition. Unfenced raw land with no utilities. (Landlord and Tenant agree Tenant at no cost to Landlord will remove west end of property mound of dirt previously known as Old Blue Diamond Road access ramp).

SUBLETTING: None

CONDITIONS:

A) Indemnity: The Tenant agrees to release, defend, indemnify and hold harmless the Landlord from and against any claims and demands for losses or damages from the Tenants use of the Property (including claims for property damage, personal injury or wrongful death) by the Tenant or by persons acting under the authority of the Tenant, arising from or growing out of any willful act or negligence of the Tenant in connection with their use or occupancy of the Property including any Tenant use of Property noted by

APN's in Attachment "B". Tenant, as a material part of the consideration to Landlord, hereby assumes all risk or damage to the Property or injury to persons, in, upon or about the Property arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord and indemnifies Landlord for the same.

B) **Property Turn Over:** Tenant will remove all personal property and surrender the Property in its original safe condition and as good condition as when received, including any roads and be responsible for any damage resulting from the use of the Property.

C) **Dust Control:** Tenant will be responsible for all dust control and permits, and will be responsible for indemnifying Landlord for any and all fines or sanctions against the Property as a result of Tenant's use and after final use the Tenant will provide the necessary measures including watering the site or emergent chemical treatment to control future dust emissions.

D) **Responsibility:** Tenant will refrain from doing anything on the Property which could harm the Property including refraining from anything which could create hazardous substances on the Property and Tenant agrees to indemnify and be responsible for any damage to the property including any hazardous substances caused by Tenant and shall immediately take steps to remediate any problem to the Property caused by Tenant or required by governmental entities.

DEFAULTS AND REMEDIES:
The occurrence of any of the following events shall constitute a default of this Lease by Tenant:

a) The failure by Tenant to make any payments required by this Lease, where such failure shall continue for 5 days after written notice of such has been given from Landlord to Tenant;
b) The failure by Tenant to observe or perform any of the terms and conditions required by this Lease, where such failure shall continue for 5 days after written notice of such has been given from Landlord to Tenant.

In the event of default by Tenant, Landlord may, without further notice and at any time thereafter:

a) Terminate Tenants right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of Property to Landlord. In such case, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including all rent, charges or fees paid in connection with this Lease.
b) Pursue any other remedy now or hereafter available to Landlord under the law.
c) 30 days after the Landlord delivers notice to Tenant to remove all personal or professional Property, Landlord shall be entitled to dispose of any such personal or professional Property after default without further notice or approval of Tenant.

INSURANCE: The Tenant shall provide, carry and maintain at its own expense, comprehensive general liability insurance, including contingent liability, contractual liability and products and completed operations liability, covering all activities conducted on the Landlords Property by the Tenant. The limits of liability shall be not less than: Bodily Injury and Property Damage Liability - $5,000,000.00 each occurrence; and Personal Injury Liability - $5,000,000.00 each occurrence. If the policy is written on a "claims made" form, it shall provide for an extended reporting period of not less than one (1) year. The Landlord shall be included as additional insured on all of the Tenants insurance policies required herein. All policies shall provide for prior notice of material change in coverage, cancellation, or non-renewal and coverage shall be primary and not excess or contributory to any similar coverage carried by the Landlord or any other additional insured. The Tenant will furnish the Landlord with certificates of insurance evidencing the above insurance coverage.

ORDINANCES & STATUTES: Tenant shall comply with all statutes, ordinances, and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Property, occasioned by or affecting the use thereof by Tenant.

GOVERNING LAW: This Agreement shall be governed and construed in accordance with the laws of the State of Nevada. The language in all parts of this Agreement shall be construed under the laws of the State of Nevada according to its normal and usual meaning.

ATTORNEYS FEES: In the event of any litigation or other proceedings between the parties concerning this Agreement or the Property, the prevailing party shall be entitled to the payment by the non-prevailing party of all of its reasonable attorneys' fees, court costs, and litigation expenses.

ENTIRE AGREEMENT: This Agreement, constitutes the entire agreement between Landlord and Tenant concerning the use of the Property, and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.

In witness whereof, the parties have caused this lease to be duly executed by as of the dates written above.

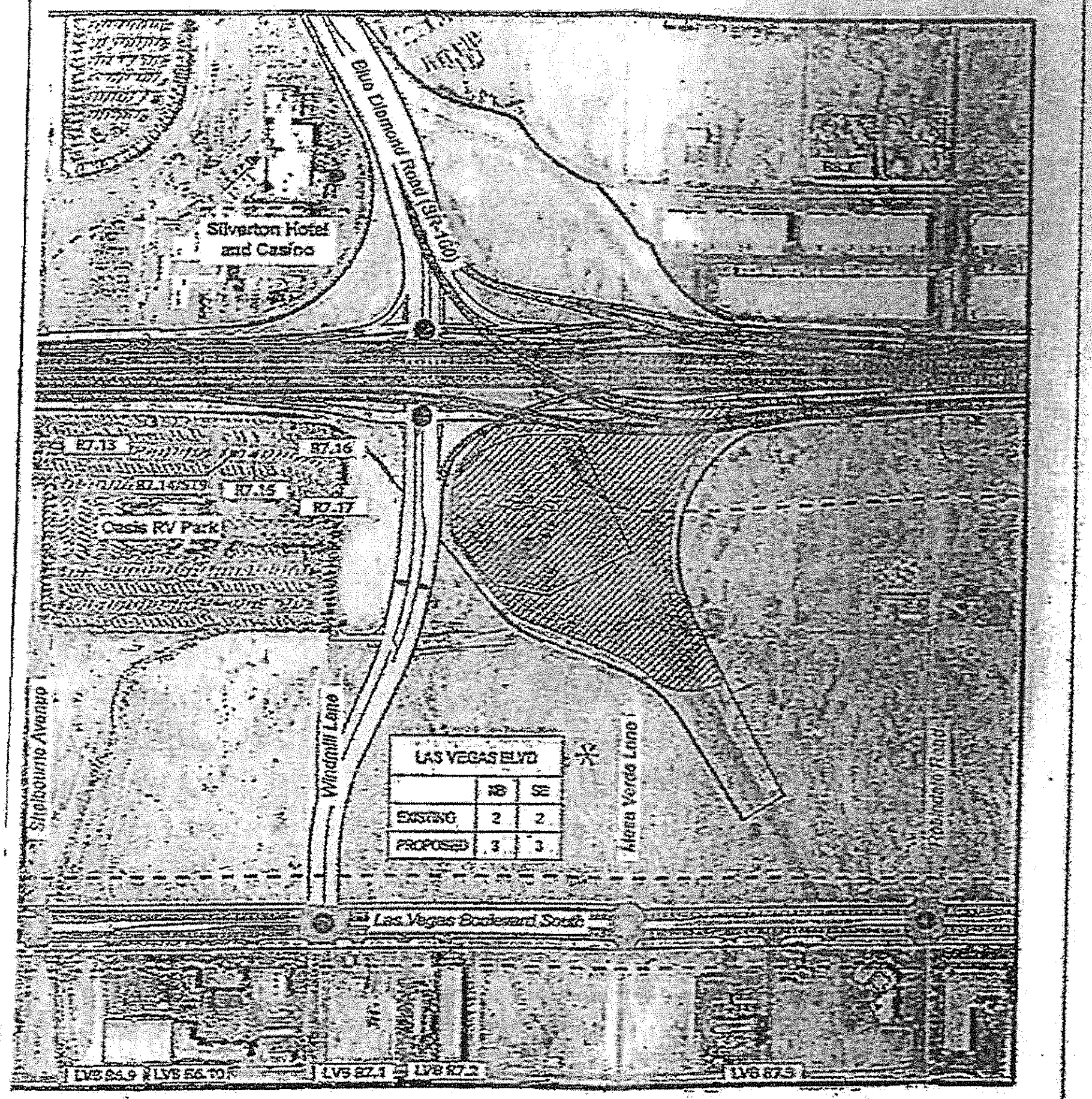
Agreed and Accepted
Landlord,
Nassiri Living Trust

By: Fred Nassiri, its Trustee

Agreed and Accepted
Tenant,
Las Vegas Paving

4/7/10
By: Authorized Signature for Las Vegas Paving

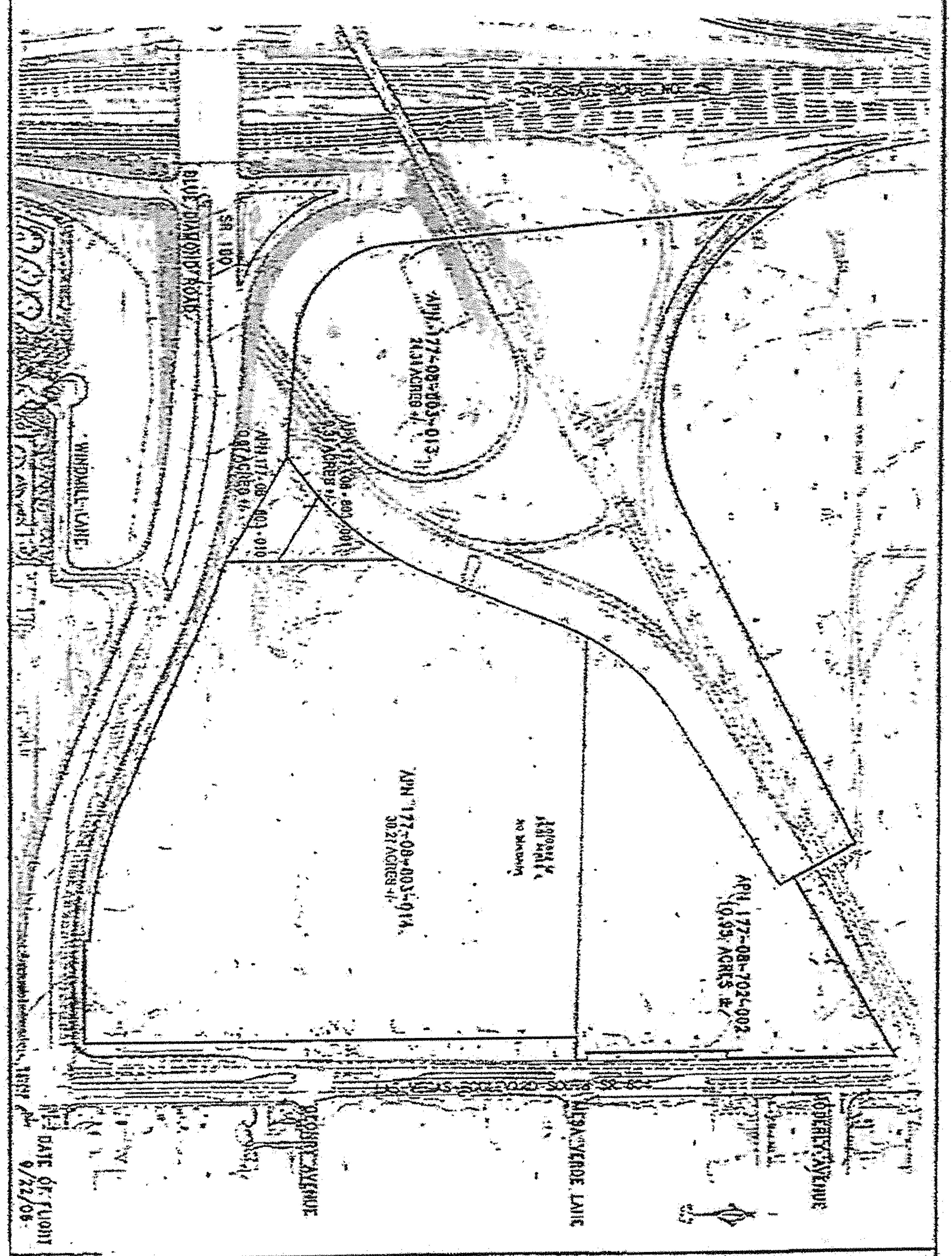
Attachment "A"



14.81 ACRES

Nassiri000125

Attachment "B"



BLUE DIAMOND INTERCHANGE
NASSIRI LIVING TRUST

BOUNDARY-TOPO EXHIBIT

Carter-Burgess

EXHIBIT B

LAS VEGAS PAVING

PAT SHEEHAN'S RESPONSE

JOSEPH W BROWN
ALBERT F PAGNI
JOHN P SANDE, III
WILLIAM J RAGGIO
GARY R GOODHEART
MICHAEL E BUCKLEY
RICHARD F JOST
DOUGLAS M COHEN
KEVIN R STOLWORTHY
JAMES L WADHAMS
JODI R GOODHEART
PAUL A LEMCKE
MICHAEL G. ALONSO
ANN MORGAN
KRIS T. BALLARD
WILLIAM C. DAVIS, JR
KARL L NIELSON
PATRICK J SHEEHAN
JOHN P DESMOND
SCOTT M SCHOENWALD
CONSTANCE L AKRIDGE
RICHARD M. TRACHOK, II
EDWARD M GARCIA
ELIZABETH FIELDER
MOLLY MALONE REZAC
BRIAN R IRVINE
MATTHEW T MILONE
BRETT J SCOLARI
AMANDA J COWLEY
TRACY A DIFILLIPPO

CLIFFORD A. JONES (1912 - 2001)
HERBERT M JONES (1914 - 2008)
GEORGE L. VARGAS (1909 - 1988)
JOHN C BARTLETT (1910 - 1982)
LOUIS MEAD DIXON (1910 - 1993)
GARY F FOREMASTER (1963 - 1998)

JONES VARGAS

ATTORNEYS AT LAW
3773 HOWARD HUGHES PARKWAY
THIRD FLOOR SOUTH
LAS VEGAS, NEVADA 89169

TEL (702) 862-3300 FAX (702) 737-7705

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JUSTIN J BI
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CONOR P I
BENJAMIN W KEN
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VAR E LORDAH

MELVIN D CLOSI
RICHARD G. BAR

CATHERINE A SOURK
EXECUTIVE DIRECTOR

E-mail: pjs@jonesvargas.com

Direct (702) 862-3320

September 20, 2011

Corey Newcome, P.E.
Las Vegas Paving Corporation
3920 W. Hacienda Ave.
Las Vegas, NV 89118

Re: Ground Lease Agreement ("Agreement")
Nassiri Living Trust ("Landlord")
Las Vegas Paving Corp. ("Tenant")

Dear Corey:

Our firm has been retained by the Nassiri Living Trust ("Nassiri") to write you this letter concerning the Ground Lease Agreement dated April 15, 2010. As you are aware, Mr. Nassiri signed that Agreement based on your representation that only 14.81 acres of Nassiri's property would be used, that only certain things would be done with respect to the use of that property (no actual construction) and that you were using it for storage in connection with the construction of certain improvements with respect to the interchange. In violation of your representations and the terms of the Agreement, the entirety of the parcel or 24.3 acres are being utilized. It has also been noted that a portion of the parcel (approximately 2 acres) appears to be contaminated. In addition, Mr. Nassiri recently gave a tour of the property to potential buyers and noted the access gate facing Las Vegas Boulevard was padlocked. The gate was definitely outside the boundaries as depicted in the Agreement and therefore prevented Mr. Nassiri access to the unleased portion of the entire parcel. Finally, it appears that the improvements being made to the interchange are far greater than represented by you and will cause Mr. Nassiri substantial damages such that he would have never allowed you the use of the property had he known about the extent of these improvements.

Mr. Nassiri wishes to meet with you to discuss these issues and this letter shall constitute notice of a violation of the terms of the Lease. Certainly, additional compensation is necessary for both past use of the additional space as well as any future use of the additional space. In addition, damages need

RENO OFFICE
300 EAST SECOND STREET, SUITE 1510, RENO NEVADA 89501 TEL (775) 786-5000 FAX (775) 786-1177
*LICENSED IN WISCONSIN ONLY

to be paid for the additional use of the property and the fact that Las Vegas Paving misrepresented what it was building at the time it got Mr. Nassiri to enter into the Lease. Mr. Nassiri expects to receive a call within five days of the date of this letter in order to avoid the undersigned from instituting any legal proceedings. Mr. Nassiri can be reached at 286-5200.

Sincerely,

JONES VARGAS

Patrick J. Sheehan, Esq.

PJS:emp

EXHIBIT C

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

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[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.

$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

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[3] *See* Quit Claim Deed, attached hereto as Exhibit 3.

[4] *See* Settlement Agreement attached hereto as Exhibit 4.

$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.

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[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.

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 1-15 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 1-15 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

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[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.

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.

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[9] *See* photographs attached hereto as Exhibit 8.

[10] *See* Appraisal attached hereto as Exhibit 9.

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 ($23,396,223[11]), 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. Nasssiri paid $23,396,223 to Nevada Title Co. to close escrow, which included all applicable title fees.

(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.

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

07662-015/1557720

EXHIBIT 7

NV_NASSIRI000948

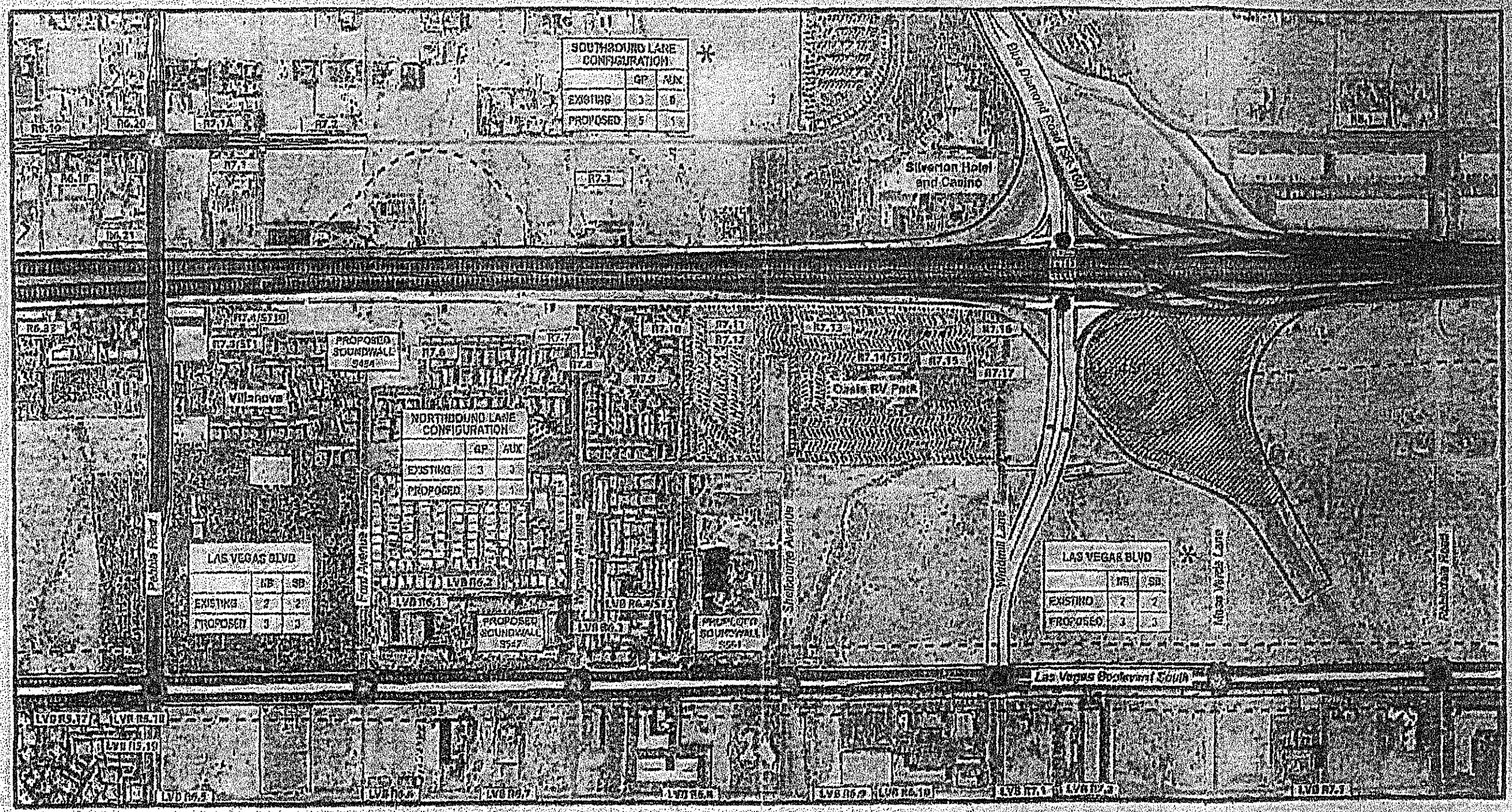

EXHIBIT 8

NV_NASSIRI000950

2/18/2011

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 08:45 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No. 70098

APPENDIX VOLUME 11, part 3

TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

ADAM PAUL LAXALT, ESQ.
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WILLIAM L. COULTHARD, ESQ.
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ATTORNEYS FOR PETITIONER

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

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

EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of Nevada, County of Clark, described as follows:

PARCEL I: (177-08-803-013)

The following is a legal description provided by Nevada Department of Transportation dated June 2, 2005:

Lying and being in the County of Clark, State of Nevada, and more particularly described as being a portion of Government Lots 30, 31, 32, 33, 35, 38, 39, 40, all of Government Lot 34 and a portion of the East One-Half (E ½) of the Southeast One-Quarter (SE ¼), all in Section 8, Township 22 South, Range 61 East, M.D.M., and more fully described by metes and bounds as follows, to wit:

Commencing at the found R/R Spike with Punch mark, located at the intersection of Las Vegas Boulevard and Mesa Verde Lane. Accepted as being the South One-Sixteenth corner common to said Section 1 and Section 8, Township 22 South, Range 61 East, M.D.M., shown and delineated as a "R/R Spike" on that certain Record of Survey for Clark County, No. 00414, filed for record on June 27, 1997, file 089, Page 086 of Surveys, Official Records Book No. 970627, Clark County, Nevada Records; Thence South 0° 13'50" East, along the East line of said Section 8, a distance of 1,322.43 feet, (Record N. 0°00'27" East – 1,322.49 feet per said Record of Survey), to a found R/R Spike with punch mark, located at the intersection of Las Vegas Boulevard and Windmill Lane, accepted as being the corner common to Sections 8, 9, 17, and 16, Township 22 South, Range 61 East, M.D.M., shown and delineated as a "R/R Spike" on said Record of Survey; thence North 69°42'39" West, a distance of 1,702.09 feet to the Point of Beginning, Said Point of Beginning described as being on the right or Easterly Right-of-Way line of IR-15, 845.56 feet right of and at right angles of Highway Engineer's Station "LNE" 384+79.89 P.O.T.; Thence along said right or Easterly right-of-way line the following Three (3) courses and distances:

1. North 85°40'00" West – 300.00 feet;
2. From a tangent which bears the last described course, curving to the right with a radius of 260.00 feet, through an angle of 80°26'12", an arc distance of 365.01 feet;
3. North 5°13'48" West – 984.40 feet to the former right or Easterly right-of-way line of said IR-15;

thence along said former right or Easterly right-of-way line the following Three (3) courses and distances:

1. From a tangent which bears South 30°05'59" East, curving to the left with a radius of 800.00 feet, through an angle of 85°41'24", an arc distance of 907.82 feet;
2. North 63°12'37" East – 500.00 feet;
3. North 63°05'14" East – 441.62 feet;

thence South 29°09'04" East a distance of 215.92 feet to the former right or Easterly right-of-way line of said IR-15;

thence along said former right or Easterly right-of-way line the following Five (5) courses and distances:

1. South 58°42'57" West – 499.31 feet;
2. From a tangent which bears the last described course, curving to the left with a radius of 600.00 feet, through an angle of 35°52'12", an arc distance of 375.70 feet;
3. South 21°50'45" West – 336.79 feet;
4. From a tangent which bears the last described course, curving to the right with a radius of 800.00 feet, through an angle of 30°05'10", an arc distance of 420.31 feet;
5. South 51°55'55" West – 76.01 feet to the Point of Beginning;

The basis of bearing for this description is the Nevada State Plane Coordinate System, NAD 83/94 Datum, East Zone as determined by the State of Nevada, Department of Transportation.

The above described parcel shall have no access in and to IR-15. Subject to any and all existing utilities, whether of record or not.

EXCEPTING THEREFROM that portion thereof conveyed to the County of Clark by that certain "Grant, Bargain, Sale Deed" recorded February 22, 2008 in Book 20080222 as Document No. 0004791, of Official Records.

TOGETHER WITH that portion vacated by "Order of Vacation" recorded February 22, 2008 in Book 20080222 as Document No. 0004790, of Official Records.

PARCEL II: (177-08-803-014)

The Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) of Section 8, Township 22 South, Range 61 East, M.D.M.

EXCEPTING THEREFROM said land as conveyed to the State of Nevada by Deed recorded March 14, 1969 in Book 235 as Document No. 161000 of Official Records.

ALSO EXCEPTING THEREFROM Las Vegas Boulevard as it currently exists.

FURTHER EXCEPTING THEREFROM said land as conveyed to the Clark County by Deed recorded December 21, 1995 in Book 951221 as Document No. 01191 of Official Records.

FURTHER EXCEPTING THEREFROM said land as conveyed to the State of Nevada by Quitclaim Deed recorded August 27, 2004 in Book 20040827 as Document No. 0002484 of Official Records.

FURTHER EXCEPTING THEREFROM said land by "Final Order of Condemnation", recorded September 22, 2004 in Book 20040922 as Document No. 0001978, of Official Records, more particularly described as follows:

Being a portion of the East One-Half (E ½) of the Southeast Quarter (SE ¼) of Section 8, Township 22 South, Range 61 East, M.D.M., and the individual parcel being more particularly described by metes and bounds as follows, to wit:

Beginning at a point on the right or Northerly Right-of-Way line of SR-160 (Blue Diamond Road) 92.05 feet right of and at right angles to Highway Engineer's Station "BDI" 11+00.38 P.O.T. and on the left and Westerly Right-of-Way line of SR-604 (Las Vegas Blvd.) 100.00 feet left of and at further described as bearing North 47°32'21" West, a distance of 135.31 feet from the Southwest corner of Section 8, Township 22 South, Range 61 East, M.D.M.;

thence South 0°14'13" East, along said left or Westerly Right-of-Way line of SR-604, a distance of 39.67 feet to the Northeast corner of that parcel of land conveyed to County of Clark as "Windmill Lane" by that certain Grant, Bargain, Sale Deed recorded on December 21, 1995, in Book 951221 as Document No. 01191 of Official Records of Clark County, Nevada; thence North 88°46'59" West, along a line parallel with and 50.00 feet distant from the South Section line of said Section 8, a distance of 295.00 feet; thence South 1°13'01" West a distance of 25.00 feet; thence North 88°46'59" West, along a line parallel with and 25.00 feet distant from said South Section line, a distance of 520.92 feet to a Point on the Left or Southerly Right-of-Way line of said SR-160; thence along said Left or Southerly Right-of-Way line the following Three (3) courses and distances:

1. North 67°34'55" West 294.80 feet;
2. from a tangent which bears the last described course, curving to the left and with a radius of 80.00 feet, through an angle of 112°35'20", an arc distance of 157.23 feet;
3. South 0°11'15" East – 30.08 feet to a point on the Northerly boundary line of said "Windmill Lane" Parcel; thence North 88°46'59" West, along said Northerly boundary line, a distance of 61.06 feet to a point on the West line of the East ½ of the Southeast One-Quarter (SE ¼) of said Section 8; thence North 0°10'32" West, along said West line, a

distance of 383.49 feet to a point on said right of Northerly Right-of-Way line of SR-160; thence along said Northerly Right-of-Way line the following Seven (7) courses and distances:

4. from a tangent which bears south 73°23'15" East, curving to the right with a radius of 3,120.00 feet, through an angle of 0°25'18", an arc distance of 22.98 feet;
5. from a tangent which bears South 73°08'55" East, curving to the right with a radius of 1,455.00 feet, through an angle of 9°41'44", an arc distance of 247.91 feet;
6. South 67°17'49" East – 380.52 feet;
7. South 22°42'11" West – 3.00 feet;
8. from a tangent which bears South 67°17'49" East, curving to the left with a radius of 1,095.96 feet, through an angle of 19°42'29", an arc distance of 378.97 feet;
9. South 0°00'00" East – 13.50 feet;
10. North 90°00'00" East – 253.52 feet to the Point of Beginning

FURTHER EXCEPTING THEREFROM that portion as conveyed to Clark County by Deed recorded February 22, 2008 in Book 20080222 as Document No. 004791, of Official Records.

PARCEL III: (177-08-702-002)

The Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) lying Southerly of Blue Diamond Road as it currently exists of Section 8, Township 22 South, Range 61 East, M.D.M.

EXCEPTING THEREFROM said land as conveyed to the State of Nevada by Deed recorded May 25, 1960 in book 245 as Document No. 188822 of Official Records.

ALSO EXCEPTING THEREFROM Las Vegas Boulevard as it currently exists.

FURTHER EXCEPTING THEREFROM said land on that certain Deed conveyed to the State of Nevada, recorded March 14, 1969 in Book 235 as Document No. 191000, of Official Records.

AND FURTHER EXCEPTING THEREFROM that portion of said land as conveyed by "Final Order of Condemnation" recorded December 23, 1999 in Book 991223 as Document No. 01162, of Official Records.

PARCEL IV: (177-08-803-001)

Government Lot Thirty-three (33) in the Southwest Quarter (SW¼) of the Southeast Quarter (SE ¼) of Section 8, Township 22 South, Range 61 East, M.D.M.

EXCEPTING THEREFROM that portion conveyed to the State of Nevada for Interstate Route 15 by Deed recorded January 26, 1960 in Book 228 as Document No. 186250, of Official Records.

PARCEL V: (177-08-803-010)

Government Lot Forty (40) in the Southwest Quarter (SW ¼) of the Southeast Quarter (SE ¼) of Section 8, Township 22 South, Range 61 East, M.D.M.

EXCEPTING THEREFROM that portion conveyed to the State of Nevada for Interstate Route 15 by Deed recorded March 17, 1960 in Book 236 as Document No. 191482, of Official Records.

ALSO EXCEPTING THEREFROM the Easterly thirty (30.00) feet as conveyed to Clark County by Deed recorded April 23, 1974 in Book 419 as Document No. 378548, of Official Records.

FURTHER EXCEPTING THEREFROM that portion as conveyed to Clark County by Deed recorded June 25, 1997 in Book 970625 as Document No. 00855, of Official Records.

FURTHER EXCEPTING THEREFROM that portion as conveyed to Clark County by Deed recorded February 3, 1998 in Book 980203 as Document No. 00542, of Official Records.

FURTHER EXCEPTING THEREFROM that portion conveyed to the State of Nevada by Deed recorded August 27, 2004 in Book 20040827 as Document No. 02484, of Official Records.

AND FURTHER EXCEPTING THEREFROM that portion of said land as shown by that certain "Judgment and Final Order of Condemnation" recorded September 27, 2005 in Book 20050927 as Document No. 05239, of Official Records.

AND FURTHER EXCEPTING THEREFROM that portion of said land as conveyed by Deed recorded October 30, 2006 in Book 20061030 as Document No. 02044, of Official Records.

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a. 177-08-803-001; 177-08-803-010
   b. 177-08-803-010; 177-08-803-013
   c. 177-08-803-013
   d.

2. Type of Property:
   a. ☒ Vacant Land b. ☐ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDER'S OPTIONAL USE ONLY
Book: Page:
Date of Recording:
Notes:

3. a. Total Value/Sales Price of Property $
   b. Deed in Lieu of Foreclosure Only (value of property) ( )
   c. Transfer Tax Value: $
   d. Real Property Transfer Tax Due $

4. If Exemption Claimed:
   a. Transfer Tax Exemption per NRS 375.090, Section exempt 3
   b. Explain Reason for Exemption: re-record document no. 20131113000031912 to correct scrivenors error - spelling of grantors name

5. Partial Interest: Percentage being transferred: %
The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: Stewart Title Company Capacity: as agent

Signature: Capacity:

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Fred Nassiri, Trustee
Address: 2035 Helm Drive
City: Las Vegas
State: NV Zip: 89119

BUYER (GRANTEE) INFORMATION
(REQUIRED)

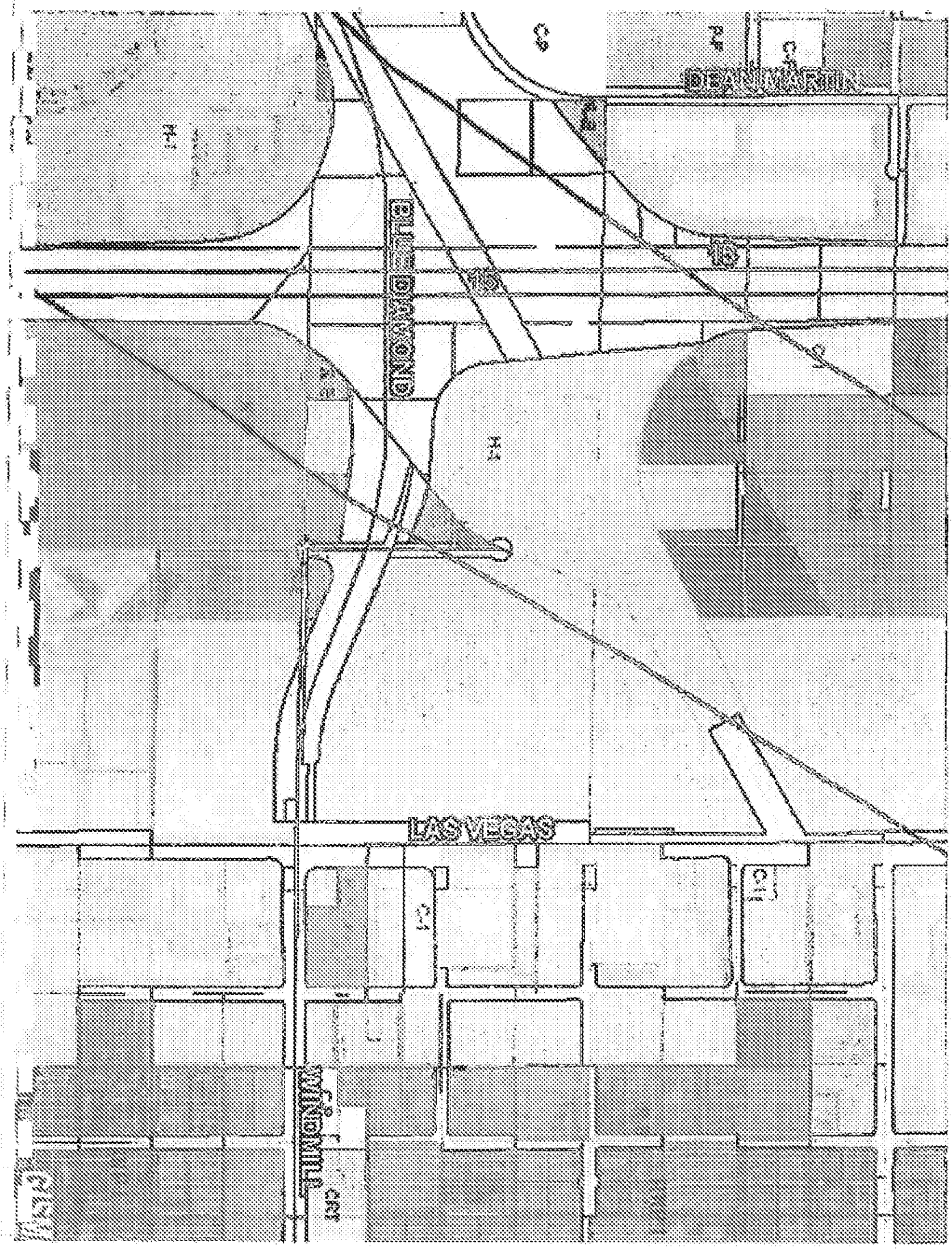
Print Name: LVSSD, LLC
Address: 2035 Helm Drive
City: Las Vegas
State: NV Zip: 89119

COMPANY REQUESTING RECORDING:
Print Name: Stewart Title Company(314)6286
Address: 626 E Warm Springs Rd, Ste 110
City: Las Vegas

Escrow #:
State: NV Zip: 89119

As a public record this form may be recorded/microfilmed

Valuation Consultants
File No. V-14-64A (Revised)


C-2
R-3
C-1
R-4
ENCANTO
LAS VEGAS
WASHINGTON

30.40.320 H-1 Limited Resort and Apartment District.

a. Purpose. The H-1 Limited Resort and Apartment District is established to provide for the development of gaming enterprises, compatible commercial, and mixed commercial and residential uses, and to prohibit the development of incompatible uses that are detrimental to gaming enterprises. See Table 30.56-2 (Design Standards) for additional design standards.

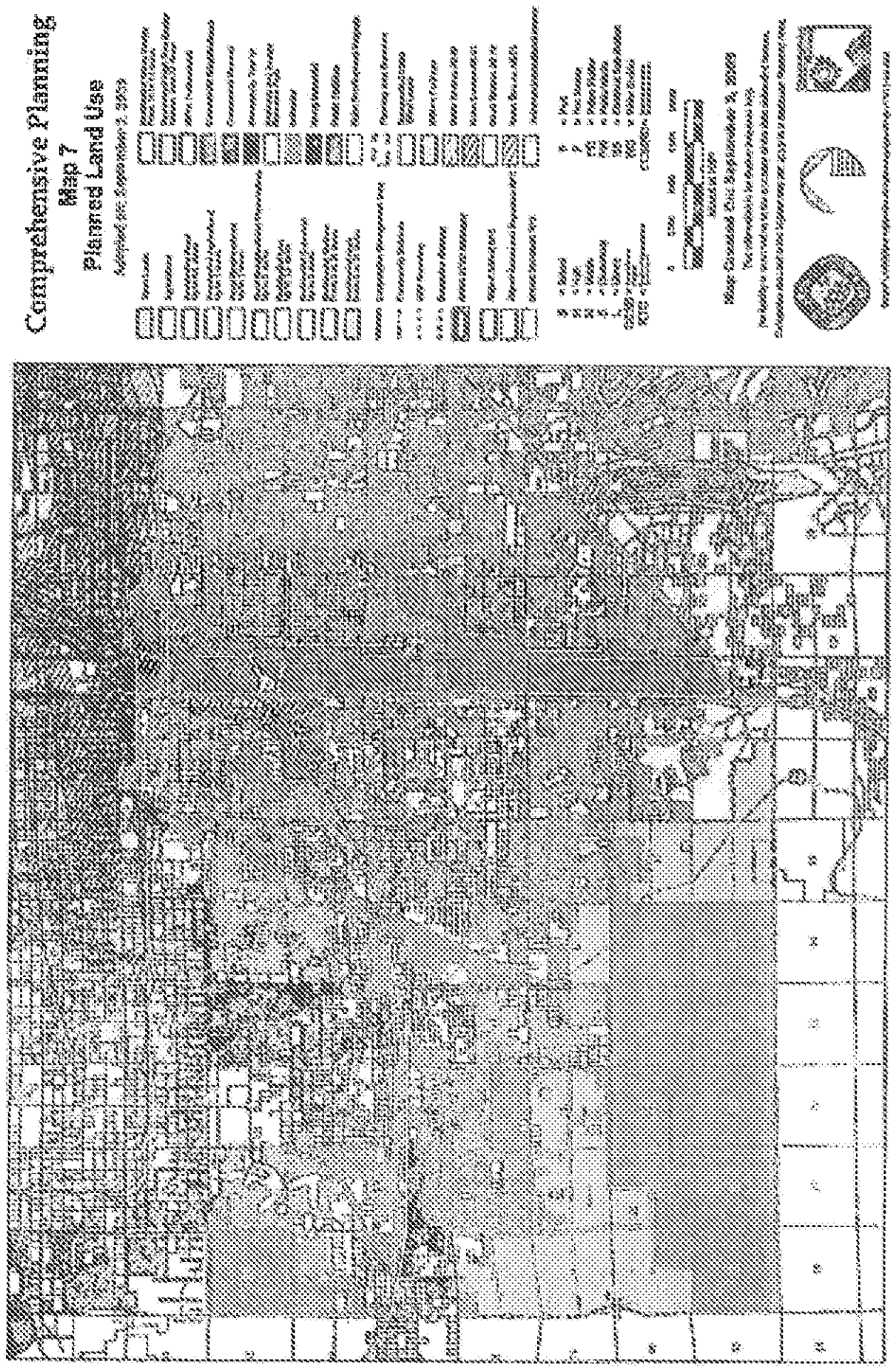
b. Designation as Gaming Enterprise District. The H-1 Limited Resort and Apartment District per Chapter 463 of the Nevada Revised Statutes, is designated as the Gaming Enterprise District as shown on the Gaming Enterprise Map in Appendix G. A special use permit for a resort hotel approved in accordance with Table 30.16-1 establishes the ability to have live gaming. Applications to expand the Gaming Enterprise District shall not be accepted for property within 300 feet of residential development or 1,000 feet of a school or church.

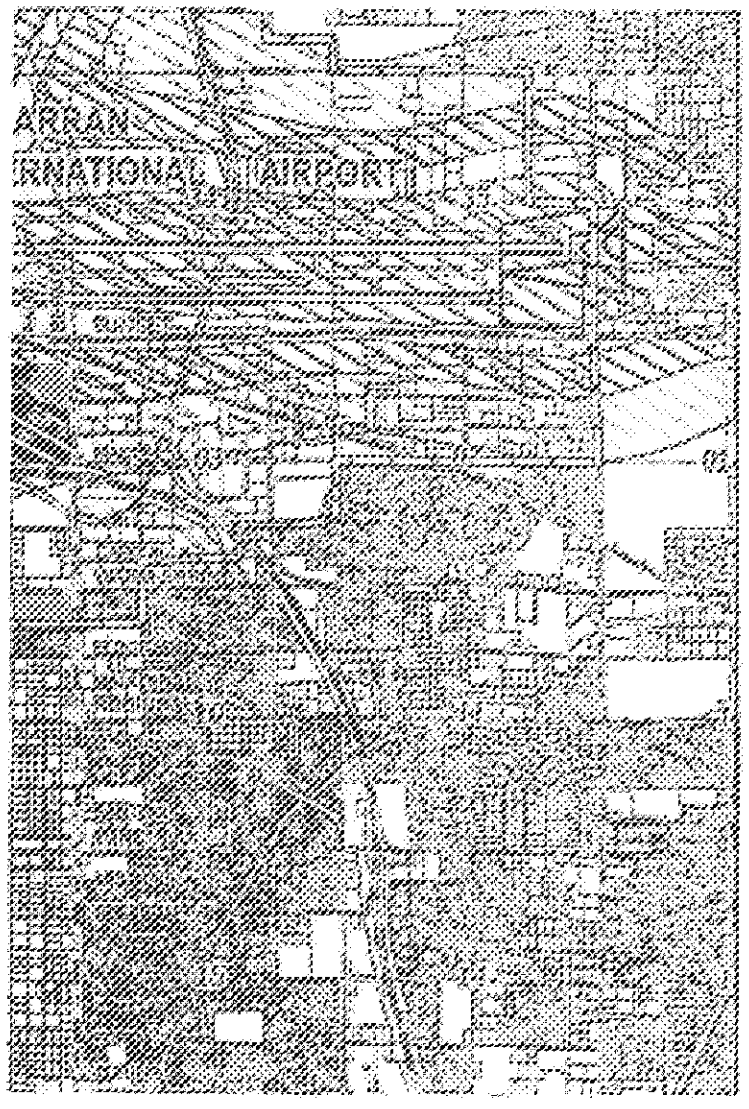
30.40.330 Alternative Development Standards. It is recognized that individual sites may present unique characteristics, including the shape and location of the site, and the design of existing and proposed structures, could be best developed through the application of alternative development standards which depart from the requirements of this Chapter. In certain circumstances such alternative standards may be considered beneficial by the Commission or Board as a tool to achieve the land development policies of the County. In such cases, the Board or Commission may approve alternative development standards through the granting of a waiver of standards, according to the procedures outlined in Table 30-16-7 of this Title subject to finding that the alternative standards will:

1. Result in development having a visual character which is as or more compatible with adjacent development than anticipated by the requirements of this Chapter.

2. Encourage a development trend or a visual character similar to that anticipated by the requirements of this Chapter.

3. Result in a development which meets or exceeds all other requirements of this Title.


Comprehensive Planning
Map 7
Planned Land Use



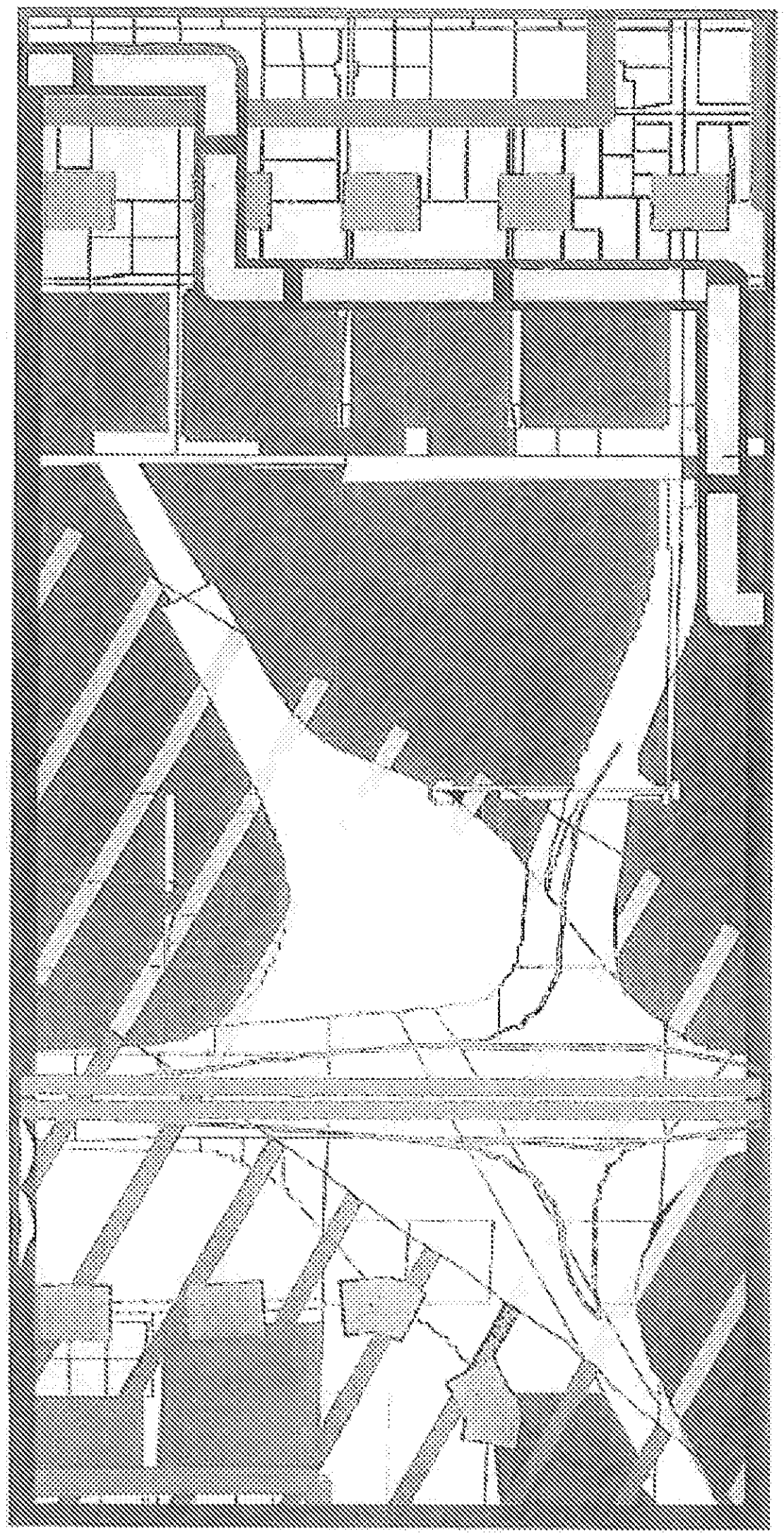
Comprehensive Planning

Map 7

Planned Land Use

Adopted on: September 2, 2009

- Open Lands
- Agricultural
- Residential Rural Up to 0.5 du/ac
- Residential Agricultural Up to 1 du/ac
- Rural Neighborhood Up to 2 du/ac
- Rural Neighborhood Preservation Up to 2 du/ac
- Residential Low Up to 3.5 du/ac
- Residential Suburban Up to 8 du/ac
- Residential Medium From 3 to 14 du/ac
- Residential High From 8 to 18 du/ac
- Residential Urban Center From 18 to 32 du/ac
- Residential High Rise Center Greater than 32 du/ac
- Office Professional
- Commercial Neighborhood
- Commercial General
- Commercial Tourist
- Business and Design Research Park
- Industrial
- Heavy Industrial
- Public Facilities
- Major Development Projects



A Note on Mixed-Use Development (MUD)

The purpose of the Mixed-Use Overlay District (MUD) is to encourage a diversity of compatible land uses, including a mixture of residential with commercial, office, educational, institutional and other appropriate urban uses. The MUD overlay provides a mechanism to encourage new housing and innovative urban design that is less dependent on automobile transit. MUD projects are intended to create and sustain pedestrian oriented neighborhoods where local residents have convenient access to jobs, schools shops public facilities, transit and various services.

The MUD shall minimize adverse impacts on surrounding property. THE STATED MAXIMUM DENSITIES AND INTENSITIES IN NO WAY OBLIGATE THE COUNTY TO APPROVE MUD DEVELOPMENTS AT A GIVEN DENSITY OR INTENSITY, BUT IS EXPECTED TO APPROVE ONLY SUCH LEVEL OF DENSITY OR INTENSITY THAT IS APPROPRIATE FOR A PARTICULAR LOCATION. The Commission or Board may require, as a condition of approval, any condition, limitation or design factor which will promote proper development and the use of effective land use transitioning.

OL - Open Land

The Open Land category designates areas to provide for permanent open space in the community; to prevent irreversible environmental damage to sensitive areas; and to deter development in areas with highly limited availability of public services and facilities; or severe natural constraints (i.e. areas with 12% or greater slope). Lands are primarily in public ownership. For lands in private ownership, residential uses up to 1 dwelling unit per 10 acres are allowed. Grazing, open space, and recreational uses may occur. Local supporting public facility uses are also allowed in this category with appropriate buffering and setbacks.

The category includes the following zoning districts: Open Space (O-S) and Public Facility (P-F).

RR - Residential Rural [up to 0.5 dwellings (du)/1 acre (ac) (up 0.83 du/ac with an approved PUD)][1]

Residential Rural (up to 0.5 du/ 1 ac) designates areas where the primary land uses are large lot, single family residential. Single family detached dwellings generally occupy lots at least two acres in size and have limited access to public services and facilities or have severe natural constraints. Septic system and well usage is common. Multiple family dwellings are not appropriate. Local supporting public facility uses are also allowed in this category with appropriate buffering and setbacks.

The category includes the following zoning districts: Rural Open Land (R-O) and Public Facility (P-F).

1 Residential Rural – A request for .51 to .83 dwelling units per 1 acre may be considered under this land use designation if it meets the requirements of Planned Unit Development in accordance with the Unified Development Code (Title 30)

CT - Commercial Tourist

The Commercial Tourist category designates areas for commercial establishments that primarily cater to tourists. The predominant land uses include casinos, resorts, hotels, motels (greater than three stories), recreational vehicle parks, time shared condominiums, amusement or theme parks. Planned hotel/resort gaming establishments are restricted to the Gaming Enterprise Overlay District as defined by Title 30 (Unified Development Code). Public facility uses are also allowed in this category.

The category includes the following zoning districts: Commercial Residential Transitional (CRT), Office and Professional (C-P), Local Business (C-1), General Commercial (C-2), Recreational Vehicle Park (R-V-P), Apartment Residential (R-5), Limited Resort and Apartment (H-1), and Public Facility (P-F).

MDP - Major Development Project

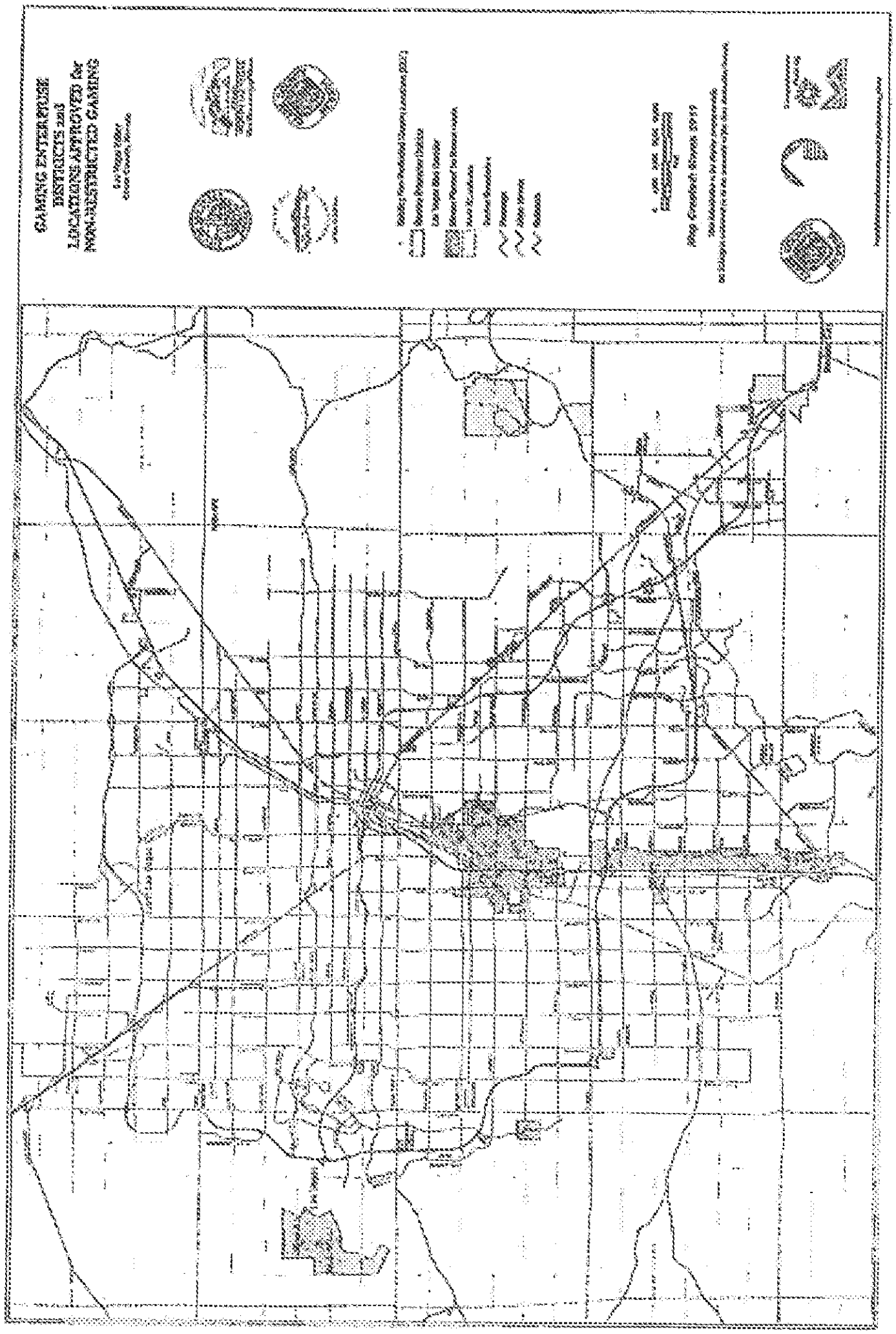
The Major Development Project category is most often applied to areas outside of the Community District 2 Boundary as referenced in Clark County's Community District Element. It indicates areas where land uses of greater densities than two residential units per acre are considered premature and/or inappropriate unless guided by the County's Major Projects Review Process. This process is designed to accommodate the timely and comprehensive review of projects and their impacts to the local community. Details of the Major Projects are found in Title 30, the Clark County Development Code.

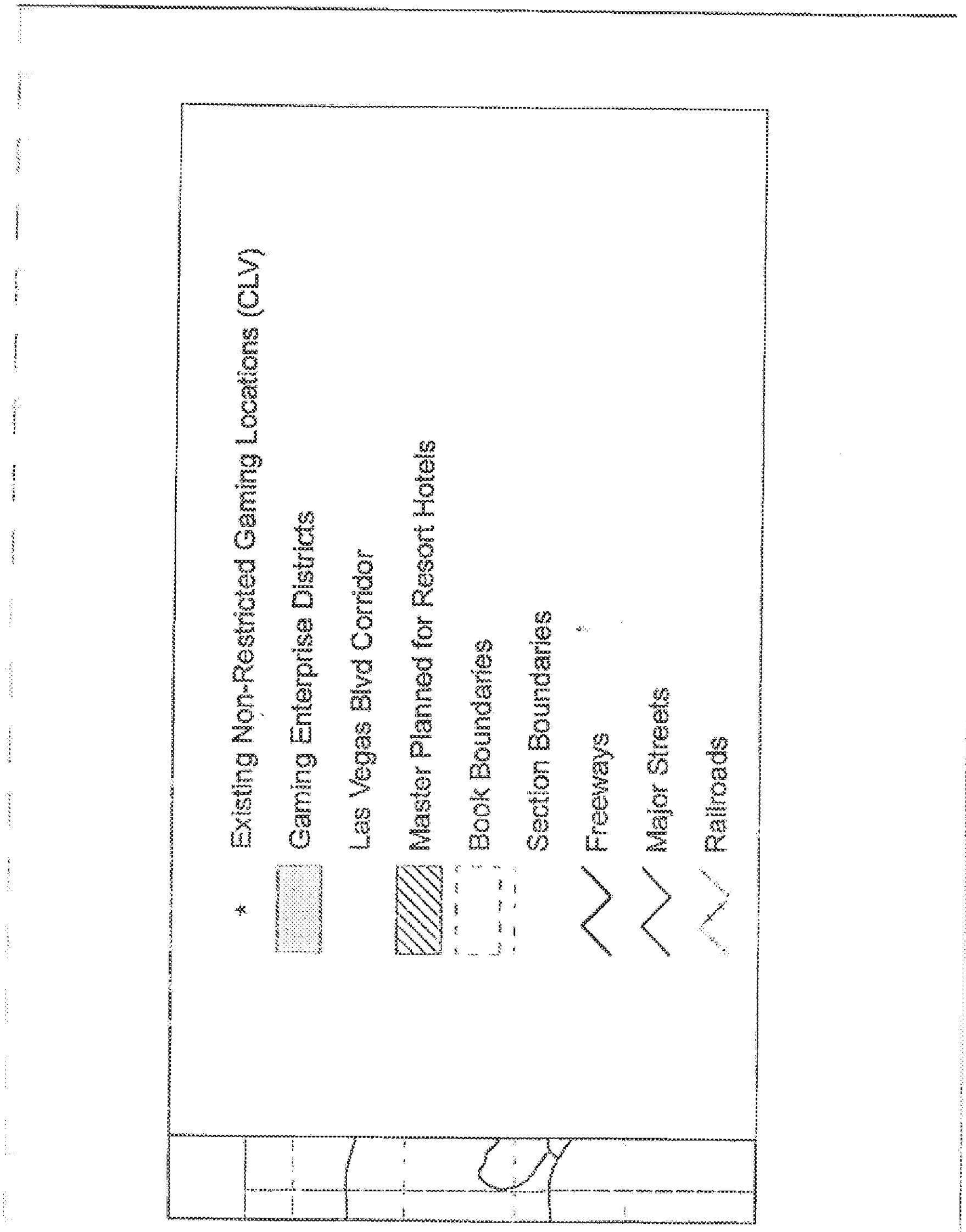
Some areas located outside of Community District 2 have been planned with a specific land use category. Although these areas have been planned, they are still considered premature for urban development unless they are developed in accordance with the County's Major Projects Review Process or the Community District 2 boundary is amended to include these areas.

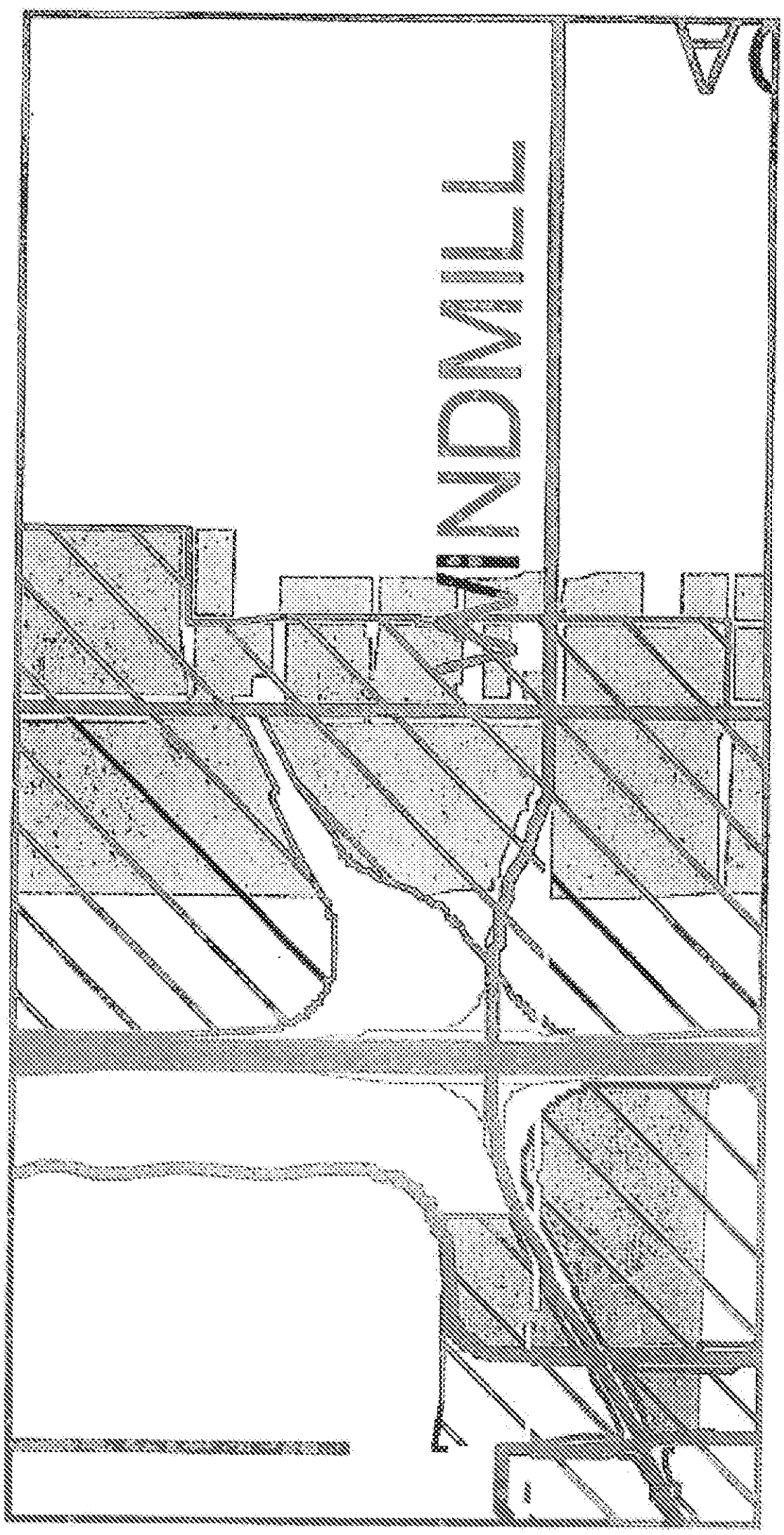
BDRP - Business and Design/Research Park

The Business and Design/Research Park category applies to areas where commercial, professional or manufacturing developments are designed to assure minimum impact on surrounding areas. Major uses in the category include research and development, incubator businesses, food sales and distribution, postal and data processing centers, vehicle sales and repair (inside), and general non-hazardous warehousing. Public facility uses are also allowed in this category with appropriate buffering and setbacks.

The category includes the following zoning districts: Office and Professional (C-P), Local Business, (C-1), General Commercial (C-2), Designed Manufacturing (M-D), and Public Facility (P-F).


GAMING ENTERPRISE
DISTRICTS and
LOCATIONS APPROVED for
NON-RESTRICTED GAMING


Existing Non-Restricted Gaming Locations (CLV)
Gaming Enterprise Districts
Las Vegas Blvd Corridor
Master Planned for Resort Hotels
Book Boundaries
Section Boundaries
Freeways
Major Streets
Railroads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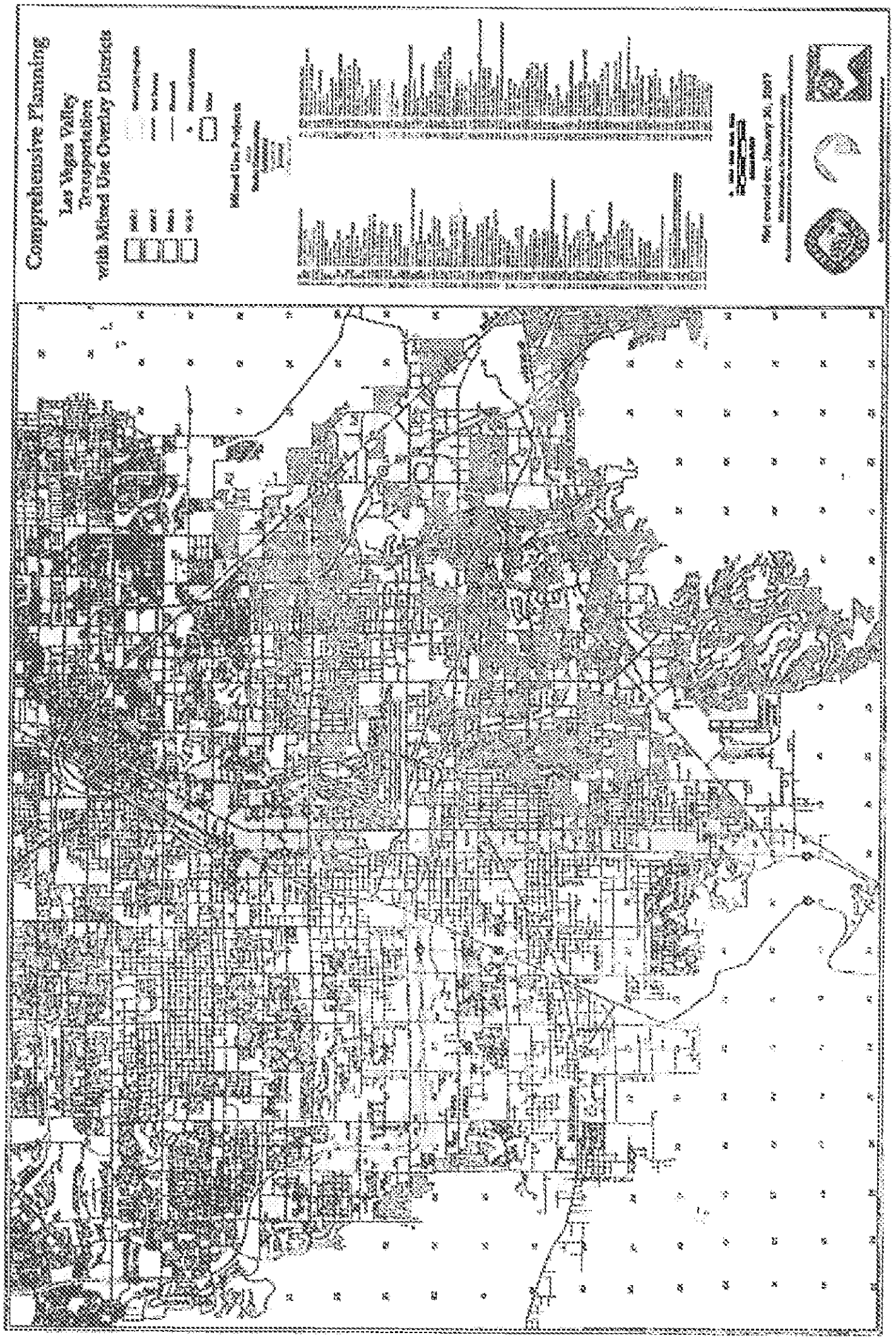
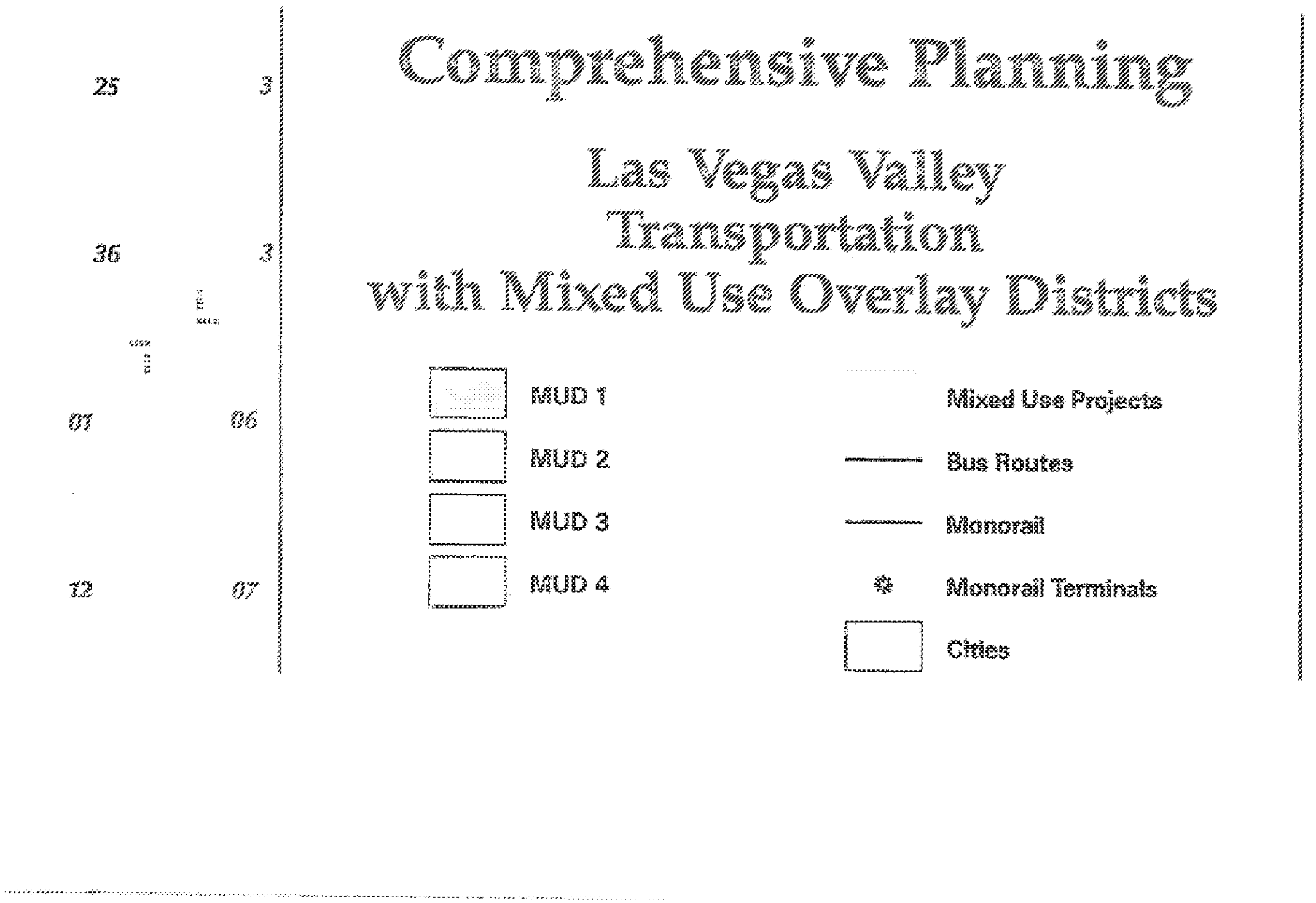
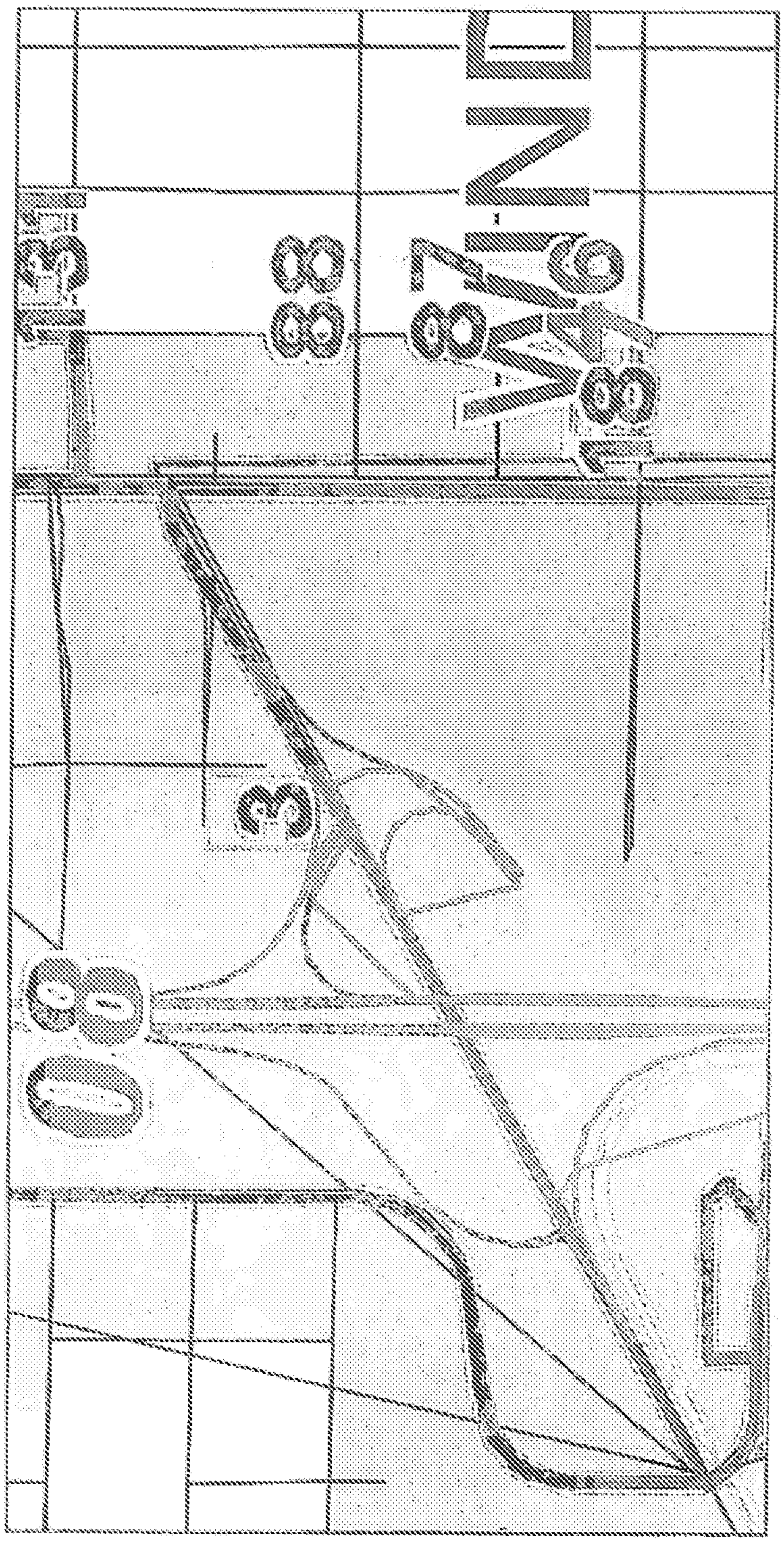
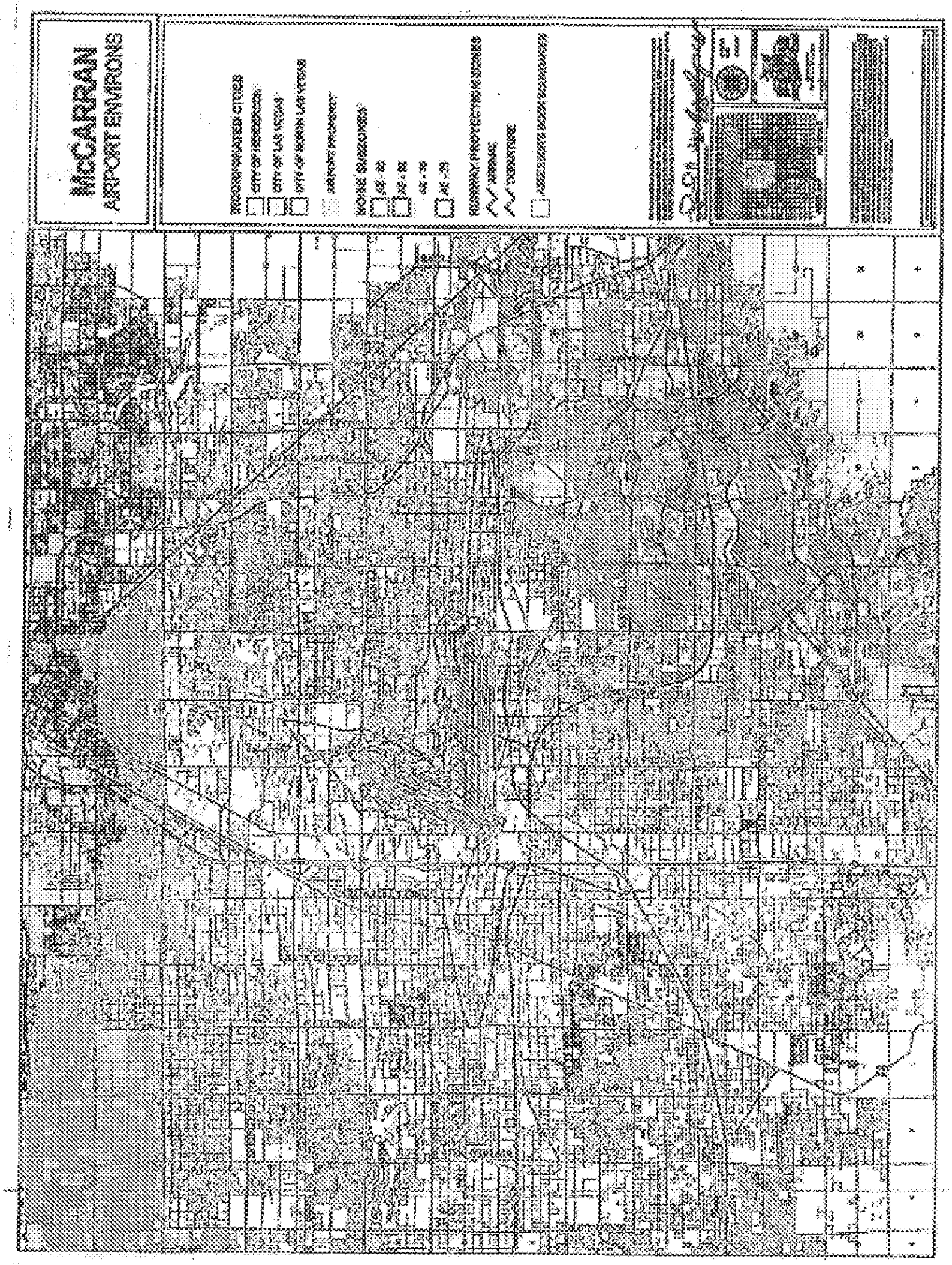

Comprehensive Planning
Las Vegas Valley
Transportation
with Mixed Use Overlay Districts

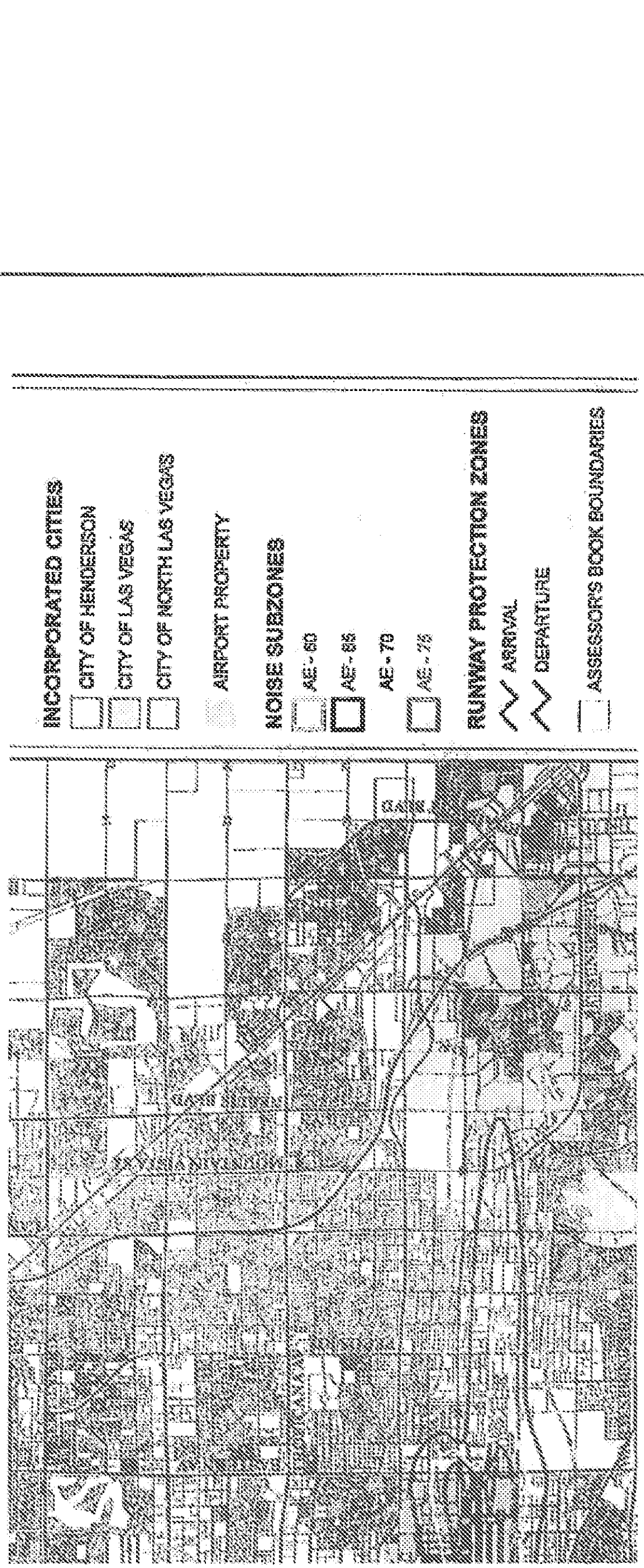
Comprehensive Planning

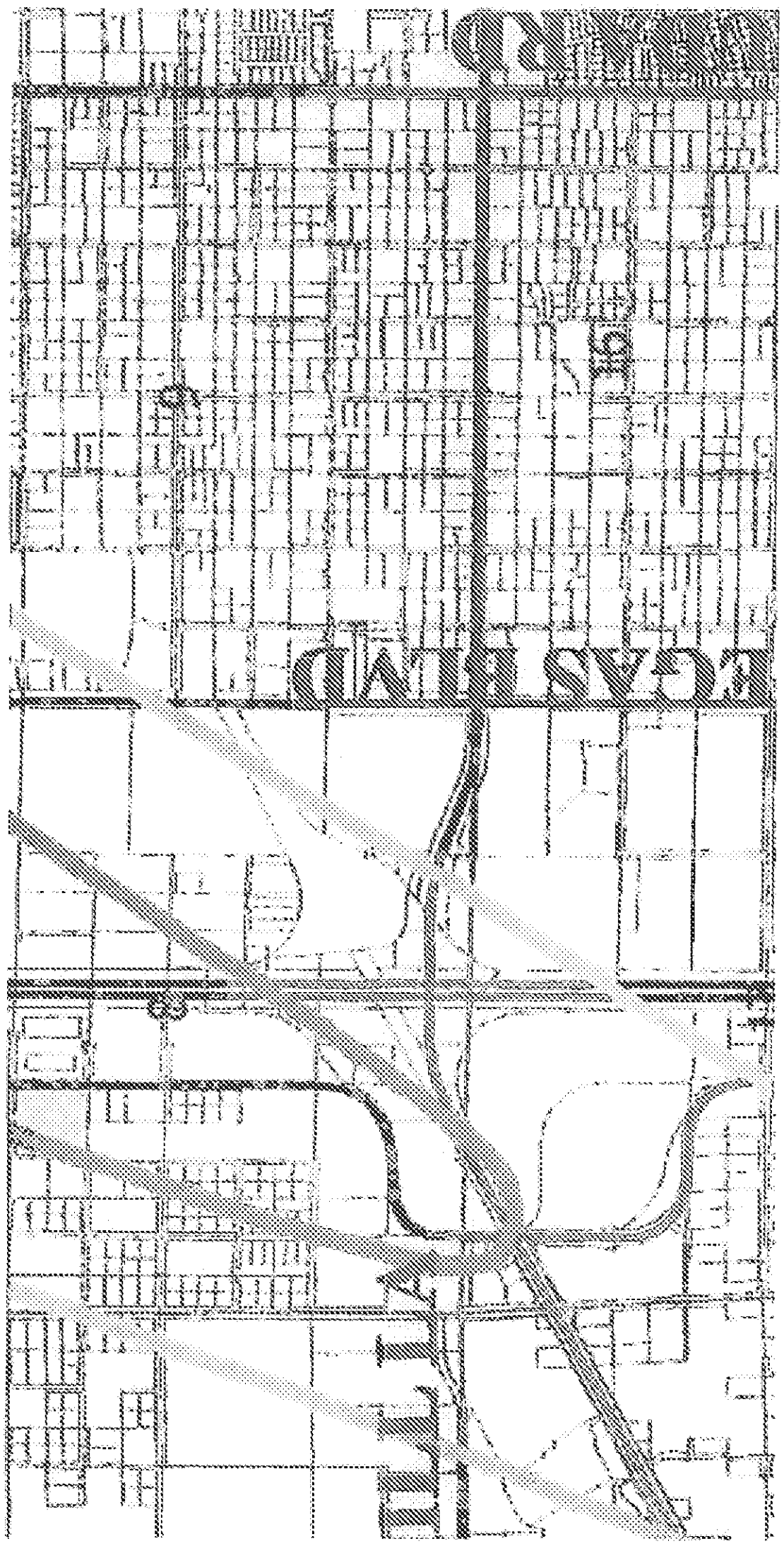
Las Vegas Valley Transportation with Mixed Use Overlay Districts

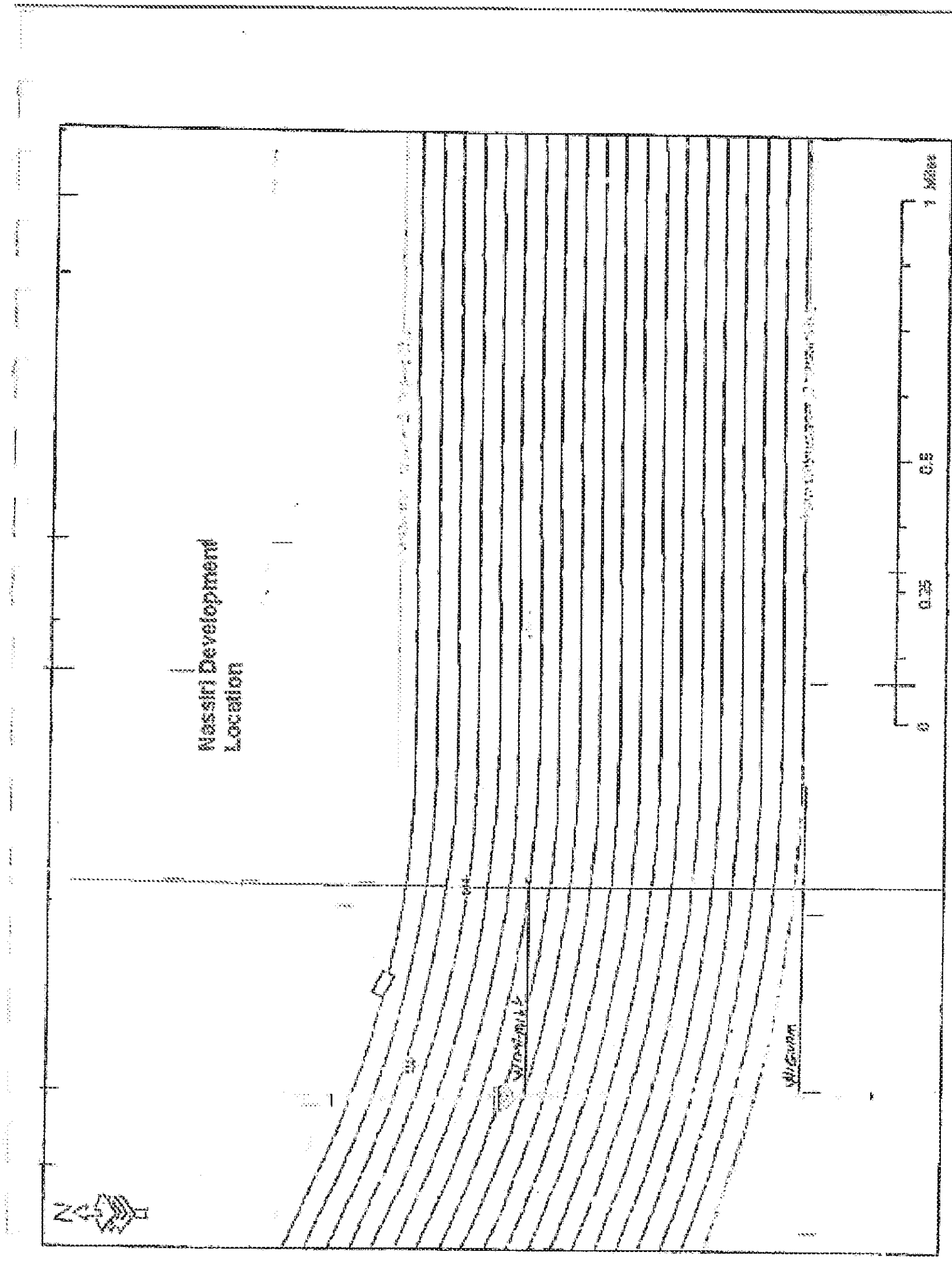





McCARRAN
AIRPORT ENVIRONS


INCORPORATED CITIES
CITY OF HENDERSON
CITY OF LAS VEGAS
CITY OF NORTH LAS VEGAS
AIRPORT PROPERTY
NOISE SUBZONES
AE - 60
AE - 65
AE - 70
AE - 75
RUNWAY PROTECTION ZONES
ARRIVAL
DEPARTURE
ASSESSORS BOOK BOUNDARIES


CASTLETON


Nassiri Development
Location
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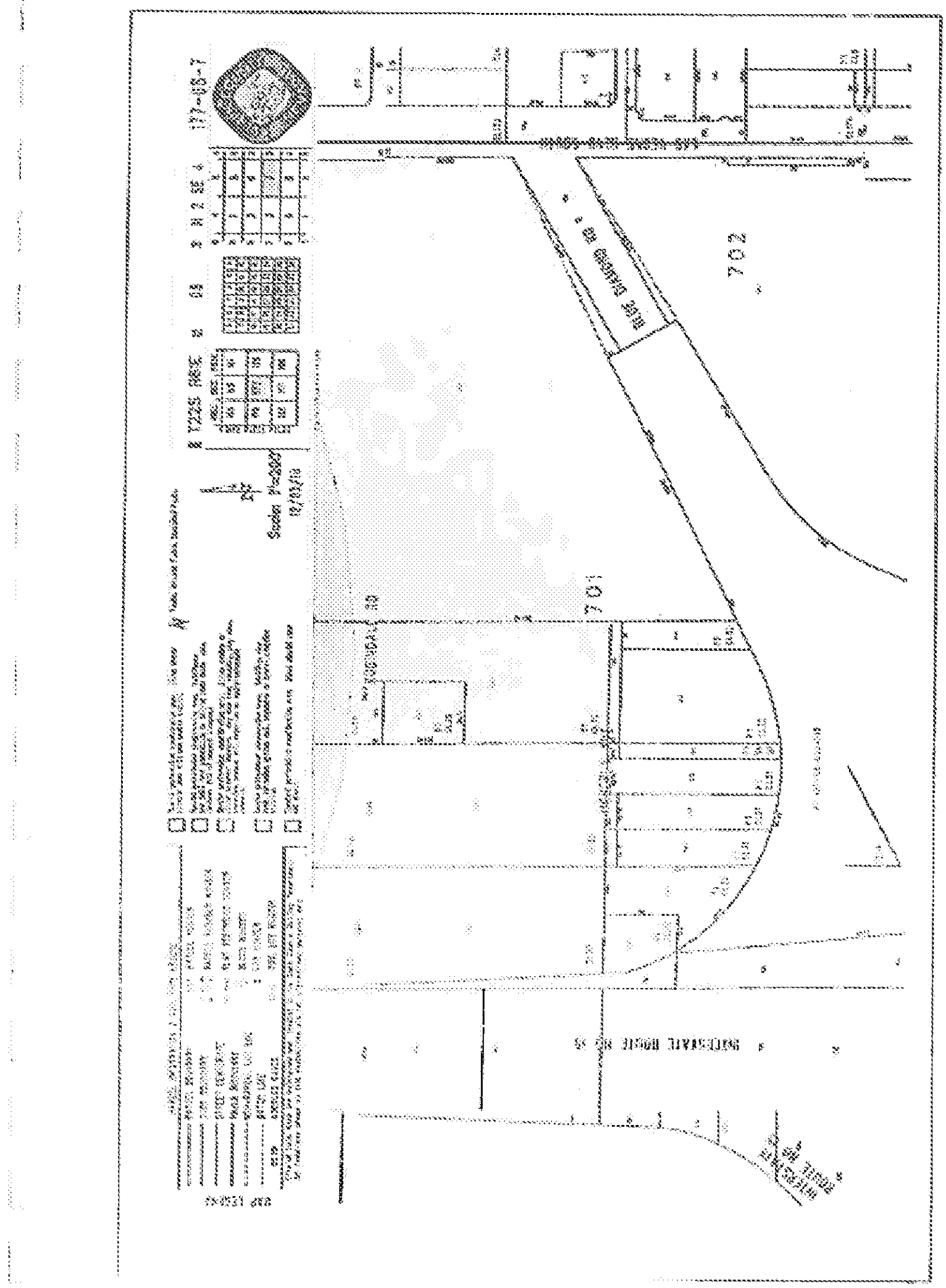
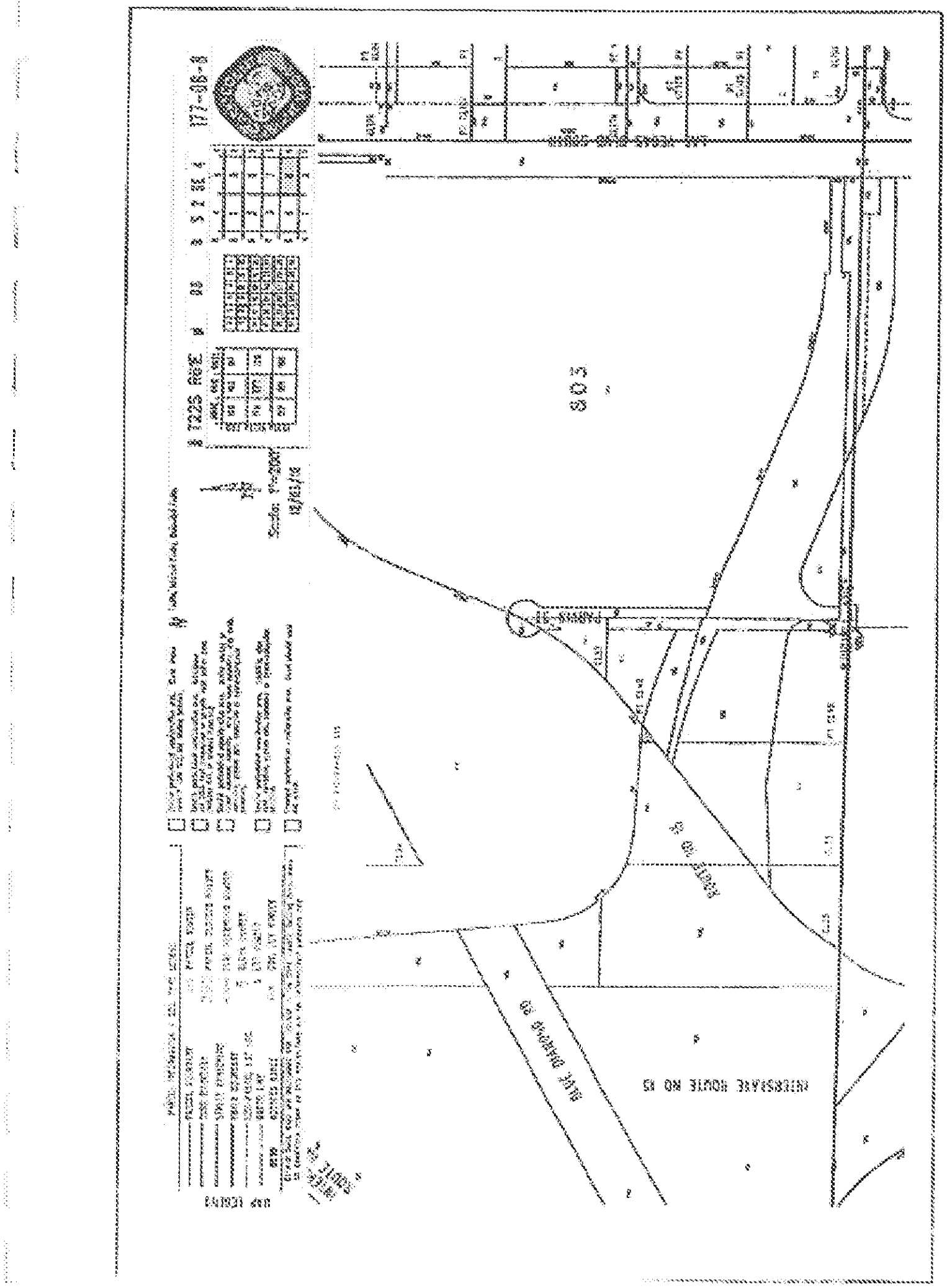
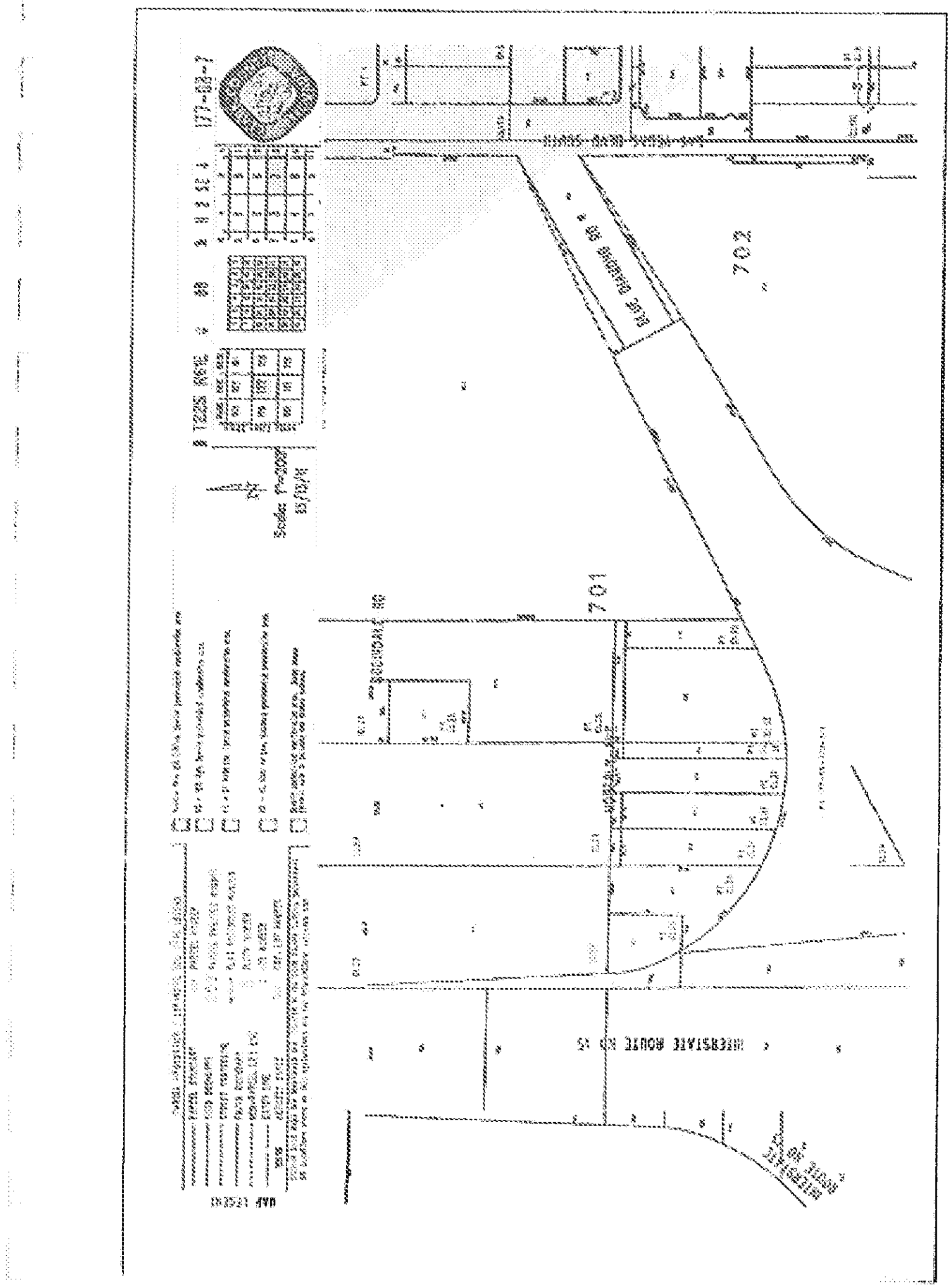
0.35
0




177-96-8
1223 RGE
803
BLUE DIAMOND RD
RIDGESPARE ROUTE NO 15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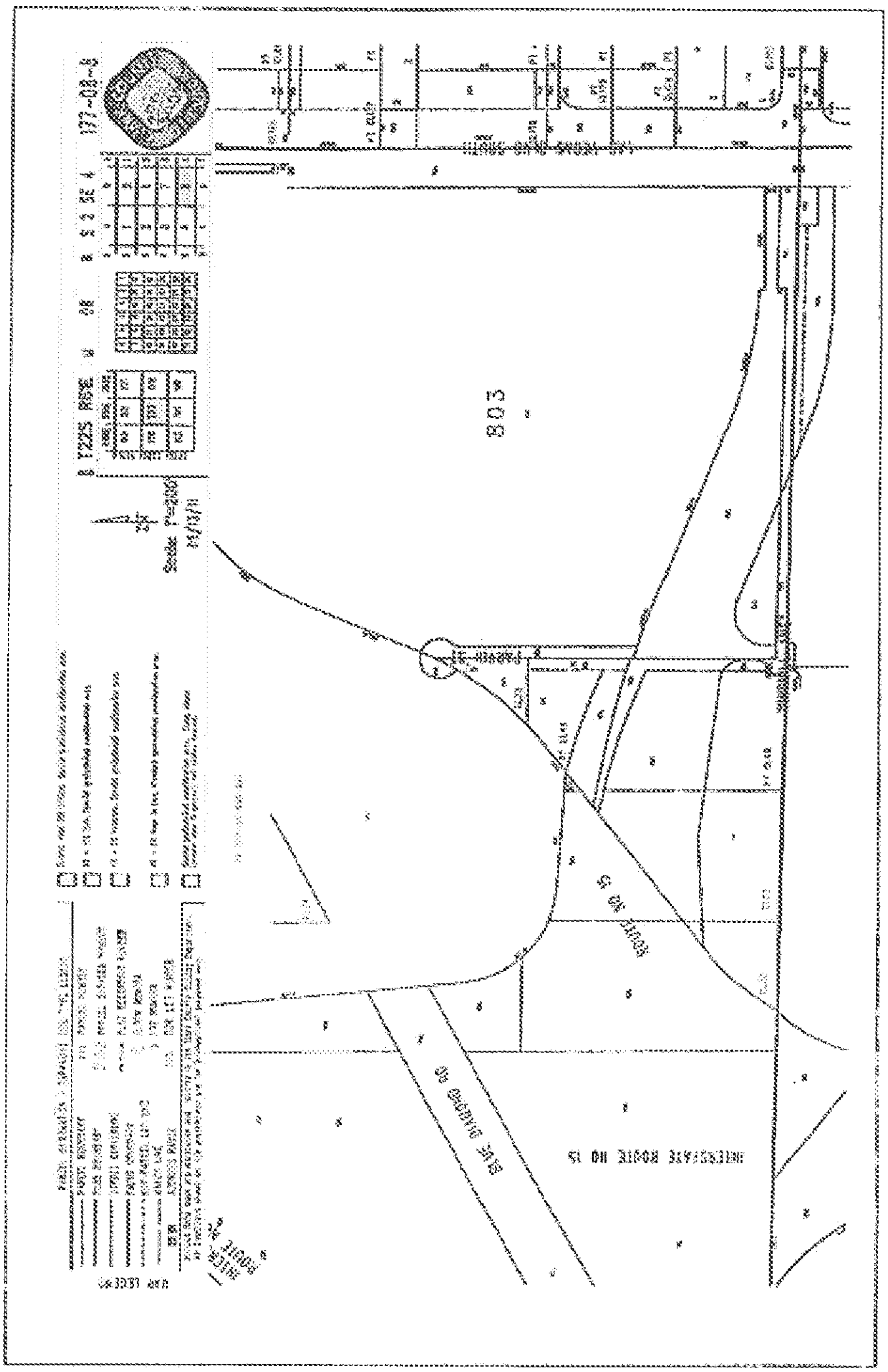
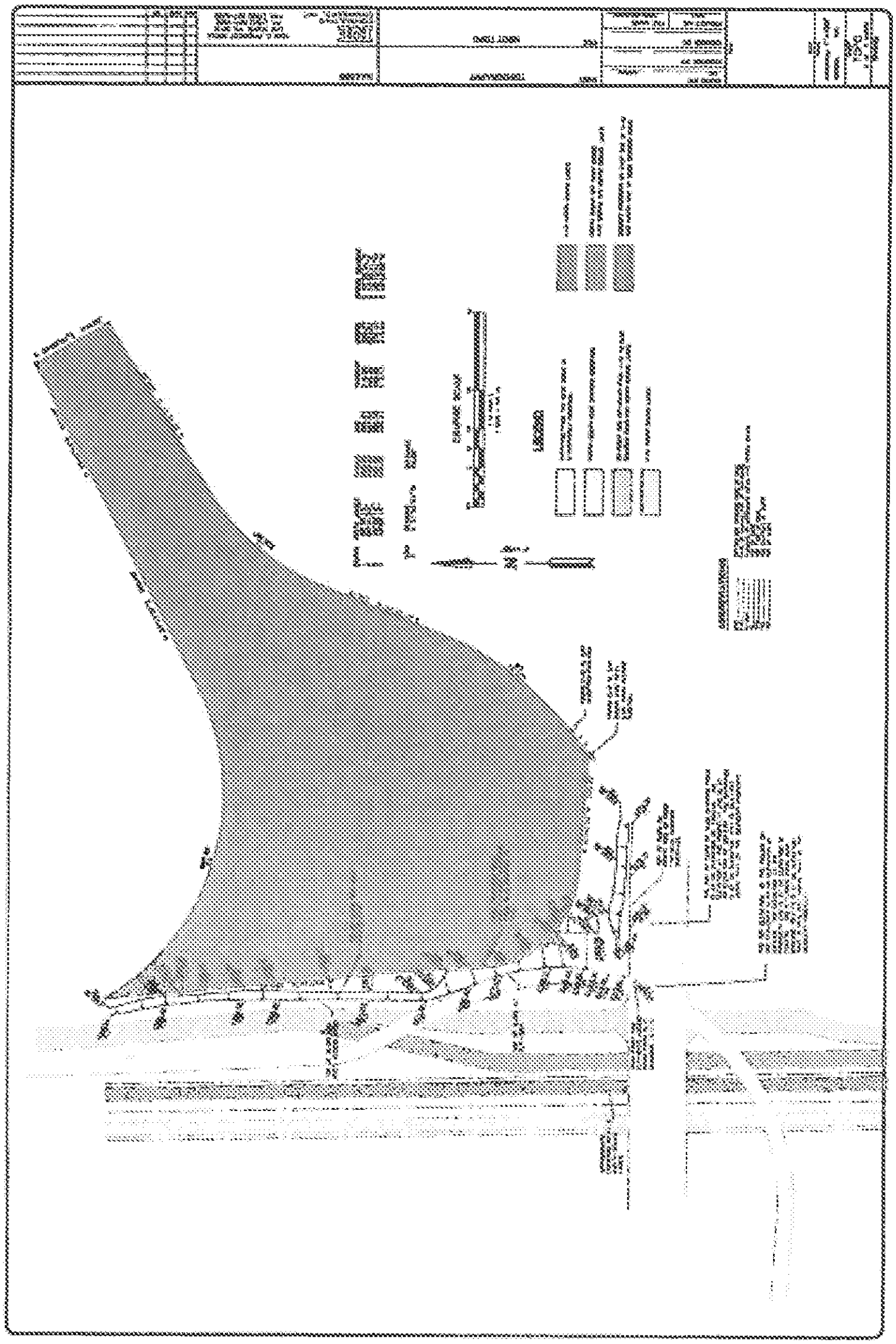
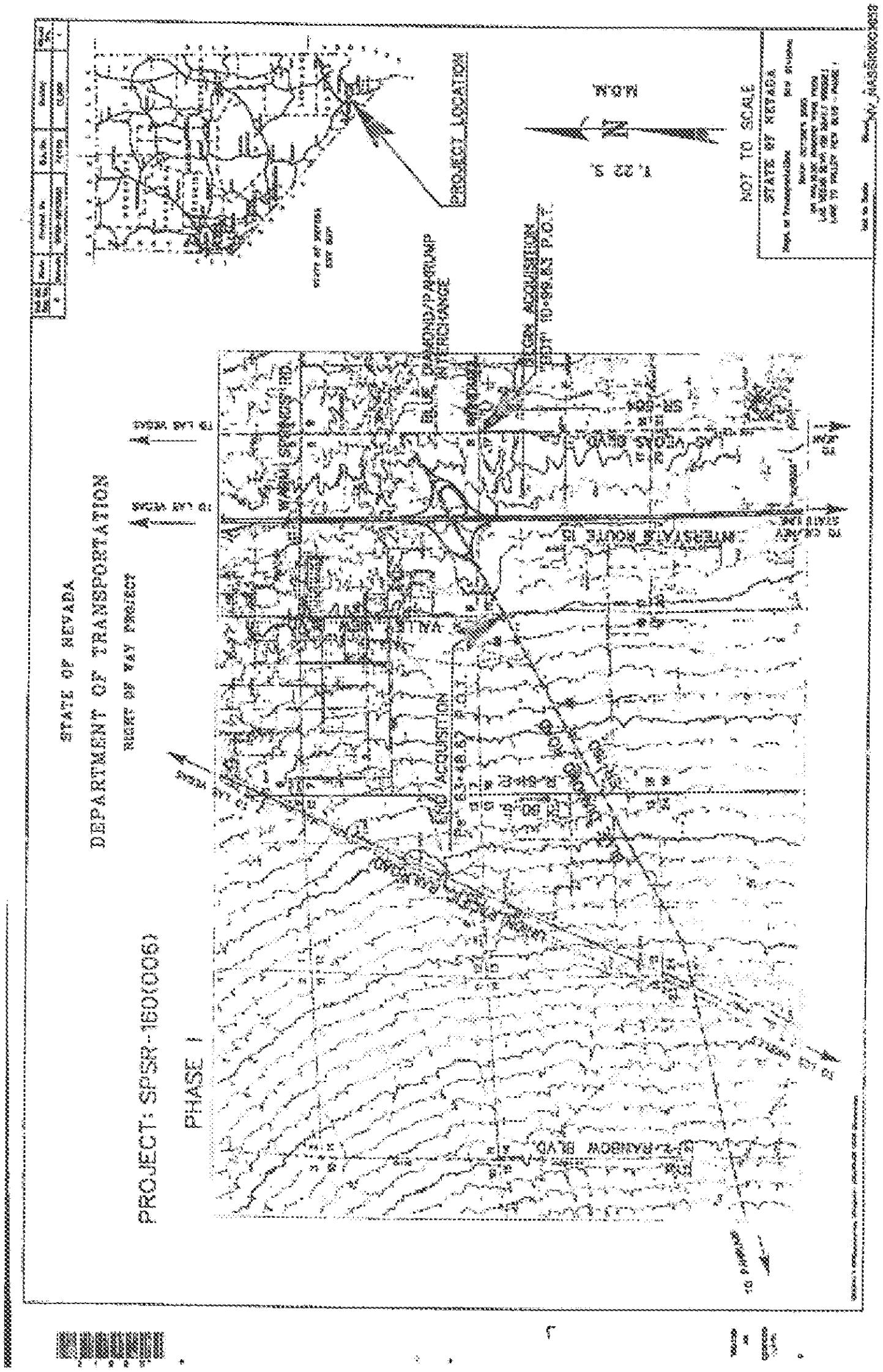
701

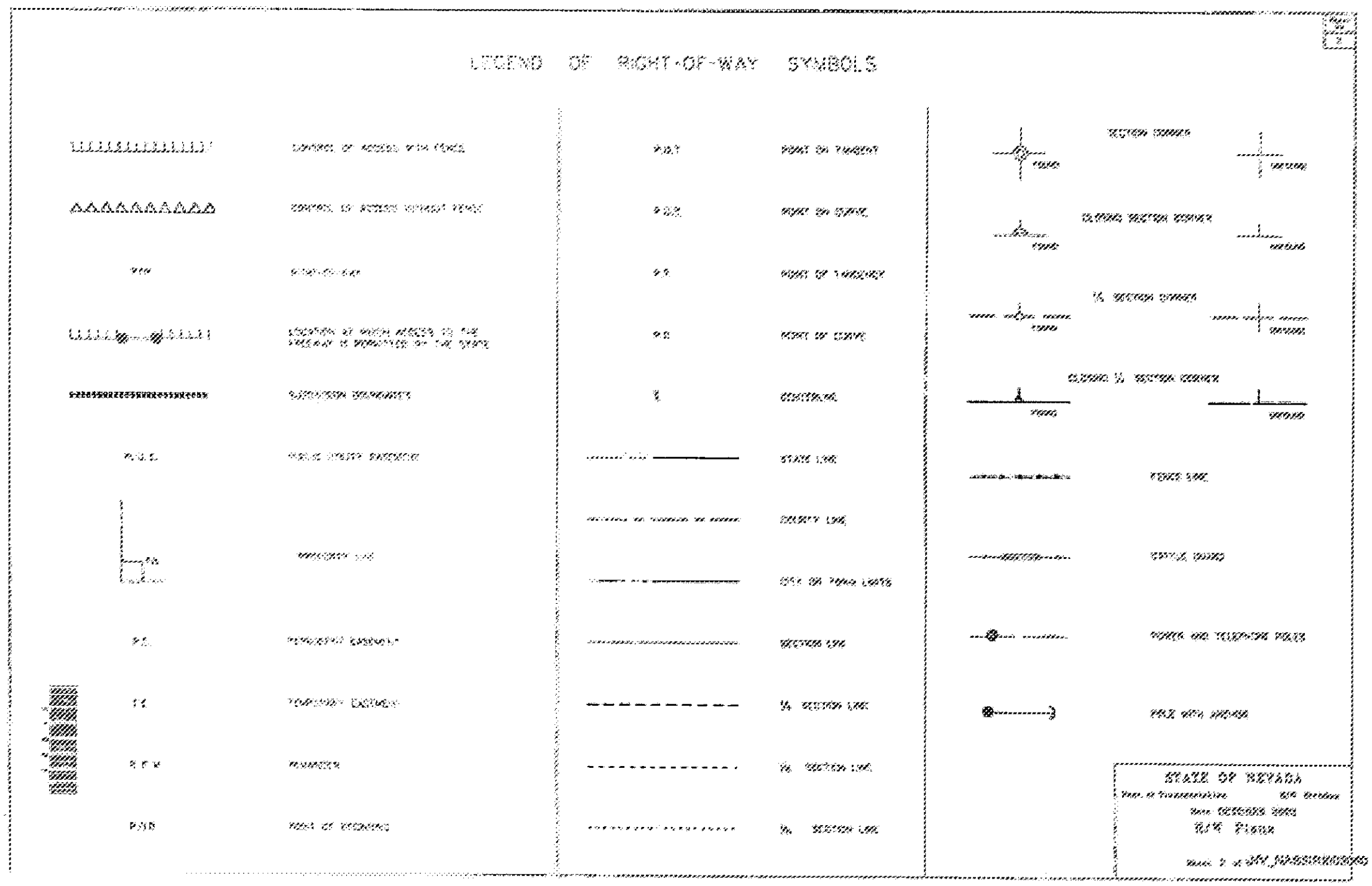

803

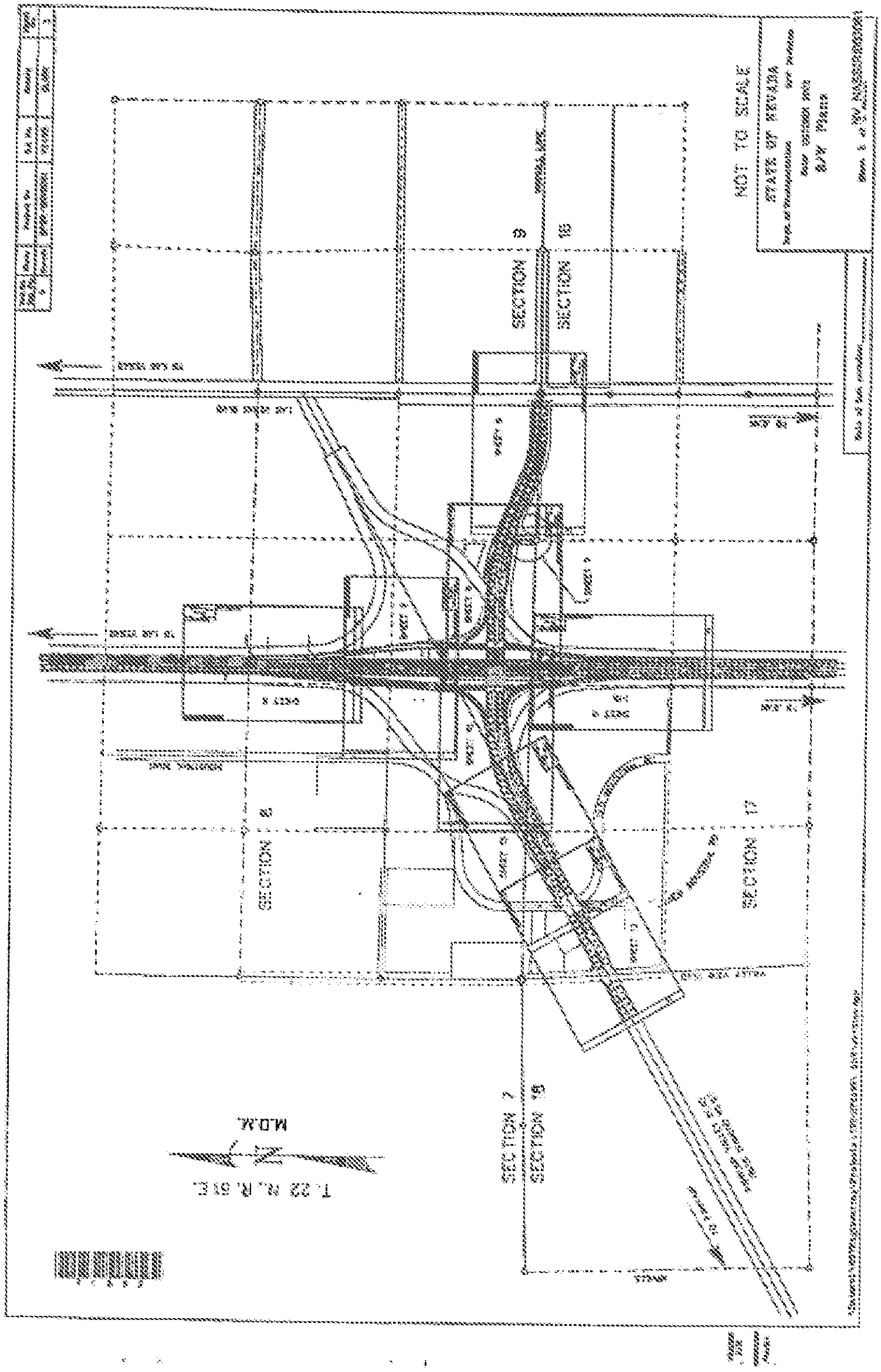
Additional Property Map prepared by KJE Consulting Engineers, Inc. and NDOT Right of Way Plans dated October 2003 – Provided on February 27, 2015

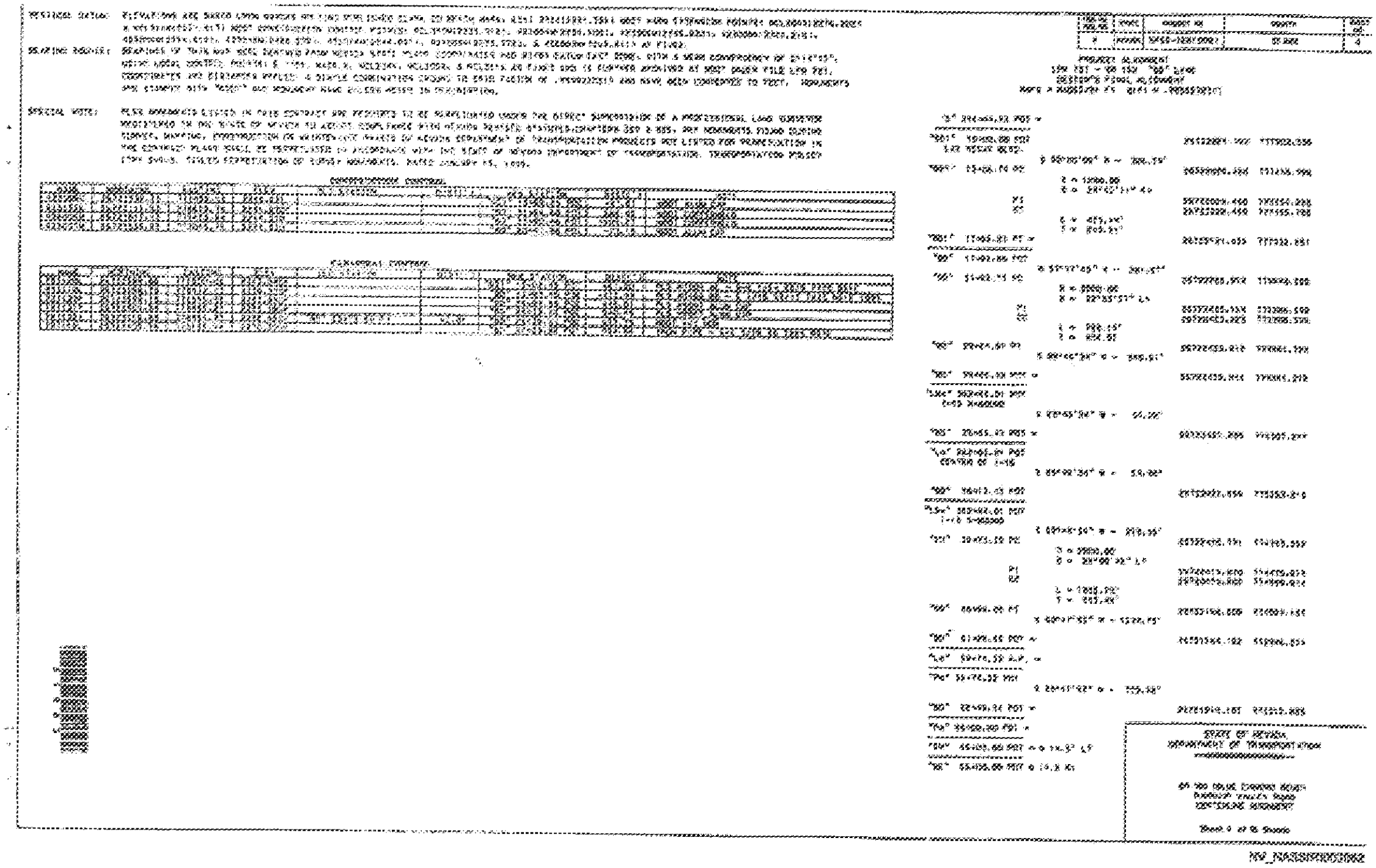


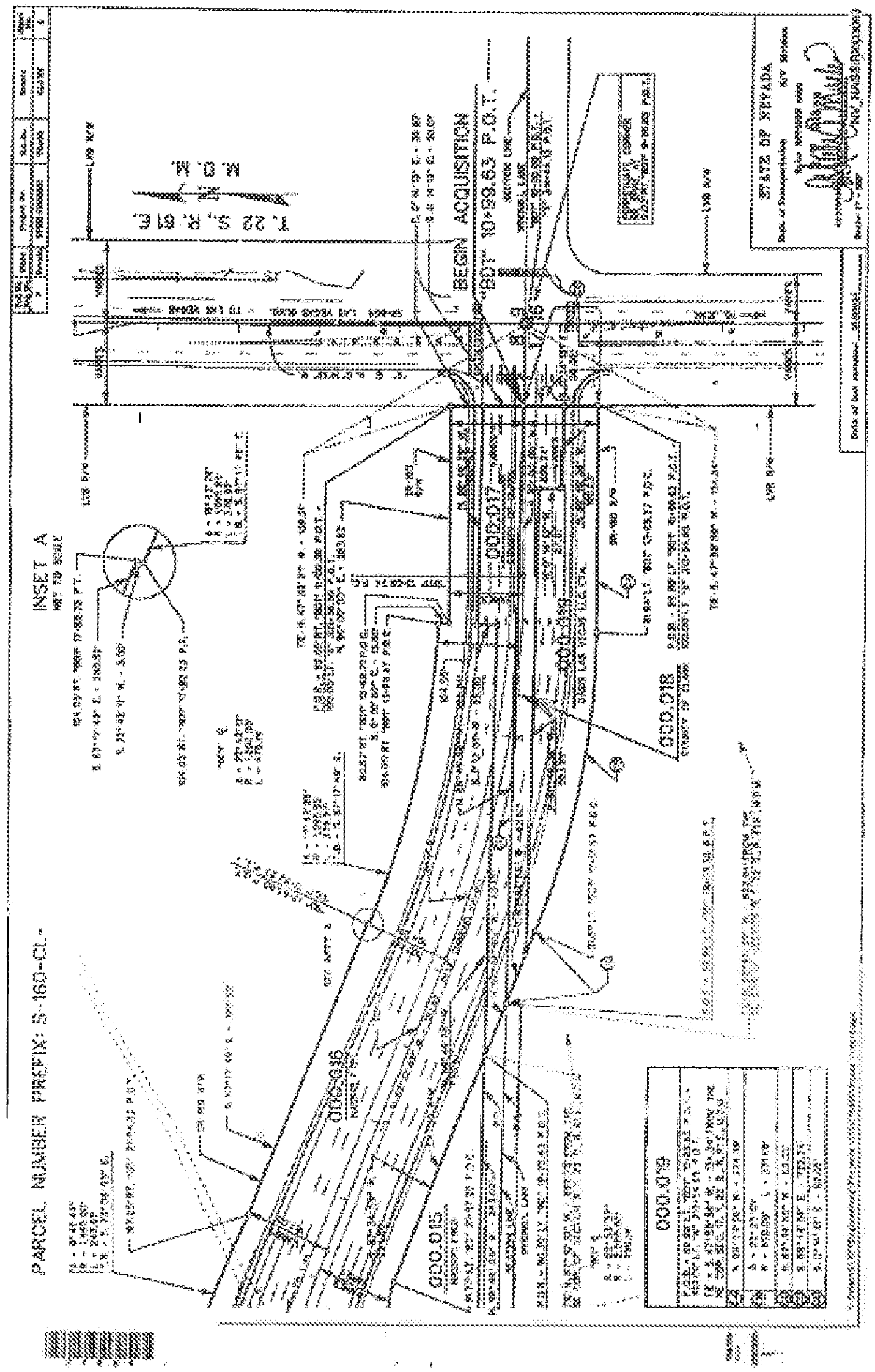

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY PROJECT
PROJECT: SPSR-160(006)
PHASE 1
PROJECT LOCATION
NOT TO SCALE
INTERSTATE ROUTE 15
ACQUISITION
BLUE DIAMOND/
INTERCHANGE
RAINBOW BLVD.
VALLEY VIEW BLVD.
WARM SPRINGS RD.

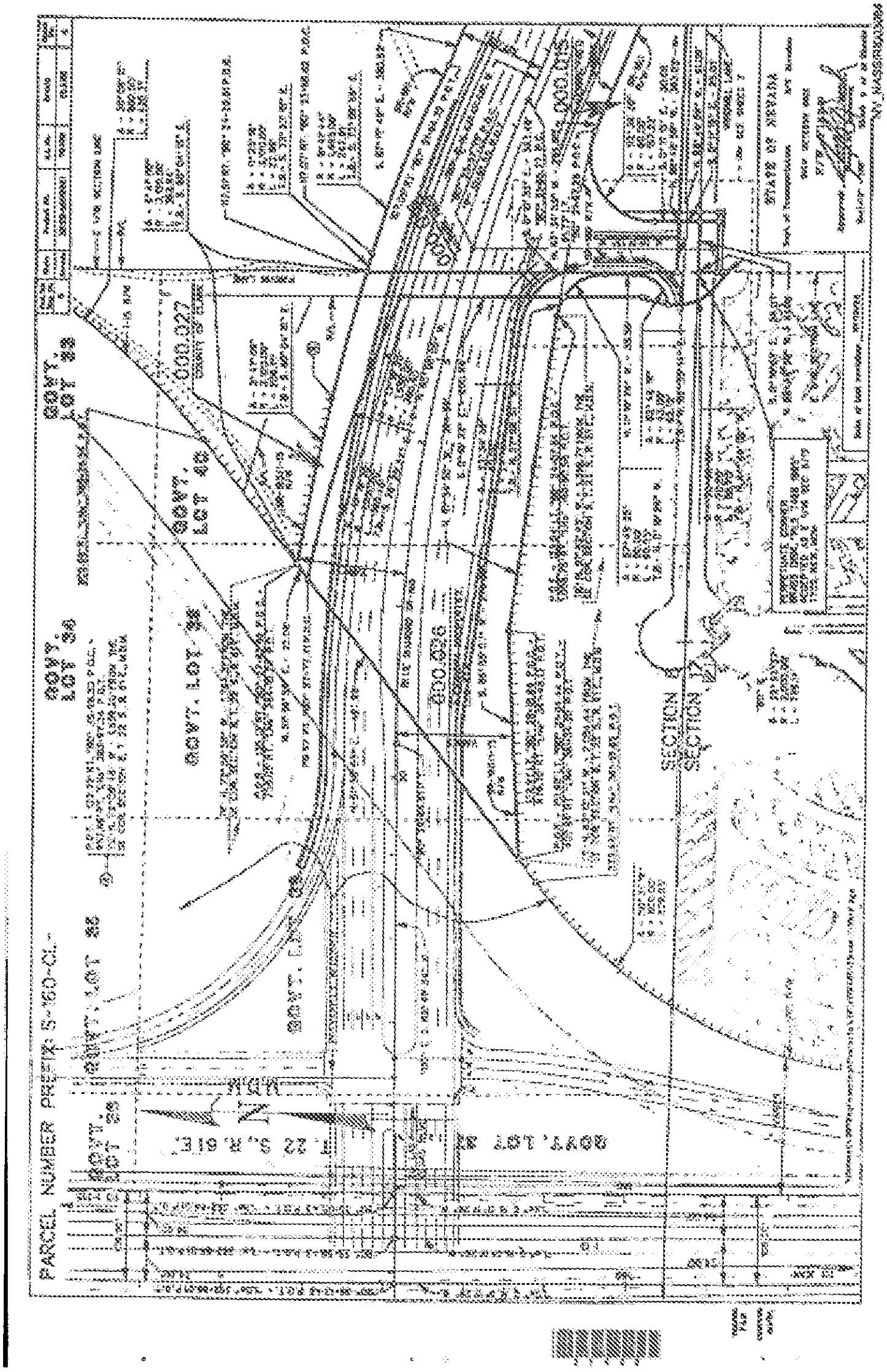
LEGEND OF RIGHT-OF-WAY SYMBOLS

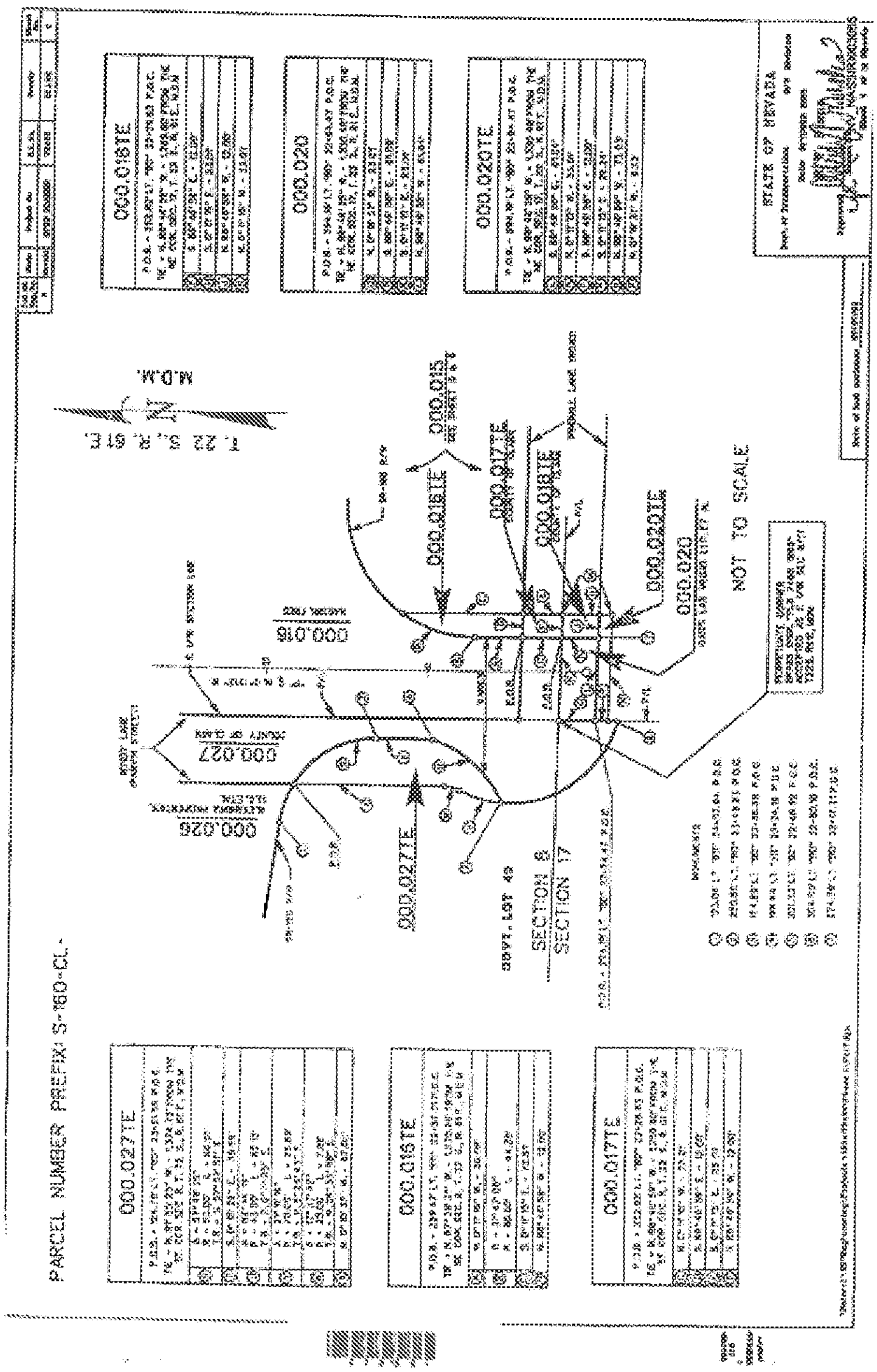



SECTION 6
SECTION 7
SECTION 18
SECTION 17
T. 22 N., R. 6 E.
M.D.M.




BEGIN ACQUISITION
BOT. 10+89.63 P.O.T.
T. 22 S., R. 61 E.
M.D.M.
INSET A
PARCEL NUMBER PREFIX: 5-160-01-
000.017
000.018
000.019
000.035
000.036


PARCEL NUMBER PREFIX: S-160-CL-
GOVT. LOT 38
GOVT. LOT 39
GOVT. LOT 40
GOVT. LOT 41
GOVT. LOT 42
SECTION 12
T. 22 S., R. 61E.
000.022
000.036
000.015


NOT TO SCALE
SECTION 8
SECTION 17
PARCEL NUMBER PREFIX S-160-CL-
T. 22 S., R. 61 E.
M.D.M.
000.020TE
000.018TE
000.017TE
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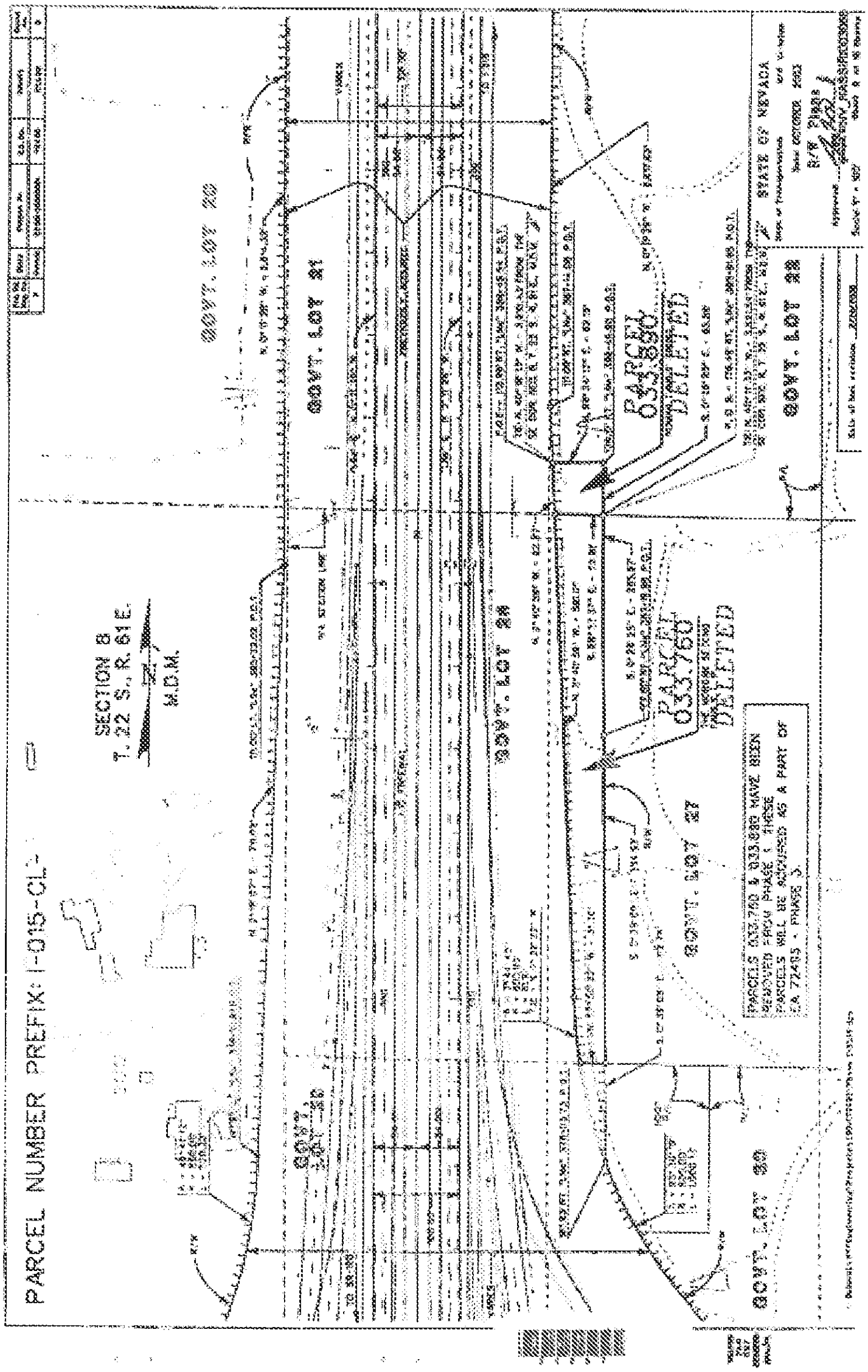
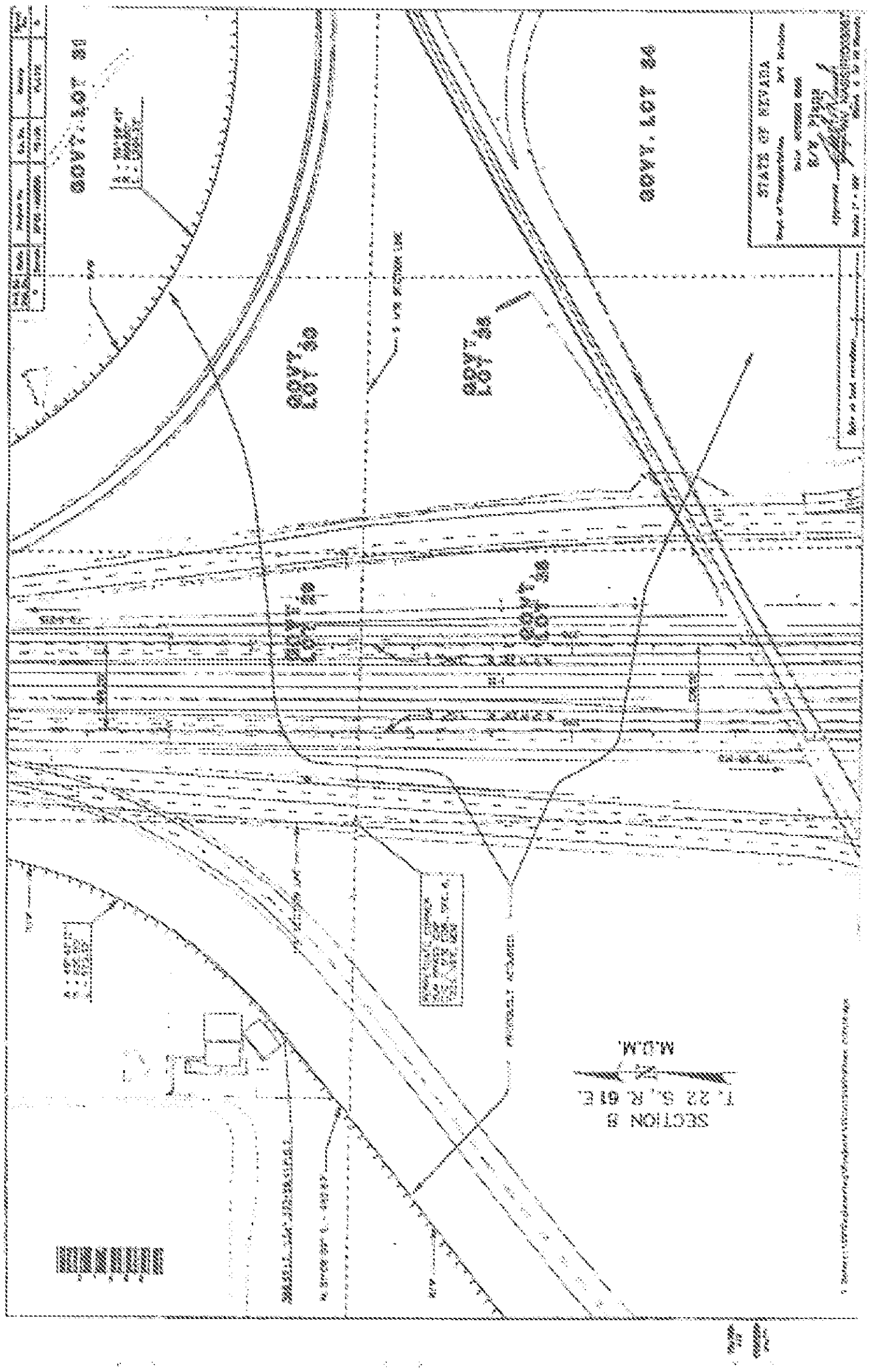
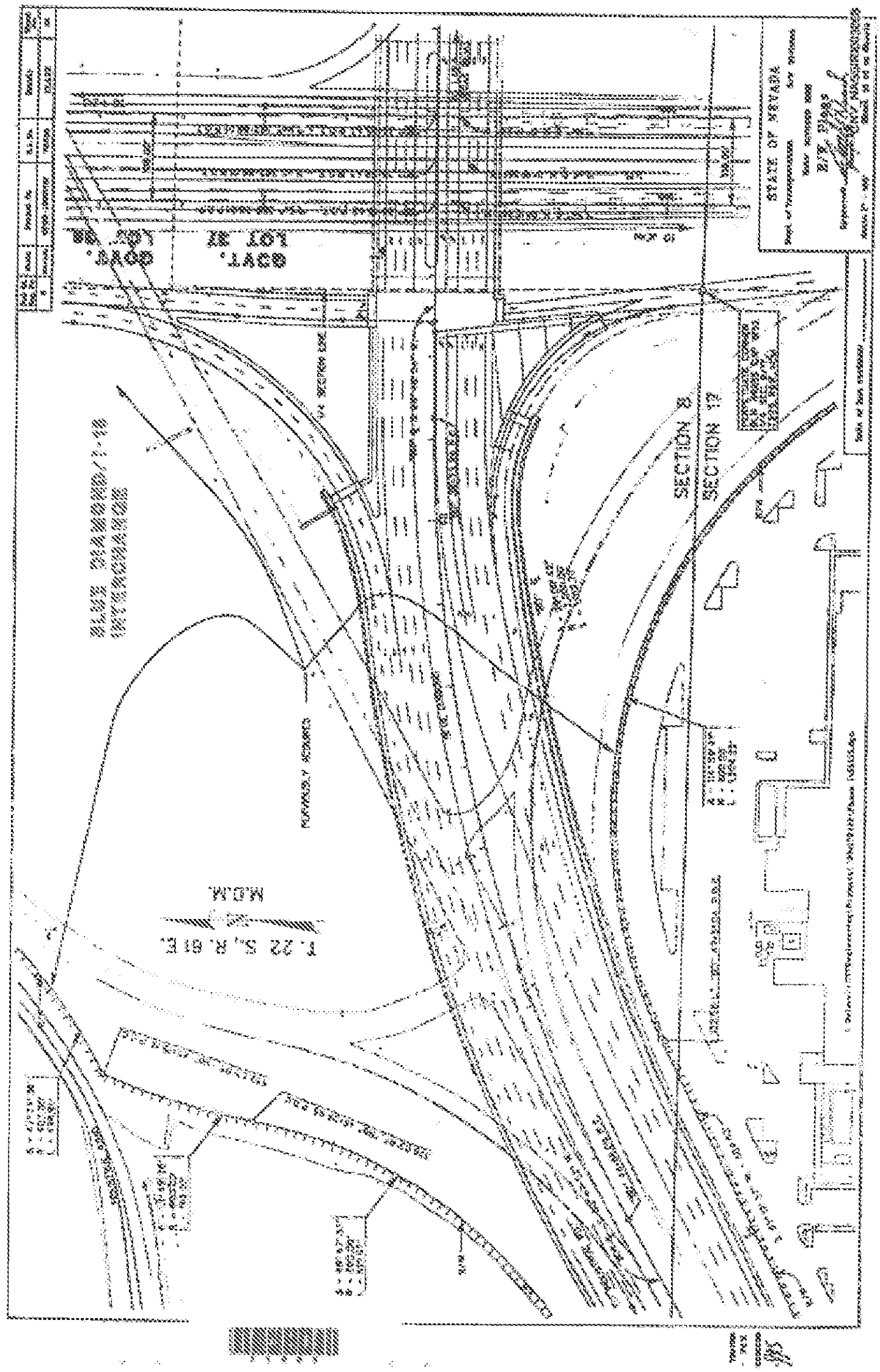
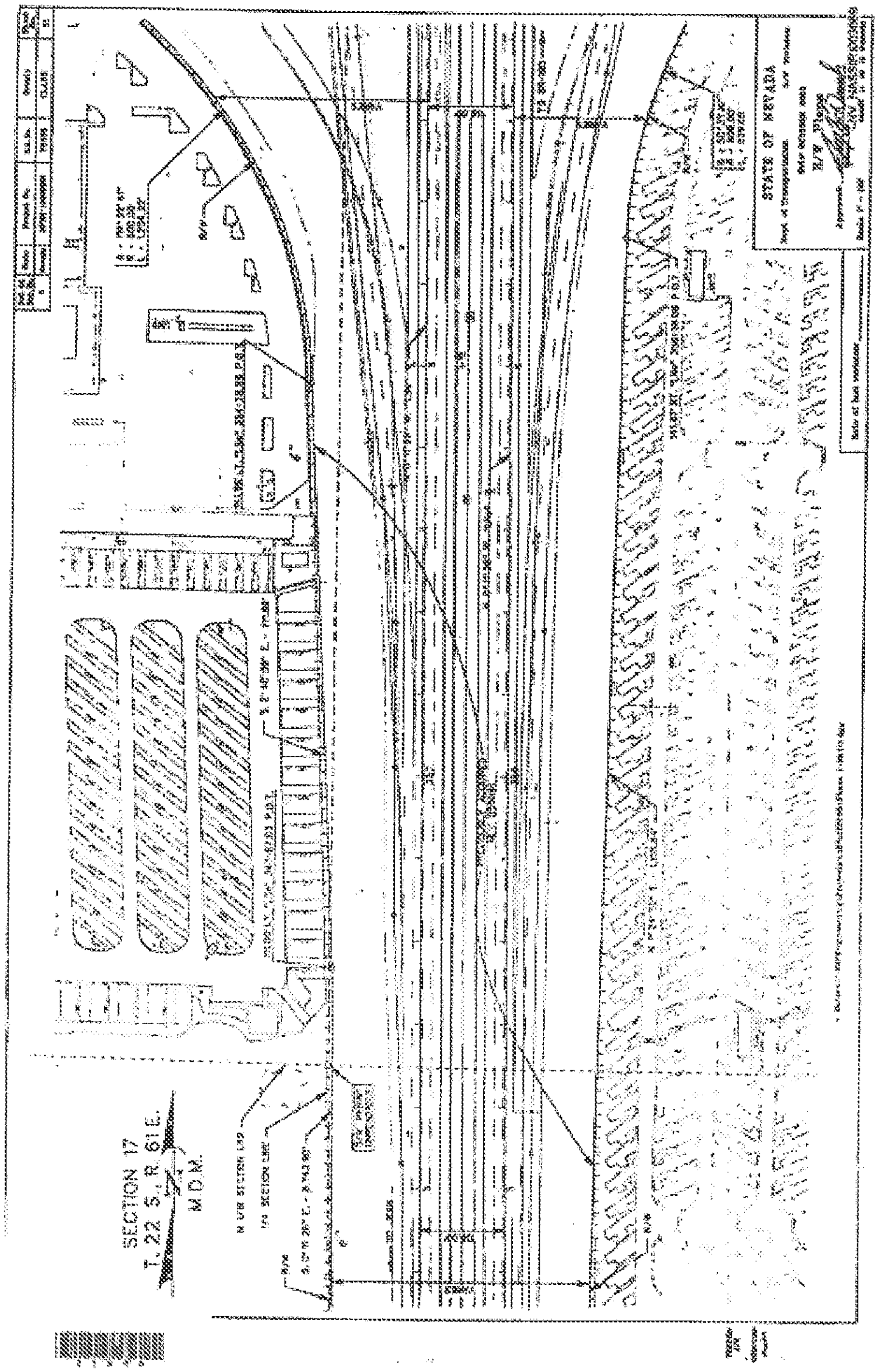
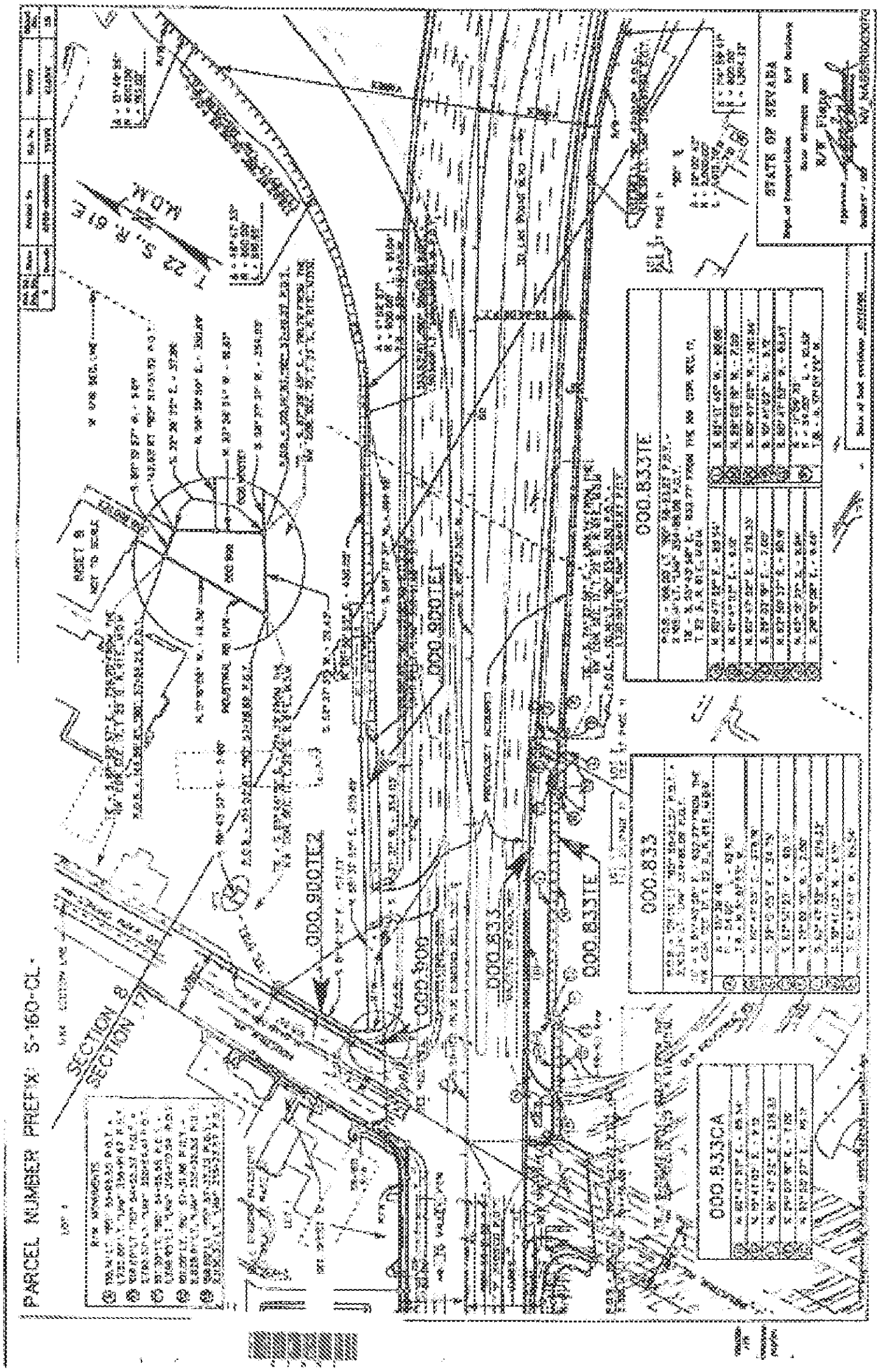
000.027TE
000.026
000.027
000.018
000.020

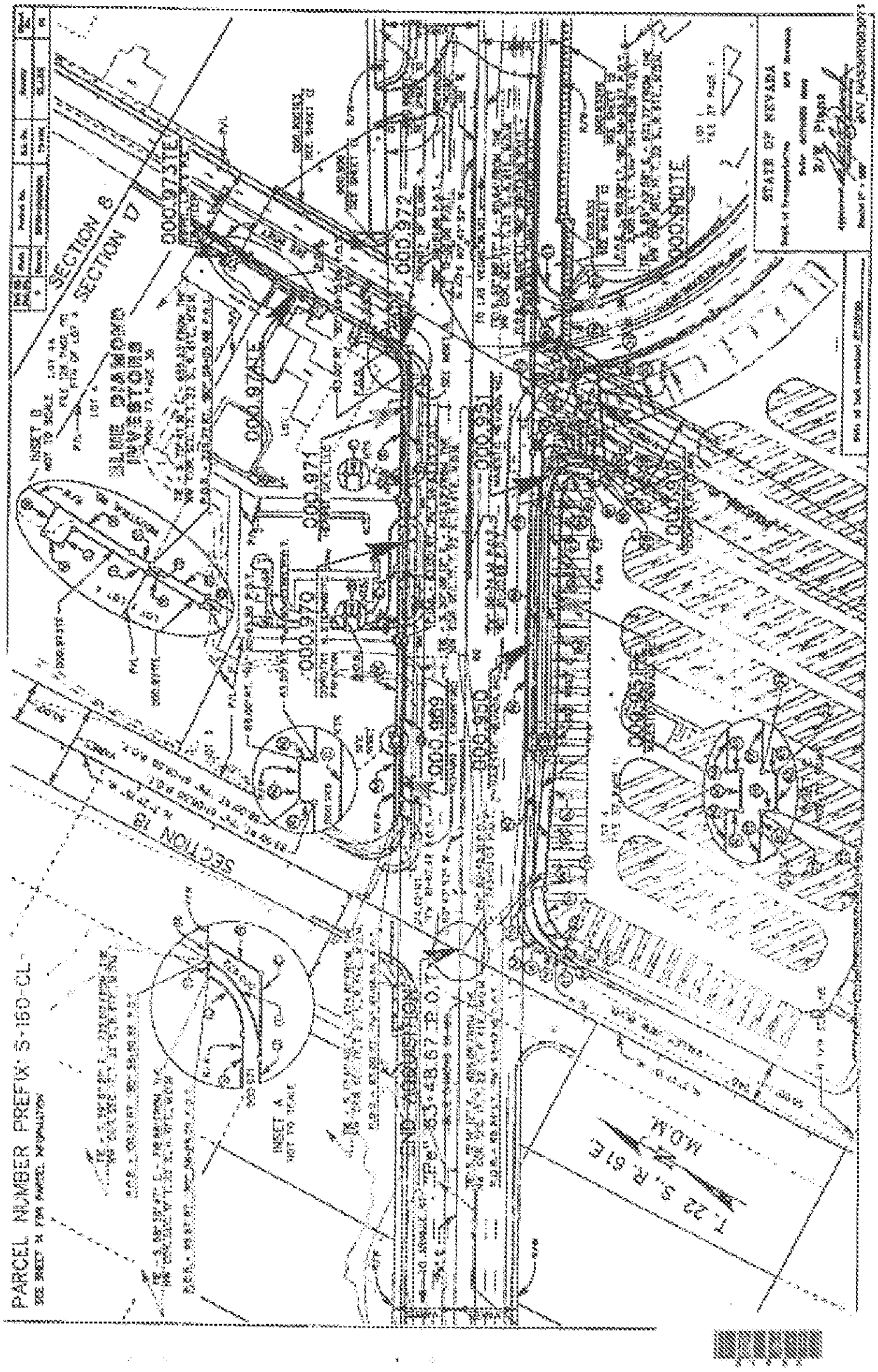

PARCEL NUMBER PREFIX: 1-015-01-
SECTION 8
T. 22 S., R. 61 E.
W.O.M.
PARCEL
033.760
UNITED
PARCELS 033.760 & 033.089 MAY BEEN
PARCELS WILL BE ACQUIRED AS A PART OF
EA 72485 - PHASE 3.

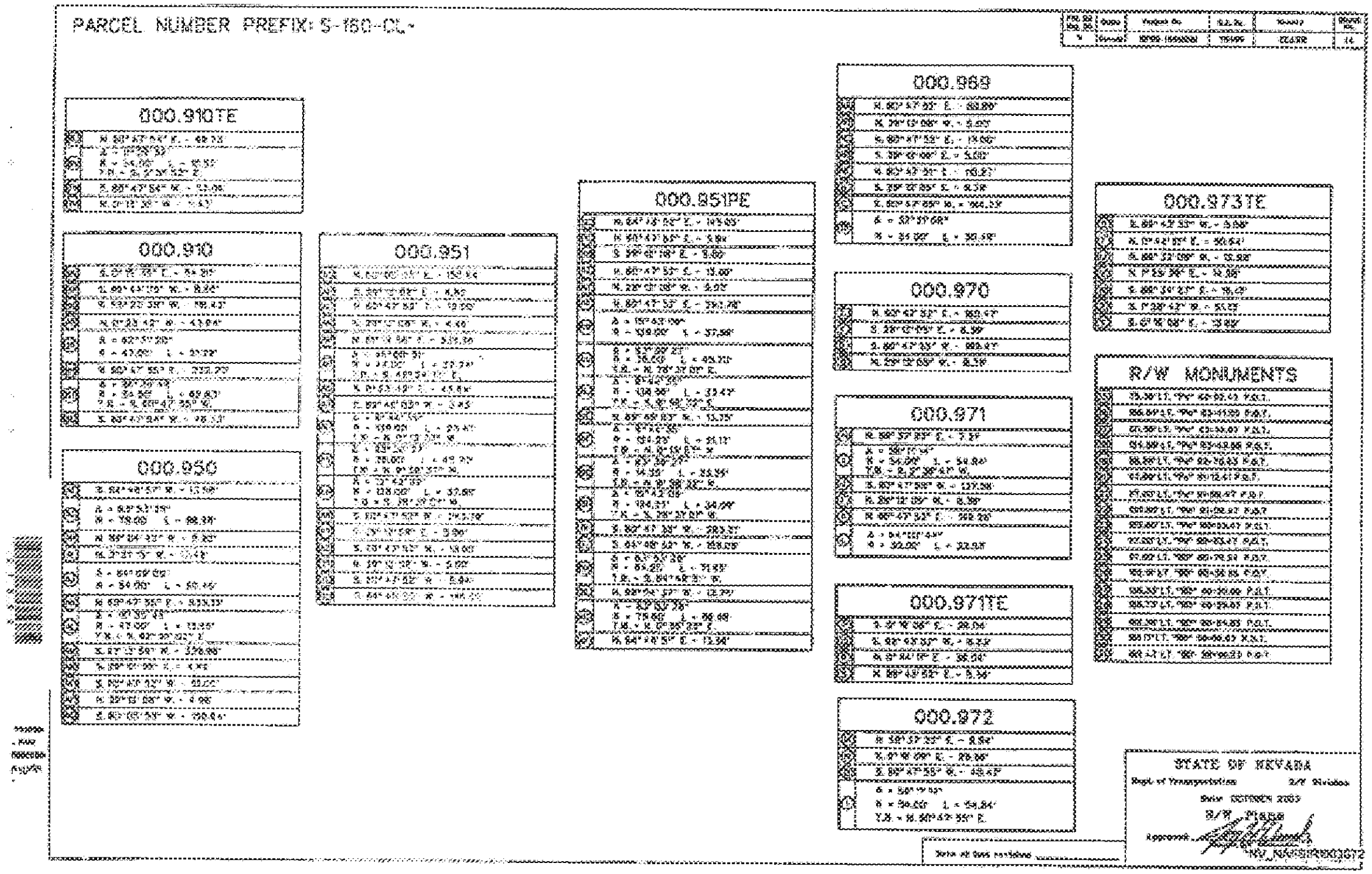

SECTION 8
T. 22 S., R. 61 E.
M.D.M.


SECTION 8
SECTION 17
LOT 32
LOT 33
M.D.M.
T. 22 S., R. 61 E.


SECTION 17
T. 22 S., R. 61 E.
M.D.M.




SECTION 6
SECTION 7
SECTION 18
SECTION 19
INSET B
INSET A
PARCEL NUMBER PREFIX 5-150-CL -
T. 22 S., R. 61 E.
MDM
STATE OF NEVADA



PARCEL NO PREFIX: S-160-CL-

PROPERTY SCHEDULE

STATE OF NEVADA DEPT. OF TRANSPORTATION

PROJECT NO	E. A. NO.	COUNTY	SHEET NO.
SPSR-[illegible]	73[illegible]	CLARK	15

PARCEL NO	GRANTOR	ORIGINAL AREA OF PARCEL	PREV. ACQ	NET AREA	R/W AREA	REMAINDER LT	REMAINDER RT	ACQUISITION RECORDING DATA INST. OR DOC	ACQUISITION RECORDING DATA BK. PG	ACQUISITION RECORDING DATA DATE TYPE	SURPLUS LAND DATA AREA	SURPLUS LAND DATA INST. OR DOC	SURPLUS LAND DATA BK. PG	SURPLUS LAND DATA DATE TYPE	REMARKS
000-015	[illegible] FRED	15,419		15,419											REMAINDER LEFT FOR 000-01[illegible]
000-016	[illegible] FRED	4.[illegible] AC		4.77 AC	4.[illegible] AC	29,4[illegible]	11.[illegible] AC								
000-016TE	[illegible] FRED	[illegible]		[illegible]											CONSTRUCTION
000-017	COUNTY OF CLARK	[illegible]		[illegible]	25,435	10,564	28,[illegible]	[illegible]	[illegible]	[illegible]					
000-017TE	COUNTY OF CLARK	[illegible]		[illegible]											CONSTRUCTION
000-018	COUNTY OF CLARK	19,[illegible]		19,[illegible]	19,[illegible]	10,564		[illegible]	[illegible]	[illegible]					CLEARING DOCUMENT
000-018TE	COUNTY OF CLARK	[illegible]		[illegible]											CONSTRUCTION, CLEARING DOCUMENT
000-019	[illegible] LAS VEGAS LLC et al	[illegible]		[illegible]	24,[illegible]	19.[illegible] AC		[illegible]	[illegible]	[illegible]					* SEE NOTE #1
000-020	[illegible] LAS VEGAS LLC et al	[illegible]		[illegible]	[illegible]	19.[illegible] AC		[illegible]	[illegible]	[illegible]					
000-020TE	[illegible] LAS VEGAS LLC et al	[illegible]		[illegible]				[illegible]	[illegible]	[illegible]					CONSTRUCTION
000-026	ALEXANDRA PROPERTIES LLC et al	[illegible] AC		[illegible] AC	[illegible]	[illegible] AC		[illegible]	[illegible]	[illegible]					
000-027	COUNTY OF CLARK	22,[illegible]		22,[illegible]	22,[illegible]	19,[illegible]	28,[illegible]	[illegible]	[illegible]	[illegible]					
000-027TE	COUNTY OF CLARK	[illegible]		[illegible]											CONSTRUCTION
000-[illegible]	[illegible] NEVADA, INC	11,[illegible]		11,[illegible]	11,[illegible]	[illegible] AC		[illegible]	[illegible]	[illegible]					[illegible] ACCESS RIGHTS AND ALL ABUTTERS RIGHTS
000-[illegible]TE	[illegible] NEVADA, INC	[illegible]		[illegible]				[illegible]	[illegible]	[illegible]					CONSTRUCTION
000-[illegible]	TA OPERATING CORP	[illegible]		[illegible]	[illegible]		[illegible] AC	[illegible]	[illegible]	[illegible]					
000-[illegible]TE1	TA OPERATING CORP	[illegible]		11,[illegible]				[illegible]	[illegible]	[illegible]					CONSTRUCTION
000-[illegible]TE2	TA OPERATING CORP	[illegible]		[illegible]				[illegible]	[illegible]	[illegible]					CONSTRUCTION
000-[illegible]	COUNTY OF CLARK	12,[illegible]		12,[illegible]	12,[illegible]										
000-[illegible]TE	COUNTY OF CLARK	[illegible]		[illegible]											CONSTRUCTION
000-[illegible]	MAJESTIC NEVADA, INC	[illegible]		[illegible]	[illegible]	[illegible] AC		[illegible]	[illegible]	[illegible]					
000-[illegible]	MAJESTIC NEVADA, INC	[illegible]		[illegible]	[illegible]	[illegible] AC		[illegible]	[illegible]	[illegible]					
000-[illegible]	MAJESTIC NEVADA, INC	[illegible]		[illegible]				[illegible]	[illegible]	[illegible]					DEED OF GIFT GRANTED FEE INTEREST [illegible] AS A SLOPE EASEMENT

NOTE #1: [illegible]

DATE OF LAST REVISION: [illegible]

STATE OF NEVADA
DEPT. OF TRANSPORTATION
DATE: JULY 2003
R/W PLANS
SHEET 15 OF 18 SHEETS

NV_[illegible]

PARCEL NO. PREFIX: S-[illegible]-CL

PROPERTY SCHEDULE

STATE OF NEVADA DEPT. OF TRANSPORTATION

PROJECT NO.	E.A. NO.	COUNTY	SHEET NO.
SPSR-[illegible]	[illegible]	CLARK	[illegible]

PARCEL NO.	GRANTOR	TOTAL AREA OF PARCEL	PREV. ACQ.	NET AREA	R/W AREA	REMAINDER LT	REMAINDER RT	ACQUISITION RECORDING DATA INST. OR DOC.	BK. PG.	DATE TYPE	SURPLUS LAND DATA AREA	INST. OR DOC.	BK. PG.	DATE TYPE	REMARKS
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[illegible]	[illegible]	[illegible]		[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]					[illegible]
[illegible]	[illegible] DEVELOPMENT, LLC	[illegible]		[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]					
[illegible]	[illegible] DEVELOPMENT, LLC	[illegible]		[illegible]				[illegible]	[illegible]	[illegible] EASE					[illegible]
[illegible]	COUNTY OF CLARK	[illegible]		[illegible]	[illegible]										
[illegible]	[illegible], TRUSTEES	[illegible]		[illegible]				[illegible]	[illegible]	[illegible] EASE					[illegible]

STATE OF NEVADA
DEPT. OF TRANSPORTATION
DATE: JULY 20[illegible]
R/W PLANS
SHEET [illegible] OF [illegible] SHEETS

DATE OF LAST REVISION: [illegible]

HARPER002559

PA02259

OEXH000416

PARCEL NO. PREFIX I-015-CL-

PROPERTY SCHEDULE

STATE OF NEVADA DEPT. OF TRANSPORTATION

[illegible]

PROJECT NO.	E. A. NO.	COUNTY	SHEET NO.
SPSR-[illegible]	72[illegible]	CLARK	17

PARCEL NO.	GRANTOR	GROSS AREA OF PARCEL	PREV. ACQ.	NET AREA	R/W AREA	REMAINDER LT.	REMAINDER RT.	ACQUISITION RECORDING DATA INST. OR DOC.	ACQUISITION RECORDING DATA BK. PG.	ACQUISITION RECORDING DATA DATE TYPE	SURPLUS LAND DATA AREA	SURPLUS LAND DATA INST. OR DOC.	SURPLUS LAND DATA BK. PG.	SURPLUS LAND DATA DATE TYPE	REMARKS
[illegible]	THE MORGAN SECOND FAMILY, L.P.	31,[illegible] SF		31,[illegible] SF	31,[illegible] SF		[illegible] AC								PORTION OF APN 177-[illegible]
[illegible]	[illegible] FAMILY TRUST, et al	5,[illegible] SF		5,[illegible] SF	5,[illegible] SF		[illegible] AC								PORTION OF APN 177-[illegible] WITH ACCESS RIGHTS

DATE OF LAST REVISION: [illegible]

STATE OF NEVADA

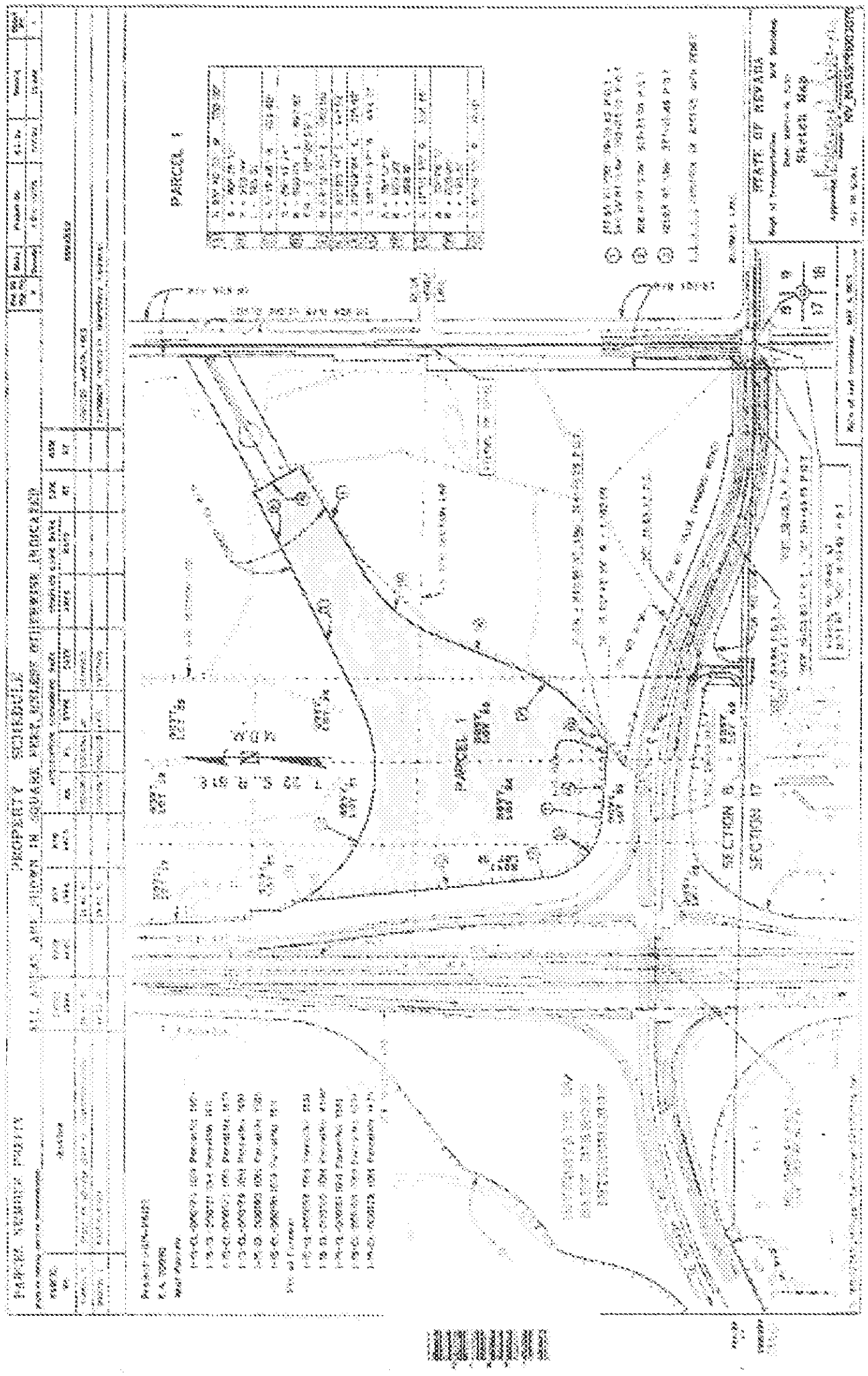
DEPT. OF TRANSPORTATION

DATE MARCH 2004

R/W PLANS

SHEET 17 OF 17 SHEETS

NV_[illegible]



PROPOSAL LETTER

Valuation Consultants

4300 Cassell Circle
Las Vegas, NV 89103
Phone (702) 222-0015
Fax (702) 222-0047

October 22, 2014

Gordon Silver
ATTN.: Dylan T. Ciciliano, Esq.
3960 Howard Hughes Parkway
Ninth Floor
Las Vegas, Nevada 89169

RE: Proposal to provide an appraisal report of the 66.63 net acres of land located at the southwest corner of Blue Diamond Road and Las Vegas Boulevard South, Las Vegas, Clark County, Nevada. This property is also identified 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.

Dear Mr. Ciciliano:

Valuation Consultants hereby submits this letter as a proposal to provide an appraisal of the above referenced property. We will provide an opinion of the property, as follows:

- Retrospective "As Is" Fair Market Value and Just Compensation, as of April 17, 2013

The total fee for this appraisal is $7,500. Valuation Consultants will provide a PDF version of the report as well as three copies of the report, if requested. Please note that a 50% retainer, or $3,750, is required before we start any work on this report. The remaining 50% payment, of $3,750, of the appraisal fee is required to be paid in full before the final copies will be released.

Please note that the fee listed above is for the completion of the appraisal. If any expert witness services are required after the completion of the report, my billing rate is $500 per hour for depositions and $350 per hour for all other services.

This appraisal report will be intended to assist Dylan T. Ciciliano, Esq. of Gordon Silver as well as any and all attorneys, paralegals and others associated with this law firm representing the property ownership by providing an opinion of just compensation.

This appraisal report will be prepared with the intent to conform to the appraisal standards required by the *Uniform Standards of Professional Appraisal Practice* (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation as well as the Code of Professional Ethics of the Appraisal Institute.

Valuation Consultants shall keep the appraisal confidential in all respects, and will not disseminate the appraisal to anyone other than Gordon Silver or the property owner and understands and agrees that the firm of Gordon Silver is going to use the contents of the appraisal to provide legal advice to their client(s). Therefore, the appraisal is subject to the attorney work-product privilege.

If this proposal is acceptable, please authorize us to proceed with the appraisal by signing below.

If you have any questions concerning this proposal, please do not hesitate to call me at (702) 222-0018, extension 11 or on my cell phone at (702) 303-0533.

Respectively submitted,

VALUATION CONSULTANTS

Keith Harper, MAI
Certified General Appraiser
License Number A.0000604-CG
State of Nevada
Expires March 31, 2016

Acknowledged and Agreed by:

By: _____

Dated: October 22, 2014

QUALIFICATIONS OF THE APPRAISER

QUALIFICATIONS OF KEITH HARPER, MAI

I, Keith Harper, MAI graduated with a Bachelor of Arts from the University of Texas at Austin. I am currently President/Owner of Harper Appraisal, Inc. a Nevada corporation dba Valuation Consultants located at 4200 Cannoli Circle, Las Vegas, Nevada, 89103-5404. My direct phone number is (702) 222-0018, ext. 11 and the fax number is (702) 222-0047. My email address is kharper@valconlv.com. A partial resume of specific qualifications is outlined as follows:

Professional Memberships and Licenses Held

Designated Member of the Appraisal Institute #9262
Certified General Appraiser - Nevada, License Number A.0000604-CG, Expires March 31, 2016

Las Vegas Chapter of the Appraisal Institute

1994 – Vice President
1995 – President
1995 – Regional Representative
2010 – Nominating Committee
Latter Part of 2010 – Government Relations Chair
2011 – Government Relations Chair
2012 – Government Relations Committee
2013 – Government Relations Chair

Nevada Department of Taxation

Member, State Board of Equalization – Appointed in April 2013

University of Nevada – Las Vegas

Spring Semester 2011 – Part Time Instructor; RE 333 Real Estate Valuation
Spring Semester 2012 – Part Time Instructor; RE 333 Real Estate Valuation
Spring Semester 2013 – Part Time Instructor; RE 333 Real Estate Valuation

Formal Education

University of Texas at Austin, B.A., August 1984, Minor in Business Administration

Appraisal Education

- 1985 The Appraisal Institute's Course 1A1 – R.E. Appraisal Principles
- 1986 The Appraisal Institute's Course 1A2 – Basic Valuation Procedures
- 1986 The Appraisal Institute's Course 1BA – Cap Theory & Tech, Part A
- 1987 International Right of Way Association – The Appraisal of Partial Acquisitions
- 1987 The Appraisal Institute's Course 1BB – Cap Theory & Tech, Part B
- 1987 International Right of Way Association – Skills of Expert Testimony
- 1987 International Right of Way Association – Easement Valuation
- 1988 The Appraisal Institute's Course 022 – Valuation Analysis and Report Writing

- 1989 The Appraisal Institute's Course SPP – Standards of Professional Practice
- 1990 International Right of Away Association – Legal Aspects of Easements
- 1990 The Appraisal Institute's Course 2-1 – Case Studies in R.E. Valuation
- 1992 The Real Estate Exam Center's Course – Nevada Appraisal Law
- 1993 Bank of California – Commercial Fee Panel Seminar
- 1993 The Appraisal Institute's Course I410 – Standards of Professional Practice, Part A
- 1993 The Appraisal Institute's Course II420 – Standards of Professional Practice, Part B
- 1994 International Right of Way Association Course 101 – Law (Principles of Land Acquisition, Law Segment)
- 1994 The Appraisal Institute's Program – Cash Equivalency
- 1995 The Appraisal Institute Program – Marketing for Appraisers
- 1997 Commercial Investment Real Estate Institute – CI 101: Financial Analysis for Commercial Investment Real Estate
- 1997 The Appraisal Institute's Program – Litigation Appraisals and Expert Testimony: Mock Trial
- 1997 The Appraisal Institute's Program R600 – The FHA Appraisal
- 1997 The Appraisal Institute's Program – Understanding and Using DCF Software
- 1998 The Appraisal Institute's Program R6127 – Historic and Estate Homes
- 1999 The Appraisal Institute's Course II430 – *Uniform Standards of Professional Appraisal Practice* (USPAP) Part C
- 2000 The Appraisal Institute's Course #A7478 – Attacking and Defending an Appraisal in Litigation
- 2000 Nevada Appraisal Seminars – Appraising Atypical Properties
- 2001 The Appraisal Institute's Program – Condemnation Appraising: Basic Principles and Applications
- 2002 Course Sponsored by Gregory A. Hoefer, MAI and Approved for Continuing Appraisal Education by The Nevada Commission of Appraisers – National USPAP 2002 Update – A7453ES
- 2002 The Chicopee Group – Introduction to Commercial Appraising
- 2002 The Appraisal Institute's Online Course – Internet Search Strategies for R.E. Appraisers
- 2002 The Appraisal Institute's Program – Appraisal Consulting
- 2002 The Appraisal Institute's Course SE700 – The Appraiser as an Expert Witness: Preparation and Testimony
- 2003 United States Department of the Interior BLM Workshop – SNPLMA Appraisal Compliance Nevada Course Code A7681
- 2004 CLE International – Eminent Domain Conference
- 2004 Institute for Real Estate and Appraisal Studies – 7-Hour National USPAP Course
- 2005 CLE International – Eminent Domain Conference
- 2006 The Appraisal Institute's Course 1400 – 7-Hour National USPAP Update
- 2006 Institute for Real Estate and Appraisal Studies – Highest and Best Use
- 2006 The Appraisal Institute's Online Course - Analyzing Operating Expenses
- 2007 The Appraisal Institute's Online Course 420 - Business Practice and Ethics
- 2007 The Appraisal Institute's Program Online Course - Analyzing Distressed Real Estate
- 2007 The Appraisal Institute's Online Course - Condominiums, Co-ops and PUDs
- 2007 The Appraisal Institute's Online Course - Cool Tools: New Technology for Real Estate Appraisers

- 2007 The Appraisal Institute's Online Course – What Commercial Clients Would Like Appraisers to Know
- 2007 The Appraisal Institute's Online Course - Scope of Work: Expanding Your Range of Services
- 2007 The Appraisal Institute's Online Course – Apartment Appraisal, Concepts & Applications
- 2008 Las Vegas Chapter of the Appraisal Institute's Seminar – Spotlight on Common Errors and Confidentiality USPAP Issues
- 2008 The Appraisal Institute's Course 1400 – 7-Hour National USPAP Update
- 2010 The Appraisal Institute's Seminar – Appraisal Policy Changes: Challenges & Opportunities
- 2010 The Appraisal Institute's Online Course - Business Practices and Ethics
- 2010 The Appraisal Institute's Online Course - Supervising Appraisal Trainees
- 2010 The Appraisal Institute's Online Course - Eminent Domain and Condemnation
- 2010 The Appraisal Institute's Online Course – Site Use and Valuation Analysis
- 2010 The Appraisal Institute's Course – 7-Hour National USPAP Update
- 2010 The Appraisal Institute's Seminar – Appraisal Regulatory Update
- 2010 Coalition of Appraisers in Nevada - Legislative Update
- 2011 Las Vegas Market Symposium 2011
- 2012 The Appraisal Institute's Course – 7-Hour National USPAP Update
- 2012 The Appraisal Institute's Course – Fundamentals of Separating Real Property, Personal Property, and Intangible Business Assets
- 2013 Las Vegas Market Symposium – November 7, 2013
- 2014 The Appraisal Institute's Course – 7-Hour National USPAP Update
- 2014 The Appraisal Institute's Online Course – Online Comparative Analysis
- 2014 The Appraisal Institute's Online Course – Online Data Verification Methods
- 2014 The Appraisal Institute's Online Course – Online Business Practices and Ethics

Experience

In 1985, I started my career as a commercial appraiser when I joined Trans-Texas Land Services in Austin, Texas. During 1985 to 1988, I was associated with this firm that specialized in the field of eminent domain. I was involved in their commercial appraisal and right-of-way acquisition departments. I was then associated for four years from 1988 to 1992 as a Vice President of McCluskey-Jenkins Appraisal, Inc. also in Austin. During my employment at this firm, I was involved in the analysis and valuation of commercial real estate.

In March of 1992, I moved to Las Vegas and started an office as one of the three owners/partners of Morgan, Beebe & Harper, Inc. which had been legally incorporated in The State of Texas as of the effective date of February 20, 1992. This partnership was ended in late 1997, but this Texas Corporation and partnership was not legally dissolved until Articles of Dissolution were filed with The State of Texas Secretary of State on January 12, 2000. I filed Articles of Incorporation with the State of Nevada Secretary of State on December 28, 1999 in order to form a new Nevada Corporation known as Morgan, Beebe & Harper of Nevada, Inc. I am the 100 percent shareholder of this corporation.

On August 28, 1998, I formed a new partnership and we filed Articles of Organization with the State of Nevada Secretary of State that formed Valuation Consultants, LLC, a Nevada limited

liability company. Valuation Consultants, LLC dba Snyder-Harper & Associates operated until this partnership was ended as of April 1, 2006. A legal Dissolution of Valuation Consultants, LLC was filed with the State of Nevada Secretary of State effective as of July 28, 2006. Since April 1, 2006 through December 31, 2012, I operated as the 100 percent owner of Morgan, Beebe & Harper of Nevada, Inc., a Nevada corporation dba Valuation Consultants.

On January 1, 2013, Larry Snyder, MAI and I formed a new partnership, Harper-Snyder & Associates, LLC, a Nevada limited liability company. We operated under the legal entity of Harper-Snyder & Associates, LLC, a Nevada limited liability company dba Valuation Consultants until this LLC was dissolved on December 31, 2014.

As of January 1, 2015, I am operating as the 100 percent owner of Harper Appraisal, Inc., a Nevada corporation dba Valuation Consultants.

I have over 30 years of experience in the appraisal of a variety of commercial properties.

Types of Properties Appraised/Services Provided

Adult Use, Apartments, Condemnation (total and partial takes), Condominium Projects (High-Rise and Garden Style), Daycare Facilities, Gaming Resorts, Golf Courses, Health/Fitness Centers, Hotels, Industrial Properties, Leasehold/Leased Fee Interests, Litigation Support, Master Planned Communities (Residential and Commercial), Medical Offices, Mobile Home Parks, Motels, Office Buildings/Complexes, Residential Subdivisions, Retail Projects, Self-Storage Facilities, Taverns, Triple Net Properties, Vacant Land (all types).

I assist companies in cases involving disputes arising from transactions involving real estate appraisals and estimated valuation opinions of real estate. I have been involved in various real estate litigations involving the application of proper appraisal standards such as FIRREA and USPAP. I help counsel evaluate real estate appraisal issues, identify key documents obtained during discovery and prepare for depositions and trial, and draft court filings. I have testified before the District Courts in Nevada and the Federal Bankruptcy Courts. I have also provided litigation consulting services on real estate appraisal matters to various parties throughout the State of Nevada.

Clients

Clients include banks, other lenders, insurance companies, attorneys and private parties. A list is available upon request.

My current rate for depositions is $500 per hour.
My current rate for expert witness services is $350 per hour.

Since 1992, following is a summary of cases in which I provided expert testimony:

A) Deposition testimony only:

1. UBS Warburg Real Estate Securities, Inc. v. Meusy, et al. (Clark County, Nevada District Court Case No. A442660).
2. Vestin Mortgage, Inc., a Nevada corporation, et al, Plaintiffs v. Douglas C. Clementson, an individual, et al, Defendants.

3. Richard and Connie Kaplan, husband and wife, etc., Plaintiffs v. Clark County, et al, Defendants (District Court - Clark County, Nevada Case No. A 415286, Department II).
4. Consolidated Mortgage Corporation, Plaintiff vs. Forum Group Limited, LLC, a Nevada Limited Liability Company, et al, Defendants.
5. Jerry Argovitz, Hal Ober, Jon Jannotta, and the AOJ One, LLC, a Nevada Limited Liability Company, Plaintiffs v. United Title of Nevada, et al, Defendants (District Court - Clark County, Nevada; Case No. A 417983, Department XXI).
6. Clark County v. Edmond Windmill Holding.
7. The State of Nevada, on relation of its Department of Transportation, Plaintiff vs. Emerald Crest Holdings, LLC, a Nevada limited liability company, et al, Defendants (District Court - Clark County, Nevada; Case No. A 480269, Department XV).
8. The State of Nevada, on relation of its Department of Transportation, Plaintiff vs. Catalina Apartments, LLC, a Nevada limited liability company, et al, Defendants (District Court - Clark County, Nevada; Case No. A 477159, Department XIII).
9. Commercial Federal Bank, FSB, a federally chartered bank, Plaintiff vs. Lee Kapaloski; Parsons Behle & Latimer, a professional law corporation; James E. Ordowski; and Does 1 through 10, Defendant (District Court - Clark County, Nevada; Case No. A 455945, Department No. 20).
10. 26 Beverly Glen v. Wykoff Newberg (Case No. CV-S-05-0862-BES-GWF).
11. My Private Club, Inc. d/b/a The Playpen v. ABC Warehouses, LLC (District Court - Clark County, Nevada; Case No. A 502716, Department No. V). Deposition taken on September 6, 2006.
12. Joseph Quagliana and Paula Quagliana, husband and wife, Plaintiffs v. Victor E. Grigoriev, et al, Defendants (District Court - Clark County, Nevada; Case No. A 514592). Deposition taken on June 29, 2007, December 3, 2007 and December 7, 2007.
13. The State of Nevada, on relation of its Department of Transportation, Plaintiff v. Larene Secrist, et al, Defendants. (District Court – Clark County, Nevada; Case No. A527582, Department No. V). Deposition taken on August 23, 2007.
14. The State of Nevada, on relation of its Department of Transportation, Plaintiff v. Goss Family Trust, et al, Defendants. (District Court – Clark County, Nevada; Case No. A527592, Department No. XVI). Deposition taken on September 19, 2007.
15. Nevada Power Company, a Nevada corporation, Plaintiff v. Pardee Homes of Nevada, a Nevada corporation, et al, Defendants. (District Court – Clark County, Nevada; Case No. A549636, Department No. XVII). Deposition taken on August 29, 2008.
16. Nevada Power Company, a Nevada corporation, Plaintiff v. Micheal B. Phillips, an individual, et al, Defendants. (District Court – Clark County, Nevada; Case No. A549641, Department No. II). Deposition taken on September 4, 2008.
17. Rhonda Frank, Petitioner v. David Frank, Respondent (District Court – Clark County, Nevada; Case No. A559588, Department No. I). Deposition taken on September 26, 2008.
18. Nevada Power Company, a Nevada corporation, Plaintiff v. Treasure Cove, LLC, et al, Defendants. (District Court – Clark County, Nevada; Case No. A549645). Deposition taken on October 27, 2008.
19. Nevada State Bank, Plaintiff vs. GSG Patrick, L.L.C., a Nevada limited liability company, et al, Defendants (District Court – Clark County, Nevada; Case No. A-09-591924, Department XVI). Deposition taken on June 16, 2010.
20. In re: FX Luxury Las Vegas I, LLC, a Nevada limited liability company, Debtor (United States Bankruptcy Court, District of Nevada, Case No. BK-S-10-17015 BAM, Chapter 11). Deposition taken on July 15, 2010.

21. Nevada Power Company, a Nevada corporation, d/b/a NV Energy, Plaintiff vs. Vegas Valley Investment, LLC, a Nevada limited liability company, Defendants (District Court – Clark County, Nevada; Case No. A-09-590564, Department XXV). Deposition taken on July 29, 2010.
22. Wells Fargo Bank, N.A., as Trustee for the Certificate Holders of Commercial Mortgage Pass-Through Certificates, Series 2006-MF2, acting and through Crown NorthCorp, Inc., as Special Servicer, Plaintiff v. LaSalle Bank National Association, Defendant (United States District Court, District of Nevada, Case No. 2:08-CV-1448). Deposition taken on August 19, 2010.
23. City National Bank, N.A., a national banking association, Plaintiff v. Durango Beltway, LLC, a Nevada limited liability company, et al, Defendants (District Court – Clark County, Nevada; Case No. A10-609979-B, Department XI). Deposition taken on September 29, 2010.
24. City National Bank, N.A., a national banking association, Plaintiff v. Sunset Pointe Industrial, LLC, a Nevada limited liability company, et al, Defendants (District Court – Clark County, Nevada; Case No. A-10-619228-B, Department XI). Deposition taken on November 29, 2010.
25. City National Bank, Plaintiff vs. S.B.A. Development, Inc. et al, Defendants (District Court – Clark County, Nevada; Case No. A-10-618407-C, Department XIX). Deposition taken on December 9, 2010
26. Pama Airport South, LLC, a Nevada limited liability company, et al, Plaintiffs vs. Silver State Bank, a Nevada corporation; Multibank 2009-1 CML-ADC Venture, LLC, a Delaware limited liability company, et al, Defendants (District Court – Clark County, Nevada; Case No. A623297, Department XIX). Deposition taken on July 12, 2011.
27. Service 1st Bank of Nevada, a Nevada corporation, Plaintiff v. HGH Investments, LLC, a Nevada limited liability company, et al, Defendants (District Court - Clark County; Case No. A-11-634607-C, Department XXV). Deposition taken on February 7, 2012.
28. Las Vegas Development Associates, LLC, a Nevada Limited Liability Company; Essex Real Estate Partners, LLC, a Nevada Limited Liability Company, Plaintiffs vs. KB Home Nevada Inc., a Nevada Corporation, Defendants (District Court - Clark County, Nevada; Case Number A574976, Department XIII). Deposition taken on April 9, 2012.
29. Branch Banking and Trust Company, a North Carolina banking corporation, Plaintiff, vs. Post Rainbow, LLC, a Nevada limited liability company, et al, Defendants. United States District Court, District of Nevada, Case No. 2:11-cv-01820-GMN-RJJ. Deposition taken on September 17, 2012.
30. Branch Banking and Trust Company, a North Carolina banking corporation, Plaintiff, vs. Ford Duneville, LLC, a Nevada limited liability company, et al, Defendants. United States District Court, District of Nevada, Case No. 2:11-cv-01776-JCM-GWF. Deposition taken on September 17, 2012.
31. In Re: Desert Inn Management Company, Ltd., Debtor. (United States Bankruptcy Court – District of Nevada, Case No. BK-S-12-16719-LBR, Chapter 11). Deposition taken on January 29, 2013.
32. In Re: O'Bannon Plaza, LLC Debtor. (United States Bankruptcy Court – District of Nevada, Case No. 12-10369-LBR, Chapter 11). Deposition taken on March 6, 2013.
33. Global Development Group, LLC, a Nevada limited liability company, Plaintiff, vs. Black Mountain Community Bank; Bank of Las Vegas; Does I – X, and Roe Corporations I – X, inclusive, Defendants. Bank of Las Vegas, a Nevada Corporation, as successor by statutory merger to Black Mountain Community Bank, Counterclaimant, v. Global

Development Group, LLC, a Nevada limited liability company; Michael D. Froelich, an individual; Barbara A. Froelich, an individual; and Savvas Papasavvas, an individual, Counterdefendants. District Court, Clark County, Nevada, Case No. A-12-667098-C, Department No. XV. Deposition taken on April 30, 2013.

34. 2010-1 CRE VENTURE, LLC, a Delaware limited liability company, Plaintiff, v. Flamingo Paradise Partners, LLC, a Nevada limited liability company; Vaso Boreta, as trustee of the Vaso Boreta 2000 Trust; Vaso Boreta, an individual; David Scatena, an individual; David Frear, as trustee of the Frear Trust of 2004; and David Frear, an individual; and John Doe and Jane Doe, as personal representative(s) of the Estate of Arthur Bruchera, deceased, Defendants. David Scatena, Third-Party, Plantiff, v. Vaso Boreta ; John Boreta; and Ron Boreta, Third-Party Defendants. District Court, Clark County, Nevada, Case No. A-12-660926-B, Department No. XI. Deposition taken on September 19, 2013.
35. Virgin Valley Water District, a political subdivision of the State of Nevada, Plaintiff, vs. Michael E. Johnson, an individual; Robert A. Coache, an individual; Michael Winters, an individual; John Lonetti Jr., individually and as trustee of the Lonetti 1975 Trust; Jordan Coache, an individual; Rio Virgin, LLC; Cibola Investments, LLC; Kovadchy, LLC; Madras, LLC; LV Petro Holdings, LLC; Does 1-50; and Roe Corporations 1-50, Defendants. District Court, Clark County, Nevada, Case No. A-11-636082, Department No. XXXII. Deposition taken on January 16, 2014.
36. The State of Nevada, on relation of its Department of Transportation, Plaintiff vs. Highland 2000-I, L.L.C., a Nevada limited liability company; et al, Defendants. District Court, Clark County, Nevada, Case No. A-12-671915-C, Department No. V. Deposition taken on January 21, 2014.
37. Bank of Las Vegas, a Nevada Corporation, Plaintiff v. Albert A. Flangas, an individual; The Albert A. Flangas Revocable Living Trust; Philip J. Weisman, an individual; George Filios, an individual; and George and Nitsa Filios Trust R-501, Defendants. District Court, Clark County, Nevada, Case No. A-13-682893-C, Department No. XIV. Deposition taken on February 20, 2014.
38. The State of Nevada, on relation of its Department of Transportation, Plaintiff vs. I-15 and Cactus, LLC, a Nevada limited liability company; et al, Defendants. District Court, Clark County, Nevada, Case No. A-12-664403-C, Department No. XXVII. Deposition taken on June 3, 2014.
39. Fred Nassiri, individually and as a trustee of the Nassiri Living Trust, Plaintiffs vs. The State of Nevada, on relation of its Department of Transportation, Defendants. District Court, Clark County, Nevada, Case No. A672841, Department No. XXVI. Deposition taken on January 15, 2015.
40. City National Bank, a national banking association, Plaintiff vs. RA Southeast Land Company LLC, a Nevada limited liability company, Defendant. District Court, Clark County, Nevada, Case No. A-13-679051-B, Department No. XXIX. Deposition taken on March 2, 2015.

B) Deposition and arbitration testimony:

41. Cheryl Slakey v. Forest City Properties, et al. The subject of this case is the house located at 3107 Quail Crest Avenue in the City of Henderson, Clark County, Nevada 89012.

C) Arbitration testimony:

42. The Freight House District, LLC, a Nevada limited liability company, Petitioner vs. Monkey Bars, Inc., a Nevada corporation, Respondent. In the Second Judicial District Court of the State of Nevada in and for the County of Washoe, Case No. CV12-02546, Department No. 6. Hearing was on May 8, 2014.

D) Trial testimony only:

43. T & M Land, LLC, Debtor v. Dielman, et al (United States Bankruptcy Court – Southern District of Nevada, Case No. BK-S 03-22523-LBR).
44. Las Vegas & Lamb Ltd., Debtor v. Vestin Mortgage, a Nevada corporation, et al (United States Bankruptcy Court – Southern District of Nevada).
45. Double Play Enterprises, LLC, a Nevada Limited Liability Company, Plaintiff v. Carmine Vento, Trustee of the Carmine Vento and Ann M. Vento Revocable Family Trust; and I.R.-Still Ltd., a Nevada Limited Liability Company, Defendants (District Court - Clark County, Nevada; Case No. A 452966, Department III).
46. United Title of Nevada, a Nevada Corporation and Chicago Title Insurance Company, an Illinois corporation, Plaintiffs vs. Pebble Silverado, HI, LLC, a Nevada limited liability company, et al (District Court - Clark County, Nevada; Case No. A 448461, Department XV).
47. Mark Properties v. National Title Company (District Court – Clark County, Nevada; Case No. A 371261, Department No. II).
48. Lakeside Mortgage Company vs. Nevada Management Holding Co. LLC, Christopher A. Villareale, et al (District Court – Clark County, Nevada, Case No. A 565282, Department No. 8). Trial testimony was on May 21, 2009.
49. Move West, LLC, Debtor vs. Business Partners, LLC, loan serving agent for Community One Federal Credit Union, Creditor. (United States Bankruptcy Court, District of Nevada, Case No. 09-26789-MKN). Trial testimony was on February 2, 2010.
50. Sun West Bank, a Nevada Banking Company, Plaintiff vs. Kyle Canyon Investments II, LLC, a Nevada limited liability company, et al, Defendants (District Court – Clark County, Nevada, Case No. A-09-96620-C, Department No. XXII). Trial testimony was on May 4, 2010.
51. VDG Chicken, LLC, Debtor vs. FDIC as receiver for Community Bank of Nevada, Creditor. (United States Bankruptcy Court, District of Nevada, Case No. BK-S-09-32607 BAM, Chapter 11). Trial testimony was on May 5, 2010.
52. Pair-A-Dice Mobile Home Park, LLC, Debtor vs. SPCP Group V, LLC, Creditor. (United States Bankruptcy Court, District of Nevada, Case No. BK-S-11-12534-LBR, Chapter 11). Trial testimony was on October 18, 2011.
53. In re: Marion Manor, LLC, Debtor (United States Bankruptcy Court for the District of Nevada, Case No. BK-S-11-28020-BAM, Chapter 11). Trial testimony was on March 9, 2012.
54. Apco Construction, Plaintiff(s) vs. Gemstone Development West Inc, Defendant(s) (District Court – Clark County, Nevada, Case No. A571228, Department No. XXIX). Trial testimony was on July 9, 2012.
55. RES-NV Triple Crown, LLC, Plaintiff(s) vs. Triple Crown Estates, LLC, Defendant(s) (Eighth Judicial District Court - Clark County, Nevada, Consolidated Case No. A644507, Department XI). Trial testimony was on July 12, 2012. Matter involved three properties.
56. In re: Pair-A-Dice Mobile Home Park, LLC, Debtor (United States Bankruptcy Court, District of Nevada, Case No. BK-S-11-12534-LBR, Chapter 11). Trial testimony was on October 12, 2011.

57. Branch Banking and Trust Company, successor-in-interest to Colonial Bank by acquisition of assets from the FDIC as Receiver for Colonial Bank, a North Carolina banking corporation organized and in good standing under the laws of North Carolina, Plaintiffs, vs. Joe D. Thomas, an individual; Mickeleen E. Thomas, an individual; James E. Saycich, an individual; Rosanne C. Saycich, an individual; Miles Sorenson, an individual; Cina Marie Sorensen, an individual; Merl Two, L.P., a Nevada Limited Partnership; and Does I thorugh X and Roe Corporations, I through X, inclusive, Defendants. District Court, Clark County, Nevada, Case No. A-12-670622-B, Department XI. Trial testimony was on September 9, 2013.

E) Deposition and trial testimony:

58. Nevada Department of Transportation (NDOT) v. Donald Nelson, et al.
59. Nevada Power Company, a Nevada corporation v. Southwest Desert Equities, LLC.
60. City of North Las Vegas, v. Mary Bartsas, et al.
61. Clark County, et al v. Moshe Pereg.
62. David Stoddart, and Jencar Development Corporation, Plaintiff v. Larry Miller, Executor of the Estate of William Peccole, and the William Peccole 1982 Trust, Defendants (District Court – Clark County, Nevada; Case No. A 353258, Department XVII).
63. Specialty Financial, a Nevada Corporation, Plaintiff vs. Douglas C. Clementson and Judith P. Clementson, Defendants (BK. Case No. 04-50269-GWZ Chapter 11).
64. County of Clark v. Ensworth Apartments, Inc., et al (District Court - Clark County, Nevada; Case No. A 514536, Department No. XI). Deposition taken on March 27, 2007 and trial testimony was on April of 2008.
65. FMC Pahrump, LLC, Debtor v. Community Bank of Nevada, Secured Creditor (United States Bankruptcy Court – District of Nevada, Case No. BK-08-15600-LBR). Deposition taken on October 16, 2008 and trial testimony was on October 23, 2008.
66. Nevada Power Company, a Nevada corporation, Plaintiff v. Ernest A. Becker, Jr. and Kathleen C. Becker, husband and wife as joint tenants, et al, Defendants (District Court – Clark County, Nevada; Case No. A550071, Department No. II). Deposition taken on May 28, 2009 and June 3, 2009 and trial testimony was on August 26th and 27th, 2009.
67. Federal Deposit Insurance Corporation (FDIC) as Receiver for Community Bank of Nevada, Plaintiff vs. Susan M. Hunt-Krygiell, et al, Defendants (District Court – Clark County, Nevada; Case No. A572559, Department Number IV). Deposition taken on March 31, 2010 and trial testimony was on May 10th and 11th, 2010.
68. Nevada State Bank, a Nevada corporation, Plaintiff vs. Allay Investments, LLC, a Nevada limited liability company, et al, Defendants (District Court – Clark County, Nevada; Case No. A09-595261-C, Department XXII). Deposition taken on February 22, 2010 and trial testimony was on July 23, 2010.
69. Federal Deposit Insurance Corporation (FDIC) as Receiver for Community Bank of Nevada, Plaintiff vs. GSG Alexander, LLC, et al, Defendants (District Court – Clark County, Nevada, Case No. 08A575592, Department Number XI). Deposition taken on May 26, 2010 and trial testimony was on January 11, 2011.
70. In re: Horizon Village Square, LLC, Debtor (United States Bankruptcy Court for the District of Nevada, Case No. 11-21034-MKN, Chapter 11). Deposition taken on January 4, 2012 and trial testimony was on January 9 and 10, 2012.
71. In re: Beltway One Development Group, LLC, Debtor (United States Bankruptcy Court for the District of Nevada, Case No. 11-21026-MKN, Chapter 11). Deposition taken on January 4, 2012 and trial testimony was on January 9 and 10, 2012.

72. In re: Nigro HQ, LLC, Debtor (United States Bankruptcy Court for the District of Nevada, Case No. 11-21014-MKN, Chapter 11). Deposition taken on January 4, 2012 and trial testimony was on January 9 and 10, 2012.
73. In Re: Decatur Retail Partners, LLC and BH Partners Decatur Pad A, LLC, Debtors. United States Bankruptcy Court – District of Nevada, Case Nos. 12-13579-MKN and 12-13582-MKN, Chapter 11 Jointly Administrated. Deposition taken on November 1, 2012 and trial testimony was on November 15, 2012.
74. In Re: Horizon Ridge Medical & Corporate Center, LLC, Debtor. United States Bankruptcy Court – District of Nevada, Case No. BK-S-12-13906-lbr, Chapter 11. Deposition taken on December 4, 2012 and trial testimony was on December 11, 2012.
75. Far East National Bank, N.A., a National Banking Association, Plaintiff v. 4730 Pecos, LLC, a Nevada limited liability company; Jennifer S. Cha, an individual; Audree2, LLC, a Nevada limited liability company; Leon Chen a/k/a Chun-Leon Chen a/k/a C. Leon Chun, et al, Defendants. District Court, Clark County, Case No. A-11-644427-B, Department No. XXV. This case involved three properties. Deposition taken on August 17, 2012 and trial testimony was on June 13, 2013.
76. Town & Country Bank, a Nevada State Chartered Bank; Dean Phillips and Darnell Phillips, Trustees of the Phillips Family Trust 11/19/2004 as amended; and Sauvage Real Estate, LLC, a Nevada limited liability company, Plaintiffs, v. SPS Investments, LLC, a Nevada limited liability company; Shearing Rentals, Inc., a Nevada corporation; Los Reyes Corporation, a Nevada corporation; Ellen Miriam Shearing a.k.a. Miriam Shearing, in her capacity as Trustee of the Shearing Family Trust dated February 10, 1995, as amended, and in her capacity as Special Administratrix and Executrix of the Estate of Steven P. Shearing; Hea Vacation, LLC, a Nevada limited liability company; Soro, LLC, a Nevada limited liability company; Hendo TC, LLC, a Nevada limited liability company; Nosro, LLC, a Nevada limited liability company; Hodgepodge, LLC, a Nevada limited liability company; Vegas Mud, LLC, a Nevada limited liability company; Does I through X; and Roe Corporations XI through XX, Defendants. District Court, Clark County, Nevada, Case No. A-12-664628-B, Department No. XIII. Deposition taken on June 7, 2013 and trial testimony was on August 14 and 15, 2013. Additional trial testimony on January 13, 2014.
77. In Re: Craig 95, LLC, Debtor. (United States Bankruptcy Court – District of Nevada, Case No. 13-11935-LBR, Chapter 11). Deposition taken on September 20, 2013 and trial testimony was on September 24, 2013.
78. Federal Deposit Insurance Corporation as Receiver for Southwest USA Bank, N.A., a Nevada Corporation, Plaintiffs, v. PV Land Investments, LLC; Mustang Trust; Focus Contribution, LLC; John A. Ritter, individually, Doe Individuals I through V; and Roe Corporations I through V, inclusive, Defendants. PV Land Investments, LLC; Mustang Trust; Focus Contribution, LLC; John A. Ritter, individually, Counterclaimants, v. Federal Deposit Insurance Corporation as Receiver for Southwest USA Bank, N.A., a Nevada Corporation; Roes I-X, inclusive, Counterdefendants. District Court, Clark County, Nevada, Case No. A-11-650238-C, Department I. Deposition taken on November 1, 2013 and trial testimony was on March 20, 2014. Second Deposition taken on August 20, 2014.
79. The State of Nevada, on relations of its Department of Transportation, Plaintiff vs. The Alexander Gendall and Lily Gendall Trust; National Title Co., a Nevada Corporation; Alta M. Plunkett, Trustee of the Alta M. Plunkett Family Trust; Alta Plunkett, Trustee of the Alta M. Plunkett Family Trust; Carmic, Inc., a Nevada corporation; City of Las Vegas; Clark County, a political subdivision of the State of Nevada; and all other persons

unknown claiming any right, title, estate, lien or interest in the real property described in the Complaint, Defendants. District Court, Clark County, Nevada, Case No. A-12-666487-C, Department No. II. Deposition taken on September 10, 2013 and trial testimony was on April 9 and 10, 2014.

F) Prove Up Hearings (Unopposed)

80. Clark County Credit Union, Plaintiff vs. Deepak Karamchandami and Rashi Karamchandani, husband and wife as Joint Tenants, Defendants (District Court – Clark County, Nevada, Case No. A-09-606435-C, Department No. XVII). Hearing was on April 28, 2010.
81. Desert Community Bank, now known as Bank of Las Vegas, Plaintiff vs. Exceed Properties, Inc., Defendants (District Court – Clark County, Nevada, Case No. A-09-598483-C, Department No. XII). Hearing was on August 5, 2010.
82. Clark County Credit Union, Plaintiff vs. Impact Commercial, LLC, Defendants (District Court – Clark County, Nevada, Case No. A-10-621637-C, Department No. XVI). Hearing was on April 26, 2011.
83. 2010-1 CRE Venture, LLC, Plaintiff vs. Buffalo Badura Commercial, LLC, Defendants (District Court – Clark County, Nevada, Case No. A-10-626776-B, Department No. XXIX). Hearing was on August 8, 2011.
84. RES-NV Bluffs LLC, Plaintiff vs. CW Capital Fund One LLC, Defendants (District Court – Clark County, Nevada, Case No. A-11-636655-B, Department No. XXIX). Hearing was on November 16, 2011.
85. Bank of America, Plaintiff vs. Eugene P. Libby DO PC, Libby 2749 Sunridge Heights Parkway LLC, and Libby 2759 Sunridge Heights Parkway LLC, Defendants (District Court – Clark County, Nevada, Case No. A-10-625606-B, Department No. XIII). Hearing was on December 19, 2011.
86. CML-NV Eagle Rock, LLC, Plaintiff v. Ridge View at Eagle Rock, LLC, et al, Defendants [Eighth Judicial District Court - Clark County, Nevada, Case No. A-11-644137-B, Department XI (consolidated)]. Hearing was on February 6, 2012.
87. Great Western Bank, Plaintiff v. La Madre 48, LLC, et al, Defendants (Eighth Judicial District Court - Clark County, Nevada, Case No. A-645017, Department XIII). Hearing was on February 27, 2012.
88. CML-NV SPV, LLC, Plaintiff v. Stephanie Paseo Verde 6, LLC, et al, Defendants (Eighth Judicial District Court - Clark County, Nevada, Case No. A641188-B, Department XI). Hearing was on March 27, 2012.
89. CML-NV WBC, LLC, Plaintiff v. War Bonnet Commercial, LLC, et al, Defendants (Eighth Judicial District Court - Clark County, Nevada, Case No. A641190-B, Department XI). Hearing was on March 27, 2012.
90. CML-NV Eastern Springs, LLC, Plaintiff v. APK Realty and Investments, a Nevada corporation, et al, Defendants (District Court - Clark County, Nevada, Case No. A-11-642518-B, Department XIII). Hearing was on April 18, 2012.
91. CML-NV One, LLC, Plaintiff v. Cliff Shadows, LLC, et al, Defendants (Eighth Judicial District Court - Clark County, Nevada, Case No. A-11-644501-C, Department XI). Hearing was on April 24, 2012.
92. RES-NV SBD, LLC, Plaintiff v. Saddlebrook Development, LLC, et al, Defendants (Eighth Judicial District Court - Clark County, Nevada, Case No. A-11-644138-B, Department XI). Hearing was on April 24, 2012.

93. CML-NV Tuntland, LLC, Plaintiff v. Apache Point, LLC, et al, Defendants (Eighth Judicial District Court - Clark County, Nevada, Case No. A-11-644506-B, Department XXIX). Hearing was on April 24, 2012.
94. Great Western Bank, Plaintiff v. Mojave Sun Land Development Company, LLC, et al, Defendants (Eighth Judicial District Court - Clark County, Nevada, Case No. A-591665, Department XXIX). Hearing was on June 12, 2012. Matter involved three properties.
95. RES-NV MMJ, LLC, Plaintiff v. Maverick-Maggie 5, LLC, et al, Defendants (Eighth Judicial District Court - Clark County, Nevada, Case No. A-11-641029-B, Department XIII). Hearing was on June 25, 2012.
96. RES-NV MMJ, LLC, Plaintiff(s) vs. Janell 3 Development, LLC, Defendant(s) (Eighth Judicial District Court - Clark County, Nevada, Case No. A-11-641028-B, Department XI). Hearing was on July 12, 2012.
97. Bank of Las Vegas, Plaintiff(s) vs. St. Damien, Ltd. Defendant(s) (Eighth Judicial District Court - Clark County, Nevada, Case No. A-11-640894-C, Department XXV). Hearing was on September 11, 2012.
98. RES-NV DM, LLC and RES-NV SD, LLC, Plaintiff(s) vs. Gregory Rexroad et al, Defendant(s) (Eighth Judicial District Court - Clark County, Nevada, Case No. A-11-644253-C, Department XVIII). Hearing was on October 18, 2012. Matter involved four properties.
99. Bank of Las Vegas, Plaintiff vs. A.O.E., LLC a Nevada limited liability company; 7426 Bandini, LLC a California limited liability company, et al, Defendants (Eighth Judicial District Court – Clark County, Nevada, Case No. A638077, Department IV). Hearing was on February 5, 2013.
100. MULTIBANK 2009-1 RES-ADC VENTURE, LLC; RES-NV ONE, LLC and RES-NV HENDERSON, LLC, Plaintiffs vs. FSP UNLIMITED, LLC; BJCB INVESTMENTS, LLC; PATRICK & STEPHANIE DEVELOPMENT, LLC; BRIAN M. COLLINS, an individual; JULIE M. COLLINS, an individual; MICHAEL THOMPSON, an individual, et al, Defendants (Eighth Judicial District Court - Clark County, Nevada, Case No. A-10-623856-C, Department II – consolidated with Case No. A623866). Hearing was on March 4, 2013. Matter involved two properties.
101. Great Western Bank, Plaintiff v. Celebrate/Legends, LLC, et al, Defendants (Eighth Judicial District Court - Clark County, Nevada, Case No. A-12-657572-B, Department XIII). Hearing was on April 30, 2013.
102. CML-NV ONE, LLC, Plaintiff vs. Ironcrest, LLC, et al, Defendant(s) (Eighth Judicial District Court - Clark County, Nevada, Case No. A-11-644510-B, Department XXIX). Hearing was on April 17, 2014.
103. 2010-1 CRE VENTURE, LLC, a Delaware limited liability company, Plaintiff, v. Flamingo Paradise Partners, LLC, a Nevada limited liability company; Vaso Boreta, as trustee of the Vaso Boreta 2000 Trust; Vaso Boreta, an individual; David Scatena, an individual; David Frear, as trustee of the Frear Trust of 2004; and David Frear, an individual; and John Doe and Jane Doe, as personal representative(s) of the Estate of Arthur Bruchera, deceased, Defendants. David Scatena, Third-Party, Plantiff, v. Vaso Boreta; John Boreta; and Ron Boreta, Third-Party Defendants. District Court, Clark County, Nevada, Case No. A-12-660926-B, Department No. XI. Hearing was on June 3, 2014.

G) Right of Entry Hearing

104. Nevada Power Company, a Nevada corporation, Plaintiff v. Ernest A. Becker, Jr. and Kathleen C. Becker, husband and wife as joint tenants, et al, Defendants. Hearing testimony was in November 2007.

I have not published any books or articles in the past 10 years.

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE REAL ESTATE DIVISION NOT TRANSFERABLE

This is to Certify That : KEITH HARPER Certificate Number: A.0000604-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: July 1, 2014 Expire Date: March 31, 2016

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: VALUATION CONSULTANTS
4200 CANDELA CIRCLE
LAS VEGAS, NV 89109

REAL ESTATE DIVISION

GAIL J ANDERSON
Administrator

EXHIBIT 12

EXHIBIT 12

DECLARATION OF KEITH HARPER, MAI

I, Keith Harper, MAI hereby declare as follows:

1. I am president of Harper Appraisal, Inc. d/b/a Valuation Consultants. I am a licensed Certified General Appraiser, License Number A.0000604-CG.

2. I have personal knowledge of the facts and circumstances set forth in this Declaration and could and would competently testify thereto in a court of law.

3. On November 3, 2014, I completed an expert report in the matter of *Fred Nassiri v. State of Nevada*, Case No. A672841.

4. In my expert report, I determined the value of the loss of exposure to APN numbers 177-08-803-013, 177-08-702-002, 177-08-803-014, 177-08-803-001, and 177-08-803-010 (collectively, the "Property"), resulting from the State of Nevada's construction of a southbound Flyover at Blue Diamond Road and Interstate I-15 in Clark County, Nevada.

5. My expert report was in the context of just-compensation, which 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." The taking in this case refers to the loss of visibility, view and exposure to the Property from the Flyover. As such, the compensation would be severance damages.

6. I determined based on a review of historical data, comparative sales, and my experience as an appraiser, that the construction of flyover caused a 10% decrease in the value of the Property. To determine the monetary value of that decrease, I determined that on April 17, 2013, the property would have had a value of $99,945,000 had the flyover not been built. Therefore, the monetary value of the damages resulting from the construction of the flyover was $9,994,500.

7. Assuming that the building of a flyover was a breach of the agreement by which Plaintiffs acquired parcel number 177-08-803-013 from the State of Nevada, or a breach of the covenant of good faith and fair dealing, the damages suffered by Plaintiffs would be equal to the sum of money necessary to place Plaintiffs in the same position monetarily had the flyover not been constructed.

8. To determine those contract damages, you would determine the decrease in the value of the property due to a loss of view and visibility resulting from the construction of the flyover. The value of that damage would be calculated using the same methodology as I used when determining just compensation, because both seek to place Plaintiffs in the position they would be in had the flyover not been constructed. Accordingly, Plaintiffs' contract damages would be equal to the level of just compensation.

9. My determination that the value of the property decreased by 10% as a result of the loss of view and visibility would hold true during different time periods as well. The decrease of 10% was calculated by using historical data and comparative sales that spanned from 2007 to 2013. To a reasonable degree of professional certainty, the Property would have also experienced a 10% decrease in value in 2010.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of December, 2015.

Keith Harper, MAI