

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

180 LAND CO LLC, A NEVADA  
LIMITED LIABILITY COMPANY,

Appellant,

v.

CITY OF LAS VEGAS, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA,

Respondents.

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) Supreme Court 77771

) District Case No. A758528

Electronically Filed  
Feb 27 2019 02:06 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S OPPOSITION TO CITY OF LAS VEGAS' MOTION TO  
DISMISS FOR LACK OF JURISDICTION**

**I. INTRODUCTION**

This is an appeal from a final judgment that is complicated because the district court first severed the action in district court into two separate actions, and then by error (admitted by the district court) treated the two separate actions as one, issuing a single, but erroneous judgment. Because of the uncertainty caused by the odd procedural posture of the case, appellant was compelled to file a notice of appeal with respect to both severed actions, to protect all appellate rights.

Now, after the district court has corrected its procedural error, respondent moves to dismiss this appeal because (1) the notice of appeal is premature; and (2) there is no final judgment from which an appeal may be taken. Respondent is only

partially correct. The notice of appeal is premature, but there is a final judgment from which an appeal may be taken. Dismissal at this time is not indicated.

## **II. RELEVANT FACTS AND PROCEDURAL POSTURE**

This is one of five cases currently pending in the Nevada judicial system regarding the development of certain land formerly operated as the Badlands Golf Course in Clark County, Nevada. The property comprises approximately 250 acres on eight parcels located in the City of Las Vegas. This Court has previously issued an opinion in an appeal related to this Property, and another appeal is now pending and being briefed. Although these other appeals are not directly related to this case, they involve separate and distinct parcels that comprise the 250 acres property, and many of the same legal issues and concerns.

The various parcels have separate and distinct owners. Appellant 180 Land Co. LLC owns approximately 180 acres. 180 Land submitted to the City Council a proposal for development of a portion of the property, which application was denied. 180 Land then filed in district court a petition for judicial review. Exhibit A. That petition for judicial review included a complaint based on a claim for inverse condemnation. *Id.*

On February 1, 2018, the district court entered an order that, among other things, severed the inverse condemnation claims from the petition for judicial

review, and stayed the inverse condemnation action pending a decision on the petition for judicial review. Exhibit B (without exhibits). Significantly, the district court did not bifurcate the proceedings; it severed the inverse condemnation complaint from the petition for judicial review. *Id.*

Thereafter, 180 Land filed a separate amended petition for judicial review and a separate amended complaint for inverse condemnation, properly treating the severed actions as separate for all purposes. Exhibits C and D (both without exhibits).

Following proceedings on the petition for judicial review, on November 21, 2018, the district court entered findings of fact, conclusions of law and an order denying the petition for judicial review. Exhibit 1 to respondent's motion. Although no motion was pending before the district court involving the complaint for inverse condemnation, and indeed that matter had been stayed, the district court's order, drafted by respondent's counsel who was seriously overreaching, contained a conclusion of law (No. 64) that "Petitioner's alternative claim for inverse condemnation must be dismissed for lack of ripeness."<sup>1</sup> It also included other language referring to the inverse condemnation action, and an order "that

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<sup>1</sup>This conclusion is particularly inappropriate given the fact that the district court, in its prior order, had specifically ruled that the inverse condemnation complaint was ripe.

Petitioner's alternative claims in inverse condemnation are hereby DISMISSED."

*Id.*

The paragraphs dismissing the inverse condemnation claims were a surprise to 180 Land because the district court had already denied respondent's motion to dismiss the inverse condemnation claims, had ruled that the inverse condemnation claims were ripe, and had severed the inverse condemnation claims entirely from the petition for judicial review.

Respondent served notice of entry of the district court's findings, conclusions and order on November 26, 2018. This presented counsel for 180 Land with a dilemma; the single order was clearly final as to all claims against all parties in both of the separate actions pending in district court. But there was only one district court docket number in which to file a notice of appeal.

With respect to the petition for judicial review, as noted in the motion, 180 Land timely filed a motion for a new trial and for other relief on December 13, 2018. This motion is undoubtedly a tolling motion under NRAP 4(a)(4).

On December 11, 2018, 180 Land also filed a motion for rehearing/reconsideration in the separately pending action based on inverse condemnation. It is not clear under present Nevada appellate law whether this motion would toll the appeal in the inverse condemnation matter. *See AA Primo*

*Builders, LLC v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010) (some motions for reconsideration toll while others do not; one must look to the substance of the motion itself to determine whether it tolls).

Because there was only one petition in both pending actions, and only one order resolving both, appellant could not be certain whether the time for appeal had been tolled as to both appeals which under the circumstances, are contained in a single notice of appeal. Therefore, on December 20, 2018, 180 Land filed a single notice of appeal, explaining:

[T]he matter in district court was severed between a petition for judicial review and several claims sounding in inverse condemnation. However, the Order of November 21, 2018, not only denies judicial review, it dismisses all of the claims for inverse condemnation, with no recognition that the matter had been severed into two actions, and that separate pleadings were filed. Therefore, petitioner, the only petitioner in the severed actions below, appeals from all aspects of the district court's Order with respect to all of the pleaded but severed matters.

Exhibit E.

Thereafter, the district court granted appellant's motion for reconsideration in the inverse condemnation action, and on November 21, 2018, entered an order removing *nunc pro tunc* all language from its findings, conclusions and prior order referencing in any way the separate action for inverse condemnation, noting specifically that the district court "had no intention of making any findings of fact,

conclusions of law or orders regarding the Landowners' severed inverse claims as part of the Findings of Fact and Conclusions of Law entered on November 21, 2018." Exhibit 2 to motion to dismiss.

Respondent then moved this Court to dismiss this appeal.

### **III. DISCUSSION**

#### **A. The Severed Actions Are Separate For All Purposes.**

When a district court severs two actions pending before it, those actions become separate for all purposes. This Court has stated:

Under NRCP 21, when a claim against a party is severed, that claim proceeds separately from the unsevered claims. Federal courts, recognizing that claims severed under FRCP 21 " 'may be ... proceeded with separately,' " treat severed claims as a separate suit, and when a judgment has been entered resolving claims properly severed, it is final and appealable, despite the existence of other pending, unsevered claims. *See Acevedo-Garcia v. Monroig*, 351 F.3d 547, 559 (1st Cir.2003) (quoting former FRCP 21 and explaining that an order resolving properly severed claims is final despite any unresolved, unsevered claims); *United States v. O'Neil*, 709 F.2d 361, 368–69 (5th Cir.1983) (same); *Spencer, White & Prentis Inc. of Conn. v. Pfizer Inc.*, 498 F.2d 358, 361 (2d Cir.1974) (same). As NRCP 21 parallels FRCP 21, we conclude likewise that a judgment resolving claims properly severed under NRCP 21, Nevada's equivalent to FRCP 21, is appealable. *See Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) (recognizing that "federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules").

Further, an order finally resolving severed claims does not need to be certified as final under NRCP 54(b) before a party may appeal

from it because once the claims are severed, two separate actions exist.

*Valdez v. Cox Commc'ns Las Vegas*, 130 Nev. 905, 907–08, 336 P.3d 969, 971 (2014).

Therefore, when the district court severed the petition for judicial review from the complaint for inverse condemnation, it created separate actions. When a final judgment was entered with respect to both, albeit improperly in a single order, appeal was an available remedy with respect to both actions. Therefore, the single notice appeal specifically noting appeal from both actions was properly filed.

**B. The Portion of the Appeal Purporting to Be From the Order Dismissing the Inverse Condemnation Action Should be Dismissed.**

The district court has since rescinded the portions of the final judgment dismissing the separate inverse condemnation action, and that action is proceeding below. Therefore, to the extent that this appeal originally challenged the final judgment in the inverse condemnation action, this appeal has been rendered moot by the district court's *nunc pro tunc* order withdrawing that judgment. That portion of this appeal should be dismissed.

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**C. There is a Final Judgment As to the Separate Action for Judicial Review.**

For the reasons already stated, the district court issued a final judgment in the separate action for judicial review, and the district court's *nunc pro tunc* order removing improper and offending portions of that order concerning a separate action did nothing to abrogate the finality of that order with respect to the separate action in which it was entered. The petition for judicial review has been completely and finally denied by the district court's order; that order is appealable as a final judgment in the separate judicial review action. See *Valdez v. Cox Commc'ns Las Vegas*, 130 Nev. 905, 907–08, 336 P.3d 969, 971 (2014).

**D. Although the Notice of Appeal is Premature, this Appeal Should Not Be Dismissed.**

Appellant's notice of appeal is premature as to the district court's order denying appellant's petition for judicial review because a timely tolling motion was filed and has not yet been resolved. NRAP 4(a)(4). Relying on caselaw that predates the current version of NRAP 4(a)(4), respondent argues that this appeal must be dismissed. Respondent is not correct. Dismissal is not mandatory.

NRAP 4(a)(6) states:

(6) *Premature Notice of Appeal.* A premature notice of appeal does not divest the district court of jurisdiction. The court may dismiss as premature a notice of appeal filed after the oral pronouncement of a

decision or order but before entry of the written judgment or order, or before entry of the written disposition of the last-remaining timely motion listed in Rule 4(a)(4). If, however, a written order or judgment, or a written disposition of the last-remaining timely motion listed in Rule 4(a)(4), is entered before dismissal of the premature appeal, the notice of appeal shall be considered filed on the date of and after entry of the order, judgment or written disposition of the last-remaining timely motion.

This Court *may* dismiss this appeal because the notice of appeal is premature, but it is not required to do so, and in undersigned counsel's experience, it is not generally the practice of this Court to do so.

If this appeal is dismissed, all of the time and effort that has already been put into this matter in opening the case, assigning it to a settlement program, removing it from the program, setting a briefing schedule, reviewing case appeal and docketing statements, and administering the case will be wasted. Also, appellant will needlessly forfeit its filing fees and be punished for its prudence in filing a notice of appeal to protect its rights when circumstances of respondent's creation made the timing of the notice of appeal uncertain. Appellant will merely file a new notice of appeal when the tolling motion is resolved, and the process will have to be repeated.

If this Court simply waits to act, as it usually does, the district court will soon issue a decision on the pending motion (the hearing was already conducted

and the parties are merely awaiting a decision), and appellant's notice of appeal will become valid on that date. Appellant's appellate rights should not be placed in jeopardy or limbo when a proper notice of appeal has been filed. This is precisely the trap for the unwary draftsman, created by the caselaw now relied on by respondent, that this Court intended to un-set when it amended NRAP 4.

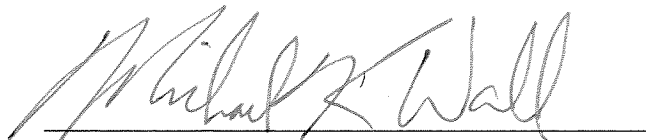
Therefore, appellants suggest that respondent's motion to dismiss should be denied in the exercise of this Court judicial discretion recognized in NRAP 4(a)(6).

### **CONCLUSION**

Plaintiffs' motion should be granted as to the appeal from the now non-existent order in the inverse condemnation action, but should be denied as to the appeal from the order denying judicial review.

Respectfully submitted this 27 day of February, 2019.

HUTCHISON & STEFFEN, PLLC

A handwritten signature in dark ink, appearing to read "Michael K. Wall", is written over a horizontal line.

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## CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date **APPELLANT'S OPPOSITION TO CITY OF LAS VEGAS' MOTION TO DISMISS FOR LACK OF JURISDICTION** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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DATED this 27<sup>th</sup> day of February, 2019.

  
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An employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

## EXHIBIT A

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DISTRICT COURT  
CLARK COUNTY, NEVADA

12 180 LAND COMPANY, LLC, a Nevada limited  
liability company,

13 Petitioner,

14 vs.

15 CITY OF LAS VEGAS, political subdivision of  
16 the State of Nevada,

17 Defendant.

Case No.: A-17-758528-J

Dept. No.:  
Department 16

**PETITION FOR JUDICIAL REVIEW**  
**(Exempt from Arbitration – Action Seeking**  
**Review of Administrative Decision)**

18 Petitioner, by and through its attorneys of record, Kaempfer Crowell, for its Petition for  
19 Judicial Review complains and alleges as follows:

20 **PARTIES**

21 1. Petitioner ("Petitioner") is organized and existing under the laws of the state of  
22 Nevada.

23 2. Respondent City of Las Vegas ("City") is a political subdivision of the State of  
24 Nevada.

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3. The Court has jurisdiction over this Petition for Judicial Review pursuant to NRS

4. Venue is proper in this judicial district pursuant to NRS 13.040.

## GENERAL ALLEGATIONS

5. Petitioner owns 166.99 acres of real property subject to this litigation generally

located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard within the

Petitioner also owns 11.28 acres of real property in this same general area, being Assessor's

6. The existing zoning on the Property is R-PD7 (Residential Planned Development

7. The R-PD7 zoning designation on the Property allows for up to 7.49 residential

8. While an application for a General Plan Amendment was filed by Petitioner

1 numbers WVR-68480; SDR-68481 and TMP-68482. These applications are discussed in further  
2 detail in paragraphs 16, 17 and 18, below.

3 9. Although the Property currently shows the General Plan Designation of PR-OS  
4 (Parks/Recreation/Open Space), that Designation was placed on the Property by the City without  
5 the City having followed its own proper notice requirements or procedures. Therefore, the  
6 General Plan Designation of PR-OS is being shown on the Property in error.

7 10. On or about December 29, 2016, and at the suggestion of the City, Petitioner filed  
8 with the City an application for a General Plan Amendment to change the General Plan  
9 Designation on the Property (including the 35 Acres) from PR-OS (Parks/Recreation/Open  
10 Space) to L (Low Density Residential) and the application was given number GPA-68385  
11 ("GPA-68385").

12 11. This proposed General Plan Designation of "L" corresponded to the General Plan  
13 Designation on the Property prior to the time the PR-OS designation was improperly placed on  
14 the Property by the City.

15 12. As noted, while the General Plan Amendment application (GPA-68385) related to  
16 the Property, the balance of the applications filed with the City related specifically to the  
17 proposed development of sixty one (61) residential lots on the 35 Acres.

18 13. To the north of the 35 Acres are existing residences developed on lots generally  
19 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

20 14. In the center of the 35 Acres, are existing residences developed on lots generally  
21 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

22 15. To the south of the 35 Acres are existing residences developed on lots generally  
23 ranging in size from three quarters (3/4) of an acre to one and one quarter (1 1/4) acre.  
24

1           16.    On or about January 25, 2017, Petitioner filed with the City an application  
2    pertaining to the 35 Acres for a waiver to allow 32-foot private streets with a sidewalk on one  
3    side within a privately gated community where 47-foot private streets with sidewalks on both  
4    sides are required. The application was given number WVR-68480 ("WVR-68480").

5           17.    On or about January 4, 2017, Petitioner filed with the City an application  
6    pertaining to the 35 Acres for a Site Development Plan Review for a proposed 61-Lot single  
7    family residential development. The application was given number SDR-68481 ("SDR-68481").

8           18.    On or about January 4, 2017, Petitioner filed with the City an application  
9    pertaining to the 35 Acres for a Tentative Map for a proposed 61-Lot single family residential  
10   development. The application was given number TMP-68482 ("TMP-68482").

11          19.    The Planning Staff for the City's Planning Department ("Planning Staff")  
12   reviewed GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations  
13   of approval for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had  
14   "No Recommendation" with regard to GPA-68385; however in the "Agenda Memo-Planning"  
15   relating to the City Council meeting date of June 21, 2017, Planning Staff noted its  
16   recommendation of GPA-68385 as "Approval."

17          20.    On February 14, 2017, the City of Las Vegas Planning Commission ("Planning  
18   Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-  
19   68482.

20          21.    After considering Petitioner's comments, and those of the public, the Planning  
21   Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's  
22   conditions.

1           22.     The Planning Commission voted four to two in favor of GPA-68385, however,  
2 the vote failed to reach a super-majority (which would have been 5 votes in favor) and the vote  
3 was, therefore, tantamount to a denial.

4           23.     On June 21, 2017, the Las Vegas City Council ("City Council") for the City heard  
5 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

6           24.     In conjunction with this City Council public hearing, the Planning Staff, in  
7 continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted "*the*  
8 *adjacent developments are designated ML (Medium Low Density Residential) with a density*  
9 *cap of 8.49 dwelling units per acre. The proposed development would have a density of 1.79*  
10 *dwelling units per acre...Compared with the densities and General Plan designations of the*  
11 *adjacent residential development, the proposed L (Low Density Residential) designation is less*  
12 *dense and therefore appropriate for this area, capped at 5.49 units per acre."* (emphasis  
13 added).

14           25.     The Planning Staff found the density of the proposed General Plan compatible  
15 with the existing adjacent land use designation, found the zoning designations compatible and  
16 found that the filed applications conform to other applicable adopted plans and policies that  
17 include approved neighborhood plans.

18           26.     At the June 21, 2017 City Council hearing, Petitioner addressed the concerns of  
19 the individuals speaking in opposition, and provided substantial evidence, through the  
20 introduction of documents and through testimony, of expert witnesses and others, rebutting each  
21 and every opposition claim.

22           27.     Included as part of the evidence presented by Petitioner at the June 21, 2017 City  
23 Council hearing, Petitioner introduced evidence, among other things, (i) that representatives of  
24 the City had specifically noted in both City public hearings and in public neighborhood

1 meetings, that the standard for appropriate development based on the existing R-PD7 zoning on  
2 the Property would be whether the proposed lot sizes were compatible with and comparable to  
3 the lot sizes of the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acres  
4 were compatible with and comparable to the lot sizes of the existing residences adjoining the lots  
5 proposed in the 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acres  
6 was less than the density of those already existing residences adjoining the 35 Acres; and (iv)  
7 that both Planning Staff and the Planning Commission recommended approval of WVR-68480,  
8 SDR-68481 and TMP-68482, all of which applications pertain to the proposed development of  
9 the 35 Acres.

10 28. Any public statements made in opposition to the various applications were either  
11 conjecture or opinions unsupported by facts; all of which public statements were either rebutted  
12 by findings as set forth in the Planning Staff report or through statements made by various City  
13 representatives at the time of the City Council public hearing or through evidence submitted by  
14 Petitioner at the time of the public hearing.

15 29. In spite of the Planning Staff recommendation of approval and the  
16 recommendation of approval from the Planning Commission, and despite the substantial  
17 evidence offered by Petitioner in support of the WVR-68480, SDR-68481, TMP-68482 and  
18 GPA-68385; and in spite of the fact there no substantial evidence was offered in opposition, the  
19 City Council denied the WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

20 30. This denial by the City Council was not supported by substantial evidence and  
21 was arbitrary and capricious.

22 31. On or about June 28, 2017, Notices of Final Action were issued for WVR-68480,  
23 SDR-68481, TMP-68482 and GPA-68385 stating these applications had been denied.

24

1           32.     This Petition for Judicial Review has been filed within 25 days of the Notices of  
2 Final Action as required by NRS 278.3195.

3  
4                           **FIRST CLAIM FOR RELIEF**  
5                           **(Judicial Review)**

6           33.     Petitioner repeats, re-alleges and incorporates by reference the foregoing  
7 paragraphs as if set forth in full herein.

8           34.     City has a duty to refrain from exercising its zoning and land use authority in a  
9 manner that is arbitrary and capricious.

10          35.     City, by engaging in the conduct set forth above, acted arbitrarily and capriciously  
11 when it denied WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

12          36.     City's decisions denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385  
13 were not supported by evidence a reasonable mind would find adequate to support denials.

14          37.     By denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385 without  
15 substantial evidence supporting such denials, City abused its discretion.

16          38.     City's arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-68482  
17 and GPA-68385 has caused Petitioner to suffer real and significant damages.

18          39.     Petitioner is aggrieved by City's denial of WVR-68480, SDR-68481, TMP-68482  
19 and GPA-68385.

20          40.     Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law  
21 to correct City's arbitrary and capricious actions.

22          41.     Pursuant to NRS 278.3195, Petitioner is entitled to judicial review of City's  
23 arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

24          ///

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1. For judicial review of City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385;
2. For an Order reversing City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and
3. For an award of attorneys fees and costs incurred in the filing of this action.
4. For such further relief as the Court deems just and equitable under the circumstances.

KAEMPFER CROWELL

  
CHRISTOPHER L. KAEMPFER (Nevada Bar No. 10000)

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## EXHIBIT B

HUTCHISON & STEFFEN

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A PROFESSIONAL LLC



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3 Nevada Bar No. 1264

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5 Nevada Bar No. 6506

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7 Nevada Bar No. 13094

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Facsimile: (702) 731-1964

*Attorneys for Petitioner*

DISTRICT COURT  
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited  
liability company, DOE INDIVIDUALS I  
through X, DOE CORPORATIONS I through X,  
and DOE LIMITED LIABILITY COMPANIES  
I through X,

Petitioners,

vs.

CITY OF LAS VEGAS, political subdivision of  
the State of Nevada, ROE government entities I

Case No.: A-17-758528-J

Dept. No.: XVI

**ORDER DENYING MOTION TO  
DISMISS AND COUNTERMOTION TO  
STAY LITIGATION**

Hearing Date: January 11, 2017

Hearing Time: 9:00 a.m.

JAN 24 2018

1 through X, ROE CORPORATIONS I through X,  
2 ROE INDIVIDUALS I through X, ROE  
3 LIMITED LIABILITY COMPANIES I through  
X, ROE quasi-governmental entities I through X,

4 Defendant.

5  
6 This court heard the City Of Las Vegas' (the "City") Motion to Dismiss/Motion to Strike  
7 and 180 Land Company, LLC's ("180 Land") Countermotion on January 11, 2017. Jeffery  
8 Dorocak appeared on behalf of the City and Kermit Waters, James Leavitt, Michael Schneider,  
9 and Ryan Daniels appeared on behalf of 180 Land. Having considered the pleadings and papers  
10 on file and the argument of counsel, this Court makes the following findings of fact and  
11 conclusions of law and orders as follows:

12 **FINDING OF FACT**

- 13 1. 180 Land filed its Petition for Judicial Review on July 17, 2017.
- 14 2. 180 Land later amended its Petition for Judicial Review and added alternative  
15 verified claims in inverse condemnation.
- 16 3. Both the Petition for Judicial Review and Alternative Verified Claims in Inverse  
17 Condemnation comprise one action for which this Court has jurisdiction.

18 **CONCLUSIONS OF LAW**

- 19 4. Under EJDRC 8.03, "[a] document that is E-Filed shall be deemed to have been  
20 received by the Clerk of the Court on the date and time of its transmittal." Since 180 Land  
21 transmitted its Petition for Judicial Review on July 17, 2017, as a matter of law, it timely filed its  
22 petition on July 17, 2017.

- 23 5. 180 Land appropriately stated inverse condemnation claims against the City when  
24 it amended its Petition for Judicial Review. The Inverse Condemnation claims relied on

1 allegations that—if true—would entitle 180 Land to relief. Moreover, the claims were ripe  
2 because 180 Land obtained a final decision from the City regarding the property at issue and “a  
3 final decision by the responsible state agency informs the constitutional determination whether a  
4 regulation has deprived a landowner of ‘all economically beneficial use’ of the property.”  
5 *Palazzolo v. Rhode Island*, 533 U.S. 606, 618, 121 S. Ct. 2448, 2458 (2001).

6           6. Given the one form of action rule in the Nevada Constitution Article 6, Section  
7 14, and Nevada Rules of Civil Procedure 2 and 8, 180 Land could bring both the Petition for  
8 Judicial Review and the Alternative Verified Claims in Inverse Condemnation in the same  
9 action.

10           7. Nonetheless, according to N.R.C.P 42, this Court may order “a separate trial of  
11 any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any  
12 number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving  
13 inviolate the right of trial by jury” “in furtherance of convenience or to avoid prejudice, or when  
14 separate trials will be conducive to expedition and economy.”

15           Based on the foregoing, and good cause appearing,

16           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the City’s Motion to  
17 Dismiss 180 Land’s Petition for Judicial Review and Alternative Claims in Inverse  
18 Condemnation is DENIED.

19           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the City’s Motion  
20 to strike 180 Land’s claims for Inverse Condemnation is DENIED.

21           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Alternative  
22 Claims in Inverse Condemnation are ripe and will be severed from the Petition for Judicial  
23 review pursuant to N.R.C.P. 42 and the Countermotion to stay the litigation is GRANTED which  
24 includes a stay of the N.R.C.P. 41(e) time periods (including without limitation the two (2) year

1 and five (5) year trial periods) during the stay period and these time periods shall not commence  
2 for the Alternative Inverse Condemnation Claims until a final decision on the Petition for  
3 Judicial Review is entered. This Court will consider the Petition for Judicial Review first while  
4 the Alternative Inverse Condemnation claims are stayed pending this Court's decision on the  
5 petition.

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that 180 Land shall  
7 have 30 days from entry of this Order to file an amended complaint for the alternative claims in  
8 inverse condemnation in this action.

9 IT IS SO ORDERED

10 Dated this 25<sup>th</sup> day of January, 2018.

11   
12 DISTRICT COURT JUDGE

13 Submitted By:

14 **KAEMPFER CROWELL**

15 Ron W. Daniels (13094) for Jim Smyth  
16 CHRISTOPHER L. KAEMPFER (Nevada Bar No. 1264)  
17 JAMES E. SMYTH II (Nevada Bar No. 6506)  
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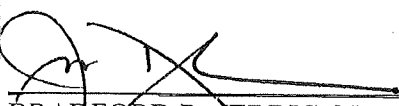
22 And

23 **LAW OFFICES OF KERMIT L. WATERS**  
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Las Vegas, Nevada 89101

1 *Attorneys for Petitioner*

2 Approved as to form By:

3 **CITY OF LAS VEGAS**

4   
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6 BRADFORD R. JERBIC (Nevada Bar No. 1056)  
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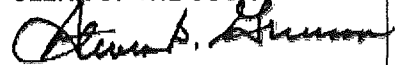
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## EXHIBIT C

HUTCHISON & STEFFEN

---

A PROFESSIONAL LLC



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*Attorneys for Petitioner*

DISTRICT COURT  
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,

Petitioners,

vs.

CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X,

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

**SECOND AMENDED PETITION FOR  
JUDICIAL REVIEW TO SEVER  
ALTERNATIVE VERIFIED CLAIMS IN  
INVERSE CONDEMNATION PER  
COURT ORDER ENTERED ON  
FEBRUARY 1, 2018**

**(Exempt from Arbitration – Action Seeking  
Review of Administrative Decision and  
Action Concerning Title To Real Property)**

The First Amended Petition is amended pursuant to the Court's Order entered on February 1, 2018, to sever the Alternative Verified Claims In Inverse Condemnation filed in this action on September 7, 2017. The allegations in this Second Amended Petition For Judicial Review To Sever Alternative Verified Claims In Inverse Condemnation Per Court Order Entered On February 1, 2018 are in all material respects the same as filed on September 7, 2017, except for the severed Alternative Verified Claims In Inverse Condemnation which are being severed from this Petition and filed in this same case before Department 16 of the Eighth Judicial District for the State of Nevada contemporaneously herewith pursuant to the Court's Order Entered on February 1, 2018, as the First Amended Complaint Pursuant to Court Order Entered On February 1, 2018 For Severed Alternative Verified Claims In Inverse Condemnation.

Petitioner, by and through its attorneys of record, Hutchison & Steffen, Kaempfer Crowell, and The Law Offices of Kermitt L. Waters, for its Petition for Judicial Review complains and alleges as follows:

PARTIES

1. Petitioner ("Petitioner and/or Landowner") is organized and existing under the laws of the state of Nevada.

2. Respondent City of Las Vegas ("City") is a political subdivision of the State of Nevada and is a municipal corporation subject to the provisions of the Nevada Revised Statutes, including NRS 342.105, which makes obligatory on the City all of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601-4655, and the regulations adopted pursuant thereto. The City is also subject to all of the provisions of the Just Compensation Clause of the United States Constitution and Article 1, sections 8 and 22 of the Nevada Constitution, also known as PISTOL (Peoples Initiative to Stop the Taking of Our Land).

3. That the true names and capacities, whether individual, corporate, associate, or otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X (hereinafter collectively referred to as “DOEs”) inclusive are unknown to Petitioner at this time and who may have standing to sue in this matter and who, therefore, sue the Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other entities with standing to sue under the allegations set forth herein.

4. That the true names and capacities, whether individual, corporate, associate, or otherwise of Defendants named herein as ROE government entities I through X, ROE

1 CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY  
2 COMPANIES I through X, ROE quasi-governmental entities I through X (hereinafter  
3 collectively referred to as "ROEs"), inclusive are unknown to the Landowners at this time, who  
4 therefore sue said Defendants by fictitious names and will ask leave of the Court to amend this  
5 Complaint to show the true names and capacities of Defendants when the same are ascertained;  
6 that said Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or  
7 actions, either alone or in concert with the aforementioned defendants, resulted in the claims set  
8 forth herein.

### 9 JURISDICTION AND VENUE

10 5. The Court has jurisdiction over this Petition for Judicial Review pursuant to NRS  
11 278.0235 and NRS 278.3195 and this Court has jurisdiction over the alternative claims for inverse  
12 condemnation pursuant to the United States Constitution, Nevada State Constitution and the  
13 Nevada Revised Statutes.

14 6. Venue is proper in this judicial district pursuant to NRS 13.040.

### 15 GENERAL ALLEGATIONS

16 7. Petitioner owns 166.99 acres of real property generally located south of Alta Drive,  
17 east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada;  
18 all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-702-003,  
19 138-31-601-008, 138-31-702-004 and 138-31-201-005 ("Property").

20 8. The existing zoning on the Property is R-PD7 (Residential Planned Development  
21 District – 7.49 Units per Acre).

22 9. The R-PD7 zoning designation on the Property allows for up to 7.49 residential  
23 units per acre; but such zoning designation is still subject to the approved densities being  
24 comparable to and compatible with the existing adjacent and nearby residential development.

1           10.     While an application for a General Plan Amendment was filed by Petitioner relating  
2 to the Property, being application number, GPA-68385; additional applications were filed by  
3 Petitioner with the City that related more particularly to a parcel consisting of 34.07 acres, being  
4 Assessor's Parcel Number 138-31-201-005. (This 34.07 acres is hereinafter referred to as the "35  
5 Acres".) Those zoning applications pertaining to these 35 Acres were application numbers WVR-  
6 68480; SDR-68481 and TMP-68482. These applications are discussed in further detail in  
7 paragraphs below.

8           11.     At all relevant times herein, Petitioner had the vested right to use and develop the  
9 35 Acres, at a density of up to 7.49 residential units per acre as long as the development is  
10 comparable and compatible with the existing adjacent and nearby residential development.

11           12.     This vested right to use and develop the 35 Acres, was confirmed by the City prior  
12 to Petitioner's acquisition of the 35 Acres and Petitioner materially relied upon the City's  
13 confirmation regarding the Property's vested zoning rights.

14           13.     Petitioner's vested property rights in the 35 Acres is recognized under the United  
15 States and Nevada constitutions, Nevada case law, and the Nevada Revised Statutes.

16           14.     Although the Property currently shows the General Plan Designation of PR-OS  
17 (Parks/Recreation/Open Space), that Designation was placed on the Property by the City without  
18 the City having followed its own proper notice requirements or procedures. Therefore, the General  
19 Plan Designation of PR-OS is being shown on the Property in error.

20           15.     On or about December 29, 2016, and at the suggestion of the City, Petitioner filed  
21 with the City an application for a General Plan Amendment to change the General Plan  
22 Designation on the Property (including the 35 Acres) from PR-OS (Parks/Recreation/Open Space)  
23 to L (Low Density Residential) and the application was given number GPA-68385 ("GPA-  
24 68385").

1           16.     This proposed General Plan Designation of "L" allows densities less than the  
2 corresponding General Plan Designation on the Property prior to the time the PR-OS designation  
3 was improperly placed on the Property by the City.

4           17.     As noted, while the General Plan Amendment application (GPA-68385) related to  
5 the Property, the balance of the applications filed with the City related specifically to the proposed  
6 development of sixty one (61) residential lots on the 35 Acres.

7           18.     To the north of the 35 Acres are existing residences developed on lots generally  
8 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

9           19.     In the center of the 35 Acres, are existing residences developed on lots generally  
10 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

11          20.     To the south of the 35 Acres are existing residences developed on lots generally  
12 ranging in size from three quarters (3/4) of an acre to one and one quarter (1¼) acre.

13          21.     On or about January 25, 2017, Petitioner filed with the City an application  
14 pertaining to the 35 Acres for a waiver to allow 32-foot private streets with a sidewalk on one side  
15 within a privately gated community where 47-foot private streets with sidewalks on both sides are  
16 required. The application was given number WVR-68480 ("WVR-68480").

17          22.     On or about January 4, 2017, the City required Petitioner to file an application  
18 pertaining to the 35 Acres for a Site Development Plan Review for a proposed 61-Lot single family  
19 residential development. The application was given number SDR-68481 ("SDR-68481").

20          23.     On or about January 4, 2017, Petitioner filed with the City an application pertaining  
21 to the 35 Acres for a Tentative Map for a proposed 61-Lot single family residential development.  
22 The application was given number TMP-68482 ("TMP-68482").

23          24.     The Planning Staff for the City's Planning Department ("Planning Staff") reviewed  
24 GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations of approval

1 for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had "No  
2 Recommendation" with regard to GPA-68385; however in the "Agenda Memo-Planning" relating  
3 to the City Council meeting date of June 21, 2017, Planning Staff noted its recommendation of  
4 GPA-68385 as "Approval."

5 25. On February 14, 2017, the City of Las Vegas Planning Commission ("Planning  
6 Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-  
7 68482.

8 26. After considering Petitioner's comments, and those of the public, the Planning  
9 Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's  
10 conditions.

11 27. The Planning Commission voted four to two in favor of GPA-68385, however, the  
12 vote failed to reach a super-majority (which would have been 5 votes in favor) and the vote was,  
13 therefore, tantamount to a denial.

14 28. On June 21, 2017, the Las Vegas City Council ("City Council") for the City heard  
15 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

16 29. In conjunction with this City Council public hearing, the Planning Staff, in  
17 continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted *"the*  
18 *adjacent developments are designated ML (Medium Low Density Residential) with a density cap*  
19 *of 8.49 dwelling units per acre. The proposed development would have a density of 1.79 dwelling*  
20 *units per acre...Compared with the densities and General Plan designations of the adjacent*  
21 *residential development, the proposed L (Low Density Residential) designation is less dense and*  
22 *therefore appropriate for this area, capped at 5.49 units per acre."* (emphasis added).

23 30. The Planning Staff found the density of the proposed General Plan compatible with  
24 the existing adjacent land use designation, found the zoning designations compatible and found

1 that the filed applications conform to other applicable adopted plans and policies that include  
2 approved neighborhood plans.

3 31. At the June 21, 2017 City Council hearing, Petitioner addressed the concerns of the  
4 individuals speaking in opposition, and provided substantial evidence, through the introduction of  
5 documents and through testimony, of expert witnesses and others, rebutting each and every  
6 opposition claim.

7 32. Included as part of the evidence presented by Petitioner at the June 21, 2017 City  
8 Council hearing, Petitioner introduced evidence, among other things, (i) that representatives of the  
9 City had specifically noted in both City public hearings and in public neighborhood meetings, that  
10 the standard for appropriate development based on the existing R-PD7 zoning on the Property  
11 would be whether the proposed lot sizes were compatible with and comparable to the lot sizes of  
12 the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acres were compatible  
13 with and comparable to the lot sizes of the existing residences adjoining the lots proposed in the  
14 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acres was less than the  
15 density of those already existing residences adjoining the 35 Acres; and (iv) that both Planning  
16 Staff and the Planning Commission recommended approval of WVR-68480, SDR-68481 and  
17 TMP-68482, all of which applications pertain to the proposed development of the 35 Acres.

18 33. Any public statements made in opposition to the various applications were either  
19 conjecture or opinions unsupported by facts; all of which public statements were either rebutted  
20 by findings as set forth in the Planning Staff report or through statements made by various City  
21 representatives at the time of the City Council public hearing or through evidence submitted by  
22 Petitioner at the time of the public hearing.

23 34. In spite of the Planning Staff recommendation of approval and the recommendation  
24 of approval from the Planning Commission, and despite the substantial evidence offered by

1 Petitioner in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and in spite  
2 of the fact that no substantial evidence was offered in opposition, the City Council denied the  
3 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

4 35. The City Council's stated reason for the denial was its desire to see, not just the 35  
5 Acres, but the entire 250.92 acres of property, developed under one master development agreement  
6 which would include all of the following properties in that master development agreement:

7 APN 138-31-201-005, a 34.07 acre property, which is the 35 Acre Property, legally  
8 subdivided and separate and apart from the properties identified below;

9 APN 138-31-702-003, a 76.93 acre property that has its own assessor parcel number and  
10 is legally subdivided separate and apart from the 35 Acres;

11 APN 138-31-601-008, a 22.19 acre property that has its own assessor parcel number and  
12 is legally subdivided separate and apart from the 35 Acres;

13 APN 138-31-702-004, a 33.8 acre property that has its own assessor parcel number and is  
14 legally subdivided separate and apart from the 35 Acres;

15 APN 138-31-801-002, a 11.28 acre property that has its own assessor parcel number and  
16 is legally subdivided separate and apart from the 35 Acres;

17 APN 138-32-301-007, a 47.59 acre property that has its own assessor parcel number and  
18 is legally subdivided separate and apart from the 35 Acres and is owned by a different legal  
19 entity, Seventy Acres, LLC;

20 APN 138-32-301-005, a 17.49 acre property that has its own assessor parcel number and  
21 is legally subdivided separate and apart from the 35 Acres and is owned by a different legal  
22 entity, Seventy Acres, LLC;

23

24

1 APN 138-31-801-003, a 5.44 acre property that has its own assessor parcel number and is  
2 legally subdivided separate and apart from the 35 Acres and is owned by a different legal  
3 entity, Seventy Acres, LLC;

4 APN 138-32-202-001, a 2.13 acre property that has its own assessor parcel number and is  
5 legally subdivided separate and apart from the 35 Acres and is owned by a different legal  
6 entity, Fore Stars, LTD;

7 36. At the City Council hearing considering and ultimately denying WVR-68480,  
8 SDR-68481, TMP-68482 and GPA-68385, the City Council advised Petitioner that the only way  
9 the City Council would allow development on the 35 Acres was under a master development  
10 agreement for the entirety of the Property (totaling 250.92 acres).

11 37. At the time the City Council was considering WVR-68480, SDR-68481, TMP-  
12 68482 and GPA-68385, that would allow the 35 Acres to be developed, the City Council stated  
13 that the approval of the master development agreement is very, very close and "we are going to  
14 get there [approval of the master development agreement]." The City Council was referring to the  
15 next public hearing wherein the master development agreement ("MDA") would be voted on by  
16 the City Council.

17 38. The City Attorney stated that "if anybody has a list of things that should be in this  
18 agreement [MDA], but are not, I say these words speak now or forever hold your peace, because  
19 I will listen to you and we'll talk about it and if it needs to be in that agreement, we'll do our best  
20 to get it in. . . . This is where I have to use my skills and say enough is enough and that's why I  
21 said tonight 'speak now or forever hold your peace.' If somebody comes to me with an issue that  
22 they should have come to me with months ago I'm gonna ignore them 'cause that's just not fair  
23 either. We can't continue to whittle away at this agreement by throwing new things at it all the  
24 time. There's been two years for people to make their comments. I think we are that close."

1           39.     On August 2, 2017, less than two months after the City Council said it was very,  
2 very close to approving the MDA, the City Council voted to deny the MDA altogether.

3           40.     The City's actions in denying Petitioner's tentative map (TMP-68482), WVR-  
4 68480, SDR-68481 and GPA-68385 foreclosed all development of the 35 Acres in violation of  
5 Petitioner's vested right to develop the 35 Acres.

6           41.     This denial by the City Council was not supported by substantial evidence and was  
7 arbitrary and capricious.

8           42.     On or about June 28, 2017, Notices of Final Action were issued for WVR-68480,  
9 SDR-68481, TMP-68482 and GPA-68385 stating these applications had been denied.

10          43.     This Petition for Judicial Review has been filed within 25 days of the Notices of  
11 Final Action as required by NRS 278.3195.

12  
13                           **FIRST CLAIM FOR RELIEF**  
                                  **(Judicial Review)**

14          44.     Petitioner repeats, re-alleges and incorporates by reference all paragraphs included  
15 in this pleading as if set forth in full herein.

16          45.     The City has a duty to refrain from exercising its zoning and land use authority in  
17 a manner that is arbitrary and capricious.

18          46.     The City, by engaging in the conduct set forth above, acted arbitrarily and  
19 capriciously when it denied WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

20          47.     The City's decisions denying WVR-68480, SDR-68481, TMP-68482 and GPA-  
21 68385 were not supported by evidence a reasonable mind would find adequate to support denials.

22          48.     By denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385 without  
23 substantial evidence supporting such denials, the City abused its discretion.  
24

49. The City's arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385 has caused Petitioner to suffer real and significant damages.

50. Petitioner is aggrieved by the City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

51. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law to correct the City's arbitrary and capricious actions.

52. Pursuant to NRS 278.3195, Petitioner is entitled to judicial review of the City's arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

### PRAYER FOR RELIEF

**WHEREFORE**, Petitioner prays for judgment as follows:

1. For judicial review of City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385;

2. For an Order reversing City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385;

3. Payment for all costs incurred in attempting to develop the 35 Acres;

4. For an award of attorneys' fees and costs incurred in and for this action; and,

///

1           5.     For such further relief as the Court deems just and equitable under the  
2 circumstances.

3           DATED this 28<sup>th</sup> day of February 2018.

4                               **HUTCHISON & STEFFEN, PLLC**

5  
6           BY: Joseph S. Kistler  
              Mark A. Hutchison (4639)  
              Joseph S. Kistler (3458)  
              Robert T. Stewart (13770)

8                               **KAEMPFER CROWELL**

9  
10          BY: /s/ Christopher Kaempfer  
              CHRISTOPHER L. KAEMPFER (Nevada Bar No. 1264)  
              JAMES E. SMYTH II (Nevada Bar No. 6506)  
              STEPHANIE H. ALLEN (Nevada Bar No. 8486)  
              KAEMPFER CROWELL  
              1980 Festival Plaza Drive, Suite 650  
              Las Vegas, Nevada 89135

13                           **LAW OFFICES OF KERMITT L. WATERS**

14  
15          BY: /s/ Kermit L. Waters  
              KERMITT L. WATERS, ESQ.  
              Nevada Bar. No.2571  
              JAMES J. LEAVITT, ESQ.  
              Nevada Bar No. 6032  
              MICHAEL SCHNEIDER, ESQ.  
              Nevada Bar No. 8887  
              AUTUMN WATERS, ESQ.  
              Nevada Bar No. 8917

18  
19  
20                           *Attorneys for Petitioner*

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Yohan Lowie, on behalf of Petitioner, being first duly sworn, upon oath, deposes and says: that he has read the foregoing **SECOND AMENDED PETITION FOR JUDICIAL REVIEW TO SEVER ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION PER COURT ORDER ENTERED ON FEBRUARY 1, 2018** and based upon information and belief knows the contents thereof to be true and correct to the best of his knowledge.

 JENNIFER KNIGHTON  
Notary Public, State of Nevada  
Appointment No. 14-15063-1  
My Appt. Expires Sep 11, 2018

*Jennifer Kneight*  
NOTARY PUBLIC

1 **Certificate of Service**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,  
3 PLLC and that on this 28<sup>th</sup> day of February 2018, I caused a true and correct copy of the attached  
4 **SECOND AMENDED PETITION FOR JUDICIAL REVIEW TO SEVER  
ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION PER COURT  
ORDER ENTERED ON FEBRUARY 1, 2018** to be served as follows:

5 [X] pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the  
6 Eighth Judicial District Court's electronic filing system, with the date and time of  
7 the electronic service substituted for the date and place of deposit in the mail;  
and/or

8 to the attorney(s) listed below at the address and/or facsimile number indicated below:

9 CITY ATTORNEY'S OFFICE

10 Bradford R. Jerbic

Philip R. Byrnes

11 Jeffrey M. Dorocak

495 S. Main Street, 6<sup>th</sup> Floor

12 Las Vegas, NV 89101

702-229-6629

*Attorneys for City of Las Vegas*

13 Dyanne Morales

14 an employee of Hutchison & Steffen

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EXHIBIT PAGE ONLY

## EXHIBIT D

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



**ACOMP  
LAW OFFICES OF KERMITT L. WATERS**

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Fax: (702) 385-2086  
*Attorneys for 180 Land Company, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

180 LAND COMPANY, LLC, a Nevada limited  
liability company, DOE INDIVIDUALS I  
through X, DOE CORPORATIONS I through X,  
and DOE LIMITED LIABILITY COMPANIES  
I through X,

Plaintiff,

vs.

CITY OF LAS VEGAS, political subdivision of  
the State of Nevada, ROE government entities I  
through X, ROE CORPORATIONS I through X,  
ROE INDIVIDUALS I through X, ROE  
LIMITED LIABILITY COMPANIES I through  
X, ROE quasi-governmental entities I through X,

Defendant.

Case No.: A-17-758528-J  
Dept. No.: XVI

**FIRST AMENDED COMPLAINT  
PURSUANT TO COURT ORDER  
ENTERED ON FEBRUARY 2, 2018 FOR  
SEVERED ALTERNATIVE VERIFIED  
CLAIMS IN INVERSE  
CONDEMNATION  
(Exempt from Arbitration – Action Seeking  
Review of Administrative Decision and  
Action Concerning Title To Real Property)**

COMES NOW Plaintiff, 180 Land Company, LLC ("Landowner") and pursuant to the Order of the Court entered on February 2, 2018, by and through its attorneys of record, The Law Offices of Kermitt L. Waters and Hutchison & Steffen, for its First Amended Complaint Pursuant to Court Order Entered On February 2, 2018 For Severed Alternative Claims In Inverse Condemnation complains and alleges as follows:

**PARTIES**

1. Landowner is organized and existing under the laws of the state of Nevada.
2. Respondent City of Las Vegas ("City") is a political subdivision of the State of Nevada and is a municipal corporation subject to the provisions of the Nevada Revised Statutes, including NRS 342.105, which makes obligatory on the City all of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601-4655, and the regulations adopted pursuant thereto. The City is also subject to all of the provisions of the Just Compensation Clause of the United States Constitution and Article 1, sections 8 and 22 of the Nevada Constitution, also known as PISTOL (Peoples Initiative to Stop the Taking of Our Land).
3. That the true names and capacities, whether individual, corporate, associate, or otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X (hereinafter collectively referred to as "DOEs") inclusive are unknown to the Landowner at this time and who may have standing to sue in this matter and who, therefore, sue the Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as

1 principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other  
2 entities with standing to sue under the allegations set forth herein.

3 4. That the true names and capacities, whether individual, corporate, associate, or  
4 otherwise of Defendants named herein as ROE government entities I through X, ROE  
5 CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY  
6 COMPANIES I through X, ROE quasi-governmental entities I through X (hereinafter  
7 collectively referred to as "ROEs"), inclusive are unknown to the Landowner at this time, who  
8 therefore sue said Defendants by fictitious names and will ask leave of the Court to amend this  
9 Complaint to show the true names and capacities of Defendants when the same are ascertained;  
10 that said Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or  
11 actions, either alone or in concert with the aforementioned defendants, resulted in the claims set  
12 forth herein.

### 13 JURISDICTION AND VENUE

14 5. The Court has jurisdiction over the alternative claims for inverse condemnation  
15 pursuant to the United States Constitution, Nevada State Constitution, the Nevada Revised Statutes  
16 and pursuant to the Court Order entered in this case on February 2, 2018.

17 6. Venue is proper in this judicial district pursuant to NRS 13.040.

### 18 GENERAL ALLEGATIONS

19 7. Landowner owns 166.99 acres of real property generally located south of Alta  
20 Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas,  
21 Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-  
22 702-003, 138-31-601-008, 138-31-702-004 and 138-31-201-005 ("Property").

23 8. The existing zoning on the Property is R-PD7 (Residential Planned Development  
24 District – 7.49 Units per Acre).

1           9.       The R-PD7 zoning designation on the Property allows for up to 7.49 residential  
2 units per acre; but such zoning designation is still subject to the approved densities being  
3 comparable to and compatible with the existing adjacent and nearby residential development.

4           10.       While an application for a General Plan Amendment was filed by the Landowner  
5 relating to the Property, being application number, GPA-68385; additional applications were filed  
6 by the Landowner with the City that related more particularly to a parcel consisting of 34.07 acres,  
7 being Assessor's Parcel Number 138-31-201-005. (This 34.07 acres is hereinafter referred to as  
8 the "35 Acres".) Those zoning applications pertaining to these 35 Acres were application numbers  
9 WVR-68480; SDR-68481 and TMP-68482. These applications are discussed in further detail in  
10 paragraphs below.

11           11.       At all relevant times herein, the Landowner had the vested right to use and develop  
12 the 35 Acres, at a density of up to 7.49 residential units per acre as long as the development is  
13 comparable and compatible with the existing adjacent and nearby residential development.

14           12.       This vested right to use and develop the 35 Acres, was confirmed by the City prior  
15 to Landowner's acquisition of the 35 Acres and Landowner materially relied upon the City's  
16 confirmation regarding the Property's vested zoning rights.

17           13.       Landowner's vested property rights in the 35 Acres are recognized under the United  
18 States and Nevada constitutions, Nevada case law, and the Nevada Revised Statutes.

19           14.       Although the Property currently shows the General Plan Designation of PR-OS  
20 (Parks/Recreation/Open Space), that Designation was placed on the Property by the City without  
21 the City having followed its own proper notice requirements or procedures. Therefore, the General  
22 Plan Designation of PR-OS is being shown on the Property in error.

23           15.       On or about December 29, 2016, and at the suggestion of the City, Landowner filed  
24 with the City an application for a General Plan Amendment to change the General Plan

1 Designation on the Property (including the 35 Acres) from PR-OS (Parks/Recreation/Open Space)  
2 to L (Low Density Residential) and the application was given number GPA-68385 ("GPA-  
3 68385").

4 16. This proposed General Plan Designation of "L" allows densities less than the  
5 corresponding General Plan Designation on the Property prior to the time the PR-OS designation  
6 was improperly placed on the Property by the City.

7 17. As noted, while the General Plan Amendment application (GPA-68385) related to  
8 the Property, the balance of the applications filed with the City related specifically to the proposed  
9 development of sixty one (61) residential lots on the 35 Acres.

10 18. To the north of the 35 Acres are existing residences developed on lots generally  
11 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

12 19. In the center of the 35 Acres, are existing residences developed on lots generally  
13 ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

14 20. To the south of the 35 Acres are existing residences developed on lots generally  
15 ranging in size from three quarters (3/4) of an acre to one and one quarter (1 1/4) acre.

16 21. On or about January 25, 2017, Landowner filed with the City an application  
17 pertaining to the 35 Acres for a waiver to allow 32-foot private streets with a sidewalk on one side  
18 within a privately gated community where 47-foot private streets with sidewalks on both sides are  
19 required. The application was given number WVR-68480 ("WVR-68480").

20 22. On or about January 4, 2017, the City required Landowner to file an application  
21 pertaining to the 35 Acres for a Site Development Plan Review for a proposed 61-Lot single family  
22 residential development. The application was given number SDR-68481 ("SDR-68481").  
23  
24

1           23.     On or about January 4, 2017, Landowner filed with the City an application  
2     pertaining to the 35 Acres for a Tentative Map for a proposed 61-Lot single family residential  
3     development. The application was given number TMP-68482 ("TMP-68482").

4           24.     The Planning Staff for the City's Planning Department ("Planning Staff") reviewed  
5     GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations of approval  
6     for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had "No  
7     Recommendation" with regard to GPA-68385; however, in the "Agenda Memo-Planning" relating  
8     to the City Council meeting date of June 21, 2017, Planning Staff noted its recommendation of  
9     GPA-68385 as "Approval."

10          25.     On February 14, 2017, the City of Las Vegas Planning Commission ("Planning  
11     Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-  
12     68482.

13          26.     After considering Landowner's comments, and those of the public, the Planning  
14     Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's  
15     conditions.

16          27.     The Planning Commission voted four to two in favor of GPA-68385, however, the  
17     vote failed to reach a super-majority (which would have been 5 votes in favor) and the vote was,  
18     therefore, tantamount to a denial.

19          28.     On June 21, 2017, the Las Vegas City Council ("City Council") for the City heard  
20     WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

21          29.     In conjunction with this City Council public hearing, the Planning Staff, in  
22     continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted *"the*  
23     *adjacent developments are designated ML (Medium Low Density Residential) with a density cap*  
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12 32. Included as part of the evidence presented by Landowner at the June 21, 2017, City  
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15 that the standard for appropriate development based on the existing R-PD7 zoning on the Property  
16 would be whether the proposed lot sizes were compatible with and comparable to the lot sizes of  
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10 Acres, but the entire 250.92 acres of property, developed under one master development agreement  
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14 APN 138-31-702-003, a 76.93 acre property that has its own assessor parcel number and  
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17 is legally subdivided separate and apart from the 35 Acres;

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6 entity, Seventy Acres, LLC;

7 APN 138-32-202-001, a 2.13 acre property that has its own assessor parcel number and is  
8 legally subdivided separate and apart from the 35 Acres and is owned by a different legal  
9 entity, Fore Stars, LTD;

10 36. At the City Council hearing considering and ultimately denying WVR-68480,  
11 SDR-68481, TMP-68482 and GPA-68385, the City Council advised Landowner that the only way  
12 the City Council would allow development on the 35 Acres was under a master development  
13 agreement for the entirety of the Property (totaling 250.92 acres).

14 37. At the time the City Council was considering WVR-68480, SDR-68481, TMP-  
15 68482 and GPA-68385, that would allow the 35 Acres to be developed, the City Council stated  
16 that the approval of the master development agreement is very, very close and "we are going to  
17 get there [approval of the master development agreement]." The City Council was referring to the  
18 next public hearing wherein the master development agreement ("MDA") would be voted on by  
19 the City Council.

20 38. The City Attorney stated that "if anybody has a list of things that should be in this  
21 agreement [MDA], but are not, I say these words speak now or forever hold your peace, because  
22 I will listen to you and we'll talk about it and if it needs to be in that agreement, we'll do our best  
23 to get it in. . . . This is where I have to use my skills and say enough is enough and that's why I  
24 said tonight 'speak now or forever hold your peace.' If somebody comes to me with an issue that

1 they should have come to me with months ago I'm gonna ignore them 'cause that's just not fair  
2 either. We can't continue to whittle away at this agreement by throwing new things at it all the  
3 time. There's been two years for people to make their comments. I think we are that close."

4 39. On August 2, 2017, less than two months after the City Council said it was very,  
5 very close to approving the MDA, the City Council voted to deny the MDA altogether.

6 40. The City's actions in denying Landowner's tentative map (TMP-68482), WVR-  
7 68480, SDR-68481 and GPA-68385 foreclosed all development of the 35 Acres in violation of  
8 Landowner's vested right to develop the 35 Acres.

9 41. This denial by the City Council was not supported by substantial evidence and was  
10 arbitrary and capricious.

11 42. On or about June 28, 2017, Notices of Final Action were issued for WVR-68480,  
12 SDR-68481, TMP-68482 and GPA-68385 stating these applications had been denied.

13 43. The Landowner's Alternative Verified Claims in Inverse Condemnation have been  
14 timely filed and, pursuant to the Court's Order entered on February 2, 2018, are ripe.

15 **FIRST ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

16 **(Categorical Taking)**

17 44. Landowner repeats, re-alleges and incorporates by reference all paragraphs  
18 included in this pleading as if set forth in full herein.

19 45. The City reached a final decision that it will not allow development of  
20 Landowner's 35 Acres.

21 46. Any further requests to the City to develop the 35 Acres would be futile.

22 47. The City's actions in this case have resulted in a direct appropriation of  
23 Landowner's 35 Acre property by entirely prohibiting Landowner from using the 35 Acres for  
24 any purpose and reserving the 35 Acres undeveloped.

1           48.     As a result of the City's actions, Landowner has been unable to develop the 35  
2 Acres and any and all value in the 35 Acres has been entirely eliminated.

3           49.     The City's actions have completely deprived Landowner of all economically  
4 beneficial use of the 35 Acres.

5           50.     The City's actions have resulted in a direct and substantial impact on the  
6 Landowner and on the 35 Acres.

7           51.     The City's actions result in a categorical taking of Landowner's 35 Acre property.

8           52.     The City has not paid just compensation to the Landowner for this taking of its 35  
9 Acre property.

10          53.     The City's failure to pay just compensation to Landowner for the taking of its 35  
11 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and  
12 the Nevada Revised Statutes, which require the payment of just compensation when private  
13 property is taken for a public use.

14          54.     Therefore, Landowner is compelled to bring this cause of action for the taking of  
15 the 35 Acre property to recover just compensation for property the City is taking without  
16 payment of just compensation.

17          55.     The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

18           **SECOND ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

19                   **(Penn Central Regulatory Taking)**

20          56.     Landowner repeats, re-alleges and incorporates by reference all paragraphs  
21 included in this pleading as if set forth in full herein.

22          57.     The City reached a final decision that it will not allow development of  
23 Landowner's 35 Acres.

24          58.     Any further requests to the City to develop the 35 Acres would be futile.

1           59.     The City already denied an application to develop the 35 Acres, even though: 1)  
2 Landowner's proposed 35 Acre development was in conformance with its zoning density and  
3 was comparable and compatible with existing adjacent and nearby residential development; 2)  
4 the Planning Commission recommended approval; and 3) the City's own Staff recommended  
5 approval.

6           60.     The City affirmatively stated that it will not allow Landowner to develop the 35  
7 Acres unless it is developed as part of the MDA, referenced above. Landowner worked on the  
8 MDA for nearly two years, with numerous City-imposed and/or City requested abeyances and  
9 with the City's direct and active involvement in the drafting and preparing the MDA and the  
10 City's statements that it would approve the MDA and despite nearly two years of working on the  
11 MDA, on or about August 2, 2017, the City denied the MDA.

12           61.     The City's actions have caused a direct and substantial economic impact on  
13 Landowner, including but not limited to preventing development of the 35 Acres.

14           62.     The City was expressly advised of the economic impact the City's actions were  
15 having on Landowner.

16           63.     At all relevant times herein, Landowner had specific and distinct investment  
17 backed expectations to develop the 35 Acres.

18           64.     These investment backed expectations are further supported by the fact that the  
19 City, itself, advised Landowner of its vested rights to develop the 35 Acre property prior to  
20 acquiring the 35 Acres.

21           65.     The City was expressly advised of Landowner's investment backed expectations  
22 prior to denying Landowner the use of the 35 Acres.

23           66.     The City's actions are preserving the 35 Acres as open space for a public use and  
24 the public is actively using the 35 Acres.

1           67.     The City's actions have resulted in the loss of Landowner's investment backed  
2 expectations in the 35 Acres.

3           68.     The character of the City action to deny Landowner's use of the 35 Acres is  
4 arbitrary, capricious, and fails to advance any legitimate government interest and is more akin to  
5 a physical acquisition than adjusting the benefits and burdens of economic life to promote the  
6 common good.

7           69.     The City never stated that the proposed development on the 35 Acres violated any  
8 code, regulation, statute, policy, etc. or that Landowner did not have a vested property right to  
9 develop the 35 Acres.

10          70.     The City provided only one reason for denying Landowner's request to develop  
11 the 35 Acres - that the City would only approve the MDA that included the entirety of the 250.92  
12 acres owned by various entities and that the MDA would allow development of the 35 Acres.

13          71.     The City then, on or about August 2, 2017, denied the MDA, thereby preventing  
14 the development of the 35 Acres.

15          72.     The City's actions meet all of the elements for a Penn Central regulatory taking.

16          73.     The City has not paid just compensation to Landowner for this taking of its 35  
17 Acre property.

18          74.     The City's failure to pay just compensation to Landowner for the taking of its 35  
19 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and  
20 the Nevada Revised Statutes, which require the payment of just compensation when private  
21 property is taken for a public use.

22          75.     Therefore, Landowner is compelled to bring this cause of action for the taking of  
23 the 35 Acre property to recover just compensation for property the City is taking without  
24 payment of just compensation.

1           76.     The requested compensation is in excess of ten thousand dollars (\$15,000.00).

2           **THIRD ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

3                           **(Regulatory Per Se Taking)**

4           77.     Landowner repeats, re-alleges and incorporates by reference all paragraphs  
5 included in this pleading as if set forth in full herein.

6           78.     The City's actions stated above fail to follow the procedures for taking property  
7 set forth in Chapters 37 and 342 of the Nevada Revised Statutes, Nevada's statutory provisions  
8 on eminent domain, and the United States and Nevada State Constitutions.

9           79.     The City's actions exclude the Landowner from using the 35 Acres and, instead,  
10 permanently reserve the 35 Acres for a public use and the public is using the 35 Acres.

11          80.     The City's actions have shown an unconditional and permanent taking of the 35  
12 Acres.

13          81.     The City has not paid just compensation to the Landowner for this taking of its 35  
14 Acre property.

15          82.     The City's failure to pay just compensation to Landowner for the taking of its 35  
16 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and  
17 the Nevada Revised Statutes, which require the payment of just compensation when private  
18 property is taken for a public use.

19          83.     Therefore, Landowner is compelled to bring this cause of action for the taking of  
20 the 35 Acre property to recover just compensation for property the City is taking without  
21 payment of just compensation.

22          84.     The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

1        **FOURTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

2                                **(Nonregulatory Taking)**

3            85.     Landowner repeats, re-alleges and incorporates by reference all paragraphs  
4 included in this pleading as if set forth in full herein.

5            86.     The City actions directly and substantially interfere with Landowner's vested  
6 property rights rendering the 35 Acres unusable and/or valueless.

7            87.     The City has intentionally delayed approval of development on the 35 Acres and,  
8 ultimately, denied any and all development in a bad faith effort to preclude any use of the 35  
9 Acres.

10          88.     The City's actions are oppressive and unreasonable.

11          89.     The City's actions result in a nonregulatory taking of Landowner's 35 Acres.

12          90.     The City has not paid just compensation to Landowner for this taking of its 35  
13 Acre property.

14          91.     The City's failure to pay just compensation to Landowner for the taking of its 35  
15 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and  
16 the Nevada Revised Statutes, which require the payment of just compensation when private  
17 property is taken for a public use.

18          92.     Therefore, Landowner is compelled to bring this cause of action for the taking of  
19 the 35 Acre property to recover just compensation for property the City is taking without  
20 payment of just compensation.

21          93.     The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).

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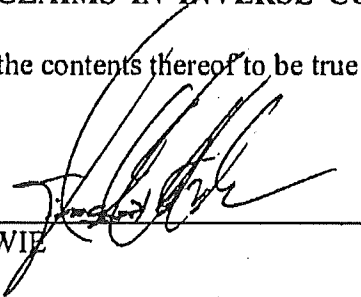
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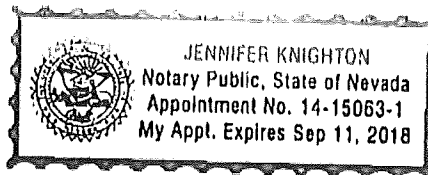
STATE OF NEVADA       )  
                                      ):ss  
COUNTY OF CLARK       )

Yohan Lowie, on behalf of the Landowner, being first duly sworn, upon oath, deposes and says: that he has read the foregoing **FIRST AMENDED COMPLAINT PURSUANT TO COURT ORDER ENTERED ON FEBRUARY 2, 2018 FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** and based upon information and belief knows the contents thereof to be true and correct to the best of his knowledge.

  
\_\_\_\_\_  
YOHAN LOWIE

SUBSCRIBED and SWORN to before me  
This 26 day of February, 2018.

  
NOTARY PUBLIC



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EXHIBIT PAGE ONLY

## EXHIBIT E

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



1 **NOAS**

2 **HUTCHISON & STEFFEN, PLLC**

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28 Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

*Attorneys for Petitioner*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

180 LAND CO LLC, a Nevada limited-liability  
company; DOE INDIVIDUALS I through X;  
DOE CORPORATIONS I through X; and  
DOE LIMITED-LIABILITY COMPANIES I  
through X,

Petitioners,

v.

Case No. A-17-758528-J  
Dept. No. XVI

**NOTICE OF APPEAL**

1 CITY OF LAS VEGAS, a political  
2 subdivision of the State of Nevada; ROE  
3 GOVERNMENT ENTITIES I through X;  
4 ROE CORPORATIONS I through X; ROE  
5 INDIVIDUALS I through X; ROE  
6 LIMITED-LIABILITY COMPANIES I  
7 through X; ROE QUASI-  
8 GOVERNMENTAL ENTITIES I through  
9 X,

10 Defendants.

11 JACK B. BINION, an individual; DUNCAN  
12 R. and IRENE LEE, individuals and Trustees  
13 of the LEE FAMILY TRUST; FRANK A.  
14 SCHRECK, an individual; TURNER  
15 INVESTMENTS, LTD., a Nevada Limited  
16 Liability Company; ROGER P. and  
17 CAROLYN G. WAGNER, individuals and  
18 Trustees of the WAGNER FAMILY TRUST;  
19 BETTY ENGLESTAD AS TRUSTEE OF  
20 THE BETTY ENGLESTAD TRUST;  
21 PYRAMID LAKE HOLDINGS, LLC;  
22 JASON AND SHEREEN AWAD AS  
23 TRUSTEES OF THE AWAD ASSET  
24 PROTECTION TRUST; THOMAS LOVE  
25 AS TRUSTEE OF THE ZENA TRUST;  
26 STEVE AND KAREN THOMAS AS  
27 TRUSTEES OF THE STEVE AND KAREN  
28 THOMAS TRUST; SUSAN SULLIVAN AS  
TRUSTEE OF THE KENNETH J.  
SULLIVAN FAMILY TRUST, AND DR.  
GREGORY BIGLER AND SALLY  
BIGLER,

Intervenors.

23 Notice is given that 180 LAND CO LLC, Petitioner in the above-captioned matter,  
24 appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law on  
25 Petition for Judicial Review, and Order which was entered by the district court on November  
26 21, 2018.  
27  
28

1 Petitioner notes that the matter in district court was severed between a petition for  
2 judicial review and several claims sounding in inverse condemnation. However, the Order of  
3 November 21, 2018, not only denies judicial review, it dismisses all of the claims for inverse  
4 condemnation, with no recognition that the matter had been severed into two actions, and that  
5 separate pleadings were filed. Therefore, petitioner, the only petitioner in the severed actions  
6 below, appeals from all aspects of the district court's Order with respect to all of the pleaded but  
7 severed matters.  
8

9 DATED this 20 day of December, 2018.

11 HUTCHISON & STEFFEN, PLLC

12   
13

14 Mark A. Hutchison (4639)  
15 Michael K. Wall (2098)  
16 Joseph S. Kistler (3458)  
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22 James J. Leavitt (6032)  
23 Michael Schneider (8887)  
24 Autumn L. Waters (8917)  
704 South Ninth Street  
Las Vegas, Nevada 89101

25 *Attorneys for Petitioner*  
26  
27  
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 20<sup>th</sup> day of December, 2018, I caused the above and foregoing document entitled **NOTICE OF APPEAL** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

☐ to be served via facsimile; and/or

XXX pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

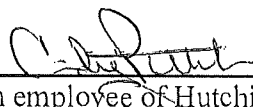
☐ to be hand-delivered;

to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

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Philip R. Byrnes (166)  
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An employee of Hutchison & Steffen, PLLC