

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 78792

CITY OF LAS VEGAS, a political subdivision of the State of Nevada

Petitioner

v.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of
Clark, and the Honorable Timothy C. Williams, District Judge,

Respondents

and

180 LAND CO, LLC, a Nevada limited-liability company,

Real Party in Interest

District Court Case No.: A-17-758528-J
Eighth Judicial District Court of Nevada

**PETITIONER'S APPENDIX
VOLUME 5
PA0761-PA0902**

<p>McDONALD CARANO LLP George F. Ogilvie III (#3552) Debbie Leonard (#8260) Amanda C. Yen (#9726) Christopher Molina (#14092) 2300 W. Sahara Ave, Suite 1200 Las Vegas, NV 89102 Phone: 702.873.4100 Fax: 702.873.9966 gogilvie@mcdonaldcarano.com dleonard@mcdonaldcarano.com ayen@mcdonaldcarano.com cmolina@mcdonaldcarano.com</p>	<p>LAS VEGAS CITY ATTORNEY'S OFFICE Bradford R. Jerbic (#1056) Philip R. Byrnes (#166) Seth T. Floyd (#11959) 495 S. Main Street, 6th Floor Las Vegas, NV 89101 Phone: 702.229.6629 Fax: 702.386.1749 bjerbic@lasvegasnevada.gov pbyrnes@lasvegasnevada.gov sfloyd@lasvegasnevada.gov</p>
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Attorneys for Petitioner

Electronically Filed
May 17 2019 03:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

DATE	DOCUMENT	VOLUME	PAGE	RANGE
7/18/2017	Petition for Judicial Review	1	PA0001	PA0008
9/7/2017	First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation	1	PA0009	PA0027
2/23/2018	First Amended Complaint	1	PA0028	PA0044
2/28/2018	Errata to First Amended Complaint Pursuant to Court Order entered on February 2-[1], 2018 for Severed Alternative Verified Claims in Inverse Condemnation	1	PA0045	PA0061
2/28/2018	Second Amended Petition for Judicial Review to Sever Alternative Verified Claims in Inverse Condemnation Per Court Order Entered on February 1, 2018	1	PA0062	PA0076
3/5/2018	Order Granting Plaintiffs' Petition for Judicial Review in <i>Jack B. Binion, et al. v. The City of Las Vegas, et al.</i> , A-17-752344-J	1	PA0077	PA0090
4/17/2018	Petitioner's Memorandum of Points and Authorities in Support of Second Amended Petition for Judicial Review	1	PA0091	PA0152
6/26/2018	Errata to Petitioner's Memorandum of Points and Authorities in Support of Second Amended Petition for Judicial Review	1	PA0153	PA0199
11/26/2018	Notice of Entry of Order of Findings of Fact and Conclusions of Law on Petition for Judicial Review	1	PA0200	PA0227
12/13/2018	Motion for a New Trial Pursuant to NRCP 59 (e) and Motion to Alter or Amend Pursuant to NRCP 52(b) and/or Reconsider the Findings of Facts and Conclusions of Law and Motion to Stay Pending Nevada Supreme Court Directives	2	PA0228	PA0255
2/6/2019	Order <i>NUNC PRO TUNC</i> Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	2	PA0256	PA0258

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2/13/2019	City of Las Vegas' Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims	2	PA0259	PA0272
3/4/2019	Plaintiff Landowners' Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, If Required	2	PA0273	PA0399
3/14/2019	City of Las Vegas' Reply in Support of Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims	3	PA0400	PA0483
3/18/2019	City of Las Vegas' Opposition to Plaintiff Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, If Required	3	PA0484	PA0562
3/22/2019	Reporter's Transcript of Motions	4	PA0563	PA0725
4/15/2019	Plaintiff Landowners' Request for Admission to the City of Las Vegas - First Request	4	PA0726	PA0737
4/15/2019	Plaintiff Landowners' Request for Production of Documents to the City of Las Vegas - First Request	4	PA0738	PA0749
4/15/2019	Plaintiff Landowners' Early Case Conference Initial Disclosures <i>For Phase I – Liability</i> Pursuant to NRCP 16.1	4	PA0750	PA0760
4/23/2019	City of Las Vegas' Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening Time	5	PA0761	PA0851

DATE	DOCUMENT	VOLUME	PAGE RANGE	
5/8/2019	Notice of Entry of Findings of Fact and Conclusions of Law on Plaintiff's Motion for New Trial	5	PA0852	PA0867
5/10/2019	Reply in Support of City of Las Vegas' Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening time and Opposition to Countermotion for <i>Nunc Pro Tunc</i> Order	5	PA0868	PA0874
5/15/2019	Notice of Entry of Order Granting the Landowners' Countermotion to Amend/Supplement the Pleadings; Denying the City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and Denying Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims	5	PA0875	PA0901
5/15/2019	Court Minutes	5	PA0902	PA0902
	Excerpts from Record on Review ROR000032- ROR000033 ROR002648-ROR-002670 ROR002823-ROR002831 ROR002854- ROR002863 ROR0025968 ROR0032657 ROR0034009 ROR0034050 ROR0034059 ROR035183-035186	6	PA0903	PA0955
	District Court Docket	6	PA0956	PA1050

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5/15/2019	Court Minutes	5	PA0902	PA0902
	District Court Docket	6	PA0956	PA1050
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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that **PETITIONER'S APPENDIX** does not contain the social security number of any person.

DATED this 17th day of May, 2019.

McDONALD CARANO LLP

BY: /s/ Debbie Leonard _____

Debbie Leonard (#8260)

Adam Hosmer-Henner (#12779)

100 W. Liberty St., 10th Floor

Reno, NV 89501

Phone: 775.788.2000

Fax: 775-788-2020

dleonard@mcdonaldcarano.com

ahosmerhenner@mcdonaldcarano.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, LLP, and that on this 17th day of May, 2019, a copy of the foregoing **PETITIONER'S APPENDIX VOLUME 5** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system and others not registered will be served via U.S. mail as follows:

The Honorable Timothy C. Williams
District Court Department XVI
Regional Justice Center
200 Lewis Avenue,
Las Vegas, Nevada 89155
dept16lc@clarkcountycourts.us
Respondent

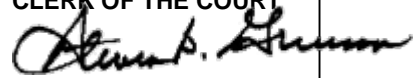
PISANELLI BICE
Todd L. Bice (4534)
Dustun H. Holmes (12776)
400 S. Seventh St., Suite 300
Las Vegas NV 89101
tlb@pisanellibice.com
Attorneys for Intervenors

KAEMPFER CROWELL
Christopher L. Kaempfer (1264)
Stephanie H. Allen (8486)
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135
ckaempfer@kcnvlaw.com
sallen@kcnvlaw.com
Attorneys for Real Party in Interest
180 Land Company, LLC

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
Michael K. Wall, Esq., Bar No. 2098
mwall@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Real Party in Interest
180 Land Company, LLC

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com
Attorneys for Real Party in Interest
180 Land Company, LLC

/s/ Pamela Miller
An employee of McDonald Carano LLP



MSTY

George F. Ogilvie III (NV Bar #3552)
Debbie Leonard (NV Bar #8260)
Amanda C. Yen (NV Bar #9726)
Chris Molina (NV Bar #14092)
McDONALD CARANO LLP
2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102
Tel.: 702.873.4100; Facs.: 702.873.9966
gogilvie@mcdonaldcarano.com
dleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 S. Main Street, 6th Floor
Las Vegas, NV 89101
Tel.: 702.873.4100; Facs.: 702.873.9966
bjerbic@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

Attorneys for City of Las Vegas

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.

CITY OF LAS VEGAS, a 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,

Respondents.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**CITY OF LAS VEGAS' MOTION
TO STAY PROCEEDINGS PENDING
RESOLUTION OF WRIT PETITION
TO THE NEVADA SUPREME COURT
ON ORDER SHORTENING TIME**

HEARING REQUESTED

OST Hearing Date:

OST Hearing Time:

The City of Las Vegas, by and through its undersigned counsel, moves the Court for an
order staying all further proceedings in this action pending resolution of the City's soon-to-be-

1 filed petition for writ of mandamus, or in the alternative, prohibition to the Supreme Court. The
2 writ petition will seek a determination from the Supreme Court that this Court's denial of the
3 City's Motion for Judgment on the Pleadings was improper and a writ that directs this Court to
4 dismiss the Developer's inverse condemnation claims.

5 The City intends to file its writ petition upon entry of the Order denying the City's
6 Motion for Judgment on the Pleadings. The City requests an order shortening time pursuant to
7 EDCR 2.26 because discovery is proceeding, and the Developer has served written discovery
8 requests upon the City. Neither the City nor any other municipal government in the State of
9 Nevada should be forced to bear the burdens of litigating inverse condemnation actions based
10 upon the lawful exercise of its discretionary authority over land use matters, particularly where
11 this Court already concluded, as a matter of law, that the Developer lacks vested rights to have
12 its redevelopment applications approved.

13 This motion is made and based upon the record on file, the following memorandum of
14 points and authorities, the Court's Findings of Fact and Conclusions of Law on Petition for
15 Judicial Review entered November 21, 2018, the transcript from the Court's March 22, 2019
16 oral argument, the Declaration of George F. Ogilvie III and any argument the Court may
17 entertain on this matter.

18 Respectfully submitted this 19th day of April 2019.

19 McDONALD CARANO LLP

20 By: /s/ George F. Ogilvie III
21 George F. Ogilvie III, Esq. (NV Bar #3552)
22 Debbie Leonard (NV Bar #8260)
23 Amanda C. Yen (NV Bar #9726)
24 Chris Molina (NV Bar #14092)
25 2300 West Sahara Avenue, Suite 1200
26 Las Vegas, NV 89102

27 LAS VEGAS CITY ATTORNEY'S OFFICE
28 Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
495 S. Main Street, 6th Floor
Las Vegas, NV 89101

Attorneys for City of Las Vegas

ORDER SHORTENING TIME

Upon good cause shown, please take notice that the hearing before the above-entitled Court on the **CITY OF LAS VEGAS' MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF WRIT PETITION TO THE NEVADA SUPREME COURT ON ORDER SHORTENING TIME** is shortened to the 15 day of May, 2019, at 9:00 a.m., or as soon thereafter as counsel may be heard. Any opposition to this Motion must be filed and served by the _____ day of _____, 2019 no later than _____:_____ p.m.

DATED this 22 day of April 2019.


DISTRICT COURT JUDGE *CB*

Submitted By:

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III
George F. Ogilvie III (NV Bar #3552)
Debbie Leonard (NV Bar # 8260)
Amanda C. Yen (NV Bar #9726)
Chris Molina (NV Bar #14092)
McDONALD CARANO LLP
2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
495 S. Main Street, 6th Floor
Las Vegas, NV 89101

Attorneys for City of Las Vegas

DECLARATION OF GEORGE F. OGILIVIE III

George F. Ogilvie III, after being sworn, declares as follows:

1. I am an attorney licensed to practice law in the State of Nevada and a partner in the law firm of McDonald Carano LLP. I am co-counsel for the City of Las Vegas (the “City”) in the above-captioned matter. I am over the age of 18 years and a resident of Clark County, Nevada. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. This declaration is made in support of the City of Las Vegas’ Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening Time (“**Motion**”).

3. The City intends to petition the Nevada Supreme Court for a writ of mandamus, or in the alternative, prohibition (“**Writ Petition**”) to direct the district court to dismiss the inverse condemnation claims of 180 Land Co, LLC (“**the Developer**”).

4. The Developer’s inverse condemnation claims fail as a matter of law based upon the Court’s Findings of Fact and Conclusions of Law on Petition for Judicial Review entered in this matter on November 21, 2018. (“**the November 2018 Order**”).

5. The November 2018 Order denied the Developer’s petition for judicial review of the City Council’s June 21, 2017 decision to deny four land use applications filed by the Developer regarding a 34.07-acre portion of the former Badlands golf course (“**the 35-Acre Property**”).

6. The November 2018 Order also concluded that issue preclusion applies to Judge Crockett’s order in *Jack B. Binion, et al v. The City of Las Vegas, et al.*, A-17-752344-J (“**the Crockett Order**”), which held that a major modification of the Peccole Ranch Master Plan is a prerequisite to approval of land use applications for redevelopment of the Badlands golf course.

7. The Developer sought reconsideration of the November 2018 Order.

8. On February 13, 2019, the City filed a Motion for Judgment on the Pleadings (“**Rule 12(c) Motion**”) based upon the November 2018 Order, which establishes the following

1 grounds for dismissing the Developer's inverse condemnation claims as a matter of law:

2 (i) The Developer has no vested rights to have its redevelopment
3 applications approved;

4 (ii) Since a major modification is required before the City can approve any
5 development proposals concerning the former Badlands golf course, and the Developer
6 withdrew the only major modification application it ever filed, the Developer cannot
7 satisfy the ripeness requirements under *Williamson Cty. Reg'l Planning Comm'n v.*
8 *Hamilton Bank of Johnson City*, 473 U.S. 172, 186, 105 S. Ct. 3108, 3116 (1985).

9 (iii) The Developer's inverse condemnation claims are time barred to the
10 extent that the Developer challenges the City's general plan designation for the property
11 because the Developer's predecessor in interest sought and obtained the open-space
12 designation when requesting approval of the Peccole Ranch Master Plan.

13 9. The Court conducted a hearing on the City's 12(c) Motion on March 22, 2019.
14 The Court denied the City's Rule 12(c) Motion and the Developer's countermotion for a
15 judicial determination of liability on the Developer's inverse condemnation claims and directed
16 the Developer's counsel to prepare findings of fact and conclusions of law regarding the same.
17 A true and correct copy of relevant portions of the March 22, 2019 transcript is attached hereto
18 as **Exhibit A**.

19 10. On March 22, 2019, the Court also entered a minute order that denied the
20 Developer's motion for new trial. A true and correct copy of the Court's minute order is
21 attached hereto as **Exhibit B**.

22 11. On April 4, 2019, an early case conference was held pursuant to Rule 16.1(b)
23 during which the Court bifurcated discovery into two phases for liability and damages.

24 12. On April 15, 2019, the Developer served the following documents on the City:
25 (i) Rule 16.1(a) initial disclosures; (ii) the Developer's first set of requests for admission; and
26 (iii) the Developer's first set of requests for production of documents.

27 13. The Developer's initial disclosures indicate that the Developer will seek to
28 depose City officials about matters dating back to 1986. A true and correct copy of the

Developer's Rule 16.1(a) disclosures is attached hereto as **Exhibit C**.

14. The Developer's requests for admission ask the City to stipulate to the authenticity of several self-serving demonstrative aids created by the Developer and/or the Developer's counsel in connection with the litigation surrounding the Badlands property. A true and correct copy of the Developer's first set of requests for admission is attached hereto as **Exhibit D**.

15. The Developer's requests for production of documents will require the City to undertake a comprehensive review and produce several decades of voluminous records. A true and correct copy of the Developer's first set of requests for production is attached hereto as **Exhibit E**.

16. The public's interest is not served in allowing this case to proceed and requiring the City to expend taxpayer dollars and other public resources defending inverse condemnation claims based on the City's lawful exercise of its discretionary authority over land use matters and when this Court lacks subject matter jurisdiction.

17. Allowing inverse condemnation cases to proceed in the absence of vested rights exposes the City of Las Vegas and every other land use authority in the state to liability for inverse condemnation even in instances in which the governing body properly exercises its discretion to deny a land use application and when the applicant lacks vested rights to have the application approved.

18. On April 15, 2019, the Developer's counsel served the City with proposed findings of fact and conclusions of law regarding the City's Rule 12(c) Motion and the Developer's counter motions ("the Proposed FFCL"). A true and correct copy of the Proposed FFCL is attached hereto as **Exhibit F**.

19. The Developer's Proposed FFCL is improper, *inter alia*, because it includes specific findings of fact contrary to those set forth in the November 2018 Order.

20. In addition, the Proposed FFCL contains incorrect statements of law manufactured by the Developer's counsel contrary to U.S. Supreme Court precedents in inverse condemnation cases, including *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of*

1 *Johnson City*, 473 U.S. 172, 186 (1985), in particular. The City is preparing its own proposed
2 Order for the Court to enter instead of the Proposed FFCL.

3 21. The City requests an order shortening time for a hearing on this Motion because
4 the City should not be forced to invest additional resources in this action given the fact that the
5 November 2018 Order conclusively establishes three independent grounds for dismissing the
6 Developer's inverse condemnation claims as a matter of law, and the law does not change
7 simply because different standards of proof exist for a petition for judicial review and the
8 Developer's inverse condemnation claims.

9 22. This declaration is made in good faith and not for the purpose of delay. The
10 interests of judicial economy will be served by the relief requested in the Motion.

11 I declare under penalty of perjury under the laws of the State of Nevada that the
12 foregoing is true and correct.

13 Executed this 19th day of April 2019.

14 /s/George F. Ogilvie III
15 GEORGE F. OGILVIE III
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A stay is warranted to arrest the proceedings while the City has the opportunity to petition the Supreme Court for a writ of mandamus, or in the alternative, prohibition, to direct the Court to dismiss the inverse condemnation claims. As set forth more fully in the City's Rule 12(c) Motion, the Court's November 2018 Order established three independent grounds for dismissing the Developer's inverse condemnation claims as a matter of law.

First, the November 2018 Order establishes as a matter of law that the Developer lacked any vested rights to have its redevelopment applications approved. As a result, there can be no taking as a matter of law.

Second, the November 2018 Order determined that the Crockett Order, which holds that no redevelopment of the golf course may occur without a major modification of the Peccole Ranch Master Plan, has preclusive effect. The Court correctly found that the Developer withdrew the only major modification application it submitted. Since the Developer's inverse condemnation claims cannot be ripe under the Crockett Order until the Developer receives a final decision from the City Council on at least one meaningful application for a major modification of the Peccole Ranch Master Plan, the Court lacks subject matter jurisdiction over the Developer's inverse condemnation claims.

Third, the Developer's inverse condemnation claims are time-barred insofar as they are based on the City's general plan designation for the property, PR-OS, which prohibits residential development. The statute of limitations on any such claims expired long ago since the Developer's predecessor in interest set aside the golf course property to satisfy the City's open space requirements for RPD-7 zoning when seeking approval for the Peccole Ranch Master Plan.

Because there are at least three independent legal grounds for dismissing the Developer's inverse condemnation claims as a matter of law, the City intends to file the Writ Petition as soon as findings of fact and conclusions of law denying the Rule 12(c) Motion have been entered. The City requests a stay of all proceedings while the Writ Petition is pending

1 because the City should not be forced to bear the burden of litigating the Developer's inverse
2 condemnation claims given the fact that the November 2018 Order establishes that those claims
3 fail as a matter of law.

4 **II. LEGAL ARGUMENT**

5 **A. Standard of Review**

6 NRAP 8(a) requires that an application for stay be made to the district court in the first
7 instance when the application seeks to stay the proceedings pending resolution of a petition to
8 the Nevada Supreme Court for an extraordinary writ. *Hansen v. Eighth Judicial Dist. Court ex*
9 *rel. Cty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). In ruling on a motion to stay
10 proceedings, the district courts apply the same standards under NRAP 8(a) as the appellate
11 courts. *See, e.g., Nelson v. Heer*, 121 Nev. 832, 837, 122 P.3d 1252, 1254 (2005), *as modified*
12 (Jan. 25, 2006) (noting that the district court is in the best position to weigh the relevant
13 considerations).

14 Under NRAP 8(c), the courts generally consider the following factors in deciding
15 whether to issue a stay: (1) whether the object of the appeal or writ petition will be defeated if
16 the stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if
17 the stay is denied; (3) whether respondent/real party in interest will suffer irreparable or serious
18 injury if the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the
19 merits in the appeal or writ petition. *Hansen*, 116 Nev. at 657, 6 P.3d at 986. A motion for stay
20 is appropriate pending the Supreme Court's disposition of a writ petition. *See id.* As discussed
21 below, each of these factors weighs in favor of granting the motion to stay.

22 **B. Allowing the Case to Proceed Defeats the Purpose of the Writ Petition**

23 The primary purpose of the Writ Petition is to compel the Court to dismiss the
24 Developer's inverse condemnation claims based upon the undisputed conclusions of law set
25 forth in the November 2018 Order. The law is settled that ripeness is a jurisdictional
26 requirement in inverse condemnation actions. *S. Pac. Transp. Co. v. City of Los Angeles*, 922
27 F.2d 498, 502 (9th Cir. 1990) ("Ripeness is more than a mere procedural question; it is
28 determinative of jurisdiction.").

1 The ripeness of an as-applied claim for inverse condemnation “depends upon the
2 landowner’s first having followed reasonable and necessary steps to allow regulatory agencies
3 to exercise *their full discretion* in consideration development plans for the property, including
4 the opportunity to grant variances or waivers allowed by law.” *Palazzolo v. Rhode Island*, 533
5 U.S. 606, 620–21 (2001) (emphasis added). “As a general rule, until these ordinary processes
6 have been followed *the extent of the restriction on property is not known* and a regulatory
7 taking has not yet been established.” *Id.* at 621 (emphasis added).

8 Another object of the Writ Petition is to avoid subjecting the City to inverse
9 condemnation actions in the absence of vested rights and based on the lawful exercise of
10 authority granted pursuant to NRS 278.250 and 278.260. The Writ Petition is necessary to
11 prevent opening the floodgates to litigants for every discretionary land use application that gets
12 denied. The Writ Petition will ask the Supreme Court to stem the loss of additional public
13 resources in defending a suit over which there is no jurisdiction and that must be dismissed as a
14 matter of law. There are serious reasons this:

15 “If a Government official is to devote time to his or her duties, and to the
16 formulation of sound and responsible policies, it is counterproductive to require
17 the substantial diversion that is attendant to participating in litigation and making
18 informed decisions as to how it should proceed. Litigation, though necessary to
ensure that officials comply with the law, exacts heavy costs in terms of
efficiency and expenditure of valuable time and resources that might otherwise be
directed to the proper execution of the work of the Government.”

19 *Ashcroft v. Iqbal*, 556 U.S. 662, 685 (2009).

20 The City has invested a tremendous amount of time in this and at least ten other cases
21 involving the Developer’s attempts to repurpose the Badlands golf course as residential
22 development. At the hearing on the Rule 12(c) motion, the Developer’s counsel suggested that
23 the Developer intends to seek discovery regarding whether the City intentionally delayed the
24 Developer’s applications. March 22, 2019 Transcript (Ex. A), 74:7-12. The Developer, in other
25 words, intends to seek discovery to support a collateral attack on this November 2018 Order
26 denying the petition for judicial review. No amount of discovery will change the fact that the
27 Developer has not received a final decision from the City Council on an application for a major
28 modification of the Peccole Ranch Master Plan.

1 **C. The City Will Suffer Irreparable Harm if The Case is Allowed to Proceed**

2 Allowing the case to proceed in this posture will cause irreparable harm to the City and,
3 in turn, the taxpayers funding this litigation. As the Court acknowledged during the hearing on
4 the Rule 12(c) Motion, “we could waste a year” allowing this case to proceed. March 22, 2019
5 Transcript (Ex. A), 74:6. The loss of public resources occasioned by defending a meritless
6 lawsuit is a harm that cannot be undone. There is more at stake here, however, than just time
7 and money.

8 The current posture of this case establishes a dangerous precedent that would allow
9 disappointed landowners to sue for inverse condemnation whenever a land use application has
10 been denied, regardless of the reasons for the denial. If the Court’s conclusion that the City
11 properly exercised its discretion to deny the 35-Acre Applications provides no assurances that
12 the City will be protected against liability for inverse condemnation, the City’s Planning
13 Department and City Council (and every other municipality) will be chilled from denying
14 deficient land use proposals when such denial is permitted and warranted.

15 Since the Writ Petition is likely to dispose of the Developer’s inverse condemnation
16 claims and may provide guidance to the district courts in not only this case but the other cases
17 involving the Badlands property, a stay pending the determination of the Writ Petition is an
18 eminently logical means to prevent wasting the time and effort of all concerned, and to make
19 the most efficient use of judicial resources.

20 **D. Staying This Case Results in No Prejudice to the Developer**

21 A stay pending resolution of the Writ Petition will result in no prejudice to the
22 Developer regardless of whether the Supreme Court grants or denies the Writ Petition. Since the
23 Developer is merely seeking compensation for an alleged taking, in the unlikely event that the
24 Developer should ultimately prevail, any delay in the proceedings can be compensated for by
25 prejudgment interest.

26 **E. The City is Likely to Prevail on the Merits of the Writ Petition**

27 **(1) Standard for Issuance of Writ**

28 A writ of prohibition is available to “arrest[] the proceedings of any tribunal,

1 corporation, board, or person exercising judicial functions, when such proceedings are without
2 or in excess of the jurisdiction of such tribunal, corporation, board, or person.” NRS 34.320;
3 *see Nevada Power Co. v. Eighth Jud. Dist. Ct.*, 120 Nev. 948, 954, 102 P.3d 578, 582-83 (2004).
4 The Supreme Court has not hesitated to issue a writ of prohibition when a district court acts
5 without jurisdiction. *See Gaming Control Bd. v. Breen*, 99 Nev. 320, 324, 661 P.2d 1309, 1311
6 (1983); *Gray Line Tours v. Eighth Jud. Dist. Ct.*, 99 Nev. 124, 126, 659 P.2d 304, 305 (1983).

7 A writ of mandamus compels the performance of an act that “the law especially enjoins
8 as a duty resulting from an office, trust or station; or to compel the admission of a party to the
9 use and enjoyment of a right or office to which the party is entitled and from which the party is
10 unlawfully precluded by such inferior tribunal, corporation, board or person.” NRS 34.160; *Int’l*
11 *Game Tech. v. Sec. Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

12 A writ is appropriate when the petitioner does not have a plain, speedy, and adequate
13 remedy at law. *Club Vista Fin. Servs. v. Eighth Jud. Dist. Ct.*, 128 Nev. 224, 228, 276 P.3d 246,
14 249 (2012). The Supreme Court has deemed the erroneous denial of a motion to dismiss
15 grounds for writ relief. *See Fulbright & Jaworski LLP v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv.
16 Op. 5, 342 P.3d 997, 1005-06 (2015) (granting petition for writ of prohibition to vacate district
17 court order denying motion to dismiss); *Smith v. Eighth Jud. Dist. Ct.*, 113 Nev. 1343, 1344-45,
18 1348, 950 P.2d 280, 281, 283 (1997) (issuing writ of mandamus compelling the district court to
19 vacate its order denying a motion to dismiss).

20 **(2) The City is Likely to Prevail on the Writ Petition Because the Court**
21 **Cannot Disregard its Own Conclusions of Law**

22 The Court’s conclusion of law that the Developer lacks vested rights to have its
23 redevelopment applications approved is a legal bar to the inverse condemnation claims. It is
24 axiomatic that the Takings Clause is not implicated unless government conduct affects a
25 protected property interest cognizable under the Fifth Amendment. “[A] mere unilateral
26 expectation or an abstract need is not a property interest entitled to protection.” *Webb’s*
27 *Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980). Because this Court’s
28 November 2018 Order conclusively establishes the Developer does not have a vested right to

1 have its applications approved, the City is likely to prevail on the Writ Petition.

2 **(3) The City is Likely to Prevail on the Writ Petition Because the**
3 **District Court Exceeded its Jurisdiction by Allowing Unripe Claims**
4 **to Proceed**

5 The Court concluded as a matter of law that Judge Crockett's Order has preclusive
6 effect in this case. Judge Crockett's Order requires the Developer to apply for a major
7 modification, and this Court correctly determined that the Developer withdrew the only
8 application for a major modification it ever filed. Under these circumstances the Developer
9 failed to satisfy the final decision requirement under *Williamson Cty. Reg'l Planning Comm'n v.*
10 *Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985). If a party's claims are not ripe for
11 review, they are not justiciable, and the Court lacks subject matter jurisdiction to review them.
12 *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010); *Resnick v.*
13 *Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988).

14 **IV. CONCLUSION**

15 For the foregoing reasons, the City of Las Vegas respectfully requests an order staying
16 all further proceedings in this action pending the Supreme Court's resolution of the City's Writ
17 Petition.

18 Respectfully submitted this 19th day of April 2019.

19 McDONALD CARANO LLP

20 By: /s/ George F. Ogilvie III
21 George F. Ogilvie III, Esq. (NV Bar #3552)
22 Debbie Leonard (NV Bar #8260)
23 Amanda C. Yen (NV Bar #9726)
24 Chris Molina (NV Bar #14092)
25 2300 West Sahara Avenue, Suite 1200
26 Las Vegas, NV 89102

27 LAS VEGAS CITY ATTORNEY'S OFFICE
28 Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
495 S. Main Street, 6th Floor
Las Vegas, NV 89101

Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 23rd day of April, 2019, a true and correct copy of the foregoing **CITY OF LAS VEGAS' MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF THE CITY'S WRIT PETITION TO THE NEVADA SUPREME COURT ON ORDER SHORTENING TIME** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

EXHIBIT A

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9

180 LAND COMPANY LLC,

)

10

Plaintiff,

)

11

vs.

)

12

LAS VEGAS CITY OF,

)

13

Defendant.

)

14

15

REPORTER'S TRANSCRIPT

16

OF

17

MOTIONS

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED FRIDAY, MARCH 22, 2019

22

23

24

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

25

Peggy Isom, CCR 541, RMR

1 APPEARANCES:

2

3 FOR THE PLAINTIFF:

4

5

6 KERMITT L. WATERS

7 BY: KERMITT WATERS, ESQ.

8 BY: JAMES J. LEAVITT, ESQ.

9 BY: AUTUMN L. WATERS, ESQ.

10 704 SOUTH NINTH STREET

11 LAS VEGAS, NV 89101

12 (702) 733-8877

13 (702) 731-1964

14 INFO@KERMITTWATERS.COM

15

16

17 HUTCHISON & STEFFEN, LLC

18 BY: MARK HUTCHISON, ESQ.

19 10080 ALTA DRIVE

20 SUITE 200

21 LAS VEGAS, NV 89145

22 (702) 385-2500

23 (702) 385-2086 Fax

24 MHUTCHISON@HUTCHLEGAL.COM

25

Peggy Isom, CCR 541, RMR

002

PA0777

(702) 671-4400 GPOFFICE@COMMITTEE.COM

1 APPEARANCES CONTINUED:

2
3 FOR THE DEFENDANT:

4 MCDONALD CARANO WILSON, LLP
5 BY: GEORGE F. OGILVIE, III, ESQ.
6 BY: DEBBIE LEONARD, ESQ.
7 2300 WEST SAHARA AVENUE
8 SUITE 1000
9 LAS VEGAS, NV 89102
10 (702) 873-4100
11 (702) 873-9966 Fax
12 GOGILVIE@MCDONALDCARANO.COM
13
14

15 FOR THE INTERVENORS:

16 PISANELLI BICE PLLC
17 BY: DUSTUN HOLMES, ESQ.
18 BY: TODD BICE, ESQ.
19 400 SOUTH SEVENTH STREET
20 SUITE 300
21 LAS VEGAS, NV 89101
22 (702) 214-2100
23 (702) 214-2101 Fax
24 DHH@PISANELLIBICE.COM
25

* * * * *

Peggy Isom, CCR 541, RMR

003

PA0778

(702) 671-4400 GOGILVIE@MCDONALDCARANO.COM

1 LAS VEGAS, NEVADA; FRIDAY, MARCH 22, 2019

2 1:36 P.M.

3 P R O C E E D I N G S

4 * * * * *

5
6 THE COURT: Good afternoon to everyone.

7 IN UNISON: Good afternoon.

8 THE COURT: Let's go ahead and place our
9 appearances on the record.

10 MR. OGILVIE: Your Honor --

11 MR. WATERS: Kermitt Waters -- go ahead. Go
12 ahead.

13 MR. OGILVIE: Sorry. Good afternoon, your
14 Honor. George Ogilvie on behalf of the City of
15 Las Vegas.

16 MS. LEONARD: Good afternoon, your Honor,
17 Debbie Leonard on behalf of the City of Las Vegas.

18 MR. HOLMES: Good afternoon, your Honor,
19 Dustun Holmes on behalf of the intervenors.

20 MR. BICE: Good afternoon, your Honor. Todd
21 Bice on behalf of the intervenors.

22 MR. WATERS: Kermitt Waters on behalf of 180
23 Land, your Honor.

24 MR. LEAVITT: James A. Leavitt on behalf of
25 180 Land, your Honor.

1 could be wrong. I mean, I don't mind making tough
2 calls. I really don't. But I don't want to make tough
3 calls when I know there's a great probability that it's
4 going to come back to me.

5 MR. LEAVITT: So, your Honor --

6 THE COURT: And we could waste a year.

7 MR. LEAVITT: I got it. And here's our
8 concern on this, is we feel like the City has delayed
9 and delayed and delayed this matter. And we think that
10 they have a purpose behind it. The obvious purpose
11 behind this is to try to run our client out of money,
12 so that's our big concern here.

13 THE COURT: I understand.

14 MR. LEAVITT: And we have documentation here
15 that we've submitted on the record. It's 17 volumes.
16 And the City had an opportunity to object to that in
17 its opposition. The way we've done these before is
18 very similar to this.

19 THE COURT: But hasn't it always been after
20 the answer, 16.1 and those --

21 MR. LEAVITT: No. No, your Honor. It's not
22 always like that. And the reason that -- for that, is,
23 again, your Honor, is because --

24 THE COURT: So the Court granted summary
25 judgment?

1 to dismiss a case where we've unequivocally established
2 the taking facts. We don't think it's appropriate. We
3 think you should allow us to amend. Deny the City's
4 motion, and then let's do a 16.1 next week and move
5 forward in this case.

6 Thank you, your Honor.

7 THE COURT: All right. Thank you, sir.

8 Okay. I just want to -- when I think of this
9 case, and understand we have a 12(c) motion, you don't
10 see those as often as you see the 12(b) types of
11 motions. But under (c):

12 "The rule is designed to provide a means of
13 disposing of cases when material facts are not
14 in dispute, and a judgment on the merits can be
15 achieved by focusing on the contents of the
16 pleadings. It has utility only when all
17 material allegations of facts are admitted in
18 the pleadings and only questions of law
19 remain."

20 And the reason why I went back to Rule 12(c)
21 for everyone, we've had about three and a half, four
22 hours of factual disputes and arguments throughout this
23 entire hearing. And nobody can agree on what the
24 appropriate facts are, number one.

25 Secondly, I can't say as a matter of law under

1 any set of facts as alleged in the complaint, although
2 that's a slightly different standard, that the
3 plaintiffs have no case. I can't say that.

4 Just as important, too, in listening to the
5 argument, when I go back and I'm charged with reviewing
6 the complaints in this case, the plaintiff alleges a
7 vested property right, and I accept that; right? I do.
8 You know, that's a factual dispute. I get it. But
9 nonetheless, this is the pleading stage of the case.

10 Just as important, too, there's issues
11 regarding whether there's a taking or not. Another
12 important issue that has to be resolved factually.

13 Right now we've discussed a lot -- what I
14 would consider very -- a lot of significant issues
15 regarding -- number one, we talked about the
16 distinction between the evidentiary burdens in a
17 petition for judicial review versus a general civil
18 litigation case where the primary standard is by a
19 preponderance of the evidence, and that's a much
20 different standard too. It's a heightened standard.
21 And I think we can all agree in determining whether
22 there's substantial evidence in the record and whether
23 the decision of the fact finders on an administrative
24 level, or maybe legislative like the City council, are
25 arbitrary and capricious, or plain error as a matter of

1 law. That's the whole standard there.

2 So we -- you know, that's important to point
3 out. And that might give us guidance going down the
4 road.

5 Just as important, too, and this is a unique
6 issue, but -- as it deals with the statute of
7 limitations. I thought about it, and typically all
8 statutes of limitations are triggered by some sort of
9 act or actions; right? That's the triggering event.
10 And in this case, whether it's 2014, 2015, I'm going to
11 make a determination that the date that would
12 potentially trigger the statute of limitations wouldn't
13 be the master plan or necessarily the designation of
14 the property as RDP7, but it's the acts of the City
15 council that would control. I just want to tell you
16 that.

17 And consequently, what I'm going to do is
18 this: Regarding the motion pursuant to NRCP 12(c) to
19 dismiss, I'm going to deny that; right? It's very
20 early in the pleading stage.

21 I can't say as a matter of law the claims
22 sought for are futile in the amendment. I'm going to
23 grant that.

24 Last, but not least, like I said before, I
25 think it would -- it would have been plain error as a

1 matter of law to even consider the Rule 56 motion for
2 summary judgment, and that's denied.

3 Consequently, we can move forward with this
4 litigation.

5 Last, but not least, as far as time for a
6 16.1, I have no clue what's on my calendar next week.
7 I can just tell you that. We can check. We'll try to
8 be very efficient. This is what Lynn said. We
9 anticipated this question.

10 Oh, Lynn verified answer filed. Next
11 available 16.1 conference in business court is 4/2/19.
12 So I can give you a date right now. We're pretty
13 efficient.

14 MR. HUTCHISON: 9:00 a.m.?

15 THE COURT: No. We do those at 10:30. So if
16 there's no conflict, you got a date.

17 MR. LEAVITT: Your Honor, we're going to make
18 it work.

19 THE COURT: All right. That's the next date I
20 have available.

21 And, Mr. Leavitt?

22 MR. LEAVITT: Yes, your Honor.

23 THE COURT: Prepare the order, sir.

24 MR. LEAVITT: We'll prepare the order, your
25 Honor.

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

:SS

3 COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
6 PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
7 TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
8 STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
9 AND UNDER MY DIRECTION AND SUPERVISION AND THE
10 FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
11 ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

16
17 _____
18 PEGGY ISOM, RMR, CCR 541
19
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25

Peggy Isom, CCR 541, RMR

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PA0785

EXHIBIT B

A-17-758528-J

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

March 22, 2019

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

**March 22, 2019 4:59 PM Minute Order re: Motion for New Trial Pursuant
to NRCP 59(e) AND Motion to Alter or Amend
Pursuant to NRCP 52(b) and/or Reconsider the
FFCL AND Motion to Stay Pending Nevada
Supreme Court Directives**

HEARD BY: Williams, Timothy C.

COURTROOM: Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

- After a review and consideration of the record, the points and authorities on file herein, and oral argument of counsel, the Court determined as follows:

First, Plaintiff seeks a new trial where no trial has occurred. Plaintiff's Motion for New Trial Pursuant to NRCP 59 shall be DENIED.

Pursuant to EDCR 2.24(a), no motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court. The Court declines to grant such leave.

Plaintiff has raised no new facts, substantially different evidence or new issues of law for rehearing or reconsideration. In addition, Plaintiff has failed to show that the Court's previous findings that the City Council did not abuse its discretion or that sufficient privity exists to bar Plaintiff's petition under issue preclusion were clearly erroneous. The Supreme Court's affirmation of the Smith decisions has no impact on this Court's denial of the developer's Petition for Judicial Review. Thus, the Court finds no cause exists to alter or amend the Findings of Fact and Conclusions of Law Denying Plaintiff's Petition for Judicial Review. Plaintiff's Motion to Alter or Amend Pursuant to NRCP 52(b) and/or Reconsider the FFCL shall be DENIED. Plaintiff's Motion to Stay Pending Nevada Supreme Court Directives shall be DENIED.

PRINT DATE: 03/22/2019

Page 1 of 2

Minutes Date: March 22, 2019

Finally, the Court is well aware of the standards that control its considerations when deciding petitions for judicial review. The court feels its decision here is based on a different evidentiary standard and thus shall not control the pending claims for inverse condemnation and therefore, this issue is subject to further briefing.

Counsel for Defendant shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: This Minute Order has been electronically served to the parties through Odyssey eFile.

EXHIBIT C

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

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

**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,)	Case No.: A-17-758528-J
)	Dept. No.: XVI
Plaintiffs,)	
CITY OF LAS VEGAS, a political subdivision of the State of Nevada, ROE government entities I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental I through X,)	
Defendants.)	

**PLAINTIFF LANDOWNERS' EARLY CASE CONFERENCE
INITIAL DISCLOSURES FOR PHASE I - LIABILITY PURSUANT TO NRCP 16.1**

TO: THE CITY OF LAS VEGAS, Defendant; and

TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS

Plaintiff 180 LAND COMPANY, LLC (hereinafter "Landowners"), by and through their counsel of record, the Law Offices of Kermitt L. Waters, hereby submits its 16.1 Early Case Conference Disclosures for Phase I - Liability as follows:

1 **A. NRCP Rule 16.1(a)(1)(A) disclosure: The name and, if known, the address and**
2 **telephone number of each individual likely to have information discoverable under**
3 **Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the**
4 **information:**

5 1. Person Most Knowledgeable at the City of Las Vegas
6 c/o Las Vega City Attorney's Office
7 495 S. Main Street, 6th Floor
8 Las Vegas, Nevada 89101

9 Person Most Knowledgeable at the City of Las Vegas regarding the City's guidelines,
10 instructions, process and/or procedures for adopting a land use designation on the City of Las Vegas
11 General Plan Land Use Element and/or Master Plan, including the guidelines, instructions, process
12 and/or procedures applicable for each and every year from 1986 to present.

13 2. Person Most Knowledgeable at the City of Las Vegas
14 c/o Las Vega City Attorney's Office
15 495 S. Main Street, 6th Floor
16 Las Vegas, Nevada 89101

17 Person Most Knowledgeable at the City of Las Vegas regarding the City of Las Vegas
18 guidelines, instructions, process and/or procedures implemented to place a designation of PR-OS or
19 any similar open space designation on all or any part of the Landowners' Property and/or the 250
20 Acre Residential Zoned Land on the City of Las Vegas General Plan Land Use Element and/or
21 Master Plan from 1986 to present.

22 3. Person Most Knowledgeable at the City of Las Vegas
23 c/o Las Vega City Attorney's Office
24 495 S. Main Street, 6th Floor
25 Las Vegas, Nevada 89101

26 Person Most Knowledgeable at the City of Las Vegas regarding the Master Development
27 Agreement referenced in the Landowners' Complaint.

28 4. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vega City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the major modification
process.

//
//
//

1 5. Steve Seroka
2 c/o Las Vega City Attorney's Office
3 495 S. Main Street, 6th Floor
4 Las Vegas, Nevada 89101

5 Mr. Seroka may have information regarding the facts and circumstances surrounding the
6 allegations alleged in the Landowners' Complaint which occurred while Mr. Seroka was running for
7 the City Council and while Mr. Seroka was on the City Council.

8 6. Person Most Knowledgeable
9 180 LAND COMPANY, LLC
10 c/o Law Offices of Kermitt L. Waters
11 704 South Ninth Street
12 Las Vegas Nevada 89101

13 Person Most Knowledgeable at 180 Land Company, LLC regarding the facts and
14 circumstances surrounding the allegations alleged in the Landowners' Complaint as it relates to
15 Phase 1 of discovery, liability.

16 7. Person Most Knowledgeable
17 FORE STARS, Ltd
18 c/o Law Offices of Kermitt L. Waters
19 704 South Ninth Street
20 Las Vegas Nevada 89101

21 Person Most Knowledgeable at FORE STARS, LTD regarding the facts and circumstances
22 surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of
23 discovery, liability.

24 8. Person Most Knowledgeable
25 SEVENTY ACRES, LLC
26 c/o Law Offices of Kermitt L. Waters
27 704 South Ninth Street
28 Las Vegas Nevada 89101

Person Most Knowledgeable at Seventy Acres, LLC regarding the facts and circumstances
surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of
discovery, liability.

B. NRCP Rule 16.1(a)(1)(B) disclosure: A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b):

**INDEX TO PLAINTIFF LANDOWNERS' EARLY CASE CONFERENCE
DISCLOSURES PURSUANT TO NRCP 16.1**

Exhibit No.	Exhibit Description	Vol. No.	Bates No.
1	Map of 250 Acre Residential Zoned Land Identifying Each Parcel	1	LO 00000001
2	Bill No. Z-2001-1: Ordinance No. 5353 Dated 8.15.2001	1	LO 00000002-00000083
3	12.30.14 Letter City of Las Vegas to Frank Pankratz "Zoning Verification" letter	1	LO 00000084
4	11.16.16 City Council Meeting Transcript Items 101-107	1-2	LO 00000085-00000354
5	6.21.17 City Council Meeting Transcript Items 82, 130-134	2	LO 00000355-00000482
6	5.16.18 City Council Meeting Transcript Items 71, 74-83	2-3	LO 00000483-00000556
7	Notice of Entry of Findings of Fact, Conclusions of Law, Final Order and Judgment, Eighth Judicial District Court Case No. A-16-739654-C filed 1.31.17	3	LO 00000557-00000601
8	Intentionally left blank	3	LO 00000602-00000618
9	12.7.16 Letter From Jimmerson to Jerbic	3	LO 00000619-00000627
10	City of Las Vegas' Answering Brief, Eighth Judicial District Court Case No. A-17-752344-J filed 10.23.17	3	LO 00000628-00000658
11	7.12.16 City of Las Vegas Planning Commission Meeting Transcript excerpts Items 4, 6, 29-31, 32-35	3	LO 00000659-00000660
12	Staff Recommendation 10.18.16 Special Planning Commission Meeting	3	LO 00000661-00000679
13	10.18.16 Special Planning Commission Meeting Agenda Items 10-12 Summary Pages	3	LO 00000680-00000685
14	2.15.17 City Council Meeting Transcript Items 100-102	3-4	LO 00000686-00000813
15	LVMC 19.10.040	4	LO 00000814-00000816
16	LVMC 19.10.050	4	LO 00000817-00000818
17	Staff Recommendation 2.15.17 City Council Meeting GPA-62387, ZON-62392, SDR-62393	4	LO 00000819-00000839

18	2.15.17 City Council Agenda Summary Pages Items 100-102	4	LO 00000840-00000846
19	Seroka Campaign Contributions	4	LO 00000847-00000895
20	Crear Campaign Contributions	4	LO 00000896-00000929
21	2.14.17 Planning Commission Transcript Items 21-14 portions with video still	4	LO 00000930-00000931
22	35 Acre Applications: SDR-68481; TMP- 68482; WVR-68480	4	LO 00000932-00000949
23	Staff Recommendation 6.21.17 City Council Meeting GPA-68385, WVR-68480, SDR-68481, TMP 68482	4	LO 00000950-00000976
24	8.2.17 City Council Meeting Transcript Item 8 (excerpt) and Items 53 and 51	4-5	LO 00000977-00001131
25	MDA Combined Documents	5	LO 00001132-00001179
26	Email between City Planning Section Manager, Peter Lowenstein, and Landowner representative Frank Pankratz dated 2.24.16	5	LO 00001180-00001182
27	Email between City Attorney Brad Jerbic and Landowner's land use attorney Stephanie Allen, dated 5.22.17	5	LO 00001183-00001187
28	16 versions of the MDA dating from January, 2016 to July, 2017	5-7	LO 00001188-00001835
29	The Two Fifty Development Agreement's Executive Summary	8	LO 00001836
30	City requested concessions signed by Landowners representative dated 5.4.17	8	LO 00001837
31	Badlands Development Agreement CLV Comments, dated 11-5-15	8	LO 00001838-00001845
32	Two Fifty Development Agreement (MDA) Comparison – July 12, 2016 and May 22, 2017	8	LO 00001846-00001900
33	The Two Fifty Design Guidelines, development Standards and Uses, comparison of the March 17, 2016 and May, 2017 versions	8	LO 00001901-00001913
34	Seroka Campaign Literature	8	LO 00001914-00001919
35	2017-12-15 Thoughts on: Eglet-Prince Opioid Proposed Law Suit	8	LO 00001920-00001922
36	Tax Assessor's Values for 250 Acre Residential Land	8	LO 00001923-00001938

37	City's Motion to Dismiss Eighth Judicial District Case No. A-18-773268-C, filed 7/2/18	8	LO 00001939-00001963
38	1.11.18 Hearing Transcript, Eighth Judicial District Court Case No. A-17-752344-J	8-9	LO 00001964-00002018
39	City's Motion to Dismiss Eighth Judicial District Case No. A-18-775804-J, filed 8.27.18	9	LO 00002019-00002046
40	Staff Recommendation 6.21.17 City Council Meeting DIR-70539	9	LO 00002047-00002072
41	9.6.17 City Council Meeting Agenda Summary Page for Item No. 26	9	LO 00002073-00002074
42	9.4.18 meeting submission for Item No. 4 by Stephanie Allen	9	LO 00002075
43	5.16.18 City Council Meeting Agenda Summary Page for Item No. 66	9	LO 00002076-00002077
44	5.16.18 City Council Meeting Transcript Item No. 66	9	LO 00002078-00002098
45	Bill No. 2018-5 "Proposed First Amendment (5-1-18 Update)"	9	LO 00002099-00002105
46	Bill No. 2018-24	9	LO 00002106-00002118
47	October/November 2017 Applications for the 133 Acre Parcel: GPA-7220; WVR-72004, 72007, 72010; SDR-72005, 72008, 72011; TMP-72006, 72009, 72012	9-10	LO 00002119-00002256
48	Staff Recommendation 5.16.18 City Council Meeting GPA-72220	10	LO 00002257-00002270
49	11.30.17 Justification Letter for GPA-72220	10	LO 00002271-00002273
50	2.21.18 City Council Meeting Transcript Items 122-131	10	LO 00002274-00002307
51	5.16.18 City Council Meeting Agenda Summary Page for Item Nos. 74-83	10	LO 00002308-00002321
52	3.21.18 City Council Meeting Agenda Summary Page for Item No. 47	10	LO 00002322-00002326
53	5.17.18 Letters from City to Applicant Re: Applications Stricken	10	LO 00002327-00002336
54	Coffin Email	10	LO 00002337-00002344
55	8.10.17 Application For Walls, Fences, Or Retaining Walls Single Lot Only	10	LO 00002345-00002352
56	8.24.17 Letter from City of Las Vegas to American Fence Company	10	LO 00002353

57	LVMC 19.16.100	10	LO 00002354-00002358
58	6.28.16 Letter from Mark Colloton to Victor Bolanos, City of Las Vegas public Works Dept.	10	LO 00002359-00002364
59	8.24.17 Letter from the City of Las Vegas to Seventy Acres, LLC	10	LO 00002365
60	1990 Peccole Ranch Master Plan	10	LO 00002366-00002387
61	1.3.18 City Council Meeting Transcript Item No. 78	10	LO 00002388-00002470
62	Exhibit F-1 2.22.16 with annotations	10	LO 00002471-00002472
63	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	10-11	LO 00002473-00002543
64	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	11	LO 00002544-00002545
65	Email between Frank Schreck and George West 11.2.16	11	LO 00002546-00002551
66	Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge	11	LO 00002552-00002704
67	Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge effective 10.1.2000	11	LO 00002705
68	Findings of Fact, Conclusions of Law and Judgment Granting Defendants Fore Stars, LTD., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Prankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint, Eighth Judicial District Court Case No. A-16-739654-C Filed 11.30.16	11	LO 00002706-00002730
69	Custom Lots at Queensridge North Purchase Agreement, Earnest Money Receipt and Escrow Instructions	11	LO 00002731-00002739
70	Land Use Hierarchy Exhibit	11	LO 00002740
71	2.14.17 Planning Commission Transcript Agenda Items 21-14	11-12	LO 00002741-00002820
72	Order Granting Plaintiffs' Petition for Judicial Review Eighth Judicial District Court Case No. A-17-752344-J filed 3.5.18	12	LO 00002821-00002834

73	City of Las Vegas' Reply In Support of Its Motion to Dismiss and Opposition To Petitioner's Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 12.21.17	12	LO 00002835-00002840
74	Notice of Entry of Order Denying Motion to Dismiss and [Granting] Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 2.2.18	12	LO 00002841-00002849
75	Complaint in Eighth Judicial District Court Case No. A434337 filed 5.7.01	12	LO 00002850-00002851
76	Email	12	LO 00002852
77	6.13.17 PC Meeting Transcript	12	LO 00002853-00002935
78	1.23.17 onsite Drainage Agmt.	12	LO 00002936-00002947
79	9.11.18 PC – Hardstone Temp Permit Transcript	12	LO 00002948-00002958
80	Estate Lot Concepts	12	LO 00002959-00002963
81	Text Messages	12	LO 00002964-00002976
82	Intentionally left blank	12	Not bates stamped
83	Judge Smith Nov. 2016 Order	13	LO 00002977-00002982
84	Supreme Court Affirmance	13	LO 00002983-00002990
85	City Confirmation of R-PD7	13	LO 00002991-00003020
86	De Facto Case Law	13	LO 00003021-00003023
87	Johnson v. McCarran	13	LO 00003024-00003026
88	Boulder Karen v. Clark County	13	LO 00003027-00003092
89	Supreme Court Order Dismissing Appeal <i>in part</i> and Reinstating Briefing	13	LO 00003093-00003095
90	Bill No. 2018-24	13	LO 00003096-00003108
91	July 17, 2018 Hutchinson Letter in Opposition of Bill 2018-24	13	LO 00003109-00003111
92	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 1 of 2)	13-14	LO 00003112-00003309
93	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 2 of 2)	14-15	LO 00003310-00003562
94	Minutes from November 7, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003563-00003564
95	Verbatim Transcript from October 15, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003565-00003593

96	Minutes from November 7, 2018 City Council Hearing Re Bill 2018-24	15	LO 00003594-00003595
97	Verbatim Transcript from November 7, 2018 City Council Meeting Adopting Bill 2018-24	15-16	LO 00003596-00003829
98	Supreme Court Order Denying Rehearing	16	LO 00003830-00003832
99	Deposition of Greg Steven Goorjian	16	LO 00003833-00003884
100	2019.01.07 Robert Summerfield Email	16	LO 00003885
101	2019.02.06 Judge Williams' Order Nunc Pro Tunc Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019	16	LO 00003886-00003891
102	2019.02.15 Judge Sturman's Minute Order re Motion to Dismiss	16	LO 00003892
103	2019.01.23 Judge Bixler's Transcript of Proceedings	16	LO 00003893-00003924
104	2019.01.17 Judge Williams' Recorder's Transcript of Plaintiff's Request for Rehearing	16	LO 00003925-00003938
105	Approved Land Uses in Peccole Conceptual Plan	16	LO 00003939
106	2020 Master Plan – Southwest Sector Zoning	16	LO 00003940
107	35 Acre in Relation to Pecocole Plan	16	LO 00003941
108	CLV Hearing Documents on Major Modifications	17	LO 00003942-00004034
109	GPA Code and Application	17	LO 00004035-00004044

C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

Objection: The Landowners object to disclosing the computation of any category of “damages” at this time as this information requires the preparation of expert reports that will be produced in the normal course of discovery as provided in the Nevada Discovery Rules. The Landowners further object to disclosing any category of “damages” as discovery has been bifurcated,

1 the damages/just compensation phase of discovery has not commenced yet. Additionally, the
2 computation of any category of "damages" may contain attorney work product, privileged
3 information, and may require legal instructions or court rulings, accordingly, the same cannot be
4 produced at this time.

5 The Landowners will disclose their expert opinions/testimony regarding the just
6 compensation owed pursuant to NRCP 16.1(a)(2) and in accordance with the scheduling order set
7 in this matter.

8 **D. For inspection and copying as under Rule 34 any insurance agreement under which**
9 **any person carrying on an insurance business may be liable to satisfy party or all of**
10 **a judgment which may be entered in the action to indemnify or reimburse for payments**
11 **made to satisfy the judgment and any disclaimer or limitation of coverage or**
12 **reservation or frights under any such insurance agreement:**

13 N/A

14 The Landowners incorporate by reference herein all witnesses and documents disclosed by
15 other parties to this action. The Landowners further reserve the right to supplement and/or amend
16 these disclosures as discovery continues. The Landowners also reserve the right to object to the
17 introduction and/or admissibility of any document at the time of trial.

18 DATED this 15th day of April, 2019

19 **LAW OFFICES OF KERMIT L. WATERS**

20 By: /s/ Autumn Waters

21 KERMIT L. WATERS, ESQ.

22 Nevada Bar No. 2571

23 JAMES J. LEAVITT, ESQ.,

24 Nevada Bar No. 6032

25 MICHAEL SCHNEIDER, ESQ.

26 Nevada Bar No. 8887

27 AUTUMN L. WATERS, ESQ.,

28 Nevada Bar No. 8917

Attorneys for Plaintiff Landowners

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Offices of Kermitt L. Waters, and that on
3 the 15th day of April, 2019, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of
4 the foregoing document(s): **DEFENDANT LANDOWNERS' EARLY CASE CONFERENCE**
5 **INITIAL DISCLOSURES *FOR PHASE I - LIABILITY* PURSUANT TO NRCP 16.1** was
6 served to the following parties via E-Service through EJDC E-Filing; and that the date and time of
7 the electronic service is in place of the date and place of deposit in the mail.

8
9 **McDonald Carano LLP**

10 George F. Ogilvie III
11 Debbie Leonard
12 Amanda C. Yen
13 2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
dleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

14 **Las Vega City Attorney's Office**

15 Bradford Jerbic, City Attorney
16 Philip R. Byrnes
17 Seth T. Floyd
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
pbyrnes@lasvegasnevada.gov
Sfloyd@lasvegasnevada.gov

18
19
20
21 /s/ Evelyn Washington
22 Evelyn Washington, **an Employee of the**
23 **Law Offices of Kermitt L. Waters**
24
25
26
27
28

EXHIBIT D

RFA
LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

HUTCHISON & STEFFEN, PLLC

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

CITY OF LAS VEGAS, political subdivision of
the State of Nevada, et al.,

Defendant.

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

**PLAINTIFF LANDOWNERS'
REQUESTS FOR ADMISSION TO THE
CITY OF LAS VEGAS**

FIRST REQUEST

1 TO: THE CITY OF LAS VEGAS, Defendant; and

2 TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS.

3 Pursuant to the provisions of Nevada Rules of Civil Procedure, Rule 36, Plaintiffs 180 LAND
4 COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES,
5 LLC, a Nevada limited liability company (hereinafter "Landowner" and/or "Landowners"), by and
6 through their undersigned attorney, the Law Offices of Kermitt L. Waters, hereby propounds Plaintiff
7 Landowners' Requests for Admission to the City of Las Vegas (hereinafter "City") - First Request
8 as follows:

9 **GENERAL DEFINITIONS**

10 The following terms used in these Requests, whether capitalized or lowercase, have the
11 meaning ascribed to them as follows:

12 (a) The terms "and" and "or" shall be construed either disjunctively or conjunctively
13 whenever appropriate in order to bring within the scope of this discovery request any information
14 or documents which might otherwise be considered beyond its scope.

15 (b) The term "communication", its plural or any synonym thereof, means any
16 dissemination of information or transmission of a statement from one person to another, or in the
17 presence of another, whether by written, oral, or electronic means or by action or conduct and shall
18 include, but is not limited to, every discussion, conversation, conference, meeting, interview,
19 memorandum, telephone call, and/or visit.

20 (c) The term "document", and the plural form thereof, mean the original (or any copies
21 when originals are not available) and any nonidentical copies (whether different from originals by
22 reason of notation made on such copies or otherwise) or any book, pamphlet, periodical, letter,
23 report, note, memorandum, correspondence, record, minutes, log, diary, study, compilation, analysis,
24 tabulation, map, diagram, drawing, plan, picture, photograph, summary, working paper, chart, paper,
25 graph, index, data sheet, data processing card, computer run, summary of computer run, computer
26 disc, floppy disk, hard disk, tape, contract, agreement, lease, ledger, journal, balance sheet, account,
27 invoice, purchase order, receipt, billing record, diary, film, trip ticket, telex, facsimile, teletype
28

1 message, expense voucher, instructions, bulletins, or any other message or writing, however
2 produced or reproduced, and includes any mechanical recording or reproduction of any oral material.

3 (d) The term “fact” means, without limitation, every matter, occurrence, act, event,
4 transaction, occasion, instance, circumstance, representation, or other happening, by whatever name
5 it is known.

6 (e) The terms “identify” or “identification”, their plurals or synonyms thereof, when used
7 with reference to a person, mean to describe a person in sufficient detail to permit service of a
8 subpoena. The identification of a person shall include: (i) full name; (ii) last known residence,
9 address, and telephone number; (iii) last known business address and telephone number; and (iv) last
10 known occupation, with a description of job title, capacity, or position.

11 (f) The terms “identify” or “identification”, their plurals or synonyms thereof, when used
12 with reference to a document, mean to describe a document in sufficient detail to permit service of
13 a subpoena duces tecum. The identification of a document shall include: (i) the general nature of
14 the document or object, i.e., whether it is a letter, memorandum, report, drawing, chart, tracing,
15 pamphlet, etc.; (ii) the general subject matter of the document and/or object; (iii) the name, and
16 current or last known business address and home address of the original author or draftsman (and,
17 if different, the signor/signors), and of any person who edited, corrected, revised or amended, and/or
18 has entered any initials, comments, or notations thereon; (iv) the date thereof, including any date of
19 any such edition, correction, amendment, and/or revision; (v) any numerical designation appearing
20 thereon, such as a file reference and/or Bates-stamp; (vi) the name of each recipient of a copy of the
21 document and/or object; and, (vii) the place where any person now having custody or control of each
22 such document or object, resides or works, or if such document or object has been destroyed, the
23 place of and reasons for such destruction.

24 (g) The term “Landowner” and any plural thereof, shall mean the Plaintiffs, 180 LAND
25 COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES,
26 LLC, a Nevada limited liability company, in this action, including any representative of these
27 entities, including but not limited to Yohan Lowie, Vickie DeHart, Frank Pankratz and Brett
28 Harrison.

1 (h) The term “person” means any natural person, firm, business, corporation, partnership,
2 sole proprietorship, estate, trust, trust estate, joint venture, association, group, organization, or
3 governmental agency (whether federal, state, or local), or any agent thereof.

4 (i) The term “project,” or “Project” refers to the entire project for which the Plaintiff
5 alleges the subject property or subject properties are being taken/acquired in this case.

6 (j) The “Subject Property,” “subject property,” “subject properties,” or “Landowners’
7 Property” includes and refers to the Landowners’ Property specifically designated Clark County
8 Assessor’s Parcel Numbers as follows:

9 35 Acre Property - 138-31-201-005;

10 17 Acre Property - 138-32-301-005;

11 65 Acre Property - 138-31-801-002, 138-31-801-003, 138-32-301-007; and

12 133 Acre Property - 138-31-601-008, 138-31-702-003, 138-31-702-004.

13 The Subject Property also includes that property commonly known as the Badlands Golf
14 Course or the 250 Acre Residential Zoned Land.

15 (k) The term “writing”, and the plural form thereof, means the original (or any copies
16 when originals are not available) and any nonidentical copies (whether different from originals by
17 reason of notation made on such copies or otherwise) or any book, pamphlet, periodical, letter,
18 report, note, memorandum, correspondence, record, minutes, log, diary, study, compilation, analysis,
19 tabulation, map, diagram, drawing, plan, picture, photograph, summary, working paper, chart, paper,
20 graph, index, data sheet, data processing card, computer run, summary of computer run, computer
21 disc, floppy disk, hard disk, tape, contract, agreement, lease, ledger, journal, balance sheet, account,
22 invoice, purchase order, receipt, billing record, diary, film, trip ticket, telex, facsimile, teletype
23 message, expense voucher, instructions, bulletins, or any other message or writing, however
24 produced or reproduced, and includes any mechanical recording or reproduction of any oral material.

25 (l) The term “you,” and its plural, or any synonym thereof, shall mean Defendant,
26 including but not limited to all of its present or past agents, employees, representatives, consultants,
27 managers, members, insurers, successors, assigns, and, unless privileged, attorneys and accountants,
28 and its parent, subsidiary, and affiliated companies, corporations, and business entities, and all other
natural persons or business or legal entities acting or purporting to act for or on behalf of Defendant,

1 whether authorized to do so or not, and all others who are in possession of or may have obtained
2 information on behalf of Defendant as context dictates.

3 INSTRUCTIONS

4 1. Each Request should be construed independently. No Request should be construed
5 by reference to any other Request if the result is a limitation of the scope of the response to such
6 Request.

7 2. When a Request calls for a response in more than one part, each part should be
8 separate so that the answer is clearly understandable.

9 3. Whenever you are unable to provide a response to these Requests based upon your
10 personal knowledge, provide what you believe the correct response to be, and the facts upon which
11 you base your response.

12 4. If you object to a Request, either in whole or in part, or if the information regarding
13 the response to a Request is withheld on the grounds of privilege or otherwise, please set forth fully
14 each and every objection, describing generally the document withheld and set forth the exact ground
15 upon which you rely with such specificity as will permit the Court to determine the legal sufficiency
16 of your objection or position upon a motion to compel.

17 5. The singular form of a word shall be interpreted as plural and the plural form of a
18 word shall be interpreted as singular whenever appropriate in order to bring within the scope of these
19 Requests any information or documents which might otherwise be considered to be beyond their
20 scope.

21 6. The knowledge of any of your attorneys, if any, is deemed to be your knowledge of
22 the information sought to be produced herein, and said knowledge must be incorporated into these
23 responses, even if such information is personally unknown by you.

24 7. These Requests are continuing in nature, and you are therefore requested to
25 supplement your answers to each of these Requests with any information that you obtain following
26 your initial answers hereto that would reasonably be deemed to be within the scope of these
27 Requests.

28 //

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

For each and every document listed below, please admit that it is a true and correct copy of the original and/or that you will not challenge that it is a true and correct copy of the original so as to dispense with any foundationary authentication requirements of the NRS 52.015. Copies of these documents have been furnished previously in the Landowners' Appendix of Exhibits and the supplements thereto.

Exhibit No.	Exhibit Description	Vol. No.	Bates No.
1	Map of 250 Acre Residential Zoned Land Identifying Each Parcel	1	LO 00000001
2	Bill No. Z-2001-1: Ordinance No. 5353 Dated 8.15.2001	1	LO 00000002-00000083
3	12.30.14 Letter City of Las Vegas to Frank Pankratz "Zoning Verification" letter	1	LO 00000084
4	11.16.16 City Council Meeting Transcript Items 101-107	1-2	LO 00000085-00000354
5	6.21.17 City Council Meeting Transcript Items 82, 130-134	2	LO 00000355-00000482
6	5.16.18 City Council Meeting Transcript Items 71, 74-83	2-3	LO 00000483-00000556
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14	27	Email between City Attorney Brad Jerbic and Landowner's land use attorney Stephanie Allen, dated 5.22.17	5	LO 00001183-00001187
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16	29	The Two Fifty Development Agreement's Executive Summary	8	LO 00001836
17	30	City requested concessions signed by Landowners representative dated 5.4.17	8	LO 00001837
18	31	Badlands Development Agreement CLV Comments, dated 11-5-15	8	LO 00001838-00001845
19	32	Two Fifty Development Agreement (MDA) Comparison – July 12, 2016 and May 22, 2017	8	LO 00001846-00001900
20	33	The Two Fifty Design Guidelines, Development Standards and Uses, comparison of the March 17, 2016 and May, 2017 versions	8	LO 00001901-00001913

1	34	Seroka Campaign Literature	8	LO 00001914-00001919
2	35	2017-12-15 Thoughts on: Eglet-Prince Opioid Proposed Law Suit	8	LO 00001920-00001922
3	36	Tax Assessor's Values for 250 Acre Residential Land	8	LO 00001923-00001938
4	37	City's Motion to Dismiss Eighth Judicial District Case No. A-18-773268-C, filed 7/2/18	8	LO 00001939-00001963
5	38	1.11.18 Hearing Transcript, Eighth Judicial District Court Case No. A-17-752344-J	8-9	LO 00001964-00002018
6	39	City's Motion to Dismiss Eighth Judicial District Case No. A-18-775804-J, filed 8.27.18	9	LO 00002019-00002046
7	40	Staff Recommendation 6.21.17 City Council Meeting DIR-70539	9	LO 00002047-00002072
8	41	9.6.17 City Council Meeting Agenda Summary Page for Item No. 26	9	LO 00002073-00002074
9	42	9.4.18 meeting submission for Item No. 4 by Stephanie Allen	9	LO 00002075
10	43	5.16.18 City Council Meeting Agenda Summary Page for Item No. 66	9	LO 00002076-00002077
11	44	5.16.18 City Council Meeting Transcript Item No. 66	9	LO 00002078-00002098
12	45	Bill No. 2018-5 "Proposed First Amendment (5-1-18 Update)"	9	LO 00002099-00002105
13	46	Bill No. 2018-24	9	LO 00002106-00002118
14	47	October/November 2017 Applications for the 133 Acre Parcel: GPA-7220; WVR- 72004, 72007, 72010; SDR-72005, 72008, 72011; TMP-72006, 72009, 72012	9-10	LO 00002119-00002256
15	48	Staff Recommendation 5.16.18 City Council Meeting GPA-72220	10	LO 00002257-00002270
16	49	11.30.17 Justification Letter for GPA-72220	10	LO 00002271-00002273
17	50	2.21.18 City Council Meeting Transcript Items 122-131	10	LO 00002274-00002307
18	51	5.16.18 City Council Meeting Agenda Summary Page for Item Nos. 74-83	10	LO 00002308-00002321
19	52	3.21.18 City Council Meeting Agenda Summary Page for Item No. 47	10	LO 00002322-00002326
20	53	5.17.18 Letters from City to Applicant Re: Applications Stricken	10	LO 00002327-00002336

54	Coffin Email	10	LO 00002337-00002344
55	8.10.17 Application For Walls, Fences, Or Retaining Walls Single Lot Only	10	LO 00002345-00002352
56	8.24.17 Letter from City of Las Vegas to American Fence Company	10	LO 00002353
57	LVMC 19.16.100	10	LO 00002354-00002358
58	6.28.16 Letter from Mark Colloton to Victor Bolanos, City of Las Vegas public Works Dept.	10	LO 00002359-00002364
59	8.24.17 Letter from the City of Las Vegas to Seventy Acres, LLC	10	LO 00002365
60	1990 Peccole Ranch Master Plan	10	LO 00002366-00002387
61	1.3.18 City Council Meeting Transcript Item No. 78	10	LO 00002388-00002470
62	Exhibit F-1 2.22.16 with annotations	10	LO 00002471-00002472
63	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	10-11	LO 00002473-00002543
64	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	11	LO 00002544-00002545
65	Email between Frank Schreck and George West 11.2.16	11	LO 00002546-00002551
66	Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge	11	LO 00002552-00002704
67	Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge effective 10.1.2000	11	LO 00002705
68	Findings of Fact, Conclusions of Law and Judgment Granting Defendants Fore Stars, LTD., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Prankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint, Eighth Judicial District Court Case No. A-16-739654-C Filed 11.30.16	11	LO 00002706-00002730
69	Custom Lots at Queensridge North Purchase Agreement, Earnest Money Receipt and Escrow Instructions	11	LO 00002731-00002739
70	Land Use Hierarchy Exhibit	11	LO 00002740
71	2.14.17 Planning Commission Transcript Agenda Items 21-14	11-12	LO 00002741-00002820

72	Order Granting Plaintiffs' Petition for Judicial Review Eighth Judicial District Court Case No. A-17-752344-J filed 3.5.18	12	LO 00002821-00002834
73	City of Las Vegas' Reply In Support of Its Motion to Dismiss and Opposition To Petitioner's Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 12.21.17	12	LO 00002835-00002840
74	Notice of Entry of Order Denying Motion to Dismiss and [Granting] Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 2.2.18	12	LO 00002841-00002849
75	Complaint in Eighth Judicial District Court Case No. A434337 filed 5.7.01	12	LO 00002850-00002851
76	Email	12	LO 00002852
77	6.13.17 PC Meeting Transcript	12	LO 00002853-00002935
78	1.23.17 onsite Drainage Agmt.	12	LO 00002936-00002947
79	9.11.18 PC – Hardstone Temp Permit Transcript	12	LO 00002948-00002958
80	Estate Lot Concepts	12	LO 00002959-00002963
81	Text Messages	12	LO 00002964-00002976
82	Intentionally left blank	12	Not bates stamped
83	Judge Smith Nov. 2016 Order	13	LO 00002977-00002982
84	Supreme Court Affirmance	13	LO 00002983-00002990
85	City Confirmation of R-PD7	13	LO 00002991-00003020
86	De Facto Case Law	13	LO 00003021-00003023
87	Johnson v. McCarran	13	LO 00003024-00003026
88	Boulder Karen v. Clark County	13	LO 00003027-00003092
89	Supreme Court Order Dismissing Appeal <i>in part</i> and Reinstating Briefing	13	LO 00003093-00003095
90	Bill No. 2018-24	13	LO 00003096-00003108
91	July 17, 2018 Hutchinson Letter in Opposition of Bill 2018-24	13	LO 00003109-00003111
92	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 1 of 2)	13-14	LO 00003112-00003309
93	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 2 of 2)	14-15	LO 00003310-00003562
94	Minutes from November 7, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003563-00003564

95	Verbatim Transcript from October 15, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003565-00003593
96	Minutes from November 7, 2018 City Council Hearing Re Bill 2018-24	15	LO 00003594-00003595
97	Verbatim Transcript from November 7, 2018 City Council Meeting Adopting Bill 2018-24	15-16	LO 00003596-00003829
98	Supreme Court Order Denying Rehearing	16	LO 00003830-00003832
99	Deposition of Greg Steven Goorjian	16	LO 00003833-00003884
100	2019.01.07 Robert Summerfield Email	16	LO 00003885
101	2019.02.06 Judge Williams' Order Nunc Pro Tunc Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019	16	LO 00003886-00003891
102	2019.02.15 Judge Sturman's Minute Order re Motion to Dismiss	16	LO 00003892
103	2019.01.23 Judge Bixler's Transcript of Proceedings	16	LO 00003893-00003924
104	2019.01.17 Judge Williams' Recorder's Transcript of Plaintiff's Request for Rehearing	16	LO 00003925-00003938
105	Approved Land Uses in Peccole Conceptual Plan	16	LO 00003939
106	2020 Master Plan – Southwest Sector Zoning	16	LO 00003940
107	35 Acre in Relation to Pecocole Plan	16	LO 00003941
108	CLV Hearing Documents on Major Modifications	17	LO 00003942-00004034
109	GPA Code and Application	17	LO 00004035-00004044

DATED the 15th day of April, 2019.

LAW OFFICES OF KERMIT L. WATERS

By: /s/ Autumn Waters, Esq.

KERMIT L. WATERS, ESQ.

Nevada Bar No. 2571

JAMES J. LEAVITT, ESQ.

Nevada Bar No. 6032

MICHAEL SCHNEIDER, ESQ.

Nevada Bar No. 8887

AUTUMN L. WATERS, ESQ.

Nevada Bar No. 8917

Attorneys for Plaintiff Landowners

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 15th day of April, 2019, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the foregoing document(s): **PLAINTIFF LANDOWNERS' REQUESTS FOR ADMISSION TO CITY OF LAS VEGAS - FIRST REQUESTS** was made by electronic means 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 addressed to each of the following:

George F. Ogilvie III
Debbie Leonard
Amanda C. Yen
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
dleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

Bradford Jerbic, City Attorney
Philip R. Byrnes
Seth T. Floyd
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

PA0813

EXHIBIT E

1 **RFP**

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

3 Kermitt L. Waters, Esq., Bar No. 2571

4 kermitt@kermittwaters.com

5 James J. Leavitt, Esq., Bar No. 6032

6 jim@kermittwaters.com

7 Michael A. Schneider, Esq., Bar No. 8887

8 michael@kermittwaters.com

9 Autumn L. Waters, Esq., Bar No. 8917

10 autumn@kermittwaters.com

11 704 South Ninth Street

12 Las Vegas, Nevada 89101

13 Telephone: (702) 733-8877

14 Facsimile: (702) 731-1964

15 **HUTCHISON & STEFFEN, PLLC**

16 Mark A. Hutchison (4639)

17 Joseph S. Kistler (3458)

18 Matthew K. Schriever (10745)

19 Peccole Professional Park

20 10080 West Alta Drive, Suite 200

21 Las Vegas, NV 89145

22 Telephone: 702-385-2500

23 Facsimile: 702-385-2086

24 mhutchison@hutchlegal.com

25 jkistler@hutchlegal.com

26 mschriever@hutchlegal.com

27 *Attorneys for Plaintiff Landowners*

28 **DISTRICT COURT**

CLARK COUNTY, NEVADA

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

Plaintiffs,

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

**PLAINTIFF LANDOWNERS' REQUEST
FOR PRODUCTION OF DOCUMENTS
TO THE CITY OF LAS VEGAS**

FIRST REQUEST

1 TO: THE CITY OF LAS VEGAS, Defendant; and

2 TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS.

3 Pursuant to the provisions of Nevada Rules of Civil Procedure, Rule 34, Plaintiffs, 180
4 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY
5 ACRES, LLC, a Nevada limited liability company, (hereinafter "Landowner" and/or "Landowners")
6 by and through their undersigned attorney, the Law Offices of Kermitt L. Waters, hereby propounds
7 Plaintiff Landowners' Request for Production of Documents to the City of Las Vegas (hereinafter
8 "City") - First Request as follows:

9 **GENERAL DEFINITIONS**

10 The following terms used in these Requests, whether capitalized or lowercase, have the
11 meaning ascribed to them as follows:

12 (a) The terms "and" and "or" shall be construed either disjunctively or conjunctively
13 whenever appropriate in order to bring within the scope of this discovery request any information
14 or documents which might otherwise be considered beyond its scope.

15 (b) The term "communication", its plural or any synonym thereof, means any
16 dissemination of information or transmission of a statement from one person to another, or in the
17 presence of another, whether by written, oral, or electronic means or by action or conduct and shall
18 include, but is not limited to, every discussion, conversation, conference, meeting, interview,
19 memorandum, telephone call, and/or visit.

20 (c) The term "document", and the plural form thereof, mean the original (or any copies
21 when originals are not available) and any nonidentical copies (whether different from originals by
22 reason of notation made on such copies or otherwise) or any book, pamphlet, periodical, letter,
23 report, note, memorandum, correspondence, record, minutes, log, diary, study, compilation, analysis,
24 tabulation, map, diagram, drawing, plan, picture, photograph, summary, working paper, chart, paper,
25 graph, index, data sheet, data processing card, computer run, summary of computer run, computer
26 disc, floppy disk, hard disk, tape, contract, agreement, lease, ledger, journal, balance sheet, account,
27 invoice, purchase order, receipt, billing record, diary, film, trip ticket, telex, facsimile, teletype
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1 message, expense voucher, instructions, bulletins, or any other message or writing, however
2 produced or reproduced, and includes any mechanical recording or reproduction of any oral material.

3 (d) The term “fact” means, without limitation, every matter, occurrence, act, event,
4 transaction, occasion, instance, circumstance, representation, or other happening, by whatever name
5 it is known.

6 (e) The terms “identify” or “identification”, their plurals or synonyms thereof, when used
7 with reference to a person, mean to describe a person in sufficient detail to permit service of a
8 subpoena. The identification of a person shall include: (i) full name; (ii) last known residence,
9 address, and telephone number; (iii) last known business address and telephone number; and (iv) last
10 known occupation, with a description of job title, capacity, or position.

11 (f) The terms “identify” or “identification”, their plurals or synonyms thereof, when used
12 with reference to a document, mean to describe a document in sufficient detail to permit service of
13 a subpoena duces tecum. The identification of a document shall include: (i) the general nature of
14 the document or object, i.e., whether it is a letter, memorandum, report, drawing, chart, tracing,
15 pamphlet, etc.; (ii) the general subject matter of the document and/or object; (iii) the name, and
16 current or last known business address and home address of the original author or draftsman (and,
17 if different, the signor/signors), and of any person who edited, corrected, revised or amended, and/or
18 has entered any initials, comments, or notations thereon; (iv) the date thereof, including any date of
19 any such edition, correction, amendment, and/or revision; (v) any numerical designation appearing
20 thereon, such as a file reference and/or Bates-stamp; (vi) the name of each recipient of a copy of the
21 document and/or object; and, (vii) the place where any person now having custody or control of each
22 such document or object, resides or works, or if such document or object has been destroyed, the
23 place of and reasons for such destruction.

24 (g) The term “Landowner” and any plural thereof, shall mean the Plaintiffs, 180 LAND
25 COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES,
26 LLC, a Nevada limited liability company, in this action, including any representative of these
27
28

1 entities, including but not limited to Yohan Lowie, Vickie DeHart, Frank Pankratz, and Brett
2 Harrison.

3 (h) The term “person” means any natural person, firm, business, corporation, partnership,
4 sole proprietorship, estate, trust, trust estate, joint venture, association, group, organization, or
5 governmental agency (whether federal, state, or local), or any agent thereof.

6 (i) The term “project,” or “Project” refers to the entire project for which the Plaintiff
7 alleges the subject property or subject properties are being taken/acquired in this case.

8 (j) The “Subject Property,” “subject property,” “subject properties,” or “Landowners’
9 Property” includes and refers to the Landowners’ Property specifically designated Clark County
10 Assessor’s Parcel Numbers as follows:

11 35 Acre Property - 138-31-201-005;

12 17 Acre Property - 138-32-301-005;

13 65 Acre Property - 138-31-801-002, 138-31-801-003, 138-32-301-007; and

14 133 Acre Property - 138-31-601-008, 138-31-702-003, 138-31-702-004.

15 The Subject Property also includes that property commonly known as the Badlands Golf
16 Course or the 250 Acre Residential Zoned Land.

17 (k) The term “writing”, and the plural form thereof, means the original (or any copies
18 when originals are not available) and any nonidentical copies (whether different from originals by
19 reason of notation made on such copies or otherwise) or any book, pamphlet, periodical, letter,
20 report, note, memorandum, correspondence, record, minutes, log, diary, study, compilation, analysis,
21 tabulation, map, diagram, drawing, plan, picture, photograph, summary, working paper, chart, paper,
22 graph, index, data sheet, data processing card, computer run, summary of computer run, computer
23 disc, floppy disk, hard disk, tape, contract, agreement, lease, ledger, journal, balance sheet, account,
24 invoice, purchase order, receipt, billing record, diary, film, trip ticket, telex, facsimile, teletype
25 message, expense voucher, instructions, bulletins, or any other message or writing, however
26 produced or reproduced, and includes any mechanical recording or reproduction of any oral material.

1 (l) The term “you,” and its plural, or any synonym thereof, shall mean Defendant,
2 including but not limited to all of its present or past agents, employees, representatives, consultants,
3 managers, members, insurers, successors, assigns, and, unless privileged, attorneys and accountants,
4 and its parent, subsidiary, and affiliated companies, corporations, and business entities, and all other
5 natural persons or business or legal entities acting or purporting to act for or on behalf of Defendant,
6 whether authorized to do so or not, and all others who are in possession of or may have obtained
7 information on behalf of Defendant as context dictates.

8 **INSTRUCTIONS**

9 1. Each Request should be construed independently. No Request should be construed
10 by reference to any other Request if the result is a limitation of the scope of the response to such
11 Request.

12 2. When a Request calls for a response in more than one part, each part should be
13 separate so that the answer is clearly understandable.

14 3. Whenever you are unable to provide a response to these Requests based upon your
15 personal knowledge, provide what you believe the correct response to be, and the facts upon which
16 you base your response.

17 4. If you object to a Request, either in whole or in part, or if the documentation
18 regarding the response to a Request is withheld on the grounds of privilege or otherwise, please set
19 forth fully each and every objection, describing generally the document withheld and set forth the
20 exact ground upon which you rely with such specificity as will permit the court to determine the
21 legal sufficiency of your objection or position upon a motion to compel.

22 5. The singular form of a word shall be interpreted as plural and the plural form of a
23 word shall be interpreted as singular whenever appropriate in order to bring within the scope of these
24 Requests any information or documents which might otherwise be considered to be beyond their
25 scope.

26 6. All documents are to be divulged which are in your possession or control, or can be
27 ascertained upon reasonable investigation of the areas within your control. The knowledge of any
28

1 of your attorneys, if any, is deemed to be your knowledge of the documents sought to be produced
2 herein, and said knowledge must be incorporated into these responses, even if such documentation
3 is personally unknown by you.

4 7. These Requests are continuing in nature, and you are therefore requested to
5 supplement your production to each of these Requests with any information that you obtain
6 following your initial production hereto that would reasonably be deemed to be within the scope of
7 these Requests.

8 **REQUEST FOR PRODUCTION NO. 1:**

9 Identify and produce any and all documents, including but not limited to, the entire and
10 complete file in the possession of the City of Las Vegas, the applications, minutes from the meetings,
11 any and all communications (electronic or other), correspondence, letters, minutes, memos,
12 ordinances, and drafts related directly or indirectly to the following:

- 13 A. The 1985 City of Las Vegas General Land Use Plan, including land use map, adopted
14 January 16, 1985.
- 15 B. The Peccole Property Land Use Plan or Venetian Foothills Preliminary Development
16 Plan, 1986.
- 17 C. The consideration and/or adoption by the City of Las Vegas of the Venetian Foothills
18 conceptual plan or the Master Development Plan for the Venetian Foothills.
- 19 D. City of Las Vegas zoning file No. Z-00030-86, including the April 22, 1986 City
20 Planning Commission hearing, the May 7, 1986 City Council hearing, and the May
21 27, 1986 City Planning Commission hearing.
- 22 E. City of Las Vegas zoning file No. Z-139-89.
- 23 F. The consideration and/or adoption by the City of Las Vegas of the "Peccole Ranch
24 Master Plan, A Master Plan Amendment and Phase Two Re-zoning Application,"
25 dated February 6, 1990.
- 26 G. City of Las Vegas zoning file No. Z-17-90, including but not limited to the March 8,
27 1990 City Planning Commission hearing, and the April 4, 1990 City Council hearing.

- 1 H. City of Las Vegas zoning files Nos. Z-17-90 (1) through Z-17-90 (10), inclusive.
- 2 I. Master Development Plan Amendment, presented to the City Planning Commission,
- 3 March 8, 1990.
- 4 J. The updated City of Las Vegas Master Plan for the area within which the Subject
- 5 Property is located, dated March 12, 1992.
- 6 K. Southwest Sector Land Use Plan, dated January 5, 2007.
- 7 L. City of Las Vegas ZVL-57350 (Zoning Verification Letters, dated December 30,
- 8 2014).
- 9 M. Letter dated September 4, 1996, from Clyde O. Spitze to Robert Genzer, Re:
- 10 Badlands Golf Course, Phase 2.
- 11 N. Letter dated October 8, 1996 from Robert S. Genzer to Clyde O. Spitze, Re:
- 12 Badlands Golf Course, Phase 2.
- 13 O. City of Las Vegas zoning file TM-82-96.
- 14 P. GPA - 68385
- 15 Q. WVR - 68480
- 16 R. SDR - 68481
- 17 S. TMP - 68482
- 18 T. The Master Development Agreement for the 250 Acre Residential Zoned Land,
- 19 which was denied and/or stricken at the August 2, 2017 City Council meeting, more
- 20 fully identified as item 53-DIR - 70539 and item 31-Bill No. 2017-27 on the City
- 21 Council Agenda for August 2, 2017.
- 22 U. City of Las Vegas Bill No. 2018-5
- 23 V. City of Las Vegas Bill No. 2018-24
- 24 W. The request for access to the Subject Property, permit L17-00198.
- 25 X. The request to construct a fence on the Subject Property, permit C17-01047.
- 26 Y. WVR - 72004
- 27 Z. SDR - 72005

- 1 AA. TMP - 72006
2 BB. WVR - 72007
3 CC. SDR - 72008
4 DD. TMP - 72009
5 EE. WVR - 72010
6 FF. SDR - 72011
7 GG. TMP - 72012
8 HH. GPA - 72220
9 II. Bill No. Z-2001-1, Ordinance 5353.

10
11 **REQUEST FOR PRODUCTION NO. 2:**

12 Identify and produce a complete copy of the 2007 City of Las Vegas General Land Use Plan
13 and any and all documents, including the entire and complete file in the possession of the City of Las
14 Vegas, the applications, minutes from any the meetings, any and all communications,
15 correspondence, letters, minutes, memos, ordinances, and drafts related directly or indirectly to the
16 2007 City of Las Vegas General Land Use Plan.

17 **REQUEST FOR PRODUCTION NO. 3:**

18 Identify and produce a complete copy of the City of Las Vegas 2020 Master Plan and any
19 drafts thereto, including the entire and complete file in the possession of the City of Las Vegas, the
20 applications, minutes from the meetings, any and all communications, correspondence, letters,
21 minutes, memos, ordinances, and drafts related directly or indirectly to the City of Las Vegas 2020
22 Master Plan.

23 **REQUEST FOR PRODUCTION NO. 4:**

24 Identify and produce a complete copy of every City of Las Vegas master / land use plan for
25 the area within which the Subject Property is located or which includes the Subject Property from
26 1983 to present and any drafts thereto, including the entire and complete file in the possession of the
27 City of Las Vegas, the applications, minutes from the meetings, any and all communications,
28

1 correspondence, letters, minutes, memos, ordinances, and drafts related directly or indirectly to the
2 City of Las Vegas master / land use plan from 1983 to present.

3 **REQUEST FOR PRODUCTION NO. 5:**

4 Identify and produce a complete copy of every City of Las Vegas Zoning Atlas Map from
5 1983 to present for the area within which the Subject Property is located or which includes the
6 Subject Property and any drafts thereto, including the entire and complete file in the possession of
7 the City of Las Vegas, the applications, minutes from the meetings, any and all communications,
8 correspondence, letters, minutes, memos, ordinances, and drafts related directly or indirectly to these
9 City of Las Vegas Zoning Atlas Maps from 1983 to present.

10 **REQUEST FOR PRODUCTION NO. 6:**

11 Identify and produce a list / summary of every instance where an application was submitted
12 to the City to use property, the use of the property identified in the application was consistent with
13 the then existing zoning designation and/or the City of Las Vegas Zoning Atlas Map and the City
14 denied the request from 1986 to present. Please include in the list / summary a reference to the City
15 of Las Vegas zoning file where the action was taken.

16 **REQUEST FOR PRODUCTION NO. 7:**

17 Identify and produce a list / summary of every instance where an application was submitted
18 to the City to use property, the use of the property identified in the application was consistent with
19 the then existing zoning designation and/or the City of Las Vegas Zoning Atlas Map, but the use was
20 inconsistent with the land use designation on the City's master plan and/or land use plan and the City
21 applied the designation on the City's master plan and/or land use plan over the then existing zoning
22 designation and/or City of Las Vegas Zoning Atlas Map to deny the application to use the property
23 from 1986 to present. Please include in the list / summary a reference to the City of Las Vegas
24 zoning file where the action was taken.

25 **REQUEST FOR PRODUCTION NO. 8:**

26 Identify and produce any and all documents, including but not limited to, the entire and
27 complete file in the possession of the City of Las Vegas, the applications, minutes from the meetings,
28 any and all communications (electronic or other), correspondence, letters, minutes, memos,

ordinances, and drafts related directly or indirectly to the “Peccole Ranch Master Plan,” (Plan) including but not limited to the passage or adoption of the Plan, the changes to any boundaries applicable to the Plan, any major modifications to the Plan, and general plan amendments to the Plan, and/or any zone changes related to the Plan from the period 1990 to present.

REQUEST FOR PRODUCTION NO. 9:

Identify and produce every document in the possession list / summary of every instance where an application was submitted to the City to use property within the geographic area of the “Peccole Ranch Master Plan” where the application and/or request to use the property was inconsistent or contrary to the land use designation on the “Peccole Ranch Master Plan” and the City required the applicant to submit / file a major modification application with the City to modify the land use designation on the “Peccole Ranch Master Plan” from 1986 to present. Please include in the list / summary a reference to the City of Las Vegas zoning file where the action was taken.

REQUEST FOR PRODUCTION NO. 10:

Identify and produce each and every document, communication, email, memo, correspondence, and/or text sent to or sent from any member of the City Council, any Staff member of the City of Las Vegas and/or any member of the City of Las Vegas City Attorney’s Office from 2015 to present that is related to the Subject Property, the Badlands Golf Course, the 250 Acre Residential Zoned Land and/or any application to develop the entire or any part of the Subject Property, the Badlands Golf Course, and/or the 250 Acre Residential Zoned Land.

REQUEST FOR PRODUCTION NO. 11:

Identify and produce each and every document, communication, email, memo, correspondence, and/or text sent to or sent from any member of the City Council, any Staff member of the City of Las Vegas and/or any member of the City of Las Vegas City Attorney’s Office from 2015 to present that is related to the identification or suggestion of funds to purchase the Subject Property, the Badlands Golf Course, and/or the 250 Acre Residential Zoned Land.

REQUEST FOR PRODUCTION NO. 12:

Identify and produce each and every document, communication, email, memo, correspondence, and/or text sent to or sent from any member of the City Council, any Staff member

1 of the City of Las Vegas and/or any member of the City of Las Vegas City Attorney's Office from
2 1986 to present that is related to the identification or suggestion of a PR-OS designation on all or any
3 part of the Landowners' Property and/or all or any part of the 250 Acre Residential Zoned Land.

4 **REQUEST FOR PRODUCTION NO. 13:**

5 Identify and produce each and every City of Las Vegas guideline, instruction, process and/or
6 procedure for adopting a land use designation on the City of Las Vegas General Plan Land Use
7 Element and/or Master Plan, including the guideline, instruction, process and/or procedure
8 applicable for each and every year from 1986 to present.

9 **REQUEST FOR PRODUCTION NO. 14:**

10 Identify and produce each and every document in your possession or at the City of Las Vegas
11 which supports or shows how the City of Las Vegas guideline, instruction, process and/or procedure
12 was implemented to place a designation of PR-OS or any similar open space designation on all or
13 any part of the Landowners' Property and/or the 250 Acre Residential Zoned Land on the City of Las
14 Vegas General Plan Land Use Element and/or Master Plan from 1986 to present.

15 **REQUEST FOR PRODUCTION NO. 15:**

16 Identify and produce the City of Las Vegas Code section and/or any other City document
17 which provides each and every guideline, instruction, process and/or procedure that the City of Las
18 Vegas requires for a major modification application including the City document(s) identifying each
19 and every guideline, instruction, process and/or procedure applicable for a major modification
20 application for each and every year from 2014 to present.

21 DATED this 15th day of April, 2019.

22 **LAW OFFICES OF KERMIT L. WATERS**

23 By: /s/ Autumn Waters, Esq.

KERMIT L. WATERS, ESQ.

Nevada Bar No. 2571

JAMES J. LEAVITT, ESQ.

Nevada Bar No. 6032

MICHAEL SCHNEIDER, ESQ.

Nevada Bar No. 8887

AUTUMN L. WATERS, ESQ.

Nevada Bar No. 8917

Attorneys for Plaintiff Landowners

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 15th day of April, 2019, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy
4 of the foregoing document(s): **PLAINTIFF LANDOWNERS' REQUEST FOR PRODUCTION**
5 **OF DOCUMENTS TO THE CITY OF LAS VEGAS - FIRST REQUEST** was made by
6 electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the
7 Eighth Judicial District Court's electronic filing system, with the date and time of the electronic
8 service substituted for the date and place of deposit in the mail and addressed to each of the
9 following:

10 **McDonald Carano LLP**
11 George F. Ogilvie III
12 Debbie Leonard
13 Amanda C. Yen
14 2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
dleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

15 **Las Vega City Attorney's Office**
16 Bradford Jerbic, City Attorney
17 Philip R. Byrnes
18 Seth T. Floyd
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
pbyrnes@lasvegasnevada.gov
Sfloyd@lasvegasnevada.gov

19
20 /s/ Evelyn Washington
21 Evelyn Washington, an Employee of the
22 Law Offices of Kermitt L. Waters
23
24
25
26
27
28

EXHIBIT F

1 **ORD**

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

3 Kermitt L. Waters, Esq., Bar No. 2571

4 kermitt@kermittwaters.com

5 James J. Leavitt, Esq., Bar No. 6032

6 jim@kermittwaters.com

7 Michael A. Schneider, Esq., Bar No. 8887

8 michael@kermittwaters.com

9 Autumn L. Waters, Esq., Bar No. 8917

10 autumn@kermittwaters.com

11 704 South Ninth Street

12 Las Vegas, Nevada 89101

13 Telephone: (702) 733-8877

14 Facsimile: (702) 731-1964

15 **HUTCHISON & STEFFEN, PLLC**

16 Mark A. Hutchison (4639)

17 Joseph S. Kistler (3458)

18 Matthew K. Schriever (10745)

19 Peccole Professional Park

20 10080 West Alta Drive, Suite 200

21 Las Vegas, NV 89145

22 Telephone: 702-385-2500

23 Facsimile: 702-385-2086

24 mhutchison@hutchlegal.com

25 jkistler@hutchlegal.com

26 mschriever@hutchlegal.com

27 *Attorneys for Plaintiff Landowners*

28 **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,

Plaintiffs,

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

ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims

Hearing Date: March 22, 2019

Hearing Time: 1:30 p.m.

ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims

The City of Las Vegas's (The City") Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; Plaintiff, 180 LAND COMPANY, LLC's ("Landowner") Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/amend the Pleadings, if Required; and Plaintiff Landowners' Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time along with the City's and the Intervenor's (from the Petition for Judicial Review¹) Oppositions and the Landowners Replies² to the same having come for hearing on March 22, 2019 at 1:30 p.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., Mark Hutchison, Esq., and Autumn Waters, Esq., appearing for and on behalf of the Landowners, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of the City, and Todd Bice, Esq., and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenor's (from the Petition for Judicial Review). The Court having read the briefings, conducted a hearing and after considering the writings and oral arguments presented and being fully informed in the premise makes the following findings of facts and conclusions of law:

I. The Landowners' Countermotion to Supplement/Amend the Pleadings

The Landowners moved this Court to supplement/amend their pleadings. The Landowners attached a copy of their proposed amended/supplemental complaint to their request pursuant to NRCP Rule 15. This matter is in its early stages, as discovery has yet to commence so no prejudice

¹ The Intervenor's have not moved nor been granted entry into this case dealing with the Landowners' inverse condemnation claims, they have moved and been granted entry into the severed petition for judicial review.

² The Landowners withdrew this Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time, accordingly, no arguments were taken nor rulings issued.

1 or delay will result in allowing the amendment. The City argues that permitting the amendment
2 would result in impermissible claim splitting as the Landowners currently have other litigation
3 pending which also address the City action complained of in the amended/supplemental complaint.
4 However, those other pending cases deal with other property also allegedly affected by the City
5 action and do not seek relief for the property at issue in this case.

6 Leave to amend should be freely given when justice so requires. NRCP Rule 15(a)(2);
7 Adamson v. Bowker, 85 Nev. 115, 121 (1969). Absent undue delay, bad faith or dilatory motive on
8 the part of the movant, leave to amend should be freely given. Stephens v. Southern Nev. Music Co.,
9 89 Nev. 104 (1973). Justice requires leave to amend under the facts of this case and there has been
10 no showing of bad faith or dilatory motive on the part of the Landowners.

11 Accordingly, IT IS HEREBY ORDERED that the Landowners' Counter-motion to
12 Supplement/Amend the Pleadings is **GRANTED**. The Landowners may file the amended /
13 supplemental complaint in this matter.

14 **II. The City's Motion for Judgment on the Pleadings on Developer's Inverse
Condemnation Claims**

15 The City moved this Court for judgment on the pleadings on the Landowners' inverse
16 condemnation claims pursuant to NRCP 12(c). Only under rare circumstances is dismissal proper,
17 such as where plaintiff can prove no set of facts entitling him to relief. Williams v. Gerber Prod.,
18 552 F.3d 934, 939 (9th Cir. 2008). The Nevada Supreme Court has held that a motion to dismiss "is
19 subject to a rigorous standard of review on appeal," that it will recognize all factual allegations as
20 true, and draw all inferences in favor of the plaintiff. Buzz Stew, LLC v. City of North Las Vegas,
21 181 P.3d 670, 672 (2008). The Nevada Supreme Court rejected the reasonable doubt standard and
22 held that a complaint should be dismissed only where it appears beyond a doubt that the plaintiff
23 could prove no set of facts, which, if true, would entitle the plaintiff to relief. Id., see also fn. 6.
24 Additionally, Nevada is a notice pleading state. NRCP Rule 8; Liston v. Las Vegas Metropolitan
25 Police Dep't, 111 Nev. 1575 (1995) (referring to an amended complaint, deposition testimony,
26 interrogatory responses and pretrial demand statement as a basis to provide notice of facts that
27 support a claim). Moreover, the Nevada Supreme Court has adopted the "policy of this state that
28

cases be heard on the merits, whenever possible.” Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

A. The Landowners’ Inverse Condemnation Claims

The Landowners have asserted five (5) separate inverse condemnation claims for relief, a Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking and, finally, a Temporary Taking. Each of these claims is a valid claim in the State of Nevada:

Categorical Taking - “Categorical [taking] rules apply when a government regulation either (1) requires an owner to suffer a permanent physical invasion of her property or (2) completely deprives an owner of all economical use of her property.” McCarran Intern. Airport v. Sisolak, 122 Nev. 645, 663, 137 P. 3d 1110, 1122 (2006).

Penn Central Regulatory Taking - A Penn Central taking analysis examines three guideposts: the regulations economic impact on the property owner; the regulations interference with investment backed expectations; and, the character of the government action. Sisolak, supra, at 663.

Regulatory Per Se Taking - A Per Se Regulatory Taking occurs where government action “preserves” property for future use by the government. Sisolak, supra, at 731.

Non-regulatory Taking / De Facto Taking - A non-regulatory/de facto taking occurs where the government has “taken steps that directly and substantially interfere with [an] owner’s property rights to the extent of rendering the property unusable or valueless to the owner.” State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015). “To constitute a taking under the Fifth Amendment it is not necessary that property be absolutely ‘taken’ in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights.” Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir. Ct. App. 1977).

Temporary Taking - “[T]emporary deprivations of use are compensable under the Taking Clause.” Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1011-12 (1992); Arkansas Game & Fish Comm’s v. United States, 568 U.S. 23, 133 S.Ct. 511 (2012).

1 Here, the Landowners have alleged facts and provided documents sufficient to sustain these
2 inverse condemnation claims as further set forth herein, which is sufficient to defeat the City's
3 motion for judgment on the pleadings.

4 **B. The Landowners' Property Interest**

5 "An individual must have a property interest in order to support a takings claim....The term
6 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the
7 property." McCarran v. Sisolak, 122 Nev. 645, 137 P.3d 1110, 1119 (2006). "It is well established
8 that an individual's real property interest in land supports a takings claim." ASAP Storage, Inc. v.
9 City of Sparks, 123 Nev. 639, 645, 173 P.3d 734, 738 (2007) *citing to Sisolak and Clark County v.*
10 Alper, 100 Nev. 382 (1984). Meaning a landowner merely need allege an ownership interest in the
11 land at issue to support a takings claim and defeat a judgment on the pleadings. The Landowners
12 have made such an allegation.

13 The Landowners assert that they have a property interest and vested property rights in the
14 Subject Property for the following reasons:

15 1) The Landowners assert that they own approximately 250 acres of real property
16 generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard
17 within the City of Las Vegas, Nevada; all of which acreage is more particularly described as
18 Assessor's Parcel Numbers 138-31-702-003, 138-31-601-008, 138-31-702-004; 138-31-201-005;
19 138-31-801-002; 138-31-801-003; 138-32-301-007; 138-32-301-005; 138-32-210-008; and 138-32-
20 202-001 ("250 Acre Residential Zoned Land"). This action deals specifically and only with Assessor
21 Parcel Number 138-31-201-005 (the "35 Acre Property" and/or "35 Acres" and/or "Landowners'
22 Property" or "Property").

23 2) The Landowners assert that they had a property interest in the 35 Acre Property; that
24 they had the vested right to use and develop the 35 Acre Property; that the hard zoning on the 35
25 Acre Property has always been for a residential use, including R-PD7 (Residential Planned
26 Development District – 7.49 Units per Acre). The City does not contest that the hard zoning on the
27 Landowners' Property has always been R-PD7.

1 3) The Landowners assert that they had the vested right to use and develop the 35 Acre
2 Property up to a density of 7.49 residential units per acre as long as the development is comparable
3 and compatible with the existing adjacent and nearby residential development. The Landowners'
4 property interest and vested property rights in the 35 Acre Property are recognized under the United
5 States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

6 4) The Landowners assert that their property interest and vested right to use and develop
7 the 35 Acre Property is further confirmed by the following:

- 8 a) On March 26, 1986, a letter was submitted to the City Planning Commission
9 requesting zoning on the entire 250 Acre Residential Zoned Land (which
10 includes the 35 Acre Property) and the zoning that was sought was R-PD7 as
11 it allows the developer flexibility and shows that developing the 35 Acre
12 Property for a residential use has always been the intent of the City and all
13 prior owners.
- 14 b) The City has confirmed the Landowners' property interest and vested right
15 to use and develop the 35 Acre Property residentially in writing and orally in,
16 without limitation, 1996, 2001, 2014, 2016, and 2018.
- 17 c) The City adopted Zoning Bill No. Z-2001, Ordinance 5353, which
18 specifically and further demonstrates that the R-PD7 Zoning was codified and
19 incorporated into the City of Las Vegas' Amended Zoning Atlas in 2001. As
20 part of this action, the City "repealed" any prior City actions that could
21 conflict with this R-PD7 hard zoning adopting: "SECTION 4: All ordinances
22 or parts of ordinances or sections, subsections, phrases, sentences, clauses or
23 paragraphs contained in the Municipal Code of the City of Las Vegas,
24 Nevada, 1983 Edition, in conflict herewith are hereby repealed."
- 25 d) At a November 16, 2016, City Council hearing, Tom Perrigo, the City
26 Planning Director, confirmed the 250 Acre Residential Zoned Land (which
27 includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49
28 residential units per acre.
- e) Long time City Attorney, Brad Jerbic, has also confirmed the 250 Acre
Residential Zoned Land (which includes the 35 Acre Property) is hard zoned
R-PD7, which allows up to 7.49 residential units per acre.
- f) The City Planning Staff has also confirmed the 250 Acre Residential Zoned
Land (which includes the 35 Acre Property) is hard zoned R-PD7, which
allows up to 7.49 residential units per acre.
- g) The City's own 2020 master plan confirms the 250 Acre Residential Zoned
Land (which includes the 35 Acre Property) is hard zoned R-PD7, which
allows up to 7.49 residential units per acre.
- h) The City issued two formal Zoning Verification Letters dated December 20,
2014, confirming the R-PD7 zoning on the entire 250 Acre Residential Zoned
Land (which includes the 35 Acre Property).

- 1 i) The City confirmed the Landowners' vested right to use and develop the 35
2 Acres prior to the Landowners' acquisition of the 35 Acres and the
3 Landowners materially relied upon the City's confirmation regarding the
4 Subject Property's vested zoning rights.
- 5 j) The City has approved development on approximately 26 projects and over
6 1,000 units in the area of the 250 Acre Residential Zoned Land (which
7 includes the 35 Acre Property) on properties that are similarly situated to the
8 35 Acre Property further establishing the Landowners' property interest and
9 vested right to use and develop the 35 Acre Property.
- 10 k) The City has never denied an application to develop in the area of the 250
11 Acre Residential Zoned Land (which includes the 35 Acre Property) on
12 properties that are similarly situated to the 35 Acre Property further
13 establishing the Landowners' property interest and vested right to use and
14 develop the 35 Acre Property.
- 15 l) There has been a judicial finding that the Landowners have the "right to
16 develop" the 35 Acre Property.
- 17 m) The Landowners' property interest and vested right to use and develop the
18 entire 250 Acre Residential Zoned Land (which includes the 35 Acre
19 Property) is so widely accepted that even the Clark County tax Assessor has
20 assessed the property as residential for a value of approximately \$88 Million
21 and the current Clark County website identifies the 35 Acre Property "zoned"
22 R-PD7.
- 23 n) There have been no other officially and properly adopted plans or maps or
24 other recorded document(s) that nullify, replace, and/or trump the
25 Landowners' property interest and vested right to use and develop the 35
26 Acre Property.
- 27 o) Although certain City of Las Vegas planning documents show a general plan
28 designation of PR-OS (Parks/Recreation/Open Space) on the 35 Acre
Property, that designation was placed on the Property by the City without the
City having followed its own proper notice requirements or procedures.
Therefore, any alleged PR-OS on any City planning document is being shown
on the 35 Acre Property in error. The City's Attorney confirmed the City
cannot determine how the PR-OS designation was placed on the Subject
Property.
- p) The 35 Acre Property has always been zoned and land use planned for a
residential use. The City has argued that the Peccole Concept Plan applies
to the Landowners' 35 Acre Property and that plan has always identified the
specific 35 Acre Property in this case for a residential use. The land use
designation where the 35 Acre Property is located is identified for a
residential use under the Peccole Concept Plan and no major modification of
Mr. Peccole's Plan would be needed in this specific case to use the 35 Acre
Property for a residential use.

Any determination of whether the Landowners have a "property interest" or the vested right to use
the 35 Acre Property must be based on eminent domain law, rather than the land use law. The
Nevada Supreme Court in both the Sisolak and Schwartz v. State, 111 Nev. 998, fn 6 (1995)

1 decisions held that all property owners in Nevada, including the Landowners in this case, have the
2 vested right to use their property, even if that property is vacant, undeveloped, and without City
3 approvals. The City can apply “valid” zoning regulations to the property to regulate the use of the
4 property, but if those zoning regulations “rise to a taking,” Sisolak at fn 25, then the City is liable
5 for the taking and must pay just compensation.

6 Here, the Landowners have alleged facts and provided documents sufficient to show they
7 have a property interest in and a vested right to use the 35 Acre Property for a residential use, which
8 is sufficient to defeat the City’s motion for judgment on the pleadings.

9 **C. City Actions the Landowners Claim Amount to A Taking**

10 In determining whether a taking has occurred, Courts must look at the aggregate of all of the
11 government actions because “the form, intensity, and the deliberateness of the government actions
12 toward the property must be examined ... All actions by the [government], in the aggregate, must
13 be analyzed.” Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State
14 v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (*citing* Arkansas Game & Fish Comm’s v. United
15 States, 568 U.S. --- (2012)) (there is no “magic formula” in every case for determining whether
16 particular government interference constitutes a taking under the U.S. Constitution; there are “nearly
17 infinite variety of ways in which government actions or regulations can effect property interests.”
18 Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse
19 condemnation action is an “ad hoc” proceeding that requires “complex factual assessments.” Id.,
20 at 720.); Lehigh-Northampton Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn.
21 1999) (“There is no bright line test to determine when government action shall be deemed a de facto
22 taking; instead, each case must be examined and decided on its own facts.” Id., at 985-86).

23 The City has argued that the Court is limited to the record before the City Council in
24 considering the Landowners’ applications and cannot consider all the other City action towards the
25 Subject Property, however, the City cites the standard for petitions for judicial review, not inverse
26 condemnation claims. A petition for judicial review is one of legislative grace and limits a court’s
27 review to the record before the administrative body, unlike an inverse condemnation, which is of
28

1 constitutional magnitude and requires all government actions against the property at issue to be
2 considered.

3 The Landowners assert that the following City actions individually and/or cumulatively
4 amount to a taking of their Property:

5 **1. City Denial of the 35 Acre Property Applications.**

6 The Landowners submitted complete applications to develop the 35 Acre Property for a
7 residential use consistent with the R-PD7 hard zoning. *Exhibit 22: App LO 00000932-949*. The City
8 Planning Staff determined that the proposed residential development was consistent with the R-PD7
9 hard zoning, that it met all requirements in the Nevada Revised Statutes, and in the City's Unified
10 Development Code (Title 19), and appropriately recommended approval. *Exhibit 22: 4 App LO*
11 *00000932-949 and Exhibit 23: 4 App LO 00000950-976*. Tom Perrigo, the City Planning Director,
12 stated at the hearing on the Landowners' applications that the proposed development met all City
13 requirements and should be approved. *Exhibit 5: 2 App LO 00000376 line 566 - 377 line 587*. The
14 City Council denied the 35 Acre Property applications, stating as the sole basis for denial that the
15 City did not want piecemeal development and instead wanted to see the entire 250 Acre Residential
16 Zoned Land developed under one Master Development Agreement ("MDA").

17 **2. City Action #2: Denial of the Master Development Agreement (MDA).**

18 To comply with the City demand to have one unified development, for over two years
19 (between July, 2015, and August 2, 2017), the Landowners worked with the City on an MDA that
20 would allow development on the 35 Acre Property along with all other parcels that made up the 250
21 Acre Residential Zoned Land. *Exhibit 25: 5 App LO 00001132-1179*. The Landowners complied
22 with each and every City demand, making more concessions than any developer that has ever
23 appeared before this City Council. A non-exhaustive list of the Landowners' concessions, as part
24 of the MDA, include: 1) donation of approximately 100 acres as landscape, park equestrian facility,
25 and recreation areas (*Exhibit 29: 8 App LO 00001836; Exhibit 24: 4 App LO 00000998 lines 599-*
26 *601; Exhibit 30: 8 App LO 00001837*); 2) building two new parks, one with a vineyard; (Id.) and,
27 3) reducing the number of units, increasing the minimum acreage lot size, and reducing the number
28 and height of towers. *Exhibit 5: 2 App LO 00000431 lines 2060-2070; Exhibit 29: 8 App LO*

00001836; and Exhibit 30: 8 App LO 00001837. In total, the City required at least 16 new and revised versions of the MDA. Exhibit 28: 5-7 App LO 00001188-00001835. The City's own Planning Staff, who participated at every step in preparing the MDA, recommended approval, stating the MDA "is in conformance with the requirements of the Nevada Revised Statutes 278" and "the goals, objectives, and policies of the Las Vegas 2020 Master Plan" and "[a]s such, staff [the City Planning Department] is in support of the development Agreement." Exhibit 24: 4 App LO 00000985 line 236 – 00000986 line 245; LO 00001071-00001073; and Exhibit 40: 9 App LO 00002047-2072. And, as will be explained below, the MDA also met and exceeded any and all major modification procedures and standards that are set forth in the City Code.

On August 2, 2017, the MDA was presented to the City Council and the City denied the MDA. Exhibit 24: 5 App LO 00001128-112. The City did not ask the Landowners to make more concessions, like increasing the setbacks or reducing the units per acre, it simply and plainly denied the MDA altogether. *Id.* As the 35 Acre Property is vacant, this meant that the property would remain vacant.

3. City Action #3: Adoption of the Yohan Lowie Bills.

After denial of the MDA, the City adopted two Bills that solely target the 250 Acre Residential Zoned Land and preserve the Landowners' Property for public use. City Bill No. 2018-5 and Bill No. 2018-24 (now City Ordinances LVMC 19.16.105) not only target solely the Landowners' Property (no other golf course in the City is privately owned with residential zoning and no deed restrictions); but also requires the Landowners to preserve their Property for public use (LVMC 19.16.105 (E)(1)(d), (G)(1)(d)), provide ongoing public access to their Property (LVMC 19.16.105(G)(1)(d)), and provides that failure to comply with the Ordinances will result in a misdemeanor crime punishable by imprisonment and \$1,000 per day fine. (LVMC 19.16.105 (E)(1)(d), (G)(5)(b)&(c)). The Ordinance requires the Landowners to perform an extensive list of requirement, beyond any other development requirements in the City for residential development, before development applications will be accepted by the City. LVMC 19.16.105.

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1 **4. City Action #4: Denial of an Over the Counter, Routine Access Request.**

2 The Landowners have sufficiently alleged that in August of 2017, the Landowners filed with
3 the City a routine over the counter request (specifically excluded from City Council review - LVMC
4 19.16.100(f)(2)(a) and 19.16.100(f)(2)(a)(iii)) for three access points to streets the 250 Acre
5 Residential Zoned Land abuts – one on Rampart Blvd. and two on Hualapai Way. *Exhibit 58: 10 App*
6 *LO 00002359-2364*. The City denied the access applications citing as the sole basis for the denial,
7 “the various public hearings and subsequent debates concerning the development on the subject site.”
8 *Exhibit 59: 10 App LO 00002365*. The City required that the matter be presented to the City Council
9 through a “Major Review.” The City has required that this extraordinary standard apply only to the
10 Landowners to gain access to their property.

11 The Nevada Supreme Court has held that a landowner cannot be denied access to abutting
12 roadways, because all property that abuts a public highway has a special right of easement to the
13 public road for access purposes and this is a recognized property right in Nevada. Schwartz v. State,
14 111 Nev. 998 (1995). The Court held that this right exists “despite the fact that the Landowner had
15 not yet developed access.”Id., at 1003.

16 **5. City Action #5: Denial of an Over the Counter, Routine Fence Request.**

17 The Landowners have sufficiently alleged that in August, 2017, the Landowners filed with
18 the City a routine request to install chain link fencing to enclose two water features/ponds that are
19 located on the 250 Acre Residential Zoned Land. *Exhibit 55: 10 App LO 00002345-2352*. The City
20 Code expressly states that this application is similar to a building permit review that is granted over
21 the counter and not subject to City Council review. LVMC 19.16.100(f)(2)(a) and
22 19.16.100(f)(2)(a)(iii). The City denied the application, citing as the sole basis for denial, “the
23 various public hearings and subsequent debates concerning the development on the subject site.”
24 *Exhibit 56: 10 App LO 2343*. The City then required that the matter be presented to the City Council
25 through a “Major Review” pursuant to LVMC 19.16.100(G)(1)(b) which states that “the Director
26 determines that the proposed development could significantly impact the land uses on the site or on
27 surrounding properties.” *Exhibit 57: 10 App LO 00002354-2358*.

1 The Major Review Process contained in LVMC 19.16.100 is substantial. It requires a pre-
2 application conference, plans submittal, circulation to interested City departments for
3 comments/recommendation/requirements, and publicly noticed Planning Commission and City
4 Council hearings. The City has required that this extraordinary standard apply despite the fact that
5 LVMC 19.16.100 F(3) specifically prohibits review by the City Council, “[t]he Provisions of this
6 Paragraph (3) shall not apply to *building permit level reviews* described in Paragraph 2(a) of this
7 Subsection (F). Enumerated in Paragraph 2(a) as only requiring a “building level review” are “onsite
8 signs, walls and fences.”

9 **6. City Action #6: Denial of a Drainage Study.**

10 The Landowners have sufficiently alleged that in an attempt to clear the property, replace
11 drainage facilities, etc., the Landowners submitted an application for a technical drainage study,
12 which should have been routine, because the City and the Landowners already executed an On-Site
13 Drainage Improvements Maintenance Agreement that allows the Landowners to remove and replace
14 the flood control facilities on their property. *Exhibit 78: 12 App LO 00002936-2947*. Additionally,
15 the two new City Ordinances referenced in City Action #3 require a technical drainage study.
16 However, the City has refused to accept an application for a technical drainage study from the
17 Landowners claiming the Landowners must first obtain entitlements, however, the new City
18 Ordinances will not provide entitlements until a drainage study is received.

19 **7. City Action #7: The City’s Refusal to Even Consider the 133 Acre
20 Property Applications.**

21 The Landowners have sufficiently alleged that as part of the numerous development
22 applications filed by the Landowners over the past three years to develop all or portions of the 250
23 Acre Residential Zoned Land, in October and November 2017, the necessary applications were filed
24 to develop residential units on the 133 Acre Property (part of the 250 Acre Residential Zoned Land)
25 consistent with the R-PD7 hard zoning. *Exhibit 47: 9 App LO 00002119-10 App LO 2256. Exhibit*
26 *49: 10 App LO 00002271-2273*. The City Planning Staff determined that the proposed residential
27 development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada
28 Revised Statutes, the City Planning Department, and the Unified Development Code (Title 19), and
recommended approval. *Exhibit 51: 10 App. LO 00002308-2321*. Instead of approving the

1 development, the City Council delayed the hearing for several months until May 16, 2018 - the same
2 day it was considering the Yohan Lowie Bill (now LVMC 19.16.105), referenced above in City
3 Action #3. *Exhibit 50: 10 App LO 00002285-2287*. The City put the Yohan Lowie Bill on the
4 morning agenda and the 133 Acre Property applications on the afternoon agenda. The City then
5 approved the Yohan Lowie Bill in the morning session. Thereafter, Councilman Seroka asserted that
6 the Yohan Lowie Bill applied to deny development on the 133 Acre Property and moved to strike
7 all of the applications for the 133 Acre Property filed by the Landowners. *Exhibit 6: 2 App LO*
8 *00000490 lines 206-207*. The City then refused to allow the Landowners to be heard on their
9 applications for the 133 Acre Property and voted to strike the applications. *Exhibit 51: 10 App LO*
10 *00002308-2321 and Exhibit 53: 10 App LO 00002327-2336*.

11 **8. City Action #8: The City Announces It Will Never Allow Development**
12 **on the 35 Acre Property, Because the City Wants the Property for a City**
Park and Wants to Pay Pennies on the Dollar for it.

13 The Landowners have sufficiently alleged that in documents obtained from the City it was
14 discovered that the City has already allocated \$15 million to acquire the Landowners' private
15 property - "\$15 Million-Purchase Badlands and operate." *Exhibit 35: 8 App LO 00001922*. In this
16 same connection, Councilman Seroka issued a statement during his campaign entitled "The Seroka
17 Badlands Solution" which provides the intent to convert the Landowners' private property into a
18 "fitness park." *Exhibit 34: 8 App LO 00001915*. In an interview with KNPR Seroka stated that he
19 would "turn [the Landowners' private property] over to the City." *Id. at LO 00001917*. Councilman
20 Coffin agreed, stating his intent referenced in an email as follows: "I think your third way is the only
21 quick solution...Sell off the balance to be a golf course with water rights (key). Keep the bulk of
22 Queensridge green." *Exhibit 54: 10 App LO 00002344*. Councilman Coffin and Seroka also
23 exchanged emails wherein they state they will not compromise one inch and that they "need an
24 approach to accomplish the desired outcome," which, as explained, is to prevent all development on
25 the Landowners' Property so the City can take it for the City's park and only pay \$15 Million.
26 *Exhibit 54: 10 App LO 00002340*. In furtherance of the City's preservation for public use, the City
27 has announced that it will never allow any development on the 35 Acre Property or any other part
28 of the 250 Acre Residential Zoned Land.

1 As it is universally understood that tax assessed value is well below market value, to
2 “Purchase Badlands and operate” for “\$15 Million,” (which equates to less than 6% of the tax
3 assessed value and likely less than 1% of the fair market value) shocks the conscience. And, this
4 shows that the City’s actions are in furtherance of a City scheme to specifically target the
5 Landowners’ Property to have it remain in a vacant condition to be “turned over to the City” for a
6 “fitness park” for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8*
7 *App LO 00001922.*

8 **9. City Action #9: The City Shows an Unprecedented Level of Aggression**
9 **To Deny All Use of the 250 Acre Residential Zoned Land.**

10 The Landowners have sufficiently alleged that the City has gone to unprecedented lengths
11 to interfere with the use and enjoyment of the Landowners’s Property. Council members sought
12 “intel” against one of the Landowners so that the “intel” could, presumably, be used to deny any
13 development on the 250 Acre Residential Zoned Land (including the 35 Acre Property). In a text
14 message to an unknown recipient, Councilman Coffin stated:

15 Any word on your PI enquiry about badlands [250 Acre Residential Zoned Land]
16 guy?
17 While you are waiting to hear **is there a fair amount of intel on the scam** behind
18 [sic] the badlands [250 Acre Residential Zoned Land] takeover? **Dirt will be handy**
19 **if I need to get rough.** *Exhibit 81: 12 App LO 00002969. (emphasis supplied).*

20 Instructions were then given by Council Members on how to hide communications regarding the 250
21 Acre Residential Zoned Land from the Courts. Councilman Coffin, after being issued a documents
22 subpoena, wrote:

23 “Also, his team has filed an official request for all txt msg, email, anything at all on
24 my personal phone and computer under an erroneous supreme court opinion...So
25 everything is subject to being turned over so, for example, your letter to the c[i]ty
26 email is now public and this response might become public (to Yohan). I am
27 considering only using the phone but awaiting clarity from court. **Please pass word**
28 **to all your neighbors. In any event tell them to NOT use the city email address**
but call or write to our personal addresses. For now...PS. Same crap applies to
Steve [Seroka] as he is also being individually sued i[n] Fed Court and also his
personal stuff being sought. This is no secret so let all your neighbors know.”
Exhibit 54: 10 App LO 00002343. (Emphasis added).

26 Councilman Coffin advised Queensridge residents on how to circumvent the legal process and the
27 Nevada Public Records Act *NRS 239.001(4)* by instructing them on how not to trigger any of the
28 search terms being used in the subpoenas. “Also, please pass the word for everyone to not use
B...l..nds in title or text of comms. That is how search works.” Councilman Seroka testified at the

1 Planning Commission (during his campaign) that it would be “over his dead body” before the
2 Landowners could use their private property for which they have a vested right to develop. *Exhibit*
3 *21: 4 App LO 00000930-931*. And, In reference to development on the Landowners’ Property,
4 Councilman Coffin stated firmly “I am voting against the whole thing,” (*Exhibit 54: 10 App LO*
5 *00002341*)

6 **10. City Action #10: the City Reverses the Past Approval on the 17 Acre**
7 **Property.**

8 The Landowners have sufficiently alleged that in approving the 17 Acre Property applications
9 the City agreed the Landowners had the vested right to develop without a Major Modification, now
10 the City is arguing in other documents that: 1) the Landowners have no property rights; and, 2) the
11 approval on the 17 Acre Property was erroneous, because no major modification was filed:

12 “[T]he Developer must still apply for a major modification of the Master Plan before
13 a takings claim can be considered...” *Exhibit 37: 8 App LO 00001943 lines 18-20*;

14 “Moreover, because the Developer has not sought a major modification of the Master
15 Plan, the Court cannot determine if or to what extent a taking has occurred.” *Id. at*
16 *LO 00001944 lines 4-5*;

17 “According to the Council’s decision, the Developer need only file an application for
18 a major modification to the Peccole Ranch Master Development Plan ...to have its
19 Applications considered.” *Exhibit 39: 9 App LO 00002028 lines 11-15*;

20 “Here, the Council’s action to strike the Applications as incomplete in the absence
21 of a major modification application does not foreclose development on the Property
22 or preclude the City from ultimately approving the Applications or other
23 development applications that the Developer may subsequently submit. It simply held
24 that the City would not consider the Applications without the Developer first
25 submitting a major modification application.” *Id. at LO 00002032 lines 18-22*.

26 The reason the City changed its position is the City is seeking to deny the Landowners their
27 constitutional property rights so the Landowners’ Property will remain in a vacant condition to be
28 “turned over to the City” for a “fitness park” for 1% of its fair market value. *Exhibit 34: 8 App LO*
00001915 and Exhibit 35: 8 App LO 00001922.

29 **11. City Action #11: The City Retains Private Counsel to Advance an Open**
30 **Space Designation on the 35 Acre Property.**

31 The Landowners have sufficiently alleged that the City has retained and authorized private
32 counsel to advance an “open space” designation/major modification argument in this case to prevent
33 any and all development on the 35 Acre Property. This is a contrary position from that taken by the

1 City over the past 32 years on at least 1,067 development units in the Peccole Concept Plan area.
2 *Exhibit 105.* As explained above, over 1,000 units have been developed over the past 32 years in
3 the Peccole Concept Plan area and not once did the City apply the “open space”/major modification
4 argument it is now advancing, even though those +1,000 units were developed contrary to the land
5 use designation on the Peccole Concept Plan. The City has specifically targeted the Landowners and
6 their Property and is treating them differently than it has treated all other properties and owners in
7 the area (+1,000 other units in the area) for the purpose of forcing the Landowners’ Property to
8 remain in a vacant condition to be “turned over to the City” for a “fitness park” for 1% of its fair
9 market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

10 Here, the Landowners have alleged facts and provided documents sufficient to show their
11 Property has been taken by inverse condemnation, which is sufficient to defeat the City’s motion for
12 judgment on the pleadings.

13
14 **D. The City’s Argument that the Landowners have No Vested Property Right**

15 The City contends that the Landowners do not have a vested right to use their property for
16 anything other than open space or a golf course. As set forth above, the Landowners have alleged
17 facts and provided documents sufficient to show they have a property interest in and a vested right
18 to use the 35 Acre Property for a residential use, which is sufficient to defeat the City’s motion for
19 judgment on the pleadings.

20 **E. The City’s Argument that the Landowners’ Taking Claims are Not Ripe**

21 The City contends that the Landowners’s taking claims are not ripe, because they have not
22 filed a major modification application, which the City contends is a precondition to any development
23 on the Landowners’ Property. This City argument is closely related to the City’s vested rights
24 argument as the City also contends the Landowners have no vested right to use their property for
25 anything other than a golf course until such time as they submit a major modification application.
26 The Landowners have alleged that a ripeness/exhaustion of administrative remedies analysis does
27 not apply to the four inverse condemnation claims for which the Landowners’ are requesting a
28 judicial finding of a taking - regulatory per se, non-regulatory/de facto, categorical, or temporary

1 taking of property⁴ and, therefore, the City's ripeness/exhaustion of administrative remedies
2 argument has no application to these four inverse condemnation claims. The Landowners further
3 allege that the ripeness analysis only applies to the Landowners' inverse condemnation Penn Central
4 Regulatory Takings Claim and, if the Court applies the ripeness analysis, all claims are ripe,⁵
5 including the Penn Central claim.

6
7 **1. The Landowners Allege Facts Sufficient to Show They Made At Least
One Meaningful Application and It Would be Futile to Seek Any
Further Approvals From the City.**

8 "While a landowner must give a land-use authority an opportunity to exercise its discretion,
9 once [...] the permissible uses of the property are known to a reasonable degree of certainty, a
10 [regulatory] taking claim [Penn Central claim] is likely to have ripened."⁶ The purpose of this rule
11 is to understand what the land use authority will and will not allow to be developed on the property
12 at issue. But, "[g]overnment authorities, of course, may not burden property by imposition of
13 repetitive or unfair land-use procedures in order to avoid a final decision."⁷ "[W]hen exhausting
14 available remedies, including the filing of a land-use permit application, is futile, a matter is deemed
15 ripe for review."⁸

16
17 ⁴ Hsu v. County of Clark, supra, ("[d]ue to the 'per se' nature of this taking, we further
18 conclude that the landowners were not required to apply for a variance or otherwise exhaust their
19 administrative remedies prior to bringing suit." *Id.*, at 732); McCarran Int'l Airport v. Sisolak, 122
20 Nev. 645, 137 P.3d 1110 (2006) ("Sisolak was not required to exhaust administrative remedies or
21 obtain a final decision from the Clark County Commission by applying for a variance before
bringing his inverse condemnation action based on a regulatory per se taking of his private property."
Id. at 664).

22 ⁵ The Nevada Supreme Court has stated regulatory takings claims are generally "not
23 ripe until the government entity charged with implementing the regulations has reached a final
24 decision regarding the application of the regulations to the property at issue." State v. Eighth Jud.
Dist. Ct., 131 Nev. Adv. Op. 41 (2015) (*quoting Williamson County Reg'l Planning Comm'n v.*
Hamilton Bank of Johnson City, 473 U.S. 172, 186, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985)).

25 ⁶ Palazzolo v. Rhode Island, 533 U.S. 606, 620, (2001) ("The central question in
26 resolving the ripeness issue, under *Williamson County* and other relevant decisions, is whether
petitioner obtained a final decision from the Council determining the permitted use for the land." *Id.*,
at 618.).

27 ⁷ Palazzolo, at 621. *Citing to Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526
28 U.S. 687, 698, 119 S.Ct. 1624, 143 L.Ed. 2d 882 (1999).

⁸ State v. Eighth Judicial Dist. Court of Nev., 351 P.3d 736, 742 (Nev. 2015). For
example, in Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624,

1 In City of Monterey v. Del Monte Dunes 526 U.S. 687, 119 S.Ct. 1624 (1999) the United
2 States Supreme Court held that a taking claim was ripe where the City of Monterey required 19
3 changes to a development application and then asked the landowner to make even more changes.
4 Finally, the landowner filed inverse condemnation claims. Similar to the City argument in this case,
5 the City of Monterey asserted the landowners' inverse condemnation claims were not ripe for review.
6 The City of Monterey asserted that the City's decision was not final and the landowners' claim was
7 not ripe, because, if the landowner had worked longer with the City of Monterey or filed a different
8 type of application with the City of Monterey, the City of Monterey may have approved development
9 on the landowner's property. The United States Supreme Court approved the Ninth Circuit opinion
10 as follows: "to require additional proposals would implicate the concerns about repetitive and unfair
11 procedures" and "the city's decision was sufficiently final to render [the landowner's] claim ripe for
12 review." Del Monte Dunes, at 698. The United States Supreme Court re-affirmed this rule in the
13 Palazzolo v. Rhode Island, 533 U.S. 606, 121 S.Ct. 2448 (2001) holding the "Ripeness Doctrine does
14 not require a landowner to submit applications for their own sake. Petitioner is required to explore
15 development opportunities on his upland parcel only if there is uncertainty as to the land's permitted
16 uses." *Id* at 622.

17 As set forth above, the Landowners have alleged facts and provided documents sufficient to
18 show they submitted the necessary applications to develop the 35 Acre Property, that the City denied
19 every attempt at development, and that it would be futile to seek any further development
20

21 143 L.Ed. 2d 882 (1999) "[a]fter five years, five formal decisions, and 19 different site plans,
22 [internal citation omitted] Del Monte Dunes decided the city would not permit development of the
23 property under any circumstances." *Id.*, at 698. "After reviewing at some length the history of
24 attempts to develop the property, the court found that to require additional proposals would implicate
25 the concerns about repetitive and unfair procedures expressed in MacDonld, Commer & Frates v.
26 Yolo County, 477 U.S. 340, 350 n. 7, (1986) [*citing* Stevens concurring in judgment from
27 Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172 at 205-206, 105 S.Ct. 3108 at 3126
28 (1985)] and that the city's decision was sufficiently final to render Del Monte Dunes' claim ripe for
review." Del Monte Dunes, at 698. The "Ripeness Doctrine does not require a landowner to submit
applications for their own sake. Petitioner is required to explore development opportunities on his
upland parcel only if there is uncertainty as to the land's permitted uses." Palazzolo v. Rhode Island,
at 622.

1 applications from the City, which is sufficient to defeat the City's motion for judgment on the
2 pleadings.

3 **2. The Landowners Allege Facts Sufficient to Show That a Major**
4 **Modification Application Was Not Required To Ripen Their Inverse**
5 **Condemnation Claims**

6 The Landowners further allege that no major modification of the Peccole Concept Plan was
7 necessary to develop the 35 Acre Property, because the Landowners were seeking to develop the 35
8 Acre Property residentially and the land use designation on the Peccole Concept Plan for the 35 Acre
9 Property is a residential use. *Exhibit 107*. Therefore, there was no need to "modify" the Peccole
10 Concept Plan to develop the 35 Acre Property residentially.

11 The Landowners have also alleged that the City has never required a major modification
12 application to develop properties included in the area of the Peccole Concept Plan. The Landowners
13 allege the City has approved development for approximately 26 projects and over 1,000 units in the
14 area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties
15 that were developed with a use contrary to the Peccole Concept Plan and not once did the City
16 require a major modification application.

17 Here, the Landowners have alleged facts and provided documents sufficient to show that a
18 major modification was not required to ripen their inverse condemnation claims, which is sufficient
19 to defeat the City's motion for judgment on the pleadings.

20 **3. The Landowners Allege Facts Sufficient to Show That, Even if a Major**
21 **Modification Application was Necessary to Ripen Their Inverse**
22 **Condemnation Claims, They Met this Requirement**

23 Specific to the City's assertion that a major modification application is necessary to ripen the
24 Landowners' inverse condemnation claims, the Landowners allege that even if a major modification
25 application is required, the MDA the Landowners worked on with the City for over two years,
26 referenced above, included and far exceeded all of the requirements of a major modification
27 application. *Exhibit 28*. Moreover, the Landowners have cited to a statement by the City Attorney
28 wherein he stated on the City Council record as follows: "Let me state something for the record just
to make sure we're absolutely accurate on this. There was a request for a major modification that

1 accompanied the development agreement [MDA], that was voted down by Council. So that the
2 modification, major mod was also voted down.” Exhibit 61, City Council Meeting of January 3,
3 2018 Verbatim Transcript – Item 78, Page 80 of 83, lines 2353-2361. Additionally, the Landowners
4 allege that they also submitted an application referred to as a General Plan Amendment (GPA),
5 which includes and far exceeds the requirements of the City’s major modification application and
6 the City denied the GPA as part of its denial of any use of the 35 Acre Property. Exhibit 5.

7 Here, the Landowners have alleged facts and provided documents sufficient to show that,
8 even if a major modification application is required to ripen their inverse condemnation claims, they
9 met these requirements, which is sufficient to defeat the City’s motion for judgment on the
10 pleadings.

11 **F. The City’s Argument that the Statute of Limitation has Run on the Landowners**
12 **Inverse Condemnation Claims**

13 The City contends that, if there was a taking, it resulted from the City action related to
14 adoption of the City’s Master Plan and the City’s Master Plan was adopted more than 15 years ago
15 and, therefore, the statute of limitations has run on the Landowners’ inverse condemnation claims.
16 The Landowners contend that a City Plan cannot result in a taking, that the City must take action to
17 implement the Plan on a specific property to make the City liable for a taking.

18 The statute of limitations for an inverse condemnation action in Nevada is 15 years. White
19 Pine Limber v. City of Reno, 106 Nev. 778 (1990). Nevada law holds that merely writing a land use
20 designation over a parcel of property on a City land use plan is “insufficient to constitute a taking
21 for which an inverse condemnation action will lie.” Sproul Homes of Nev. v. State ex rel. Dept of
22 Highways, 96 Nev. 441, 443 (1980) *citing to* Selby Realty Co. v. City of San Buenaventura, 169
23 Cal.Rptr. 799, 514 P.2d 111, 116 (1973) (Inverse claims could not be maintained from a City’s
24 “General Plan” showing public use of private land). *See also* State v. Eighth Jud. Dist. Ct., 131 Nev.
25 Adv. Op. 41, 351 P.3d 736 (2015) (City’s amendment to its master plan to allow for a road widening
26 project on private land did not amount to a regulatory taking). This rule and its policy are set forth
27 by the Nevada Supreme Court as follows:

28 If a governmental entity and its responsible officials were held subject to a claim for
inverse condemnation merely because a parcel of land was designated for potential

1 public use on one of the several authorized plans, the process of community planning
2 would either grind to a halt, or deteriorate to publication of vacuous generalizations
3 regarding the future use of land. We indulge in no hyperbole to suggest that if every
4 landowner whose property might be affected at some vague and distant future time
5 by any of these legislatively permissible plans was entitled to bring an action in
6 declaratory relief to obtain a judicial declaration as to the validity and potential effect
7 of the plan upon his land, the courts of this state would be inundated with futile
8 litigation. Sproul Homes, supra, at 444.

9 Accordingly, the date that would trigger the statute of limitations would not be the master plan or
10 necessarily the designation of the Property as PR-OS, but it will be the acts of the City of Las Vegas
11 / City Council that would control.

12 Here, the Landowners have alleged facts and provided documents sufficient to show their
13 property has been taken by inverse condemnation based upon the acts of the City of Las Vegas / City
14 Council that occurred less than 15 years ago. Therefore, the City's statute of limitations argument
15 is denied.

16 **G. The City's Argument that the Court Should Apply Its Holding in the Petition
17 For Judicial Review to the Landowners Inverse Condemnation Claims**

18 The City contends that the Court's holding in the Landowners' petition for judicial review
19 should control in this inverse condemnation action. However, both the facts and the law are different
20 between the petition for judicial review and the inverse condemnation claims. The City itself made
21 this argument when it moved to have the Landowners' inverse condemnation claims dismissed from
22 the petition for judicial review earlier in this litigation. Calling them "two disparate sets of claims"
23 the City argued that:

24 "The procedural and structural limitations imposed by petitions for judicial review
25 and complaints, however, are such that they cannot afford either party ample
26 opportunity to litigate, in a single lawsuit, all claims arising from the transaction. For
27 instance, Petitioner's claim for judicial review will be "limited to the record below,"
28 and "[t]he central inquiry is whether substantial evidence supports the agency's
decision." United Exposition Service Company v. State Industrial Insurance System,
109 Nev. 421, 424, 851 P.2d 423, 425 (1993). On the other hand, Petitioner's inverse
condemnation claims initiate a new a civil action requiring discovery (not limited to
the record below), and the central inquiry is whether Petitioner (as plaintiff) can
establish its claims by a preponderance of the evidence. Thus, allowing Petitioner's
four "alternative" inverse condemnation claims (i.e., the complaint) to remain on the
Petition will create an impractical situation for the Court and parties, and may allow
Petitioner to confuse the record for judicial review by attempting to augment it with
discovery obtained in the inverse condemnation action." (October 30, 2017, City of
Las Vegas Motion to Dismiss at 8:2)

1 The evidence and burden of proof are significantly different in a petition for judicial review
2 than in civil litigation. And, as further recognized by the City, there will be additional facts in the
3 inverse condemnation case that must be considered which were not permitted to be considered in
4 the petition for judicial review. This is true, as only City Action #1 above was considered in the
5 petition for judicial review, not City Actions #2-11. And, as stated above, this Court must consider
6 all city actions in the aggregate in this inverse condemnation proceeding.

7 As an example, if the Court determined in a petition for judicial review that there was
8 substantial evidence in the record to support the findings of a workers' compensation hearing
9 officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the
10 alleged injured individual, as there are different fact, different legal standards and different burdens
11 of proof.

12 Furthermore, the law is also very different in an inverse condemnation case than in a petition
13 for judicial review. Under inverse condemnation law, if the City exercises discretion to render a
14 property valueless or useless, there is a taking. *Tien Fu Hsu v. County of Clark*, 173 P.3d 724 (Nev.
15 2007), *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110 (Nev. 2006), City of
16 Monterey v. Del Monte Dunes, 526 U.S. 687, 119 S.Ct. 1624 (1999), Lucas v. South Carolina
17 Coastal Council, 505 U.S. 1003 (1992). In an inverse condemnation case, every landowner in the
18 state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken,
19 just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all
20 government action and the evidence considered is not limited to the record before the City Council.
21 Merkur v. City of Detroit, 680 N.W.2d 485 (Mich.Ct.App. 2004), State v. Eighth Jud. Dist. Ct., 131
22 Nev. Adv. Op. 41, 351 P.3d 736 (2015), Arkansas Game & Fish Comm's v. United States, 568 U.S.
23 23, 133 S.Ct. 511 (2012). On the other hand, in petitions for judicial review, the City has discretion
24 to deny a land use application as long as valid zoning laws are applied, there is no vested right to
25 have a land use application granted, and the record is limited to the record before the City Council.
26 Stratosphere Gaming Corp., v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004).
27
28

1 The Court has previously entered a Nunc Pro Tunc Order in this case recognizing the petition
2 for judicial review matter is different from the inverse condemnation matter:

3 “this Court had no intention of making any findings, conclusions of law or orders
4 regarding the Landowners' severed inverse condemnation claims as a part of the
5 Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL").
6 Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions
and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed
nunc pro tunc.” (Order filed February 6, 2019).

7 For these reasons, it would be improper to apply the Court’s ruling from the Landowners’
8 petition for judicial review to the Landowners’ inverse condemnation claims.

9
10 **H. Conclusion on The City’s Motion for Judgment on the Pleadings on Developer’s
Inverse Condemnation Claims**

11 The City moved the Court for judgment on the pleadings pursuant to NRCP 12(c). The rule
12 is designed to provide a means of disposing of cases when material facts are not in dispute, and a
13 judgment on the merits can be achieved by focusing on the contents of the pleadings. It has utility
14 only when all material allegations of facts are admitted in the pleadings and only questions of law
15 remain.

16 This Court reviewed extensive briefings and entertained three and a half to four hours of oral
17 arguments which contained factual disputes and argument throughout the entire hearing. The Court
18 cannot say as a matter of law that the Landowners have no case, there are still factual disputes that
19 must be resolved. Moreover, the court finds that this case can be heard on the merits as that policy
20 is provided in Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

21
22 Accordingly, IT IS HEREBY ORDERED that The City’s Motion for Judgment on the
23 Pleadings on Developer’s Inverse Condemnation Claims is **DENIED**.

24 **III. The Landowners Rule 56 Motion for Summary Judgment on Liability for the
Landowners Inverse Condemnation Claims**

25 The Landowners countermoved this Court for summary judgment on the Landowners’
26 inverse condemnation claims. Discovery has not commenced nor as of the date of the hearing have
27 the parties had a NRCP 16.1 case conference. The Court finds it would be error to consider a Rule
28 56 motion at this time.

1 Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion for Judicial
2 Determination of Liability on the Landowners' Inverse Condemnation Claims is **DENIED** without
3 prejudice.

4 **IT IS SO ORDERED.**

5 DATED this ____ day of April, 2019.
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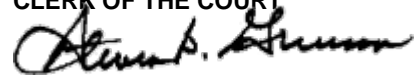
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9 _____
DISTRICT COURT JUDGE

10 Respectfully Submitted By:
11 **LAW OFFICES OF KERMITT L. WATERS**

12 By: _____
13 Kermitt L. Waters, ESQ., NBN 2571
14 James Jack Leavitt, ESQ., NBN 6032
15 Michael A. Schneider, ESQ., NBN 8887
16 Autumn Waters, ESQ., NBN 8917
17 704 S. 9th Street
Las Vegas, NV 89101
Attorneys for Plaintiff Landowners

18 Reviewed and Approved As to Content and Form By:
19 **McDonald Carano LLP**

20 By: _____
21 George F. Ogilvie III, Esq., NBN 3552
22 Debbie Leonard, Esq., NBN 8260
23 Amanda C. Yen, Esq., NBN 9726
24 2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102
25 *Attorneys for Defendant, City of Las Vegas*
26
27
28



**NEFF
HUTCHISON & STEFFEN, PLLC**

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Telephone: (702) 385-2500
Facsimile: (702) 385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com

LAW OFFICES OF KERMITT L. WATERS

Kermit L. Waters (2571)
James J. Leavitt (6032)
Michael Schneider (8887)
Autumn L. Waters (8917)
704 South Ninth Street
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,

Plaintiff,

v.

CITY OF LAS VEGAS, a 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,

Defendants.

Case No. A-17-758528-J

Dept. No. XVI

**NOTICE OF ENTRY OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

1 TO: ALL INTERESTED PARTIES

2 NOTICE IS HEREBY GIVEN that *Findings of Fact and Conclusions of Law Regarding*
3 *Plaintiff's Motion for a New Trial, Motion to Alter or Amend and/or Reconsider the Findings of*
4 *Fact and Conclusions of Law, and Motion to Stay Pending Nevada Supreme Court Directives*
5 was entered in the above-entitled action on May 7, 2019, a copy of which is attached hereto.
6

7 Dated this 8th day of May, 2019.

8 HUTCHISON & STEFFEN, PLLC

9 /s/ Joseph S. Kistler

10 _____
11 Mark A. Hutchison (4639)
12 Joseph S. Kistler (3458)
13 Peccole Professional Park
14 10080 West Alta Drive, Suite 200
15 Las Vegas, Nevada 89145

16 LAW OFFICES OF KERMIT L. WATERS
17 Kermit L. Waters (2571)
18 James J. Leavitt (6032)
19 Michael Schneider (8887)
20 Autumn L. Waters (8917)
21 704 South Ninth Street
22 Las Vegas, Nevada 89101

23 *Attorneys for Plaintiffs*
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC
3 and that on this 8th day of May, 2019, I caused the above and foregoing document entitled
4 **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW** to be
5 served as follows:
6

- 7 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
8 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
9 and/or
10 ☐ to be served via facsimile; and/or
11 X pursuant to NEFCR (9), to be electronically served through the Eighth Judicial
12 District Court's electronic filing system, with the date and time of the electronic
13 service substituted for the date and place of deposit in the mail; and/or
14 ☐ to be hand-delivered;

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

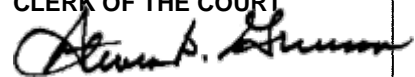
17 Philip R. Byrnes
18 Brad Jerbic
19 Set T. Floyd
20 City Attorney's Office
21 495 S. Main Street, 6th Fl.
Las Vegas, NV 89101
Attorneys for City of Las Vegas

George F. Ogilvie III
Debbie Leonard
Amanda C. Yen
McDonald Carano LLP
2300 W. Sahara Ave., Suite 1200
Las Vegas, NV 89102
Attorneys for City of Las Vegas

22 /s/ *Bobbie Benitez*

23
24

An employee of Hutchison & Steffen, PLLC
25
26
27
28



**FFCO
HUTCHISON & STEFFEN, PLLC**

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Telephone: (702) 385-2500
Facsimile: (702) 385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com

LAW OFFICES OF KERMIT L. WATERS

Kermit L. Waters (2571)
James J. Leavitt (6032)
Michael Schneider (8887)
Autumn L. Waters (8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for 180 Land Company, LLC

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,

Plaintiffs,

v.

CITY OF LAS VEGAS, a 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,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**[PROPOSED] FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF'S MOTION FOR A NEW
TRIAL, MOTION TO ALTER OR
AMEND AND/OR RECONSIDER THE
FINDINGS OF FACT AND
CONCLUSIONS OF LAW, AND
MOTION TO STAY PENDING NEVADA
SUPREME COURT DIRECTIVES**

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Intervenors.

Currently before the Court is Plaintiff 180 Land Co, LLC's Motion For A New Trial Pursuant To NRCP 59(e) And Motion To Alter Or Amend Pursuant To NRCP 52(b) And/Or Reconsider The Findings Of Fact And Conclusions Of Law And Motion To Stay Pending Nevada Supreme Court Directives ("the Motion") filed on December 13, 2018. The alternative relief sought by the Developer is a stay of the proceedings until the Nevada Supreme Court decides an appeal from the judgment entered March 5, 2018 by the Honorable James Crockett in Case No. A-17-752344-J ("Judge Crockett's Order"). The City filed an opposition, to which the Intervenors joined, and the Plaintiff filed a reply. The Court held oral argument on the Motion on January 22, 2019.

Having considered the record on file, the written and oral arguments presented, and being fully informed in the premises, the Court makes the following findings of facts and conclusions of law:

1 **I. FINDINGS OF FACT**

2 1. Plaintiff 180 Land Co, LLC (“the Developer”) filed a Petition for Judicial Review
3 (the “Petition”) challenging the Las Vegas City Council’s June 21, 2017 decision to deny its four
4 land use applications (“the 35-Acre Applications”) to develop its 34.07 acres of R-PD7 zoned
5 property (the “35-Acre Property”).

6 2. On November 21, 2018, this Court entered Findings of Fact and Conclusions of
7 Law on Petition for Judicial Review (“FFCL”) that denied the Petition and dismissed the
8 alternative claims for inverse condemnation. The Court concluded that the Las Vegas City Council
9 properly exercised its discretion to deny the 35-Acre Applications and that substantial evidence
10 supported the City Council’s June 21, 2017 decision. The Court further concluded that the
11 Developer had no vested rights to have the 35-Acre Applications approved.

12 3. On February 6, 2019, the Court entered an Order Nunc Pro Tunc that removed
13 those portions of the FFCL that dismissed the inverse condemnation claims. Specifically, the
14 Order *Nunc Pro Tunc* removed FFCL page 23:4-20 and page 24:4-5 but left all findings of fact
15 and all other conclusions of law intact.

16 4. The Developer seeks a new trial: however, because this matter is a petition for
17 judicial review, no trial occurred.

18 5. While the Developer has raised new facts, substantially different evidence and new
19 issues of law, none of these new matters warrant rehearing or reconsideration, as discussed infra.

20 6. The Developer identifies claimed errors in the Court’s previous findings of fact in
21 the FFCL and disagrees with the Court’s interpretation of law.

22 7. The Developer has failed to show that the Court’s previous findings that the City
23 Council did not abuse its discretion or that sufficient privity exists to bar Plaintiff’s Petition under
24 issue preclusion were clearly erroneous.

25 8. The Developer repeats its arguments that it raised previously in support of its
26 petition for judicial review; namely, that public opposition, the desire for a comprehensive and
27 cohesive development proposal to amend the General Plan’s open space designation, and the City
28

1 Council's choice not to follow Staff's recommendation purportedly were not ample grounds to
2 affirm the City Council's June 21, 2017 decision.

3 9. The Developer also reasserts its contentions that: (a) NRS 278.349 gives it vested
4 rights to have the 35-Acre Applications approved; (b) the Queensridge homeowners have no rights
5 in the golf course; (c) no major modification is required; (d) Judge Crockett's Order should be
6 disregarded; and (e) the County Assessor changed the assessed value of the property after the
7 Developer stopped using it as a golf course. The Developer made each of these arguments in the
8 briefs submitted by the Developer in support of the Petition. *See* Pet. Memo. of P&A in support
9 of Second Amended PJR at 5:17-20, 6:3, 7:4-10, 10:4-14:17, 17:8-18:7, 22-42, 26:10-17, 29:10-
10 30:24, n.6, n.37, n.42, n.45, n.79, n.112; Post Hearing Reply Br. at 2:2-4, 2:19-4:3, 7:18-13:14,
11 13-16, 26:16-29:15, n.79.

12 10. The Motion also cites to and attaches documents that were not part of the record
13 on review at the time the City Council rendered its June 21, 2017 decision to deny the 35-Acre
14 Applications. *See* Motion at 2:14-3:23, 8:1-21; n.2, n.3, n.18, n.20, n. 21, n.22, citing Exs. 1-6 to
15 the Motion.

16 11. The transcripts and minutes from the August 2, 2017 and March 21, 2018 City
17 Council meetings on which the Developer relies (Exs. 1 and 6 to the Motion) post-dated the City
18 Council's June 21, 2017 decision to deny the 35-Acre Applications and are, therefore, not part of
19 the record on review.

20 12. Similarly, the Developer's attacks on Councilmember Seroka are beyond the
21 record on review because he was not on the City Council on June 21, 2017 when the City Council
22 voted to deny the 35-Acre Applications.

23 13. The Supreme Court's order of affirmance and order denying rehearing related to
24 Judge Smith's orders (Exs. 4 and 5 to the Motion) were entered on October 17, 2018 and
25 November 27, 2018, respectively, after the City Council denied the 35-Acre Applications and,
26 therefore, are not part of the record on review.

27 14. The Developer previously cited to Judge Smith's underlying orders before the
28 Nevada Supreme Court's actions both before the City Council and before this Court. *See* Pet.'s

1 P&A at 9:5-10:10, 17:1-2; *see also* 6.29.18 Hrg. Trans. at 109:6-110:13, attached as Exhibit B to
2 City Opp.

3 15. The Motion relies not only on the aforestated orders, but also the Nevada Supreme
4 Court's decision affirming the orders Judge Smith issued in that case.

5 16. Judge Smith's orders interpreted the rights of the Queensridge homeowners under
6 the Queensridge CC&Rs, which in the Court's view, have no relevance to the issues in this case
7 or the reasons supporting the Court's denial of the Petition.

8 17. Judge Smith described the matter before him as the Queensridge homeowners'
9 claims that *their* "vested rights" in the CC&Rs were violated. *See* 11.30.16 Smith FFCL at ¶¶2, 7,
10 29, 108, Ex. 2 to the Motion.

11 18. Whether the Developer had vested rights to have its development applications
12 approved was not precisely at issue in the matter before Judge Smith. *See id.*

13 19. Indeed, Judge Smith confirmed that, notwithstanding the zoning designation for
14 the golf course property, the Developer is nonetheless "subject to City of Las Vegas requirements"
15 and that the City is not obligated to make any particular decision on the Developer's applications.
16 1.31.17 FFCL ¶¶9, 16-17, 71.

17 20. The Supreme Court's affirmance of Judge Smith's orders has no impact on this
18 Court's denial of the Developer's Petition for Judicial Review.

19 21. In the Motion, the Developer challenges the Court's application of issue preclusion
20 to Judge Crockett's Order. The Developer reargues its attacks on the substance of Judge Crockett's
21 Order (Motion at 17:21-20:7) and also reargues the application of issue preclusion to Judge
22 Crockett's Order.

23 22. The Court finds no conflict between Judge Crockett's Order and Judge Smith's
24 orders and therefore rejects the Developer's argument that such orders are "irreconcilable."

25 23. In its Motion, the Developer argues that this Court's factual findings are incorrect
26 and need amendment. Two findings from the FFCL the Developer argues are incorrect are ¶¶12-
27 13, which the Developer contends are different than Judge Smith's findings. Motion at 20, n.67.
28

1 24. As stated supra in finding No. 17, Judge Smith's orders are irrelevant to this
2 Petition for Judicial Review. Thus, the Court finds no cause exists to alter or amend the findings
3 in the FFCL.

4 **II. CONCLUSIONS OF LAW**

5 **A. The Court May Not Consider Matters Outside The Record On Review**

6 1. The scope of the Court's review is limited to the record made before the
7 administrative tribunal. *Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654
8 P.2d 531, 533 (1982). That scope cannot be expanded with a motion for reconsideration of the
9 Court's denial of a petition for judicial review. *See id.*

10 2. The Developer's Motion cites to matters that post-dated the City Council's June
11 21, 2017 Decision and that are otherwise outside the record on review.

12 3. Because the Court's review is limited to the record before the City Council on June
13 21, 2017, the Court may not consider the documents that post-date the City Council's June 21,
14 2017 decision submitted by the Developer. *See Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*,
15 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

16 **B. No "Retrial" Is Appropriate For A Petition For Judicial Review**

17 4. Under NRCP 59(a), the Court may grant a new trial on some or all issues based
18 upon certain grounds specifically enumerated in that rule.

19 5. Where a petition for judicial review is limited to the record and does not involve
20 the Court's consideration of new evidence, a motion for a new trial is not the appropriate
21 mechanism to seek reconsideration of the denial of a petition for judicial review.

22 6. "Retrial" presupposes that a trial occurred in the first instance, but no trial occurred
23 here or is allowed for a petition for judicial review because the Court's role is limited to reviewing
24 the record below for substantial evidence to support the City Council's decision. *See City of Reno*
25 *v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P. 3d 10, 15-16 (2010) (citing *Kay v. Nunez*,
26 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)).

27 7. Moreover, a motion for a new trial under NRCP 59(a), which is the authority cited
28 by the Developer (at 16:22-23), may only be granted based upon specific enumerated grounds

1 cited in the rule, none of which is invoked by the Developer. As a result, no “retrial” may be
2 granted.

3 **C. The Developer’s Repetition of its Previous Arguments is Not Grounds for**
4 **Reconsideration**

5 8. Pursuant to EDCR 2.24(a), no motions once heard and disposed of may be renewed
6 in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the
7 court.

8 9. “Although Rule 59(e) permits a district court to reconsider and amend a previous
9 order, the rule offers an ‘extraordinary remedy, to be used sparingly in the interests of finality and
10 conservation of judicial resources.’” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th
11 Cir. 2000), quoting 12 Moore’s Federal Practice §59.30[4] (3d ed. 2000) (discussing the federal
12 corollary of NRCP 59(e)).

13 10. A Rule 59(e) motion may not be used “to relitigate old matters.” 11 Fed. Prac. &
14 Proc. Civ. §2810.1 (3d ed.); accord *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008).

15 11. “Rehearings are not granted as a matter of right and are not allowed for the purpose
16 of re-argument, unless there is a reasonable probability that the court may have arrived at an
17 erroneous conclusion.” *Geller v. McCowan*, 64 Nev. 106, 108, 178 P.2d 380, 381 (1947) (citations
18 omitted) (discussing petition for rehearing of appellate decision).

19 12. Because the Developer has not raised sufficient new facts, substantially different
20 evidence or new issues of law for rehearing or reconsideration showing an erroneous conclusion,
21 the Court rejects the Developer’s repetitive arguments.

22 **D. NRCP 52(b) Does Not Apply Where the Developer Does Not Identify Any of**
23 **the Court’s Findings of Fact That Warrant Amendment**

24 13. Although it brings its motion to alter or amend pursuant to NRCP 52(b), that rule
25 is directed only at amendment of factual “findings,” not legal conclusions. *See id.* “Rule 52(b)
26 merely provides a method for amplifying and expanding the lower court's findings, and is not
27 intended as a vehicle for securing a re-hearing on the merits.” *Matter of Estate of Herrmann*, 100
28 Nev. 1, 21 n.16, 677 P.2d 594, 607 n.16 (1984).

1 14. The only findings mentioned in the Motion (at ¶¶12-13) are supported by the
2 portion of the record cited by the Court, namely, the Peccole Ranch Master Development Plan.
3 Judge Smith's findings in support of his interpretation of the Queensridge CC&Rs do not alter the
4 Court's findings.

5 15. Because the Developer has not identified any findings that should be amended
6 under NRCF 52(b), the Court declines to amend any of its findings.

7 **E. The Developer May Not Present Arguments and Materials it Could Have**
8 **Presented Earlier But Did Not**

9 16. The Developer's Motion cannot be granted based upon arguments the Developer
10 could have raised earlier but chose not to.

11 17. "A Rule 59(e) motion may not be used to raise arguments or present evidence for
12 the first time when they could reasonably have been raised earlier in the litigation." *Kona Enters.*,
13 229 F.3d at 890.

14 18. "Points or contentions not raised in the original hearing cannot be maintained or
15 considered on rehearing." *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d
16 447, 450 (1996).

17 19. Contrary to the Developer's assertion (Motion at 16:1-2), the Court considered all
18 of the arguments in its Petition related to Judge Smith's orders. The Court simply rejected them
19 because Judge Smith's interpretation of the Queensridge CC&R's does not affect the City
20 Council's discretion under NRS Chapter 278 and the City's Unified Development Code to deny
21 the 35-Acre Applications.

22 **F. The Supreme Court's Affirmance of Judge Smith's Orders Has No Impact on**
23 **this Court's Denial of the Developer's Petition for Judicial Review**

24 20. The fact that the Supreme Court affirmed Judge Smith's orders is not grounds for
25 reconsideration because Judge Smith's orders interpreted the Queensridge homeowners' rights
26 under the CC&R's, not the City Council's discretion to deny re-development applications.

1 21. As a result, the Developer's assertion (at 3:4-5) that Judge Smith's Orders are
2 "irreconcilable" with Judge Crockett's Decision does not accurately reflect the scope of the matter
3 before Judge Smith.

4 22. This Court correctly concluded that the Developer does not have vested rights to
5 have the 35-Acre Applications approved, and neither Judge Smith's orders, nor the Supreme
6 Court's orders of affirmance, alter that conclusion.

7 **G. The Court Correctly Determined That Judge Crockett's Order Has**
8 **Preclusive Effect Here**

9 23. The Developer has failed to show that the Court's conclusion that sufficient privity
10 exists to bar the Developer's petition under the doctrine of issue preclusion was clearly erroneous.

11 24. The Court correctly determined that Judge Crockett's Order has preclusive effect
12 here and, as a result, the Developer must obtain the City Council's approval of a major
13 modification to the Peccole Ranch Master Developer Plan before it may develop the 35-Acre
14 Property.

15 25. The Court's conclusion that the City Council's decision was supported by
16 substantial evidence was independent of its determination that Judge Crockett's Order has
17 preclusive effect here. Judge Crockett's Order was only a "further" (i.e., not exclusive) reason to
18 deny the Developer's petition for judicial review.

19 **H. The Developer Does Not Identify Any Clear Error That Warrants**
20 **Reconsideration**

21 26. The sole legal grounds for reconsideration asserted by the Developer is purported
22 "clear error."

23 27. The only legal conclusions in the FFCL with which the Developer takes issue are
24 the Court's determinations that public opposition constitutes substantial evidence for denial of the
25 35-Acre Applications and that the City Council properly exercised its discretion to insist on
26 comprehensive and orderly development for the entirety of the property of which the 35-Acre
27 Property was a part. Motion at 20:8-24:7. In making these arguments, however, the Developer
28 never contends that the Court incorrectly interpreted the law cited in the FFCL. *See id.* It therefore

1 cannot satisfy its burden of showing “clear error.” The Developer has failed to show that the
2 Court’s previous conclusion that the City Council did not abuse its discretion was clearly
3 erroneous.

4 28. The Court’s analysis of these issues was correct. The *Stratosphere* and *C.A.G.*
5 cases hold that public opposition from neighbors, even if rebutted by a developer, constitutes
6 substantial evidence to support denial of development applications. *See Stratosphere Gaming*, 120
7 Nev. at 529, 96 P.3d at 760; *C.A.G.*, 98 Nev. at 500-01, 654 P.2d at 533. The Developer’s Motion
8 is silent as to this point.

9 29. Citing NRS 278.349(3)(e), the Developer contests the Court’s reliance on *Nova*
10 *Horizon* and *Cold Springs* that zoning must substantially conform to the master plan and that the
11 master plan presumptively governs a municipality’s land use decisions. *Nova Horizon*, 105 Nev.
12 at 97, 769 P.2d at 724; *Citizens for Cold Springs*, 126 Nev. at 266, 236 P.3d at 12. The Developer’s
13 discussion fails to discredit the *Nova Horizon* decision given NRS 278.349(3)(a) and does not
14 address the *Cold Springs* case.

15 30. Having failed to demonstrate any clear error in the Court’s decision, the Developer
16 fails to satisfy its burden for reconsideration.

17 31. Nothing presented in the Motion alters the Court’s conclusion that the City Council
18 properly exercised its discretion to deny the 35-Acre Applications and the June 21, 2017 decision
19 was supported by substantial evidence. *See City of Reno v. Citizens for Cold Springs*, 126 Nev.
20 263, 271, 236 P.3d 10, 15-16 (2010) (citing *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801,
21 805 (2006)); *Cty. of Clark v. Doumani*, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998), *superseded by*
22 *statute on other grounds*; *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96
23 P.3d 756, 760 (2004).

24 32. As the Court correctly concluded, its job was to evaluate whether substantial
25 evidence supports the City Council’s decision, not whether there is substantial evidence to support
26 a contrary decision. *Nevada Power Co. v. Pub. Utilities Comm’n of Nevada*, 122 Nev. 821, 836
27 n.36, 138 P.3d 486, 497 (2006).

1 33. This is because the administrative body alone, not a reviewing court, is entitled to
2 weigh the evidence for and against a project. *Liquor & Gaming Licensing Bd.*, 106 Nev. at 99,
3 787 P.2d at 784.

4 **I. The Developer Failed to Advance Any Argument to Justify a Stay**

5 34. The Motion lacks any argument or citation whatsoever related to its request for a
6 stay.

7 35. “A party filing a motion must also serve and file with it a memorandum of points
8 and authorities in support of each ground thereof. The absence of such memorandum may be
9 construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver
10 of all grounds not so supported.” EDCR 2.20(c) (emphasis added).

11 36. Because the Developer provides no points and authorities in support of its motion
12 for stay, the motion for stay must be denied.

13 **J. Effect On The Developer’s Inverse Condemnation Claims**

14 37. The Developer’s petition for judicial review and its inverse condemnation claims
15 involve different evidentiary standards.

16 38. Relative to the petition for judicial review, the Developer had to demonstrate that
17 the City Council abused its discretion in that the June 21, 2017 decision was not supported by
18 substantial evidence; whereas, relative to its inverse condemnation claims, the Developer must
19 prove its claims by a preponderance of the evidence.

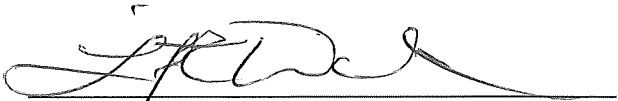
20 39. Because of these different evidentiary standards, the Court concludes that its
21 conclusions of law regarding the petition for judicial review do not control its consideration of the
22 Developer’s inverse condemnation claims.

23 **ORDER**

24 Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Motion
25 For A New Trial Pursuant To NRCP 59(e) And Motion To Alter Or Amend Pursuant To NRCP
26 52(b) And/Or Reconsider The Findings Of Fact And Conclusions Of Law And Motion To Stay
27 Pending Nevada Supreme Court Directives is DENIED.
28

1 IT IS FURTHER ORDERED THAT the Court's conclusions of law regarding the petition
2 for judicial review do not control its consideration of the Developer's inverse condemnation
3 claims, which will be subject to further action by the Court.

4 DATED: April 6th, 2019.

5
6
7
8 
TIMOTHY C. WILLIAMS
District Court Judge
9 CB + TCW

Submitted By:

10 HUTCHISON & STEFFEN, PLLC

11 
12 Mark A. Hutchison (4639)
13 Joseph S. Kistler (3458)
14 10080 West Alta Drive, Suite 200
15 Las Vegas, Nevada 89145
16 Telephone: (702) 385-2500
17 Facsimile: (702) 385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com

18 LAW OFFICES OF KERMITT L. WATERS

19 Kermit L. Waters (2571)
20 James J. Leavitt (6032)
21 Michael Schneider (8887)
22 Autumn L. Waters (8917)
23 704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

24 *Attorneys for 180 Land Company, LLC*
25
26
27
28

1 Competing Order Submitted By:

2 **MCDONALD CARANO LLP**

3 George F. Ogilvie, III

4 Debbie Leonard

5 Amanda C. Yen

6 2300 W. Sahara Ave., Suite 1200

7 Las Vegas, Nevada 89102

8 gogilvie@mcdonaldcarano.com

9 dleonard@mcdonaldcarano.com

10 ayen@mcdonaldcarano.com

11 and

12 **Las Vegas City Attorney's Office**

13 Brad Jerbic

14 Philip R. Byrnes

15 Seth T. Floyd

16 495 S. Main Street, 6th Floor

17 Las Vegas, Nevada 89101

18 pbyrnes@lasvegasnevada.gov

19 sfloyd@lasvegasnevada.gov

20 *Attorneys for the City of Las Vegas*

21

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23

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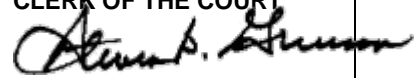
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34



RPLY

George F. Ogilvie III (NV Bar #3552)
Debbie Leonard (NV Bar #8260)
Amanda C. Yen (NV Bar #9726)
McDONALD CARANO LLP
2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102
Tel.: 702.873.4100; Facs.: 702.873.9966
gogilvie@mcdonaldcarano.com
dleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 S. Main Street, 6th Floor
Las Vegas, NV 89101
Tel.: 702.873.4100; Facs.: 702.873.9966
bjerbic@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

Attorneys for City of Las Vegas

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.

CITY OF LAS VEGAS, a 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,

Respondents.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**REPLY IN SUPPORT OF CITY OF
LAS VEGAS' MOTION TO STAY
PROCEEDINGS PENDING
RESOLUTION OF WRIT PETITION
TO THE NEVADA SUPREME COURT
ON ORDER SHORTENING TIME**

AND

**OPPOSITION TO COUNTERMOTION
FOR *NUNC PRO TUNC* ORDER**

OST Hearing Date: May 15, 2019
OST Hearing Time: 9:00 a.m.

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

I. INTRODUCTION

Most notable about the Developer's Opposition to the Motion to Stay is not what it says, but what it *does not* say. The Developer fails to address all of the criteria for a stay under NRAP 8(a). Instead, the Developer regurgitates the same arguments the Court has already rejected multiple times, most recently in its Findings of Fact and Conclusions of Law entered on May 7, 2019. Because (i) the object of the City's writ petition will be defeated absent a stay; (ii) the City will suffer serious and irreparable injury if the stay is denied; (iii) the Developer will suffer no injury should the stay be granted; and (iv) the City is likely to prevail on the merits, the City respectfully requests that the Motion to Stay be granted. Because the Developer's countermotion for *nunc pro tunc* order is nothing but a rehash of its now-denied motion for retrial of the Court's denial of its petition for judicial review ("PJR"), it should likewise be denied.

II. LEGAL ARGUMENT – REPLY TO MOTION TO STAY

A. By Failing to Address the City's Arguments, the Developer Acknowledges They Are Meritorious and Warrant a Stay

In its Motion to Stay, the City argued that the purpose of its Writ Petition would be defeated and the City would be irreparably harmed in the absence of a stay. The City also argued that a stay would not prejudice the Developer. In its Opposition, the Developer did not even address these arguments. As a result, the Developer concedes that the City's position on three out of four criteria is meritorious. *See* EDCR 2.20(e).

B. The Developer's Arguments Regarding the Merits of a Writ Petition Do Not Defeat the City's Request for a Stay

1. There is No Factual Dispute Regarding the Principles of Law at Issue in the City's Motion for Judgment on the Pleadings

The City's motion for judgment on the pleadings was based solely on issues of law for which no facts are in dispute. In denying the Developer's petition for judicial review, the Court concluded as a matter of law that: (1) the Developer had no vested right to have the Applications approved; and (2) the Developer must first give the City Council the opportunity to consider an application for a major modification to the Peccole Ranch Master Development

1 Plan (“Major Mod Application”) before it can redevelop the golf course property. The Court
2 reiterated these conclusions of law in its May 7, 2019 Findings of Fact and Conclusions of Law
3 Regarding Plaintiff’s Motion For A New Trial, Motion To Alter Or Amend And/Or Reconsider
4 The Findings Of Fact And Conclusions Of Law, And Motion To Stay Pending Nevada
5 Supreme Court Directives (“May 7 FFCL”). These conclusions of law require dismissal of the
6 Developer’s inverse condemnation claims, as a matter of law, and no factual dispute exists as to
7 these dispositive points.

8 To advance its factual dispute argument, the Developer cites to a portion of the March
9 22, 2019 transcript. However, as the Court will recall, the motions being heard at that hearing
10 were both the City’s motion for judgment on the pleadings and the Developer’s countermotion
11 for judicial determination of liability (i.e., motion for summary judgment). The Developer’s
12 opposition to the instant motion conflates the arguments on those two motions. In support of its
13 summary judgment countermotion, the Developer attached reams of exhibits and asserted that
14 judgment should be entered in its favor. The City’s argument in opposition to that motion was
15 that there was a sufficient factual dispute *as to the Developer’s countermotion* to prevent
16 summary judgment against the City. With regard to the purely legal issues presented in the
17 City’s motion for judgment on the pleadings, the City was clear (and still maintains) that no
18 factual disputes relevant to that motion exist.

19 **2. The City’s Writ Petition Will Satisfy the Requirements for Writ Relief**

20 For multiple reasons, the legal principles at issue here are an appropriate subject of writ
21 relief from the Supreme Court. First, under the binding authority of *Stratosphere Gaming Corp.*
22 *v. City of Las Vegas*, 120 Nev. 523, 527-28, 96 P.3d 756, 759-60 (2004), and similar precedent,
23 because the City Council had discretion to deny the 35-Acre Applications, the Developer has no
24 vested right to have the 35-Acre Applications approved. *Bowers v. Whitman*, 671 F.3d 905, 913
25 (9th Cir. 2012); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). Absent
26 vested rights, there can be no regulatory taking, as a matter of law. *Landgraf v. USI Film Prod.*,
27 511 U.S. 244, 266 (1994).

28 ...

1 Even though, when denying the Developer's PJR, the Court concluded that the
2 Developer lacks vested rights to redevelop the golf course, the Court declined to dismiss the
3 inverse condemnation claims. The Court recently reiterated that conclusion in the May 7 FFCL,
4 stating, "[t]his Court correctly concluded that the Developer does not have vested rights to have
5 the 35-Acre Applications approved, and neither Judge Smith's orders, nor the Supreme Court's
6 order of affirmance, alter that conclusion." See May 7 FFCL ¶22.

7 The Developer's argument that the law of what constitutes a vested right changes
8 depending on the type of proceeding in which the alleged vested right is asserted is nonsensical.
9 To make that incorrect point, the Developer relies exclusively on takings cases that involved
10 physical invasions of land, rather than discretionary land use decisions by a government agency
11 that are at issue here. See Developer's Opposition at 10, citing *McCarran v. Sisolak*, 122 Nev.
12 645, 137 P.3d 1110, 1119 (2006), etc. The net result of the Court's denial of the City's motion
13 for judgment on the pleadings is that the City – and, if the Court's determination were accepted
14 as Nevada law, every other land use authority in the State – is now exposed to takings liability
15 for decisions that are squarely within governmental discretion, in contravention of *Stratosphere*
16 *Gaming*, 120 Nev. at 527-28, 96 P.3d at 759-60. That constitutes a "potentially significant,
17 recurring question of law" for which the Supreme Court considers writ relief appropriate.
18 *Buckwalter v. Dist. Ct.*, 126 Nev. 200, 201, 234 P.3d 920, 921 (2010).

19 Second, a district court acting without subject matter jurisdiction is precisely the
20 circumstances under which the Supreme Court will issue a writ of prohibition. NRS 34.320; see
21 *Nevada Power Co. v. Eighth Jud. Dist. Ct.*, 120 Nev. 948, 954, 102 P.3d 578, 582-83 (2004).
22 The Court has repeatedly stated that the Developer must obtain approval of major modification
23 before the City Council could approve the Applications at issue here, most recently in its May 7
24 FFCL. The Developer's failure and refusal to submit such a major modification application
25 divests the Court of subject matter jurisdiction over the inverse condemnation claims because
26 they are not ripe for review. *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of*
27 *Johnson City*, 473 U.S. 172, 186 (1985). The Nevada Supreme Court has not hesitated to issue
28 a writ of prohibition when a district court acts without jurisdiction. See *Gaming Control Bd. v.*

1 *Breen*, 99 Nev. 320, 324, 661 P.2d 1309, 1311 (1983); *Gray Line Tours v. Eighth Jud. Dist. Ct.*,
2 99 Nev. 124, 126, 659 P.2d 304, 305 (1983).

3 The Court explained the inconsistencies between its denial of the City's motion for
4 judgment on the pleadings and its order denying the Developer's PJR based on the different
5 evidentiary standard of proof between a petition for judicial review and inverse condemnation
6 claims. The City submits that different evidentiary standards do not allow the Court to
7 disregard its earlier legal conclusions. The standard of proof addresses a litigant's duty to
8 convince the fact finder to view the facts in a way that favors that litigant. It does not alter the
9 applicable substantive law because the law stays the same, no matter what the standard of proof
10 is.

11 Finally, the Court granted the Developer leave to amend its complaint to add claims that
12 the Developer is litigating in other pending cases. This amounts to impermissible claim
13 splitting. *See Smith v. Hutchins*, 93 Nev. 431, 432, 566 P.2d 1136, 1137 (1977). The Developer
14 is attempting to shop its claims to the most receptive judge, thereby unfairly requiring the City
15 to defend duplicative claims, exposing the City to potentially conflicting results and
16 undermining the integrity of the judiciary.

17 Because these are all important legal questions, of which the Supreme Court's review
18 "would promote sound judicial economy and administration," the City has a high likelihood of
19 prevailing on the merits of its writ petition. *Int'l Game Tech. v. Sec. Jud. Dist. Ct.*, 124 Nev.
20 193, 198, 179 P.3d 556, 559 (2008).

21 Because the Developer's Opposition fails to address these issues, it effectively concedes
22 them pursuant to EDCR 2.20(e). As such, the City's request for a stay should be granted.

23 **III. LEGAL ARGUMENT – OPPOSITION TO COUNTERMOTION FOR NUNC**
24 **PRO TUNC ORDER**

25 Because the Developer's countermotion for a *nunc pro tunc* order is just another
26 meritless motion for reconsideration of the Court's denial of the PJR, and because no grounds
27 exist for a *nunc pro tunc* order, the countermotion should be denied. The purpose of a *nunc pro*
28 *tunc* order is for a court to "correct mere clerical errors or omissions" so that "the record

1 speak[s] the truth as to what was actually determined or done or intended to be determined or
2 done by the court.” *Finley v. Finley*, 65 Nev. 113, 119, 189 P.2d 334, 337 (1948), *overruled on*
3 *other grounds by Day v. Day*, 80 Nev. 386, 395 P.2d 321 (1964). A court “may not use a *nunc*
4 *pro tunc* order to change a ‘judgment actually rendered to one which the court neither rendered
5 nor intended to render.’” *McClintock v. McClintock*, 122 Nev. 842, 845, 138 P.3d 513, 515
6 (2006).

7 Through its May 7 FFCL denying the Developer’s motion for new trial, the Court has
8 been abundantly clear that it stands firm on its order denying the Developer’s PJR. The Court
9 correctly decided the PJR, and nothing presented in the Developer’s latest attack casts any
10 doubt on the correctness of the Court’s decision. The countermotion for *nunc pro tunc* order
11 should likewise be denied.

12 **IV. CONCLUSION**

13 Because the City has satisfied the requirements of a stay, it respectfully requests an
14 order staying all further proceedings in this action pending the Supreme Court’s resolution of
15 the City’s Writ Petition. The City also requests that the Developer’s countermotion be denied as
16 duplicative and meritless.

17 Respectfully submitted this 10th day of May 2019.

18 McDONALD CARANO LLP

19 By: /s/ George F. Ogilvie III
20 George F. Ogilvie III, Esq. (NV Bar #3552)
21 Debbie Leonard (NV Bar #8260)
22 Amanda C. Yen (NV Bar #9726)
23 2300 West Sahara Avenue, Suite 1200
24 Las Vegas, NV 89102

25 LAS VEGAS CITY ATTORNEY’S OFFICE
26 Bradford R. Jerbic (NV Bar #1056)
27 Philip R. Byrnes (NV Bar #166)
28 Seth T. Floyd (NV Bar #11959)
495 S. Main Street, 6th Floor
Las Vegas, NV 89101

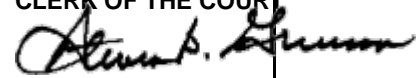
Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 10th day of May, 2019, a true and correct copy of the foregoing **REPLY IN SUPPORT OF CITY OF LAS VEGAS' MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF THE CITY'S WRIT PETITION TO THE NEVADA SUPREME COURT ON ORDER SHORTENING TIME AND OPPOSITION TO COUNTERMOTION FOR *NUNC PRO TUNC* ORDER** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP



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

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

HUTCHISON & STEFFEN, PLLC

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

**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,

Plaintiffs,

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

**NOTICE OF ENTRY OF ORDER
GRANTING THE LANDOWNERS'
COUNTERMOTION TO
AMEND/SUPPLEMENT THE
PLEADINGS; DENYING THE CITY'S
MOTION FOR JUDGMENT ON THE
PLEADINGS ON DEVELOPER'S
INVERSE CONDEMNATION CLAIMS;
AND DENYING LANDOWNERS'
COUNTERMOTION FOR JUDICIAL
DETERMINATION OF LIABILITY ON
THE LANDOWNERS' INVERSE
CONDEMNATION CLAIMS**

1 **PLEASE TAKE NOTICE** that on the 15th day of May, 2019, an Order Granting the
2 Landowners' Countermotion to Amend/Supplement the Pleadings; Denying the City's Motion for
3 Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and Denying the
4 Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse
5 Condemnation Claims, was entered in the above-captioned case, a copy of which is attached hereto.

6 DATED this 15th day of May, 2019.

7 **LAW OFFICES OF KERMIT L. WATERS**

8 By: /s/ Autumn Waters

9 KERMIT L. WATERS, ESQ., NBN 2571
10 JAMES JACK LEAVITT, ESQ., NBN 6032
11 MICHAEL A. SCHNEIDER, ESQ., NBN 8887
12 AUTUMN WATERS, ESQ., NBN 8917
13 704 S. 9th Street
14 Las Vegas, NV 89101

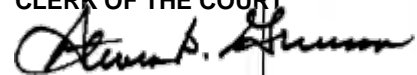
15 *Attorneys for Plaintiff*

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McDonald Carano LLP
George F. Ogilvie III
Debbie Leonard
Amanda C. Yen
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
tleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

Las Vegas City Attorney's Office
Bradford Jerbic
Philip R. Byrnes
Seth T. Floyd
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

-3-



1 **ORD**

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

3 Kermit L. Waters, Esq., Bar No. 2571

4 kermitt@kermittwaters.com

5 James J. Leavitt, Esq., Bar No. 6032

6 jim@kermittwaters.com

7 Michael A. Schneider, Esq., Bar No. 8887

8 michael@kermittwaters.com

9 Autumn L. Waters, Esq., Bar No. 8917

10 autumn@kermittwaters.com

11 704 South Ninth Street

12 Las Vegas, Nevada 89101

13 Telephone: (702) 733-8877

14 Facsimile: (702) 731-1964

15 **HUTCHISON & STEFFEN, PLLC**

16 Mark A. Hutchison (4639)

17 Joseph S. Kistler (3458)

18 Matthew K. Schriever (10745)

19 Peccole Professional Park

20 10080 West Alta Drive, Suite 200

21 Las Vegas, NV 89145

22 Telephone: 702-385-2500

23 Facsimile: 702-385-2086

24 mhutchison@hutchlegal.com

25 jkistler@hutchlegal.com

26 mschriever@hutchlegal.com

27 *Attorneys for Plaintiff Landowners*

28 **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,

Plaintiffs,

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

**ORDER GRANTING The Landowners'
Counter-motion to Amend/Supplement the
Pleadings; DENYING The City's Motion
for Judgment on the Pleadings on
Developer's Inverse Condemnation Claims;
and DENYING the Landowners'
Counter-motion for Judicial Determination
of Liability on the Landowners' Inverse
Condemnation Claims**

Hearing Date: March 22, 2019
Hearing Time: 1:30 p.m.

04-24-10P05:40 REVD

PA0878

ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims

The City of Las Vegas's (The City") Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; Plaintiff, 180 LAND COMPANY, LLC's ("Landowner") Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/amend the Pleadings, if Required; and Plaintiff Landowners' Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time along with the City's and the Intervenor's (from the Petition for Judicial Review¹) Oppositions and the Landowners Replies² to the same having come for hearing on March 22, 2019 at 1:30 p.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., Mark Hutchison, Esq., and Autumn Waters, Esq., appearing for and on behalf of the Landowners, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of the City, and Todd Bice, Esq., and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenor's (from the Petition for Judicial Review). The Court having read the briefings, conducted a hearing and after considering the writings and oral arguments presented and being fully informed in the premise makes the following findings of facts and conclusions of law:

I. The Landowners' Countermotion to Supplement/Amend the Pleadings

The Landowners moved this Court to supplement/amend their pleadings. The Landowners attached a copy of their proposed amended/supplemental complaint to their request pursuant to NRCP Rule 15. This matter is in its early stages, as discovery has yet to commence so no prejudice

¹ The Intervenor's have not moved nor been granted entry into this case dealing with the Landowners' inverse condemnation claims, they have moved and been granted entry into the severed petition for judicial review.

² The Landowners withdrew this Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time, accordingly, no arguments were taken nor rulings issued.

1 or delay will result in allowing the amendment. The City argues that permitting the amendment
2 would result in impermissible claim splitting as the Landowners currently have other litigation
3 pending which also address the City action complained of in the amended/supplemental complaint.
4 However, those other pending cases deal with other property also allegedly affected by the City
5 action and do not seek relief for the property at issue in this case.

6 Leave to amend should be freely given when justice so requires. NRCP Rule 15(a)(2);
7 Adamson v. Bowker, 85 Nev. 115, 121 (1969). Absent undue delay, bad faith or dilatory motive on
8 the part of the movant, leave to amend should be freely given. Stephens v. Southern Nev. Music Co.,
9 89 Nev. 104 (1973). Justice requires leave to amend under the facts of this case and there has been
10 no showing of bad faith or dilatory motive on the part of the Landowners.

11 Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion to
12 Supplement/Amend the Pleadings is **GRANTED**. The Landowners may file the amended /
13 supplemental complaint in this matter.

14 **II. The City's Motion for Judgment on the Pleadings on Developer's Inverse
Condemnation Claims**

15 The City moved this Court for judgment on the pleadings on the Landowners' inverse
16 condemnation claims pursuant to NRCP 12(c). Only under rare circumstances is dismissal proper,
17 such as where plaintiff can prove no set of facts entitling him to relief. Williams v. Gerber Prod.,
18 552 F.3d 934, 939 (9th Cir. 2008). The Nevada Supreme Court has held that a motion to dismiss "is
19 subject to a rigorous standard of review on appeal," that it will recognize all factual allegations as
20 true, and draw all inferences in favor of the plaintiff. Buzz Stew, LLC v. City of North Las Vegas,
21 181 P.3d 670, 672 (2008). The Nevada Supreme Court rejected the reasonable doubt standard and
22 held that a complaint should be dismissed only where it appears beyond a doubt that the plaintiff
23 could prove no set of facts, which, if true, would entitle the plaintiff to relief. Id., see also fn. 6.
24 Additionally, Nevada is a notice pleading state. NRCP Rule 8; Liston v. Las Vegas Metropolitan
25 Police Dep't, 111 Nev. 1575 (1995) (referring to an amended complaint, deposition testimony,
26 interrogatory responses and pretrial demand statement as a basis to provide notice of facts that
27 support a claim). Moreover, the Nevada Supreme Court has adopted the "policy of this state that
28

cases be heard on the merits, whenever possible.” Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

A. The Landowners’ Inverse Condemnation Claims

The Landowners have asserted five (5) separate inverse condemnation claims for relief, a Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking and, finally, a Temporary Taking. Each of these claims is a valid claim in the State of Nevada:

Categorical Taking - “Categorical [taking] rules apply when a government regulation either (1) requires an owner to suffer a permanent physical invasion of her property or (2) completely deprives an owner of all economical use of her property.” McCarran Intern. Airport v. Sisolak, 122 Nev. 645, 663, 137 P. 3d 1110, 1122 (2006).

Penn Central Regulatory Taking - A Penn Central taking analysis examines three guideposts: the regulations economic impact on the property owner; the regulations interference with investment backed expectations; and, the character of the government action. Sisolak, supra, at 663.

Regulatory Per Se Taking - A Per Se Regulatory Taking occurs where government action “preserves” property for future use by the government. Sisolak, supra, at 731.

Non-regulatory Taking / De Facto Taking - A non-regulatory/de facto taking occurs where the government has “taken steps that directly and substantially interfere with [an] owner’s property rights to the extent of rendering the property unusable or valueless to the owner.” State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015). “To constitute a taking under the Fifth Amendment it is not necessary that property be absolutely ‘taken’ in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights.” Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir. Ct. App. 1977).

Temporary Taking - “[T]emporary deprivations of use are compensable under the Taking Clause.” Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1011-12 (1992); Arkansas Game & Fish Comm’s v. United States, 568 U.S. 23, 133 S.Ct. 511 (2012).

1 Here, the Landowners have alleged facts and provided documents sufficient to sustain these
2 inverse condemnation claims as further set forth herein, which is sufficient to defeat the City's
3 motion for judgment on the pleadings.

4 **B. The Landowners' Property Interest**

5 "An individual must have a property interest in order to support a takings claim....The term
6 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the
7 property." McCarran v. Sisolak, 122 Nev. 645, 137 P.3d 1110, 1119 (2006). "It is well established
8 that an individual's real property interest in land supports a takings claim." ASAP Storage, Inc. v.
9 City of Sparks, 123 Nev. 639, 645, 173 P.3d 734, 738 (2007) *citing to Sisolak and Clark County v.*
10 Alper, 100 Nev. 382 (1984). Meaning a landowner merely need allege an ownership interest in the
11 land at issue to support a takings claim and defeat a judgment on the pleadings. The Landowners
12 have made such an allegation.

13 The Landowners assert that they have a property interest and vested property rights in the
14 Subject Property for the following reasons:

15 1) The Landowners assert that they own approximately 250 acres of real property
16 generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard
17 within the City of Las Vegas, Nevada; all of which acreage is more particularly described as
18 Assessor's Parcel Numbers 138-31-702-003, 138-31-601-008, 138-31-702-004; 138-31-201-005;
19 138-31-801-002; 138-31-801-003; 138-32-301-007; 138-32-301-005; 138-32-210-008; and 138-32-
20 202-001 ("250 Acre Residential Zoned Land"). This action deals specifically and only with Assessor
21 Parcel Number 138-31-201-005 (the "35 Acre Property" and/or "35 Acres" and/or "Landowners'
22 Property" or "Property").

23 2) The Landowners assert that they had a property interest in the 35 Acre Property; that
24 they had the vested right to use and develop the 35 Acre Property; that the hard zoning on the 35
25 Acre Property has always been for a residential use, including R-PD7 (Residential Planned
26 Development District – 7.49 Units per Acre). The City does not contest that the hard zoning on the
27 Landowners' Property has always been R-PD7.
28

1 3) The Landowners assert that they had the vested right to use and develop the 35 Acre
2 Property up to a density of 7.49 residential units per acre as long as the development is comparable
3 and compatible with the existing adjacent and nearby residential development. The Landowners'
4 property interest and vested property rights in the 35 Acre Property are recognized under the United
5 States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

6 4) The Landowners assert that their property interest and vested right to use and develop
7 the 35 Acre Property is further confirmed by the following:

- 8 a) On March 26, 1986, a letter was submitted to the City Planning Commission
9 requesting zoning on the entire 250 Acre Residential Zoned Land (which
10 includes the 35 Acre Property) and the zoning that was sought was R-PD7 as
11 it allows the developer flexibility and shows that developing the 35 Acre
12 Property for a residential use has always been the intent of the City and all
13 prior owners.
- 14 b) The City has confirmed the Landowners' property interest and vested right
15 to use and develop the 35 Acre Property residentially in writing and orally in,
16 without limitation, 1996, 2001, 2014, 2016, and 2018.
- 17 c) The City adopted Zoning Bill No. Z-2001, Ordinance 5353, which
18 specifically and further demonstrates that the R-PD7 Zoning was codified and
19 incorporated into the City of Las Vegas' Amended Zoning Atlas in 2001. As
20 part of this action, the City "repealed" any prior City actions that could
21 conflict with this R-PD7 hard zoning adopting: "SECTION 4: All ordinances
22 or parts of ordinances or sections, subsections, phrases, sentences, clauses or
23 paragraphs contained in the Municipal Code of the City of Las Vegas,
24 Nevada, 1983 Edition, in conflict herewith are hereby repealed."
- 25 d) At a November 16, 2016, City Council hearing, Tom Perrigo, the City
26 Planning Director, confirmed the 250 Acre Residential Zoned Land (which
27 includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49
28 residential units per acre.
- e) Long time City Attorney, Brad Jerbic, has also confirmed the 250 Acre
Residential Zoned Land (which includes the 35 Acre Property) is hard zoned
R-PD7, which allows up to 7.49 residential units per acre.
- f) The City Planning Staff has also confirmed the 250 Acre Residential Zoned
Land (which includes the 35 Acre Property) is hard zoned R-PD7, which
allows up to 7.49 residential units per acre.
- g) The City's own 2020 master plan confirms the 250 Acre Residential Zoned
Land (which includes the 35 Acre Property) is hard zoned R-PD7, which
allows up to 7.49 residential units per acre.
- h) The City issued two formal Zoning Verification Letters dated December 20,
2014, confirming the R-PD7 zoning on the entire 250 Acre Residential Zoned
Land (which includes the 35 Acre Property).

- 1 i) The City confirmed the Landowners' vested right to use and develop the 35
2 Acres prior to the Landowners' acquisition of the 35 Acres and the
3 Landowners materially relied upon the City's confirmation regarding the
4 Subject Property's vested zoning rights.
- 5 j) The City has approved development on approximately 26 projects and over
6 1,000 units in the area of the 250 Acre Residential Zoned Land (which
7 includes the 35 Acre Property) on properties that are similarly situated to the
8 35 Acre Property further establishing the Landowners' property interest and
9 vested right to use and develop the 35 Acre Property.
- 10 k) The City has never denied an application to develop in the area of the 250
11 Acre Residential Zoned Land (which includes the 35 Acre Property) on
12 properties that are similarly situated to the 35 Acre Property further
13 establishing the Landowners' property interest and vested right to use and
14 develop the 35 Acre Property.
- 15 l) There has been a judicial finding that the Landowners have the "right to
16 develop" the 35 Acre Property.
- 17 m) The Landowners' property interest and vested right to use and develop the
18 entire 250 Acre Residential Zoned Land (which includes the 35 Acre
19 Property) is so widely accepted that even the Clark County tax Assessor has
20 assessed the property as residential for a value of approximately \$88 Million
21 and the current Clark County website identifies the 35 Acre Property "zoned"
22 R-PD7.
- 23 n) There have been no other officially and properly adopted plans or maps or
24 other recorded document(s) that nullify, replace, and/or trump the
25 Landowners' property interest and vested right to use and develop the 35
26 Acre Property.
- 27 o) Although certain City of Las Vegas planning documents show a general plan
28 designation of PR-OS (Parks/Recreation/Open Space) on the 35 Acre
Property, that designation was placed on the Property by the City without the
City having followed its own proper notice requirements or procedures.
Therefore, any alleged PR-OS on any City planning document is being shown
on the 35 Acre Property in error. The City's Attorney confirmed the City
cannot determine how the PR-OS designation was placed on the Subject
Property.
- p) The 35 Acre Property has always been zoned and land use planned for a
residential use. The City has argued that the Peccole Concept Plan applies
to the Landowners' 35 Acre Property and that plan has always identified the
specific 35 Acre Property in this case for a residential use. The land use
designation where the 35 Acre Property is located is identified for a
residential use under the Peccole Concept Plan and no major modification of
Mr. Peccole's Plan would be needed in this specific case to use the 35 Acre
Property for a residential use.

Any determination of whether the Landowners have a "property interest" or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law. The Nevada Supreme Court in both the Sisolak and Schwartz v. State, 111 Nev. 998, fn 6 (1995)

1 decisions held that all property owners in Nevada, including the Landowners in this case, have the
2 vested right to use their property, even if that property is vacant, undeveloped, and without City
3 approvals. The City can apply “valid” zoning regulations to the property to regulate the use of the
4 property, but if those zoning regulations “rise to a taking,” Sisolak at fn 25, then the City is liable
5 for the taking and must pay just compensation.

6 Here, the Landowners have alleged facts and provided documents sufficient to show they
7 have a property interest in and a vested right to use the 35 Acre Property for a residential use, which
8 is sufficient to defeat the City’s motion for judgment on the pleadings.

9 **C. City Actions the Landowners Claim Amount to A Taking**

10 In determining whether a taking has occurred, Courts must look at the aggregate of all of the
11 government actions because “the form, intensity, and the deliberateness of the government actions
12 toward the property must be examined ... All actions by the [government], in the aggregate, must
13 be analyzed.” Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State
14 v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (*citing* Arkansas Game & Fish Comm’s v. United
15 States, 568 U.S. --- (2012)) (there is no “magic formula” in every case for determining whether
16 particular government interference constitutes a taking under the U.S. Constitution; there are “nearly
17 infinite variety of ways in which government actions or regulations can effect property interests.”
18 Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse
19 condemnation action is an “ad hoc” proceeding that requires “complex factual assessments.” Id.,
20 at 720.); Lehigh-Northampton Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn.
21 1999) (“There is no bright line test to determine when government action shall be deemed a de facto
22 taking; instead, each case must be examined and decided on its own facts.” Id., at 985-86).

23 The City has argued that the Court is limited to the record before the City Council in
24 considering the Landowners’ applications and cannot consider all the other City action towards the
25 Subject Property, however, the City cites the standard for petitions for judicial review, not inverse
26 condemnation claims. A petition for judicial review is one of legislative grace and limits a court’s
27 review to the record before the administrative body, unlike an inverse condemnation, which is of
28

1 constitutional magnitude and requires all government actions against the property at issue to be
2 considered.

3 The Landowners assert that the following City actions individually and/or cumulatively
4 amount to a taking of their Property:

5 **1. City Denial of the 35 Acre Property Applications.**

6 The Landowners submitted complete applications to develop the 35 Acre Property for a
7 residential use consistent with the R-PD7 hard zoning. *Exhibit 22: App LO 00000932-949*. The City
8 Planning Staff determined that the proposed residential development was consistent with the R-PD7
9 hard zoning, that it met all requirements in the Nevada Revised Statutes, and in the City's Unified
10 Development Code (Title 19), and appropriately recommended approval. *Exhibit 22: 4 App LO*
11 *00000932-949 and Exhibit 23: 4 App LO 00000950-976*. Tom Perrigo, the City Planning Director,
12 stated at the hearing on the Landowners' applications that the proposed development met all City
13 requirements and should be approved. *Exhibit 5: 2 App LO 00000376 line 566 - 377 line 587*. The
14 City Council denied the 35 Acre Property applications, stating as the sole basis for denial that the
15 City did not want piecemeal development and instead wanted to see the entire 250 Acre Residential
16 Zoned Land developed under one Master Development Agreement ("MDA").

17 **2. City Action #2: Denial of the Master Development Agreement (MDA).**

18 To comply with the City demand to have one unified development, for over two years
19 (between July, 2015, and August 2, 2017), the Landowners worked with the City on an MDA that
20 would allow development on the 35 Acre Property along with all other parcels that made up the 250
21 Acre Residential Zoned Land. *Exhibit 25: 5 App LO 00001132-1179*. The Landowners complied
22 with each and every City demand, making more concessions than any developer that has ever
23 appeared before this City Council. A non-exhaustive list of the Landowners' concessions, as part
24 of the MDA, include: 1) donation of approximately 100 acres as landscape, park equestrian facility,
25 and recreation areas (*Exhibit 29: 8 App LO 00001836; Exhibit 24: 4 App LO 00000998 lines 599-*
26 *601; Exhibit 30: 8 App LO 00001837*); 2) building two new parks, one with a vineyard; (Id.) and,
27 3) reducing the number of units, increasing the minimum acreage lot size, and reducing the number
28 and height of towers. *Exhibit 5: 2 App LO 00000431 lines 2060-2070; Exhibit 29: 8 App LO*

00001836; and Exhibit 30: 8 App LO 00001837. In total, the City required at least 16 new and revised versions of the MDA. Exhibit 28: 5-7 App LO 00001188-00001835. The City's own Planning Staff, who participated at every step in preparing the MDA, recommended approval, stating the MDA "is in conformance with the requirements of the Nevada Revised Statutes 278" and "the goals, objectives, and policies of the Las Vegas 2020 Master Plan" and "[a]s such, staff [the City Planning Department] is in support of the development Agreement." Exhibit 24: 4 App LO 00000985 line 236 – 00000986 line 245; LO 00001071-00001073; and Exhibit 40: 9 App LO 00002047-2072. And, as will be explained below, the MDA also met and exceeded any and all major modification procedures and standards that are set forth in the City Code.

On August 2, 2017, the MDA was presented to the City Council and the City denied the MDA. Exhibit 24: 5 App LO 00001128-112. The City did not ask the Landowners to make more concessions, like increasing the setbacks or reducing the units per acre, it simply and plainly denied the MDA altogether. *Id.* As the 35 Acre Property is vacant, this meant that the property would remain vacant.

3. City Action #3: Adoption of the Yohan Lowie Bills.

After denial of the MDA, the City adopted two Bills that solely target the 250 Acre Residential Zoned Land and preserve the Landowners' Property for public use. City Bill No. 2018-5 and Bill No. 2018-24 (now City Ordinances LVMC 19.16.105) not only target solely the Landowners' Property (no other golf course in the City is privately owned with residential zoning and no deed restrictions); but also requires the Landowners to preserve their Property for public use (LVMC 19.16.105 (E)(1)(d), (G)(1)(d)), provide ongoing public access to their Property (LVMC 19.16.105(G)(1)(d)), and provides that failure to comply with the Ordinances will result in a misdemeanor crime punishable by imprisonment and \$1,000 per day fine. (LVMC 19.16.105 (E)(1)(d), (G)(5)(b)&(c)). The Ordinance requires the Landowners to perform an extensive list of requirement, beyond any other development requirements in the City for residential development, before development applications will be accepted by the City. LVMC 19.16.105.

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1 **4. City Action #4: Denial of an Over the Counter, Routine Access Request.**

2 The Landowners have sufficiently alleged that in August of 2017, the Landowners filed with
3 the City a routine over the counter request (specifically excluded from City Council review - LVMC
4 19.16.100(f)(2)(a) and 19.16.100(f)(2)(a)(iii)) for three access points to streets the 250 Acre
5 Residential Zoned Land abuts – one on Rampart Blvd. and two on Hualapai Way. *Exhibit 58: 10 App*
6 *LO 00002359-2364*. The City denied the access applications citing as the sole basis for the denial,
7 “the various public hearings and subsequent debates concerning the development on the subject site.”
8 *Exhibit 59: 10 App LO 00002365*. The City required that the matter be presented to the City Council
9 through a “Major Review.” The City has required that this extraordinary standard apply only to the
10 Landowners to gain access to their property.

11 The Nevada Supreme Court has held that a landowner cannot be denied access to abutting
12 roadways, because all property that abuts a public highway has a special right of easement to the
13 public road for access purposes and this is a recognized property right in Nevada. Schwartz v. State,
14 111 Nev. 998 (1995). The Court held that this right exists “despite the fact that the Landowner had
15 not yet developed access.”Id., at 1003.

16 **5. City Action #5: Denial of an Over the Counter, Routine Fence Request.**

17 The Landowners have sufficiently alleged that in August, 2017, the Landowners filed with
18 the City a routine request to install chain link fencing to enclose two water features/ponds that are
19 located on the 250 Acre Residential Zoned Land. *Exhibit 55: 10 App LO 00002345-2352*. The City
20 Code expressly states that this application is similar to a building permit review that is granted over
21 the counter and not subject to City Council review. LVMC 19.16.100(f)(2)(a) and
22 19.16.100(f)(2)(a)(iii). The City denied the application, citing as the sole basis for denial, “the
23 various public hearings and subsequent debates concerning the development on the subject site.”
24 *Exhibit 56: 10 App LO 2343*. The City then required that the matter be presented to the City Council
25 through a “Major Review” pursuant to LVMC 19.16.100(G)(1)(b) which states that “the Director
26 determines that the proposed development could significantly impact the land uses on the site or on
27 surrounding properties.” *Exhibit 57: 10 App LO 00002354-2358*.

1 The Major Review Process contained in LVMC 19.16.100 is substantial. It requires a pre-
2 application conference, plans submittal, circulation to interested City departments for
3 comments/recommendation/requirements, and publicly noticed Planning Commission and City
4 Council hearings. The City has required that this extraordinary standard apply despite the fact that
5 LVMC 19.16.100 F(3) specifically prohibits review by the City Council, “[t]he Provisions of this
6 Paragraph (3) shall not apply to *building permit level reviews* described in Paragraph 2(a) of this
7 Subsection (F). Enumerated in Paragraph 2(a) as only requiring a “building level review” are “onsite
8 signs, walls and fences.”

9 **6. City Action #6: Denial of a Drainage Study.**

10 The Landowners have sufficiently alleged that in an attempt to clear the property, replace
11 drainage facilities, etc., the Landowners submitted an application for a technical drainage study,
12 which should have been routine, because the City and the Landowners already executed an On-Site
13 Drainage Improvements Maintenance Agreement that allows the Landowners to remove and replace
14 the flood control facilities on their property. *Exhibit 78: 12 App LO 00002936-2947*. Additionally,
15 the two new City Ordinances referenced in City Action #3 require a technical drainage study.
16 However, the City has refused to accept an application for a technical drainage study from the
17 Landowners claiming the Landowners must first obtain entitlements, however, the new City
18 Ordinances will not provide entitlements until a drainage study is received.

19 **7. City Action #7: The City’s Refusal to Even Consider the 133 Acre**
20 **Property Applications.**

21 The Landowners have sufficiently alleged that as part of the numerous development
22 applications filed by the Landowners over the past three years to develop all or portions of the 250
23 Acre Residential Zoned Land, in October and November 2017, the necessary applications were filed
24 to develop residential units on the 133 Acre Property (part of the 250 Acre Residential Zoned Land)
25 consistent with the R-PD7 hard zoning. *Exhibit 47: 9 App LO 00002119-10 App LO 2256. Exhibit*
26 *49: 10 App LO 00002271-2273*. The City Planning Staff determined that the proposed residential
27 development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada
28 Revised Statutes, the City Planning Department, and the Unified Development Code (Title 19), and
recommended approval. *Exhibit 51: 10 App. LO 00002308-2321*. Instead of approving the

1 development, the City Council delayed the hearing for several months until May 16, 2018 - the same
2 day it was considering the Yohan Lowie Bill (now LVMC 19.16.105), referenced above in City
3 Action #3. *Exhibit 50: 10 App LO 00002285-2287*. The City put the Yohan Lowie Bill on the
4 morning agenda and the 133 Acre Property applications on the afternoon agenda. The City then
5 approved the Yohan Lowie Bill in the morning session. Thereafter, Councilman Seroka asserted that
6 the Yohan Lowie Bill applied to deny development on the 133 Acre Property and moved to strike
7 all of the applications for the 133 Acre Property filed by the Landowners. *Exhibit 6: 2 App LO*
8 *00000490 lines 206-207*. The City then refused to allow the Landowners to be heard on their
9 applications for the 133 Acre Property and voted to strike the applications. *Exhibit 51: 10 App LO*
10 *00002308-2321 and Exhibit 53: 10 App LO 00002327-2336*.

11 **8. City Action #8: The City Announces It Will Never Allow Development**
12 **on the 35 Acre Property, Because the City Wants the Property for a City**
Park and Wants to Pay Pennies on the Dollar for it.

13 The Landowners have sufficiently alleged that in documents obtained from the City it was
14 discovered that the City has already allocated \$15 million to acquire the Landowners' private
15 property - "\$15 Million-Purchase Badlands and operate." *Exhibit 35: 8 App LO 00001922*. In this
16 same connection, Councilman Seroka issued a statement during his campaign entitled "The Seroka
17 Badlands Solution" which provides the intent to convert the Landowners' private property into a
18 "fitness park." *Exhibit 34: 8 App LO 00001915*. In an interview with KNPR Seroka stated that he
19 would "turn [the Landowners' private property] over to the City." *Id. at LO 00001917*. Councilman
20 Coffin agreed, stating his intent referenced in an email as follows: "I think your third way is the only
21 quick solution...Sell off the balance to be a golf course with water rights (key). Keep the bulk of
22 Queensridge green." *Exhibit 54: 10 App LO 00002344*. Councilman Coffin and Seroka also
23 exchanged emails wherein they state they will not compromise one inch and that they "need an
24 approach to accomplish the desired outcome," which, as explained, is to prevent all development on
25 the Landowners' Property so the City can take it for the City's park and only pay \$15 Million.
26 *Exhibit 54: 10 App LO 00002340*. In furtherance of the City's preservation for public use, the City
27 has announced that it will never allow any development on the 35 Acre Property or any other part
28 of the 250 Acre Residential Zoned Land.

1 As it is universally understood that tax assessed value is well below market value, to
2 "Purchase Badlands and operate" for "\$15 Million," (which equates to less than 6% of the tax
3 assessed value and likely less than 1% of the fair market value) shocks the conscience. And, this
4 shows that the City's actions are in furtherance of a City scheme to specifically target the
5 Landowners' Property to have it remain in a vacant condition to be "turned over to the City" for a
6 "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8*
7 *App LO 00001922.*

8 **9. City Action #9: The City Shows an Unprecedented Level of Aggression**
9 **To Deny All Use of the 250 Acre Residential Zoned Land.**

10 The Landowners have sufficiently alleged that the City has gone to unprecedented lengths
11 to interfere with the use and enjoyment of the Landowners's Property. Council members sought
12 "intel" against one of the Landowners so that the "intel" could, presumably, be used to deny any
13 development on the 250 Acre Residential Zoned Land (including the 35 Acre Property). In a text
14 message to an unknown recipient, Councilman Coffin stated:

15 Any word on your PI enquiry about badlands [250 Acre Residential Zoned Land]
16 guy?

17 While you are waiting to hear **is there a fair amount of intel on the scum** behind
18 [sic] the badlands [250 Acre Residential Zoned Land] takeover? **Dirt will be handy**
19 **if I need to get rough.** *Exhibit 81: 12 App LO 00002969. (emphasis supplied).*

20 Instructions were then given by Council Members on how to hide communications regarding the 250
21 Acre Residential Zoned Land from the Courts. Councilman Coffin, after being issued a documents
22 subpoena, wrote:

23 "Also, his team has filed an official request for all txt msg, email, anything at all on
24 my personal phone and computer under an erroneous supreme court opinion...So
25 everything is subject to being turned over so, for example, your letter to the c[i]ty
26 email is now public and this response might become public (to Yohan). I am
27 considering only using the phone but awaiting clarity from court. **Please pass word**
28 **to all your neighbors. In any event tell them to NOT use the city email address**
but call or write to our personal addresses. For now...PS. Same crap applies to
Steve [Seroka] as he is also being individually sued i[n] Fed Court and also his
personal stuff being sought. This is no secret so let all your neighbors know."
Exhibit 54: 10 App LO 00002343. (Emphasis added).

29 Councilman Coffin advised Queensridge residents on how to circumvent the legal process and the
30 Nevada Public Records Act *NRS 239.001(4)* by instructing them on how not to trigger any of the
31 search terms being used in the subpoenas. "Also, please pass the word for everyone to not use
32 B...l.nds in title or text of comms. That is how search works." Councilman Seroka testified at the

1 Planning Commission (during his campaign) that it would be “over his dead body” before the
2 Landowners could use their private property for which they have a vested right to develop. *Exhibit*
3 *21: 4 App LO 00000930-931*. And, In reference to development on the Landowners’ Property,
4 Councilman Coffin stated firmly “I am voting against the whole thing,” (*Exhibit 54: 10 App LO*
5 *00002341*)

6
7 **10. City Action #10: the City Reverses the Past Approval on the 17 Acre Property.**

8 The Landowners have sufficiently alleged that in approving the 17 Acre Property applications
9 the City agreed the Landowners had the vested right to develop without a Major Modification, now
10 the City is arguing in other documents that: 1) the Landowners have no property rights; and, 2) the
11 approval on the 17 Acre Property was erroneous, because no major modification was filed:

12 “[T]he Developer must still apply for a major modification of the Master Plan before
13 a takings claim can be considered...” *Exhibit 37: 8 App LO 00001943 lines 18-20*;

14 “Moreover, because the Developer has not sought a major modification of the Master
15 Plan, the Court cannot determine if or to what extent a taking has occurred.” *Id. at*
16 *LO 00001944 lines 4-5*;

17 “According to the Council’s decision, the Developer need only file an application for
18 a major modification to the Peccole Ranch Master Development Plan ...to have its
19 Applications considered.” *Exhibit 39: 9 App LO 00002028 lines 11-15*;

20 “Here, the Council’s action to strike the Applications as incomplete in the absence
21 of a major modification application does not foreclose development on the Property
22 or preclude the City from ultimately approving the Applications or other
23 development applications that the Developer may subsequently submit. It simply held
24 that the City would not consider the Applications without the Developer first
25 submitting a major modification application.” *Id. at LO 00002032 lines 18-22*.

26 The reason the City changed its position is the City is seeking to deny the Landowners their
27 constitutional property rights so the Landowners’ Property will remain in a vacant condition to be
28 “turned over to the City” for a “fitness park” for 1% of its fair market value. *Exhibit 34: 8 App LO*
00001915 and Exhibit 35: 8 App LO 00001922.

29
30 **11. City Action #11: The City Retains Private Counsel to Advance an Open Space Designation on the 35 Acre Property.**

31 The Landowners have sufficiently alleged that the City has retained and authorized private
32 counsel to advance an “open space” designation/major modification argument in this case to prevent
33 any and all development on the 35 Acre Property. This is a contrary position from that taken by the

1 City over the past 32 years on at least 1,067 development units in the Peccole Concept Plan area.
2 *Exhibit 105.* As explained above, over 1,000 units have been developed over the past 32 years in
3 the Peccole Concept Plan area and not once did the City apply the “open space”/major modification
4 argument it is now advancing, even though those +1,000 units were developed contrary to the land
5 use designation on the Peccole Concept Plan. The City has specifically targeted the Landowners and
6 their Property and is treating them differently than it has treated all other properties and owners in
7 the area (+1,000 other units in the area) for the purpose of forcing the Landowners’ Property to
8 remain in a vacant condition to be “turned over to the City” for a “fitness park” for 1% of its fair
9 market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

10 Here, the Landowners have alleged facts and provided documents sufficient to show their
11 Property has been taken by inverse condemnation, which is sufficient to defeat the City’s motion for
12 judgment on the pleadings.

13
14 **D. The City’s Argument that the Landowners have No Vested Property Right**

15 The City contends that the Landowners do not have a vested right to use their property for
16 anything other than open space or a golf course. As set forth above, the Landowners have alleged
17 facts and provided documents sufficient to show they have a property interest in and a vested right
18 to use the 35 Acre Property for a residential use, which is sufficient to defeat the City’s motion for
19 judgment on the pleadings.

20 **E. The City’s Argument that the Landowners’ Taking Claims are Not Ripe**

21 The City contends that the Landowners’s taking claims are not ripe, because they have not
22 filed a major modification application, which the City contends is a precondition to any development
23 on the Landowners’ Property. This City argument is closely related to the City’s vested rights
24 argument as the City also contends the Landowners have no vested right to use their property for
25 anything other than a golf course until such time as they submit a major modification application.
26 The Landowners have alleged that a ripeness/exhaustion of administrative remedies analysis does
27 not apply to the four inverse condemnation claims for which the Landowners’ are requesting a
28 judicial finding of a taking - regulatory per se, non-regulatory/de facto, categorical, or temporary

1 taking of property⁴ and, therefore, the City's ripeness/exhaustion of administrative remedies
2 argument has no application to these four inverse condemnation claims. The Landowners further
3 allege that the ripeness analysis only applies to the Landowners' inverse condemnation Penn Central
4 Regulatory Takings Claim and, if the Court applies the ripeness analysis, all claims are ripe,⁵
5 including the Penn Central claim.

6
7 **1. The Landowners Allege Facts Sufficient to Show They Made At Least
8 One Meaningful Application and It Would be Futile to Seek Any
9 Further Approvals From the City.**

10 "While a landowner must give a land-use authority an opportunity to exercise its discretion,
11 once [...] the permissible uses of the property are known to a reasonable degree of certainty, a
12 [regulatory] taking claim [Penn Central claim] is likely to have ripened."⁶ The purpose of this rule
13 is to understand what the land use authority will and will not allow to be developed on the property
14 at issue. But, "[g]overnment authorities, of course, may not burden property by imposition of
15 repetitive or unfair land-use procedures in order to avoid a final decision."⁷ "[W]hen exhausting
16 available remedies, including the filing of a land-use permit application, is futile, a matter is deemed
17 ripe for review."⁸

18 ⁴ Hsu v. County of Clark, supra, ("[d]ue to the "per se" nature of this taking, we further
19 conclude that the landowners were not required to apply for a variance or otherwise exhaust their
20 administrative remedies prior to bringing suit." *Id.*, at 732); McCarran Int'l Airport v. Sisolak, 122
21 Nev. 645, 137 P.3d 1110 (2006) ("Sisolak was not required to exhaust administrative remedies or
22 obtain a final decision from the Clark County Commission by applying for a variance before
23 bringing his inverse condemnation action based on a regulatory per se taking of his private property."
24 *Id.* at 664).

25 ⁵ The Nevada Supreme Court has stated regulatory takings claims are generally "not
26 ripe until the government entity charged with implementing the regulations has reached a final
27 decision regarding the application of the regulations to the property at issue." State v. Eighth Jud.
28 Dist. Ct., 131 Nev. Adv. Op. 41 (2015) (*quoting Williamson County Reg'l Planning Comm'n v.*
Hamilton Bank of Johnson City, 473 U.S. 172, 186, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985)).

⁶ Palazzolo v. Rhode Island, 533 U.S. 606, 620, (2001) ("The central question in
resolving the ripeness issue, under *Williamson County* and other relevant decisions, is whether
petitioner obtained a final decision from the Council determining the permitted use for the land." *Id.*,
at 618.).

⁷ Palazzolo, at 621. *Citing to Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526
U.S. 687, 698, 119 S.Ct. 1624, 143 L.Ed. 2d 882 (1999).

⁸ State v. Eighth Judicial Dist. Court of Nev., 351 P.3d 736, 742 (Nev. 2015). For
example, in Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624,

1 In City of Monterey v. Del Monte Dunes 526 U.S. 687, 119 S.Ct. 1624 (1999) the United
2 States Supreme Court held that a taking claim was ripe where the City of Monterey required 19
3 changes to a development application and then asked the landowner to make even more changes.
4 Finally, the landowner filed inverse condemnation claims. Similar to the City argument in this case,
5 the City of Monterey asserted the landowners' inverse condemnation claims were not ripe for review.
6 The City of Monterey asserted that the City's decision was not final and the landowners' claim was
7 not ripe, because, if the landowner had worked longer with the City of Monterey or filed a different
8 type of application with the City of Monterey, the City of Monterey may have approved development
9 on the landowner's property. The United States Supreme Court approved the Ninth Circuit opinion
10 as follows: "to require additional proposals would implicate the concerns about repetitive and unfair
11 procedures" and "the city's decision was sufficiently final to render [the landowner's] claim ripe for
12 review." Del Monte Dunes, at 698. The United States Supreme Court re-affirmed this rule in the
13 Palazzolo v. Rhode Island, 533 U.S. 606, 121 S.Ct. 2448 (2001) holding the "Ripeness Doctrine does
14 not require a landowner to submit applications for their own sake. Petitioner is required to explore
15 development opportunities on his upland parcel only if there is uncertainty as to the land's permitted
16 uses." *Id* at 622.

17 As set forth above, the Landowners have alleged facts and provided documents sufficient to
18 show they submitted the necessary applications to develop the 35 Acre Property, that the City denied
19 every attempt at development, and that it would be futile to seek any further development
20

21
22 143 L.Ed. 2d 882 (1999) "[a]fter five years, five formal decisions, and 19 different site plans,
23 [internal citation omitted] Del Monte Dunes decided the city would not permit development of the
24 property under any circumstances." *Id.*, at 698. "After reviewing at some length the history of
25 attempts to develop the property, the court found that to require additional proposals would implicate
26 the concerns about repetitive and unfair procedures expressed in MacDonld, Commer & Frates v.
27 Yolo County, 477 U.S. 340, 350 n. 7, (1986) [*citing* Stevens concurring in judgment from
28 Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172 at 205-206, 105 S.Ct. 3108 at 3126
(1985)] and that the city's decision was sufficiently final to render Del Monte Dunes' claim ripe for
review." Del Monte Dunes, at 698. The "Ripeness Doctrine does not require a landowner to submit
applications for their own sake. Petitioner is required to explore development opportunities on his
upland parcel only if there is uncertainty as to the land's permitted uses." Palazzolo v. Rhode Island,
at 622.

1 applications from the City, which is sufficient to defeat the City's motion for judgment on the
2 pleadings.

3 **2. The Landowners Allege Facts Sufficient to Show That a Major**
4 **Modification Application Was Not Required To Ripen Their Inverse**
5 **Condemnation Claims**

6 The Landowners further allege that no major modification of the Peccole Concept Plan was
7 necessary to develop the 35 Acre Property, because the Landowners were seeking to develop the 35
8 Acre Property residentially and the land use designation on the Peccole Concept Plan for the 35 Acre
9 Property is a residential use. *Exhibit 107*. Therefore, there was no need to "modify" the Peccole
10 Concept Plan to develop the 35 Acre Property residentially.

11 The Landowners have also alleged that the City has never required a major modification
12 application to develop properties included in the area of the Peccole Concept Plan. The Landowners
13 allege the City has approved development for approximately 26 projects and over 1,000 units in the
14 area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties
15 that were developed with a use contrary to the Peccole Concept Plan and not once did the City
16 require a major modification application.

17 Here, the Landowners have alleged facts and provided documents sufficient to show that a
18 major modification was not required to ripen their inverse condemnation claims, which is sufficient
19 to defeat the City's motion for judgment on the pleadings.

20 **3. The Landowners Allege Facts Sufficient to Show That, Even if a Major**
21 **Modification Application was Necessary to Ripen Their Inverse**
22 **Condemnation Claims, They Met this Requirement**

23 Specific to the City's assertion that a major modification application is necessary to ripen the
24 Landowners' inverse condemnation claims, the Landowners allege that even if a major modification
25 application is required, the MDA the Landowners worked on with the City for over two years,
26 referenced above, included and far exceeded all of the requirements of a major modification
27 application. *Exhibit 28*. Moreover, the Landowners have cited to a statement by the City Attorney
28 wherein he stated on the City Council record as follows: "Let me state something for the record just
to make sure we're absolutely accurate on this. There was a request for a major modification that

1 accompanied the development agreement [MDA], that was voted down by Council. So that the
2 modification, major mod was also voted down.” Exhibit 61, City Council Meeting of January 3,
3 2018 Verbatim Transcript – Item 78, Page 80 of 83, lines 2353-2361. Additionally, the Landowners
4 allege that they also submitted an application referred to as a General Plan Amendment (GPA),
5 which includes and far exceeds the requirements of the City’s major modification application and
6 the City denied the GPA as part of its denial of any use of the 35 Acre Property. Exhibit 5.

7 Here, the Landowners have alleged facts and provided documents sufficient to show that,
8 even if a major modification application is required to ripen their inverse condemnation claims, they
9 met these requirements, which is sufficient to defeat the City’s motion for judgment on the
10 pleadings.

11 **F. The City’s Argument that the Statute of Limitation has Run on the Landowners**
12 **Inverse Condemnation Claims**

13 The City contends that, if there was a taking, it resulted from the City action related to
14 adoption of the City’s Master Plan and the City’s Master Plan was adopted more than 15 years ago
15 and, therefore, the statute of limitations has run on the Landowners’ inverse condemnation claims.
16 The Landowners contend that a City Plan cannot result in a taking, that the City must take action to
17 implement the Plan on a specific property to make the City liable for a taking.

18 The statute of limitations for an inverse condemnation action in Nevada is 15 years. White
19 Pine Limber v. City of Reno, 106 Nev. 778 (1990). Nevada law holds that merely writing a land use
20 designation over a parcel of property on a City land use plan is “insufficient to constitute a taking
21 for which an inverse condemnation action will lie.” Sproul Homes of Nev. v. State ex rel. Dept of
22 Highways, 96 Nev. 441, 443 (1980) *citing to* Selby Realty Co. v. City of San Buenaventura, 169
23 Cal.Rptr. 799, 514 P.2d 111, 116 (1973) (Inverse claims could not be maintained from a City’s
24 “General Plan” showing public use of private land). *See also* State v. Eighth Jud. Dist. Ct., 131 Nev.
25 Adv. Op. 41, 351 P.3d 736 (2015) (City’s amendment to its master plan to allow for a road widening
26 project on private land did not amount to a regulatory taking). This rule and its policy are set forth
27 by the Nevada Supreme Court as follows:

28 If a governmental entity and its responsible officials were held subject to a claim for
inverse condemnation merely because a parcel of land was designated for potential

1 public use on one of the several authorized plans, the process of community planning
2 would either grind to a halt, or deteriorate to publication of vacuous generalizations
3 regarding the future use of land. We indulge in no hyperbole to suggest that if every
4 landowner whose property might be affected at some vague and distant future time
5 by any of these legislatively permissible plans was entitled to bring an action in
6 declaratory relief to obtain a judicial declaration as to the validity and potential effect
7 of the plan upon his land, the courts of this state would be inundated with futile
8 litigation. Sproul Homes, supra, at 444.

9 Accordingly, the date that would trigger the statute of limitations would not be the master plan or
10 necessarily the designation of the Property as PR-OS, but it will be the acts of the City of Las Vegas
11 / City Council that would control.
12

13 Here, the Landowners have alleged facts and provided documents sufficient to show their
14 property has been taken by inverse condemnation based upon the acts of the City of Las Vegas / City
15 Council that occurred less than 15 years ago. Therefore, the City's statute of limitations argument
16 is denied.
17

18 **G. The City's Argument that the Court Should Apply Its Holding in the Petition
19 For Judicial Review to the Landowners Inverse Condemnation Claims**

20 The City contends that the Court's holding in the Landowners' petition for judicial review
21 should control in this inverse condemnation action. However, both the facts and the law are different
22 between the petition for judicial review and the inverse condemnation claims. The City itself made
23 this argument when it moved to have the Landowners' inverse condemnation claims dismissed from
24 the petition for judicial review earlier in this litigation. Calling them "two disparate sets of claims"
25 the City argued that:
26

27 "The procedural and structural limitations imposed by petitions for judicial review
28 and complaints, however, are such that they cannot afford either party ample
opportunity to litigate, in a single lawsuit, all claims arising from the transaction. For
instance, Petitioner's claim for judicial review will be "limited to the record below,"
and "[t]he central inquiry is whether substantial evidence supports the agency's
decision." United Exposition Service Company v. State Industrial Insurance System,
109 Nev. 421,424, 851 P.2d 423,425 (1993). On the other hand, Petitioner's inverse
condemnation claims initiate a new a civil action requiring discovery (not limited to
the record below), and the central inquiry is whether Petitioner (as plaintiff) can
establish its claims by a preponderance of the evidence. Thus, allowing Petitioner's
four "alternative" inverse condemnation claims (i.e., the complaint) to remain on the
Petition will create an impractical situation for the Court and parties, and may allow
Petitioner to confuse the record for judicial review by attempting to augment it with
discovery obtained in the inverse condemnation action." (October 30, 2017, City of
Las Vegas Motion to Dismiss at 8:2)

1 The evidence and burden of proof are significantly different in a petition for judicial review
2 than in civil litigation. And, as further recognized by the City, there will be additional facts in the
3 inverse condemnation case that must be considered which were not permitted to be considered in
4 the petition for judicial review. This is true, as only City Action #1 above was considered in the
5 petition for judicial review, not City Actions #2-11. And, as stated above, this Court must consider
6 all city actions in the aggregate in this inverse condemnation proceeding.

7
8 As an example, if the Court determined in a petition for judicial review that there was
9 substantial evidence in the record to support the findings of a workers' compensation hearing
10 officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the
11 alleged injured individual, as there are different fact, different legal standards and different burdens
12 of proof.

13 Furthermore, the law is also very different in an inverse condemnation case than in a petition
14 for judicial review. Under inverse condemnation law, if the City exercises discretion to render a
15 property valueless or useless, there is a taking. Tien Fu Hsu v. County of Clark, 173 P.3d 724 (Nev.
16 2007), McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (Nev. 2006), City of
17 Monterey v. Del Monte Dunes, 526 U.S. 687, 119 S.Ct. 1624 (1999), Lucas v. South Carolina
18 Coastal Council, 505 U.S. 1003 (1992). In an inverse condemnation case, every landowner in the
19 state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken,
20 just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all
21 government action and the evidence considered is not limited to the record before the City Council.
22 Merkur v. City of Detroit, 680 N.W.2d 485 (Mich.Ct.App. 2004), State v. Eighth Jud. Dist. Ct., 131
23 Nev. Adv. Op. 41, 351 P.3d 736 (2015), Arkansas Game & Fish Comm's v. United States, 568 U.S.
24 23, 133 S.Ct. 511 (2012). On the other hand, in petitions for judicial review, the City has discretion
25 to deny a land use application as long as valid zoning laws are applied, there is no vested right to
26 have a land use application granted, and the record is limited to the record before the City Council.
27 Stratosphere Gaming Corp., v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004).

1 The Court has previously entered a Nunc Pro Tunc Order in this case recognizing the petition
2 for judicial review matter is different from the inverse condemnation matter:

3 “this Court had no intention of making any findings, conclusions of law or orders
4 regarding the Landowners' severed inverse condemnation claims as a part of the
5 Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL").
6 Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions
and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed
nunc pro tunc.” (Order filed February 6, 2019).

7 For these reasons, it would be improper to apply the Court's ruling from the Landowners'
8 petition for judicial review to the Landowners' inverse condemnation claims.

9
10 **H. Conclusion on The City's Motion for Judgment on the Pleadings on Developer's
Inverse Condemnation Claims**

11 The City moved the Court for judgment on the pleadings pursuant to NRCP 12(c). The rule
12 is designed to provide a means of disposing of cases when material facts are not in dispute, and a
13 judgment on the merits can be achieved by focusing on the contents of the pleadings. It has utility
14 only when all material allegations of facts are admitted in the pleadings and only questions of law
15 remain.

16 This Court reviewed extensive briefings and entertained three and a half to four hours of oral
17 arguments which contained factual disputes and argument throughout the entire hearing. The Court
18 cannot say as a matter of law that the Landowners have no case, there are still factual disputes that
19 must be resolved. Moreover, the court finds that this case can be heard on the merits as that policy
20 is provided in Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

21
22 Accordingly, IT IS HEREBY ORDERED that The City's Motion for Judgment on the
23 Pleadings on Developer's Inverse Condemnation Claims is **DENIED**.

24 **III. The Landowners Rule 56 Motion for Summary Judgment on Liability for the
Landowners Inverse Condemnation Claims**

25 The Landowners countermoved this Court for summary judgment on the Landowners'
26 inverse condemnation claims. Discovery has not commenced nor as of the date of the hearing have
27 the parties had a NRCP 16.1 case conference. The Court finds it would be error to consider a Rule
28 56 motion at this time.

1 Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion for Judicial
2 Determination of Liability on the Landowners' Inverse Condemnation Claims is **DENIED** without
3 prejudice.

4 **IT IS SO ORDERED.**

5 DATED this ~~6th~~ day of April, 2019. *CB*
6 *May 14,*
7

8 
9 DISTRICT COURT JUDGE

10 Respectfully Submitted By:

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

12 By: 

13 Kermit L. Waters, ESQ., NBN 2571
14 James Jack Leavitt, ESQ., NBN 6032
15 Michael A. Schneider, ESQ., NBN 8887
16 Autumn Waters, ESQ., NBN 8917
17 704 S. 9th Street
18 Las Vegas, NV 89101
19 *Attorneys for Plaintiff Landowners*
20
21
22
23
24
25
26
27
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A-17-758528-J

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

May 15, 2019

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

**May 15, 2019 3:25 PM Minute Order re: Plaintiff's Opposition to the
City of Las Vegas' Motion to Stay Proceedings
Pending Resolution of Writ Petition to the
Nevada Supreme Court on Order Shortening
Time AND Countermotion for Nunc Pro Tunc
Order**

HEARD BY: Williams, Timothy C.

COURTROOM: Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

- After a review and consideration of the record, the points and authorities on file herein, and oral argument of counsel, the Court determined as follows:

The Court feels the record is clear as to its intent pertaining to the denial of Petition for Judicial Review. The Court did not intend for that decision to impact the property rights of Plaintiff as it relates to their claims set forth in the severed action seeking damages for inverse condemnation and improper taking by the government.

Notwithstanding, the Court was required to make specific findings of fact and conclusions of law when addressing the Petition for Judicial Review. As a result, Plaintiff s Countermotion seeking a Nunc Pro Tunc clarification shall be DENIED. Counsel for Defendant shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: This Minute Order has been electronically served to the parties through Odyssey eFile.

PRINT DATE: 05/15/2019

Page 1 of 1

Minutes Date: May 15, 2019

PA0902