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

PETITION FOR EN BANC RECONSIDERATION

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. The City of Las Vegas is a political subdivision of the State of Nevada and has no corporate affiliation.
2. The City is represented in the district court and this Court by the Las Vegas City Attorney's Office, McDonald Carano LLP and Leonard Law, PC.

DATED this 6th day of August, 2019.

BY: /s/ Debbie Leonard

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INTRODUCTION

En banc reconsideration is necessary to secure and maintain uniformity of the Court's decisions and to prevent serious precedential, constitutional and public policy consequences for land use decision makers statewide. The panel's Order denying the City's Writ Petition ("the Order") failed to consider controlling authority that required dismissal of the Developer's First Amended Complaint ("FAC") as a matter of law where the district court concluded that: (1) the Developer lacks vested rights to have its redevelopment applications approved and (2) the City Council properly exercised its discretion to deny those applications. The panel's Order disrupts a long line of precedent that should have put an end to this case at the pleadings stage and erroneously exposes municipalities, counties and other agencies that make discretionary land use decisions to takings liability when they have appropriately exercised the discretion afforded them under NRS Chapter 278.

The Developer cannot assert as "taken" a property interest it never had. *Stratosphere Gaming* and similar cases make clear that the Developer has no vested rights to have discretionary redevelopment applications approved and therefore cannot state a claim for a taking based on the denial of one development proposal. Although the district court correctly concluded that the Developer lacked such vested rights, it inexplicably allowed the Developer to proceed with its inverse

condemnation claims. In denying writ relief to the City, the panel acted contrary to the Court's dispositive case law.

Likewise, the panel's Order disregarded the jurisdictional bar to the Developer's inverse condemnation claims. The district court concluded that the decision of the Honorable Jim Crockett, on appeal in Case No. 75481, has preclusive effect on this case. Judge Crockett's decision requires the Developer to obtain approval of a Major Modification to the Peccole Ranch Master Development Plan before it can redevelop the Badlands golf course. The Developer did not submit a Major Modification application with the redevelopment applications at issue in this case. As a result, the Developer's inverse condemnation claims were not ripe, and the district court therefore lacked jurisdiction. The Developer's allegations of futility and exhaustion cannot circumvent the Court's controlling law on issue preclusion.

The panel also misapprehended which complaint was the operative pleading at issue in the Writ Petition, thereby allowing the Developer to engage in claim splitting, in violation of the Court's long-standing jurisprudence. The City's motion for judgment on the pleadings was directed at the First Amended Complaint ("FAC"). The only action the FAC alleged was a taking was the City Council's June 21, 2017 Decision to deny the Developer's 35-Acre Applications. 1(28-44). The Developer has two other pending lawsuits (Case Nos. A-18-775804-J and A-18-780184-C) that allege takings claims based on actions by the City that post-dated

June 21, 2017. 3(422-482). To consider them in this case constitutes improper claim splitting prohibited by the Court's controlling authorities.

These are purely legal issues that have great significance for public entities across the state. Every month, the City and other municipalities, counties, and planning agencies make discretionary decisions to grant or deny specific land use applications under NRS Chapter 278. The panel's Order puts every one of those decisions at risk of prompting liability for inverse condemnation, even when they, as here, constituted a proper exercise of discretion. Because there is no vested right to have a discretionary development application approved, dismissal of the Developer's takings claims was required.

Full court review and reversal is warranted to rectify the panel's disregard of controlling authority and to prevent the deleterious public policy and fiscal consequences to land use decision makers throughout the State. Also, because there are numerous pending cases related to the Developer's efforts to redevelop the Badlands golf course that raise these issues, judicial economy would be best served if the City's Writ Petition were granted. The City therefore respectfully requests en banc reconsideration.

ARGUMENT

A. Legal Standard for En Banc Reconsideration

A petition for en banc reconsideration is appropriate when: (1) reconsideration by the full court is necessary to secure or maintain uniformity of decisions of the Supreme Court or Court of Appeals, or (2) the proceeding involves a substantial precedential, constitutional or public policy issue. NRAP 40A(a). Both of these bases for en banc reconsideration apply here.

B. The Panel Failed to Consider Controlling Authority That Mandates, As A Matter Of Law, Dismissal Of The Developer's Inverse Condemnation Claims

1. The Developer Lacks The Requisite Vested Rights To Trigger The Constitutional Claims It Alleges

In denying the City's Writ Petition, the panel did not address the binding authority of *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995) and *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 527-28, 96 P.3d 756, 759-60 (2004), which confirm that the Developer has no vested rights to have its redevelopment applications approved and, therefore, no property interest that was "taken" by the denial of those applications. "In order for rights in a proposed development project to vest, zoning or use approvals ***must not be subject to further governmental discretionary action affecting project commencement***, and the developer must prove considerable reliance on the approvals granted." *Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112 (emphasis added); *see also Stratosphere*

Gaming, 120 Nev. at 527-28, 96 P.3d at 759-60 (holding that, because the City's site development review process under Title 19.18.050 involved discretionary action by City Council, the project proponent had no vested right to construct). These authorities alone required dismissal of the Developer's inverse condemnation claims.

The RPD-7 zoning designation on the golf course does not create a vested right because "compatible zoning does not, ipso facto, divest a municipal government of the right to deny certain uses based upon considerations of public interest." *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *see also Nevada Contractors v. Washoe Cty.*, 106 Nev. 310, 311, 792 P.2d 31, 31-32 (1990) (affirming county commission's denial of a special use permit even though property was zoned for the use). Likewise, contrary to the panel's conclusion (at p. 2), the Developer's mere assertion of a "property interest" is not sufficient to give rise to a taking because the property interest that is alleged to be taken must be vested. *See Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994); *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). The Developer has no property interest in the approval of discretionary redevelopment applications. *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112.

By disregarding these controlling authorities, the panel incorrectly accepted as dispositive the district court's explanation "that it was unable to conclude, as a

matter of law and at the pleading stage, that real party in interest could not prevail on any of its inverse condemnation claims." Order Denying Writ Petition at 1-2. Yet the *Am. W. Dev.*, *Stratosphere Gaming*, *Tighe* and *Nevada Contractors* authorities **required** the panel to conclude, as a matter of law, that the Developer could not prevail on its inverse condemnation claims because the property interest alleged to be taken cannot be subject to discretionary approval, as is the case here. *See Landgraf*, 511 U.S. at 266. This is a threshold legal matter that should have disposed of the case at the pleadings stage. *See* NRCP 12(c).

Only a "legitimate claim of entitlement" under state law that derives from "existing rules or understandings" can give rise to a taking claim. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). This Court's precedent is clear that for a property interest to vest under Nevada law, it must be "fixed and established." *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949); *see also Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev. 813, 824, 313 P.3d 849, 856 (2013) (citing *Filippini* for the proposition that "the sale of the secured property is the event that vests the right to deficiency…[because that is when] the amount of a deficiency ***is crystalized***.…") (emphasis added).

In other words, the "existing rule" under Nevada law is that a developer does not have a vested right in the approval of a land use application that is subject to discretionary decision-making since it could be denied and, therefore, is neither

"fixed" nor "established." *Filippini*, 66 Nev. at 22, 202 P.2d at 537; *see Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112. Because the Developer does not have a property interest in the approval of redevelopment project, the FAC does not allege a property interest that has been taken. *See Buzz Stew, LLC v. City of N. Las Vegas,* 131 Nev. Adv. Op. 1, 341 P.3d 646, 649 (2015) (requiring "a legitimate interest" in the property alleged to be taken); *Fritz v. Washoe Cty.,* 132 Nev. Adv. Op. 57, 376 P.3d 794, 796 (2016) (requiring the "taking" to be of an existing property interest).

The Court's precedents regarding vested rights align with federal takings jurisprudence, which hold that constitutional guarantees are only triggered by a vested right. *Landgraf*, 511 U.S. at 266. "To determine whether a property interest has vested for Takings Clause purposes, 'the relevant inquiry is the certainty of one's expectation in the property interest at issue.'" *Bowers v. Whitman*, 671 F.3d 905, 913 (9th Cir. 2012); *quoting Engquist v. Oregon Dep't of Agric.*, 478 F.3d 985, 1002 (9th Cir. 2007), *aff'd.* 553 U.S. 591 (2008); *see also Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 715 (2010) (noting a property right must be "established" for a taking to occur). If a property interest is "contingent and uncertain," "speculative," "discretionary," "inchoate," or "does not provide a certain expectation," then it cannot be deemed a vested right that gives rise to a taking. *Bowers*, 671 F.3d at 913, *quoting Engquist*, 478 F.3d at 1002-03; *accord Angelotti Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1081 (9th Cir. 2015). For that reason,

there is no constitutionally protected property interest in the approval of a discretionary permit application. *See*, *e.g.*, *Hermosa on Metropole, LLC v. City of Avalon*, 659 F. App'x 409, 411 (9th Cir. 2016); *Charles Wiper, Inc. v. City of Eugene*, 486 F. App'x 630, 631 (9th Cir. 2012); *Dyson v. City of Calumet City*, 306 F. Supp. 3d 1028, 1041 (N.D. Ill. 2018); *Zimmerman v. Bd. of Cty. Commr's of Wabaunsee Cty.*, 264 P.3d 989, 1002 (Kansas 2011); *Belle Co., LLC v. State ex rel. Dep't of Envtl. Quality*, 25 So. 3d 847, 853-857 (La. Ct. App. 2009).

In light of these authorities, dismissal of the inverse condemnation claims was required. *See Roth*, 408 U.S. at 577. Because the existence of a vested right is a question of law, a plaintiff cannot plead its way around this legal barrier to its claims simply by saying the words "vested right" or asserting a mere "property interest" in its First Amended Complaint. *CMC of Nevada, Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983); *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (holding that legal conclusions in a complaint are not entitled to the assumption of truth). The City respectfully submits that the panel disregarded these authorities regarding pleading requirements as well.

2. The Panel Failed to Consider The District Court's Own Legal Conclusion That The Developer Lacked Vested Rights

In denying the City's Writ Petition, the panel also did not consider the district court's own conclusions of law, which should have applied to all aspects of the case. In denying the Developer's petition for judicial review, the district court concluded:

> A zoning designation does not give the developer a vested right to have its development applications approved. "In order for rights in a proposed development project to vest, zoning or use approvals ***must not be subject to further governmental discretionary action affecting project commencement***, and the developer must prove considerable reliance on the approvals granted." *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995) (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at 759–60 (holding that because City's site development review process under Title 19.18.050 involved discretionary action by Council, the project proponent had no vested right to construct).
>
> "[C]ompatible zoning does not, ipso facto, divest a municipal government of the right to deny certain uses based upon considerations of public interest." *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *see Nevada Contractors v. Washoe Cty.*, 106 Nev. 310, 311, 792 P.2d 31, 31-32 (1990) (affirming county commission's denial of a special use permit even though property was zoned for the use).
>
> The four Applications submitted to the Council for a general plan amendment, tentative map, site development review and waiver were all subject to the Council's discretionary decision making, no matter the zoning designation. *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112; *Cty. of Clark v. Doumani*, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998), *superseded by statute on other grounds.*; *Bd. of Cty. Comm'rs of Clark Cty. v. CMC of Nevada, Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983).
>
> The Court rejects the Developer's attempt to distinguish the *Stratosphere* case, which concluded that the very same decision-

> making process at issue here was squarely within the Council's discretion, no matter that the property was zoned for the proposed use. *Id.* at 527; 96 P.3d at 759.
>
> * * *
>
> … NRS 278.349(e) does not confer any vested rights.

1(219-222). In response to the Developer's motion for reconsideration, the district court reiterated that "[t]his Court correctly concluded that the Developer does not have vested rights to have the 35-Acre Applications approved…." 5(863).

Based on these conclusions of law, therefore, there are no "disputed factual or legal conclusions" as to the nonexistence of vested rights, as the panel erroneously concluded. Order at p.2. The law does not change from one legal proceeding to another. *See*, *e.g.*, *McNabney v. McNabney*, 105 Nev. 652, 659, 782 P.2d 1291, 1295 (1989) (explaining the concept of a "legal rule"); *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. Adv. Op. 28, 321 P.3d 912, 916 (2014) (setting forth requirements for issue preclusion); *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (same). The law also must be uniformly applied throughout a legal proceeding, even where, as here, a case involves both a petition for judicial review and original claims for inverse condemnation. *See Britton v. City of North Las Vegas*, 106 Nev. 690, 693, 799 P.2d 568, 570 (1990) (describing doctrine of administrative res judicata). By allowing the Developer to circumvent dispositive principles of law simply by asserting its inverse condemnation claims in

the same case as its petition for judicial review, the panel acted inconsistently with the Court's decisions.

C. The Panel Allowed The Developer To Engage In Claim Splitting By Considering Matters Outside The Operative Complaint That Are Being Litigated Elsewhere

The panel's Order also disregarded the Court's precedent by considering matters that the Developer is litigating in other cases and that were not alleged in the First Amended Complaint. "As a general proposition, a single cause of action may not be split and separate actions maintained." *Smith v. Hutchins*, 93 Nev. 431, 432, 566 P.2d 1136, 1137 (1977) citing *Reno Club, Inc. v. Harrah*, 70 Nev. 125, 260 P.2d 304 (1953)) "It would be contrary to fundamental judicial procedure to permit two actions to remain pending between the same parties upon the identical cause." *Fitzharris v. Phillips*, 74 Nev. 371, 376, 333 P.2d 721, 724 (1958), disapproved on other grounds by *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000). A main purpose behind the rule preventing claim splitting is "to protect the defendant from being harassed by repetitive actions based on the same claim." Restatement (Second) Judgments, § 26 cmt. a; *accord* 1 Am. Jur. 2d Actions § 99.

Here, the operative complaint on which the City's motion for judgment on the pleadings was based (the First Amended Complaint) alleged only that the City Council's June 21, 2017 Decision to deny the Developer's four discretionary applications to redevelop the 35-Acre Property constituted a taking. 1(28-44).

"[E]vents occurring after the petition for judicial review time frame," which the panel erroneously deemed acceptable for the district court to consider (Order at p. 2), are being litigated in other cases, were not part of the operative complaint and should not have been considered by the panel. *Compare* 1(28-44) *to* 3(422-482) (Complaints in Case Nos. A-18-775804-J and A-18-780184-C).

Similarly, the panel failed to follow the Court's jurisprudence regarding the scope of a motion for judgment on the pleadings. As with a motion to dismiss, when deciding a motion for judgment on the pleadings, the district court could not consider matters outside the pleadings. *See* NRCP 12(c). "A motion under NRCP 12(c) 'is designed to provide a means of disposing of cases when material facts are not in dispute and a judgment on the merits can be achieved ***by focusing on the content of the pleadings***.'" *Duff v. Lewis*, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998) (emphasis added), *quoting Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987).

The panel's conclusion that the district court could consider "events occurring after the petition for judicial review time frame" disregarded the limited scope of the allegations in the First Amended Complaint, which only alleged a taking based on the City Council's June 21, 2017 Decision. 1(28-44). And as to whether the City Council's proper exercise of discretion under NRS Chapter 278 could constitute a taking, there are no "disputed factual and legal conclusions at issue," as the panel

erroneously concluded (at p. 2), because the Developer had no right to have the redevelopment applications approved. *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112. Since the district court already entered legal conclusions that barred the Developer's claims as a matter of law, nothing of relevance to the City's motion for judgment on the pleadings was in dispute. 1(219-223).

D. The Panel Acted Contrary to Controlling Authority By Disregarding The Preclusive Effect Of Judge Crockett's Decision On The District Court's Subject Matter Jurisdiction

The panel's Order disregarded the basic jurisdictional requirements for the district court set forth in Nevada's constitution. If a party's claims are not ripe for review, they are not justiciable, and a court lacks subject matter jurisdiction to review them. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010); *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988). And where a district court lacks subject matter jurisdiction, dismissal is required. *Rohlfing v. Second Jud. Dist. Ct.*, 106 Nev. 902, 906, 803 P.2d 659, 662 (1990) (citing Nev. Const. art. 6, § 6; NRS 3.220); *see Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

To resolve a taking claim, a court must know "the extent of permitted development on the land in question." *Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001), *quoting MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 351 (1986)). The decisions of the U.S. Supreme Court regarding ripeness of inverse

condemnation claims "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it." *MacDonald, Sommer*, 477 U.S. at 351. If a developer withdraws an application, it fails to meet the threshold jurisdictional requirement of a taking claim. *Zilber v. Town of Moraga*, 692 F. Supp. 1195, 1199 (N.D. Cal. 1988); *see also Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1455 (9th Cir. 1987), *amended*, 830 F.2d 968 (9th Cir. 1987) (holding that trial court erred by reaching merits of unripe takings claims because "[t]he application made by the developer was not meaningful since it was abandoned at an early stage in the application process.").

Judge Crockett's Decision mandated that the Developer obtain approval of a major modification of the Master Development Plan before its claims could ripen. Judge Williams (1) found that the Developer withdrew the only Major Mod Application it filed and (2) concluded that Judge Crockett's Decision had preclusive effect in this case. 1(77-90); 1(208-209); 1(223-225). In light of this finding and conclusion, the inverse condemnation claims were unripe, as a matter of law. *See Zilber*, 692 F. Supp. at 1199; *Kinzli*, 818 F.2d at 1455. The panel disregarded this jurisdictional bar when it incorrectly looked at "alleged facts indicating that exhaustion was met or futile." Order at p.2. Nothing alleged by the Developer can

overcome the preclusive effect of Judge Crockett's Decision. *See Rohlfing*, 106 Nev. at 906, 803 P.2d at 662.

E. Writ Relief Is Appropriate Because This Case Presents Significant Issues Of Law And Involves The District Court's Improper Exercise of Jurisdiction

Although the City agrees with the panel that, ***generally***, the Court does not consider writ petitions that challenge orders denying motions to dismiss, this case presents the precise circumstances in which the exception to this rule applies. The Court will "entertain a writ petition challenging the denial of a motion to dismiss … where … the issue is not fact-bound and involves an unsettled and potentially significant, recurring question of law." *Buckwalter v. Dist. Ct.*, 126 Nev. 200, 201, 234 P.3d 920, 921 (2010). There are numerous examples where the Court has granted writ relief to address a district court's erroneous denial of a motion to dismiss. *See Fulbright & Jaworski LLP v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 5, 342 P.3d 997, 1005-06 (2015) (granting petition for writ of prohibition to vacate district court order denying motion to dismiss); *Smith v. Eighth Jud. Dist. Ct.*, 113 Nev. 1343, 1344-45, 1348, 950 P.2d 280, 281, 283 (1997) (issuing writ of mandamus compelling the district court to vacate its order denying a motion to dismiss). Moreover, the Court has not hesitated to issue a writ of prohibition when a district court acts without jurisdiction. *See Gaming Control Bd. v. Breen*, 99 Nev. 320, 324, 661 P.2d 1309, 1311 (1983); *Gray Line Tours v. Eighth Jud. Dist. Ct.*, 99 Nev. 124,

126, 659 P.2d 304, 305 (1983). The panel's Order did not consider these controlling authorities.

This case falls squarely within the exception stated in *Buckwalter*, having profound precedential, constitutional, fiscal and public policy implications for land use decision makers statewide. Every month, the Las Vegas City Council, Planning Commission and numerous other authorities throughout the State consider and decide hundreds of discretionary land use applications. Until the district court's order, such discretionary decisions were plainly protected from inverse condemnation claims under the authority of *Stratosphere* and similar precedents, which hold that a developer does not have vested rights to obtain land use approvals that are subject to discretionary governmental decision-making. *See Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at 759–60; *Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112. This is consistent with federal takings law. *See Roth*, 408 U.S. at 577; *Landgraf*, 511 U.S. at 266. Where a writ petition "raises an important issue regarding Nevada's takings laws," the Court has considered and granted the petition. *NDOT v. Eighth Judicial Dist. Court (Ad America)*, 131 Nev. 411, 351 P.3d 736, 740 (2015).

If the district court's conclusion that the City properly exercised its discretion to deny the 35-Acre Applications provides no assurances that the City will be protected against liability for inverse condemnation, the City Council, Planning Commission and other decision makers statewide will be chilled from exercising

their discretion to deny land use proposals, when warranted, for fear of the potential impact on the public fisc. The drain on government resources just to defend this case is tremendous, and under *Stratosphere* and *Am. W. Dev.*, it is not something that public entities in this State should have to endure. This case presents pure issues of law that have great statewide public importance and that are already addressed in the Court's jurisprudence. En banc reconsideration to grant the City's writ petition is warranted under these circumstances.

Moreover, judicial economy will be advanced by the writ relief sought by the City. "[T]he primary standard" in the Court's determination of whether to entertain a writ petition is "the interests of judicial economy." *Smith*, 113 Nev. at 1345, 1348, 950 P.2d at 281. Particularly when a case is in "the early stages of litigation," "policies of judicial administration" warrant that the Court consider a writ petition. *Int'l Game Tech. v. Sec. Jud. Dist. Ct.*, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008).

Here, the case is at the pleadings stage, which militates in favor of granting writ relief. *See id.* Yet the panel considered the "early procedural stage of this case" as reason to deny the City's Writ Petition. Order at p.2. This is contrary to precedent. *See Int'l Game Tech.*, 124 Nev. at 198, 179 P.3d at 559.

Moreover, because the Court's ruling on this Writ Petition may provide guidance to the district court in not only this case but the other cases involving the

Badlands golf course (of which there are many[1]) writ relief here will make the most efficient use of judicial resources. "Where a petition raises an important legal issue in need of clarification, involving public policy, of which this court's review would promote sound judicial economy and administration, [the Court] will exercise [its] discretion and consider [a writ] petition." *Int'l Game Tech.*, 124 Nev. at 198, 179 P.3d at 559. Such is the case here.

CONCLUSION

As a matter of law, the Developer cannot assert as "taken" a property interest it never had. The Developer never had a property interest in the approval of discretionary development applications. On this basis alone, judgment in favor of the City was required.

[1] *See Jack B. Binion, et al. v. Fore Stars, Ltd., City of Las Vegas, et al.*, 8JDC Case No. A-15-729053-C, NSC Case No. 73813; *Jack B. Binion, et al. v. City of Las Vegas, et al.*, 8JDC Case No. A-17-752344-J, NSC Case No. 75481; *180 Land Company, LLC v. City of Las Vegas*, 8JDC Case No. A-17-758528-J, NSC Case No. 77771; *Frank A. Schreck v. City of Las Vegas and 180 Land Co., LLC*, 8JDC Case No. A-18-768490-J; *180 Land Co LLC v. City of Las Vegas*, 8JDC Case No. A-18-771389-C; *180 Land Co LLC, et al. v. City of Las Vegas, James R. Coffin, Steven G. Seroka*; USDC Case No. 2:18-cv-0547-JCM-CWH; *Fore Stars, Ltd., et al. v. City of Las Vegas, et al.*; 8JDC Case No. A-18-773268-C; *180 Land Company, LLC v. City of Las Vegas*, 8JDC Case No. A-18-775804-J; *180 Land Company, LLC, et al. v. City of Las Vegas*, 8JDC Case No. A-18-780184-C; *Laborers' Int'l Union N. Am., Local 872 v. City of Las Vegas, James Robert Coffin, and Steve Seroka*, USDC Case No. 2:19-cv-00322-GMN-NJK.

Because the panel's Order denying the City's Writ Petition failed to follow controlling authorities and could have serious economic and policy consequences for public entities statewide, the City respectfully asks this Court to grant this petition for en banc reconsideration, enter a stay of the district court proceedings, and issue a writ of mandamus, or in the alternative prohibition, that directs the district court to dismiss the Developer's claims with prejudice.

DATED this 6th day of August, 2019.

BY: /s/ Debbie Leonard

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CERTIFICATE OF COMPLIANCE

I hereby certify that this petition for en banc reconsideration complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point font, Times New Roman style. I further certify that this petition for rehearing complies with the type-volume limitation of NRAP 40A(d) because it contains 4,580 words.

Pursuant to NRAP 28.2, I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on this 6th day of August, 2019, a copy of the foregoing **PETITIONER'S PETITION FOR EN BANC RECONSIDERATION** 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:

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