

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR; AND SONNIA ILIESCU,
TRUSTEES OF THE JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST
AGREEMENT, DATED JANUARY 24, 1992,
Appellants

vs.

THE REGIONAL TRANSPORTATION
COMMISSION OF WASHOE COUNTY, A
SPECIAL PURPOSE UNIT OF THE
GOVERNMENT,
Respondent.

Electronically Filed
Oct 05 2020 01:31 p.m.

Elizabeth A. Brown

Supreme Court of Nevada
District Court Case No.: CV1900753

DOCKETING STATEMENT

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE KATHLEEN DRAKULICH

DOCKETING STATEMENT

DONALD A. LATTIN, ESQ.
Nevada State Bar No. 693
CAROLYN K RENNERT, Esq.
Nevada State Bar No. 9164
BRETT MAUPIN, ESQ.
Nevada State Bar No. 12443
MAUPIN, COX & LEGOY
4785 Caughlin Parkway
Reno, Nevada 89519
(775) 827-2000
Appellants

1. Judicial District Second Department 1
County Washoe Judge Drakulich
District Ct. Case No. CV-19-00753

2. Attorney filing this docketing statement:

Attorney Donald A. Lattin Telephone (775) 827-2000
Firm Maupin, Cox & LeGoy
Address 4785 Caughlin Parkway,
Reno, Nevada 89519

Client(s) See attached.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney See Attached Telephone _____
Firm _____
Address _____

Client(s) _____

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:
See attached.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):
See attached.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:
None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is not presumptively retained in the Supreme Court, nor presumptively assigned to the Court of Appeals under NRAP 17.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from See attached.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served See attached.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed September 3, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal from an order granting summary judgment which resolved all remaining claims as to all parties.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

See attached.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

See attached.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

See attached.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:
N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

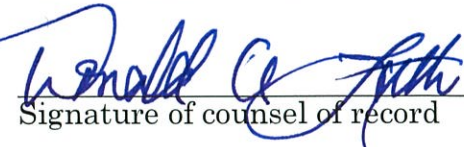
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

See attached.
Name of appellant

Donald A. Lattin
Name of counsel of record

October 5, 2020
Date


Signature of counsel of record

Nevada, Washoe County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____, 2020, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

See attached Certificate of Service.

Dated this _____ day of _____, _____

See attached Certificate of Service.
Signature

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

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of MAUPIN, COX & LeGOY, Attorneys at Law, and in such capacity and on the date indicated below I served the foregoing document(s) by mailing a true and correct copy thereof, postage prepaid, at Reno, Nevada, addressed as follows:


Gordon H. DePaoli, Esq.
Dane W. Anderson, Esq.
Bronagh M. Kelly, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511
Attorneys for Plaintiff

Honorable Kathleen M. Drakulich
Department 1
Second Judicial District Court
75 Court Street
Reno, NV 89501

And via electronic transmission addressed as follows:

Jonathan L. Andrews
14300 Poleline Rd.
Reno, NV 89511
jonathanlandrews@yahoo.com

DATED this 5th day of October, 2020.


EMPLOYEE

1 INDEX OF EXHIBITS

2

3

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
4 1.	Additional pages for Docketing Statement Response No. 2; No. 8;	
5	No. 9; No. 16; No. 17; No. 22; and No. 23	7
6 2.	File-Stamped Copies of Documents Responsive to Docketing	
7	Statement Response No. 27	81

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ILIESCU, JR; AND SONNIA ILIESCU,
TRUSTEES OF THE JOHN ILIESCU, JR. AND
SONNIA ILIESCU 1992 FAMILY TRUST
AGREEMENT, DATED JANUARY 24, 1992,
Appellants

vs.

THE REGIONAL TRANSPORTATION
COMMISSION OF WASHOE COUNTY, A
SPECIAL PURPOSE UNIT OF THE
GOVERNMENT,
Respondent.

Supreme Court No.: 81753

District Court Case No.: CV1900753

DOCKETING STATEMENT

ATTACHMENT TO DOCKETING STATEMENT CIVIL APPEALS

2. Client(s): John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement, dated January 24, 1992.

3. Attorney(s) representing respondent(s):

Counsel for Regional Transportation Commission of Washoe County:

WOODBURN & WEDGE
Gordon H. DePaoli, Esq.
Dane W. Anderson, Esq.
Bronagh M. Kelly, Esq.
6100 Neil Road, Suite 500
Reno, NV 89511

8. Nature of the Action. Briefly describe the nature of the action and the result below:

The Regional Transportation Commission of Washoe County (the "RTC") filed a Verified Complaint in Eminent Domain on April 3, 2019, seeking to acquire

property by its power of eminent domain needed for the construction of the Virginia Street Bus Rapid Transit Extension Project (the “Project”). The RTC sought to acquire a permanent easement and a temporary construction easement located upon Washoe County Assessor Parcel Number (“APN”) 014-063-11, owned by Appellants.

In addition, the RTC sought a temporary construction easement located upon Washoe County APN 014-063-07, owned by the City of Reno. The City of Reno subsequently filed a Disclaimer of Interest on April 11, 2019 disclaiming any right, title or interest in the property identified as APN 014-063-07, and also disclaiming any interest in just compensation or damages for the taking of the property.

The Court filed an Order Granting Motion for Immediate Occupancy Pending Final Judgment on July 15, 2019, in which it found that the use for which the property sought to be condemned is a public use authorized by law and the taking thereof was necessary for such use.

After issuance of this order, the only remaining issue was that of damages to Appellants as owners of real property taken by RTC for public use. All issues related to the City of Reno had been resolved.

With respect to the issue of damages, on February 11, 2020, RTC filed its Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305, arguing that Appellants failed to timely disclose its expert witness. Appellants filed

an opposition to the motion and requested an extension of time within which to disclose their experts. In the opposition, Appellants conceded that they did not disclose their experts by the deadline, but argued that the failure was due to excusable neglect caused by an unexpected and unforeseen medical event suffered by counsel for Appellants. The opposition requested a 21-day extension of time within which to file their expert report. It is not clear from the request whether the extension requested 21 days from the date of the opposition, the date of the anticipated order on the motion in limine, or from some other date. On March 2, 2020, Appellants filed a second Opposition, which appears to be the same document, with the exception of the request for extension of time within which to file their expert report changed from 21 days to 45 days. It remains unclear whether the extension requested 45 days from the date of the opposition, the date of the anticipated order on the motion, or from some other date. The RTC filed its Reply and submitted the motion on March 16, 2020. Subsequent to submitting its motion in limine, and prior to the district court issuing an order on the motion, on March 27, 2020, the RTC filed a Supplemental Reply to the motion in which it argued that Appellants had requested an extension of 45 days from the prior deadline of February 7, 2020, which is not accurate. In calculating a new deadline, the RTC asserted that the disclosure would have been due on March 23, 2020, a date which had already passed without any disclosure. The RTC argued, incorrectly, that even if the Court

granted the relief requested the new deadline had already passed.

On May 14, 2020, the district court issued its order on the motion in limine in which it found that Appellants' counsel's injuries and care formed a sufficient basis for the district court to find that the failure to disclose the expert witness by the deadline was the result of excusable neglect. The district court, however, relied on the RTC's incorrect representation that Appellants' request for an extension of time to disclose the expert witness was 45 days from the original disclosure deadline. The district court relied on this incorrect calculation of days and found that Appellants had again missed the deadline. As a result, the district denied the request to extend the expert disclosure deadline as moot and barred Appellants from disclosing an initial expert in the case. The district court issued this decision based on incorrect information, the result of which was that Appellants were left without the ability to present an expert witness to prove their damages.

The impact of this order sealed the fate of Appellants in the district court case as it formed the basis for the district court's decision to grant the motion for summary judgment. This appeal follows.

9. Issues on appeal. State concisely the principal issue(s) in this appeal:

A. Whether the court erred by granting RTC's Motion for Summary Judgment;

B. Whether the court erred by granting in part and denying in part RTC's

Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285, and 50.305;

C. Whether the court erred by granting RTC's Motion in Limine to Preclude Defendants from Calling Witnesses and Presenting Documentary Evidence; and

D. Whether the court erred by granting RTC's Motion in Limine to Preclude Evidence or Argument Regarding Unasserted Claims.

16. Date of entry of written judgment or order appealed from:

This is an appeal to the Nevada Supreme Court from: (1) *Order Granting Motion for Summary Judgment* filed on August 3, 2020; (2) *Order Granting in Part and Denying in Part Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285, and 50.305*, filed on May 14, 2020; (3) *Order Granting Motion in Limine to Preclude Defendants From Calling Witnesses and Presenting Documentary Evidence*, filed on June 4, 2020; and (4) *Order Granting Plaintiff's Motion in Limine to Preclude Evidence or Argument Regarding Unasserted Claims*, filed on June 26, 2020.

17. Date written notice of entry of judgment or order was served:

A. *Order Granting Motion for Summary Judgment* filed on August 3, 2020, Notice of Entry served on August 4, 2020;

B. *Order Granting in Part and Denying in Part Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285, and 50.305*, filed on May 14, 2020, no

Notice of Entry was served;

C. *Order Granting Motion in Limine to Preclude Defendants From Calling Witnesses and Presenting Documentary Evidence*, filed on June 4, 2020, no Notice of Entry was served; and

D. *Order Granting Plaintiff's Motion in Limine to Preclude Evidence or Argument Regarding Unasserted Claims*, filed on June 26, 2020, no Notice of Entry was served.

22. (a). List all parties involved in the action or consolidated actions in the district court:

A. John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement, dated January 24, 1992.

B. Regional Transportation Commission of Washoe County; and

C. City of Reno.

22.(b). If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

As set forth in No. 8 above, all matters concerning the City of Reno have been resolved; therefore, the City of Reno is not a party to this appeal.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

The Regional Transportation Commission of Washoe County (the "RTC") filed a Verified Complaint in Eminent Domain on April 3, 2019, seeking to acquire property by its power of eminent domain needed for the construction of the Virginia Street Bus Rapid Transit Extension Project (the "Project"). The RTC sought to

acquire a permanent easement and a temporary construction easement located upon Washoe County Assessor Parcel Number (“APN”) 014-063-11, owned by Appellants.

In addition, the RTC sought a temporary construction easement located upon Washoe County APN 014-063-07, owned by the City of Reno. The City of Reno subsequently filed a Disclaimer of Interest on April 11, 2019 disclaiming any right, title or interest in the property identified as APN 014-063-07, and also disclaiming any interest in just compensation or damages for the taking of the property.

The Court filed an Order Granting Motion for Immediate Occupancy Pending Final Judgment on July 15, 2019, in which it found that the use for which the property sought to be condemned is a public use authorized by law and the taking thereof was necessary for such use.

After issuance of this order, the only remaining issue was that of damages to Appellants as owners of real property taken by RTC for public use. This remaining issue was resolved via the *Order Granting Motion for Summary Judgment* filed on August 3, 2020.

VERIFICATION

Name of appellant(s): John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement, dated January 24, 1992.

EXHIBIT 2

EXHIBIT 2

1 \$1425
2 Gordon H. DePaoli, Esq.
3 Nevada Bar No. 195
4 Dane W. Anderson, Esq.
5 Nevada Bar No. 6883
6 **WOODBURN AND WEDGE**
7 6100 Neil Road, Suite 500
8 Reno, Nevada 89511
9 Telephone: 775-688-3000
10 Facsimile: 775-688-3088
11 gdepauli@woodburnandwedge.com
12 danderson@woodburnandwedge.com

13 Attorneys for Plaintiff, the Regional Transportation
14 Commission of Washoe County

15
16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF**
17 **NEVADA IN AND FOR THE COUNTY OF WASHOE**

18 THE REGIONAL TRANSPORTATION
19 COMMISSION OF WASHOE COUNTY, a
20 special purpose unit of the government,

21 Plaintiff,

22 v.

23 JOHN ILIESCU, JR. and SONNIA ILIESCU,
24 Trustees of The John Iliescu, Jr. and Sonnia
25 Iliescu 1992 Family Trust Agreement, dated
26 January 24, 1992; The City of Reno, a
27 political subdivision of the State of Nevada;
28 and DOES 1 – 20, inclusive,

Defendants.

Case No.:

Dept. No.:

VERIFIED COMPLAINT IN EMINENT DOMAIN

Plaintiff, the Regional Transportation Commission of Washoe County ("RTC"),
through its counsel, Woodburn and Wedge, alleges as follows:

1. RTC is a special purpose unit of government, duly organized and existing
under the laws of the State of Nevada. RTC's principal offices are located at 1105 Terminal
Way, Reno, Nevada. The RTC is charged with providing regional transportation services

1 which are of a quality and standard necessary to satisfactorily meet the needs of the traveling
2 public.

3 2. Pursuant to Chapters 37, 241 and 277A of the Nevada Revised Statutes, RTC
4 has the power to exercise the right of eminent domain to acquire property for public purposes
5 within the jurisdictional limits of local government if authority for the acquisition of the
6 property has been approved by said government and notice of the condemning agency's intent
7 to condemn has been given as required by law.

8 3. Pursuant to an Interlocal Cooperative Agreement, dated May 24, 2016, a copy
9 of which is attached hereto as **Exhibit 1** and incorporated herein by reference, the County of
10 Washoe and the Cities of Reno authorized the RTC to initiate condemnation proceedings, as
11 necessary, to acquire property needed for the construction of the Virginia Street Bus Rapid
12 Transit Extension Project ("the Project"). The Project addresses critical transportation needs
13 including improving transit connectivity, efficiency, and timeliness through connecting
14 RAPID to the University of Nevada, Reno (UNR), improving safety for all modes, correcting
15 ADA sidewalk deficiencies, and improving traffic operations.

16 4. The property RTC seeks to acquire by its power of eminent domain consists of
17 one (1) permanent easements and (1) temporary construction easement located upon Washoe
18 County Assessor Parcel Number ("APN") 014-063-11, and one (1) temporary construction
19 easement located upon APN 014-063-07, metes and bounds descriptions and depictions of
20 which are set forth in **Exhibit 2** attached hereto and incorporated herein by this reference.
21 APN 014-063-11 is more commonly known as 961 S. Virginia Street, Reno, Nevada, and
22 APN 014-063-07 is more commonly known as 999 S. Virginia Street, Reno, Nevada. The
23 two (2) temporary construction easements and one (1) permanent easement are referred to
24 herein as the "Property."

25 5. Based upon a preliminary title report dated February 10, 2017, the names of all
26 owners, occupants and claimants of the Property insofar as known to RTC are as follows:
27
28

1 a. Defendants John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John
2 Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement, dated January 24, 1992 (referred
3 to herein as "Iliescu").

4 b. The City of Reno, a political subdivision of the State of Nevada.

5 6. The true names and capacities of defendants DOES 1 through 20 are unknown
6 to RTC at this time. RTC is informed and believes and thereupon alleges that each DOE
7 defendant may claim an interest in the Property. RTC will seek leave to amend this complaint
8 to insert their true names when the same can be ascertained. RTC seeks to condemn their
9 interests in the manner and for the purposes described herein.

10 7. On January 22, 2019, RTC caused a "Notice Letter Pursuant to NRS 241.034"
11 to be sent hand-delivery to the owner of the Property, Iliescu, advising that the RTC Board
12 would meet on February 15, 2019 to consider acquisition of the Property by the exercise of
13 eminent domain. A true and correct copy of that letter is attached hereto as **Exhibit 3** and
14 incorporated herein by reference.

15 8. On February 15, 2019, at a properly noticed public meeting, RTC adopted a
16 "Resolution of Condemnation" authorizing its counsel to proceed, if necessary, to acquire the
17 Property by the institution of eminent domain proceedings, and to apply for an order
18 permitting RTC to take immediate possession of the Property as may be necessary for the
19 construction of the Project. Pursuant to the "Resolution of Condemnation," RTC determined
20 that the acquisition of the Property is to be applied to a public use, to wit, the Project. A true
21 and correct copy of the "Resolution of Condemnation" is attached hereto as **Exhibit 4** and is
22 incorporated herein by reference.

23 9. The Property RTC seeks to acquire is to be applied for the specific purpose of
24 constructing the Project, which is within RTC's purpose of providing quality transportation
25 facilities, a public use authorized by law. This public use will improve traffic flow and
26 provide other benefits along South Virginia Street in Reno.

27 10. If there are two (2) or more estates or divided interests in the Property, then
28 NRS 37.115 entitles RTC to have the amount of the award for the property first determined as

1 between RTC and all Defendants claiming any interest therein. The respective rights of each
2 Defendant in and to the award are to be determined subsequently at a separate hearing in the
3 same proceeding.

4 11. Pursuant to NRS 37.055, all proceedings related to this matter take precedence
5 over all other causes and actions not involving the public interest so that all such proceedings
6 may be heard and determined in a timely manner.

7 WHEREFORE, RTC prays for the following relief:

- 8 1. That the Court decree that the taking of the Property as described herein for
9 use in the Project is a public use authorized by law;
 - 10 2. That the Court decree that the taking of the Property and property rights as
11 described herein by RTC are necessary for public use;
 - 12 3. That the Court decree that RTC be allowed immediate occupancy of the
13 Property upon application and compliance with the requirements of law;
 - 14 4. That the Court ascertain and assess as between RTC and all Defendants the
15 value of the Property and property rights sought to be condemned and the
16 amount of any severance damages and/or special benefits;
 - 17 5. That the Court ensure that any taxes or liens owing or due the City of Reno,
18 Washoe County or any other public agency on the Property sought to be
19 acquired by this action be paid prior to the entry of any order authorizing
20 withdrawal of any funds deposited by RTC pursuant to NRS 37.100 or NRS
21 37.150;
 - 22 6. That the Court enter judgment granting RTC the one (1) permanent easement
23 and two (2) temporary construction easements and such other interest being
24 sought by RTC upon compliance with the terms of any judgment.
 - 25 7. That the Court enter a Final Order of Condemnation pursuant to NRS 37.160;
 - 26 8. For an order of fees and costs as allowed by law; and
 - 27 9. Any further relief the Court deems just and property under the circumstances.
- 28

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

Affirmation pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: April 3, 2019.

WOODBURN AND WEDGE

By



Gordon H. DePaoli, Esq.

Nevada Bar No. 195

Dane W. Anderson, Esq.

Nevada Bar No. 6883

Attorneys for Plaintiff, the Regional
Transportation Commission of Washoe County

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

VERIFICATION

STATE OF NEVADA)
) ss
COUNTY OF WASHOE)

I, Lee Gibson, hereby swear under penalty of perjury that the assertions of this Verified Complaint are true and correct to the best of my knowledge.

The undersigned declares that he is the Executive Director of the Regional Transportation Commission of Washoe County and in such capacity has read the foregoing Verified Complaint In Eminent Domain and knows the contents thereof, that the same is true of his own knowledge, except as to the matters stated on information and belief, and that as to such matters, he believes them to be true.

Dated this 3rd day of April, 2019.

By: 

Lee Gibson, Executive Director
The Regional Transportation Commission
of Washoe County

Subscribed and sworn to before me
this 3 day of April, 2019.


NOTARY PUBLIC



EXHIBIT INDEX TO VERIFIED COMPLAINT IN EMINENT DOMAIN

Exhibit #	Exhibit Description	Page #
1	Interlocal Cooperative Agreement, dated May 24, 2016, RTC000001-RTC000008	8
2	Metes and bounds descriptions and depictions of APN 014-063-11 and 014-063-07, RTC000009-RTC000017	9
3	Notice Letter Pursuant to NRS 241.034, dated January 22, 2019, RTC000018	1
4	Resolution of Condemnation, RTC000019-RTC000032	14

* The number of pages does not include the divider page that marks the exhibit number.

FILED
Electronically
CV19-00753
2019-04-03 02:15:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7199945 : yvilorla

EXHIBIT 1

EXHIBIT1

**INTERLOCAL COOPERATIVE AGREEMENT
APPROVING RTC PROGRAM OF PROJECTS**

This Agreement is made and executed this 24th day of May, 2016, by and between the Board of Commissioners of Washoe County, Nevada, hereinafter referred to as "County", the City Council of Reno, Nevada, hereinafter referred to as "Reno", the City Council of Sparks, Nevada, hereinafter referred to as "Sparks", and the Regional Transportation Commission of Washoe County, hereinafter referred to as "RTC".

WITNESETH:

WHEREAS, on April 15, 2016, the RTC approved the FY 2017 Program of Projects listed on Exhibit A attached to this Agreement. Each project on Exhibit A is referred to herein as a "Project" and all of such Projects are collectively referred to herein as the "Projects".

WHEREAS, the Projects will require pavement maintenance, rehabilitation, reconstruction, new construction or engineering and environmental analysis, and may require the acquisition of real property through consensual agreements with the owners or through eminent domain proceedings; and

WHEREAS, pursuant to the requirements of NRS 373.140, NRS 377A.080 and the Regional Road Impact Fee (RRIF) Program, the County, Reno, Sparks, and RTC desire by this Agreement to authorize the Projects and to set forth each entity's respective responsibilities with respect to the Projects.

NOW, THEREFORE, pursuant to the provisions of NRS 373.140, NRS 377A.080, NRS Chapter 277A, and the RRIF Ordinances/Manuals, and in consideration of the mutual promises contained herein and for other good and valuable consideration, it is hereby agreed by and between the parties hereto as follows:

I. APPROVAL OF PROJECTS

A. Reno, the County and Sparks hereby approve each and every Project and authorize the RTC to design, survey, engineer, acquire through purchase or eminent domain real property for, and construct, each of the Projects. Approval for any Project for any fiscal year shall be approval for all continued work by or on behalf of the RTC on that Project for any later

fiscal year. The RTC may expend money from one or more than one of the Regional Street and Highway Fund (the "Fuel Tax Fund"), the Transportation Sales Tax Fund (the "Sales Tax Fund") or the Regional Road Impact Fee Fund (the "RRIF Fund") on each Project as listed on the column next to the Project on Exhibit A. The cost of each Project is estimated by the RTC as shown on Exhibit A. These costs are only estimates and the RTC may expend additional monies from any one or more of the Fuel Tax Fund, the Sales Tax Fund or the RRIF Fund on each Project as such additional expenditures are reviewed and approved by the RTC Staff and/or the RTC Board of Commissioners pursuant to the RTC's policies and procedures.

B. Reno, the County and Sparks hereby authorize the RTC to adopt an appropriate resolution of condemnation and initiate and prosecute to judgment such eminent domain proceedings as may be necessary for the acquisition of such property within their respective jurisdictions as the RTC deems necessary for the construction and/or maintenance of any Project and, if prudent, future expansions of each Project identified by the Regional Transportation Plan.

II. RTC DUTIES

RTC agrees to perform the followings tasks and the County, Reno and Sparks hereby authorize the RTC to do so:

A. Provide all required services, including but not limited to design, environmental assessments and studies, surveying, construction engineering, construction management and quality assurance inspection, utilizing RTC staff and/or qualified consultants;

B. Obtain appraisal reports for any property being considered as necessary for the implementation of any Project and, if prudent, future expansions of the Project identified within the Regional Transportation Plan, conduct preliminary negotiations with the owners in an effort to arrive at a mutually agreeable purchase price and negotiate, execute and close contracts to purchase the property;

C. Offer not less than the appraisal value for the property and property rights deemed necessary for a Project and, where the prospect of reaching a mutually agreeable purchase price appears unlikely following reasonable negotiations, cause the RTC Board of Commissioners to adopt a "Resolution of Condemnation" finding that particular properties are necessary to the

success of a Project and authorize legal counsel to seek acquisition through eminent domain proceedings;

D. Coordinate all activities related to a Project including, but not limited to, advertising, receipt and review of construction bids, and execution of a contract with the contractor submitting the lowest responsive and responsible bid;

E. Maintain necessary files on each Project;

F. Pay all authorized Project costs from the Fuel Tax Fund, the RRIF Fund or the Sales Tax Fund. Payments for construction or engineering services will be paid to the contractor or consultant upon receipt of a claim or claims which have been certified as a true and correct account of the expenses incurred as a result of or in conjunction with the provisions of a contract entered into as a result of this Agreement. All submitted claims will have supporting documents attached which substantiate the basis of the claim. Such claim or claims shall be reviewed and approved in accordance with the policies and procedures of the RTC; and

G. Not permit the payment of non-reimbursable or non-payable items established by the policies and procedures of the RTC.

III. COUNTY'S, RENO'S AND SPARK'S DUTIES

The County, Reno and Sparks shall do the following:

A. Cooperate with RTC and its consultants in all phases of each Project located within their respective jurisdictions;

B. Assist the RTC in communicating with the public regarding the Project(s) located within their respective jurisdictions;

C. Accept ownership of and maintain each Project located wholly or partially within their respective jurisdictions upon completion of construction;

D. Upon notification from the RTC, require utilities having franchise agreements that require relocation to relocate their facilities prior to award of the Project in accordance with the franchise agreement; for utilities that do not address the issue of relocation in the franchise

agreement, require relocation of the subject facilities prior to the award of the Project if state law provides authority to do so; and

E. Coordinate development and administration of the Project with the RTC.

This Agreement is effective from and after the date first above written.

APPROVED AS TO LEGALITY AND FORM

BY: *Wale E. Ferguson*
RTC GENERAL COUNSEL

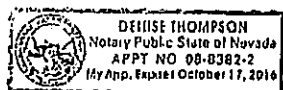
REGIONAL TRANSPORTATION COMMISSION
OF WASHOE COUNTY

BY: *[Signature]*
NEOMA JARDON, CHAIR

State of Nevada
County of Washoe

This FY 2017 Interlocal Cooperative Agreement was acknowledged before me this 15th day of April, 2016, by Neoma Jardon, as Chair of the Regional Transportation Commission of Washoe County.

[Signature]
Notary Public



RTC000004

BOARD OF COMMISSIONERS,
WASHOE COUNTY, NEVADA

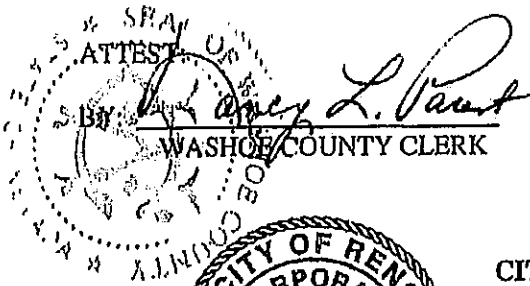
By: _____

CHAIRMAN

APPROVED AS TO FORM AND CONTENT:

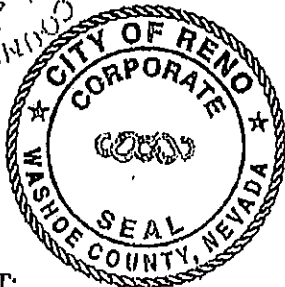
By: _____

ATTORNEY



BY: _____

WASHOE COUNTY CLERK



ATTEST:

BY: _____

RENO CITY CLERK

CITY COUNCIL OF RENO, NEVADA

By: _____

MAYOR

APPROVED AS TO FORM AND CONTENT:

BY: _____

DEPUTY CITY ATTORNEY

CITY COUNCIL OF SPARKS, NEVADA

BY: _____

MAYOR

ATTEST:

BY: _____

SPARKS CITY CLERK



APPROVED AS TO FORM AND CONTENT:

BY: _____

DEPUTY CITY ATTORNEY

EXHIBIT A
RTC PROGRAM OF PROJECTS 2017

EXHIBIT A

PROPOSED RTC FISCAL YEAR (FY) 2017 PROGRAM OF PROJECTS (POP)
PAVEMENT PRESERVATION AND CORRIDOR IMPROVEMENT PROJECTS

* ACTIVITY CODES

C = CONSTRUCTION (INCLUDES CONSTRUCTION SERVICES)

D = DESIGN

N = ENVIRONMENTAL (NEPA, INCLUDES PRELIMINARY DESIGN)

P = PLANNING

R = RIGHT OF WAY

PROJECT (YEAR OF CONSTRUCTION) & TERMINI	PROJECT OBJECTIVE	TOTAL PROJECT ESTIMATE	FUNDING SOURCE	PREVIOUSLY APPROVED		FY 17 POP FUNDS (PROPOSED)		TOTAL FUNDS PROGRAMMED (PROPOSED)
				AMOUNT	ACTIVITY *	AMOUNT	ACTIVITY *	
4TH & PRATER BUS RAPID TRANSIT PROJECT (2016) EVANS TO PYRAMID	CORRIDOR/TRANSIT CAPACITY IMPROVEMENT	\$32,610,000 (INCLUDES BUSES)	RTC FUEL TAX RTC SALES TAX CHAO/STP/TIGER	\$4,830,000 \$4,730,000 \$18,000,000 \$30,100,000		\$15,100,000	C	\$5,850,000 \$6,250,000 \$33,100,000 \$45,200,000
VIRGINIA STREET BUS RAPID TRANSIT EXTENSION (2017) PLUMB TO LIBERTY & MAPLE TO 19TH	CORRIDOR/TRANSIT CAPACITY IMPROVEMENT	\$80,000,000	RTC FUEL TAX FTA CHAO	\$419,000 \$5,012,142		\$5,000,000	D, R	\$3,564,000 \$5,012,142 \$10,640,142
2016 PREVENTIVE MAINTENANCE (2016 & 2016) VARIOUS REGIONAL ROADS	PAVEMENT PRESERVATION	\$5,413,493	RTC FUEL TAX RTC SALES TAX	\$2,000,000 \$2,413,493 \$5,413,493	D, C			\$2,000,000 \$3,413,493 \$5,413,493
2016 CORRECTIVE MAINTENANCE (2016 & 2016) VARIOUS REGIONAL ROADS	PAVEMENT PRESERVATION	\$4,242,746	RTC FUEL TAX TMDA	\$4,017,746 \$225,000 \$4,242,746	D, C			\$4,017,746 \$225,000 \$4,242,746
2016 PAVEMENT MAINTENANCE (2016) VARIOUS REGIONAL ROADS	PAVEMENT PRESERVATION	\$3,600,000	RTC FUEL TAX			\$3,600,000	D, C	\$3,600,000

PAVEMENT PRESERVATION/CORRIDOR IMPROVEMENT SUMMARY	PREVIOUSLY APPROVED	FY 17 POP FUNDS (PROPOSED)	PROPOSED TOTAL
RTC FUEL TAX	\$12,445,746	\$8,500,000	
RTC SALES TAX	\$9,463,493	\$0	
FEDERAL/OTHER NON-RTC	\$12,287,142	\$15,100,000	
TOTAL	\$44,530,421	\$23,600,000	\$68,996,421

EXHIBIT A

PROPOSED RTC FISCAL YEAR (FY) 2017 PROGRAM OF PROJECTS (POP)
CAPACITY AND CONGESTION RELIEF

* ACTIVITY CODES

C = CONSTRUCTION (INCLUDES CONSTRUCTION SERVICES)
 D = DESIGN
 H = ENVIRONMENTAL (HEPA, INCLUDES PRELIMINARY DESIGN)
 P = PLANNING
 R = RIGHT OF WAY

PROJECT (YEAR OF CONSTRUCTION) & TERMINI	PROJECT OBJECTIVE	TOTAL PROJECT ESTIMATE	FUNDING SOURCE	PREVIOUSLY APPROVED AMOUNT	ACTIVITY *	FY 17 POP FUNDS (PROPOSED) AMOUNT	ACTIVITY *	TOTAL FUNDS PROGRAMMED (PROPOSED)
SOUTHEAST CONNECTOR PHASE 2 (2015) SOUTH MEADOWS TO CLEAVELAND	CAPACITY IMPROVEMENT	\$207,205,000	RTC BOND FUEL TAX UTILITY REIMBURSEMENT	\$140,000,000 \$66,000,000 \$1,188,343				\$140,000,000 \$66,000,000 \$1,188,343 \$207,205,000
MCCARRAN/PYRAMID INTERSECTION (2016)	CAPACITY IMPROVEMENT	\$72,345,328	FUEL TAX HOV/TAP	\$7,318,411 \$65,026,915				\$7,318,411 \$65,026,915 \$72,345,328
N MCCARRAN @ N VIRGINIA INTERSECTION IMPROVEMENT (2016)	CAPACITY IMPROVEMENT	\$4,000,000	RRF	\$4,000,000	D, C			\$4,000,000
TRAFFIC ENGINEERING SPOT INTERSECTIONS 6 (2018) LOCATIONS TO BE DETERMINED	CAPACITY IMPROVEMENT	\$1,000,000	RRF	\$1,000,000	D, C			\$1,000,000
BIKE & PEDESTRIAN IMPROVEMENTS 3, 4 & 6 (2018) EVANS - 6TH TO N MCCARRAN	CAPACITY IMPROVEMENT	\$1,350,000	RRF CMAQ	\$67,500 \$1,282,500				\$67,500 \$1,282,500 \$1,350,000
PEDESTRIAN IMPROVEMENTS 2016 & 2017 (2017) SUN VALLEY BLVD	CAPACITY IMPROVEMENT	\$2,000,000	RRF CMAQ	\$50,000 \$1,950,000		\$50,000 \$1,950,000	D, C, R	\$100,000 \$1,950,000 \$2,050,000
LEMMON DRIVE SIDEWALK (2017) DELEST TO SURGE DR (WEST SIDE)	SAFETY	\$348,083	RTC FUEL TAX HOV/TAP			\$17,304 \$330,779	D, C, R	\$17,304 \$330,779 \$348,083
NORTH VALLEYS IMPROVEMENTS (2018) LOCATIONS TO BE DETERMINED	CAPACITY IMPROVEMENT	\$5,692,000	FUEL TAX RRF	\$250,000 \$5,442,000		\$1,800,000 \$3,600,000 \$5,400,000	D, C, R	\$1,750,000 \$3,642,000 \$5,692,000
TRAFFIC ENGINEERING SPOT 8 INTERSECTION IMPROVEMENTS LOCATIONS TO BE DETERMINED	CAPACITY IMPROVEMENT	\$1,000,000	RRF			\$1,000,000	D, C	
TRAFFIC MANAGEMENT 1 (2018) DESIGN & PILOT PROJECT	INTELLIGENT TRAFFIC SYSTEMS (ITS)	\$49,493	FUEL TAX CMAQ	\$49,493 \$0				\$49,493 \$0 \$49,493
TRAFFIC MANAGEMENT 2A (2017) FIBER OPTIC CONNECTIVITY AND ITS EQUIPMENT INSTALLATION	INTELLIGENT TRAFFIC SYSTEMS (ITS)	\$1,000,000	RRF CMAQ			\$50,000 \$950,000	D, C	\$50,000 \$950,000 \$1,000,000
TRAFFIC MANAGEMENT 2B (2018) FIBER OPTIC CONNECTIVITY AND ITS EQUIPMENT INSTALLATION (WITH POTENTIAL RIGHT OF WAY)	INTELLIGENT TRAFFIC SYSTEMS (ITS)	\$1,000,000	RRF CMAQ			\$50,000 \$950,000	D, C, R	\$50,000 \$950,000 \$1,000,000

CAPACITY/CONGESTION RELIEF SUMMARY	PREVIOUSLY APPROVED	FY 17 POP FUNDS (PROPOSED)	PROPOSED TOTAL
RRF/FUEL TAX	\$76,704,081	\$6,187,304	
RTC BONDS	\$140,000,000		
FEDERAL/OTHER NON RTC	\$72,338,128	\$3,178,715	
TOTAL	\$288,602,189	\$9,345,049	\$297,947,238

FILED
Electronically
CV19-00753
2019-04-03 02:15:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7199945 : yvilorla

EXHIBIT 2

EXHIBIT 2



JOHNSON | PERKINS | GRIFFIN
REAL ESTATE APPRAISERS & CONSULTANTS

**PROPOSED PERMANENT EASEMENT
LEGAL DESCRIPTION**

EXHIBIT "A"
LEGAL DESCRIPTION OF PERMANENT EASEMENT
APN: 014-083-11

A permanent easement, situate within a portion of the North East 1/4 of Section 14, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, City of Reno, County of Washoe, State of Nevada, more particularly described as follows:

Beginning at the north east corner of that certain parcel of land described in deed, recorded in the official records of Washoe County Recorder's Office on December 20, 1994, as Document File # 1858459, said point being a point of intersection with the southerly line of Martin Street and westerly line of South Virginia Street;

Thence South 20°04'24" East 0.29 feet along the east boundary line of said parcel;

Thence departing the east boundary line of said parcel, South 70°18'18" West 9.21 feet;

Thence North 46°39'20" West 0.28 feet to a point on the north boundary line of said parcel;

Thence North 70°03'09" East 9.33 feet along the north boundary line of said parcel to the **point of beginning**, containing 2 square feet, more or less.

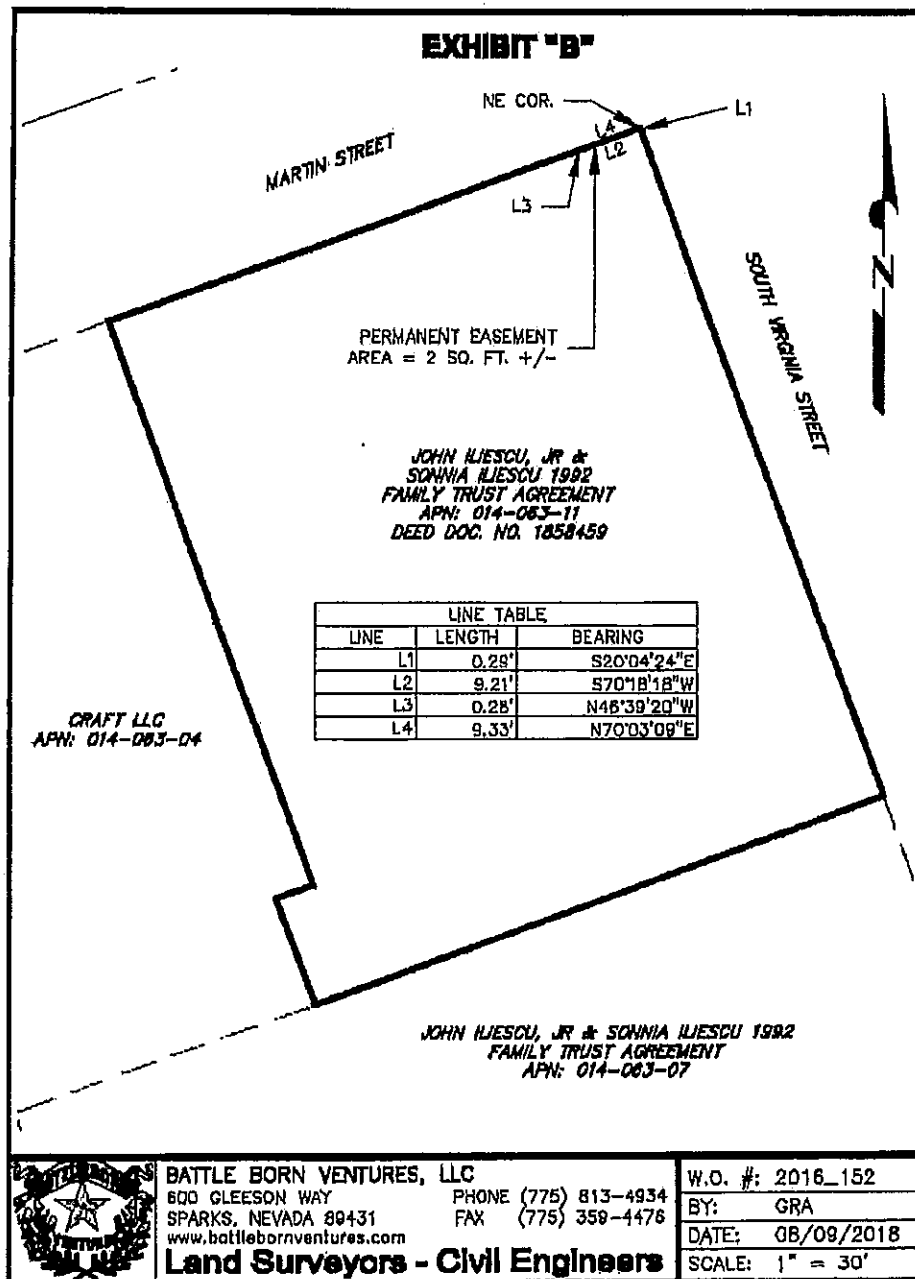
Basis of Bearings: NAD 83(94) Nevada State Plane Coordinate System, West Zone (2703).

Grant R. Alexander, P.L.S. 19051
Battle Born Ventures, LLC
600 Gleeson Way
Sparks, NV 89431



JOHNSON | PERKINS | GRIFFIN
REAL ESTATE APPRAISERS & CONSULTANTS

PROPOSED PERMANENT EASEMENT SKETCH





JOHNSON | PERKINS | GRIFFIN
REAL ESTATE APPRAISERS & CONSULTANTS

**PROPOSED TEMPORARY CONSTRUCTION EASEMENT
LEGAL DESCRIPTION
A.P.N. 014-063-07**

**EXHIBIT "A"
LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT
APN: 014-063-07**

A temporary construction easement, situate within a portion of the North East 1/4 of Section 14, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, City of Reno, County of Washoe, State of Nevada, more particularly described as follows:

Beginning at the north east corner of that certain parcel of land described as Lot 3 in Block 4 of Amended Plat of Blocks 4, 5 and 9 of an Amended Plat of Martin Addition, Reno, Nevada, recorded in the official records of Washoe County Recorder's Office on May 28, 1907, as Tract Map # 73, said point being a point on the westerly line of South Virginia Street;

Thence South 20°04'24" East 50.00 feet along the east boundary line of said parcel to the south east corner of said parcel;

Thence South 70°07'54" West 6.17 feet along the south boundary line of said parcel;

Thence departing the south boundary line of said parcel, North 20°05'53" West 50.00 feet to a point on the north boundary line of said parcel;

Thence North 70°06'19" East 6.19 feet along the north boundary line of said parcel to the **point of beginning**, containing 309 square feet, more or less.

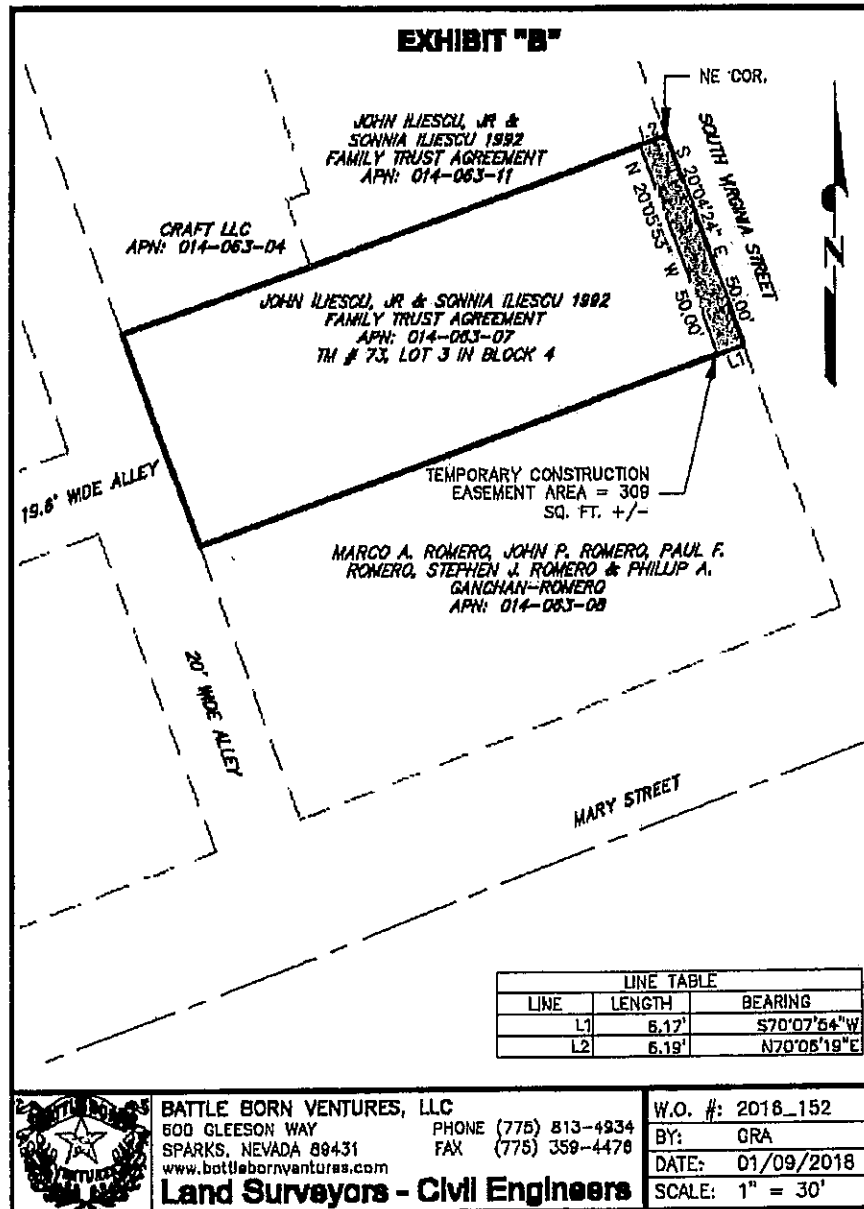
Basis of Bearings: NAD 83(94) Nevada State Plane Coordinate System, West Zone (2703).

Grant R. Alexander, P.L.S. 19051
Battle Born Ventures, LLC
600 Gleeson Way
Sparks, NV 89431



JOHNSON | PERKINS | GRIFFIN
REAL ESTATE APPRAISERS & CONSULTANTS

PROPOSED TEMPORARY CONSTRUCTION EASEMENT SKETCH
A.P.N. 014-063-07





JOHNSON | PERKINS | GRIFFIN
REAL ESTATE APPRAISERS & CONSULTANTS

**PROPOSED TEMPORARY CONSTRUCTION EASEMENT
LEGAL DESCRIPTION
A.P.N. 014-063-11**

**EXHIBIT "A"
LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT
APN: 014-063-11**

A temporary construction easement, situate within a portion of the North East 1/4 of Section 14, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, City of Reno, County of Washoe, State of Nevada, more particularly described as follows:

Beginning at the north east corner of that certain parcel of land described in deed, recorded in the official records of Washoe County Recorder's Office on December 20, 1994, as Document File # 1858459, said point being a point of intersection with the southerly line of Martin Street and westerly line of South Virginia Street;

Thence South 20°04'24" East 0.29 feet along the east boundary line of said parcel to the true point of beginning;

Thence South 20°04'24" East 99.71 feet along the east boundary line of said parcel to the south east corner of said parcel;

Thence South 70°06'19" West 6.19 feet along the south boundary line of said parcel;

Thence departing the south boundary line of said parcel, North 20°05'53" West 40.09 feet;

Thence North 70°11'00" East 4.92 feet;

Thence North 20°13'28" West 1.55 feet;

Thence South 69°46'27" West 0.25 feet;

Thence North 20°13'28" West 12.07 feet;

Thence North 69°46'27" East 0.33 feet;

Thence North 20°13'28" West 2.23 feet;

Thence South 69°46'27" West 0.24 feet;

Thence North 20°13'28" West 8.39 feet;

Thence North 20°02'05" West 3.50 feet;

Thence North 69°57'58" East 0.26 feet;

Thence North 20°02'05" West 2.25 feet;

Thence South 69°57'58" West 0.26 feet;

Thence North 20°02'05" West 1.44 feet;

Thence North 76°37'39" West 3.34 feet;

Thence North 20°45'47" West 5.13 feet;

Thence North 35°28'29" East 3.46 feet;



JOHNSON | PERKINS | GRIFFIN
REAL ESTATE APPRAISERS & CONSULTANTS

**PROPOSED TEMPORARY CONSTRUCTION EASEMENT
LEGAL DESCRIPTION
A.P.N. 014-063-11 (CONTINUED)**

Thence North 20°02'05" West 1.26 feet;
Thence North 69°57'58" East 0.27 feet;
Thence North 20°02'05" West 2.27 feet;
Thence South 69°57'58" West 0.27 feet;
Thence North 20°10'03" West 11.89 feet;
Thence North 69°43'51" East 0.32 feet;
Thence North 20°16'34" West 2.23 feet;
Thence South 68°39'31" West 2.16 feet;
Thence South 21°20'29" East 0.22 feet;
Thence South 70°11'08" West 12.10 feet;
Thence North 20°17'59" West 0.29 feet;
Thence South 69°42'12" West 2.18 feet;
Thence South 20°17'59" East 0.29 feet;
Thence South 69°42'12" West 4.31 feet;
Thence South 19°01'46" East 3.44 feet;
Thence South 70°34'44" West 9.85 feet;
Thence North 20°39'44" West 0.18 feet;
Thence South 70°18'44" West 47.07 feet;
Thence North 19°58'15" West 5.00 feet;
Thence South 70°18'44" West 0.96 feet to a point on the west boundary line of said parcel;
Thence North 20°01'37" West 0.14 feet along the west boundary line of said parcel to the north west corner of said parcel;
Thence North 70°03'09" East 70.53 feet along the north boundary line of said parcel;
Thence departing the north boundary line of said parcel, South 46°39'20" East 0.28 feet;
Thence North 70°18'18" East 9.21 feet to the true point of beginning, containing 698 square feet, more or less.

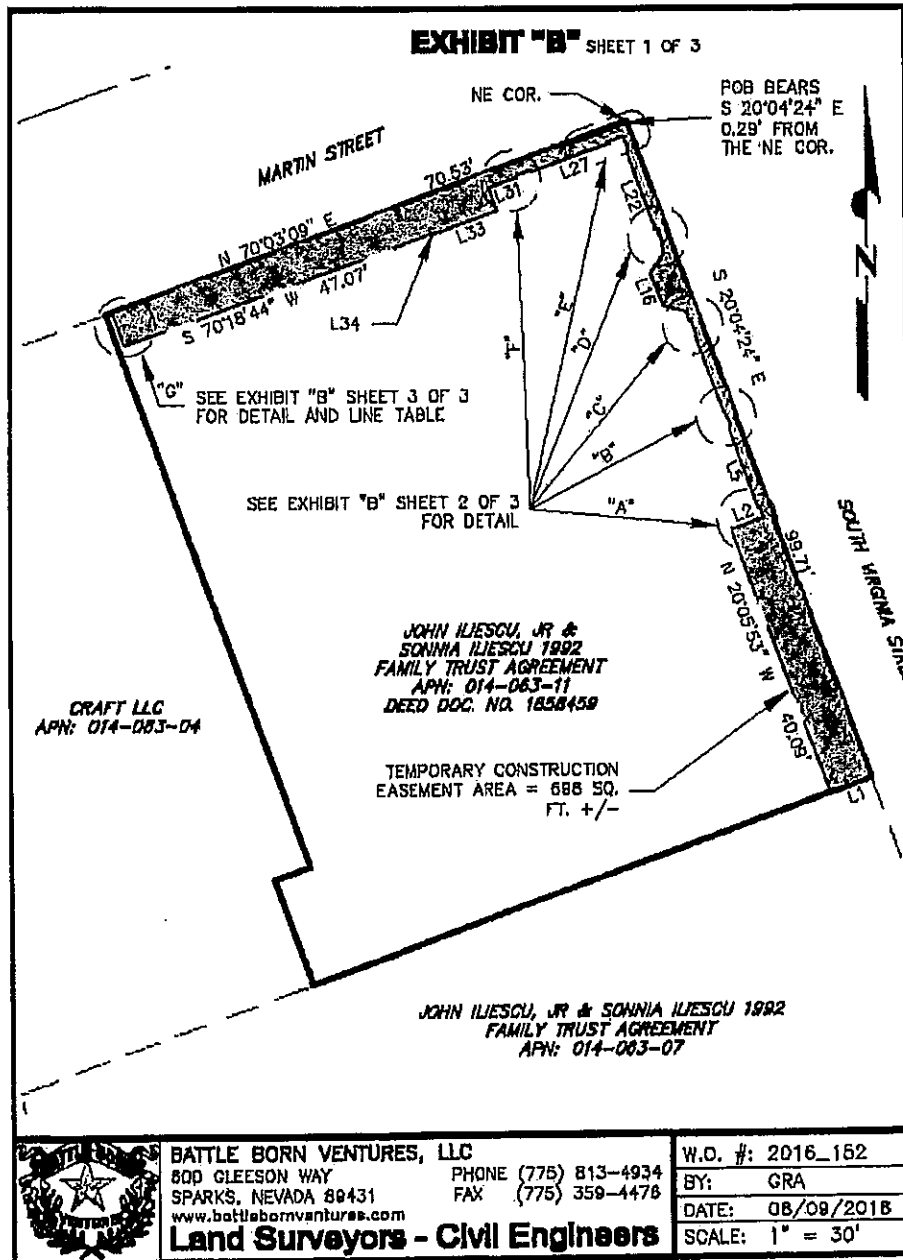
Basis of Bearings: NAD 83(94) Nevada State Plane Coordinate System, West Zone (2703).

Grant R. Alexander, P.L.S. 19051
Battle Born Ventures, LLC
600 Gleason Way
Sparks, NV 89431



JOHNSON | PERKINS | GRIFFIN
REAL ESTATE APPRAISERS & CONSULTANTS

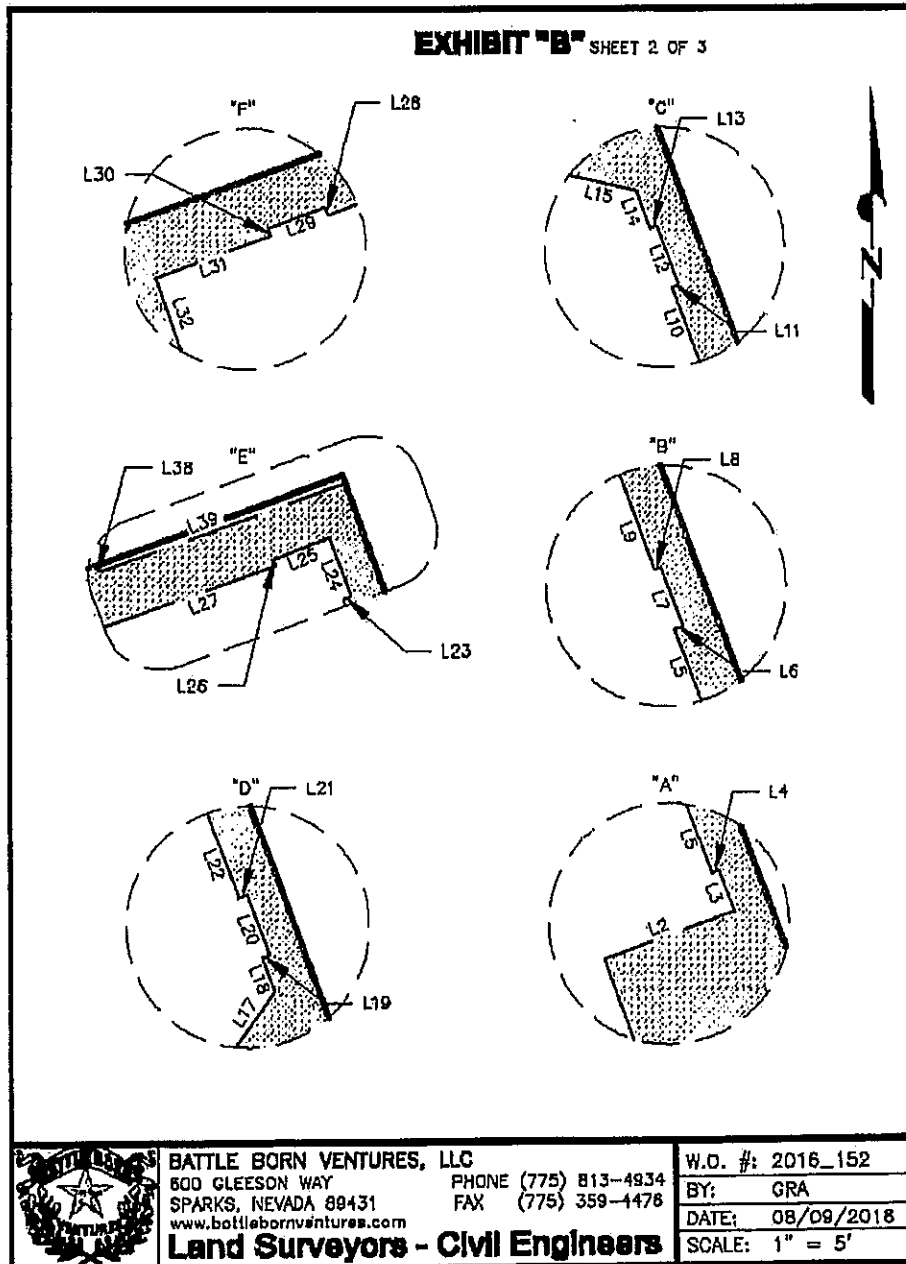
PROPOSED TEMPORARY CONSTRUCTION EASEMENT SKETCH
A.P.N. 014-063-11 (SHEET 1 OF 3)





JOHNSON | PERKINS | GRIFFIN
REAL ESTATE APPRAISERS & CONSULTANTS

PROPOSED TEMPORARY CONSTRUCTION EASEMENT SKETCH
A.P.N. 014-063-11 (SHEET 2 OF 3)



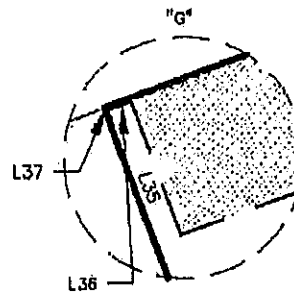


JOHNSON | PERKINS | GRIFFIN
REAL ESTATE APPRAISERS & CONSULTANTS

PROPOSED TEMPORARY CONSTRUCTION EASEMENT SKETCH
A.P.N. 014-063-11 (SHEET 3 OF 3)

EXHIBIT "B" SHEET 3 OF 3

LINE TABLE		
LINE	LENGTH	BEARING
L1	6.18'	S70°06'19"W
L2	4.92'	N70°11'00"E
L3	1.55'	N20°13'28"W
L4	0.25'	S69°46'27"W
L5	12.07'	N20°13'28"W
L6	0.33'	N69°48'27"E
L7	2.23'	N20°13'28"W
L8	0.24'	S69°46'27"W
L9	8.39'	N20°13'28"W
L10	3.50'	N20°02'05"W
L11	0.26'	N59°57'58"E
L12	2.25'	N20°02'05"W
L13	0.26'	S69°57'58"W
L14	1.44'	N20°02'05"W
L15	3.34'	N76°37'38"W
L16	5.13'	N20°45'47"W
L17	3.46'	N35°29'29"E
L18	1.26'	N20°02'05"W
L19	0.27'	N69°57'58"E
L20	2.27'	N20°02'05"W
L21	0.27'	S69°57'58"W
L22	11.69'	N20°10'03"W
L23	0.32'	N69°43'51"E
L24	2.23'	N20°16'34"W
L25	2.18'	S68°39'31"W
L26	0.22'	S21°20'29"E
L27	12.10'	S70°11'08"W
L28	0.28'	N20°17'59"W
L29	2.18'	S69°42'12"W
L30	0.29'	S20°17'59"E
L31	4.31'	S69°42'12"W
L32	3.44'	S19°01'46"E
L33	9.85'	S70°34'44"W
L34	0.18'	N20°39'44"W
L35	5.00'	N19°58'15"W
L36	0.95'	S70°15'44"W
L37	0.14'	N20°01'37"W
L38	0.28'	S46°39'20"E
L39	9.21'	N70°18'18"E



BATTLE BORN VENTURES, LLC
600 GLEESON WAY
SPARKS, NEVADA 89431
www.battlebornventures.com
PHONE (775) 813-4934
FAX (775) 359-4476
Land Surveyors - Civil Engineers

W.O. #: 2016_152
BY: GRA
DATE: 08/09/2018
SCALE: 1" = 5'

FILED
Electronically
CV19-00753
2019-04-03 02:15:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7199945 : yvilorla

EXHIBIT 4

EXHIBIT 4

RESOLUTION OF CONDEMNATION

WHEREAS, it is necessary for the Regional Transportation Commission of Washoe County, hereinafter referred to as "RTC," to provide regional transportation facilities which are of a quality and standard necessary to satisfactorily meet the needs of the traveling public; and

WHEREAS, in recognition of such needs, the RTC approved the Virginia Street Bus Rapid Transit Extension Project, hereinafter referred to as "Project," as part of an Interlocal Cooperative Agreement ("ICA") dated May 24, 2016; and

WHEREAS, in the ICA dated May 24, 2016, the City of Reno authorized the RTC to initiate eminent domain proceedings on behalf of the City, if required, for the acquisition of right-of-way for the Project; and

WHEREAS, Chapter 277A of Nevada Revised Statutes provides that the RTC may exercise the power of eminent domain, if the city or county which has jurisdiction over the property approves; and

WHEREAS, the current owner of record of the property interests to be acquired, insofar as is known to the RTC, is John Iliescu, Jr. and Sonnia Iliescu, as Trustees of the John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement dated January 24, 1992.

NOW, THEREFORE, the members of the Regional Transportation Commission of Washoe County do hereby find:

1. That proper notice of the RTC's intent to consider eminent domain action to acquire the relevant property interests of the above referenced owner(s) has been given as required by NRS 241.034.
2. That RTC staff first contacted the landowner about the property interests of a temporary construction easement located on APN 014-063-07, and a permanent easement and a temporary construction easement located on APN 014-063-11 as described in Exhibit "A" and depicted on Exhibit "B," attached hereto and incorporated herein by reference, on or about December 4, 2018. While there have been discussions, proposals and offers made, all efforts to reach a mutually acceptable agreement for the acquisition of the property interests through purchase have been unsuccessful to date.
3. That the property interests to be acquired in conjunction with the above referenced Project are to be applied to a public use, to wit, the Virginia Street Bus Rapid Transit Extension Project.

4. That the property interests described herein are necessary to such public use.

Based on the aforementioned findings of fact, the RTC does hereby direct:

1. That RTC's legal counsel initiate, if needed, eminent domain proceedings on behalf of the RTC in accordance with provisions of Chapters 37 and 277A of Nevada Revised Statutes to acquire the property interests described in Exhibit "A" and depicted on Exhibit "B".

2. That said legal counsel shall commence and prosecute in the name of the RTC, eminent domain proceedings in the court having jurisdiction of the property interests described in Exhibit "A" and depicted on Exhibit "B."

3. That said legal counsel is authorized to pursue all actions deemed appropriate for the successful prosecution of this case, including but not limited to, an application to the court for an order permitting the RTC to take immediate possession of said property interests for the construction of the Project, upon complying with conditions imposed by law.

Upon motion of Commissioner Jardon, seconded by Commissioner Lucy, the foregoing Resolution was passed and adopted this 15th day of February, 2019, by the following vote of the Regional Transportation Commission:

AYES: 4 Lucy, Jardon, Hartung, Dahn
NAYS: 0
ABSTAIN: 0

Approved this 15th day of February, 2019.

REGIONAL TRANSPORTATION COMMISSION
OF WASHOE COUNTY, STATE OF NEVADA

BY 
BOB LUCEY, CHAIR

STATE OF NEVADA
COUNTY OF WASHOE

The above-instrument was acknowledged before me this 15th day of February, 2019, by Bob Lucey,
Chair of the Regional Transportation Commission.


Notary Public



EXHIBIT A

EXHIBIT "A"
LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT
APN: 014-063-07

A temporary construction easement, situate within a portion of the North East 1/4 of Section 14, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, City of Reno, County of Washoe, State of Nevada, more particularly described as follows:

Beginning at the north east corner of that certain parcel of land described as Lot 3 in Block 4 of Amended Plat of Blocks 4, 5 and 9 of an Amended Plat of Martin Addition, Reno, Nevada, recorded in the official records of Washoe County Recorder's Office on May 28, 1907, as Tract Map # 73, said point being a point on the westerly line of South Virginia Street;

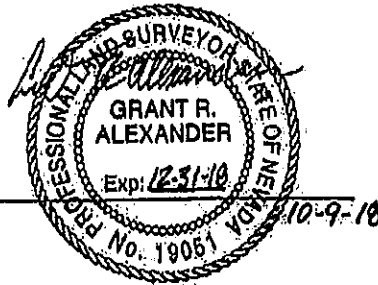
Thence South 20°04'24" East 50.00 feet along the east boundary line of said parcel to the south east corner of said parcel;

Thence South 70°07'54" West 6.17 feet along the south boundary line of said parcel;

Thence departing the south boundary line of said parcel, North 20°05'53" West 50.00 feet to a point on the north boundary line of said parcel;

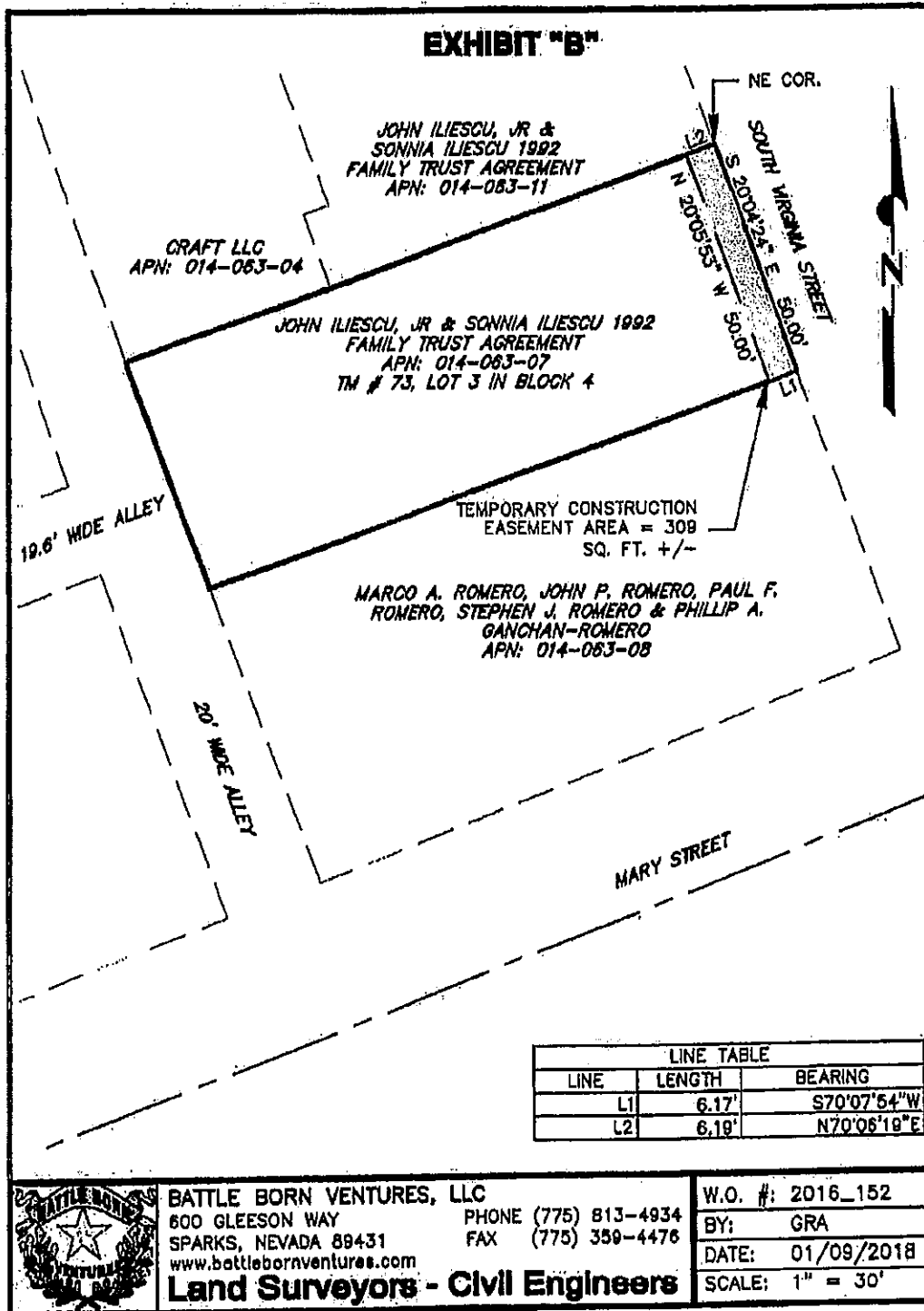
Thence North 70°06'19" East 6.19 feet along the north boundary line of said parcel to the point of beginning, containing 309 square feet, more or less.

Basis of Bearings: NAD 83(94) Nevada State Plane Coordinate System, West Zone (2703).



Grant R. Alexander, P.L.S. 19051
Battle Born Ventures, LLC
600 Gleason Way
Sparks, NV 89431

EXHIBIT "B"



BATTLE BORN VENTURES, LLC
 600 GLEESON WAY
 SPARKS, NEVADA 89431
www.battlebornventures.com
Land Surveyors - Civil Engineers

W.O. #: 2016_152
 BY: GRA
 DATE: 01/09/2018
 SCALE: 1" = 30'

EXHIBIT "A"
LEGAL DESCRIPTION OF PERMANENT EASEMENT
APN: 014-063-11

A permanent easement, situate within a portion of the North East 1/4 of Section 14, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, City of Reno, County of Washoe, State of Nevada, more particularly described as follows:

Beginning at the north east corner of that certain parcel of land described in deed, recorded in the official records of Washoe County Recorder's Office on December 20, 1994, as Document File # 1858459, said point being a point of intersection with the southerly line of Martin Street and westerly line of South Virginia Street;

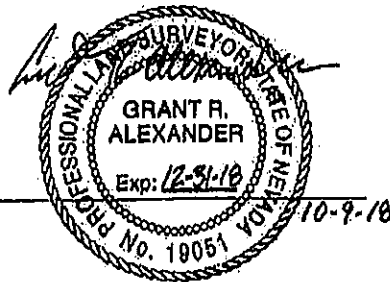
Thence South 20°04'24" East 0.29 feet along the east boundary line of said parcel;

Thence departing the east boundary line of said parcel, South 70°18'18" West 9.21 feet;

Thence North 46°39'20" West 0.28 feet to a point on the north boundary line of said parcel;

Thence North 70°03'09" East 9.33 feet along the north boundary line of said parcel to the point of beginning, containing 2 square feet, more or less.

Basis of Bearings: NAD 83(94) Nevada State Plane Coordinate System, West Zone (2703).



Grant R. Alexander, P.L.S. 19051
Battle Born Ventures, LLC
600 Gleeson Way
Sparks, NV 89431

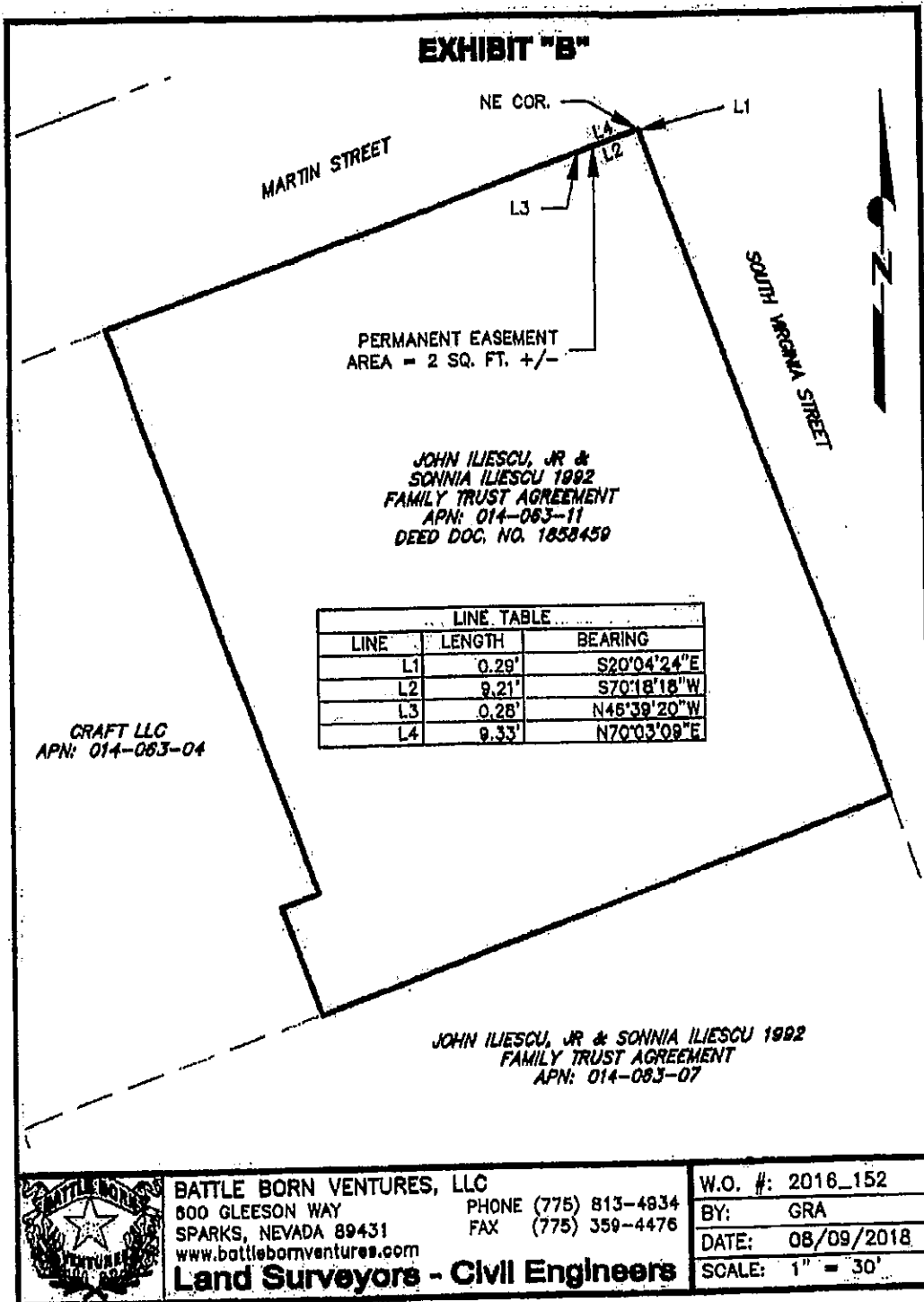


EXHIBIT "A"
LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT
APN: 014-063-11

A temporary construction easement, situate within a portion of the North East 1/4 of Section 14, Township 19 North, Range 19 East, Mount Diablo Base and Meridian, City of Reno, County of Washoe, State of Nevada, more particularly described as follows:

Beginning at the north east corner of that certain parcel of land described in deed, recorded in the official records of Washoe County Recorder's Office on December 20, 1994, as Document File # 1858459, said point being a point of intersection with the southerly line of Martin Street and westerly line of South Virginia Street;

Thence South 20°04'24" East 0.29 feet along the east boundary line of said parcel to the true point of beginning;

Thence South 20°04'24" East 99.71 feet along the east boundary line of said parcel to the south east corner of said parcel;

Thence South 70°06'19" West 6.19 feet along the south boundary line of said parcel;

Thence departing the south boundary line of said parcel, North 20°05'53" West 40.09 feet;

Thence North 70°11'00" East 4.92 feet;

Thence North 20°13'28" West 1.55 feet;

Thence South 69°46'27" West 0.25 feet;

Thence North 20°13'28" West 12.07 feet;

Thence North 69°46'27" East 0.33 feet;

Thence North 20°13'28" West 2.23 feet;

Thence South 69°46'27" West 0.24 feet;

Thence North 20°13'28" West 8.39 feet;

Thence North 20°02'05" West 3.50 feet;

Thence North 69°57'58" East 0.26 feet;

Thence North 20°02'05" West 2.25 feet;

Thence South 69°57'58" West 0.26 feet;

Thence North 20°02'05" West 1.44 feet;
Thence North 76°37'39" West 3.34 feet;
Thence North 20°45'47" West 5.13 feet;
Thence North 35°29'29" East 3.46 feet;
Thence North 20°02'05" West 1.26 feet;
Thence North 69°57'58" East 0.27 feet;
Thence North 20°02'05" West 2.27 feet;
Thence South 69°57'58" West 0.27 feet;
Thence North 20°10'03" West 11.89 feet;
Thence North 69°43'51" East 0.32 feet;
Thence North 20°16'34" West 2.23 feet;
Thence South 68°39'31" West 2.16 feet;
Thence South 21°20'29" East 0.22 feet;
Thence South 70°11'08" West 12.10 feet;
Thence North 20°17'59" West 0.29 feet;
Thence South 69°42'12" West 2.18 feet;
Thence South 20°17'59" East 0.29 feet;
Thence South 69°42'12" West 4.31 feet;
Thence South 19°01'46" East 3.44 feet;
Thence South 70°34'44" West 9.85 feet;
Thence North 20°39'44" West 0.18 feet;
Thence South 70°18'44" West 47.07 feet;
Thence North 19°58'15" West 5.00 feet;
Thence South 70°18'44" West 0.96 feet to a point on the west boundary line of said parcel;

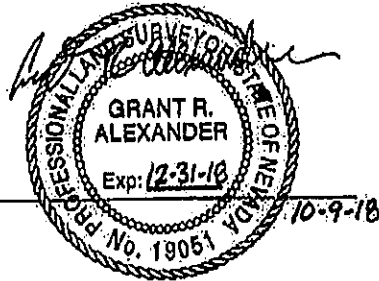
Thence North 20°01'37" West 0.14 feet along the west boundary line of said parcel to the north west corner of said parcel;

Thence North 70°03'09" East 70.53 feet along the north boundary line of said parcel;

Thence departing the north boundary line of said parcel, South 46°39'20" East 0.28 feet;

Thence North 70°18'18" East 9.21 feet to the true point of beginning, containing 698 square feet, more or less.

Basis of Bearings: NAD 83(94) Nevada State Plane Coordinate System, West Zone (2703).



Grant R. Alexander, P.L.S. 19051
Battle Born Ventures, LLC
600 Gleeson Way
Sparks, NV 89431

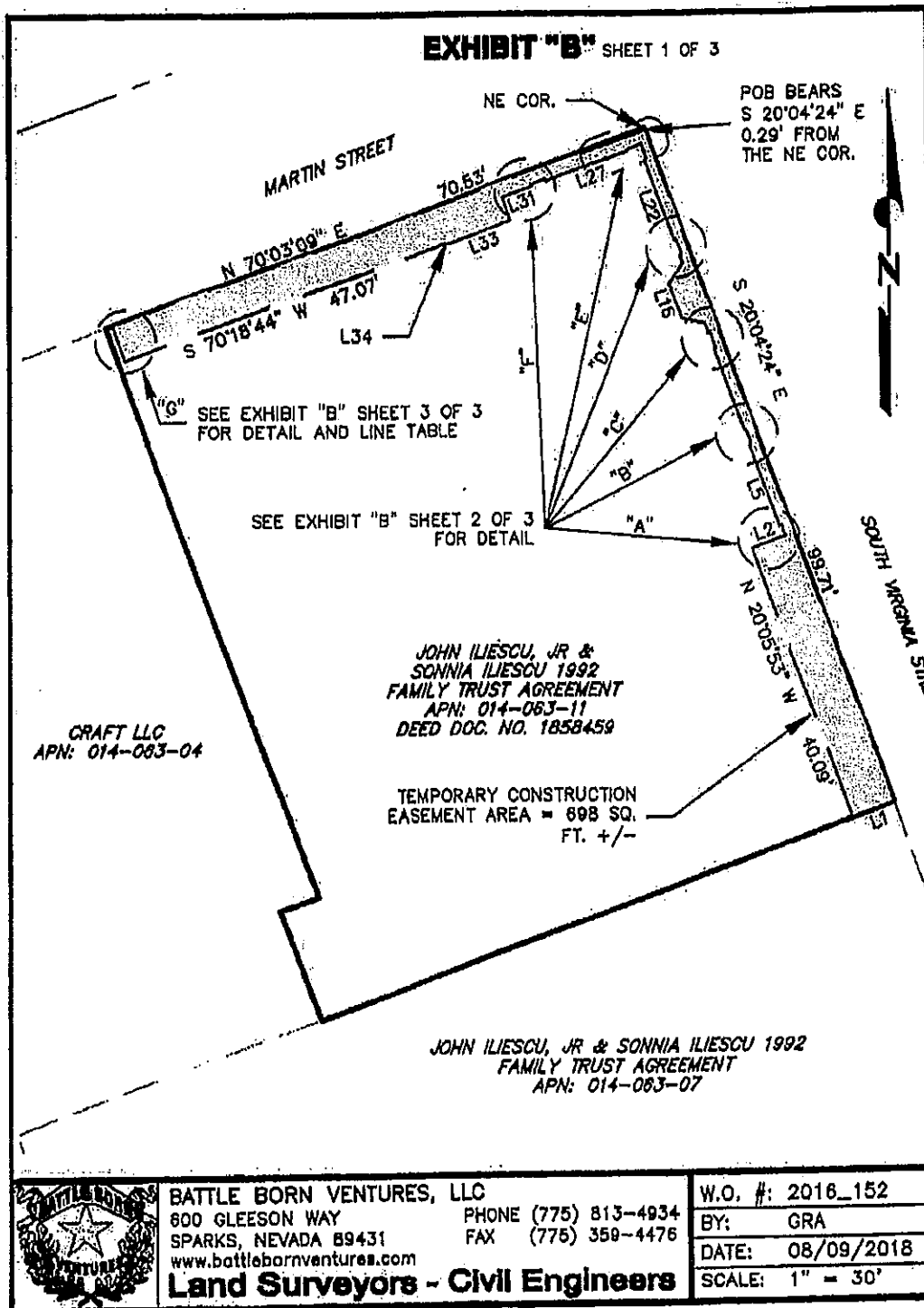
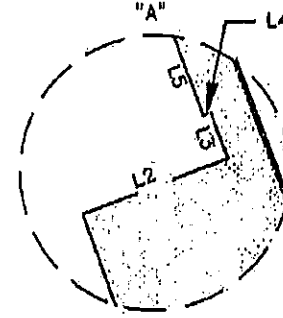
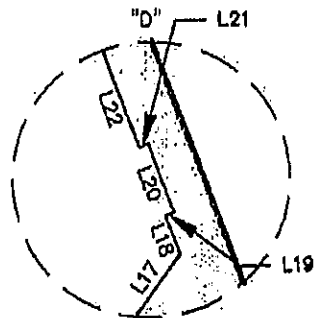
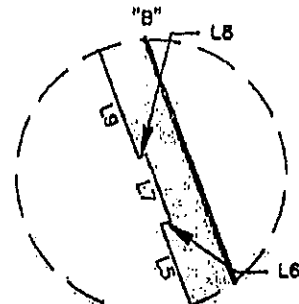
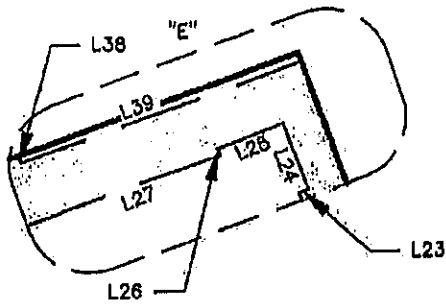
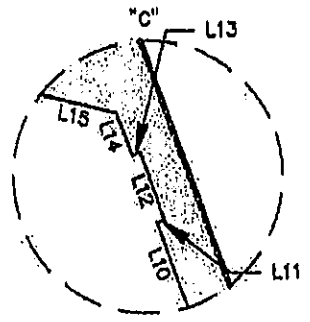
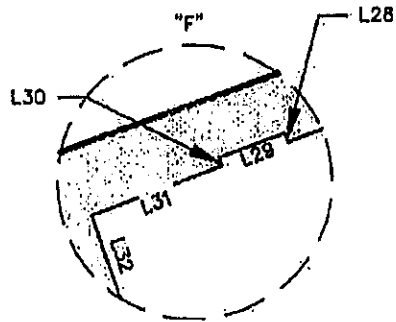


EXHIBIT "B" SHEET 2 OF 3

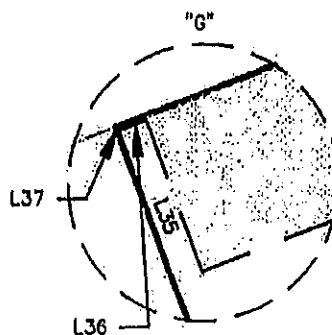


BATTLE BORN VENTURES, LLC
 800 GLEESON WAY
 SPARKS, NEVADA 89431
 www.battlebornventures.com
Land Surveyors - Civil Engineers

W.O. #: 2018_152
 BY: GRA
 DATE: 08/09/2018
 SCALE: 1" = 5'

EXHIBIT "B" SHEET 3 OF 3

LINE TABLE		
LINE	LENGTH	BEARING
L1	6.19'	S70°06'19"W
L2	4.92'	N70°11'00"E
L3	1.55'	N20°13'28"W
L4	0.25'	S69°46'27"W
L5	12.07'	N20°13'28"W
L6	0.33'	N69°46'27"E
L7	2.23'	N20°13'28"W
L8	0.24'	S69°46'27"W
L9	8.39'	N20°13'28"W
L10	3.50'	N20°02'05"W
L11	0.26'	N69°57'58"E
L12	2.25'	N20°02'05"W
L13	0.26'	S69°57'58"W
L14	1.44'	N20°02'05"W
L15	3.34'	N76°37'39"W
L16	5.13'	N20°45'47"W
L17	3.46'	N35°29'29"E
L18	1.26'	N20°02'05"W
L19	0.27'	N69°57'58"E
L20	2.27'	N20°02'05"W
L21	0.27'	S69°57'58"W
L22	11.89'	N20°10'03"W
L23	0.32'	N69°43'51"E
L24	2.23'	N20°16'34"W
L25	2.16'	S68°39'31"W
L26	0.22'	S21°20'29"E
L27	12.10'	S70°11'08"W
L28	0.29'	N20°17'59"W
L29	2.18'	S69°42'12"W
L30	0.29'	S20°17'59"E
L31	4.31'	S69°42'12"W
L32	3.44'	S19°01'46"E
L33	9.85'	S70°34'44"W
L34	0.18'	N20°39'44"W
L35	5.00'	N19°58'15"W
L36	0.98'	S70°18'44"W
L37	0.14'	N20°01'37"W
L38	0.28'	S46°39'20"E
L39	9.21'	N70°18'18"E



BATTLE BORN VENTURES, LLC
 600 GLEESON WAY
 SPARKS, NEVADA 89431
 www.battlebornventures.com
Land Surveyors - Civil Engineers

PHONE (775) 813-4934
 FAX (775) 359-4478

W.O. #: 2016_152
 BY: GRA
 DATE: 08/09/2018
 SCALE: 1" = 5'

FILED
Electronically
CV19-00753
2019-04-03 02:15:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7199945 : yvitoria

EXHIBIT 3

EXHIBIT 3



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction

Metropolitan Planning Organization of Washoe County, Nevada

January 22, 2019

John Iliescu, Jr. and Sonnia Iliescu
1992 Family Trust Agreement dated January 24, 1992
200 Court Street
Reno, NV 89501

**Notice of Public Meeting –
RTC Board Meeting**
Virginia Street BRT Extension Project
Plumb Lane to Liberty Street & Maple
Street to 15th Street / North Virginia Street
RTC Project: 211003
APNs: 014-063-07 and 014-063-11

Via Hand Delivery

RE: Notice Letter Pursuant to NRS 241.034

Dear Property Owner:

On behalf of the Board of Directors for the Regional Transportation Commission (RTC), you are hereby notified that the RTC Board will convene on February 15, 2019, at 9:00 a.m., at the Washoe County Commission Chambers, located at 1001 E. Ninth Street, Building A, Reno, Nevada 89512. At that meeting, the Board will discuss whether to acquire, and may take action to acquire one (1) permanent easement and two (2) temporary construction easements (property rights), located on Assessor Parcel Numbers 014-063-07 and 014-063-11 by the exercise of the power of eminent domain.

APN 014-063-07 Temporary Construction Easement – 309 square feet

APN 014-063-11 Permanent Easement – 2 square feet
Temporary Construction Easement – 698 square feet

This notice is provided to you pursuant to Chapter 241 of the Nevada Revised Statutes. Also pursuant to Chapter 241, this meeting is an open meeting at which comments from the public are taken.

The Washoe County Commission Chambers is accessible to individuals with disabilities. Requests for auxiliary aids to assist individuals with disabilities should be made with as much advance notice as possible. For those requiring hearing or speech assistance, contact Relay Nevada at 1-800-326-6868 (TTY, VCO or HCO). Requests for supporting documents and all other requests should be directed to Denise Thompson at (775) 335-1826.

The RTC's preference is to continue the negotiation process with you to acquire the property rights needed for the project; however, the RTC may initiate an action in eminent domain to acquire them. Upon your response, we can schedule a meeting to work on a resolution.

If you have any questions, please contact Carrie Byron, Property Agent, by phone at (775) 332-2144.

Sincerely,

Lee G. Gibson, AICP
RTC Executive Director

LGG/CAB/mmm

cc: Dale Ferguson, General Counsel, RTC
Brian Stewart, RTC Engineering Director

3025

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

THE REGIONAL TRANSPORTATION
COMMISSION OF WASHOE COUNTY, a
special purpose unit of the government,

Plaintiff,

CASE NO.: CV19-00753

DEPT. NO.: 1

vs.

JOHN ILIESCU, JR. and SONNIA ILIESCU,
Trustees of The John Iliescu, Jr. and Sonnia Iliescu
1992 Family Trust Agreement, dated January 24,
1992; The City of Reno, a political subdivision of
the State of Nevada; and DOES 1 – 20, inclusive,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART MOTION IN LIMINE TO
EXCLUDE EVIDENCE PURSUANT TO NRS 50.275, 50.285 AND 50.305**

Currently before the Court is the Regional Transportation Commission of Washoe County's
("Plaintiff") *Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305*
("Motion") filed on February 11, 2020. On February 25, 2020 Defendants John Iliescu, Jr. and
Sonnia Iliescu, Trustees of John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust ("Defendants"),
filed *Defendants' Opposition to Motion in Limine to Exclude Evidence Pursuant to NRS 50.275,*
50.285 and 50.305; Motion for Extension of Time to Disclose Expert. On March 2, 2020 Defendants
filed *Defendants' Opposition to Motion in Limine to Exclude Evidence Pursuant to NRS 50.275,*
50.285 and 50.305; Motion for Extension of Time to Disclose Expert that appears to be identical to

1 the Opposition filed on February 25, 2020. On March 16, 2020 Plaintiff filed a *Reply in Support of*
2 *Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305*. On March 27,
3 2020 Plaintiff filed a *Supplemental Reply in Support of Motion in Limine to Exclude Evidence*
4 *Pursuant to NRS 50.275, 50.285 and 50.305*.

5 I. Background

6 This is condemnation action in which Plaintiff seeks to acquire certain easements on property
7 owned by Defendants. Mot. at 2:4–8. Plaintiff seeks a permanent easement and a temporary
8 easement located upon APN 014-063-11 and a temporary construction easement located upon APN
9 014-063-07. *Id.* at 2:8–11. On July 15, 2019, this Court entered its *Order Granting Motion for*
10 *Immediate Occupancy Pending Final Judgment* finding the use and taking of the property is proper,
11 but leaving for decision the amount of compensation due to Defendants as a result of Plaintiff's
12 acquisition of the property and any severance damages. *Id.* at 2:12–18.

13 This Court's *Scheduling Order* dated July 25, 2019 set the deadline to disclose initial expert
14 witnesses pursuant to NRCP 16.1(a)(2) as February 7, 2020. Plaintiff timely disclosed its expert
15 who will provide his stated opinion of value. *Id.* at 2:20–21. Defendants failed to timely disclose
16 any experts. *Id.* at 2:21–22. This case is currently set for a seven-day jury trial beginning July 20,
17 2020.

18 II. Relevant Legal Authority

19 Motions in limine may be made to serve two different purposes: (1) to procure a definitive
20 ruling on the admissibility of evidence at the outset of trial; and, (2) to prevent opposing counsel
21 from mentioning potentially inadmissible evidence in opening statement, or eliciting such evidence
22 from a witness, before the district court has an opportunity to rule on the evidence's admissibility.
23 *See, e.g. Born v. Eisenmann*, 114 Nev. 854, 962 P.2d 1227 (1998); *see also* NRS 47.080. The district
24 court has a broad discretionary power to decide a motion in limine. *See State ex rel Dept. of*
25 *Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 376, 551 P.2d 1095 (1976); *see also*
26 *Whistler v. State*, 121 Nev. 401, 406, 116 P.3d 59, 62 (2005) (stating that "[a] district court's ruling
27 on a motion in limine is reviewed for an abuse of discretion"). Due to their anticipatory nature,
28 rulings on motions in limine are "subject to change when the case unfolds, particularly if the actual

1 testimony [or evidence] differs from what was contained,” in the pretrial motion itself. *Luce v.*
2 *United States*, 469 U.S. 38, 41, 105 S.Ct. 460, 463 (1984).

3 If a party fails to comply with a discovery order or any provision of Rule 16.1, the Court
4 should impose the appropriate sanction which may include “an order prohibiting the use of any
5 witness, document, or tangible thing that should have been disclosed, produced, exhibited, or
6 exchanged under Rule 16.1(a).” NRCP 16.1(e)(3)(B). NRCP 6(b)(1)(B)(ii) provides “the court
7 may, for good cause, extend the time . . . on motion made after the time has expired if the party failed
8 to act because of excusable neglect.”

9 In Nevada, once the issues of public use and necessity are established by the condemning
10 agency, the property owner has the burden of proving, by a preponderance of the evidence, the value
11 of the land taken and any severance damages. *State v. Pinson*, 66 Nev. 227, 236-238, 207 P.2d 1105,
12 1109-10 (1949); *City of Las Vegas v. Bustos*, 119 Nev. 360, 362, 75 P.3d 351, 352 (2003); *Pappas*
13 *v. State*, 104 Nev. 572, 575, 763 P.2d 348, 350 (1988).

14 **III. Analysis**

15 Plaintiff contends that because Defendants bear the burden to show the amount of just
16 compensation to which they are entitled and have failed to timely disclose an expert witness, they
17 should be prohibited from calling any expert witnesses. Mot. at 3:18-21. Plaintiff relies on the
18 mandatory nature of NRCP 16.1(a)(2) that expert witnesses must be timely disclosed. *Id.* at 3:23-
19 24. Plaintiff argues this is a violation of this Court’s *Scheduling Order* and therefore Defendants
20 should be precluded from offering any evidence pursuant to NRS 50.275, NRS 50.285, and 50.385
21 in this case. *Id.* at 3:24-28.

22 Defendants acknowledge that they did not timely disclose an expert witness but argue that
23 was due to a calendaring error in defense counsel’s office that was due to excusable neglect caused
24 by an unforeseen medical event, for which defense counsel accepts responsibility. Opp. at 2:8-14.
25 Defendants request this Court find good cause to extend the expert disclosure deadline to permit the
26 untimely disclosure. *Id.* at 2:17-20. Defendants point out without this, Defendants will be denied
27 their day in Court and the fact finder will lack facts to make a well-informed determination. *Id.* at
28 2:19-23. Defendants then state “The Iliescus’ retained expert in this case has performed many prior

1 appraisals for the Iliescus in RTC ‘taking’ cases and is very familiar with the subject property.” *Id.*
2 at 2:23–25.

3 Defendants argue this Court’s *Scheduling Order* uses the word could as opposed to will or
4 shall when referring to the imposition of sanctions for a failure to comply with its terms. *Id.* at 3:11–
5 14. Defendants state that shortly after Plaintiffs filed this case, defense counsel suffered significant
6 neurological and spinal injuries in an accidental fall for which extensive care, testing, treatment, and
7 rehabilitation are required. *Id.* at 3:22–25. Defense counsel states he has been undergoing treatment
8 at various medical treatment facilities in the Reno area and the injuries and his care have negatively
9 affected his ability to work. *Id.* at 3:25–4:2. Defense counsel also states that his care and injuries
10 are the principal source of the unintended scheduling error, and to that end constitute excusable
11 neglect and good cause to extend the time in which Defendants can disclose their expert witness. *Id.*
12 at 4:2–7. Defendants argue the deadline expired only eighteen days prior to the Motion, that the
13 scheduling error was beyond the Defendants’ control, and that Defendants and their counsel have
14 acted in good faith. *Id.* at 4:12–17. Defendants request a twenty-one day extension of time in which
15 to disclose their expert witness and submit his report in this case. *Id.* at 4:25–27.

16 Plaintiff responds that this case was filed nearly a year ago and at no time during this
17 litigation did defense counsel advise Plaintiff’s counsel that there was a medical issue affecting his
18 ability to represent his clients. *Id.* at 2:7–11. Plaintiff even states that defense counsel had numerous
19 discussions with Plaintiff’s counsel regarding another case pending in Department 15 between the
20 same parties. *Id.* at 2:12–14. Plaintiff states it is sympathetic to defense counsel’s assertions, but
21 points out defense counsel provides no detail about the alleged calendaring error, no detail about his
22 efforts to review the calendar, provides no name for the alleged expert Defendants intend to use, the
23 date they contacted that expert, nor have they served a report despite thirty days since the expiration
24 of the deadline. *Id.* at 2:15–21. Should this Court disagree and permit a continuance, Plaintiff
25 requests fees and costs associated with bringing the Motion. *Id.* at 2:22–25.

26 Plaintiff filed a Supplemental Reply that informed this Court that as of March 27, 2020,
27 Defendants have failed to disclose an expert witness. Suppl. at 1:28–2:10. Plaintiff states even if
28 this Court granted Defendants’ request for a forty-five day extension from the original expert

1 disclosure deadline, that would have passed on March 23, 2020. *Id.* As such, Plaintiff maintains
2 that even if this Court construes the Opposition as a proper motion seeking an extension, the
3 Defendants still have not served a timely expert witness disclosure. *Id.*

4 Having reviewed the pleadings on file and having reviewed the facts and legal support set
5 forth therein, this Court finds good cause to grant the Motion in part and deny it in part. Defense
6 counsel's injuries and care are a sufficient basis for this Court to find that the scheduling error was
7 a result of excusable neglect. This Court finds that the failure to disclose an expert in this case by
8 the February 7, 2020 deadline was the result of excusable neglect on behalf of defense counsel.

9 However, this Court cannot excuse Defendants' continued failure to disclose an expert.
10 Defendants were placed on notice of their failure to designate an expert witness by this Motion.
11 Defendants proceeded to not disclose an expert witness within the forty-five day extension that they
12 proposed in the Opposition. From the representations of defense counsel, the Defendants have
13 already retained an expert in this case, but have nonetheless failed to disclose said expert. Opp. at
14 2:23–25. This Court is unable to find that such a continued and prolonged delay is the result of
15 excusable neglect in this case.

16 Even if this Court were to construe Defendants' Opposition as a Motion for Extension of
17 Time, it specifically requested a forty-five day extension. This Court has reviewed the docket in this
18 case and notes Defendants have not filed anything in this case since March 2, 2020. Based upon the
19 Supplement, Defendants failed to disclose their expert within that forty-five day extension. As such,
20 the request to extend the expert disclosure deadline is denied as moot.

21 Accordingly, Defendants will be barred from disclosing an initial expert in this case. To
22 allow Defendants to untimely disclose an initial expert witness after Plaintiff's expert has already
23 produced his initial report would result in substantial prejudice to Plaintiff. Pursuant to this Court's
24 *Scheduling Order* filed July 25, 2019, the deadline for the close of discovery was May 8, 2020. This
25 Court will extend the discovery deadline and the deadline to make rebuttal expert disclosures
26 pursuant to NRCP 16.1(a)(2) to May 22, 2020. This extension is for the limited purpose of allowing
27 Defendants to disclose a rebuttal expert whose testimony will be limited to rebutting the expert
28

1 testimony filed by Plaintiff. This Court denies Plaintiff's request for costs and fees associated with
2 bringing this Motion.

3 Based upon the foregoing and good cause appearing,

4 IT IS HEREBY ORDERED that the *Motion in Limine to Exclude Evidence Pursuant to NRS*
5 *50.275, 50.285 and 50.305* is GRANTED IN PART and DENIED IN PART consistent with this
6 Order.

7 IT IS SO ORDERED.

8 DATED this 14th day of May, 2020.

9
10 
11 KATHLEEN M. DRAKULICH
12 District Court Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV19-00753

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 14th day of May, 2020, I electronically
5 filed the **ORDER GRANTING IN PART AND DENYING IN PART MOTION IN LIMINE**
6 **TO EXCLUDE EVIDENCE PURSUANT TO NRS 50.275, 50.285 AND 50.305** with the Clerk
7 of the Court by using the ECF system.

8 I further certify that I transmitted a true and correct copy of the foregoing document by the
9 method(s) noted below:

10 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**
11 **notice of electronic filing to the following:**

12 SUSAN ROTHE, ESQ. for CITY OF RENO

13 BRETT MAUPIN, ESQ. for JOHN ILIESCU & SONNIA ILIESCU,
14 TRUSTEES

15 MICHAEL MORRISON, ESQ. for JOHN ILIESCU & SONNIA
16 ILIESCU, TRUSTEES

17 GORDON DEPAOLI, ESQ. for THE REGIONAL TRANSPORTATION
18 COMMISSION OF WASHOE COUNTY

19 DANE ANDERSON, ESQ. for THE REGIONAL TRANSPORTATION
20 COMMISSION OF WASHOE COUNTY

21 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**
22 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**
23 **[NONE]**

24
25 
26 DANIELLE REDMOND
27 Department 1 Judicial Assistant
28

3060

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

THE REGIONAL TRANSPORTATION
COMMISSION OF WASHOE COUNTY, a
special purpose unit of the government,

Plaintiff,

CASE NO.: CV19-00753

DEPT. NO.: 1

vs.

JOHN ILIESCU, JR. and SONNIA ILIESCU,
Trustees of The John Iliescu, Jr. and Sonnia Iliescu
1992 Family Trust Agreement, dated January 24,
1992; The City of Reno, a political subdivision of
the State of Nevada; and DOES 1 – 20, inclusive,

Defendants.

**ORDER GRANTING MOTION IN LIMINE TO PRECLUDE DEFENDANTS FROM
CALLING WITNESSES AND PRESENTING DOCUMENTARY EVIDENCE**


Currently before the Court is the Regional Transportation Commission of Washoe County's ("Plaintiff") *Motion in Limine to Preclude Defendants from Calling Witnesses and Presenting Documentary Evidence* ("Motion") filed May 15, 2020 and submitted to the Court for consideration on June 1, 2020. D.C.R. 13(3) provides "[f]ailure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same." Defendants did not file a response to Plaintiff's Motion. Accordingly, this Court finds good cause to grant Plaintiff's Motion.

Based upon the foregoing and good cause appearing,

1 IT IS HEREBY ORDERED that Plaintiff's *Motion in Limine to Preclude Defendants from*
2 *Calling Witnesses and Presenting Documentary Evidence* is GRANTED.

3 IT IS SO ORDERED.

4 DATED this 4th day of June, 2020.

5 
6 _____
7 KATHLEEN M. DRAKULICH
8 District Court Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 4th day of June, 2020, I electronically filed the **ORDER GRANTING MOTION IN LIMINE TO PRECLUDE DEFENDANTS FROM CALLING WITNESSES AND PRESENTING DOCUMENTARY EVIDENCE** with the Clerk of the Court by using the ECF system.

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

BRETT MAUPIN, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

GORDON DEPAOLI, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION
OF WASHOE COUNTY

Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:
[NONE]

Danielle Redmond
DANIELLE REDMOND
Department 1 Judicial Assistant

1 3060

2
3
4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
7 **THE STATE OF NEVADA IN AND FOR THE**
8 **COUNTY OF WASHOE**

9 THE REGIONAL TRANSPORTATION
10 COMMISSION OF WASHOE COUNTY, a
11 special purpose unit of government,

12 Plaintiff,

Case No. CV19-00753

Dept. No. 1

13 vs.

14 JOHN ILIESCU, JR., and SONNIA ILIESCU,
15 Trustees of The John Ilisecu, Jr. and Sonnia
16 Iliescu 1992 Family Trust Agreement, dated
17 January 24, 1992; The City of Reno, a political
subdivision of the State of Nevada; and DOES 1
-20, inclusive,

18 Defendants
19 _____/

20 **ORDER GRANTING PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE EVIDENCE**
21 **OR ARGUMENT REGARDING UNASSERTED CLAIMS**

22 Currently before the Court is Plaintiff The Regional Transportation Commission of Washoe
23 County's ("RTC") *Motion in Limine to Preclude Evidence or Argument Regarding Unasserted*
24 *Claims* filed June 4, 2020 and submitted to the Court for consideration on June 22, 2020. D.C.R.
25 13(3) provides "[f]ailure of the opposing party to serve and file his written opposition may be
26 construed as an admission that the motion is meritorious and a consent to granting the same."
27 Defendants did not file a response to Plaintiff's Motion. Accordingly, this Court finds good cause to
28 grant Plaintiff's Motion.

Based on the foregoing and good cause appearing,

1 IT IS HEREBY ORDERED that Plaintiff's *Motion in Limine to Preclude Evidence or*
2 *Argument Regarding Unasserted Claims* is GRANTED.

3 IT IS SO ORDERED.

4 DATED this 26th day of June, 2020.

5
6 

7 KATHLEEN DRAKULICH
8 DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV19-00753

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 26th day of June, 2020, I electronically
5 filed the **ORDER GRANTING PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE**
6 **EVIDENCE OR ARGUMENT REGARDING UNASSERTED CLAIMS** with the Clerk of the
7 Court by using the ECF system.

8 I further certify that I transmitted a true and correct copy of the foregoing document by the
9 method(s) noted below:

10 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**
11 **of electronic filing to the following:**

12 SUSAN ROTHE, ESQ. for CITY OF RENO

13 BRETT MAUPIN, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

14 MICHAEL MORRISON, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

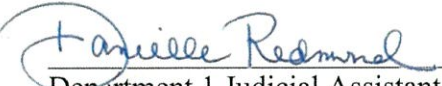
15 GORDON DEPAOLI, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION
16 OF WASHOE COUNTY

17 DANE ANDERSON, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION
18 OF WASHOE COUNTY

19 BRONAGH KELLY, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION
20 OF WASHOE COUNTY

21 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**
22 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

23 [NONE]

24 
25 Department 1 Judicial Assistant
26
27
28

3060

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

THE REGIONAL TRANSPORTATION
COMMISSION OF WASHOE COUNTY, a
special purpose unit of the government,

Plaintiff,

CASE NO.: CV19-00753

DEPT. NO.: 1

vs.

JOHN ILIESCU, JR. and SONNIA ILIESCU,
Trustees of The John Iliescu, Jr. and Sonnia Iliescu
1992 Family Trust Agreement, dated January 24,
1992; The City of Reno, a political subdivision of
the State of Nevada; and DOES 1 – 20, inclusive,

Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Currently before the Court is the Regional Transportation Commission of Washoe County's
("Plaintiff") *Motion for Summary Judgment and Declaration of Scott Q. Griffin in Support of Motion
for Summary Judgment* ("Summary Judgment Motion") filed March 31, 2020. On May 22, 2020,
Defendants John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu Jr. and Sonnia Iliescu
1992 Family Trust Agreement filed an *Opposition to Plaintiff's Motion for Summary Judgment*
("Summary Judgment Opposition"). On May 28, 2020, Plaintiff filed a *Reply in Support of Motion
for Summary Judgment* ("Summary Judgment Reply") and submitted the Summary Judgment
Motion to the Court for consideration.

///

1 **I. Background**

2 On July 25, 2019, this Court issued its *Scheduling Order* which set the initial expert
3 disclosure deadline as February 7, 2020 and the rebuttal expert disclosure deadline as March 9, 2020.
4 *Scheduling Order* at 2:4–8. The *Scheduling Order* noted that the requirement that experts submit
5 written reports had not been waived. *Id.* at 2:9. The *Scheduling Order* further noted that a
6 “continuance of the trial date does not modify, alter, change or continue the discovery schedule
7 unless specifically agreed to by the parties, in writing, and ordered by the Court.” *Id.* at 2:27–3:1.

8 On February 11, 2020, Plaintiff filed its *Motion in Limine to Exclude Evidence Pursuant to*
9 *NRS 50.275, 50.285 and 50.305* that alleged Defendants had failed to disclose a rebuttal expert.
10 Plaintiff filed a *Supplemental Reply in Support of Motion in Limine to Exclude Evidence Pursuant*
11 *to NRS 50.275, 50.285 and 50.305* on March 27, 2020 that confirmed Defendants had still failed to
12 disclose an expert witness.

13 On May 14, 2020, this Court issued its *Order Granting in Part and Denying in Part Motion*
14 *in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305* (“May 14 Order”).
15 Among other things, the Order stated:

16 Defendants will be barred from disclosing an initial expert in this case . . .
17 This Court will extend the discovery deadline and the deadline to make
18 rebuttal expert disclosures pursuant to NRCP 16.1(a)(2) to May 22, 2020.
19 This extension is for the limited purpose of allowing Defendants to disclose
20 a rebuttal expert whose testimony will be limited to rebutting the expert
21 testimony filed by Plaintiff.

22 Order at 5:21–6:2.

23 On May 15, 2020, Plaintiff filed a *Motion in Limine to Preclude Defendants From Calling*
24 *Witnesses and Presenting Documentary Evidence* (“Motion to Preclude”). In the Motion to
25 Preclude, Plaintiff states that on July 23, 2019, the parties filed a Joint Case Conference report
26 agreeing that they would make their initial disclosure of witnesses and documents pursuant to NRCP
27 16.1(a)(1). Motion to Preclude at 2:19-21. Defendants never served any disclosures. *Id.* at 2:21-
28 22. Plaintiff provides that the May 8, 2020 deadline to complete discovery was extended by the
Court to May 22, 2020, but only for the limited purpose of allowing Defendants to disclose a rebuttal
expert. *Id.* at 22-25. Plaintiff stated that for all other purposes, discovery was closed, Defendants

1 had made no disclosures required by NRCP 16.1(a)(1) and should be precluded from calling any
2 witnesses in their case. *Id.* at 3:1-3. Defendants failed to respond to the Motion to Preclude and
3 Plaintiff submitted this motion on June 1, 2020. This Court entered an *Order Granting Motion in*
4 *Limine to Preclude Defendants From Calling Witnesses and Presenting Documentary Evidence* on
5 June 4, 2020 (“June 4 Order”) that precludes Defendants from “from calling any witnesses in their
6 case in chief and from presenting any other evidence at trial. . . .” Motion to Preclude at 4:6–7.

7 On May 22, 2020, Defendants filed a *Notice* indicating that its expert witness would be Mr.
8 Tony Wren, MAI, SRA, Certified General Appraiser. Notice at 1:24–28. Exhibit 1 to the Notice
9 indicates Mr. Wren’s report was emailed to Defendants on April 8, 2020, sixty-one days after the
10 initial expert disclosure deadline. Notice at Ex. 1. Exhibit 1 to the Notice also includes a statement
11 by defense counsel on April 8, 2020 that states “I am hesitant to file anything with the Court on this
12 while the motion is pending but please let me know if you want us to file something on this.” *Id.*

13 On June 1, 2020, Plaintiff filed a *Motion in Limine to Preclude Defendants from Presenting*
14 *a Rebuttal Expert Witness* (“Rebuttal Expert Motion”). Plaintiff waited the requisite fourteen days
15 as required by WDCR 12(2) and then submitted it to the Court for consideration on June 16, 2020.
16 On June 18, 2020, or three days after the fourteen-day deadline imposed by WDCR 12(2),
17 Defendants filed an *Opposition to Plaintiff’s Motion in Limine*.¹ On June 24, 2020, Plaintiff filed a
18 *Reply to Defendants’ Untimely Opposition to Motion in Limine to Preclude Defendants from*
19 *Presenting a Rebuttal Expert Witness*.

20 **II. Relevant Legal Authority**

21 **a. Summary Judgment**

22 NRCP 56(c) provides, “[summary judgment] shall be rendered if the pleadings, depositions,
23 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there
24 is no genuine issue as to any material fact and that the moving party is entitled to judgment as a
25 matter of law.” A genuine issue of material fact exists when the evidence is such that a rational trier
26 of fact could return a verdict for the nonmoving party. *Woods v. Safeway*, 121 Nev. 724, 731, 121

27 ¹ The title does not indicate which Motion in Limine the Motion is regarding but the conclusion of the Motion
28 requests an order denying Plaintiff’s June 1, 2020 Motion in Limine and this was the only motion filed that
day. Opp. at 9:19–20.

1 P.3d 1026, 1031 (2005). When deciding whether summary judgment is appropriate, the court must
2 view all evidence in the light most favorable to the non-moving party and accept all properly
3 supported evidence, factual allegations, and reasonable inferences favorable to the non-moving party
4 as true. *C. Nicholas Pereos, Ltd. v. Bank of Am.*, 131 Nev. Adv. Op. 44, 352 P.3d 1133, 1136 (2015);
5 *NGA No. 2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1157, 946 P.2d 163, 167 (1997).

6 The Nevada Supreme Court has adopted the federal approach outlined in *Celotex Corp. v.*
7 *Catrett*, 477 U.S. 317 (1986), with respect to burdens of proof and persuasion in summary judgment
8 proceedings. See *Cuzze v. Univ. & Cmty. College Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131,
9 134 (2007). The party moving for summary judgment must meet his or her initial burden of
10 production and show there is no genuine issue of material fact. *Id.* “The manner in which each party
11 may satisfy its burden of production depends on which party will bear the burden of persuasion on
12 the challenged claim at trial.” *Id.* When the moving party bears the burden at trial, that party must
13 present evidence that would entitle it to judgment as a matter of law absent contrary evidence. *Id.*
14 If the burden of persuasion at trial will rest on the nonmoving party, “the party moving for summary
15 judgment may satisfy the burden of production by either (1) submitting evidence that negates an
16 essential element of the nonmoving party’s claim, or (2) pointing out that there is an absence of
17 evidence to support the nonmoving party’s case.” *Id.* After the moving party meets his or her initial
18 burden of production, the opposing party “must transcend the pleadings and by affidavit or other
19 admissible evidence, introduce specific facts that show a genuine issue of material fact.” *Id.*

20 When deciding a motion for summary judgment, “a district court cannot make findings
21 concerning the credibility of witnesses or weight of evidence.” *Sawyer v. Sugarless Shops Inc.*, 106
22 Nev. 265, 267–68, 792 P.2d 14, 15–16 (1990). Moreover, if documentary evidence is required, it
23 “must be construed in the light most favorable to the non-moving party. All of the non-movant’s
24 statements must be accepted as true and a district court may not pass on the credibility of affidavits.”
25 *Id.* (internal citation omitted)).

26 **b. Rebuttal Expert Witness**

27 In Nevada, once the issues of public use and necessity are established by the condemning
28 agency, the property owner has the burden of proving, by a preponderance of the evidence, the value

1 of the land taken and any severance damages. *State v. Pinson*, 66 Nev. 227, 236-238, 207 P.2d 1105,
2 1109-10 (1949); *City of Las Vegas v. Bustos*, 119 Nev. 360, 362, 75 P.3d 351, 352 (2003); *Pappas*
3 *v. State*, 104 Nev. 572, 575, 763 P.2d 348, 350 (1988).

4 In dictating when a party must make disclosure of expert witnesses, NRCP
5 16.1(a)(2)(E)(i)(b) provides that “if the evidence is intended solely to contradict or rebut evidence
6 on the same subject matter identified by another party under Rule 16.1(a)(2)(B), (C), or (D), within
7 30 days after the other party’s disclosure.” However, sub-section (ii) states that the thirty-day
8 deadline “does not apply to any party’s witness whose purpose is to contradict a portion of another
9 party’s case in chief that should have been expected and anticipated by the disclosing party, or to
10 present any opinions outside of the scope of another party’s disclosure.” NRCP 16.1(a)(2)(E)(ii).

11 The contours of this rule were discussed at length in *R&O Const. Co. v. Rox Pro Intern.*
12 *Group Ltd.*, No. 2:09–CV–01749–LRH–LRL, 2011 WL 2923703, *2 (D. Nev. July 18, 2011). First,
13 rebuttal expert reports are not the proper place to present new arguments. *Id.* (citations omitted).
14 Second, if the purpose of the expert testimony in question is to contradict an expected or anticipated
15 portion of the other party’s case in chief, the witness is not a rebuttal witness or anything analogous
16 to one. *Id.* (citations omitted). Third, rebuttal testimony “is limited to new unforeseen facts brought
17 out in the other side’s case.” *Id.* (internal quotation marks omitted).

18 **III. Analysis**

19 The parties agree the only remaining fact in dispute in this case is the amount of just
20 compensation due to Defendants for Plaintiff’s acquisition of the property and any severance
21 damages. Summ. J. Mot. at 2:10–17; Summ. J. Opp. at 2:13–17. Plaintiff argues it timely filed the
22 expert opinion of Mr. Scott Griffin who opined that the value of just compensation due to Defendants
23 is \$15,955. Summ. J. Mot. at 2:19–24. Plaintiff argues because Defendants failed to timely disclose
24 any experts to satisfy their burden of proving the value of the land taken or the existence and amount
25 of any severance damages, summary judgment is proper. *Id.* at 3:20–21. Plaintiff contends that
26 because Defendants cannot satisfy their burden, this Court should enter summary judgment in favor
27 of Plaintiff and find that the amount of just compensation due to Defendants is \$15,955. *Id.* at 3:22–
28 4:3.

1 Defendants respond² that their disclosure of expert witness and related reports were not
2 timely filed due to Mr. Morrison's health conditions and related medical tests and treatments. Summ.
3 J. Opp. at 2:20–23. Defendants assert at the time expert disclosures were due, Mr. Morrison was
4 Defendants' sole lawyer, but Defendants engaged Mr. Maupin to represent them on February 25,
5 2020. *Id.* at 2:24–27. Defendants assert that while the parties were engaged in settlement
6 discussions, Plaintiff filed the Summary Judgment Motion. *Id.* at 3:4–22. Defendants represent that
7 in a phone conversation, counsel for the Plaintiff had mentioned Mr. Maupin's diligent efforts to
8 obtain and perform an appraisal and expert report. *Id.* at 3:24–4:6. Defendants state that counsel for
9 the Plaintiff agreed that the *Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285*
10 *and 50.305* should be withdrawn but that the Plaintiff would have the final decision. *Id.* at 4:7–15.
11 Ultimately, Plaintiff decided not to withdraw the motion. *Id.* at 4:18–19. Defendants maintain that
12 this Court's May 14 Order that permits them to call a rebuttal expert witness is sufficient to create a
13 general issue of material fact. *Id.* at 4:21–5:2.

14 Defendants argue that because this Court had not issued the May 14 Order when the
15 Summary Judgment Motion was filed, it was premature and that Plaintiff's counsel's statements
16 adversely impacted Defendants' ability to disclose an expert witness. *Id.* at 6:4–13. Defendants
17 contend that by granting Defendants the ability to call a rebuttal expert witness in the May 14 Order,
18 this Court essentially made the Summary Judgment Motion moot in its current form. *Id.* at 6:19–24.
19 Defendants state that by disclosing Mr. Wren on April 8, 2020 and disclosing his appraisal report
20 that directly rebuts Plaintiff's expert's testimony, that creates a genuine dispute of material fact as
21 to the proper amount of just compensation. *Id.* at 7:3–10.

22 Plaintiff replies that there is no requirement that it file a motion in limine and filing this
23 Summary Judgment Motion is proper and timely. Summ. J. Reply at 2:6–13. Plaintiff contends this
24 Court's May 14 Order makes this Summary Judgment Motion ripe because Defendants are unable
25 to meet their burden of proof using a rebuttal expert and thus Plaintiff is entitled to judgment as a
26 matter of law. *Id.* at 2:14–18. Plaintiff contends Mr. Wren's appraisals are not rebuttal reports as

27 ² While Plaintiff filed the Summary Judgment Motion on March 31, 2020, Defendants did not file the
28 Summary Judgment Opposition until May 22, 2020, after this Court's *Order Granting in Part and Denying*
in Part Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305.

1 they do not mention Mr. Griffin or his report, do not contradict or rebut Mr. Griffin's report, and are
2 presented for the purpose of estimating the market value and just compensation. *Id.* at 3:3–7.
3 Plaintiff argues a rebuttal expert cannot be used to meet a party's burden of proof in their case in
4 chief. *Id.* at 3:11–12. Plaintiff states that NRCP 16.1(a)(2)(E)(ii) makes clear that if the party's
5 expert's purpose is to contradict a matter that should have been expected or anticipated the expert
6 disclosure deadline does not apply. *Id.* at 3:13–20.

7 Plaintiff contends that Mr. Wren's report is based on the elimination of access to South
8 Virginia Street on parcel APN 014-063-07, but that access is entirely within the right of way meaning
9 that the alleged taking is not part of this condemnation proceeding and should have been the subject
10 of an inverse condemnation counterclaim that Defendants failed to assert in this case. *Id.* at 3:21–
11 4:1. Plaintiff points out the deadline to amend pleadings in this case has passed and Defendants
12 cannot produce any evidence supporting a claim clearly beyond the scope of Plaintiff's alleged
13 taking. *Id.* at 4:1–5. Plaintiff adds that statements of Plaintiff's counsel are irrelevant and did not
14 prevent Defendants from complying with the expert disclosure deadline in this case, or any of the
15 other deadlines Defendants have failed to comply with in this case. *Id.* at 4:14–28. Plaintiff states
16 that while Defendants demanded a jury trial, they have not identified any witnesses or produced any
17 documents that would be admissible to establish just compensation and summary judgment is proper
18 for the \$15,955 figure suggested in Mr. Griffin's report. *Id.* at 5:1–6.

19 Having reviewed the pleadings on file and the facts and legal support set forth therein, this
20 Court finds good cause to grant the Summary Judgment Motion. Defendants bear the burden to
21 prove the value of the land taken and any severance damages. *Bustos*, 119 Nev. at 362. Defendants
22 are unable to satisfy this burden relying upon a rebuttal expert. This Court does not agree with
23 Defendants that the Court's May 14 Order made the Summary Judgment Motion moot in its current
24 form. The logical extension of this assertion results in impermissibly shifting the burden to Plaintiff
25 to establish the value of the land taken and any severance damages. Plaintiff's hypothetical
26 illustrates this point: at trial, the jury would hear opening statements, Defendants who bear the
27 burden of proof would have no witnesses, and Plaintiff would stand up and move for judgment as a
28 matter of law. Summ. J. Reply at 3:28.

1 Despite this Court's May 14 Order, Defendants nonetheless failed to disclose a proper
2 rebuttal expert. The *Notice* filed by Defendants on May 22, 2020 attempts to repackage Mr. Wren's
3 initial expert report as a rebuttal expert report, but the actual report attached to the Summary
4 Judgment Opposition is very clearly an initial expert report as it doesn't mention Plaintiff's expert
5 report. Summ. J. Opp. at Ex. 2. Further, Mr. Wren's report is not a proper rebuttal expert report as
6 it presents opinions outside the scope of Plaintiff's expert report and provides Mr. Wren's valuation
7 of the land and proposes just compensation, which Defendants not only should have expected or
8 anticipated but is also a fact they bear the burden of proving; and contains no facts that are new or
9 unforeseen such that they would be proper subject matter for a rebuttal expert report.³ NRCP
10 16.1(a)(2)(E)(ii); *R&O Const. Co.*, 2011 WL 2923703 at *2. Further, this Court is persuaded by
11 Plaintiff's argument that Mr. Wren's evaluation is based upon the loss of access to South Virginia
12 Street and to claim damages on that basis Defendants would have needed to assert a counterclaim
13 for inverse condemnation. Defendants have asserted no such counterclaim and the time for doing
14 so has passed.

15 As to their case in chief, Defendants have failed to produce evidence that would prove the
16 value of the land taken and any severance damages and will be unable to carry their burden to prove
17 the same. *Bustos*, 119 Nev. at 362. Importantly, this Court's June 4 Order granted Plaintiff's Motion
18 to Preclude after Defendants failed to file a response. The June 4 Order provides Defendants are
19 precluded "from calling any witnesses in their case in chief and from presenting any other evidence
20 at trial. . . ." Motion to Preclude at 4:6–7. As to the ability to call a rebuttal expert witness,
21 Defendants have failed to provide a proper rebuttal expert witness report. In summary, Defendants
22 have failed to produce admissible evidence that shows a genuine dispute of material fact as to the
23 only remaining issue in this case. Accordingly, summary judgment is proper and the amount of just
24 compensation due to Defendants is \$15,955.

25 ///

26 ///

27
28 ³ This renders moot Plaintiff's *Motion in Limine to Preclude Defendants from Presenting a Rebuttal Expert Witness*.

1 Based upon the foregoing and good cause appearing,

2 IT IS HEREBY ORDERED that Plaintiff Regional Transportation Commission of Washoe
3 County's *Motion for Summary Judgment* is GRANTED.

4 IT IS HEREBY FURTHER ORDERED that the amount of just compensation due to
5 Defendants John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu Jr. and Sonnia Iliescu
6 1992 Family Trust Agreement is \$15,955.

7 IT IS HEREBY FURTHER ORDERED that submission of Plaintiff Regional Transportation
8 Commission of Washoe County's pending *Motion in Limine to Preclude Defendants from*
9 *Presenting a Rebuttal Expert Witness* is vacated as moot.

10 IT IS SO ORDERED.

11 DATED this 3rd day of August, 2020.

12 
13 _____
14 KATHLEEN M. DRAKULICH
15 District Court Judge
16
17
18
19
20
21
22
23
24
25
26
27
28

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

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 3rd day of August, 2020, I electronically filed the **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court by using the ECF system.

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MICHAEL MORRISON, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

BRONAGH KELLY, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION
OF WASHOE COUNTY

BRETT MAUPIN, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:
[NONE]

10

1 **2540**

2 Gordon H. DePaoli, Esq.

3 Nevada Bar No. 195

4 Dane W. Anderson, Esq.

5 Nevada Bar No. 6883

6 Bronagh M. Kelly, Esq.

7 Nevada Bar No. 14555

8 **WOODBURN AND WEDGE**

9 6100 Neil Road, Suite 500

10 Reno, Nevada 89511

11 Telephone: 775-688-3000

12 Facsimile: 775-688-3088

13 gdepaoli@woodburnandwedge.com

14 danderson@woodburnandwedge.com

15 bkelly@woodburnandwedge.com

16 Attorneys for Plaintiff, the Regional Transportation
17 Commission of Washoe County

18 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

19 **IN AND FOR THE COUNTY OF WASHOE**

20 THE REGIONAL TRANSPORTATION
21 COMMISSION OF WASHOE COUNTY, a
22 special purpose unit of the government,

Case No.: CV19-00753

Dept. No.: 1

Plaintiff,

v.

23 JOHN ILIESCU, JR. and SONNIA ILIESCU,
24 Trustees of The John Iliescu, Jr. and Sonnia
25 Iliescu 1992 Family Trust Agreement, dated
26 January 24, 1992; The City of Reno, a
27 political subdivision of the State of Nevada;
28 and DOES 1 – 20, inclusive,

Defendants.

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that an Order Granting Motion for Summary Judgment was entered in the above-entitled action on August 3, 2020, by this Court. A copy of the Order is attached hereto as **Exhibit 1.**

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

Affirmation pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the personal information of any person.

DATED: August 4, 2020.

WOODBURN AND WEDGE

By: /s/ Dane W. Anderson
Gordon H. DePaoli, Esq.
Nevada Bar No. 195
Dane W. Anderson, Esq.
Nevada Bar No. 6883
Bronagh M. Kelly, Esq.
Nevada Bar No. 14555

Attorneys for Plaintiff, the Regional
Transportation Commission of Washoe County

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

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Woodburn and Wedge and that on this date, I caused to be sent via electronic delivery through the Court's E-flex system a true and correct copy of the **NOTICE OF ENTRY OF ORDER** to:

Michael James Morrison, Esq.
1495 Ridgeview Drive, Suite 220
Reno, NV 89519
venturelawusa@gmail.com

*Attorneys for Defendants
John Iliescu, Jr. and Sonnia Iliescu,
Trustees of The John Iliescu, Jr. and Sonnia
Iliescu
1992 Family Trust Agreement,
Dated January 24, 1992*

Brett W. Maupin, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
P.O. Box 30000
Reno, NV 89520
bmaupin@mcllawfirm.com

*Attorneys for Defendant John Iliescu, Jr.
and Sonnia Iliescu*

DATED: August 4, 2020.

/s/ Dianne M. Kelling
Employee of Woodburn and Wedge

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION OF EXHIBIT	NO OF PAGES INCLUDING EXHIBIT PAGES
1	Order Granting Motion for Summary Judgment	11

EXHIBIT 1

EXHIBIT 1

3060

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

THE REGIONAL TRANSPORTATION
COMMISSION OF WASHOE COUNTY, a
special purpose unit of the government,

Plaintiff,

CASE NO.: CV19-00753

DEPT. NO.: 1

vs.

JOHN ILIESCU, JR. and SONNIA ILIESCU,
Trustees of The John Iliescu, Jr. and Sonnia Iliescu
1992 Family Trust Agreement, dated January 24,
1992; The City of Reno, a political subdivision of
the State of Nevada; and DOES 1 – 20, inclusive,

Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Currently before the Court is the Regional Transportation Commission of Washoe County's ("Plaintiff") *Motion for Summary Judgment and Declaration of Scott Q. Griffin in Support of Motion for Summary Judgment* ("Summary Judgment Motion") filed March 31, 2020. On May 22, 2020, Defendants John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust Agreement filed an *Opposition to Plaintiff's Motion for Summary Judgment* ("Summary Judgment Opposition"). On May 28, 2020, Plaintiff filed a *Reply in Support of Motion for Summary Judgment* ("Summary Judgment Reply") and submitted the Summary Judgment Motion to the Court for consideration.

///

1 **I. Background**

2 On July 25, 2019, this Court issued its *Scheduling Order* which set the initial expert
3 disclosure deadline as February 7, 2020 and the rebuttal expert disclosure deadline as March 9, 2020.
4 *Scheduling Order* at 2:4–8. The *Scheduling Order* noted that the requirement that experts submit
5 written reports had not been waived. *Id.* at 2:9. The *Scheduling Order* further noted that a
6 “continuance of the trial date does not modify, alter, change or continue the discovery schedule
7 unless specifically agreed to by the parties, in writing, and ordered by the Court.” *Id.* at 2:27–3:1.

8 On February 11, 2020, Plaintiff filed its *Motion in Limine to Exclude Evidence Pursuant to*
9 *NRS 50.275, 50.285 and 50.305* that alleged Defendants had failed to disclose a rebuttal expert.
10 Plaintiff filed a *Supplemental Reply in Support of Motion in Limine to Exclude Evidence Pursuant*
11 *to NRS 50.275, 50.285 and 50.305* on March 27, 2020 that confirmed Defendants had still failed to
12 disclose an expert witness.

13 On May 14, 2020, this Court issued its *Order Granting in Part and Denying in Part Motion*
14 *in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305* (“May 14 Order”).
15 Among other things, the Order stated:

16 Defendants will be barred from disclosing an initial expert in this case . . .
17 This Court will extend the discovery deadline and the deadline to make
18 rebuttal expert disclosures pursuant to NRCP 16.1(a)(2) to May 22, 2020.
19 This extension is for the limited purpose of allowing Defendants to disclose
20 a rebuttal expert whose testimony will be limited to rebutting the expert
21 testimony filed by Plaintiff.

22 Order at 5:21–6:2.

23 On May 15, 2020, Plaintiff filed a *Motion in Limine to Preclude Defendants From Calling*
24 *Witnesses and Presenting Documentary Evidence* (“Motion to Preclude”). In the Motion to
25 Preclude, Plaintiff states that on July 23, 2019, the parties filed a Joint Case Conference report
26 agreeing that they would make their initial disclosure of witnesses and documents pursuant to NRCP
27 16.1(a)(1). Motion to Preclude at 2:19-21. Defendants never served any disclosures. *Id.* at 2:21-
28 22. Plaintiff provides that the May 8, 2020 deadline to complete discovery was extended by the
Court to May 22, 2020, but only for the limited purpose of allowing Defendants to disclose a rebuttal
expert. *Id.* at 22-25. Plaintiff stated that for all other purposes, discovery was closed. Defendants

1 had made no disclosures required by NRCP 16.1(a)(1) and should be precluded from calling any
2 witnesses in their case. *Id.* at 3:1-3. Defendants failed to respond to the Motion to Preclude and
3 Plaintiff submitted this motion on June 1, 2020. This Court entered an *Order Granting Motion in*
4 *Limine to Preclude Defendants From Calling Witnesses and Presenting Documentary Evidence* on
5 June 4, 2020 (“June 4 Order”) that precludes Defendants from “from calling any witnesses in their
6 case in chief and from presenting any other evidence at trial. . . .” Motion to Preclude at 4:6–7.

7 On May 22, 2020, Defendants filed a *Notice* indicating that its expert witness would be Mr.
8 Tony Wren, MAI, SRA, Certified General Appraiser. Notice at 1:24–28. Exhibit 1 to the Notice
9 indicates Mr. Wren’s report was emailed to Defendants on April 8, 2020, sixty-one days after the
10 initial expert disclosure deadline. Notice at Ex. 1. Exhibit 1 to the Notice also includes a statement
11 by defense counsel on April 8, 2020 that states “I am hesitant to file anything with the Court on this
12 while the motion is pending but please let me know if you want us to file something on this.” *Id.*

13 On June 1, 2020, Plaintiff filed a *Motion in Limine to Preclude Defendants from Presenting*
14 *a Rebuttal Expert Witness* (“Rebuttal Expert Motion”). Plaintiff waited the requisite fourteen days
15 as required by WDCR 12(2) and then submitted it to the Court for consideration on June 16, 2020.
16 On June 18, 2020, or three days after the fourteen-day deadline imposed by WDCR 12(2),
17 Defendants filed an *Opposition to Plaintiff’s Motion in Limine*.¹ On June 24, 2020, Plaintiff filed a
18 *Reply to Defendants’ Untimely Opposition to Motion in Limine to Preclude Defendants from*
19 *Presenting a Rebuttal Expert Witness*.

20 II. Relevant Legal Authority

21 a. Summary Judgment

22 NRCP 56(c) provides, “[summary judgment] shall be rendered if the pleadings, depositions,
23 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there
24 is no genuine issue as to any material fact and that the moving party is entitled to judgment as a
25 matter of law.” A genuine issue of material fact exists when the evidence is such that a rational trier
26 of fact could return a verdict for the nonmoving party. *Woods v. Safeway*, 121 Nev. 724, 731, 121

27 ¹ The title does not indicate which Motion in Limine the Motion is regarding but the conclusion of the Motion
28 requests an order denying Plaintiff’s June 1, 2020 Motion in Limine and this was the only motion filed that
day. Opp. at 9:19–20.

1 P.3d 1026, 1031 (2005). When deciding whether summary judgment is appropriate, the court must
2 view all evidence in the light most favorable to the non-moving party and accept all properly
3 supported evidence, factual allegations, and reasonable inferences favorable to the non-moving party
4 as true. *C. Nicholas Pereos, Ltd. v. Bank of Am.*, 131 Nev. Adv. Op. 44, 352 P.3d 1133, 1136 (2015);
5 *NGA No. 2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1157, 946 P.2d 163, 167 (1997).

6 The Nevada Supreme Court has adopted the federal approach outlined in *Celotex Corp. v.*
7 *Catrett*, 477 U.S. 317 (1986), with respect to burdens of proof and persuasion in summary judgment
8 proceedings. See *Cuzze v. Univ. & Cmty. College Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131,
9 134 (2007). The party moving for summary judgment must meet his or her initial burden of
10 production and show there is no genuine issue of material fact. *Id.* “The manner in which each party
11 may satisfy its burden of production depends on which party will bear the burden of persuasion on
12 the challenged claim at trial.” *Id.* When the moving party bears the burden at trial, that party must
13 present evidence that would entitle it to judgment as a matter of law absent contrary evidence. *Id.*
14 If the burden of persuasion at trial will rest on the nonmoving party, “the party moving for summary
15 judgment may satisfy the burden of production by either (1) submitting evidence that negates an
16 essential element of the nonmoving party’s claim, or (2) pointing out that there is an absence of
17 evidence to support the nonmoving party’s case.” *Id.* After the moving party meets his or her initial
18 burden of production, the opposing party “must transcend the pleadings and by affidavit or other
19 admissible evidence, introduce specific facts that show a genuine issue of material fact.” *Id.*

20 When deciding a motion for summary judgment, “a district court cannot make findings
21 concerning the credibility of witnesses or weight of evidence.” *Sawyer v. Sugarless Shops Inc.*, 106
22 Nev. 265, 267–68, 792 P.2d 14, 15–16 (1990). Moreover, if documentary evidence is required, it
23 “must be construed in the light most favorable to the non-moving party. All of the non-movant’s
24 statements must be accepted as true and a district court may not pass on the credibility of affidavits.”
25 *Id.* (internal citation omitted)).

26 **b. Rebuttal Expert Witness**

27 In Nevada, once the issues of public use and necessity are established by the condemning
28 agency, the property owner has the burden of proving, by a preponderance of the evidence, the value

1 of the land taken and any severance damages. *State v. Pinson*, 66 Nev. 227, 236-238, 207 P.2d 1105,
2 1109-10 (1949); *City of Las Vegas v. Bustos*, 119 Nev. 360, 362, 75 P.3d 351, 352 (2003); *Pappas*
3 *v. State*, 104 Nev. 572, 575, 763 P.2d 348, 350 (1988).

4 In dictating when a party must make disclosure of expert witnesses, NRCP
5 16.1(a)(2)(E)(i)(b) provides that "if the evidence is intended solely to contradict or rebut evidence
6 on the same subject matter identified by another party under Rule 16.1(a)(2)(B), (C), or (D), within
7 30 days after the other party's disclosure." However, sub-section (ii) states that the thirty-day
8 deadline "does not apply to any party's witness whose purpose is to contradict a portion of another
9 party's case in chief that should have been expected and anticipated by the disclosing party, or to
10 present any opinions outside of the scope of another party's disclosure." NRCP 16.1(a)(2)(E)(ii).

11 The contours of this rule were discussed at length in *R&O Const. Co. v. Rox Pro Intern.*
12 *Group Ltd.*, No. 2:09-CV-01749-LRH-LRL, 2011 WL 2923703, *2 (D. Nev. July 18, 2011). First,
13 rebuttal expert reports are not the proper place to present new arguments. *Id.* (citations omitted).
14 Second, if the purpose of the expert testimony in question is to contradict an expected or anticipated
15 portion of the other party's case in chief, the witness is not a rebuttal witness or anything analogous
16 to one. *Id.* (citations omitted). Third, rebuttal testimony "is limited to new unforeseen facts brought
17 out in the other side's case." *Id.* (internal quotation marks omitted).

18 **III. Analysis**

19 The parties agree the only remaining fact in dispute in this case is the amount of just
20 compensation due to Defendants for Plaintiff's acquisition of the property and any severance
21 damages. Summ. J. Mot. at 2:10-17; Summ. J. Opp. at 2:13-17. Plaintiff argues it timely filed the
22 expert opinion of Mr. Scott Griffin who opined that the value of just compensation due to Defendants
23 is \$15,955. Summ. J. Mot. at 2:19-24. Plaintiff argues because Defendants failed to timely disclose
24 any experts to satisfy their burden of proving the value of the land taken or the existence and amount
25 of any severance damages, summary judgment is proper. *Id.* at 3:20-21. Plaintiff contends that
26 because Defendants cannot satisfy their burden, this Court should enter summary judgment in favor
27 of Plaintiff and find that the amount of just compensation due to Defendants is \$15,955. *Id.* at 3:22-
28 4:3.

1 Defendants respond² that their disclosure of expert witness and related reports were not
2 timely filed due to Mr. Morrison's health conditions and related medical tests and treatments. Summ.
3 J. Opp. at 2:20–23. Defendants assert at the time expert disclosures were due, Mr. Morrison was
4 Defendants' sole lawyer, but Defendants engaged Mr. Maupin to represent them on February 25,
5 2020. *Id.* at 2:24–27. Defendants assert that while the parties were engaged in settlement
6 discussions, Plaintiff filed the Summary Judgment Motion. *Id.* at 3:4–22. Defendants represent that
7 in a phone conversation, counsel for the Plaintiff had mentioned Mr. Maupin's diligent efforts to
8 obtain and perform an appraisal and expert report. *Id.* at 3:24–4:6. Defendants state that counsel for
9 the Plaintiff agreed that the *Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285*
10 *and 50.305* should be withdrawn but that the Plaintiff would have the final decision. *Id.* at 4:7–15.
11 Ultimately, Plaintiff decided not to withdraw the motion. *Id.* at 4:18–19. Defendants maintain that
12 this Court's May 14 Order that permits them to call a rebuttal expert witness is sufficient to create a
13 general issue of material fact. *Id.* at 4:21–5:2.

14 Defendants argue that because this Court had not issued the May 14 Order when the
15 Summary Judgment Motion was filed, it was premature and that Plaintiff's counsel's statements
16 adversely impacted Defendants' ability to disclose an expert witness. *Id.* at 6:4–13. Defendants
17 contend that by granting Defendants the ability to call a rebuttal expert witness in the May 14 Order,
18 this Court essentially made the Summary Judgment Motion moot in its current form. *Id.* at 6:19–24.
19 Defendants state that by disclosing Mr. Wren on April 8, 2020 and disclosing his appraisal report
20 that directly rebuts Plaintiff's expert's testimony, that creates a genuine dispute of material fact as
21 to the proper amount of just compensation. *Id.* at 7:3–10.

22 Plaintiff replies that there is no requirement that it file a motion in limine and filing this
23 Summary Judgment Motion is proper and timely. Summ. J. Reply at 2:6–13. Plaintiff contends this
24 Court's May 14 Order makes this Summary Judgment Motion ripe because Defendants are unable
25 to meet their burden of proof using a rebuttal expert and thus Plaintiff is entitled to judgment as a
26 matter of law. *Id.* at 2:14–18. Plaintiff contends Mr. Wren's appraisals are not rebuttal reports as

27 ² While Plaintiff filed the Summary Judgment Motion on March 31, 2020, Defendants did not file the
28 Summary Judgment Opposition until May 22, 2020, after this Court's *Order Granting in Part and Denying*
in Part Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305.

1 they do not mention Mr. Griffin or his report, do not contradict or rebut Mr. Griffin's report, and are
2 presented for the purpose of estimating the market value and just compensation. *Id.* at 3:3–7.
3 Plaintiff argues a rebuttal expert cannot be used to meet a party's burden of proof in their case in
4 chief. *Id.* at 3:11–12. Plaintiff states that NRCP 16.1(a)(2)(E)(ii) makes clear that if the party's
5 expert's purpose is to contradict a matter that should have been expected or anticipated the expert
6 disclosure deadline does not apply. *Id.* at 3:13–20.

7 Plaintiff contends that Mr. Wren's report is based on the elimination of access to South
8 Virginia Street on parcel APN 014-063-07, but that access is entirely within the right of way meaning
9 that the alleged taking is not part of this condemnation proceeding and should have been the subject
10 of an inverse condemnation counterclaim that Defendants failed to assert in this case. *Id.* at 3:21–
11 4:1. Plaintiff points out the deadline to amend pleadings in this case has passed and Defendants
12 cannot produce any evidence supporting a claim clearly beyond the scope of Plaintiff's alleged
13 taking. *Id.* at 4:1–5. Plaintiff adds that statements of Plaintiff's counsel are irrelevant and did not
14 prevent Defendants from complying with the expert disclosure deadline in this case, or any of the
15 other deadlines Defendants have failed to comply with in this case. *Id.* at 4:14–28. Plaintiff states
16 that while Defendants demanded a jury trial, they have not identified any witnesses or produced any
17 documents that would be admissible to establish just compensation and summary judgment is proper
18 for the \$15,955 figure suggested in Mr. Griffin's report. *Id.* at 5:1–6.

19 Having reviewed the pleadings on file and the facts and legal support set forth therein, this
20 Court finds good cause to grant the Summary Judgment Motion. Defendants bear the burden to
21 prove the value of the land taken and any severance damages. *Bustos*, 119 Nev. at 362. Defendants
22 are unable to satisfy this burden relying upon a rebuttal expert. This Court does not agree with
23 Defendants that the Court's May 14 Order made the Summary Judgment Motion moot in its current
24 form. The logical extension of this assertion results in impermissibly shifting the burden to Plaintiff
25 to establish the value of the land taken and any severance damages. Plaintiff's hypothetical
26 illustrates this point: at trial, the jury would hear opening statements, Defendants who bear the
27 burden of proof would have no witnesses, and Plaintiff would stand up and move for judgment as a
28 matter of law. *Summ. J. Reply* at 3:28.

1 Despite this Court's May 14 Order, Defendants nonetheless failed to disclose a proper
2 rebuttal expert. The *Notice* filed by Defendants on May 22, 2020 attempts to repackage Mr. Wren's
3 initial expert report as a rebuttal expert report, but the actual report attached to the Summary
4 Judgment Opposition is very clearly an initial expert report as it doesn't mention Plaintiff's expert
5 report. Summ. J. Opp. at Ex. 2. Further, Mr. Wren's report is not a proper rebuttal expert report as
6 it presents opinions outside the scope of Plaintiff's expert report and provides Mr. Wren's valuation
7 of the land and proposes just compensation, which Defendants not only should have expected or
8 anticipated but is also a fact they bear the burden of proving; and contains no facts that are new or
9 unforeseen such that they would be proper subject matter for a rebuttal expert report.³ NRCP
10 16.1(a)(2)(E)(ii); *R&O Const. Co.*, 2011 WL 2923703 at *2. Further, this Court is persuaded by
11 Plaintiff's argument that Mr. Wren's evaluation is based upon the loss of access to South Virginia
12 Street and to claim damages on that basis Defendants would have needed to assert a counterclaim
13 for inverse condemnation. Defendants have asserted no such counterclaim and the time for doing
14 so has passed.

15 As to their case in chief, Defendants have failed to produce evidence that would prove the
16 value of the land taken and any severance damages and will be unable to carry their burden to prove
17 the same. *Bustos*, 119 Nev. at 362. Importantly, this Court's June 4 Order granted Plaintiff's Motion
18 to Preclude after Defendants failed to file a response. The June 4 Order provides Defendants are
19 precluded "from calling any witnesses in their case in chief and from presenting any other evidence
20 at trial. . . ." Motion to Preclude at 4:6-7. As to the ability to call a rebuttal expert witness,
21 Defendants have failed to provide a proper rebuttal expert witness report. In summary, Defendants
22 have failed to produce admissible evidence that shows a genuine dispute of material fact as to the
23 only remaining issue in this case. Accordingly, summary judgment is proper and the amount of just
24 compensation due to Defendants is \$15,955.

25 ///

26 ///

27
28 ³ This renders moot Plaintiff's *Motion in Limine to Preclude Defendants from Presenting a Rebuttal Expert Witness*.

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

Based upon the foregoing and good cause appearing,


IT IS HEREBY ORDERED that Plaintiff Regional Transportation Commission of Washoe County's *Motion for Summary Judgment* is GRANTED.

IT IS HEREBY FURTHER ORDERED that the amount of just compensation due to Defendants John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust Agreement is \$15,955.

IT IS HEREBY FURTHER ORDERED that submission of Plaintiff Regional Transportation Commission of Washoe County's pending *Motion in Limine to Preclude Defendants from Presenting a Rebuttal Expert Witness* is vacated as moot.

IT IS SO ORDERED.

DATED this 3rd day of August, 2020.



KATHLEEN M. DRAKULICH
District Court Judge

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV19-00753

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 3rd day of August, 2020, I
5 electronically filed the **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT** with
6 the Clerk of the Court by using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by the
8 method(s) noted below:

9 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**
10 **notice of electronic filing to the following:**

11 SUSAN ROTHE, ESQ. for CITY OF RENO

12 MICHAEL MORRISON, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

13 DANE ANDERSON, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION
14 OF WASHOE COUNTY

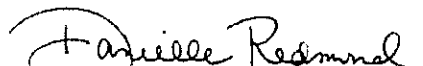
15 BRONAGH KELLY, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION
16 OF WASHOE COUNTY

17 GORDON DEPAOLI, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION
18 OF WASHOE COUNTY

19 BRETT MAUPIN, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

20 Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage
21 and mailing by Washoe County using the United States Postal Service in Reno, Nevada:

22 [NONE]

23
24
25 
26 DANIELLE REDMOND
27 Department I Judicial Assistant
28