

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. _____

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

Petitioner

v.

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

Respondents

and

180 LAND CO, LLC, a Nevada limited-liability company, FORE STARS LTD., a
Nevada limited liability company,

Real Parties in Interest

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

APPENDIX VOLUME I
TO PETITIONER'S EMERGENCY PETITION FOR WRIT OF
MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF CERTIORARI
(action needed by February 23, 2022)

<p>LAS VEGAS CITY ATTORNEY'S OFFICE Bryan K. Scott (#4381) Philip R. Byrnes (#166) Rebecca Wolfson (#14132) 495 S. Main Street, 6th Floor Las Vegas, NV 89101 Phone: 702.229.6629 Fax: 702.386.1749 bscott@lasvegasnevada.gov pbyrnes@lasvegasnevada.gov rwolfson@lasvegasnevada.gov</p>	<p>McDONALD CARANO LLP George F. Ogilvie III (#3552) Amanda C. Yen (#9726) Christopher Molina (#14092) 2300 W. Sahara Ave, Suite 1200 Las Vegas, NV 89102 Phone: 702.873.4100 Fax: 702.873.9966 gogilvie@mcdonaldcarano.com ayen@mcdonaldcarano.com cmolina@mcdonaldcarano.com</p>
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<p>LEONARD LAW, PC Debbie Leonard (#8260) 955 S. Virginia St., Suite #220 Reno, NV 89502 775-964-4656 debbie@leonardlawpc.com</p>	<p>SHUTE, MIHALY & WEINBERGER, LLP Andrew W. Schwartz (CA Bar No. 87699) (Admitted pro hac vice) Lauren M. Tarpey (CA Bar No. 321775) (Admitted pro hac vice) 396 Hayes Street San Francisco, California 94102</p>
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Attorneys for Petitioner

CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2017-07-18	Landowners' Petition for Judicial Review	I	PA0001	PA0008
2017-09-07	Landowners' First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation	I	PA0009	PA0027
2017-09-20	Affidavit of Service of Summons and First Amended Petition for Judicial Review on City of Las Vegas	I	PA0028	PA0028
2018-02-05	City of Las Vegas' Answer to First Amended Petition for Judicial Review	I	PA0029	PA0032
2018-02-23	Landowners' First Amended Complaint Pursuant to Court Order Entered February 2, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	I	PA0033	PA0049
2018-02-28	Landowners' Errata to First Amended Complaint Pursuant to Court Order Entered February 2, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	I	PA0050	PA0066
2018-02-28	Landowners' Second Amended Petition for Judicial Review to Sever Alternative Verified Claims in Inverse Condemnation per Court Order Entered on February 1, 2018	I	PA0067	PA0081

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2018-03-19	City's Answer to Second Amended Petition for Judicial Review	I	PA0086	PA0089
2018-06-26	Portions of Record on Review (ROR25813-25850)	I	PA0090	PA0127
2018-11-26	Notice of Entry of Findings of Fact and Conclusions of Law on Petition for Judicial Review	I	PA0128	PA0155
2018-12-11	Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims (Exhibits omitted)	I	PA0156	PA0174
2018-12-13	Landowners' Motion for a New Trial Pursuant to NRCP 59(e)	I	PA0175	PA0202
2018-12-20	Notice of Appeal	I	PA0203	PA0206
2019-02-06	Notice of Entry of Order <i>NUNC PRO TUNC</i> Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	I	PA0207	PA0212

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2019-05-08	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff's Motion for a New Trial, Motion to Alter or Amend and/or Reconsider the Findings of Fact and Conclusions of Law, and Motion to Stay Pending Nevada Supreme Court Directives	II	PA0213	PA0228
2019-05-15	Landowners' Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	II	PA0229	PA0266
2019-06-18	City's Answer to Plaintiff 180 Land Company's Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	II	PA0267	PA0278
2020-07-20	Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0279	PA0283
2020-08-31	Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0284	PA0287
2020-10-12	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"	II	PA0288	PA0295

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2020-12-16	2 nd Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0296	PA0299
2021-02-10	3 rd Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0300	PA0303
2021-03-26	Appendix of Exhibits in Support of Plaintiff Landowner's Motion to Determine Take and for Summary Judgment on the First, Third, and Fourth Claims for Relief - Exhibit 150 (004669-004670)	II	PA0304	PA0309
2021-08-25	¹ City's Accumulated App'x Exhibit G - Ordinance No. 3472 and related documents (Second Amendment) (CLV65-000114-000137)	II	PA0310	PA0334
2021-08-25	City's Accumulated App'x Exhibit H - City records regarding Amendment to Peccole Ranch Master Plan and Z-17-90 phase II rezoning application (CLV65-000138-000194)	II	PA0335	PA0392

¹ Due to the voluminous nature of the documents filed in this case and to avoid duplicative filing of exhibits, the City filed a cumulative appendix of exhibits, which the City cited in multiple motions and other substantive filings ("City's Accumulated App'x").

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2021-08-25	City's Accumulated App'x Exhibit M - Miscellaneous Southwest Sector (CLV65-000274-000277)	II	PA0422	PA0426
2021-08-25	City's Accumulated App'x Exhibit N - Ordinance No. 5787 and Excerpts of 2005 Land Use Element (CLV65-000278-000291)	III	PA0427	PA0441
2021-08-25	City's Accumulated App'x Exhibit P - Ordinance No. 6152 and Excerpts of 2012 Land Use & Rural Neighborhoods Preservation Element (CLV65-000302-000317)	III	PA0442	PA0458

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2021-08-25	City's Accumulated App'x Exhibit Q - Ordinance No. 6622 and Excerpts of 2018 Land Use & Rural Neighborhoods Preservation Element (CLV65-000318-000332)	III	PA0459	PA0474
2021-08-25	City's Accumulated App'x Exhibit Y- EHB Companies promotional materials (CLV65-0034763-0034797)	III	PA0475	PA0510
2021-08-25	City's Accumulated App'x Exhibit Z - General Plan Amendment (GPA-62387), Rezoning (ZON-62392) and Site Development Plan Review (SDR-62393) applications (CLV65-000446-000466)	III	PA0511	PA0532
2021-08-25	City's Accumulated App'x Exhibit EE-Order Granting Plaintiffs' Petition for Judicial Review (CLV65-000598-000611)	IV	PA0533	PA0547
2021-08-25	City's Accumulated App'x Exhibit HH - General Plan Amendment (GPA-68385), Site Development Plan Review (SDR-68481), Tentative Map (TMP-68482), and Waiver (68480) applications (CLV65-000644-0671)	IV	PA0548	PA0576

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2021-08-25	City's Accumulated App'x Exhibit II - June 21, 2017 City Council meeting minutes and transcript excerpt regarding GPA-68385, SDR-68481, TMP-68482, and 68480 (CLV65-000672-000679)	IV	PA0577	PA0585
2021-08-25	City's Accumulated App'x Exhibit AAA - Membership Interest Purchase and Sale Agreement (LO 00036807-36823)	IV	PA0586	PA0603
2021-08-25	City's Accumulated App'x Exhibit BBB - Transcript of May 16, 2018 City Council meeting (CLV65-045459-045532)	IV	PA0604	PA0621
2021-08-25	City's Accumulated App'x Exhibit DDD - Nevada Supreme Court March 5, 2020 Order of Reversal, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481 (1010-1016)	IV	PA0622	PA0629
2021-08-25	City's Accumulated App'x Exhibit GGG - September 1, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Final Entitlements for 435- Unit Housing Development Project in Badlands (1021-1026)	IV	PA0630	PA0636

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2021-08-25	City's Accumulated App'x Exhibit III - 9 th Circuit Order in <i>180 Land Co. LLC; et al v. City of Las Vegas, et al.</i> , 18-cv-0547 (Oct. 19, 2020) (1123-1127)	IV	PA0666	PA0671
2021-08-25	City's Accumulated App'x Exhibit NNN - March 26, 2020 Letter from City of Las Vegas to Landowners' Counsel (CLV65-000967-000968)	IV	PA0672	PA0674
2021-08-25	City's Accumulated App'x Exhibit OOO - March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 133 Acres (CLV65-000971-000973)	IV	PA0675	PA0678
2021-08-25	City's Accumulated App'x Exhibit PPP - April 15, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 35 Acres –1 (CLV65-000969-000970)	IV	PA0679	PA0681

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2021-08-25	City's Accumulated App'x Exhibit UUU - Excerpt of Reporter's Transcript of Hearing on City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents on Order Shortening Time in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 17, 2020) (1295-1306)	IV	PA0682	PA0694
2021-08-25	City's Accumulated App'x Exhibit CCCC - Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-18-780184-C (Dec. 30, 2020) (1478-1515)	IV	PA0695	PA0733
2021-08-25	City's Accumulated App'x Exhibit DDDD - Peter Lowenstein Declaration and Ex. 9 thereto (1516-1522, 1554-1569)	IV	PA0734	PA0741Q
2021-08-25	City's Accumulated App'x Exhibit HHHH - State of Nevada State Board of Equalization Notice of Decision, <i>In the Matter of Fore Star Ltd., et al.</i> (Nov. 30, 2017) Decision (004220-004224) (Exhibits omitted)	IV	PA0742	PA0747

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2021-09-15	Appendix of Exhibits in support of Plaintiffs Landowners' Reply in Support of Motion to Determine Take and Motion for Summary Judgment on the First, Third, and Fourth Claims for Relief and Opposition to the City's Counter-Motion for Summary Judgment - Ex. 194 (6076-6083)	V	PA0748	PA0759
2021-09-22	City's Accumulated App'x Exhibit SSSS - Excerpts of NRCP 30(b)(6) Designee of Peccole Nevada Corporation – William Bayne (3776-3789)	V	PA0760	PA0774
2021-10-13	City's Accumulated App'x Exhibit YYYY- City Council Meeting of October 6, 2021 Verbatim Transcript – Agenda Item 63 (inadvertently omitted from the 10-13-2021 appendix. Errata filed 2/8/2022) (3898-3901)	V	PA0775	PA0779
2021-10-13	City's Accumulated App'x Exhibit ZZZZ - Transcripts of September 13 & 17, 2021 Hearing in the 133-Acre Case (Case No. A-18-775804-J) (Excerpts) (3902, 4029-4030, 4053-4054, 4060, 4112)	V	PA0780	PA0787

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2021-10-19	City's Accumulated App'x Exhibit BBBB - 2005 land use applications filed by the Peccole family (CLV110456, 126670, 137869, 126669, 126708)	V	PA0851	PA0857
2021-10-25	Notice of Entry of Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion on the Second Claim for Relief	V	PA0858	PA0910
2021-10-28	Decision of the Court	V	PA0911	PA0918

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2021-11-05	Notice of Entry of Findings of Fact and Conclusions of Law Denying City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time	V	PA0919	PA0930
2021-11-18	Findings of Fact and Conclusions of Law on Just Compensation	V	PA0931	PA0950
2021-11-18	Notice of Entry of Order Granting Plaintiffs' Motions in Limine No. 1, 2 and 3 Precluding the City from Presenting to the Jury: 1. Any Evidence or Reference to the Purchase Price of the Land; 2. Any Evidence or Reference to Source of Funds; 3. Argument that the Land was Dedicated as Open Space/City's PRMP and PROS Argument	V	PA0951	PA0967
2021-11-24	Landowners' Verified Memorandum of Costs (Exhibits omitted)	VI	PA0968	PA0972
2021-11-24	Notice of Entry of Findings of Fact and Conclusions of Law on Just Compensation	VI	PA0973	PA0995
2021-12-06	Landowners' Motion for Reimbursement of Property Taxes (Exhibits omitted)	VI	PA0996	PA1001
2021-12-09	Landowners' Motion for Attorney Fees	VI	PA1002	PA1030

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2021-12-09	Landowners' Motion to Determine Prejudgment Interest	VI	PA1031	PA1042
2021-12-21	City's Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution	VI	PA1043	PA1049
2021-12-22	City's Motion for Immediate Stay of Judgment	VI	PA1050	PA1126
2022-01-26	Court Minutes	VI	PA1127	PA1127
2022-02-10	Notice of Entry of Findings of Fact and Conclusions of Law and Order Denying the City's Motion for Immediate Stay of Judgment; and Granting Plaintiff Landowners' Countermotion to Order the city to Pay the Just Compensation	VI	PA1128	PA1139

ALPHABETICAL INDEX TO PETITIONER'S APPENDIX

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2018-12-20	Notice of Appeal	I	PA0203	PA0206

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2022-02-10	Notice of Entry of Findings of Fact and Conclusions of Law and Order Denying the City's Motion for Immediate Stay of Judgment; and Granting Plaintiff Landowners' Countermotion to Order the city to Pay the Just Compensation	VI	PA1128	PA1139
2021-11-05	Notice of Entry of Findings of Fact and Conclusions of Law Denying City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time	V	PA0919	PA0930
2021-10-25	Notice of Entry of Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion on the Second Claim for Relief	V	PA0858	PA0910
2021-11-24	Notice of Entry of Findings of Fact and Conclusions of Law on Just Compensation	VI	PA0973	PA0995
2018-11-26	Notice of Entry of Findings of Fact and Conclusions of Law on Petition for Judicial Review	I	PA0128	PA0155

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2019-05-08	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff's Motion for a New Trial, Motion to Alter or Amend and/or Reconsider the Findings of Fact and Conclusions of Law, and Motion to Stay Pending Nevada Supreme Court Directives	II	PA0213	PA0228
2020-10-12	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"	II	PA0288	PA0295
2021-11-18	Notice of Entry of Order Granting Plaintiffs' Motions in Limine No. 1, 2 and 3 Precluding the City from Presenting to the Jury: 1. Any Evidence or Reference to the Purchase Price of the Land; 2. Any Evidence or Reference to Source of Funds; 3. Argument that the Land was Dedicated as Open Space/City's PRMP and PROS Argument	V	PA0951	PA0967
2019-02-06	Notice of Entry of Order <i>NUNC PRO TUNC</i> Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	I	PA0207	PA0212
2018-06-26	Portions of Record on Review (ROR25813-25850)	I	PA0090	PA0127

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2020-07-20	Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0279	PA0283

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 this 10th day of February, 2022.

BY: /s/ Debbie Leonard

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<p>LEONARD LAW, PC Debbie Leonard (#8260) 955 S. Virginia St., Suite #220 Reno, NV 89502 775-964-4656 debbie@leonardlawpc.com</p>	<p>SHUTE, MIHALY & WEINBERGER, LLP Andrew W. Schwartz (CA Bar No. 87699) (Admitted pro hac vice) Lauren M. Tarpey (CA Bar No. 321775) (Admitted pro hac vice) 396 Hayes Street San Francisco, California 94102</p>

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court on today's date by using the Nevada Supreme Court's E-Filing system (E-Flex). Upon the Clerk's docketing of this case and e-filing of the foregoing document, participants in the case who are registered with E-Flex as users will be served by the E-Flex system and others not registered will be served via U.S. mail at the following addresses. I also certify that a courtesy copy of the foregoing document was sent by email on today's date to the email addresses listed below.

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District Court Department XVI
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dept16lc@clarkcountycourts.us
Respondent

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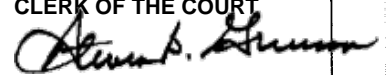
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Dated: February 10, 2022

/s/ Tricia Trevino
An employee of Leonard Law, PC



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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

14 vs.

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

Defendant.

Case No.:
Dept. No.: **A-17-758528-J**
Department 16

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

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

PARTIES

- 21 1. Petitioner ("Petitioner") is organized and existing under the laws of the state of
22 Nevada.
23 2. Respondent City of Las Vegas ("City") is a political subdivision of the State of
24 Nevada.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

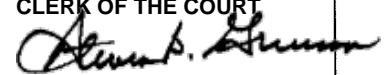
1. For judicial review of City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385;
2. For an Order reversing City's denial of WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and
3. For an award of attorneys fees and costs incurred in the filing of this action.
4. For such further relief as the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

DATED this 17th day of July, 2017.

KAEMPFER CROWELL

BY: 

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioners,

vs.

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

Case No.: A-17-758528-J

Dept. No.: XVI

**FIRST AMENDED PETITION FOR
JUDICIAL REVIEW AND
ALTERNATIVE VERIFIED CLAIMS IN
INVERSE CONDEMNATION
(Exempt from Arbitration – Action Seeking
Review of Administrative Decision and
Action Concerning Title To Real Property)**

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

5 Petitioner, by and through its attorneys of record, Kaempfer Crowell and The Law
6 Offices of Kermitt L. Waters, for its Petition for Judicial Review and alternative claims in
7 inverse condemnation complains and alleges as follows:

8 **PARTIES**

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

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

19 3. That the true names and capacities, whether individual, corporate, associate, or
20 otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE
21 CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X
22 (hereinafter collectively referred to as "DOEs") inclusive are unknown to Petitioner at this time
23 and who may have standing to sue in this matter and who, therefore, sue the Defendants by
24 fictitious names and will ask leave of the Court to amend this Complaint to show the true names

1 and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as
2 principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other
3 entities with standing to sue under the allegations set forth herein.

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

14 **JURISDICTION AND VENUE**

15 5. The Court has jurisdiction over this Petition for Judicial Review pursuant to NRS
16 278.0235 and NRS 278.3195 and this Court has jurisdiction over the alternative claims for
17 inverse condemnation pursuant to the United States Constitution, Nevada State Constitution and
18 the Nevada Revised Statutes.

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

20 **GENERAL ALLEGATIONS**

21 7. Petitioner owns 166.99 acres of real property generally located south of Alta
22 Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas,
23 Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-
24 31-702-003, 138-31-601-008, 138-31-702-004 and 138-31-201-005 ("Property").

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

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

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

13 11. At all relevant times herein, Petitioner had the vested right to use and develop the
14 35 Acres, at a density of up to 7.49 residential units per acre as long as the development is
15 comparable and compatible with the existing adjacent and nearby residential development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 29. In conjunction with this City Council public hearing, the Planning Staff, in
22 continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted *"the*
23 *adjacent developments are designated ML (Medium Low Density Residential) with a density*
24 *cap of 8.49 dwelling units per acre. The proposed development would have a density of 1.79*

1 *dwelling units per acre...Compared with the densities and General Plan designations of the*
2 *adjacent residential development, the proposed L (Low Density Residential) designation is less*
3 *dense and therefore appropriate for this area, capped at 5.49 units per acre." (emphasis*
4 *added).*

5 30. The Planning Staff found the density of the proposed General Plan compatible
6 with the existing adjacent land use designation, found the zoning designations compatible and
7 found that the filed applications conform to other applicable adopted plans and policies that
8 include approved neighborhood plans.

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

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

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

6 34. In spite of the Planning Staff recommendation of approval and the
7 recommendation of approval from the Planning Commission, and despite the substantial
8 evidence offered by Petitioner in support of the WVR-68480, SDR-68481, TMP-68482 and
9 GPA-68385; and in spite of the fact that no substantial evidence was offered in opposition, the
10 City Council denied the WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

11 35. The City Council's stated reason for the denial was its desire to see, not just the
12 35 Acres, but the entire 250.92 acres of property, developed under one master development
13 agreement which would include all of the following properties in that master development
14 agreement:

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

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

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

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

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

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

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

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

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

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

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

23 38. The City Attorney stated that “if anybody has a list of things that should be in this
24 agreement [MDA], but are not, I say these words speak now or forever hold your peace, because

1 I will listen to you and we'll talk about it and if it needs to be in that agreement, we'll do our best
2 to get it in. . . . This is where I have to use my skills and say enough is enough and that's why I
3 said tonight 'speak now or forever hold your peace.' If somebody comes to me with an issue
4 that they should have come to me with months ago I'm gonna ignore them 'cause that's just not
5 fair either. We can't continue to whittle away at this agreement by throwing new things at it all
6 the time. There's been two years for people to make their comments. I think we are that close."

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

9 40. The City's actions in denying Petitioner's tentative map (TMP-68482), WVR-
10 68480, SDR-68481 and GPA-68385 foreclosed all development of the 35 Acres in violation of
11 Petitioner's vested right to develop the 35 Acres.

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

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

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

18
19 **FIRST CLAIM FOR RELIEF**
(Judicial Review)

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

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

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

3 47. The City's decisions denying WVR-68480, SDR-68481, TMP-68482 and GPA-
4 68385 were not supported by evidence a reasonable mind would find adequate to support
5 denials.

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

8 49. The City's arbitrary and capricious denial of WVR-68480, SDR-68481, TMP-
9 68482 and GPA-68385 has caused Petitioner to suffer real and significant damages.

10 50. Petitioner is aggrieved by the City's denial of WVR-68480, SDR-68481, TMP-
11 68482 and GPA-68385.

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

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

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

17 **(Categorical Taking)**

18 53. Petitioner repeats, re-alleges and incorporates by reference all paragraphs
19 included in this pleading as if set forth in full herein.

20 54. The City reached a final decision that it will not allow development of Petitioner's
21 35 Acres.

22 55. Any further requests to the City to develop the 35 Acres would be futile.

1 56. The City's actions in this case have resulted in a direct appropriation of
2 Petitioner's 35 Acre property by entirely prohibiting Petitioner from using the 35 Acres for any
3 purpose and reserving the 35 Acres undeveloped.

4 57. As a result of the City's actions, Petitioner has been unable to develop the 35
5 Acres and any and all value in the 35 Acres has been entirely eliminated.

6 58. The City's actions have completely deprived Petitioner of all economically
7 beneficial use of the 35 Acres.

8 59. The City's actions have resulted in a direct and substantial impact on Petitioner
9 and on the 35 Acres.

10 60. The City's actions result in a categorical taking of Petitioner's 35 Acre property.

11 61. The City has not paid just compensation to Petitioner for this taking of its 35 Acre
12 property.

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

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

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

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

22 **(Penn Central Regulatory Taking)**

23 65. Petitioner repeats, re-alleges and incorporates by reference all paragraphs
24 included in this pleading as if set forth in full herein.

1 66. The City reached a final decision that it will not allow development of Petitioner's
2 35 Acres.

3 67. Any further requests to the City to develop the 35 Acres would be futile.

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

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

15 70. The City's actions have caused a direct and substantial economic impact on
16 Petitioner, including but not limited to preventing development of the 35 Acres.

17 71. The City was expressly advised of the economic impact the City's actions were
18 having on Petitioner.

19 72. At all relevant times herein Petitioner had specific and distinct investment backed
20 expectations to develop the 35 Acres.

21 73. These investment backed expectations are further supported by the fact that the
22 City, itself, advised Petitioner of its vested rights to develop the 35 Acre property prior to
23 acquiring the 35 Acres.

24

1 74. The City was expressly advised of Petitioner's investment backed expectations
2 prior to denying Petitioner the use of the 35 Acres.

3 75. The City's actions are preserving the 35 Acres as open space for a public use and
4 the public is actively using the 35 Acres.

5 76. The City's actions have resulted in the loss of Petitioner's investment backed
6 expectations in the 35 Acres.

7 77. The character of the City action to deny Petitioner's use of the 35 Acres is
8 arbitrary, capricious, and fails to advance any legitimate government interest and is more akin to
9 a physical acquisition than adjusting the benefits and burdens of economic life to promote the
10 common good.

11 78. The City never stated that the proposed development on the 35 Acres violated any
12 code, regulation, statute, policy, etc. or that Petitioner did not have a vested property right to
13 develop the 35 Acres.

14 79. The City provided only one reason for denying Petitioner's request to develop the
15 35 Acres - that the City would only approve the MDA that included the entirety of the 250.92
16 acres owned by various entities and that the MDA would allow development of the 35 Acres.

17 80. The City then, on or about August 2, 2017, denied the MDA, thereby preventing
18 the development of the 35 Acres.

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

20 82. The City has not paid just compensation to Petitioner for this taking of its 35 Acre
21 property.

22 83. The City's failure to pay just compensation to Petitioner for the taking of its 35
23 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
24

1 the Nevada Revised Statutes, which require the payment of just compensation when private
2 property is taken for a public use.

3 84. Therefore, Petitioner is compelled to bring this cause of action for the taking of
4 the 35 Acre property to recover just compensation for property the City is taking without
5 payment of just compensation.

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

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

8 **(Regulatory Per Se Taking)**

9 86. Petitioner repeats, re-alleges and incorporates by reference all paragraphs
10 included in this pleading as if set forth in full herein.

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

14 88. The City's actions exclude the Petitioner from using the 35 Acres and, instead,
15 permanently reserve the 35 Acres for a public use and the public is using the 35 Acres.

16 89. The City's actions have shown an unconditional and permanent taking of the 35
17 Acres.

18 90. The City has not paid just compensation to Petitioner for this taking of its 35 Acre
19 property.

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

24

1 92. Therefore, Petitioner is compelled to bring this cause of action for the taking of
2 the 35 Acre property to recover just compensation for property the City is taking without
3 payment of just compensation.

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

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

6 **(Nonregulatory Taking)**

7 94. Petitioner repeats, re-alleges and incorporates by reference all paragraphs
8 included in this pleading as if set forth in full herein.

9 95. The City actions directly and substantially interfere with Petitioner's vested
10 property rights rendering the 35 Acres unusable and/or valueless.

11 96. The City has intentionally delayed approval of development on the 35 Acres and,
12 ultimately, denied any and all development in a bad faith effort to preclude any use of the 35
13 Acres.

14 97. The City's actions are oppressive and unreasonable.

15 98. The City's actions result in a nonregulatory taking of Petitioner's 35 Acres.

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

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

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

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

2 **PRAYER FOR RELIEF**

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

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

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

8 3. Alternatively, an award of just compensation according to the proof for the taking
9 and/or damaging of the Petitioner's property by inverse condemnation,

10 4. Prejudgment interest commencing from the date the City first froze the use of the
11 35 Acre property which is prior to the filing of this Complaint in Inverse Condemnation;

12 5. Upon conclusion of the judicial review claims, a preferential trial setting pursuant
13 to NRS 37.055 on the alternative inverse condemnation claims;

14 6. Payment for all costs incurred in attempting to develop the 35 Acres.

15 7. For an award of attorneys fees and costs incurred in and for this action.

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

3 DATED this 7th day of September, 2017.

4 KAEMPFER CROWELL

5
6 BY: 

CHRISTOPHER L. KAEMPFER (Nevada Bar No. 1264)

JAMES E. SMYTH II (Nevada Bar No. 6506)

STEPHANIE H. ALLEN (Nevada Bar No. 8486)

KAEMPFER CROWELL

1980 Festival Plaza Drive, Suite 650

Las Vegas, Nevada 89135

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

11 BY: /s/ Kermit L. Waters

KERMITT L. WATERS, ESQ.

Nevada Bar. No.2571

JAMES J. LEAVITT, ESQ.

Nevada Bar No. 6032

MICHAEL SCHNEIDER, ESQ.

Nevada Bar No. 8887

AUTUMN WATERS, ESQ.

Nevada Bar No. 8917

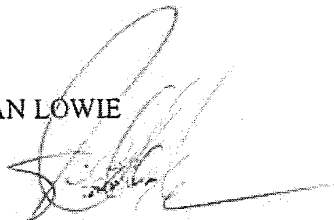
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VERIFICATION

STATE OF NEVADA)
):ss
COUNTY OF CLARK)

Yohan Lowie, on behalf of Petitioner, being first duly sworn, upon oath, deposes and says: that he has read the foregoing **FIRST AMENDED PETITION FOR JUDICIAL REVIEW AND ALTERNATIVE CLAIMS IN INVERSE CONDEMNATION** and based upon information and belief knows the contents thereof to be true and correct to the best of his knowledge.

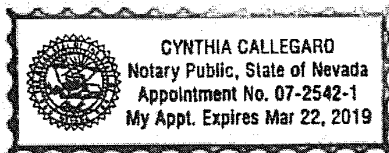
YOHAN LOWIE



SUBSCRIBED and SWORN to before me
This 7 day of September, 2017.

NOTARY PUBLIC


Cynthia Callegaro



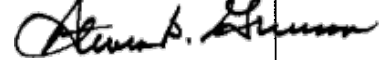
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Steven D. Grierson

CLERK OF THE COURT

Steven D. Grierson

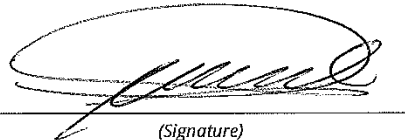
Attorney or Party without Attorney: KAEMPFER CROWELL CHRISTOPHER L. KAEMPFER (NBN 1264) 1980 FESTIVAL PLAZA, SUITE 650 LAS VEGAS, NV 89135 Telephone No: (702) 792-7000				
Attorney For: PETITIONER	Ref. No. or File No.:			
Insert name of Court, and Judicial District and Branch Court: DISTRICT COURT, CLARK COUNTY, NEVADA				
Petitioner: 180 LAND COMPANY, LLC, a Nevada limited liability company, et al., Defendant: CITY OF LAS VEGAS, political subdivision of the State of Nevada, et al.,				
AFFIDAVIT OF SERVICE	Hearing Date:	Time:	Dept/Div: XVI	Case Number: A-17-758528-J

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; FIRST AMENDED PETITION FOR JUDICIAL REVIEW AND ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION; NOTICE OF ASSOCIATION OF COUNSEL; PETITION FOR JUDICIAL REVIEW
3.
 - a. Party served: CITY OF LAS VEGAS, political subdivision of the State of Nevada
 - b. Person served: SARA MAYS, ADMINISTRATIVE SUPPORT ASSISTANT, a person of suitable age and discretion, authorized to accept at the below listed address.
4. Address where the party was served: 495 S. MAIN STREET
LAS VEGAS, NV 89101
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Thu, Sep 14 2017 (2) at: 02:30 PM

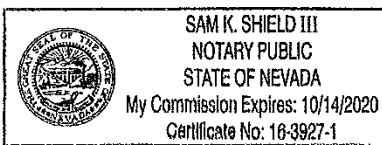
I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

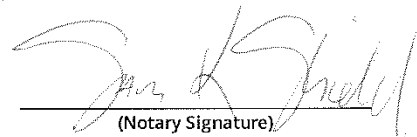
6. Person Who Served Papers:

- a. Leidy Serna (R-029907)
- b. FIRST LEGAL
NEVADA PI/PS LICENSE 1452
2920 N. GREEN VALLEY PARKWAY, SUITE 514
HENDERSON, NV 89014
- c. (702) 671-4002

9.19.17 (Date)  (Signature)

7. STATE OF NEVADA, COUNTY OF Clark 19 day of September, 2017 by Leidy Serna (R-029907)
Subscribed and sworn to (or affirmed) before on this 19 day of September, 2017 by Leidy Serna (R-029907)
proved to me on the basis of satisfactory evidence to be the person who appeared before me.




(Notary Signature)

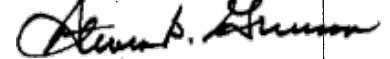


AFFIDAVIT OF SERVICE

1667507
(55049823)

Case Number: A-17-758528-J

PA0028



1 ANSC
2 BRADFORD R. JERBIC
3 City Attorney
4 Nevada Bar No. 1056
5 PHILIP R. BYRNES
6 Senior Litigation Counsel
7 Nevada Bar No. 166
8 JEFFRY M. DOROCAC
9 Deputy City Attorney
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11 495 South Main Street, Sixth Floor
12 Las Vegas, NV 89101
13 (702) 229-6629 (office)
14 (702) 386-1749 (fax)
15 Email: jdorocak@lasvegasnevada.gov
16 Attorneys for CITY OF LAS VEGAS
17
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22

DISTRICT COURT

CLARK COUNTY, NEVADA

12 180 LAND COMPANY, LLC, a Nevada
13 limited liability company, DOE
14 INDIVIDUALS I through X, DOE
15 CORPORATIONS I through X, and DOE
16 LIMITED LIABILITY COMPANIES I
17 through X,

Petitioners,

vs.

17 CITY OF LAS VEGAS, political subdivision
18 of the State of Nevada, ROE government
19 entities I through X, ROE CORPORATIONS
20 I through X, ROE INDIVIDUALS I through
21 X, ROE LIMITED LIABILITY
22 COMPANIES I through X, ROE quasi-
23 governmental entities I through X,

Respondents.

CASE NO. A-17-758528-J
DEPT. NO. XVI

**CITY OF LAS VEGAS' ANSWER TO
FIRST AMENDED PETITION FOR JUDICIAL REVIEW**

25 Respondent CITY OF LAS VEGAS, through its attorneys, BRADFORD R. JERBIC, City
26 Attorney, by PHILIP R. BYRNES, Senior Litigation Counsel, and JEFFRY M. DOROCAC, Deputy
27 City Attorney, answers Petitioner 180 LAND COMPANY, LLC's First Amended Petition for
28 Judicial Review (the "Petition") on file herein as follows:

1 1. Respondent CITY OF LAS VEGAS denies the allegations contained in
2 paragraphs 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,
3 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, and 52 of the
4 Petition.

5 2. Respondent CITY OF LAS VEGAS is without knowledge and information
6 sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 3, and 4 of
7 the Petition and, therefore, denies the same.

8 3. Respondent CITY OF LAS VEGAS admits the allegations in paragraph 6 of the
9 Petition.

10 4. Answering paragraph 2 of the Petition, Respondent CITY OF LAS VEGAS
11 admits that it is a Nevada municipality and denies the remaining allegations of paragraph 2.

12 5. Answering paragraph 44 of the Petition, Respondent CITY OF LAS VEGAS
13 repeats and realleges its responses to Paragraphs 1 through 52 as though fully set forth herein.

14 6. Respondent CITY OF LAS VEGAS neither admits nor denies the remaining
15 allegations (paragraphs 53-102) of the Petition because the Court severed these allegations from
16 the Petition by Order dated January 25, 2018.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 Petitioner has failed to state a claim upon which relief may be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 Petitioner has failed to exhaust their administrative remedies.

22 **THIRD AFFIRMATIVE DEFENSE**

23 Petitioner's claims are not ripe.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 Petitioner lacks standing to pursue the instant Petition.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 Respondent City of Las Vegas is entitled to the immunities and limitations on liability set
28 forth in NRS 41.032, 41.033 and 41.035.

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SIXTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by res judicata.

SEVENTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by collateral estoppel.

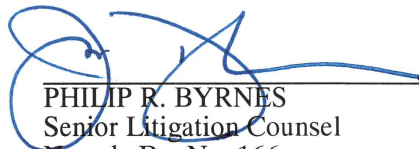
WHEREFORE, Respondent CITY OF LAS VEGAS prays for judgment, after briefing and argument as set forth in E.D.C.R. 2.15, as follows:

1. That Petitioner takes nothing by way of its Petition;
2. That Respondent CITY OF LAS VEGAS be awarded its costs and reasonable attorney's fees; and
3. For such other and further relief as this Court may deem just and proper.

DATED this 5th day of February, 2018.

BRADFORD R. JERBIC
City Attorney

By:



PHILIP R. BYRNES
Senior Litigation Counsel
Nevada Bar No. 166
JEFFRY M. DOROCAK
Deputy City Attorney
Nevada Bar No. 13109
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY OF LAS VEGAS

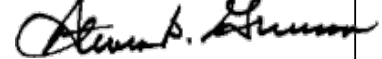
1 CERTIFICATE OF SERVICE

2 I hereby certify that on February 5, 2018, I served a true and correct copy of the
3 foregoing CITY OF LAS VEGAS' ANSWER TO FIRST AMENDED PETITION FOR
4 JUDICIAL REVIEW through the electronic filing system of the Eighth Judicial District Court of
5 the State of Nevada, pursuant to Nevada Electronic Filing and Conversion Rules, (or, if
6 necessary, by United States Mail at Las Vegas, Nevada, postage fully prepaid) upon the
7 following:

8 Christopher L. Kaempfer, Esq.
9 KAEMPFER CROWELL
10 1980 Festival Plaza Drive, #650
11 Las Vegas, NV 89135
12 Attorneys for Petitioners

Kermitt L. Waters, Esq.
LAW OFFICES OF KERMIT L. WATERS
704 S. Ninth Street
Las Vegas, NV 89101
Attorneys for Petitioners

13 
14 _____
15 AN EMPLOYEE OF THE CITY OF LAS VEGAS
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**ACOMP
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571
info@kermittwaters.com
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendant.

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

**FIRST AMENDED COMPLAINT
PURSUANT TO COURT ORDER
ENTERED ON FEBRUARY 2, 2018 FOR
SEVERED ALTERNATIVE VERIFIED
CLAIMS IN INVERSE
CONDEMNATION**

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

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

PARTIES

1. Landowner is organized and existing under the laws of the state of Nevada.

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

3. That the true names and capacities, whether individual, corporate, associate, or otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X (hereinafter collectively referred to as "DOEs") inclusive are unknown to the Landowner at this time and who may have standing to sue in this matter and who, therefore, sue the Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as

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

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

13 **JURISDICTION AND VENUE**

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

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

18 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 29. In conjunction with this City Council public hearing, the Planning Staff, in
22 continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted *"the*
23 *adjacent developments are designated ML (Medium Low Density Residential) with a density cap*
24 *of 8.49 dwelling units per acre. The proposed development would have a density of 1.79 dwelling*

1 *units per acre...Compared with the densities and General Plan designations of the adjacent*
2 *residential development, the proposed L (Low Density Residential) designation is less dense and*
3 *therefore appropriate for this area, capped at 5.49 units per acre." (emphasis added).*

4 30. The Planning Staff found the density of the proposed General Plan compatible with
5 the existing adjacent land use designation, found the zoning designations compatible and found
6 that the filed applications conform to other applicable adopted plans and policies that include
7 approved neighborhood plans.

8 31. At the June 21, 2017, City Council hearing, Landowner addressed the concerns of
9 the individuals speaking in opposition, and provided substantial evidence, through the introduction
10 of documents and through testimony, of expert witnesses and others, rebutting each and every
11 opposition claim.

12 32. Included as part of the evidence presented by Landowner at the June 21, 2017, City
13 Council hearing, Landowner introduced evidence, among other things, (i) that representatives of
14 the City had specifically noted in both City public hearings and in public neighborhood meetings,
15 that the standard for appropriate development based on the existing R-PD7 zoning on the Property
16 would be whether the proposed lot sizes were compatible with and comparable to the lot sizes of
17 the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acres were compatible
18 with and comparable to the lot sizes of the existing residences adjoining the lots proposed in the
19 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acres was less than the
20 density of those already existing residences adjoining the 35 Acres; and (iv) that both Planning
21 Staff and the Planning Commission recommended approval of WVR-68480, SDR-68481 and
22 TMP-68482, all of which applications pertain to the proposed development of the 35 Acres.

23 33. Any public statements made in opposition to the various applications were either
24 conjecture or opinions unsupported by facts; all of which public statements were either rebutted

1 by findings as set forth in the Planning Staff report or through statements made by various City
2 representatives at the time of the City Council public hearing or through evidence submitted by
3 Landowner at the time of the public hearing.

4 34. In spite of the Planning Staff recommendation of approval and the recommendation
5 of approval from the Planning Commission, and despite the substantial evidence offered by
6 Landowner in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and in spite
7 of the fact that no substantial evidence was offered in opposition, the City Council denied the
8 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **(Categorical Taking)**

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **(Penn Central Regulatory Taking)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **(Regulatory Per Se Taking)**

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

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

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

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

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

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

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

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

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

2 **(Nonregulatory Taking)**

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

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

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

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

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

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

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

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

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

22 ///

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 3 1. An award of just compensation according to the proof for the taking (permanent or
4 temporary) and/or damaging of the Landowner's property by inverse condemnation,
5 2. Prejudgment interest commencing from the date the City first froze the use of the
6 35 Acre property which is prior to the filing of this Complaint in Inverse Condemnation;
7 3. Upon conclusion of the judicial review claim(s), a preferential trial setting
8 pursuant to NRS 37.055 on the alternative inverse condemnation claims;
9 4. Payment for all costs incurred in attempting to develop the 35 Acres;
10 5. For an award of attorneys' fees and costs incurred in and for this action; and,
11 6. For such further relief as the Court deems just and equitable under the
12 circumstances.

13 DATED THIS 23rd day of February, 2018.

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

15 BY: /s/ Kermitt L. Waters
16 KERMITT L. WATERS, ESQ.
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20 **HUTCHISON & STEFFEN**

21 BY: /s/ Mark A. Hutchison
22 Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
23 Robert T. Stewart (13770)

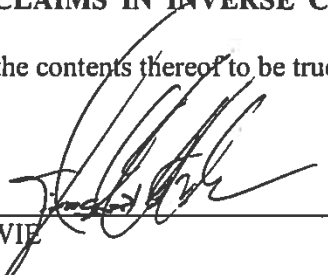
24 *Attorneys for 180 Land Company, LLC*

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VERIFICATION

STATE OF NEVADA)
):ss
COUNTY OF CLARK)

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

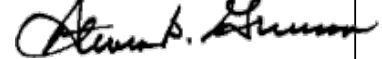


YOHAN LOWIE

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


NOTARY PUBLIC





**ERR-A COM
LAW OFFICES OF KERMITT L. WATERS**

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Attorneys for 180 Land Company, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendant.

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

**ERRATA TO FIRST AMENDED
COMPLAINT PURSUANT TO COURT
ORDER ENTERED ON FEBRUARY 2 [1],
2018 FOR SEVERED ALTERNATIVE
VERIFIED CLAIMS IN INVERSE
CONDEMNATION
(Exempt from Arbitration – Action Seeking
Review of Administrative Decision and
Action Concerning Title To Real Property)**

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2
3 **ERRATA STATEMENT:** *This Errata is being filed to the First Amended Complaint filed in this*
4 *matter on February 23, 2018, to correct references to February 2, 2018, as the date of the entry*
5 *of the order permitting filing of the First Amended Complaint for the Severed Alternative Verified*
6 *Claims in Inverse Condemnation in this case. The order allowing the amendment was entered on*
7 *February 1, 2018. Accordingly, the references to February 2, 2018 are stricken and February 1,*
8 *2018 is inserted herein.*

9 COMES NOW Plaintiff, 180 Land Company, LLC (“Landowner”) and pursuant to the
10 Order of the Court entered on February 2 [1], 2018, by and through its attorneys of record, The
11 Law Offices of Kermitt L. Waters and Hutchison & Steffen, for its First Amended Complaint
12 Pursuant to Court Order Entered On February 2 [1], 2018 For Severed Alternative Claims In
13 Inverse Condemnation complains and alleges as follows:

14 **PARTIES**

- 15 1. Landowner is organized and existing under the laws of the state of Nevada.
- 16 2. Respondent City of Las Vegas ("City") is a political subdivision of the State of
17 Nevada and is a municipal corporation subject to the provisions of the Nevada Revised Statutes,
18 including NRS 342.105, which makes obligatory on the City all of the Federal Uniform Relocation
19 Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601-4655, and the
20 regulations adopted pursuant thereto. The City is also subject to all of the provisions of the Just
21 Compensation Clause of the United States Constitution and Article 1, sections 8 and 22 of the
22 Nevada Constitution, also known as PISTOL (Peoples Initiative to Stop the Taking of Our Land).
- 23 3. That the true names and capacities, whether individual, corporate, associate, or
24 otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE
CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X
(hereinafter collectively referred to as “DOEs”) inclusive are unknown to the Landowner at this

1 time and who may have standing to sue in this matter and who, therefore, sue the Defendants by
2 fictitious names and will ask leave of the Court to amend this Complaint to show the true names
3 and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as
4 principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other
5 entities with standing to sue under the allegations set forth herein.

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

16 **JURISDICTION AND VENUE**

17 5. The Court has jurisdiction over the alternative claims for inverse condemnation
18 pursuant to the United States Constitution, Nevada State Constitution, the Nevada Revised Statutes
19 and pursuant to the Court Order entered in this case on February 2 [1], 2018.

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

21 **GENERAL ALLEGATIONS**

22 7. Landowner owns 166.99 acres of real property generally located south of Alta
23 Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas,
24

1 Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-
2 702-003, 138-31-601-008, 138-31-702-004 and 138-31-201-005 ("Property").

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

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

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

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

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

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

23 14. Although the Property currently shows the General Plan Designation of PR-OS
24 (Parks/Recreation/Open Space), that Designation was placed on the Property by the City without

1 the City having followed its own proper notice requirements or procedures. Therefore, the General
2 Plan Designation of PR-OS is being shown on the Property in error.

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

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

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

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

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

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

20 21. On or about January 25, 2017, Landowner filed with the City an application
21 pertaining to the 35 Acres for a waiver to allow 32-foot private streets with a sidewalk on one side
22 within a privately gated community where 47-foot private streets with sidewalks on both sides are
23 required. The application was given number WVR-68480 ("WVR-68480").
24

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

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

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

13 25. On February 14, 2017, the City of Las Vegas Planning Commission ("Planning
14 Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-
15 68482.

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

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

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

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

8 30. The Planning Staff found the density of the proposed General Plan compatible with
9 the existing adjacent land use designation, found the zoning designations compatible and found
10 that the filed applications conform to other applicable adopted plans and policies that include
11 approved neighborhood plans.

12 31. At the June 21, 2017, City Council hearing, Landowner addressed the concerns of
13 the individuals speaking in opposition, and provided substantial evidence, through the introduction
14 of documents and through testimony, of expert witnesses and others, rebutting each and every
15 opposition claim.

16 32. Included as part of the evidence presented by Landowner at the June 21, 2017, City
17 Council hearing, Landowner introduced evidence, among other things, (i) that representatives of
18 the City had specifically noted in both City public hearings and in public neighborhood meetings,
19 that the standard for appropriate development based on the existing R-PD7 zoning on the Property
20 would be whether the proposed lot sizes were compatible with and comparable to the lot sizes of
21 the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acres were compatible
22 with and comparable to the lot sizes of the existing residences adjoining the lots proposed in the
23 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acres was less than the
24 density of those already existing residences adjoining the 35 Acres; and (iv) that both Planning

1 Staff and the Planning Commission recommended approval of WVR-68480, SDR-68481 and
2 TMP-68482, all of which applications pertain to the proposed development of the 35 Acres.

3 33. Any public statements made in opposition to the various applications were either
4 conjecture or opinions unsupported by facts; all of which public statements were either rebutted
5 by findings as set forth in the Planning Staff report or through statements made by various City
6 representatives at the time of the City Council public hearing or through evidence submitted by
7 Landowner at the time of the public hearing.

8 34. In spite of the Planning Staff recommendation of approval and the recommendation
9 of approval from the Planning Commission, and despite the substantial evidence offered by
10 Landowner in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and in spite
11 of the fact that no substantial evidence was offered in opposition, the City Council denied the
12 WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

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

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

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

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

22 APN 138-31-702-004, a 33.8 acre property that has its own assessor parcel number and is
23 legally subdivided separate and apart from the 35 Acres;
24

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

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

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

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

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

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

19 37. At the time the City Council was considering WVR-68480, SDR-68481, TMP-
20 68482 and GPA-68385, that would allow the 35 Acres to be developed, the City Council stated
21 that the approval of the master development agreement is very, very close and “we are going to
22 get there [approval of the master development agreement].” The City Council was referring to the
23 next public hearing wherein the master development agreement (“MDA”) would be voted on by
24 the City Council.

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

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

11 40. The City’s actions in denying Landowner’s tentative map (TMP-68482), WVR-
12 68480, SDR-68481 and GPA-68385 foreclosed all development of the 35 Acres in violation of
13 Landowner’s vested right to develop the 35 Acres.

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

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

18 43. The Landowner’s Alternative Verified Claims in Inverse Condemnation have been
19 timely filed and, pursuant to the Court’s Order entered on February 2 [1], 2018, are ripe.

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

21 **(Categorical Taking)**

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

1 45. The City reached a final decision that it will not allow development of Landowner's
2 35 Acres.

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

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

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

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

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

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

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

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

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

23 55. The requested compensation is in excess of fifteen thousand dollars (\$15,000.00).
24

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

2 **(Penn Central Regulatory Taking)**

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

5 57. The City reached a final decision that it will not allow development of Landowner's
6 35 Acres.

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

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

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

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

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

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

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

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

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

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

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

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

17 70. The City provided only one reason for denying Landowner's request to develop the
18 35 Acres - that the City would only approve the MDA that included the entirety of the 250.92 acres
19 owned by various entities and that the MDA would allow development of the 35 Acres.

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

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

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

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

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

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

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

10 **(Regulatory Per Se Taking)**

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

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

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

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

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

22 82. The City's failure to pay just compensation to Landowner for the taking of its 35
23 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and
24

1 the Nevada Revised Statutes, which require the payment of just compensation when private
2 property is taken for a public use.

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

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

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

8 **(Nonregulatory Taking)**

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

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

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

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

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

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

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

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

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

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays for judgment as follows:

7 1. An award of just compensation according to the proof for the taking (permanent or
8 temporary) and/or damaging of the Landowner's property by inverse condemnation,

9 2. Prejudgment interest commencing from the date the City first froze the use of the
10 35 Acre property which is prior to the filing of this Complaint in Inverse Condemnation;

11 3. Upon conclusion of the judicial review claim(s), a preferential trial setting pursuant
12 to NRS 37.055 on the alternative inverse condemnation claims;

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

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

15 6. For such further relief as the Court deems just and equitable under the
16 circumstances.

17 DATED THIS 26th day of February, 2018.

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

19 BY: /s/ Kermitt L. Waters
20 KERMIT L. WATERS, ESQ. (NBN 2571)
21 JAMES J. LEAVITT, ESQ. (NBN 6032)
22 MICHAEL SCHNEIDER, ESQ. (NBN 8887)
23 AUTUMN WATERS, ESQ. (NBN 8917)

24 **HUTCHISON & STEFFEN**

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

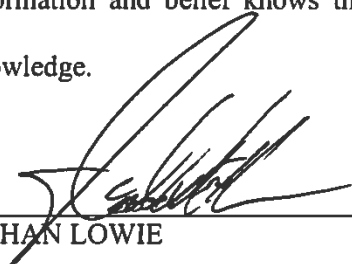
Attorneys for 180 Land Company, LLC

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VERIFICATION

STATE OF NEVADA)
):ss
COUNTY OF CLARK)

Yohan Lowie, on behalf of the Landowner, being first duly sworn, upon oath, deposes and says: that he has read the foregoing **ERRATA TO FIRST AMENDED COMPLAINT PURSUANT TO COURT ORDER ENTERED ON FEBRUARY 2 [1], 2018 FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** and based upon information and belief knows the contents thereof to be true and correct to the best of his knowledge.

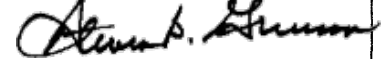


YOHAN LOWIE



SUBSCRIBED and SWORN to before me
This 28th day of February, 2018.


NOTARY PUBLIC



1 **PTJR**

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4 Joseph S. Kistler (3458)

5 Robert T. Stewart (13770)

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Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioners,

vs.

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

Defendant.

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

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

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

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

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

PARTIES

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

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

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

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

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

9 JURISDICTION AND VENUE

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

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

15 GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

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

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

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

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

11

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

3 DATED this 28th day of February 2018.

4 **HUTCHISON & STEFFEN, PLLC**

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

8 **KAEMPFER CROWELL**

9
10 BY: /s/ Christopher Kaempfer
 CHRISTOPHER L. KAEMPFER (Nevada Bar No. 1264)
 JAMES E. SMYTH II (Nevada Bar No. 6506)
 STEPHANIE H. ALLEN (Nevada Bar No. 8486)
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13 **LAW OFFICES OF KERMITT L. WATERS**

14
15 BY: /s/ Kermit L. Waters
 KERMITT L. WATERS, ESQ.
 Nevada Bar. No.2571
 JAMES J. LEAVITT, ESQ.
 Nevada Bar No. 6032
 MICHAEL SCHNEIDER, ESQ.
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18
19
20 *Attorneys for Petitioner*

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



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

Jennifer Knight
NOTARY PUBLIC

1 Certificate of Service

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

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

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

9 CITY ATTORNEY'S OFFICE

10 Bradford R. Jerbic

Philip R. Byrnes

11 Jeffrey M. Dorocak

495 S. Main Street, 6th Floor

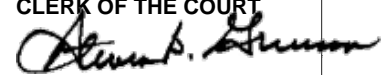
12 Las Vegas, NV 89101

702-229-6629

Attorneys for City of Las Vegas

13 *Dyanne Morahan*

14 an employee of Hutchison & Steffen



1 ANAC
2 BRADFORD R. JERBIC
3 City Attorney
4 Nevada Bar No. 1056
5 PHILIP R. BYRNES
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13 (702) 229-6629 (office)
14 (702) 386-1749 (fax)
15 Email: jdorocak@lasvegasnevada.gov
16 Attorneys for CITY OF LAS VEGAS

DISTRICT COURT

CLARK COUNTY, NEVADA

11 180 LAND COMPANY, LLC, a Nevada
12 limited liability company, DOE
13 INDIVIDUALS I through X, DOE
14 CORPORATIONS I through X, and DOE
15 LIMITED LIABILITY COMPANIES I
16 through X,

17 Plaintiffs,

18 vs.

19 CITY OF LAS VEGAS, political subdivision
20 of the State of Nevada, ROE government
21 entities I through X, ROE CORPORATIONS
22 I through X, ROE INDIVIDUALS I through
23 X, ROE LIMITED LIABILITY
24 COMPANIES I through X, ROE quasi-
25 governmental entities I through X,

26 Defendants.

CASE NO. A-17-758528-J
DEPT. NO. XVI

27 **CITY OF LAS VEGAS' ANSWER TO FIRST AMENDED COMPLAINT**
28 **PURSUANT TO COURT ORDER ENTERED ON FEBRUARY 1, 2018 FOR**
29 **SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION**

30 Defendant CITY OF LAS VEGAS, through its attorneys, BRADFORD R. JERBIC, City
31 Attorney, by PHILIP R. BYRNES, Senior Litigation Counsel, and JEFFRY M. DOROCAK, Deputy
32 City Attorney, answers Plaintiff's First Amended Complaint for Severed Alternative Verified
33 Claims in Inverse Condemnation (the "Complaint") as follows:

1 1. Defendant CITY OF LAS VEGAS is without knowledge and information
2 sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1, 3, 4, 5, 6, 7,
3 and 8 of Plaintiff's Complaint and, therefore, denies the same.

4 2. Defendant CITY OF LAS VEGAS admits that it is a political subdivision of the
5 State of Nevada, but is without knowledge and information sufficient to form a belief as to the
6 truth of the remaining allegation contained in Paragraph 2 of Plaintiff's Complaint and, thus,
7 denies the same.

8 3. Defendant CITY OF LAS VEGAS denies the allegations contained in Paragraphs
9 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34,
10 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 62,
11 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 89, 90,
12 91, 92, and 93 of Plaintiff's Complaint.

13 4. Answering Paragraphs 44, 56, 77, and 85 of Plaintiff's Complaint, Defendant
14 CITY OF LAS VEGAS repeats and realleges its responses to Paragraphs 1 through 93, inclusive,
15 as though fully set forth herein.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**

18 Plaintiff has failed to state a claim upon which relief may be granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 Plaintiff has failed to exhaust its administrative remedies.

21 **THIRD AFFIRMATIVE DEFENSE**

22 Plaintiff's claims are barred by res judicata and/or collateral estoppel.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 Defendant CITY OF LAS VEGAS is entitled to the immunities and limitations on
25 liability set forth in NRS 41.032, 41.033 and 41.035.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 Plaintiff's claims are not ripe.

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SIXTH AFFIRMATIVE DEFENSE

The City of Las Vegas has neither the obligation nor intention to acquire any portion of the subject property.

SEVENTH AFFIRMATIVE DEFENSE

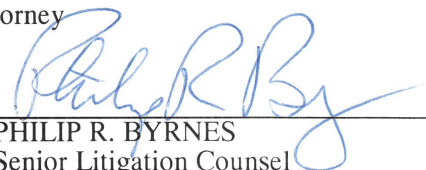
Plaintiff's damages, if any, are the result of third parties not subject to the direction and control of the City of Las Vegas.

WHEREFORE, Defendant CITY OF LAS VEGAS requests that Plaintiff take nothing by way of its First Amended Complaint for Severed Alternative Verified Claims in Inverse Condemnation on file herein and that Defendant CITY OF LAS VEGAS be awarded its costs and reasonable attorney's fees.

DATED this 12th day of March, 2018.

BRADFORD R. JERBIC
City Attorney

By:



PHILIP R. BYRNES
Senior Litigation Counsel
Nevada Bar No. 166
JEFFRY M. DOROCAK
Deputy City Attorney
Nevada Bar No. 13109
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY OF LAS VEGAS

1 **CERTIFICATE OF SERVICE**

2 ¹³

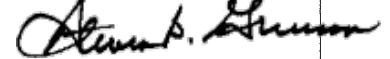
3 I hereby certify that on March 12, 2018, I served a true and correct copy of the foregoing
4 CITY OF LAS VEGAS' ANSWER TO FIRST AMENDED COMPLAINT PURSUANT TO
5 COURT ORDER ENTERED ON FEBRUARY 1, 2018 FOR SEVERED ALTERNATIVE
6 VERIFIED CLAIMS IN INVERSE CONDEMNATION through the electronic filing system of
7 the Eighth Judicial District Court of the State of Nevada, pursuant to Nevada Electronic Filing
8 and Conversion Rules, (or, if necessary, by United States Mail at Las Vegas, Nevada, postage
9 fully prepaid) upon the following:

10 Christopher L. Kaempfer, Esq.
11 KAEMPFER CROWELL
12 1980 Festival Plaza Drive, #650
13 Las Vegas, NV 89135
14 Attorneys for 180 LAND COMPANY, LLC

Mark A. Hutchison, Esq.
HUTCHISON & STEFFEN, LLP
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Las Vegas, NV 89145
Attorneys for 180 LAND COMPANY, LLC

15 Kermitt L. Waters, Esq.
16 LAW OFFICES OF KERMIT L. WATERS
17 704 South Ninth Street
18 Las Vegas, NV 89101
19 Attorneys for 180 LAND COMPANY, LLC

20 
21 _____
22 AN EMPLOYEE OF THE CITY OF LAS VEGAS
23
24
25
26
27
28



1 ANSC
2 BRADFORD R. JERBIC
3 City Attorney
4 Nevada Bar No. 1056
5 By: PHILIP R. BYRNES
6 Senior Litigation Counsel
7 Nevada Bar No. 166
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17

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 180 LAND COMPANY, LLC, a Nevada
13 limited liability company, DOE
14 INDIVIDUALS I through X, DOE
15 CORPORATIONS I through X, and DOE
16 LIMITED LIABILITY COMPANIES I
17 through X,

18 Petitioners,

19 vs.

20 CITY OF LAS VEGAS, political subdivision
21 of the State of Nevada, ROE government
22 entities I through X, ROE CORPORATIONS
23 I through X, ROE INDIVIDUALS I through
24 X, ROE LIMITED LIABILITY
25 COMPANIES I through X, ROE quasi-
26 governmental entities I through X,

27 Respondents.
28

CASE NO. A-17-758528-J
DEPT. NO. XVI

23 **CITY OF LAS VEGAS' ANSWER TO**
24 **SECOND AMENDED PETITION FOR JUDICIAL REVIEW**

25 Respondent CITY OF LAS VEGAS, through its attorneys, BRADFORD R. JERBIC, City
26 Attorney, by PHILIP R. BYRNES, Senior Litigation Counsel, and JEFFRY M. DOROCAC, Deputy
27 City Attorney, answers Petitioner 180 LAND COMPANY, LLC's Second Amended Petition for
28 Judicial Review (the "Petition") on file herein as follows:

1 1. Respondent CITY OF LAS VEGAS denies the allegations contained in
2 paragraphs 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,
3 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, and 52 of the
4 Petition.

5 2. Respondent CITY OF LAS VEGAS is without knowledge and information
6 sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 3, and 4 of
7 the Petition and, therefore, denies the same.

8 3. Respondent CITY OF LAS VEGAS admits the allegations in paragraph 6 of the
9 Petition.

10 4. Answering paragraph 2 of the Petition, Respondent CITY OF LAS VEGAS
11 admits that it is a Nevada municipality and denies the remaining allegations of paragraph 2.

12 5. Answering paragraph 44 of the Petition, Respondent CITY OF LAS VEGAS
13 repeats and realleges its responses to Paragraphs 1 through 52 as though fully set forth herein.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 Petitioner has failed to state a claim upon which relief may be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 Petitioner has failed to exhaust their administrative remedies.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Petitioner's claims are not ripe.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 Petitioner lacks standing to pursue the instant Petition.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 Respondent City of Las Vegas is entitled to the immunities and limitations on liability set
25 forth in NRS 41.032, 41.033 and 41.035.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 Petitioner's claims are barred by res judicata.

28

SEVENTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by collateral estoppel.

WHEREFORE, Respondent CITY OF LAS VEGAS prays for judgment, after briefing and argument as set forth in E.D.C.R. 2.15, as follows:

1. That Petitioner takes nothing by way of its Petition;
2. That Respondent CITY OF LAS VEGAS be awarded its costs and reasonable attorney's fees; and
3. For such other and further relief as this Court may deem just and proper.

DATED this 19th day of March, 2018.

BRADFORD R. JERBIC
City Attorney

By: 

PHILIP R. BYRNES
Senior Litigation Counsel
Nevada Bar No. 166
JEFFRY M. DOROCAC
Deputy City Attorney
Nevada Bar No. 13109
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY OF LAS VEGAS


CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2018, I served a true and correct copy of the foregoing CITY OF LAS VEGAS' ANSWER TO SECOND AMENDED PETITION FOR JUDICIAL REVIEW through the electronic filing system of the Eighth Judicial District Court of the State of Nevada, pursuant to Nevada Electronic Filing and Conversion Rules, (or, if necessary, by United States Mail at Las Vegas, Nevada, postage fully prepaid) upon the following:

Christopher L. Kaempfer, Esq.
KAEMPFER CROWELL
1980 Festival Plaza Drive, #650
Las Vegas, NV 89135
Attorneys for 180 LAND COMPANY, LLC

Mark A. Hutchison, Esq.
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, #200
Las Vegas, NV 89145
Attorneys for 180 LAND COMPANY, LLC

Kermitt L. Waters, Esq.
LAW OFFICES OF KERMIT L. WATERS
704 S. Ninth Street
Las Vegas, NV 89101
Attorneys for 180 LAND COMPANY, LLC


AN EMPLOYEE OF THE CITY OF LAS VEGAS

Scott D Widney

AGENDA SUMMARY PAGE - PLANNING
PLANNING COMMISSION MEETING OF: APRIL 12, 2016

DEPARTMENT: PLANNING

DIRECTOR: TOM PERRIGO

☐ Consent ☒ Discussion

SUBJECT:

MOD-63600 - MAJOR MODIFICATION - PUBLIC HEARING - APPLICANT: 180 LAND CO, LLC - OWNER: SEVENTY ACRES, LLC, ET AL - For possible action on a request for a Major Modification of the 1990 Peccole Ranch Master Plan TO AMEND THE NUMBER OF ALLOWABLE UNITS, TO CHANGE THE LAND USE DESIGNATION OF PARCELS COMPRISING THE CURRENT BADLANDS GOLF COURSE, TO PROVIDE STANDARDS FOR REDEVELOPMENT OF SUCH PARCELS AND TO REFLECT THE AS-BUILT CONDITION OF THE REMAINING PROPERTIES on 1,569.60 acres generally located east of Hualapai Way, between Alta Drive and Sahara Avenue (APNs Multiple), Ward 2 (Beers) [PRJ-63491]. Staff has NO RECOMMENDATION.

C.C.: 5/18/2016

PROTESTS RECEIVED BEFORE:

Planning Commission Mtg.

50

City Council Meeting

0

APPROVALS RECEIVED BEFORE:

Planning Commission Mtg.

12

City Council Meeting

0

RECOMMENDATION:

Staff has NO RECOMMENDATION

BACKUP DOCUMENTATION:

1. Location and Aerial Maps
2. Abeyance Request Submitted by - EHB Companies - MOD-63600, GPA-63599, ZON-63601 and DIR-63602 [PRJ-63491]
3. Staff Report- MOD-63600, GPA-63599 and ZON-63601 [PRJ-63491]
4. Supporting Documentation- MOD-63600, DIR-63602, GPA-63599 and ZON-63601 [PRJ-63491]
5. Photo(s) - MOD-63600, DIR-63602, GPA-63599 and ZON-63601 [PRJ-63491]
6. Justification Letter
7. Peccole Ranch Master Plan
8. Protest/Support Postcards - MOD-63600 and DIR-63602 [PRJ-63491]
9. Submitted after Final Agenda - Abeyance Request and Telephone Protest/Support Log for MOD-63600, GPA-63599, ZON-63601 and DIR-63602 [PRJ-63491], Protest Email for MOD-63600 and GPA-63599 [PRJ-63491] and Protest/Support Postcards for MOD-63600 and DIR-63602 [PRJ-63491]

Motion made by TRINITY HAVEN SCHLOTTMAN to Hold in abeyance Items 17 and 18, 22-24, 52-55, 72-74 and 80 to 5/10/2016 and Withdraw without prejudice Items 26 and 27

ROR025813

PA0090



Agenda Item No.: **52.**

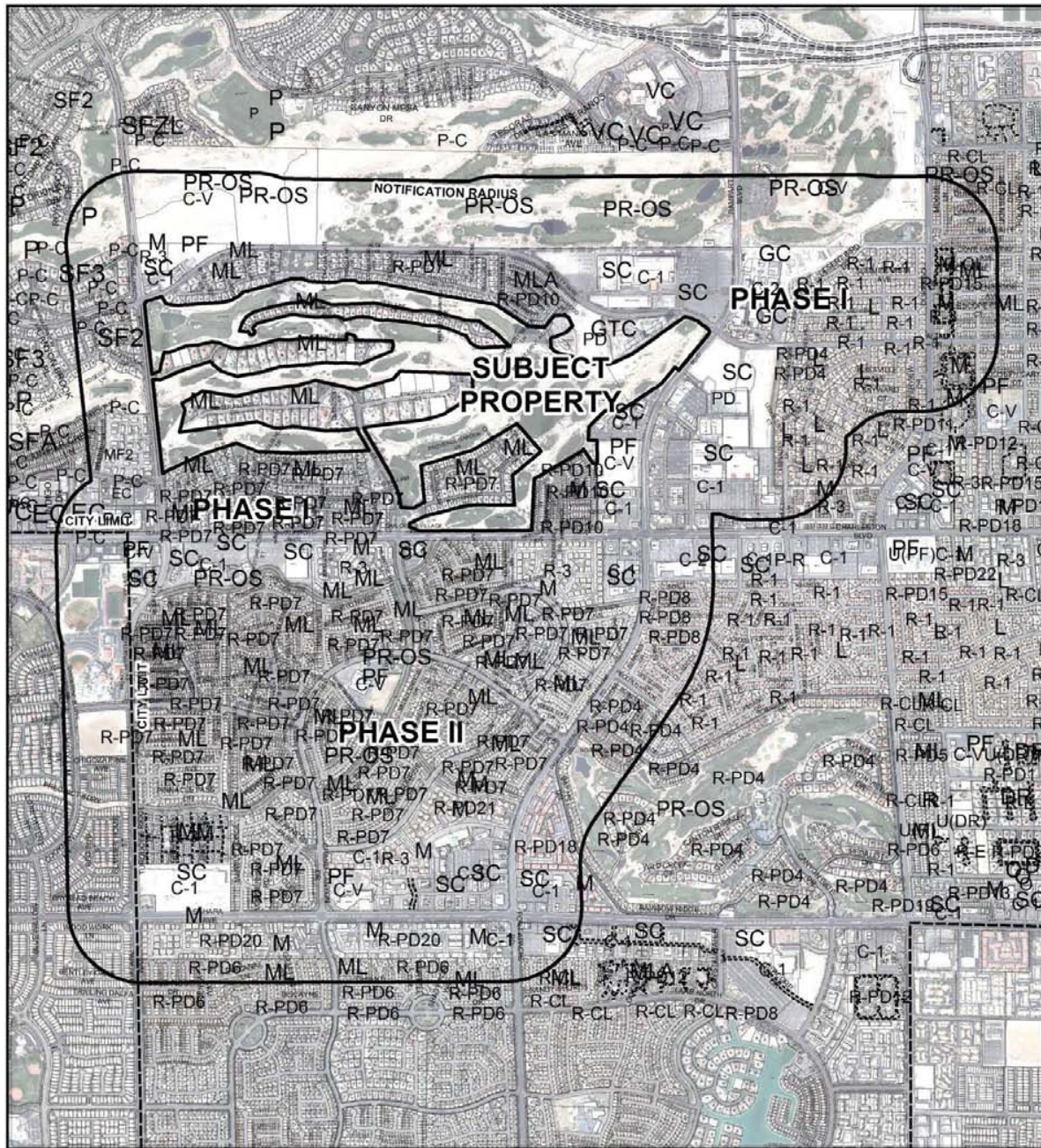
PLANNING COMMISSION MEETING OF: APRIL 12, 2016

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

CEDRIC CREAR, GLENN TROWBRIDGE, VICKI QUINN, TODD L. MOODY, TRINITY
HAVEN SCHLOTTMAN, GUS FLANGAS, SAM CHERRY; (Against-None); (Abstain-None);
(Did Not Vote-None); (Excused-None)

ROR025814

PA0091



CASE: MOD-63600 (PRJ-63491)

RADIUS: 1000 FEET FROM PHASE I AND II

GENERAL PLAN OF SUBJECT PROPERTY: PR-OS (PARKS/RECREATION/OPEN SPACE)

**PROPOSED GENERAL PLAN OF SUBJECT PROPERTY: DR (DESERT RURAL DENSITY RESIDENTIAL),
AND H (HIGH DENSITY RESIDENTIAL)**



March 25, 2016

Mr. Tom Perrigo
Planning Director
City of Las Vegas
333 N. Rancho Dr.
Las Vegas, NV 89106

RE: Abeyance request for MOD-63600, GPA-63599, ZON-63601 and DIR-63602

Dear Mr. Perrigo,

Pursuant to our discussions over the past two weeks this is an Abeyance request for referenced from the April 12th to the May 10th Planning Commission Meeting. This request is for the purpose of providing more time for continued communications with our neighbors. In this regard, we have two publicly noticed meetings already scheduled with the neighborhood, one on March 28 2016 and the other on April 4, 2016, with individually scheduled meetings with neighbors being offered through the month of April. It is in everyone's best interest that all neighbors are given ample opportunity to understand the project in its entirety before any public hearings are held before either the Planning Commission or the City Council. Thank you in advance.

Yours truly,

Frank Pankratz
As Manager of EHB Companies LLC,
the Manager of 180 Land Co. LLC,
Seventy Acres LLC and Fore Stars Ltd.

1215 South Fort Apache Road, Suite 120
Las Vegas, NV 89117
702.940.6930 / 702.940.6931 Fax

RECEIVED

MAR 25 2016

City of Las Vegas

AGENDA ITEMS 52-55
04/12/16 PC MEETING

ROR025817
PA0094

City of Las Vegas

AGENDA MEMO - PLANNING

PLANNING COMMISSION MEETING DATE: APRIL 12, 2016

DEPARTMENT: PLANNING

ITEM DESCRIPTION: APPLICANT/OWNER: 180 LAND CO, LLC, ET AL

**** STAFF RECOMMENDATION(S) ****

<i>CASE NUMBER</i>	<i>RECOMMENDATION</i>	<i>REQUIRED FOR APPROVAL</i>
MOD-63600	Staff recommends NO RECOMMENDATION.	
GPA-63599	Staff recommends NO RECOMMENDATION.	MOD-63600
ZON-63601	Staff recommends NO RECOMMENDATION.	MOD-63600 GPA-63599

SS

ROR025818

PA0095

**** STAFF REPORT ****

PROJECT DESCRIPTION

The applicant is proposing to redevelop the 250.92 acres (referred to in the applicant's documents as "the Property") that make up the Badlands Golf Course at the southwest corner of Alta Drive and Rampart Boulevard. This area is subject to the Peccole Ranch Master Plan (hereafter, "the Plan"), which was adopted in 1989 and amended in 1990. Since that time, numerous developmental changes have occurred in the Plan area without a corresponding update to the Plan. With an aim to rectify the inconsistencies of the Plan and to add residential units to the Property, the applicant is requesting a Major Modification to the Peccole Ranch Master Plan to memorialize the as-built condition of the existing properties on the overall 1,569-acre site and to change the land use designation in the Plan from Golf Course/Open Space/Drainage to Single-Family Residential and Multi-Family Residential.

Specifically, the number of allowable residential units is proposed to increase. An associated development agreement proposes standards for development of the golf course property in two categories: R-E (Residence Estates) for single-family residential uses and R-4 (High Density Residential) for multi-family uses. In addition, the Plan would be updated through a Major Modification to provide additional drainage infrastructure, which would remove some existing properties from federal flood plain designation. No new commercial is proposed within the Plan area.

ISSUES

- The Badlands golf course was enlarged from the 1990 Peccole Ranch Master Plan (184 acres to 250 acres) without modification of the Plan and built in a different location than was shown on the 1990 plan.
- If approved, the prior General Plan Amendment (GPA-62387) and Rezoning (ZON-62392) requests would be subsumed into this General Plan Amendment and Rezoning proposal.
- A Major Modification of the Peccole Ranch Master Plan is requested.
- A General Plan Amendment is requested to change the General Plan land use designation of the Property from PR-OS (Parks/Recreation/Open Space) to H (High Density Residential) on the east 67.22 acres of the Property and to DR (Desert Rural Density Residential) on the remaining 183.70 acres of the Property.
- A Rezoning is requested to change the zoning designation of the Property from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-4 (High Density Residential) on the east 67.22 acres of the Property and to R-E (Residence Estates) on the remaining 183.70 acres of the Property.

Staff Report Page Two

April 12, 2016 - Planning Commission Meeting

- A related development agreement is to contain a unique set of development standards for the development of property in the proposed R-4 and R-E Districts. The analysis and report for the development agreement will be under a separate Director's Business Item (DIR-63602).
- The proposed amendment would allow for up to 3,020 multi-family residential units to be built on the east 67.22 acres of the Property.
- The proposed amendment would allow for up to 60 single family residential estates to be constructed on the west 183.70 acres of the Property.
- No new commercial is proposed.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
12/17/80	The Board of City Commissioners approved the Annexation (A-0018-80) of 2,243 acres bounded by Sahara Avenue on the south, Hualapai Way on the west, Ducharme Avenue on the north and Durango Drive on the east. The annexation became effective on 12/26/80.
05/20/81	The Board of City Commissioners approved a Rezoning (Z-0034-81) from N-U (Non-Urban) to R-1 (Single Family Residence), R-2 (Two Family Residence), R-3 (Limited Multiple Residence), R-MHP (Residential Mobile Home Park), R-PD7 (Residential Planned Development), R-PD8 (Residential Planned Development), P-R (Professional Offices and Parking), C-1 (Limited Commercial), C-2 (General Commercial) and C-V (Civic) generally located north of Sahara Avenue, south of Westcliff Drive and extending two miles west of Durango Drive. The Planning Commission and staff recommended approval. This application included a "generalized land use plan."
05/07/86	The City Council approved the Master Development Plan for Venetian Foothills on 1,923 acres generally located north of Sahara Avenue between Durango Drive and Hualapai Way. The Planning Commission and staff recommended approval. This plan included two 18-hole golf courses and a 106-acre regional shopping center. [Venetian Foothills Master Development Plan]
	The City Council approved a Rezoning (Z-0030-86) to reclassify property from N-U (Non-Urban) (under Resolution of Intent) to R-PD4 (Residential Planned Development), P-R (Professional Offices and Parking), C-1 (Limited Commercial), and C-V (Civic) on 585.00 acres generally located north of Sahara Avenue between Durango Drive and Hualapai Way. The Planning Commission and staff recommended approval. [Venetian Foothills Phase One]

Staff Report Page Tree

April 12, 2016 - Planning Commission Meeting

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
02/15/89	The City Council considered and approved a revised master development plan for the subject site and renamed it Peccole Ranch to encumber 1,716.30 acres. Phase One of the Plan is generally located south of Charleston Boulevard, west of Fort Apache Road. Phase Two of the Plan is generally located north of Charleston Boulevard, west of Durango Drive, and south of Charleston Boulevard, east of Hualapai Way. The Planning Commission and staff recommended approval. A condition of approval limited the maximum number of dwelling units in Phase One to 3,150. The Phase One portion of the plan on 448.80 acres was subsequently rezoned (Z-0139-88). [Peccole Ranch Master Development Plan]
04/04/90	<p>The City Council approved an amendment to the Peccole Ranch Master Development Plan to make changes related to Phase Two of the Plan and to reduce the overall acreage to 1,569.60 acres. Approximately 212 acres of land in Phase Two was planned for a golf course. The Planning Commission and staff recommended approval. [Peccole Ranch Master Development Plan]</p> <p>The City Council approved a Rezoning (Z-0017-90) from N-U (Non-Urban) (under Resolution of Intent to multiple zoning districts) to R-3 (Limited Multiple Residence), R-PD7 (Residential Planned Development – 7 Units per Acre) and C-1 (Limited Commercial) on 996.40 acres on the east side of Hualapai Way, west of Durango Drive, between the south boundary of Angel Park and Sahara Avenue. A condition of approval limited the maximum number of dwelling units for Phase Two of the Peccole Ranch Master Development Plan to 4,247 units. The Planning Commission and staff recommended approval. [Peccole Ranch Phase Two]</p>
12/05/96	A (Parent) Final Map (FM-0008-96) for a 16-lot subdivision (Peccole West) on 570.47 acres at the northeast corner of Charleston Boulevard and Hualapai Way was recorded [Book 77 Page 23 of Plats]. The golf course was located on Lot 5 of this map.
03/30/98	A Final Map [FM-0190-96] for a four-lot subdivision (Peccole West Lot 10) on 184.01 acres at the southeast corner of Alta Drive and Hualapai Way was recorded [Book 83 Page 61 of Plats].
03/30/98	A Final Map [FM-0008-96(1)] to amend portions of Lots 5 and 10 of the Peccole West Subdivision Map on 368.81 acres at the northeast corner of Charleston Boulevard and Hualapai Way was recorded [Book 83 Page 57 of Plats].
07/07/04	The City Council approved a Rezoning (ZON-4205) from R-PD7 (Residential Planned Development – 7 Units per Acre) and U (Undeveloped) [M (Medium Density Residential) General Plan Designation] to PD (Planned Development) on 20.10 acres on the south side of Alta Drive, approximately 450 feet west of Rampart Boulevard. The request included the Queensridge Towers Master Development Plan and Design Standards. The Planning Commission and staff recommended approval.

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
07/07/04	The City Council approved a Variance (VAR-4207) to allow a side yard setback of 239 feet where residential adjacency standards require 570 feet on 20.10 acres on the south side of Alta Drive, approximately 450 feet west of Rampart Boulevard.
07/07/04	The City Council approved a Site Development Plan Review (SDR-4206) for a 385-unit condominium complex, consisting of two 16-story and two 18-story towers with ancillary uses, clubhouse, and a 17,400 square foot, single-story office building on 20.10 acres on the south side of Alta Drive, approximately 450 feet west of Rampart Boulevard.
01/12/06	The Planning Commission accepted the applicant's request to Withdraw Without Prejudice its application for a General Plan Amendment (GPA-9069) from PR-OS (Parks/Recreation/Open Space) to MLA (Medium Low Attached Density Residential) on 6.10 acres at the southwest corner of Alta Drive and Rampart Boulevard.
01/12/06	The Planning Commission accepted the applicant's request to Withdraw Without Prejudice its application for a Rezoning (ZON-9006) from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-PD7 (Residential Planned Development – 7 Units per Acre) on 5.40 acres at the southwest corner of Alta Drive and Rampart Boulevard.
01/12/06	The Planning Commission accepted the applicant's request to Withdraw Without Prejudice its application for a Site Development Plan Review (SDR-8632) for a proposed 24-unit townhome development on 6.10 acres at the southwest corner of Alta Drive and Rampart Boulevard.
08/06/14	The City Council approved a Major Modification (MOD-53701) of the Queensridge Towers Development Standards dated May 20, 2004 to amend development standards regarding land use, building setbacks and stepbacks, building height and parking on 20.10 acres on the south side of Alta Drive, approximately 410 feet west of Rampart Boulevard.
08/06/14	The City Council approved a Variance (VAR-53502) to allow a 582-foot building setback where residential adjacency standards require an 810-foot setback for a proposed 22-story residential tower on a 7.87-acre portion of a 10.53-acre parcel at 9119 Alta Drive.
08/06/14	The City Council approved a Major Amendment (SDR-53503) of an approved Site Development Plan Review (SDR-4206) for a proposed 22-story, 310-foot tall, 166-unit multi-family building and a single-story, 33-foot tall, 17,400 square-foot office building on a 7.87-acre portion of a 10.53-acre parcel at 9119 Alta Drive.
06/18/15	A four-lot Parcel Map (PMP-59572) on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 120 Page 49 of Parcel Maps].

Staff Report Page Five

April 12, 2016 - Planning Commission Meeting

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
11/30/15	A two-lot Parcel Map (PMP-62257) on 70.52 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 120 Page 91 of Parcel Maps].
01/12/16	The City Council voted to abey requests for a General Plan Amendment (GPA-62387) from PR-OS (Parks/Recreation/Open Space) to H (High Density Residential), a Rezoning (ZON-62392) from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-4 (High Density Residential) and a Site Development Plan Review (SDR-62393) for a proposed 720-unit multi-family residential development to the 03/08/16 Planning Commission meeting at the request of the applicant.
03/08/16	The City Council voted to abey GPA-62387, ZON-62392 and SDR-62393 to the 04/12/16 Planning Commission meeting at the request of the applicant.
03/15/16	A two-lot Parcel Map (PMP-63468) on 53.03 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 121 Page 12 of Parcel Maps].

<i>Most Recent Change of Ownership</i>	
04/14/05	A deed was recorded for a change in ownership on APN 138-32-202-001.
11/16/15	A deed was recorded for a change in ownership on APN 138-31-702-002; 138-31-801-002 and 003; 138-32-301-005 and 007.

<i>Related Building Permits/Business Licenses</i>	
There are no building permits or business licenses relevant to these requests.	

<i>Pre-Application Meeting</i>	
Multiple meetings were held with the applicant to discuss the proposed development and its impacts, and the timelines and requirements for application submittal.	

<i>Neighborhood Meeting</i>	
03/28/16	A neighborhood meeting was held at the Suncoast Hotel and Casino, 9090 Alta Drive, Las Vegas. There were 11 members of the development team, 183 members of the public, one Department of Planning staff member and one City Councilperson in attendance. After attendees signed in, they were offered a welcome letter and a hard copy of the video presentation. The developer's representative prefaced the presentation of the development proposal by explaining that the golf course will eventually be removed due to

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<i>Neighborhood Meeting</i>	
	<p>high maintenance costs and that changing the zoning is a way to preserve the low density of the neighborhood but also to increase demand for housing and commercial services in the area. The representative answered residents' questions for 40 minutes, and then invited those in attendance to visit any of four stations where large informational boards were set up and additional questions could be asked of the development team. Comment cards addressed to the Department of Planning were placed on tables for attendees to pick up.</p> <p>Concerns included the following:</p> <ul style="list-style-type: none"> • Residents purchased homes with the understanding that the golf course would remain. • Excavation: Grading cuts and fills would use existing earthwork material, and therefore there would not be trucks moving dirt in and out of the development. • The development agreement calls for 24-hour construction, which raised concerns over noise. A provision would be added that no noise would be generated during regular nighttime hours. • Adding over 3,000 units would strain water resources and raise fire and flood insurance premiums. <p>Those in attendance were overwhelmingly opposed to the project, including amending the city's General Plan and rezoning of the golf course.</p>
04/04/16	A second neighborhood meeting was held with nearby residents at the Badlands Golf Club House, 9119 Alta Drive, Las Vegas.

<i>Field Check</i>	
03/03/16	The overall site includes a mix of various uses, including single family residential of varying density, multi-family residential, schools, parks and other civic uses, neighborhood commercial and a 27-hole public golf course. A majority of the single family residential areas situated around the golf course are gated.

<i>Details of Application Request</i>	
<i>Site Area</i>	
Net Acres (MOD)	1569.60
Net Acres (GPA/ZON/DIR)	250.92

Staff Report Page Seven

April 12, 2016 - Planning Commission Meeting

<i>Surrounding Property</i>	<i>Existing Land Use Per Title 19.12</i>	<i>Planned or Special Land Use Designation</i>	<i>Existing Zoning District</i>
Subject Property	Commercial Recreation/Amusement (Outdoor) – Golf Course	PR-OS (Parks/Recreation/Open Space)	R-PD7 (Residential Planned Development – 7 Units per Acre)
North	Multi-Family Residential (Condominiums) / Club House	GTC (General Tourist Commercial)	PD (Planned Development)
	Hotel/Casino	SC (Service Commercial)	C-1 (Limited Commercial)
	Office, Medical or Dental		
	Single Family, Detached	ML (Medium Low Density Residential)	R-PD7 (Residential Planned Development – 7 Units per Acre)
		MLA (Medium Low Attached Density Residential)	R-PD10 (Residential Planned Development – 10 Units per Acre)
South	Office, Other Than Listed	SC (Service Commercial)	C-1 (Limited Commercial)
	Single Family, Detached	ML (Medium Low Density Residential)	R-PD7 (Residential Planned Development – 7 Units per Acre)
	Single Family, Attached	M (Medium Density Residential)	R-PD10 (Residential Planned Development – 10 Units per Acre)
	Multi-Family Residential		R-3 (Medium Density Residential)
East	Shopping Center	SC (Service Commercial)	PD (Planned Development)
	Office, Other Than Listed		C-1 (Limited Commercial)
	Mixed Use	GC (General Commercial)	C-2 (General Commercial)
	Utility Installation	PF (Public Facilities)	C-V (Civic)
	Single Family, Attached	M (Medium Density Residential)	R-PD10 (Residential Planned Development – 10 Units per Acre)

Staff Report Page Eight

April 12, 2016 - Planning Commission Meeting

<i>Surrounding Property</i>	<i>Existing Land Use Per Title 19.12</i>	<i>Planned or Special Land Use Designation</i>	<i>Existing Zoning District</i>
West	Single Family, Detached	SF2 (Single Family Detached – 6 Units per Acre)	P-C (Planned Community)
	Golf Course	P (Parks/Open Space)	
	Multi-Family Residential	MF2 (Medium Density Multi-family – 21 Units per Acre)	

<i>Master Plan Areas</i>	<i>Compliance</i>
Peccole Ranch	Y
<i>Special Purpose and Overlay Districts</i>	<i>Compliance</i>
R-PD (Residential Planned Development) District	Y
PD (Planned Development) District	Y
<i>Other Plans or Special Requirements</i>	<i>Compliance</i>
Trails (Pedestrian Path – Rampart)	Y
Las Vegas Redevelopment Plan Area	N/A
Project of Significant Impact (Development Impact Notification Assessment)	Y
Project of Regional Significance	Y

DEVELOPMENT STANDARDS

Pursuant to the related Development Agreement (DIR-63602) for redevelopment of the 250.92-acre golf course (“the Property”), the following standards would apply if approved:

Proposed R-4 lots:

<i>Standard</i>	<i>Title 19 Standards</i>	<i>Proposed</i>
Min. Lot Size	7,000 SF	7,000 SF
Min. Lot Width	N/A	N/A
Dwelling Units per Acre	Limited by height and underlying General Plan designation	45 du/ac (Development Area 1) 60 du/ac (Development Area 2) 36 du/ac (Development Area 3)
Min. Setbacks <ul style="list-style-type: none"> • Front • Side • Corner • Rear 	10 Feet 5 Feet 5 Feet 20 Feet	All buildings shall be set back at least 60 feet from any existing residence

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Staff Report Page Nine

April 12, 2016 - Planning Commission Meeting

<i>Standard</i>	<i>Title 19 Standards</i>	<i>Proposed</i>
Min. Distance Between Buildings	Unlimited	N/A, except as restricted by conditions of approval of SDR
Max. Lot Coverage	N/A	N/A
Max. Building Height— <ul style="list-style-type: none"> Up to 4 stories 5-6 stories Towers (7+ stories) 	55 Feet	55 Feet 75 Feet 250 Feet
Max. Accessory Structure Height	2 Stories/55 Feet or the height of the principal dwelling unit, whichever is less	Height of the principal dwelling unit
Trash Enclosure	Screened, Gated, w/ a Roof or Trellis	Screened, Gated, w/ a Roof or Trellis
Mech. Equipment	Screened	Screened

Proposed R-E lots:

<i>Standard</i>	<i>Title 19 Standards</i>	<i>Proposed</i>
Min. Lot Size	20,000 SF	43,560 SF
Min. Lot Width	100 Feet	N/A
Max. Dwelling Units per Acre	2.18 du/ac	0.33 du/ac
Dwelling Units per Lot	1	1
Min. Setbacks <ul style="list-style-type: none"> Front Side Corner Rear 	50 Feet 10 Feet 15 Feet 35 Feet	All buildings shall be set back at least 60 feet from any existing residence
Max. Lot Coverage	N/A	N/A
Max. Building Height	2 Stories/35 Feet	3 Stories over Basement/50 Feet
Max. Accessory Structure Height	2 Stories/35 Feet, whichever is less	Lesser of 3 Stories/50 Feet
Patio Covers	15-foot setback to side, rear and corner side PL from posts	5-foot setback from all property lines

<i>Existing Zoning</i>	<i>Permitted Density</i>	<i>Units Allowed</i>
R-PD7 (Residential Planned Development – 7 Units per Acre)	7.49 du/ac	1,879

SS

ROR025827

PA0104

Staff Report Page Ten

April 12, 2016 - Planning Commission Meeting

<i>Proposed Zoning</i>	<i>Permitted Density (proposed)</i>	<i>Units Allowed</i>
R-4 (High Density Residential)*	Unlimited, except by height	Limited by height
R-E (Residence Estates)*	1 du/ac	183
<i>Existing General Plan</i>	<i>Permitted Density</i>	<i>Units Allowed</i>
PR-OS (Parks/Recreation/Open Space)	N/A	None
<i>Proposed General Plan</i>	<i>Permitted Density</i>	<i>Units Allowed</i>
H (High Density Residential)	Unlimited	Unlimited
DR (Desert Rural Density Residential)	2.49 du/ac	457

*The R-4 and R-E Districts are as proposed by the Major Modification.

<i>Street Name</i>	<i>Functional Classification of Street(s)</i>	<i>Governing Document</i>	<i>Actual Street Width (Feet)</i>	<i>Compliance with Street Section</i>
Rampart Boulevard	Primary Arterial	Master Plan of Streets and Highways Map	100	Y
Alta Drive	Major Collector	Master Plan of Streets and Highways Map	84	Y

ANALYSIS

Since the original approval of the reclassification of property (Z-0017-90) that created the Peccole Ranch Master Plan Phase Two area, there have been numerous land use entitlements processed within the overall Master Plan area. Entitlements have ranged from Site Development Plan Reviews to establish Residential Planned Development (R-PD) zoning district development standards to the amending of the City of Las Vegas 2020 Master Plan and City of Las Vegas Zoning Atlas. Past land use entitlement practices have varied in respect to proposed developments within the Peccole Ranch Master Plan Phase Two area, specifically in regards to the means by which previous developers have been able to propose development with or without an associated modification of the Peccole Ranch Master Plan. Since adoption of the 1990 Peccole Ranch Master Plan the property was developed with deference to the Plan.

FINDINGS (MOD-63600)

Additional time is needed to review and evaluate the Major Modification and associated Development Agreement (DIR-63602). Therefore, no finding can be reached at this time.

SS

ROR025828

PA0105

FINDINGS (GPA-63599)

Section 19.16.030(I) of the Las Vegas Zoning Code requires that the following conditions be met in order to justify a General Plan Amendment:

1. **The density and intensity of the proposed General Plan Amendment is compatible with the existing adjacent land use designations,**

The proposed General Plan Amendment is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

2. **The zoning designations allowed by the proposed amendment will be compatible with the existing adjacent land uses or zoning districts,**

The proposed General Plan Amendment is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

3. **There are adequate transportation, recreation, utility, and other facilities to accommodate the uses and densities permitted by the proposed General Plan Amendment; and**

The proposed General Plan Amendment is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

4. **The proposed amendment conforms to other applicable adopted plans and policies that include approved neighborhood plans.**

The proposed General Plan Amendment is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

FINDINGS (ZON-63601)

In order to approve a Rezoning application, pursuant to Title 19.16.090(L), the Planning Commission or City Council must affirm the following:

1. The proposal conforms to the General Plan.

The proposed Rezoning is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

2. The uses which would be allowed on the subject property by approving the rezoning will be compatible with the surrounding land uses and zoning districts.

The proposed Rezoning is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

3. Growth and development factors in the community indicate the need for or appropriateness of the rezoning.

The proposed Rezoning is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

4. Street or highway facilities providing access to the property are or will be adequate in size to meet the requirements of the proposed zoning district.

The proposed Rezoning is dependent upon actions taken on the associated Major Modification to the Peccole Ranch Master Plan and Development Agreement. As additional time is needed for review of these submitted documents, no findings can be reached at this time.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED

44

NOTICES MAILED

6903 - MOD-63600 and DIR-63602
1495 - GPA-63599 and ZON-63601

APPROVALS

3 - MOD-63600 and DIR-63602
1 - GPA-63599 and ZON-63601

PROTESTS

23 - MOD-63600 and DIR-63602
18 - GPA-63599 and ZON-63601

SS

ROR025830

PA0107



DEPARTMENT OF PLANNING

STATEMENT OF FINANCIAL INTEREST

Case Number: **MOD-63600** APN: 138-31-702-002; 138-31-801-002

Name of Property Owner: 180 Land Co LLC

Name of Applicant: 180 Land Co LLC

Name of Representative: Frank Pankratz

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes

☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____

APN: _____ EHB COMPANIES LLC, ITS MANAGER

Signature of Property Owner: _____

Print Name: FRANK PANKRATZ, ITS MANAGER

Subscribed and sworn before me

This 25th day of FEBRUARY, 2016
Kathleen K Momot
 Notary Public in and for said County and State





DEPARTMENT OF PLANNING

STATEMENT OF FINANCIAL INTEREST

Case Number: **MOD-63600** APN: 138-32-301-005; 138-32-301-006

Name of Property Owner: Seventy Acres LLC

Name of Applicant: Seventy Acres LLC

Name of Representative: Frank Pankratz

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes

☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____

APN: _____

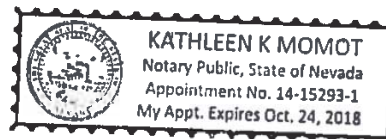
Signature of Property Owner: _____

Print Name: FRANK PANKRATZ, its Manager

Subscribed and sworn before me

This 25th day of February, 2016

Kathleen K Momot
Notary Public in and for said County and State





DEPARTMENT OF PLANNING

STATEMENT OF FINANCIAL INTEREST

Case Number: **MOD-63600** APN: 138-32-202-001;

Name of Property Owner: Fore Stars, Ltd

Name of Applicant: Fore Stars, Ltd.

Name of Representative: Frank Pankratz

To the best of your knowledge, does the Mayor or any member of the City Council or Planning Commission have any financial interest in this or any other property with the property owner, applicant, the property owner or applicant's general or limited partners, or an officer of their corporation or limited liability company?

☐ Yes

☒ No

If yes, please indicate the member of the City Council or Planning Commission who is involved and list the name(s) of the person or persons with whom the City Official holds an interest. Also list the Assessor's Parcel Number if the property in which the interest is held is different from the case parcel.

City Official: _____

Partner(s): _____

APN: _____
EHB COMPANIES, LLC, ITS MANAGER

Signature of Property Owner: _____

Print Name: *FRANK PANKRATZ, ITS MANAGER*

Subscribed and sworn before me

This 25th day of February, 20 16
Kathleen K Momot
Notary Public in and for said County and State





DEPARTMENT OF PLANNING

APPLICATION / PETITION FORM

Application/Petition For: MAJOR MODIFICATION
Project Address (Location) Multiple
Project Name 2016 Peccole Ranch Master Plan Proposed Use _____
Assessor's Parcel #(s) Multiple Ward # 2
General Plan: existing NA proposed NA Zoning: existing NA proposed NA
Commercial Square Footage _____ Floor Area Ratio _____
Gross Acres 1,569.6 Lots/Units _____ Density _____
Additional Information _____

PROPERTY OWNER Multiple Contact _____
Address _____ Phone: _____ Fax: _____
City _____ State _____ Zip _____
E-mail Address _____

APPLICANT 180 Land Co LLC Contact Frank Pankratz
Address 1215 South Fort Apache, Suite 120 Phone: (702) 940-6930 Fax: (702) 940-6931
City Las Vegas State Nevada Zip 89117
E-mail Address Frank@ehbcompanies.com

REPRESENTATIVE GCW, Inc. Contact Cindie Gee
Address 1555 South Rainbow Phone: (702) 804-2107 Fax: (702) 804-2299
City Las Vegas State Nevada Zip 89146
E-mail Address cgee@gcwengineering.com

I certify that I am the applicant and that the information submitted with this application is true and accurate to the best of my knowledge and belief. I understand that the City is not responsible for inaccuracies in information presented, and that inaccuracies, false information or incomplete application may cause the application to be rejected. I further certify that I am the owner or purchaser (or option holder) of the property involved in this application, or the lessee or agent fully authorized by the owner to make this submission, as indicated by the owner's signature below.

Property Owner Signature*

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Frank Pankratz

Subscribed and sworn before me

This 25 day of February, 20 16.
Leeann Stewart-Schencke

Notary Public in and for said County and State

Revised 10/27/08



LEEANN STEWART-SCHENCKE
Notary Public, State of Nevada
Appointment No. 07-4284-1
My Appt. Expires Jul 26, 2019

FOR DEPARTMENT USE ONLY

Case # **MOD-63600**

Meeting Date:

Total Fee:

Date Received:*

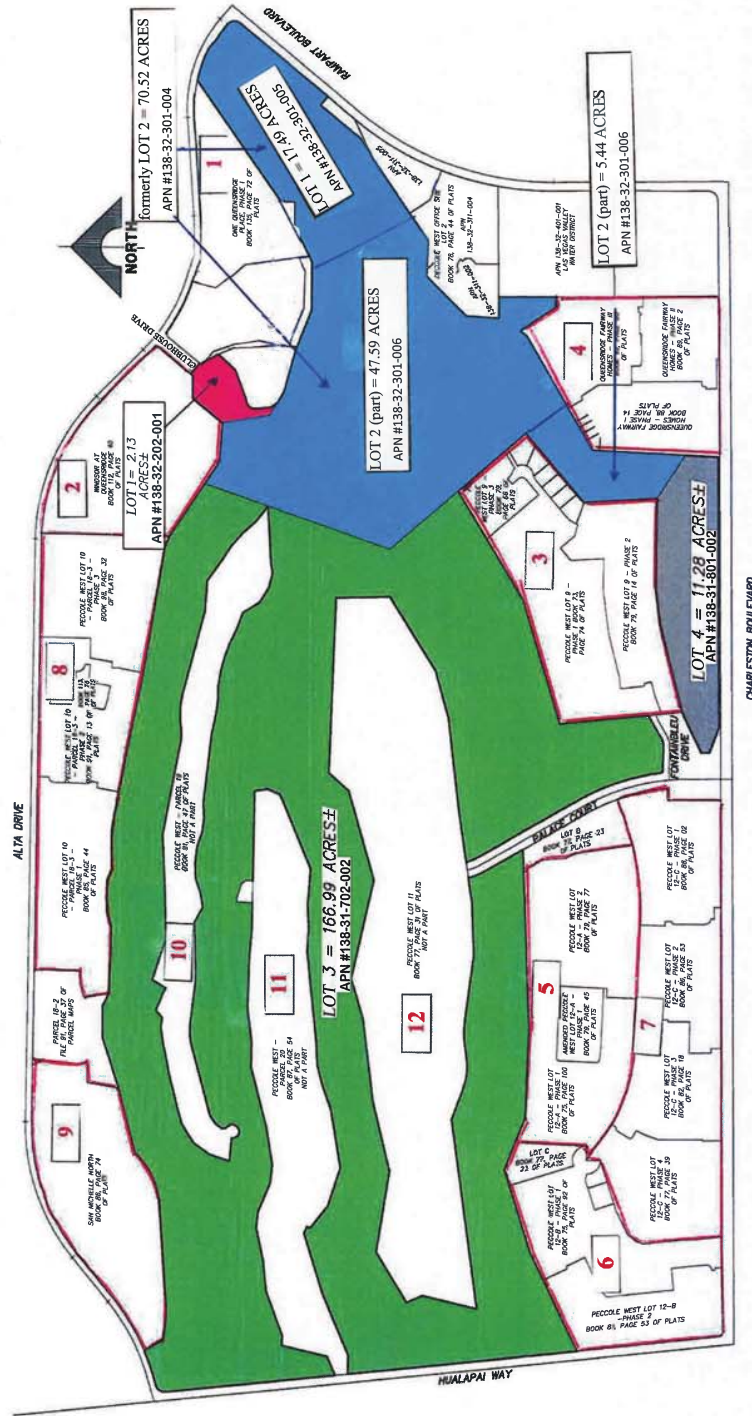
Received By:

*The application will not be deemed complete until the submitted materials have been reviewed by the Department of Planning for consistency with applicable sections of the Zoning Ordinance.
PRJ-63491
02/23/16
C:\depot\Application Packet\Application Form.pdf

ROR025834

PA0111

EXHIBIT 1 PARCEL MAP



ROR025835
PA0112

PRJ-63491
03/03/16

MOD-63600, GPA-63599, ZON-63601 and DIR-63602



LAS VEGAS
CITY COUNCIL

CAROLYN G. GOODMAN
MAYOR

STAVROS S. ANTHONY
MAYOR PRO TEM

LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
BOB COFFIN
BOB BEERS

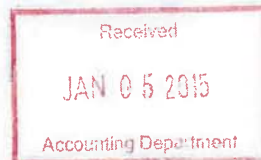
ELIZABETH N. FRETWELL
CITY MANAGER

EXHIBIT 2

December 30, 2014

Frank Pankratz
ENB Companies
9755 W. Charleston Blvd.
Las Vegas, NV 89117

RE: 138-31-713-002
138-31-712-004
138-31-610-002
138-31-212-002 (ZVL-57350)



Mr. Pankratz,

This letter is in response to a request for zoning verification on properties located within Las Vegas, Nevada with Assessor's Parcel Numbers of 138-31-713-002; 138-31-712-004; 138-31-610-002; and 138-31-212-002. The subject properties are zoned R-PD7 (Residential Planned Development District – 7 Units per Acre).

The R-PD District is intended to provide for flexibility and innovation in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space, the separation of pedestrian and vehicular traffic, and homogeneity of land use patterns. The density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.) A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code. The Las Vegas Zoning Code may be found on the City of Las Vegas website:

http://www.lasvegasnevada.gov/LawsCodes/zoning_laws.htm

The department is unable to provide you with a statement as to whether or not this property conforms to current City codes. If a use or building is nonconforming, then Title 19.14 grants certain rights to the owner, which are addressed in Sections 19.14.040 and 19.14.050 located in Title 19 ("Unified Development Code") of the Las Vegas Municipal Code. The Unified Development Code may be found on the City of Las Vegas website:

http://www.lasvegasnevada.gov/files/CLV_Unified_Development_Code.pdf

Should you wish to obtain copies of a Certificate of Occupancy or other public records related to the subject property, please contact the Las Vegas Building and Safety Department at (702) 229-6251. Information regarding City code violations on the subject property can be obtained from the Code Enforcement Division of the Building and Safety Department at (702) 229-2330.

If you have any questions concerning this matter, please contact me at (702) 229-6745.

Sincerely,

Nicole Eddowes
Planner I
Planning & Development Department

PRJ-63491
02/25/16



FM-0073a 04-12

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025836

PA0113

Docket 84221 Document 2022-04640

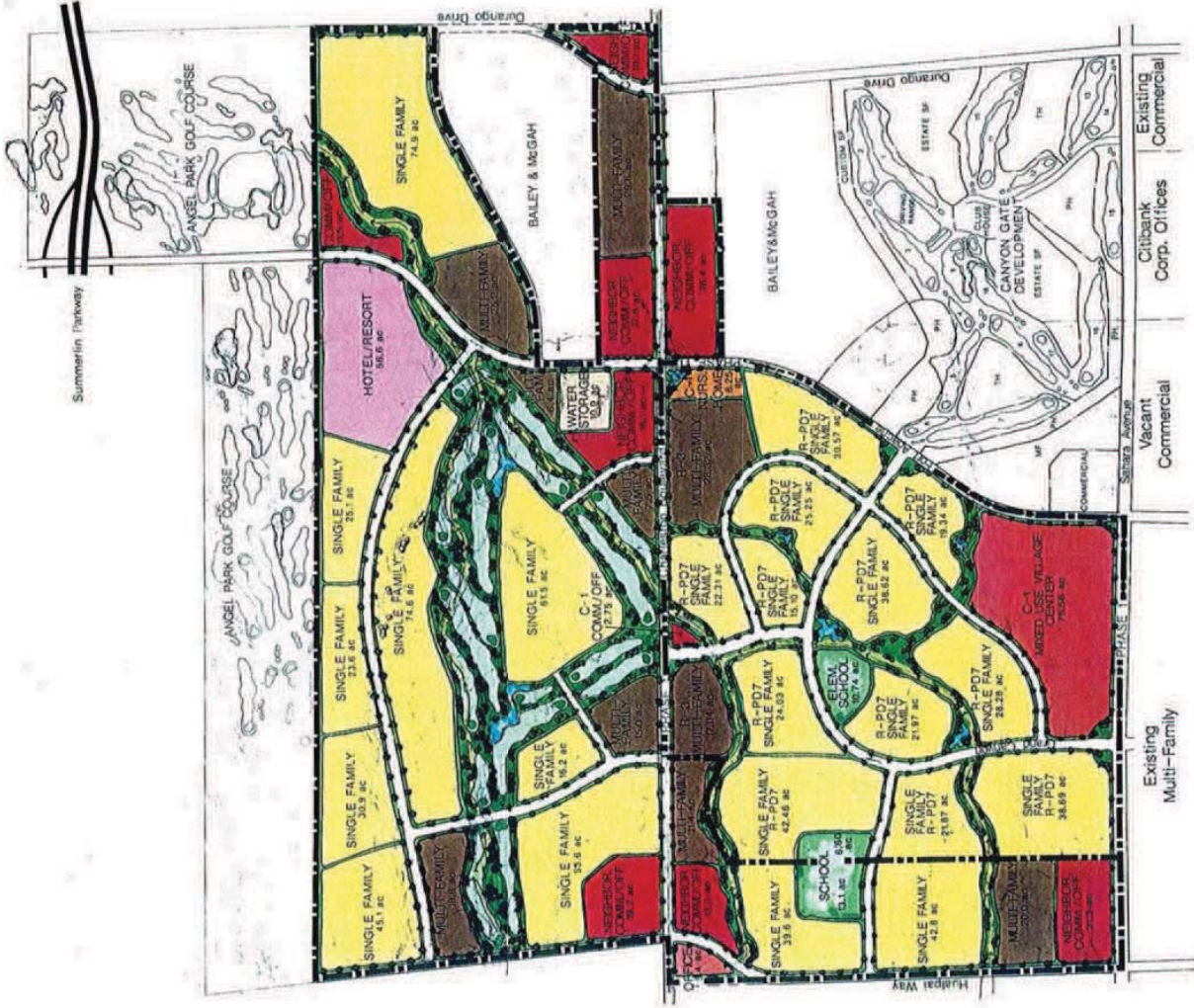
CITY OF LAS VEGAS
DEPARTMENT OF PLANNING
DEVELOPMENT SERVICES CENTER
333 NORTH RANCHO DRIVE
3RD FLOOR
LAS VEGAS, NEVADA 89106

VOICE 702.229.6301

FAX 702.474.0352

TTY 702.386.9108

www.lasvegasnevada.gov



SITE DATA - PHASE 1			
LAND USE	NET ACRES	DENSITY DU/AC	UNITS
Nursing Home	8.25	8.25	2299
Single Family	328.49	7.0	1088
Multi-family	45.39	24.0	
Mixed Use Village Center			
Commercial/Office	40.00		
Multi-Family	35.56	34.0	1208
Commercial/Office	2.75		
Drainage/ Open Space	41.47		
R.O.W	53.97		
Elementary School	17.34		
PHASE 1 TOTAL	573.19	8.8	4396

SITE DATA - FUTURE PHASES			
LAND USE	ACRES		
Single Family	487.9		
Multi-Family	133.9		
Neighborhood Commercial/Office	137.7		
Office	5.4		
Hotel/Resort	95.6		
Water Storage	10.9		
Golf Course/Drainage	207.1		
R.O.V.	90.5		
School	13.1		
FUTURE PHASES TOTAL	1143.1		
GRAND TOTAL	1716.3		

MASTER PLAN Peccole Ranch Partnership

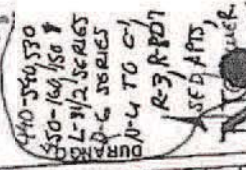
Suite 900, Capital Place
9701-110 Street
Edmonton, Alberta T5K2L9 403-482-7800

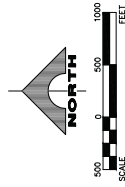
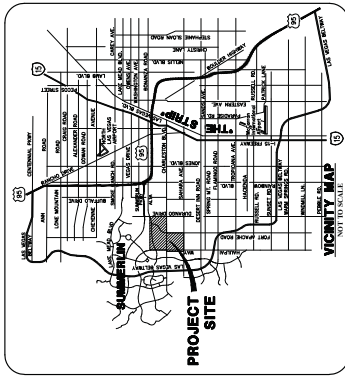
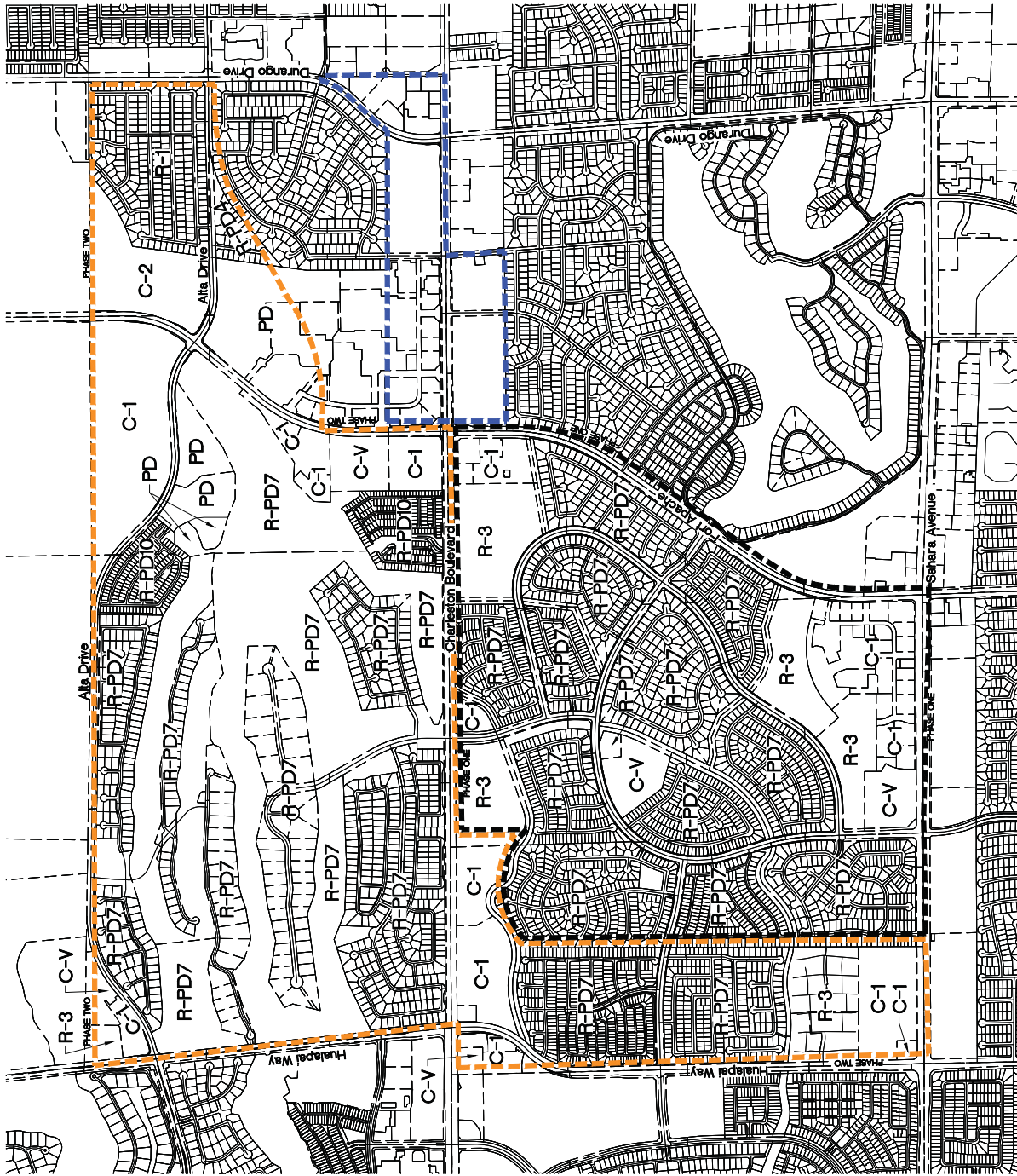
Prepared By:
A. Wayne Smith & Associates
1515 East Missouri Suite 100
Phoenix, Arizona 85014 (602) 234-3474



EXHIBIT A
2/22/2016
1989 APPROVED
PECCOLE RANCH
MASTER PLAN

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

PRJ-63491
02/25/16



LEGEND

- PHASE ONE BOUNDARY
- PHASE TWO BOUNDARY
- DELETED FROM MASTER PLAN WITH 1990 AMENDMENT

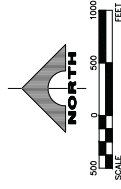
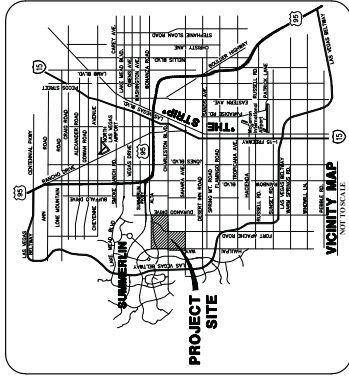
ecw
ENGINEERS & SURVEYORS
1555 S. RAINBOW BLVD.
LAS VEGAS, NV 89146
P: 702.884.2000
F: 702.884.2001
www.gowengineering.com

EXHIBIT D
2/22/2016
PECCOLE RANCH MASTER PLAN
BOTH AS-BUILT AND
AS PRESENTLY ZONED

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

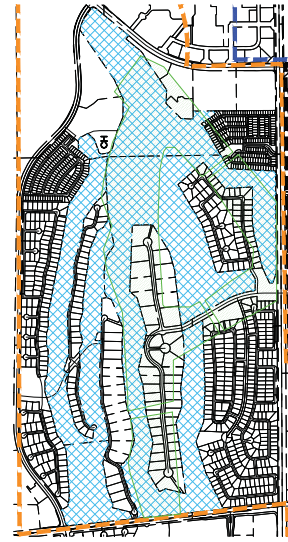
ROR025841

PA0118



LEGEND

- PHASE ONE BOUNDARY
- PHASE TWO BOUNDARY
- DELETED FROM MASTER PLAN WITH 1990 AMENDMENT



CH BADLANDS CLUBHOUSE - 2.37 AC

LOCATION OF LAND USED FOR GOLF COURSE IS 140 ACRES OUTSIDE OF WHERE THIS USE WAS SHOWN IN THE 1989 APPROVED MASTER PLAN.

1 GOLF COURSE COMPARISON - SEE EXHIBIT E-2 FOR LARGER SCALE
NOT TO SCALE

EXHIBIT E-1

2/22/2016

PECCOLE RANCH MASTER PLAN
AS-BUILT (EXHIBIT D) OVERLAYED ON
THE 1989 APPROVED PECCOLE RANCH
MASTER PLAN (EXHIBIT A)

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025842

PA0119

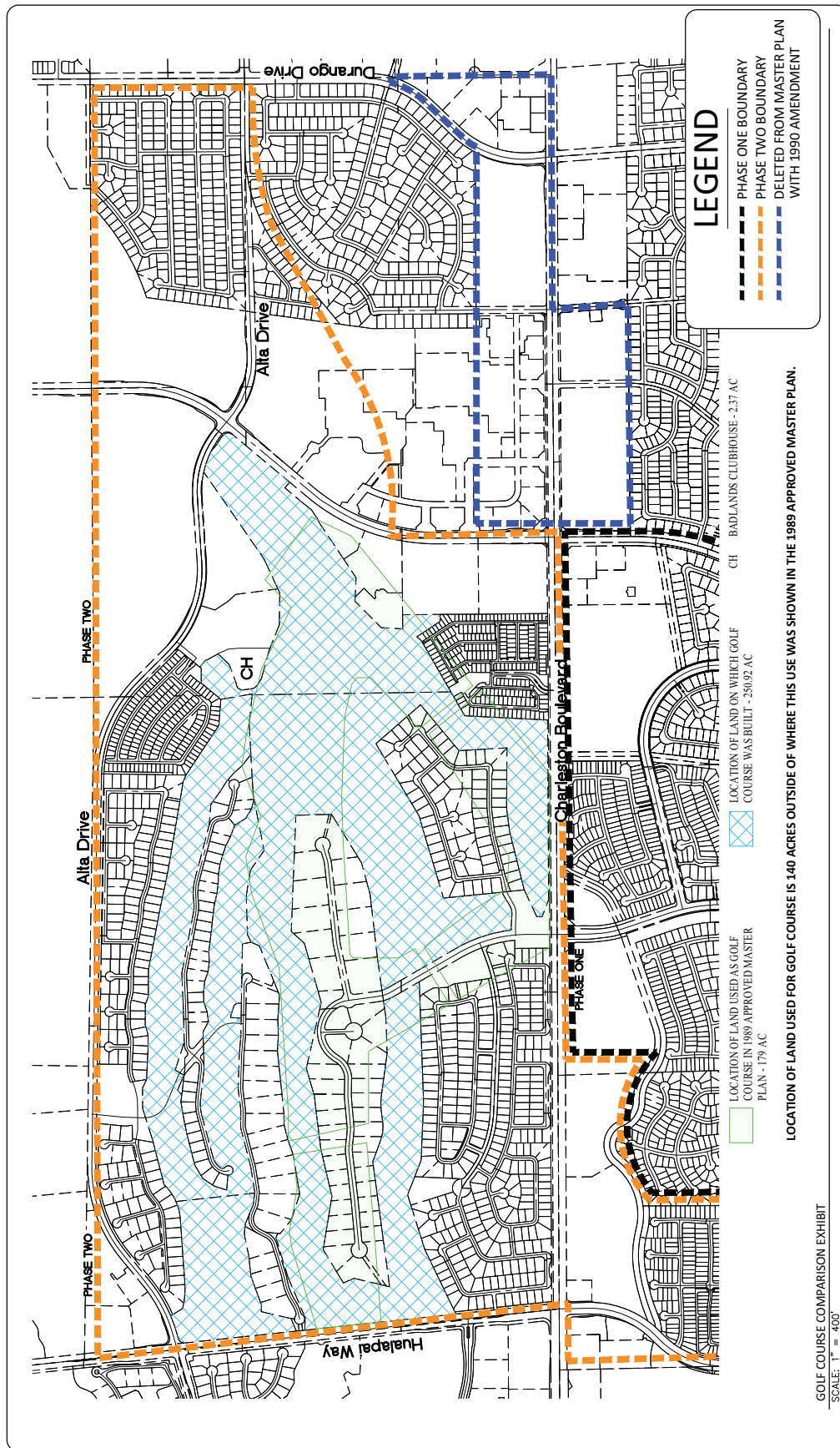


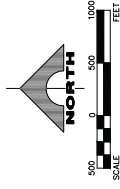
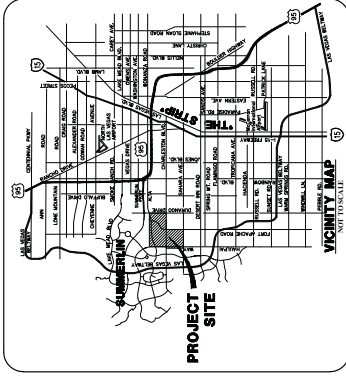
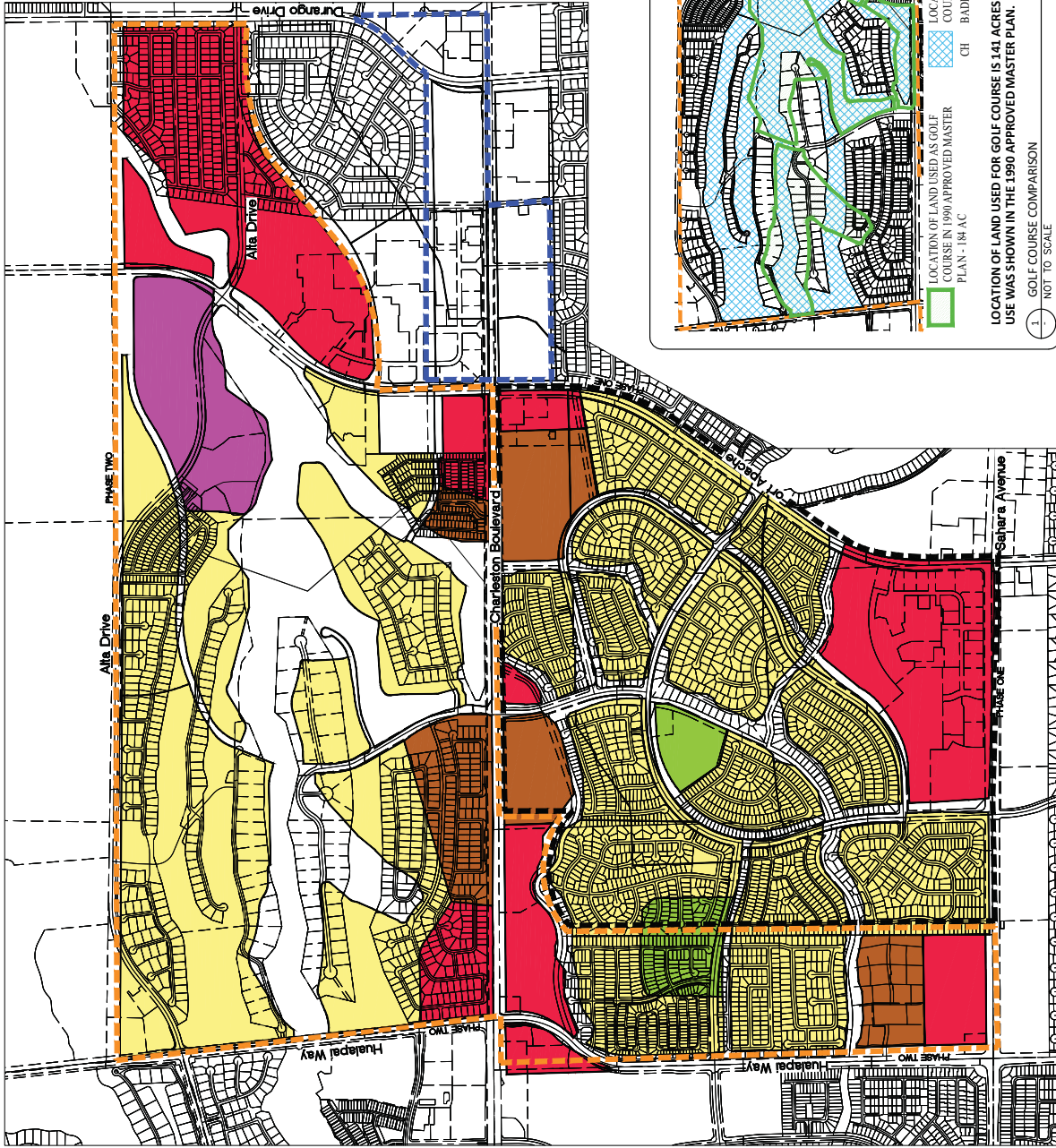
EXHIBIT E-2

2/22/2016

PECCOLE RANCH MASTER PLAN
GOLF COURSE LOCATION IN 1989
APPROVED PECCOLE RANCH MASTER PLAN
VS CURRENT LOCATION

ROR025843
PA0120

MOD-63600, GPA-63599, ZON-63601 and DIR-63602



LEGEND

- PHASE ONE BOUNDARY
- PHASE TWO BOUNDARY
- DELETED FROM MASTER PLAN WITH 1990 AMENDMENT

- SINGLE FAMILY
- MULTI FAMILY
- HOTEL/RESORT
- COMMERCIAL
- SCHOOL

EXHIBIT F-1

2/22/2016

PECCOLE RANCH MASTER PLAN
AS-BUILT (EXHIBIT D) OVERLAYED ON
THE 1990 APPROVED PECCOLE RANCH
MASTER PLAN (EXHIBIT B)

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025844

PA0121

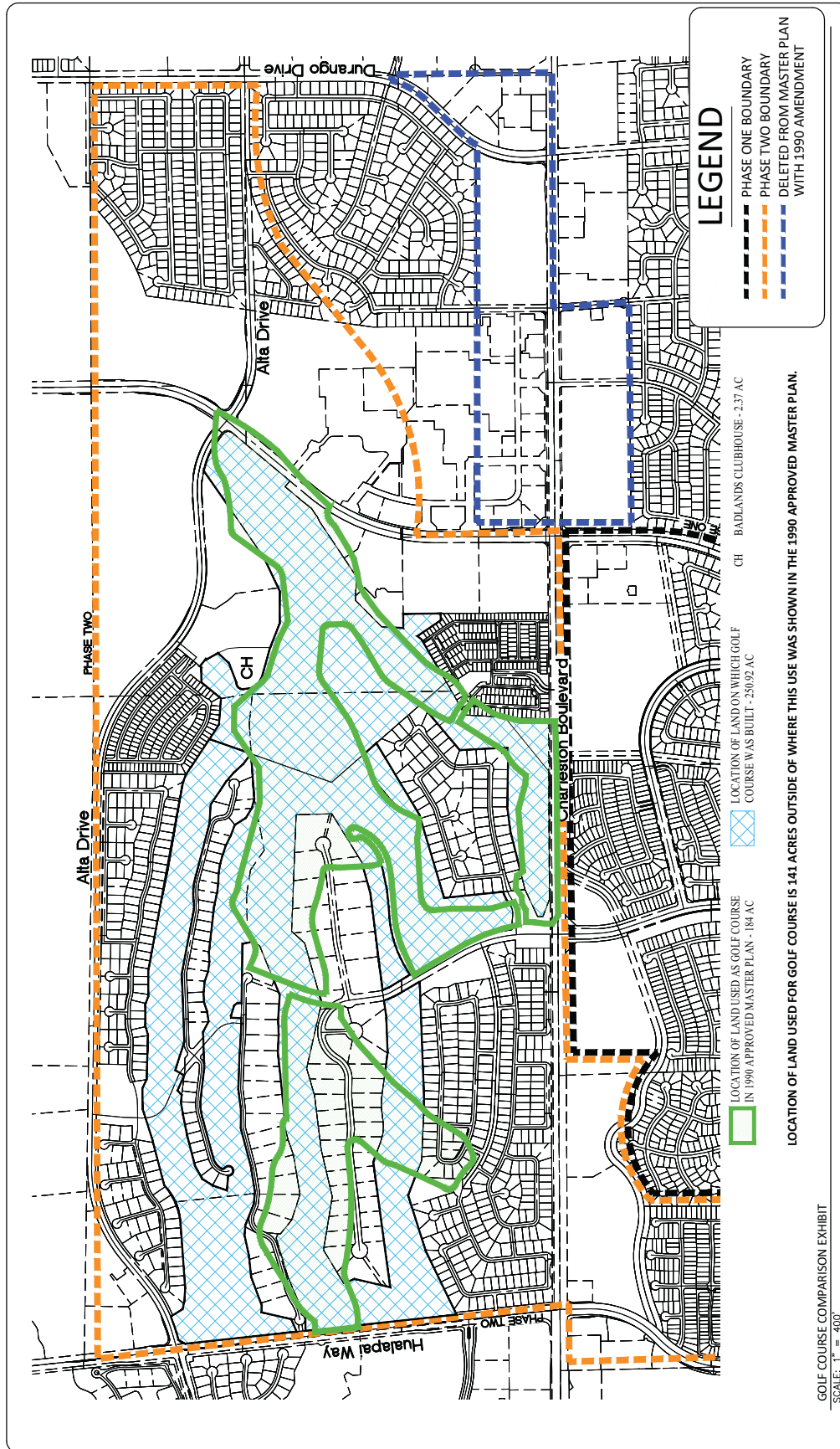
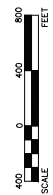


EXHIBIT F-2

2/22/2016

PECCOLE RANCH MASTER PLAN
GOLF COURSE LOCATION IN 1990
APPROVED PECCOLE RANCH MASTER PLAN
VS CURRENT LOCATION

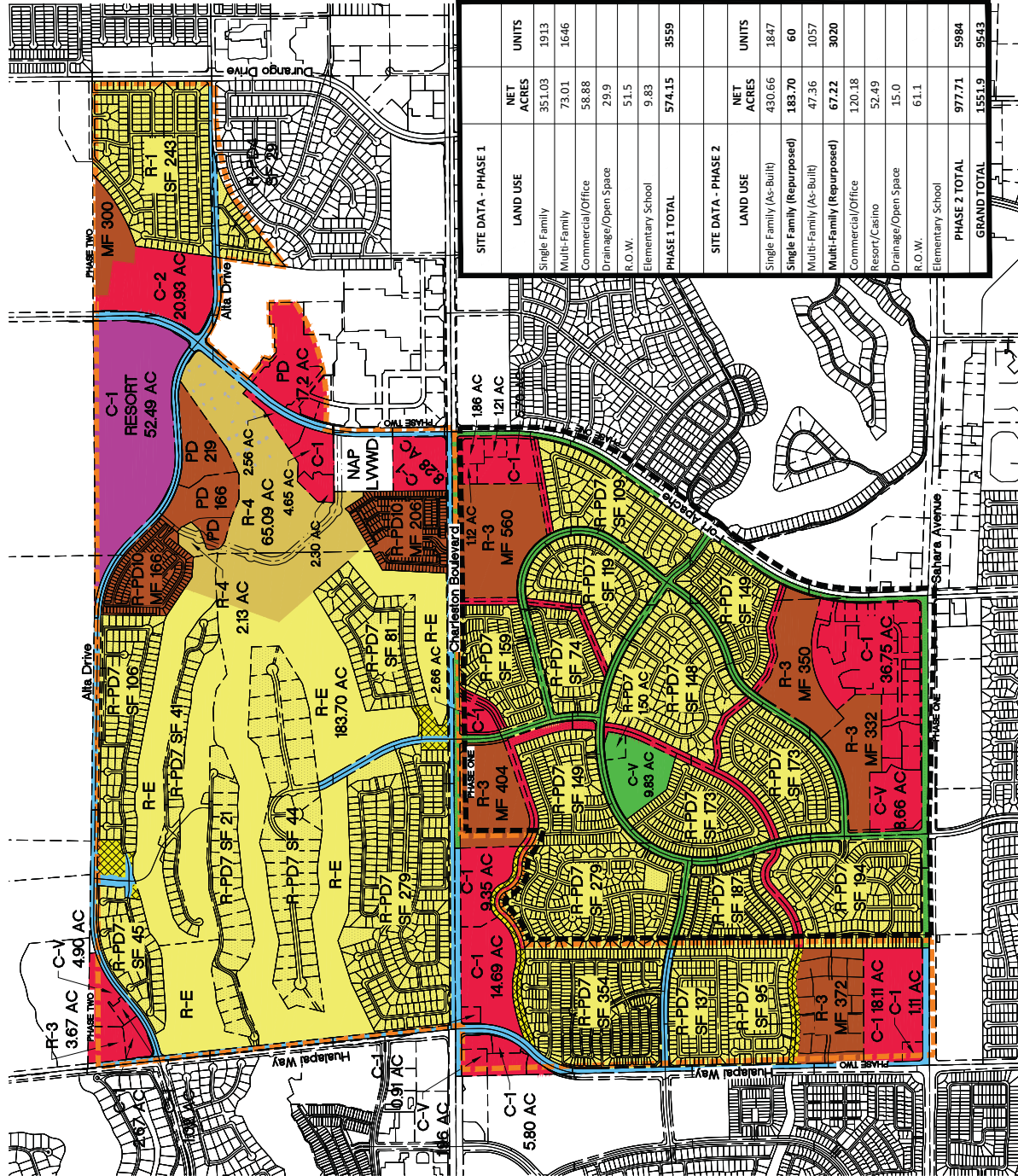
GCW
ENGINEERS & SURVEYORS
1555 S. RAINBOW BLVD.
LAS VEGAS, NV 89146
P: 702.844.2299
F: 702.844.2299
gowingengineering.com



MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025845

PA0122



LEGEND

- R-4 - 3020 UNITS - 45 DU/AC
- R-E - THE R-E ZONING ALLOWS 367 LOTS (A VERY SUBSTANTIAL DOWN ZONING FROM THE CURRENT R-PD7 WHICH @ 7.49 DU/AC ALLOWS 1376 DU's); NOTWITHSTANDING THE DEVELOPERS HAVE CHOSEN, FOR CONSERVATION PURPOSES, MINIMUM 1-ACRE LOT SIZES WITH A MAXIMUM OF 60 HOMESITES.
- EXISTING SCHOOL
- EXISTING COMMERCIAL/OFFICE
- EXISTING HOTEL/RESORT
- EXISTING MULTI-FAMILY
- EXISTING SINGLE FAMILY
- PHASE ONE DRAINAGE/OPEN SPACE
- PHASE TWO DRAINAGE/OPEN SPACE
- PHASE ONE ROW
- PHASE TWO ROW
- PHASE ONE BOUNDARY
- PHASE TWO BOUNDARY

GCV
ENGINEERS' SURVEYORS
1555 S. PARKVIEW BLVD.
SUITE 200
T. 702.804.2000
F. 702.804.2299
gcvengineering.com

PRJ-63491 2/22/2016
EXHIBIT G
2016 MASTER PLAN
(MODIFICATION TO 1990 MASTER PLAN)

MOD-63600, GPA-63599, ZON-63601 and DIR-63602



LAS VEGAS
CITY COUNCIL

CAROLYN G. GOODMAN
MAYOR

STAVROS S. ANTHONY
MAYOR PRO TEM

LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
BOB COFFIN
BOB BEERS

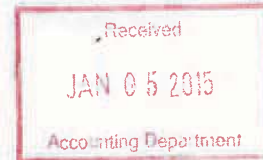
ELIZABETH N. FRETWELL
CITY MANAGER

December 30, 2014

Frank Pankratz
ENB Companies
9755 W. Charleston Blvd.
Las Vegas, NV 89117

RE: 138-31-713-002
138-31-712-004
138-31-610-002
138-31-212-002 (ZVL-57350)

EXHIBIT H



Mr. Pankratz,

This letter is in response to a request for zoning verification on properties located within Las Vegas, Nevada with Assessor's Parcel Numbers of 138-31-713-002; 138-31-712-004; 138-31-610-002; and 138-31-212-002. The subject properties are zoned R-PD7 (Residential Planned Development District – 7 Units per Acre).

The R-PD District is intended to provide for flexibility and innovation in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space, the separation of pedestrian and vehicular traffic, and homogeneity of land use patterns. The density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.) A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code. The Las Vegas Zoning Code may be found on the City of Las Vegas website:

http://www.lasvegasnevada.gov/LawsCodes/zoning_laws.htm

The department is unable to provide you with a statement as to whether or not this property conforms to current City codes. If a use or building is nonconforming, then Title 19.14 grants certain rights to the owner, which are addressed in Sections 19.14.040 and 19.14.050 located in Title 19 ("Unified Development Code") of the Las Vegas Municipal Code. The Unified Development Code may be found on the City of Las Vegas website:

http://www.lasvegasnevada.gov/files/CLV_Unified_Development_Code.pdf

Should you wish to obtain copies of a Certificate of Occupancy or other public records related to the subject property, please contact the Las Vegas Building and Safety Department at (702) 229-6251. Information regarding City code violations on the subject property can be obtained from the Code Enforcement Division of the Building and Safety Department at (702) 229-2330.

If you have any questions concerning this matter, please contact me at (702) 229-6745.

Sincerely,

Nicole Eddowes
Planner I
Planning & Development Department

CITY OF LAS VEGAS
DEPARTMENT OF PLANNING
DEVELOPMENT SERVICES CENTER
333 NORTH RANCHO DRIVE
3RD FLOOR
LAS VEGAS, NEVADA 89106

VOICE 702.229.6301
FAX 702.474.0352
TTY 702.386.9108
www.lasvegasnevada.gov

PRJ-63491
02/25/16

FM-0073a 04 12

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

ROR025847

PA0124

EXHIBIT I

PECCOLE MASTER PLAN

250.92 ACREAGE TABULATIONS WITH CURRENT/ PROPOSED ZONING AND GENERAL PLAN DESIGNATIONS

COMMENT	SINGLE FAMILY CURRENT			PROPOSED			MULTI-FAMILY CURRENT			PROPOSED			TOTAL
	APN#	ACRES	ZONING	GENERAL PLAN DESIGNATION	ZONING	GENERAL PLAN DESIGNATION	APN#	ACRES	ZONING	GENERAL PLAN DESIGNATION	ZONING	GENERAL PLAN DESIGNATION	
Previously part of APN# 138-32-301-004 (70.52 acre parcel)							138-32-301-005 (2)	17.49	RPD-7	PROS	R-4	H	17.49
Previously part of APN#138-32-301-006 (53.03 acres) - parcel map in process							(2)	47.59	RPD-7	PROS	R-4	H	47.6
Previously part of APN#138-32-301-006 (53.03 acres) - parcel map in process (4)	(2)	5.44	R-PD7	PROS	R-E	Residential							5.44
	138-31-801-002 (1)	11.28	R-PD7	PROS	R-E	Residential							
	138-31-702-002 (1)	166.99	R-PD7	PROS	R-E	Residential							
SUB TOTAL		183.71						65.08					248.79
Clubhouse parking lot parcel							138-32-202-001 (3)	2.13	PD	PROS	R-4	H	2.13
TOTAL		183.71						67.21					250.92

NOTES:

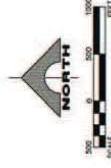
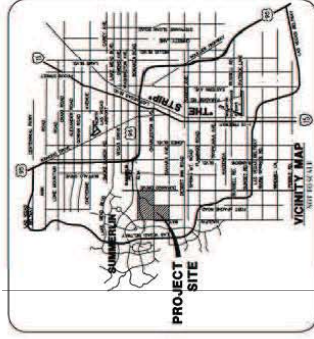
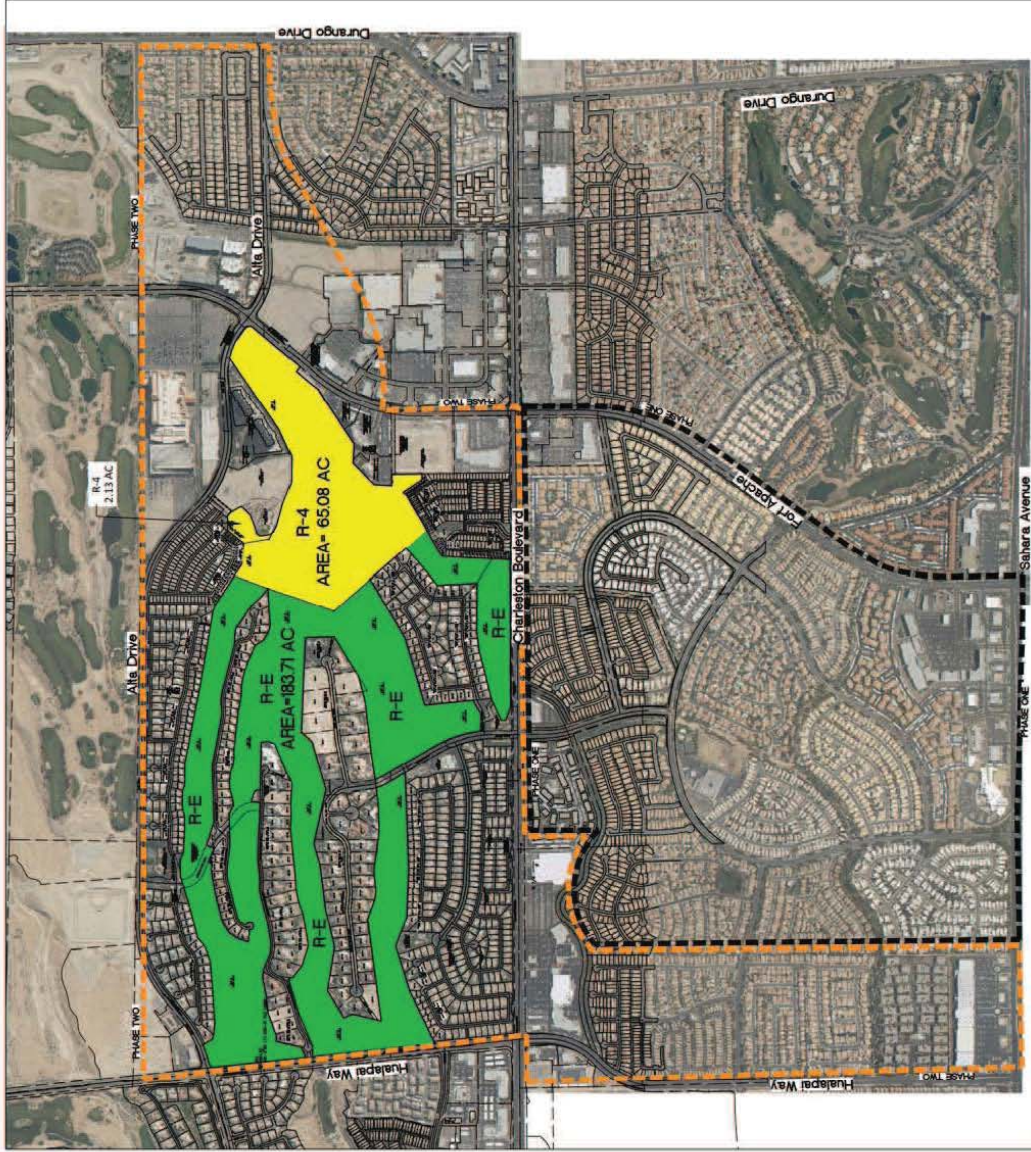
- (1) Ownership 180 Land Company LLC
 (2) Ownership Seventy Acres LLC
 (3) Ownership Fore Stars Ltd
 (4) Acreage within the above 53.03 acre parcel that lies between Fountainbleu and Fairway Pointe single family neighborhoods that will be part of the single family and not part of the multi-family.

PRJ-63491
02/25/16

ROR025848
PA0125

MOD-63600, GPA-63599, ZON-63601 and DIR-63602

EXHIBIT J-1
2/22/2016
2016 MASTER PLAN REFLECTING
RE-PURPOSED USES OF THE 250.92 ACRE
PROPERTY



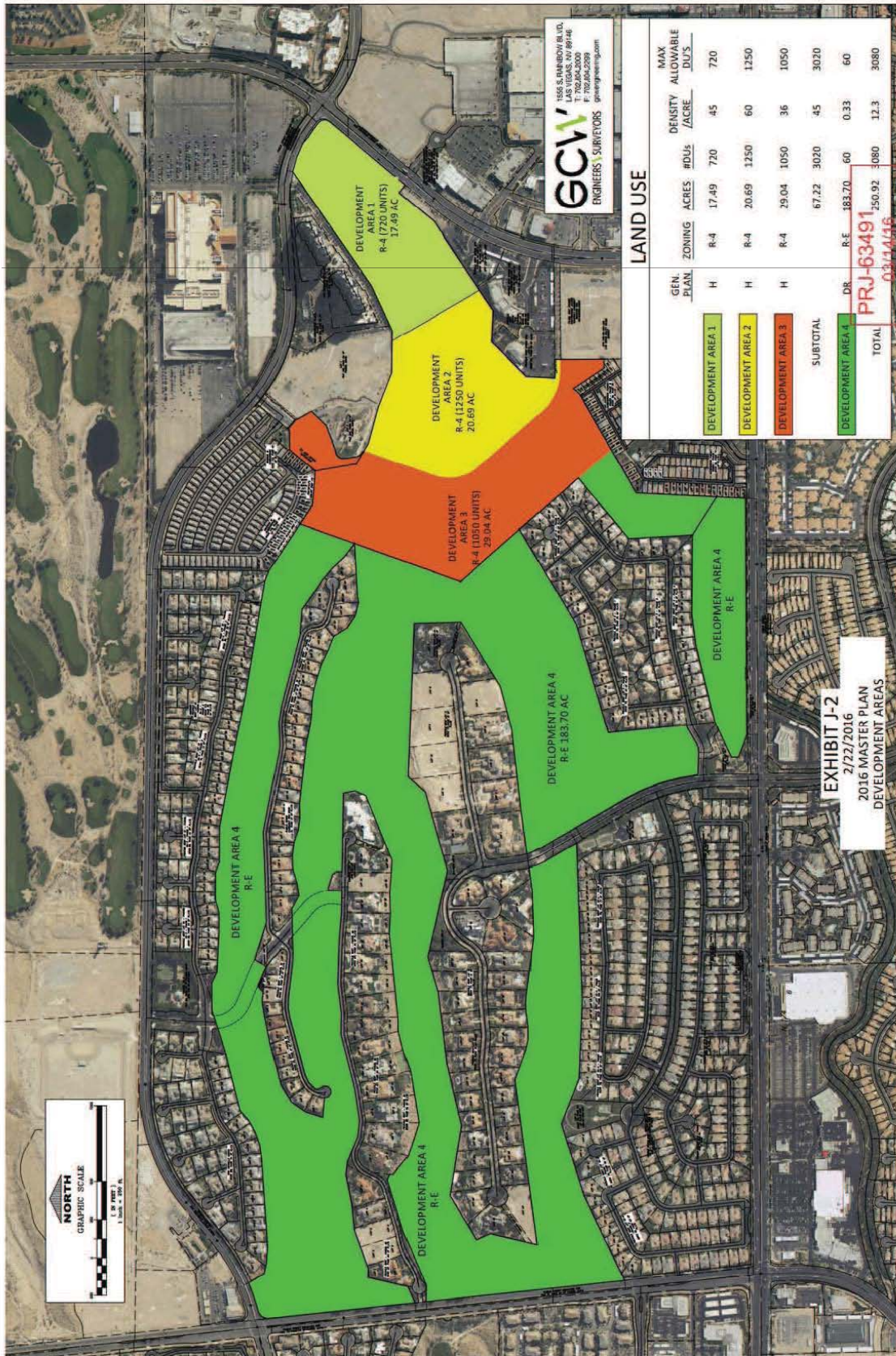
LEGEND

- R-4 - 3020 UNITS - 45 DU/AC
- R-E - THE R-E ZONING ALLOWS 367 LOTS (A VERY SUBSTANTIAL DOWN ZONING FROM THE CURRENT R-PD7 WHICH @ 7.49 DU/AC ALLOWS 1376 DU's). NOTWITHSTANDING THE DEVELOPERS HAVE CHOSEN, FOR CONSERVATION PURPOSES, MINIMUM 1-ACRE LOT SIZES WITH A MAXIMUM OF 60 HOMESITES.

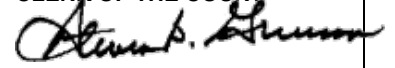
- PHASE ONE BOUNDARY
- PHASE TWO BOUNDARY

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MOD-63600, GPA-63599, ZON-63601 and DIR-63602



MOD-63600, GPA-63599, ZON-63601 and DIR-63602



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a political
subdivision of the State of Nevada; ROE
GOVERNMENT ENTITIES I through X;
ROE CORPORATIONS I through X; ROE
INDIVIDUALS I through X; ROE LIMITED-
LIABILITY COMPANIES I through X; ROE
QUASI-GOVERNMENTAL ENTITIES I
through X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**NOTICE OF ENTRY OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW
ON PETITION FOR JUDICIAL
REVIEW**

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

Intervenors.

NOTICE IS HEREBY GIVEN to all parties that Findings of Fact, Conclusions of Law were entered in the above-captioned case on the 21st day of November, 2018, a copy of which is attached hereto.

Dated this 26th day of November, 2018.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III
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Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 26th day of November, 2018, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

Steven D. Grierson

FFCO

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability
company; DOE INDIVIDUALS I through X;
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CITY OF LAS VEGAS, a political
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GOVERNMENT ENTITIES I through X;
ROE CORPORATIONS I through X; ROE
INDIVIDUALS I through X; ROE LIMITED-
LIABILITY COMPANIES I through X; ROE
QUASI-GOVERNMENTAL ENTITIES I
through X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
PETITION FOR JUDICIAL REVIEW**

OCT 30 2018

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

Intervenors.

Petitioner 180 Land Company, LLC filed a petition for judicial review (“Petition”) of the Las Vegas City Council’s June 21, 2017 decision to deny four land use applications (“Applications”) filed by Petitioner to develop a 34.07-acre portion of the Badlands Golf Course (“the 35-Acre Property”). The Court granted a motion to intervene filed by surrounding homeowners (“Intervenors”) whose real property is adjacent to and affected by the proposed development of the 35-Acre Property. The Court having reviewed the briefs submitted in support of and in opposition to the Petition, having conducted a hearing on the Petition on June 29, 2018, having considered the written and oral arguments presented, and being fully informed in the premises, makes the following findings of facts and conclusions of law:

I. FINDINGS OF FACT

A. The Badlands Golf Course and Peccole Ranch Master Development Plan

1. The 35-Acre Property is a portion of 250.92 acres of land commonly referred to as the Badlands Golf Course (“the Badlands Property”). (ROR 22140-201; 25819).

...

2. The Badlands Property is located between Alta Drive (to the north), Charleston Boulevard (to the south), Rampart Boulevard (to the east), and Hualapai Way (to the west), and is spread out within existing residential development, primarily the Queensridge Common Interest Community. (ROR 18831; 24093).

3. The Badlands Property is part of what was originally the Venetian Foothills Master Development Plan on 1,923 acres of land, which was approved by the Las Vegas City Council (the "Council") on May 7, 1986. (ROR 25820).

4. The plan included two 18-hole golf courses, one of which would later become known as "Badlands." (ROR 2635-36; 2646).

5. Both golf courses were designed to be in a major flood zone and were designated as flood drainage and open space. (ROR 2595-2604; 2635-36; 4587).

6. The Council required these designations when approving the plan to address flooding, and to provide open space in the master planned area. (*Id.*).

7. The City's General Plan identifies the Badlands Property as Parks, Recreation and Open Space ("PR-OS"). (ROR 25546).

8. The City holds a drainage easement within the Badlands Property. (ROR 4597; 5171; 5785).

9. The original master plan applicant, William Peccole/Western Devcor, Inc., conveyed its interest to an entity called Peccole Ranch Partnership. (ROR 2622; 20046-47; 25968).

10. On February 15, 1989, the Council approved a revised master development plan for 1,716.30 acres, known as "the Peccole Ranch Master Development Plan" ("the Master Development Plan"). (ROR 25821).

11. On April 4, 1990, the Council approved an amendment to the Master Development Plan to make changes related to Phase Two, and to reduce the overall acreage to 1,569.60 acres. (*Id.*).

12. Approximately 212 acres of land in Phase Two was set aside for a golf course, with the overall Peccole Ranch Master Plan having 253.07 net acres for golf course, open space and

1 drainage. (ROR 2666; 25821).

2 13. Like its predecessor, the Master Development Plan identified the golf course area
3 as being for flood drainage and golf course purposes, which satisfied the City's open space
4 requirement. (ROR 2658-2660).

5 14. Phase Two of the Master Plan was completed such that the golf course is now
6 surrounded by residential development. (ROR 32-33).

7 15. The 35-Acre Property that is the subject of the Applications at issue here lies within
8 the Phase Two area of the Master Plan. (ROR 10).

9 16. Through a number of successive conveyances, Peccole Ranch Partnership's
10 interest in the Badlands Property, amounting to 250.92 acres, was transferred to an entity called
11 Fore Stars, Ltd., an affiliate of Petitioner. (ROR 24073-75; 25968).

12 17. On June 18, 2015, Fore Stars transferred 178.27 acres to Petitioner and 70.52 acres
13 to Seventy Acres, LLC, another affiliate, and retained the remaining 2.13 acres. (*Id.*).

14 18. The three affiliated entities – Petitioner (i.e., 180 Land Co., LLC), Seventy Acres
15 LLC and Fore Stars, Ltd. (collectively, "the Developer") – are all managed by EHB Companies,
16 LLC, which, in turn, is managed by Paul Dehart, Vicki Dehart, Yohan Lowie and Frank Pankratz.
17 (ROR 1070; 1147; 1154; 3607-3611; 4027; 5256-57; 5726-29). The Court takes judicial notice of
18 the complaint filed by 180 Land Co., LLC, Fore Stars, Ltd., Seventy Acres, LLC, and Yohan
19 Lowie in the United States District Court, Case No. 2:18-cv-00547-JCM-CWH ("the Federal
20 Complaint"), which alleges these facts.

21 19. Mr. Lowie and various attorneys represented the Developer with regard to its
22 development applications before the Council. (ROR 24466-24593).

23 **B. The Developer's Prior Applications to Develop the Badlands Property**

24 20. On November 15, 2015, the Developer filed applications for a General Plan
25 Amendment, Re-zoning and Site Development Plan Review to change the classification of 17.49
26 acres within the 250.92-acre Badlands Property from Parks Recreation/Open Space to High
27 Density ("the 17-Acres Applications"). (ROR 25546; ROR 25602; ROR 25607).

28 21. The 17-Acre Property is located in the northeast corner of the Badlands Property,

1 distant from and not adjacent to existing residential development. (ROR 33).

2 22. In reviewing the 17-Acre Applications, the City's planning staff recognized that
3 the 17-Acre Property was part of the Master Development Plan and stated that any amendment of
4 the Master Development Plan must occur through a major modification pursuant to Title
5 19.10.040 of the City's Unified Development Code. (ROR 25532).

6 23. Members of the public opposed the 17-Acre Applications on numerous grounds.
7 (ROR 25768-78).

8 24. On February 25, 2016, the Developer submitted an application for a major
9 modification to the Master Development Plan (the "Major Modification Application") and a
10 proposed development agreement (which it named the "2016 Peccole Ranch Master Plan") for the
11 entire 250.92-acre Badlands Property ("the proposed 2016 Development Agreement"). (ROR
12 25729; 25831-34).

13 25. In support of the Major Modification Application, the Developer asserted that the
14 proposed 2016 Development Agreement was in conformance with the Las Vegas General Plan
15 Planning Guidelines to "[e]ncourage the master planning of large parcels under single ownership
16 in the growth areas of the City to ensure a desirable living environment and maximum efficiency
17 and savings in the provision of new public facilities and services." (ROR 25986).

18 26. The Developer also asserted that it would "guarantee that the development of the
19 golf course property would be accomplished in a way that ensures that Queensridge will retain the
20 uniqueness that makes living in Queensridge so special." (ROR 25966).

21 27. Thereafter, the Developer sought abeyances from the Planning Commission on the
22 17-Acre Applications to engage in dialogue with the surrounding neighbors, and to allow the
23 hearings on the Major Modification Application and the 17-Acre Applications to proceed
24 simultaneously. (ROR 25569; 25613; 25716; 25795; 26014; 26195; 26667; 27989).

25 28. The Council heard considerable opposition to the Major Modification Application
26 and the proposed 2016 Development Agreement regarding, among other things, traffic,
27 conservation, quality of life and schools. (ROR 25988-26010; 26017-45; 26072-89; 26091-107).

28 ...

1 29. At a March 28, 2016 neighborhood meeting, 183 members of the public attended
2 who were “overwhelmingly opposed” to the proposed development. (ROR 25823-24).

3 30. The City received approximately 586 written protests regarding the proposed 2016
4 Development Agreement plus multiple e-mails to individual Council members in opposition.
5 (ROR 31053; ROR 989-1069).

6 31. In approximately April 2016, City Attorney Brad Jerbic became involved in the
7 negotiation of the proposed 2016 Development Agreement to facilitate discussions between the
8 Developer and the nearby residents. Over the course of the next year, Mr. Jerbic and Planning
9 Director Tom Perrigo met with the Developer’s representatives and various members of the
10 public, including representatives of the Queensridge HOA and individual homeowners, in an
11 effort to reach consensus regarding a comprehensive development plan for the Badlands Property.
12 (ROR 27990).

13 32. The Mayor continued to inquire about the status of the negotiations, and Council
14 members expressed their desire that the parties negotiate a comprehensive master plan that meets
15 the City’s requirements for orderly and compatible development. (ROR 17335).

16 33. Prior to the Council voting on the Major Modification Application, the Developer
17 requested to withdraw it without prejudice. (ROR 1; 5; 6262).

18 34. Several members of the public opposed the “without prejudice” request, arguing
19 that the withdrawal should be with prejudice to ensure that the Developer would create a
20 development plan for the entire Badlands Property with input from neighbors. (ROR 1077-79,
21 1083).

22 35. In response, the Mayor received assurances from the Developer’s lawyer that the
23 Developer would engage in good-faith negotiations with neighboring homeowners. (ROR 1115).

24 36. The Developer also represented that it did not seek to develop the Badlands
25 Property in a piecemeal fashion: “[I]t’s not our desire to just build 17.49 acres of property that we
26 wanted to build the rest of it, and that’s why we agreed to the withdrawal without prejudice to
27 meet [with neighboring property owners] to try to do everything we can.” (ROR 1325). Based on
28 these assurances, the Council approved the Developer’s request to withdraw the Major

1 Modification Application and proposed 2016 Development Agreement without prejudice. (ROR
2 2; 1129-1135).

3 37. The Mayor reiterated that the Council sought a comprehensive plan for the entire
4 Badlands Property to ensure that any development would be compatible with surrounding
5 properties and provide adequate flood control. (ROR 17321-22).

6 38. The Developer's counsel acknowledged the necessity for a master development
7 plan for the entire Badlands Property. (ROR 17335).

8 39. City Planning Staff recommended approval of the 17-Acres Applications with
9 several conditions, including the approval of both (1) the Major Modification Application and (2)
10 the proposed 2016 Development Agreement. (ROR 27625-26, 27629).

11 40. On October 18, 2016, the City's Planning Commission recommended granting the
12 17-Acres Applications but denying the Major Modification Application. (ROR 1; 31691-92).

13 41. The Council heard the 17-Acres Applications at its November 16, 2016 meeting.
14 (ROR 1075-76).

15 42. The Council members expressed that a comprehensive plan for the entire Badlands
16 Property was necessary to avoid piecemeal development and ensure compatible land densities and
17 uses. (ROR 1310-14).

18 43. Nevertheless, the Council and the Planning Director recognized the 17-Acre
19 Property as distinct from the rest of the Badlands Property due to its configuration, lot size,
20 isolation and distance from existing development. (ROR 1311-12).

21 44. To allow time for negotiations between the Developer and the project opponents
22 on a comprehensive development agreement, the Council held the 17-Acres Applications in
23 abeyance until February 15, 2017. (ROR 1342; 6465-6470, 11231).

24 45. On February 15, 2017, the Council again considered the 17-Acres Applications.
25 (ROR 17235).

26 46. The Developer stated that it had reduced the requested number of units from 720
27 to 435 to match the compatibility of adjacent Queensridge Towers. (ROR 17237-38).

28 ...

1 47. Based on the reduction and compatibility effort made by the Developer, the
2 Council approved the 17-Acres Applications with certain modifications and conditions. (ROR
3 11233; 17352-57).

4 48. Certain nearby homeowners petitioned for judicial review of the Council's
5 approval of the 17-Acres Applications. *See Jack B. Binion, et al v. The City of Las Vegas, et al.*,
6 A-17-752344-J.

7 49. On March 5, 2018, the Honorable James Crockett granted the homeowners'
8 petition for judicial review, concluding that a major modification of the Master Development Plan
9 to change the open space designation of the Badlands Golf Course was legally required before the
10 Council could approve the 17-Acres Applications ("the Crockett Order"). The Court takes judicial
11 notice of the Crockett Order.

12 **C. The 35-Acres Applications at Issue in this Petition for Judicial Review**

13 50. The instant case seeks judicial review of the Council's denial of the Applications
14 filed by Petitioner to develop the 35-Acre Property.

15 51. The Applications consisted of: an application for a General Plan Amendment for
16 166.99 acres to change the existing City's General Plan designation from Parks Recreation/Open
17 Space to Low Density Residential (ROR 32657); a Waiver on the size of the private streets (ROR
18 34009); a Site Development Review for 61 lots (ROR 34050); and a Tentative Map Plan
19 application for the 35-Acre Property. (ROR 34059).

20 52. The development proposed in the Applications was inconsistent with the proposed
21 2016 Development Agreement that was being negotiated. (ROR 1217-1221; 17250-52; 32657;
22 34050; 34059).

23 53. The Council members expressed concern that the Developer was not being
24 forthcoming and was stringing along neighboring homeowners who were attempting to negotiate
25 a comprehensive development plan that the Council could approve. (ROR 1305; 1319).

26 54. The Applications came up for consideration during the February 14, 2017 Planning
27 Commission meeting. (ROR 33924).

28 ...

55. Numerous members of the public expressed opposition, specifically identifying the following areas of concern: (1) existing land use designations did not allow the proposed development; (2) the proposed development was inconsistent with the Master Development Plan and the City's General Plan; (3) the Planning Commission's decision would set a precedent that would enable development of open space and turn the expectations of neighboring homeowners upside down; (4) the Applications required a major modification of the Master Development Plan; (5) neighboring residents have a right to enjoyment of their property according to state statutes; (6) the proposed development would negatively affect property values and the characteristics of the neighborhood; and (7) the development would result in over-crowded schools. (ROR 33934-69).

56. Project opponents also expressed uncertainty and anxiety regarding the Developer's lack of a comprehensive development plan for the entire Badlands Property. (*Id.*).

57. The Planning Commission did not approve Petitioner's application for the General Plan Amendment, which required a super-majority vote, but did approve the Waiver, Site Development Review and the Tentative Map applications, subject to conditions as stated by City Staff and during the meeting. (ROR 33998-99; 34003).

58. After several abeyances (requested once by City Planning Staff and twice by Petitioner), the four Applications for the 35-Acre Property came before the Council on June 21, 2017. (ROR 17360; 18825-27; 20304-05; 24466).

59. The objections that had been presented in advance of and at the Planning Commission meeting were included in the Council's meeting materials. (ROR 22294-24196).

60. As had occurred throughout the two-year history of the Developer's various applications, the Council heard extensive public opposition, which included research, factual arguments, legal arguments and expert opinions. (ROR 22205-78; 22294-24196). The objections included, among others, the following:

- a. The Council was allowing the Developer to submit competing applications for piecemeal development, which the City had never previously allowed for any other developer. (ROR 24205).

b. The Applications did not follow the process required by planning principles. (Report submitted by Ngai Pindell, Boyd School of Law professor of property law, ROR 24222-23).

c. The General Plan Amendment application exceeds the allowable unit cap. (ROR 24225-229).

d. The Developer failed to conduct a development impact notice and assessment. (ROR 24231-36).

e. The Applications are not consistent with the Master Development Plan or the City's General Plan. (ROR 24231-36).

f. The design guidelines for Queensridge, which were approved by the City and recorded in 1996, reference the golf course, and residents purchased property and built homes in reliance on that document. (ROR 24237-38).

g. The Applications were a strategic effort by the Developer to gain leverage in the comprehensive development agreement negotiations that were ongoing. (Queensridge HOA attorney Shauna Hughes, ROR 24242-44).

h. Security would be a problem. (ROR 24246-47).

i. Approval of the Applications in the absence of a comprehensive plan for Badlands Property would be irresponsible. (ROR 24254-55).

j. The proposed General Plan Amendment would approve approximately 911 homes with no flood control or any other necessary requirements. (ROR 24262).

61. After considering the public's opposition, the Mayor inquired as to the status of negotiations related to a comprehensive development agreement for the entire Badlands Property. The City Attorney responded that no agreement had been reached. (ROR 24208-09).

62. The Developer and its counsel represented that only if the Council approved the four Applications would it then be willing to negotiate a comprehensive development agreement and plan for the entire Badlands Property. (ROR 24215, 24217, 24278-80).

63. The Council voted to deny the Applications. (ROR 24397).

64. On June 28, 2017, the City issued its final notices, which indicated that the

1 Council's denial of the Applications was "due to significant public opposition to the proposed
2 development, concerns over the impact of the proposed development on surrounding residents,
3 and concerns on piecemeal development of the Master Development Plan area rather than a
4 cohesive plan for the entire area." (ROR 35183-86).

5 65. The Petitioner filed this petition for judicial review to challenge the Council's
6 denial of the Applications.

7 66. Petitioner has not presented any evidence to the Court that it has a pending
8 application for a major modification for the 35-Acre Property at issue in this Petition for Judicial
9 Review.

10 **II. CONCLUSIONS OF LAW**

11 **A. Standard of Review**

12 1. In a petition for judicial review under NRS 278.3195, the district court reviews the
13 record below to determine whether the decision was supported by substantial evidence. *City of*
14 *Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P.3d 10, 15-16 (2010) (*citing Kay v.*
15 *Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)).

16 2. "Substantial evidence is that which a reasonable mind could accept as sufficient to
17 support a conclusion." *Id.*

18 3. The scope of the Court's review is limited to the record made before the
19 administrative tribunal. *Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654
20 P.2d 531, 533 (1982).

21 4. The Court may "not substitute its judgment for that of a municipal entity if
22 substantial evidence supports the entity's action." *Id.*

23 5. "[I]t is not the business of courts to decide zoning issues... Because of the
24 [governing body's] particular expertise in zoning, courts must defer to and not interfere with the
25 [governing body's] discretion if this discretion is not abused." *Nevada Contractors v. Washoe*
26 *Cty.*, 106 Nev. 310, 314, 792 P.2d 31, 33 (1990).

27 6. The decision of the City Council to grant or deny applications for a general plan
28 amendment, rezoning, and site development plan review is a discretionary act. *See Enterprise*

1 *Citizens Action Committee v. Clark County Bd. of Comm'rs*, 112 Nev. 649, 653, 918 P.2d 305,
2 308 (1996); *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756,
3 760 (2004).

4 7. "If a discretionary act is supported by substantial evidence, there is no abuse of
5 discretion." *Cty. of Clark v. Doumani*, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998), *superseded by*
6 *statute on other grounds*.

7 8. Zoning actions are presumed valid. *Nova Horizon, Inc. v. City Council of the City*
8 *of Reno*, 105 Nev. 92,94, 769 P.2d 721, 722 (1989).

9 9. A "presumption of propriety" attaches to governmental action on land use
10 decisions. *City Council of City of Reno v. Irvine*, 102 Nev. 277, 280, 721 P.2d 371, 373 (1986). A
11 disappointed applicant bears a "heavy burden" to overcome this presumption. *Id.*

12 10. On a petition for judicial review, the Court may not step into the shoes of the
13 Council, reweigh the evidence, consider evidence not presented to the Council or make its own
14 judgment calls as to how a land use application should have been decided. *See Bd. of Cty. Comm'rs*
15 *of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

16 **B. Substantial Evidence Supported the City Council's Decision**

17 11. The record before the Court amply shows that the Council's June 21, 2017 decision
18 to deny the Applications for the 35-Acre Property ("the Decision") was supported by substantial
19 evidence.

20 12. "Substantial evidence can come in many forms" and "need not be voluminous."
21 *Comstock Residents Ass'n v. Lyon County Bd. of Comm'rs*, 385 P.3d 607 (Nev. 2016)
22 (unpublished disposition), *citing McKenzie v. Shelly*, 77 Nev. 237, 240, 362 P.2d. 268, 269 (1961);
23 *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994).

24 13. Public opposition to a proposed project is an adequate basis to deny a land use
25 application. *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *C.A.G.*, 98 Nev. at 501, 654
26 P.2d at 533.

27 14. "[A] local government may weigh public opinion in making a land-use decision."
28 *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *accord Eldorado Hills, LLC v. Clark*

1 *County Bd. of Commissioners*, 386 P.3d 999, 2016 WL 7439360, *2 (Nev. Dec. 22, 2016)
2 (unpublished disposition).

3 15. “[L]ay objections [that are] substantial and specific” meet the substantial evidence
4 standard. *Clark Cty. Liquor & Gaming Licensing Bd. v. Simon & Tucker, Inc.*, 106 Nev. 96, 98,
5 787 P.2d 782, 783 (1990) (distinguishing *City Council, Reno v. Travelers Hotel, Ltd.*, 100 Nev.
6 436, 683 P.2d 960 (1984)); *Stratosphere Gaming*, 120 Nev. at 529-30, 96 P.3d at 761.

7 16. “Section 19.18.050(E)(5) [of the Las Vegas Municipal Code] provides that the site
8 development plan review process is intended to ensure that the proposed development is
9 ‘harmonious and compatible with development in the area’ and that it is not ‘unsightly,
10 undesirable, or obnoxious in appearance.’ The language of this ordinance clearly invites public
11 opinion.” *Stratosphere Gaming*, 120 Nev. at 528–29, 96 P.3d at 760.

12 17. The considerable public opposition to the Applications that was in the record
13 before the Council meets the substantial evidence standard. That record included written and
14 stated objections, research, legal arguments and expert opinions regarding the project’s
15 incompatibility with existing uses and with the vision for the area specified in the City’s General
16 Plan and the Peccole Ranch Master Development Plan. (ROR 2658-2666, 22294-24196, 24492-
17 24504, 25821). The opponents argued that a development must be consistent with the General
18 Plan, and what the Developer proposed was inconsistent with the Parks, Recreation and Open
19 Space designation for the Badlands Golf Course in the City’s General Plan. (ROR 24492-24504,
20 32820-21; 32842-55; 33935-36). If the applications were granted, they argued, it would set a
21 precedent that would enable development of open space in other areas, thereby defeating the
22 financial and other expectations of people who purchased homes in proximity to open space. (ROR
23 24492-24504, 33936). Because of the open space designation in the Peccole Ranch Master
24 Development Plan, the opponents contended, the Applications required a major modification,
25 which had not been approved. (ROR 24494-95; 33938). The opponents also expressed concerns
26 regarding compatibility with the neighborhood, school overcrowding and lack of a development
27 plan for the entire Badlands Property. (ROR 24492-24504, 24526, 33934-69).

28 18. The record before the Council constitutes substantial evidence to support the

1 Decision. *See Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760.

2 19. The Court rejects the evidence that the Developer contends conflicts with the
3 Council's Decision because the Court may not substitute its judgment for that of the Council.
4 "[J]ust because there was conflicting evidence does not compel interference with the Board's
5 decision so long as the decision was supported by substantial evidence." *Liquor & Gaming*
6 *Licensing Bd.*, 106 Nev. at 98, 787 P.2d at 783. The Court's job is to evaluate whether substantial
7 evidence supports the Council's decision, not whether there is substantial evidence to support a
8 contrary decision. *Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. 821, 836
9 n.36, 138 P.3d 486, 497 (2006). This is because the administrative body alone, not a reviewing
10 court, is entitled to weigh the evidence for and against a project. *Liquor & Gaming Licensing Bd.*,
11 106 Nev. at 99, 787 P.2d at 784.

12 **C. The Council's Decision Was Within the Bounds of the Council's Discretion**
13 **Over Land Use Matters**

14 20. "For the purpose of promoting health, safety, morals, or the general welfare of the
15 community, the governing bodies of cities and counties are authorized and empowered to regulate
16 and restrict the improvement of land and to control the location and soundness of structures." NRS
17 278.020(1).

18 21. The City's discretion is broad:

19 A city board acts arbitrarily and capriciously when it denies a [land use application]
20 without any reason for doing so.... [The essence of the abuse of discretion, of the
21 arbitrariness or capriciousness of governmental action in denying a[n] ... application,
is most often found in an apparent absence of any grounds or reason for the decision.
We did it just because we did it. *Irvine*, 102 Nev. at 279-80, 721 P.2d at 372-73
(quotations omitted).

22 22. The Council's Decision was free from any arbitrary or capricious decision making
23 because it provided multiple reasons for denial of the Applications, all of which are well supported
24 in the record.

25 23. The Council properly exercised its discretion to conclude that the development
26 proposed in the Applications was not compatible with surrounding areas and failed to set forth an
27 orderly development plan to alter the open space designation found in both the City's General
28 Plan and the Peccole Ranch Master Development Plan.

24. The concept of “compatibility” is inherently discretionary, and the Council was well within its discretion to decide that the development presented in the Applications was not compatible with neighboring properties, including the open space designation on the remainder of the Badlands Golf Course. *See Stratosphere*, 120 Nev. at 529, 96 P.3d at 761.

25. Residential zoning alone does not determine compatibility. The City’s General Plan, the Peccole Ranch Master Development Plan, density, design and other factors do as well. The property adjacent to the 35-Acre Property remains used for open space and drainage, as contemplated by the City’s planning documents, so the Developer’s comparison to adjacent residential development is an incomplete “compatibility” assessment.

26. The City’s Unified Development Code seeks to, among other things, promote “orderly growth and development” in order to “maintain ... the character and stability of present and future land use and development.” Title 19.00.030(G). One stated purpose is:

To coordinate and ensure the execution of the City’s General Plan through effective implementation of development review requirements, adequate facility and services review and other goals, policies or programs contained in the General Plan. Title 19.00.030(I).

27. The City’s Unified Development Code broadly lays out the various matters the Council should consider when exercising its discretion. Those considerations, which include broad goals as well as specific factors for each type of land use application, circumscribe the limits of the Council’s discretion. UDC 19.00.030, 19.16.030, 19.16.100, 19.16.130.

28. The Council was within the bounds of its discretion to request a development agreement for the Badlands Property before allowing a General Plan Amendment to change a portion of the property from Parks, Recreation and Open Space to residential uses. *See* Title 19.00.030(I). A comprehensive plan already exists for the Badlands Property; it is found in the city’s General Plan, which designates the property as Parks, Recreation and Open Space. The Developer sought to change that designation. Under these circumstances, it was reasonable for the Council to expect assurances that the Developer would create an orderly and comprehensive plan for the entire open space property moving forward.

...

29. The Court rejects the Developer's argument that a comprehensive development plan was somehow inappropriate because the parcels that make up the Badlands Property have different owners. (PPA 17:12-18:13, 23:9-14). In presenting the Developer's arguments in favor of these Applications and other land use applications relating to the development of the Badlands Property, Yohan Lowie has leveraged the fact that the three owner entities of the Badlands Property are affiliates managed by one entity – EHB Companies, LLC – which in turn is managed by Mr. Lowie and just three others. (ROR 1325; 4027; 5256-57; 17336; 24544; 25968). The Developer promoted the EHB brand and other projects it has built in Las Vegas to advance the Applications. (ROR 3607-3611; 5726-29; 5870-76; 17336; 24549-50). Additionally, by proposing the 2016 Development Agreement for the entire Badlands Property, the Developer acknowledged that the affiliated entities are one and the same. (ROR 25729).

30. The cases cited by the Developer did not involve properties owned by closely affiliated entities and are therefore inapplicable. (PPA 35:3-37:7, *citing Tinseltown Cinema, LLC v. City of Olive Branch*, 158 So.3d 367, 371 (Miss. App. Ct. 2015); *Hwy. Oil, Inc. v. City of Lenexa*, 547 P.2d 330, 331 (Kan. 1976)). They also did not involve areas that are within a master development plan area.

31. There is no evidence in the record to support the Developer's contention that it is somehow being singled out for "special treatment" because the Council sought orderly planned development within a Master Development Plan area (PPA 37:11-23).

32. Planning staff's recommendation is immaterial to whether substantial evidence supported the Council's decision because a governing body has discretion to make land use decisions separate and apart from what staff may recommend. *See Redrock Valley Ranch, LLC v. Washoe Cty.*, 127 Nev. 451, 455, 254 P.3d 641, 644 (2011) (affirming County Commission's denial of special use permit even where planning staff recommended it be granted); *Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760 (affirming City Council's denial of site development plan application even where planning staff recommended approval). The Court notes that the Planning Commission denied the Developer's General Plan Amendment application.

...

33. The statements of individual council members are not indicative of any arbitrary or capricious decision making. The action that the Court is tasked with reviewing is the decision of the governing body, not statements made by individual council members leading up to that decision. *See* NRS 278.3195(4); *Nevada Contractors*, 106 Nev. at 313, 792 P.2d at 33; *see also Comm'n on Ethics of the State of Nevada v. Hansen*, 134 Nev. Adv. Op. 40, 419 P.3d 140, 142 (2018) (discussing when action by board is required); *City of Corpus Christi v. Bayfront Assocs., Ltd.*, 814 S.W.2d 98, 105 (Tex. Ct. App. 1991) (“A city can act by and through its governing body; statements of individual council members are not binding on the city.”). “The test is not what was said before or after, but what was done at the time of the voting.” *Lopez v. Imperial Cty. Sheriff's Office*, 80 Cal. Rptr. 3d 557, 560 (Cal. Ct. App. 2008). The Council's action to deny the Applications occurred with its vote, not with the prior statements made by individual council members. NRS 241.03555(1). The Court finds nothing improper in the statements by individual Council members and rejects the Developer's contention that the statements of individual Council members require the Court to overturn the Council's Decision.

D. The City's Denial of the Applications Was Fully Compliant With the Law

34. The Court rejects the Developer's argument that the RPD-7 zoning designation on the Badlands Property somehow required the Council to approve its Applications.

35. A zoning designation does not give the developer a vested right to have its development applications approved. “In order for rights in a proposed development project to vest, zoning or use approvals *must not be subject to further governmental discretionary action affecting project commencement*, and the developer must prove considerable reliance on the approvals granted.” *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995) (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at 759–60 (holding that because City's site development review process under Title 19.18.050 involved discretionary action by Council, the project proponent had no vested right to construct).

36. “[C]ompatible zoning does not, *ipso facto*, divest a municipal government of the right to deny certain uses based upon considerations of public interest.” *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *see also Nevada Contractors*, 106 Nev. at 311,

1 792 P.2d at 31-32 (affirming county commission's denial of a special use permit even though
2 property was zoned for the use).

3 37. The four Applications submitted to the Council for a general plan amendment,
4 tentative map, site development review and waiver were all subject to the Council's discretionary
5 decision making, no matter the zoning designation. *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d
6 at 112; *Doumani*, 114 Nev. at 53, 952 P.2d at 17; *Bd. of Cty. Comm'rs of Clark Cty. v. CMC of*
7 *Nevada, Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983).

8 38. The Court rejects the Developer's attempt to distinguish the *Stratosphere* case,
9 which concluded that the very same decision-making process at issue here was squarely within
10 the Council's discretion, no matter that the property was zoned for the proposed use. *Id.* at 527;
11 96 P.3d at 759.

12 39. Statements from planning staff or the City Attorney that the Badlands Property has
13 an RPD-7 zoning designation do not alter this conclusion. *See id.*

14 40. The Developer purchased its interest in the Badlands Golf Course knowing that the
15 City's General Plan showed the property as designated for Parks Recreation and Open Space (PR-
16 OS) and that the Peccole Ranch Master Development Plan identified the property as being for
17 open space and drainage, as sought and obtained by the Developer's predecessor. (ROR 24073-
18 75; 25968).

19 41. The General Plan sets forth the City's policy to maintain the golf course property
20 for parks, open space and recreation. *See Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723.

21 42. The City has an obligation to plan for these types of things, and when engaging in
22 its General Plan process, chose to maintain the historical use for this area that dates back to the
23 1989 Peccole Ranch Master Development Plan presented by the Developer's predecessor. (ROR
24 24492-24504).

25 43. The golf course was part of a comprehensive development scheme, and the entire
26 Peccole Ranch master planned area was built out around the golf course. (ROR 2595-2604; 2635-
27 36; 4587; 25820).

28 ...

1 44. It is up to the Council – through its discretionary decision making – to decide
2 whether a change in the area or conditions justify the development sought by the Developer and
3 how any such development might look. *See Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723.

4 45. The Clark County Assessor’s assessment determinations regarding the Badlands
5 Property did not usurp the Council’s exclusive authority over land use decisions. The information
6 cited by the Developer in support of this argument is not part of the record on review and therefore
7 must be disregarded.¹ *See C.A.G.*, 98 Nev. at 500, 654 P.2d at 533. The Council alone and not the
8 County Assessor, has the sole discretion to amend the open space designation for the Badlands
9 Property. *See* NRS 278.020(1); *Doumani*, 114 Nev. at 53, 952 P.2d at 17.

10 46. The Applications included requests for a General Plan Amendment and Waiver. In
11 that the Developer asked for exceptions to the rules, its assertion that approval was somehow
12 mandated simply because there is RPD-7 zoning on the property is plainly wrong. It was well
13 within the Council’s discretion to determine that the Developer did not meet the criteria for a
14 General Plan Amendment or Waiver found in the Unified Development Code and to reject the
15 Site Development Plan and Tentative Map application, accordingly, no matter the zoning
16 designation. UDC 19.00.030, 19.16.030, 19.16.050, 19.16.100, 19.16.130.

17 47. The City’s General Plan provides the benchmarks to ensure orderly development.
18 A city’s master plan is the “standard that commands deference and presumption of applicability.”
19 *Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723; *see also City of Reno v. Citizens for Cold Springs*,
20 126 Nev. 263, 266, 236 P.3d 10, 12 (2010) (“Master plans contain long-term comprehensive
21 guides for the orderly development and growth for an area.”). Substantial compliance with the
22 master plan is required. *Nova*, 105 Nev. at 96-97, 769 P.2d at 723-24.

23 48. By submitting a General Plan Amendment application, the Developer
24 acknowledged that one was needed to reconcile the differences between the General Plan
25

26 ¹ The documents attached as Exhibits 2-5 to Petitioner’s points and authorities are not part
27 of the Record on Review and are not considered by the Court. *See C.A.G.*, 98 Nev. at 500, 654
28 P.2d at 533. The documents attached as Exhibit 1, however, were inadvertently omitted from the
Record on Review but were subsequently added by the City. *See Errata to Transmittal of Record
on Review* filed June 20, 2018; ROR 35183-86.

1 designation and the zoning. (ROR 32657). Even if the Developer now contends it only submitted
2 the General Plan Amendment application at the insistence of the City, once the Developer
3 submitted the application, nothing required the Council to approve it. Denial of the GPA
4 application was wholly within the Council's discretion. *See Nevada Contractors*, 106 Nev. at 314,
5 792 P.2d at 33.

6 49. The Court rejects the Developer's contention that NRS 278.349(3)(e) abolishes the
7 Council's discretion to deny land use applications.

8 50. First, NRS 278.349(3) merely provides that the governing body "shall consider" a
9 list of factors when deciding whether to approve a tentative map. Subsection (e) upon which the
10 Developer relies, however, is only one factor.

11 51. In addition, NRS 278.349(3)(e) relates only to tentative map applications, and the
12 Applications at issue here also sought a waiver of the City's development standards, a General
13 Plan Amendment to change the PR-OS designation and a Site Development Plan review. A
14 tentative map is a mechanism by which a landowner may divide a parcel of land into five or more
15 parcels for transfer or development; approval of a map alone does not grant development rights.
16 NRS 278.019; NRS 278.320.

17 52. Finally, NRS 278.349(e) does not confer any vested rights.

18 53. "[M]unicipal entities must adopt zoning regulations that are in substantial
19 agreement with the master plan." *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112, *quoting*
20 *Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723; NRS 278.250(2).

21 54. The City's Unified Development Code states as follows:

22 Compliance with General Plan

23 Except as otherwise authorized by this Title, approval of all Maps, Vacations,
24 Rezoning, *Site Development Plan Reviews*, Special Use Permits, Variances,
Waivers, Exceptions, Deviations and Development Agreements shall be consistent
25 with the spirit and intent of the General Plan. UDC 19.16.010(A).

26 It is the intent of the City Council that all regulatory decisions made pursuant to
27 this Title be consistent with the General Plan. For purposes of this Section,
28 "consistency with the General Plan" means not only consistency with the Plan's
land use and density designations, but also consistency with all policies and
programs of the General Plan, including those that promote compatibility of uses
and densities, and orderly development consistent with available resources. UDC
19.00.040.

1
2 55. Consistent with this law, the City properly required that the Developer obtain
3 approval of a General Plan Amendment in order to proceed with any development.

4 **E. The Doctrine of Issue Preclusion Bars Petitioner from Relitigating Issues
Decided by Judge Crockett**

5
6 56. The Court further concludes that the doctrine of issue preclusion requires denial of
7 the Petition for Judicial Review.

8 57. Issue preclusion applies when the following elements are satisfied: (1) the issue
9 decided in the prior litigation must be identical to the issue presented in the current action; (2) the
10 initial ruling must have been on the merits and have become final; (3) the party against whom the
11 judgment is asserted must have been a party or in privity with a party to the prior litigation; and
12 (4) the issue was actually and necessarily litigated. *Five Star Capital Corp. v. Ruby*, 124 Nev.
13 1048, 1055, 194 P.3d 709, 713 (2008).

14 58. Having taken judicial notice of Judge Crockett's Order, the Court concludes that
15 the issue raised by Intervenors, which once again challenges the Developer's attempts to develop
16 the Badlands Property without a major modification of the Master Plan, is identical to the issue
17 Judge Crockett decided issue in *Jack B. Binion, et al v. The City of Las Vegas, et al*, A-17-752344-
18 J. The impact the Crockett Order, which the City did not appeal, requires both Seventy Acres and
19 Petitioner to seek a major modification of the Master Plan before developing the Badlands
20 Property. The Court rejects Petitioner's argument that the issue here is not the same because it
21 involves a different set of applications from those before Judge Crockett; that is a distinction
22 without a difference. "Issue preclusion cannot be avoided by attempting to raise a new legal or
23 factual argument that involves the same ultimate issue previously decided in the prior case."
24 *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. Adv. Op. 28, 321 P.3d 912, 916-
25 17 (2014).

26 59. Judge Crockett's decision in *Jack B. Binion, et al v. The City of Las Vegas, et al*,
27 A-17-752344-J was on the merits and has become final for purposes of issue preclusion. A
28 judgment is final for purposes of issue preclusion if it is "sufficiently firm" and "procedurally

definite” in resolving an issue. *See Kirsch v. Traber*, 134 Nev., Adv. Op. 22, 414 P.3d 818, 822–23 (Nev. 2018) (citing Restatement (Second) of Judgments § 13 & cmt. g). “Factors indicating finality include (a) that the parties were fully heard, (b) that the court supported its decision with a reasoned opinion, and (c) that the decision was subject to appeal.” *Id.* at 822-823 (citations and punctuation omitted). Petitioner’s appeal of the Crockett Order confirms that it was a final decision on the merits.

60. The Court reviewed recent Nevada case law and the expanded concept of privity, which is to be broadly construed beyond its literal and historic meaning to encompass relationships where there is “substantial identity between parties, that is, when there is sufficient commonality of interest.” *Mendenhall v. Tassinari*, 133 Nev. Adv. Op. 78, 403 P.3d 364, 369 (2017) (quoting *Tahoe–Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 322 F.3d 1064, 1081–82 (9th Cir. 2003) (internal quotation marks omitted). Applying the expanded concept of privity, the Court considered the history of the land-use applications pertaining to the Badlands Property and having taken judicial notice of the Federal Complaint, the Court concludes there is a substantial identity of interest between Seventy Acres and Petitioner, which satisfies the privity requirement. Petitioner’s argument that it is not in privity with Seventy Acres is contradicted by the Federal Complaint, which reveals that Seventy Acres and Petitioner are under common ownership and control and acquired their respective interests in the Badlands Property through an affiliate, Fore Stars, Ltd.

61. The issue of whether a major modification is required for development of the Badlands Property was actually and necessarily litigated. “When an issue is properly raised and is submitted for determination, the issue is actually litigated.” *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. at 262, 321 P.3d at 918 (internal punctuation and quotations omitted) (citing *Frei v. Goodsell*, 129 Nev. 403, 407, 305 P.3d 70, 72 (2013)). “Whether an issue was necessarily litigated turns on ‘whether the common issue was necessary to the judgment in the earlier suit.’” *Id.* (citing *Tarkanian v. State Indus. Ins. Sys.*, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994)). Since Judge Crockett’s decision was entirely dependent on this issue, the issue was necessarily litigated.

1 62. Given the substantial identity of interest among Seventy Acres, LLC and
2 Petitioner, it would be improper to permit Petitioner to circumvent the Crockett Order with respect
3 to the issues that were fully adjudicated.

4 63. Where Petitioner has no vested rights to have its development applications
5 approved, and the Council properly exercised its discretion to deny the applications, there can be
6 no taking as a matter of law such that Petitioner's alternative claims for inverse condemnation
7 must be dismissed. *See Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994) ("The Fifth
8 Amendment's Takings Clause prevents the Legislature (and other government actors) from
9 depriving private persons of vested property rights except for a 'public use' and upon payment of
10 'just compensation.'"); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949).

11 64. Further, Petitioner's alternative claims for inverse condemnation must be
12 dismissed for lack of ripeness. *See Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1230-31, 122
13 Nev. 877, 887 (2006).

14 65. "Nevada has a long history of requiring an actual justiciable controversy as a
15 predicate to judicial relief." *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229,
16 233 (1988), *quoting Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

17 66. Here, Petitioner failed to apply for a major modification, a prerequisite to any
18 development of the Badlands Property. *See Crockett Order*. Having failed to comply with this
19 necessary prerequisite, Petitioner's alternative claims for inverse condemnation are not ripe and
20 must be dismissed.

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ORDER

Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Petition for Judicial Review is DENIED.

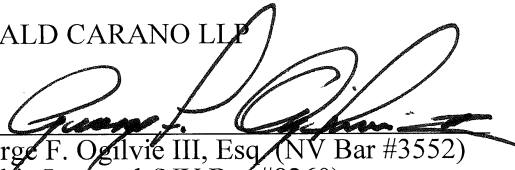
IT IS FURTHER ORDERED, ADJUDGED and DECREED that Petitioner's alternative claims in inverse condemnation are hereby DISMISSED.

DATED: 11/18, 2018.


TIMOTHY C. WILLIAMS
District Court Judge

Submitted By:

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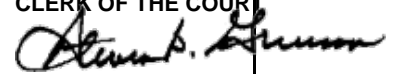
Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of November, 2018, a true and correct copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP



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16
17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 180 LAND COMPANY, LLC, a Nevada limited
20 liability company, DOE INDIVIDUALS I
21 through X, DOE CORPORATIONS I through X,
22 and DOE LIMITED LIABILITY COMPANIES I
23 through X,

24 Plaintiffs,

25 vs.

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

Defendant.

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

**PLAINTIFF LANDOWNERS'
REQUEST FOR REHEARING /
RECONSIDERATION OF ORDER /
JUDGMENT DISMISSING INVERSE
CONDEMNATION CLAIMS**

Hearing date:
Hearing time:

1 COMES NOW Plaintiffs, 180 LAND COMPANY, LLC, a Nevada Limited Liability
2 Company, FORE STAR, Ltd, and SEVENTY ACRES, LLC, a Nevada Limited Liability Company
3 (hereinafter the “Landowners”) by and through their attorney of record, the Law Offices of Kermitt
4 L. Waters and Hutchison & Steffen, and hereby file Plaintiff Landowners’ Request for Rehearing
5 / Reconsideration of Order / Judgment Dismissing Inverse Condemnation Claims.

6 This Motion is based upon the Memorandum of Points and Authorities included herein, the
7 exhibits attached hereto, the pleadings and papers on file in this matter, and such oral arguments as
8 may be heard by the Court at the time of the hearing in this matter.

9 DATED this 11th day of December, 2018.

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

11 By: /s/ James J. Leavitt

12 KERMITT L. WATERS, ESQ.

13 Nevada Bar # 2571

14 JAMES JACK LEAVITT, ESQ.

15 Nevada Bar #6032

16 MICHAEL SCHNEIDER, ESQ.

17 Nevada Bar #8887

18 AUTUMN WATERS, ESQ.

19 Nevada Bar #8917

20 *Attorney for Plaintiff Landowners*

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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVE that the undersigned will bring the above and foregoing Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims on for hearing before the above-entitled Court, on the 17 day of January, 2019, at the hour of 9:00 a.m./p.m. or as soon thereafter as counsel may be heard in the Regional Justice Center, Department No. XVI, Courtroom ^{3H}~~12D~~, 200 Lewis Avenue, Las Vegas, Nevada, 89101

DATED this 11th day of December, 2018.

LAW OFFICES OF KERMIT L. WATERS

By: /s/ James J. Leavitt

KERMIT L. WATERS, ESQ.

Nevada Bar # 2571

JAMES JACK LEAVITT, ESQ.

Nevada Bar #6032

MICHAEL SCHNEIDER, ESQ.

Nevada Bar #8887

AUTUMN WATERS, ESQ.

Nevada Bar #8917

Attorney for Plaintiff Landowners

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This case began as one involving two types of claims asserted by Plaintiff Landowners (hereinafter "Landowners") against the City of Las Vegas (hereinafter the "City" or "Government") - inverse condemnation claims and a petition for judicial review. In regards to the inverse condemnation claims, the City requested that these claims be dismissed and this court denied the request, holding the claims were properly pled and are ripe for adjudication, but stayed the claims and bifurcated them until after the petition for judicial review is decided. About six months later, this Court held a one day hearing on the Landowners' petition for judicial review claim wherein the inverse condemnation claims were not adjudicated or even mentioned as those claims were bifurcated and stayed. This Court denied the Landowners' petition for judicial review, but then

1 went one step further and also *sua sponte* dismissed the Landowners' inverse condemnation claims.
2 Not only was the dismissal of the inverse condemnation claims without notice or an opportunity to
3 be heard, but the decision is clearly erroneous. Therefore, this motion requests a rehearing /
4 reconsideration of this Court's order dismissing the Landowners' inverse condemnation claims.

5 The Landowners have also filed concurrently with this motion for rehearing a motion for
6 summary judgment on the inverse condemnation claims, which further supports the request for a
7 rehearing. Many exhibits in this motion refer to the motion for summary judgment exhibits.

8 **FACTUAL AND PROCEDURAL BACKGROUND**

9 On September 7, 2017, the Landowners filed an amended complaint alleging two types of
10 claims: 1) a petition for judicial review of the City's denial of land use applications for the 35 Acre
11 Property; and, 2) claims in inverse condemnation for the taking of the 35 Acre Property. This Court
12 held two hearings, one for the inverse condemnation claims and one on the petition for judicial
13 review, and has entered two separate and conflicting orders from each hearing.

14 **1. January 11, 2018, Hearing and Order**

15 On January 11, 2018, this Court held a hearing on the City's request to dismiss the
16 Landowners' inverse condemnation claims. *Exhibit 1, Reporter's Transcript of Motions, January*
17 *11, 2018*. The City asserted that the inverse condemnation claims should be dismissed: 1) for lack
18 of ripeness; and, 2) because, according to the City, the claims were improperly alleged in the same
19 action with the petition for judicial review. This January 11, 2018, hearing was properly noticed and
20 both parties had the opportunity to be heard on whether the inverse condemnation claims should be
21 dismissed.

22 During the hearing, the interplay between the petition for judicial review claim and the
23 inverse condemnation claims was discussed. First, it was explained that, if there is a finding the City
24 action was arbitrary and capricious or without substantial evidence and the Landowners are permitted
25 to build on the 35 Acre Property, then there would be a temporary taking of the 35 Acre Property
26 during the delay period. *Exhibit 1, 17:18-18:4*. Second, it was explained that, if there is a finding
27 the City actions were not arbitrary and capricious and, therefore, the Landowners cannot build on
28 the 35 Acre Property, then there would be a total taking of the property. *Exhibit 1, 18:6-11*.

1 After this discussion, this Court specifically stated on the record that it understood the
2 petition for judicial review and inverse condemnation claims were different:

3 THE COURT: And I just want to make sure for the record I truly understand the
4 difference in the standards that would be teed up for any trial judge as it relates to the
5 petition for judicial review - - . . . However, that's a totally different animal when it
6 comes to decisions that restrict the use of property that somehow makes it to the
7 point where it has no value. Then it's a governmental taking. **I get the difference.**
8 *Exhibit 1, 16:15-19.*

9 This Court also understood that a decision on the petition for judicial review claim would be
10 limited to those claims:

11 Now, I'm looking at this in a different light in that, okay, if I sever them out, the
12 judicial review petition there will be no discovery on that issue, and it would be
13 limited to the record on appeal, and I make a decision as to whether the city council
14 was arbitrary and capricious in their decision or not. **That's all.** *Exhibit 1, 41:10-15.*
15 . . .

16 Regarding the motion to dismiss, I'm going to deny that. Regarding the strike, I'm
17 going to deny that. However, we're going to sever off the inverse condemnation
18 claims, and the Court will only - - and we're going to stay those. **And we're going**
19 **to deal specifically with the petition for judicial review.** *Exhibit 1, 48:7-16.*

20 This Court then denied both City requests. In regards to whether the Landowners' inverse
21 condemnation claims should be dismissed, this Court held the claims were properly plead and ripe
22 as follows:

23 The Landowners "appropriately stated inverse condemnation claims against the
24 City,"

25 "[t]he Inverse condemnation claims relied on allegations that - if true- would entitle
26 [the Landowners] to relief;"

27 "[t]he claims were ripe, because [the Landowners] obtained a final decision from the
28 City regarding the property at issue and 'a final decision by the responsible state
agency informs the constitutional determination whether a regulation has deprived
a landowner of 'all economical beneficial use' of the property.'"

*Exhibit 2, Order Denying Motion to Dismiss, February 22, 2018, 6:1-4, Conclusion
of Law #5*

29 This Court then severed the petition for judicial review claims from the inverse
30 condemnation claims and ordered the Landowners to file an amended complaint for the inverse
31 condemnation claims, which the Landowners did. *Exhibit 2, pp. 3-4.* Finally, this Court stayed all
32 proceedings in the inverse condemnation claims pending the Court's decision on the petition for
33 judicial review. *Id.*

1 Accordingly, following the January 11, 2017, hearing, this Court's order was threefold; 1)
2 the Landowners' properly pled their inverse condemnation claims; 2) the claims were ripe for
3 review; and, 3) the claims were severed and stayed until **after** this Court enters a decision on the
4 petition for judicial review.

5 **2. June 29, 2018, Petition for Judicial Review Hearing and Order**

6 On June 29, 2018, this Court held a full day hearing to address only the petition for judicial
7 review issues. As explained, this Court already denied the City's motion to dismiss the inverse
8 condemnation claims, held the claims are ripe, and stayed the claims pending a decision on the
9 petition for judicial review. And, the inverse condemnation claims were not discussed at all at the
10 June 29, 2018, petition for judicial review hearing.

11 Ultimately, this Court denied the petition for judicial review. However, this Court also *sua*
12 *sponte*, without notice or a hearing, dismissed the Landowners' inverse condemnation claims as
13 follows:

14 "[w]here Petitioner [Landowners] has no vested right to have its development
15 applications approved, and the Council properly exercised its discretion to deny the
16 applications, there can be no taking as a matter of law such that Petitioner's
17 [Landowner's] alternative claims for inverse condemnation must be dismissed."

18 "Further, Petitioner's alternative claims for inverse condemnation must be dismissed
19 for lack of ripeness."

20 "Here, Petitioner failed to apply for a major modification, a prerequisite to any
21 development of the Badlands Property. ... Having failed to comply with this
22 necessary prerequisite, Petitioner's alternative claims for inverse condemnation are
23 not ripe and must be dismissed."

24 This Court concluded" IT IS HEREBY ORDERED, ADJUDGED and DECREED
25 that Petitioner's alternative claims in inverse condemnation are hereby DISMISSED.

26 *Exhibit 3, Findings of Fact and Conclusions of Law on Petition for Judicial Review,*
27 *November 26, 2018, pp. 23-24.*

28 Therefore, this Court dismissed constitutionally based inverse condemnation claims (which
it previously held were properly pled, ripe, bifurcated and stayed) without notice or a hearing for
these claims. For the following reasons, this Court's order is erroneous and reconsideration should
be granted so the Landowners at least have an opportunity to be heard on this matter.

1 **LEGAL ARGUMENT**

2 **1. Standard for Rehearing / Reconsideration**

3 EDCR rule 2.24 and NRCP Rules 52(b), 59, and 60 allow for rehearing or reconsideration
4 of the ruling of a court and amendment to or relief from judgments. Grounds to allow rehearing or
5 relief from an order or judgment include, in part, mistake, the judgment is void, new issues of fact
6 or law are raised supporting a ruling contrary to the ruling already reached,¹ or the decision is clearly
7 erroneous.² The following shows that this standard is met and this Court should grant
8 reconsideration of its order dismissing the Landowners' inverse condemnation claims.

9 **2. This Court's Order Violates the Due Process Clause**

10 The Due Process Clause of the Fifth Amendment guarantees that "[n]o person shall ... be
11 deprived of life, liberty, or property, without due process of law." United States Supreme Court
12 precedents "establish the general rule that individuals must receive notice and an opportunity to be
13 heard before the Government deprives them of property." U.S. v. James Daniel Good Real Property,
14 510 U.S. 43, 48 (1993). Here, the Landowners brought inverse condemnation claims for the taking
15 of their property that are based in the Fifth Amendment to the United States Constitution. This Court
16 first held these claims are properly pled and ripe, but stayed the claims. During the stay period,
17 however, this Court *sua sponte* dismissed these property based Fifth Amendment claims without
18 notice or even any opportunity whatsoever to be heard on the dismissal. This is a prima facie due
19 process violation. Accordingly, this Court should grant reconsideration of its order dismissing the
20 Landowners' inverse condemnation claims and give the Landowners an opportunity to be heard on
21 why it is error to dismiss the claims.

22 **3. This Court's Order Violates Well Established United States Supreme Court**
23 **Precedent Applicable to Government "Discretion" and Taking Jurisprudence**

24 The United States Supreme Court held in the case of Lucas v. South Carolina Coastal
25 Council, 505 U.S. 1003 (1992), that simply because government action is proper (or not arbitrary
26 or capricious) does not mean it cannot amount to a taking. In Lucas, Mr. Lucas purchased two ocean

27 ¹ Moore v. City of Las Vegas, 92 Nev. 402 (1976).

28 ² Masonry and Tile v. Jolley, Urga, Wirth, 113 Nev. 737 (1997).

1 front vacant lots in Charleston County, South Carolina to develop them residentially. Id., at 1006-07.
2 Thereafter, the Beachfront Management Act (Act) was adopted that prevented the development on
3 the two lots. Id., at 1008-09. Mr. Lucas conceded the validity of the Act as it was intended to
4 protect the South Carolina beaches that were eroding, but challenged the Act as an uncompensated
5 taking of his property and, after a bench trial, was awarded approximately \$1,200,000.00 for the
6 taking. Id., at 1009-10. On appeal to the United States Supreme Court, it was asserted that there was
7 not a taking, because Mr. Lucas conceded to the validity of the Act and did not challenge it. Id. at
8 1044-46. The United States Supreme Court rejected this argument, holding Mr. Lucas was not
9 required to challenge the underlying Act as a precondition to bringing his inverse condemnation
10 claim, and held that there had been a deprivation of all economic use of the property, resulting in a
11 “categorical taking.” In other words, even though it was conceded that the government action (the
12 Beachfront Management Act) was valid (not arbitrary or capricious), the Act still amounted to a
13 taking for which just compensation was constitutionally mandated.

14 Here, this Court dismissed the Landowners’ inverse condemnation claims on the grounds that
15 “the Council properly exercised its discretion to deny the applications.” This is not grounds to deny
16 a taking. As held in Lucas, even if the Government “properly exercises its discretion,” if, in
17 exercising that discretion, the government action results in a taking, just compensation is still
18 constitutionally mandated. For example, in the Lucas case, the landowner conceded that the
19 government properly exercised its discretion in adopting the Beachfront Management Act, but the
20 United States Supreme Court held this is not a defense to a taking. The Court still held the Act
21 amounted to a taking, because it foreclosed the use of the landowners’ property.

22 Therefore, simply because the City “properly exercised its discretion” does not shield it from
23 liability and it is error to hold otherwise. Here, that “discretion” resulted in a total deprivation of the
24 use of the Landowners’ 35 Acre Property, the same as in the Lucas case. *See concurrently filed*
25 *Motion for Summary Judgment*. And, the same as in the Lucas case, this Court should find a taking.
26 Accordingly, this is additional grounds to grant reconsideration of this Court’s order dismissing the
27 Landowners’ inverse condemnation claims.

1 **4. This Court Order Violates Well Established General Nevada “Vested Rights” Law**

2 The Nevada Supreme Court has held twice that Nevada landowners have the “vested” right
3 to use their property, even if the landowner has not put the property to a beneficial use.³ The Court
4 also limited the City’s “discretion” on land use decisions by requiring: 1) that the decisions be based
5 on “valid zoning and related regulations;” and, 2) the zoning regulations must not “give rise to a
6 takings claim.”⁴ The public policy for these rules is clear. If the City had absolute discretion to grant
7 or deny the use of property, then the Just Compensation Clause would be entirely eliminated. The
8 City could deny all use of all properties in the City (under the City’s alleged discretionary power)
9 and never pay any compensation whatsoever for these denials.⁵ This despotic argument is not the
10 law and never will be the law as it would bring all property transactions in the State of Nevada to
11 an immediate and abrupt halt. No entity or person would ever purchase property in this State,
12 because there would be no property rights. The only “thing” that would be purchased in a property
13 transaction is dirt for which there are no rights, because the local entities, like the City, could tell the
14 new owner that he cannot use the property at all under the City’s absolute discretion argument.

15 Here, this Court adopted a blanket, far reaching holding that the Landowners’ have “no
16 vested right to have its development applications approved.” This Court failed to recognize the

17
18 ³ McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006) (landowner had a vested
19 right to use the airspace above his property pursuant to NRS 493.040, even though he never used
20 it and the County never approved the use. Schwartz v. State, 111 Nev. 998 (1995) (Nevada
21 landowners have a vested right to access roadways adjacent to their property, even though the
22 access has never been built)

23 ⁴ Sisolak, at 660, fn 25.

24 ⁵ The City has repeatedly cited to Stratosphere Gaming Corp. v. City of Las Vegas, 11
25 Nev. 804 (1995), in this matter, for the proposition that development rights do not vest unless the
26 property is not subject to further discretionary acts. Stratosphere, however, is inapplicable to this
27 case. In Stratosphere, the vested right to use the property had already been exercised (the
28 Stratosphere hotel/casino was built) and the owner was trying to **add** an additional attraction to the
 property. The Court held that the Stratosphere owner did not have the vested right to add this
 additional attraction, **but had numerous other economic uses of the property**. The case at bar
 involves the underlying right to use the property in the first instance. If the City had told the
 Stratosphere back before it was originally built that a hotel/casino could not be built; that the
 property could only be used as open space, then there would have been a taking of a vested right to
 use the property as clearly provided in the Sisolak case.

1 limitations the Nevada Supreme Court placed on the City discretion, namely, 1) that the City
2 decisions must be based on “valid zoning and related regulations;” and, 2) the City actions must not
3 “give rise to a takings claim”⁶ without payment of just compensation. In fact, this Court could not
4 have considered these limitations, because this Court never provided notice or even an opportunity
5 to be heard on these limitations. And, it is clear that the City actions “give rise to a taking claim”
6 in this case, because the City actions foreclose any and all use of the Landowners’ Property, which
7 is recognized as a categorical taking. *See concurrently filed Motion for Summary Judgment.*
8 Accordingly, this Court should grant reconsideration so that these limitations on the City’s actions
9 may be properly considered in the context of an inverse condemnation action.

10 **5. This Court Order Violates “Vested Rights” Law Specifically Applicable to The**
11 **Landowners’ Property - The Nevada Supreme Court Very Recently Upheld the**
12 **Landowners’ Vested “Right To Develop” Residentially**

13 The pointed issue of whether the Landowners’ entire 250 Acre Residentially Zoned Property
14 (that includes the 35 Acre Property) is R-PD7 hard zoned which grants the Landowners a “right to
15 develop” has been fully litigated before the Honorable Judge Douglas E. Smith and affirmed by the
16 Nevada Supreme Court. *Exhibit 83, Findings of Fact and Conclusions of Law and Judgment, filed*
17 *November 30, 2016; Exhibit 7, Findings of Fact and Conclusions of Law, Final Order and*
18 *Judgment, filed January 1, 2017; Exhibit 84, Order of Affirmance; Exhibit 98, Order Denying*
19 *Rehearing - these exhibits are attached to the concurrently filed Motion for Summary Judgment.*

20 Following significant and lengthy briefing and oral argument, Judge Smith entered the following
21 findings, concluding the hard zoning of R-PD7 controls over any other conflicting land use plans,
22 thereby granting the Landowners the “right to develop” the 35 Acre Property with a residential use:⁷

- 23 • On March 26, 1986, a letter was submitted to the City Planning Commission
24 requesting permission to use the 250 Acre Residential Zoned Land for a “golf course,”
25 however, the zoning that was sought was R-PD “as it allows the developer flexibility
26 and the City design control.” “Thus, **keeping the golf course [250 Acre Residential
27 Zoned Land] for potential future development as residential was an intentional
28 part of the plan.**” Exhibit 83, p. 14, finding #59. (emphasis supplied).

27 ⁶ Sisolak, at 660, fn 25.

28 ⁷ All exhibits that follow in this section are attached to the concurrently filed
Motion for Summary Judgment.

- 1 • Even though there is a 1986 map that shows a golf course around the location of the
2 Landowners' 250 Acre Residential Zoned Land, "the current Badlands Golf Course
3 [250 Acre Residential Zoned Land] is not the same as what is depicted on the map"
(Exhibit 83, p. 14, finding #61) and the Landowners "have the **right to close the golf
course** and not water it" (Exhibit 7, p. 9, finding #26). (emphasis supplied).
 - 4 • The Zoning Bill No. Z-2001, Ordinance 5353, "demonstrates that the R-PD7 Zoning
5 was codified and incorporated into the Amended Atlas in 2001." Exhibit 83, pp. 13-
14, finding #58.
 - 6 • "[T]wo letters from the City of Las Vegas to Frank Pankratz dated December 20,
7 2014, **confirm the R-PD7 zoning on all parcels held by Fore Stars, Ltd.** [the 250
8 Acre Residential Zoned Land]." Exhibit 83, p. 14, finding #60.
 - 9 • "The Court finds that the GC Land [250 Acre Residential Zoned Land] owned by the
10 Developer Defendants [Landowners] has '**hard zoning**' of R-PD7. **This allows up
11 to 7.49 units per acre subject to City of Las Vegas requirements.**" Exhibit 83, p.
12 18, finding #82; Exhibit 7, p. 33, finding #130. (emphasis supplied).
 - 13 • "Notwithstanding any alleged 'open space' land use designation, the zoning on the GC
14 Land [250 Acre Residential Zoned Land], as supported by the evidence, is R-PD7." The
15 Court then rejected the argument that "suggests the land is 'zoned' as 'open
16 space' and that they [Queensridge homeowners] have some right to prevent any
17 modification of that alleged designation under NRS 278A." Exhibit 7, pp. 17-18,
18 finding #64, p. 34, finding # 132.
 - 19 • The language from NRS 278.349(3)(e) supports the Landowners' position that the
20 hard residential zoning trumps any other land use designation that may have been
21 applied at any time to the Landowners 250 Acre Residential Zoned Land. Exhibit 7,
22 p. 18, finding # 66.
 - 23 • "**The court finds that the Developer Defendants [Landowners] have the right to
24 develop the GC Land [250 Acre Residential Zoned Land].**" Exhibit 83, p. 18,
25 finding 81. (emphasis supplied). This finding was repeated in the subsequent order
26 twice as follows: "The zoning on the GC Land [250 Acre Residential Zoned Land]
27 dictates its use and **Defendants rights to develop their land**" (Exhibit 7, p. 17,
28 finding #61 (emphasis supplied)) and the Landowner has the "**right to develop their
land.**" (Exhibit 7, p. 33, finding # 130) (emphasis supplied)).
 - Judge Smith even held that the initial steps to develop, parceling the 250 Acre
Residential Zoned Land, had proceeded properly: "The Developer Defendants
[Landowners] properly followed procedures for approval of a parcel map over
Defendants' property [250 Acre Residential Zoned Land] pursuant to NRS
278.461(1)(a) because the division involved four or fewer lots. The Developer
Defendants [Landowners] parcel map is a legal merger and re-subdividing of land
within their own boundaries." Exhibit 83, p. 10, finding #41.
- Judge Smith then held the Queensridge Community could not control or restrain the
Landowners "right to develop their land:"
- The 250 Acre Residential Zoned Land is not a part of the Queensridge Community
and, therefore, is not subject to the Queensridge CC&Rs and "cannot be enforced

1 against the GC Land [250 Acre Residential Zoned Land].”⁸ Exhibit 83, p. 12, finding
2 #51; p. 13, findings #53-57; pp. 14-17, findings 62-79; Exhibit 7, pp. 4-5 findings 5-7,
3 p. 6, findings 15-16, p. 8, finding #24, pp 9-10, finding #29, 31, p. 12, findings 38-40,
pp. 17-18, findings # 64-65, pp. 18-19, findings #68-70, p. 24, finding # 88, p. 27,
finding #102, p. 30-31, findings # 120-124, p. 35, finding # 135.

- 4 • The Queensridge Community, the geographic area where the 250 Acre Residential
5 Land is located “may, but is not required to, include ... a golf course.” Exhibit 83, p.
16, finding #70.
- 6 • The Queensridge Homeowners transfer documents “evidence that no such guarantee
7 [that the 250 Acre Residential Zoned Land would remain a golf course] was made and
8 that Plaintiffs were advised **that future development to the adjoining property [250
Acre Residential Zoned Land] could occur, and could impair their views or lot
advantages.**”⁹ Exhibit 7, p. 15, finding 53, p. 6, finding # 13, p. 12 finding 38, p. 15,
9 finding #53.

10 The Landowners’ vested right to develop residentially is so irrefutable that Judge Smith found
11 any challenge to this vested right is “frivolous” and “baseless,” warranting an award of attorney
12 fees.¹⁰ *Exhibit 7, pp. 25-26, finding #95, p. 27, finding #102, attached to the concurrently filed*
13 *Motion for Summary Judgment.*

14 The Nevada Supreme Court affirmed Judge Smith. The Court held “[b]ecause the record
15 supports the district court’s determination that the golf course [250 Acre Residential Zoned Land]
16 was not part of the Queensridge community under the original CC&Rs and public map and records,

17 ⁸ The CC&Rs for the Queensridge Community plainly state “[t]he existing 18-hole
18 golf course commonly known as the ‘Badlands Golf Course’ [250 acre property] **is not a part** of
19 the Property or Annexable Property” governed by the Queensridge CC&R’s. *Exhibit 66: 11 App*
20 *LO 00002552-2704*. Also, the “Master Plan” for the Queensridge CC&Rs shows that the 250
acre property is “NOT A PART” of the Queensridge Community. *Id.*

21 ⁹ Every purchaser of property within the Queensridge Community was required to
22 accept, as part of their purchase agreement, that there were no representations on how the 250
23 acre property would be developed: “Purchaser is not relying upon any warranties, promises,
24 guarantees, advertisements or representations made by Seller or anyone....” and “....Seller has
25 made no representations or warranties concerning zoning or the future development of phases of
the Planned Community or the surrounding area or nearby property.” *Exhibit 69, at LO*
00002733-34, attached to the concurrently filed Motion for Summary Judgment.

26 ¹⁰ Given this intervening ruling and now controlling law, this Court should reverse
27 its order allowing the Intervenor’s participation in this litigation and strike all pleadings filed by
28 the Intervenor’s as the Supreme Court has now ordered they do not have standing and any claim
by the Intervenor’s regarding an interest in or right to control the 250 Acre Residential Zoned
Land is “baseless.”

1 regardless of the amendment, we conclude the district court did not abuse its discretion in denying
2 appellants' motion for NRCP 60(b) relief." *Exhibit 84, p. 2, attached to the concurrently filed*
3 *Motion for Summary Judgment.* The Court continued, "[a]ppellants filed a complaint alleging the
4 golf course land [250 Acre Residential Zoned Land] was subject to the CC&Rs when the CC&Rs
5 and public maps of the property demonstrated that the golf course land [250 Acre Residential Zoned
6 Land] was not." *Id.*, p. 4. The Supreme Court also upheld the award of \$128,131.22 in attorney fees
7 and costs. *Id.* The Court also denied rehearing, further holding the Queensridge Community has no
8 control over the 35 Acre Property as it "was never annexed into the Queensridge master community."
9 *Exhibit 98, Order Denying Rehearing, p. 2 attached to the concurrently filed Motion for Summary*
10 *Judgment.*

11 Therefore, it is settled law that the Landowners have the vested right to develop the 250 Acre
12 Residential Zoned Land (which includes the 35 Acre Property) with a residential use, and the
13 Intervenor/Queensridge owners have no right or standing to challenge because the Property has
14 always been zoned residential, the intent was always to develop the Property residentially, and hard
15 zoning trumps any other conflicting land use plan designation.

16 This Court's holding, without notice or a hearing, that the Landowners did not have the vested
17 right to have their residential development applications approved clearly violates this controlling
18 Nevada Supreme Court precedent specific to the 35 Acre Property. Accordingly, this Court should
19 grant reconsideration so that the vested rights issue may be properly considered in light of the above
20 Nevada Supreme Court decision and in the context of an inverse condemnation action.

21 **6. This Court Order Violates Well Established Nevada Eminent Domain Law**
22 **Regarding the Ripeness Doctrine**

23 **A. The Exhaustion of Administrative Remedies Requirement for Ripeness Does Not**
24 **Apply to Four of the Landowners' Inverse Condemnation Claims**

25 The Nevada Supreme Court has held that the exhaustion of administrative remedies / ripeness
26 doctrine only applies to a Penn Central type inverse condemnation claim; it does not apply to
27 regulatory per se, non-regulatory / de facto, categorical, or temporary taking inverse condemnation
28

1 claims.¹¹ The reason for this rule is that the taking is known in these type of inverse condemnation
2 claims and, once the taking is known, the payment of just compensation is “self-executing,” meaning
3 there can be no barriers or preconditions (such as exhaustion of administrative remedies/ripeness)
4 to this constitutional guarantee.¹²

5 This Court, however, held all of the Landowners’ inverse condemnation claims, including the
6 regulatory per se, non-regulatory / de facto, categorical, and temporary taking claims, “must be
7 dismissed for lack of ripeness.” As this ripeness doctrine cannot be used as a basis to dismiss these
8 claims, it was error to dismiss them on this ground. Accordingly, this Court should grant
9 reconsideration so that all of these claims may properly be considered.

10 **B. This Court Failed to Consider the Doctrine of Futility As It Applies to the**
11 **Landowners’ Penn Central Inverse Condemnation Claims**

12 The United States and Nevada Supreme Court have adopted a futility exception to the ripeness
13 doctrine, holding that “[g]overnment authorities, of course, may not burden property by imposition
14 of repetitive or unfair land-use procedures in order to avoid a final decision.”¹³ However, “when
15 exhausting available remedies, including the filing of a land-use permit application, is futile, a matter
16 is deemed ripe for review.”¹⁴ In other words, when it is clear that the government will not grant a

17
18 ¹¹ Hsu v. County of Clark, supra, (“[d]ue to the “per se” nature of this taking, we further
19 conclude that the landowners were not required to apply for a variance or otherwise exhaust their
20 administrative remedies prior to bringing suit.” *Id.*, at 732); McCarran Int’l Airport v. Sisolak, 122
21 Nev. 645, 137 P.3d 1110 (2006) (“Sisolak was not required to exhaust administrative remedies or
22 obtain a final decision from the Clark County Commission by applying for a variance before
23 bringing his inverse condemnation action based on a regulatory per se taking of his private property.”
24 *Id.* at 664).

25 ¹² Alper v. Clark County, 571 P.2d 810, 811-812 (1977).

26 ¹³ Palazzolo v. Rhode Island, 533 U.S. 606, 621 (2001), *citing to* Monterey v. Del
27 Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624, 143 L.Ed. 2d 882 (1999).

28 ¹⁴ State v. Eighth Judicial Dist. Court of Nev., 351 P.3d 736, 742 (Nev. 2015). For
example, in Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624,
143 L.Ed. 2d 882 (1999) “[a]fter five years, five formal decisions, and 19 different site plans,
[internal citation omitted] Del Monte Dunes decided the city would not permit development of the
property under any circumstances.” *Id.*, at 698. “After reviewing at some length the history of
attempts to develop the property, the court found that to require additional proposals would implicate

1 land use application, it is futile to submit any further applications and the inverse condemnation
2 claims are ripe for review. Stated another way, the government will often require “repetitive and
3 unfair” applications to avoid a taking, but once it denies even one meaningful application and it
4 appears futile to re-submit another application (such as a “major modification” application), a
5 landowner’s inverse condemnation claim are ripe and he may proceed to court on these claims.

6 Here, in the concurrently filed motion for summary judgment, this futility doctrine as it applies
7 in this case is fully briefed. However, the following gives this Court just a small understanding of
8 how futile it would be to file the “major modification” application with the City mentioned in this
9 Court’s order dated November 21, 2018. The City denied stand alone development applications for
10 the 35 Acre Property on the basis that the City did not want “piecemeal” development. The City then
11 denied a Master Development Agreement (MDA) and any and all other applications to develop any
12 parcel, as a whole or as single parcels, on any part of the 250 Acre Residential Zoned Land.¹⁵ The
13 Landowners cannot even get a permit to fence ponds on the 250 Acre Residential Zoned Land or a
14 permit to access the Property. The City also adopted two Bills which solely target the 250 Acre
15 Residential Zoned Land that eliminates all use of the entire 250 acres. Councilman Seroka stated
16 that “over his dead body” will development be allowed and Councilman Coffin referred to the
17 Landowners’ representative as a “motherfucker” and put in writing that he will vote against any
18 development on the 35 Acre Property. The City has even sought funding to purchase the 250 Acre
19 Residential Zoned Land for 1% of its fair market value¹⁶ for a City Park thereby showing the motive

20
21 the concerns about repetitive and unfair procedures expressed in MacDonld, Commer & Frates v.
22 Yolo County, 477 U.S. 340, 350 n. 7, (1986) [*citing* Stevens concurring in judgment from
23 Williamson Planning Comm’n v. Hamilton Bank, 473 U.S. 172 at 205-206, 105 S.Ct. 3108 at 3126
24 (1985)] and that the city’s decision was sufficiently final to render Del Monte Dunes’ claim ripe for
25 review.” Del Monte Dunes, at 698. The “Ripeness Doctrine does not require a landowner to submit
26 applications for their own sake. Petitioner is required to explore development opportunities on his
27 upland parcel only if there is uncertainty as to the land’s permitted uses.” Palazzolo v. Rhode Island,
28 at 622.

27 ¹⁵ The City did approve an application to develop on the 17 Acre Property, but has
28 subsequently taken aggressive action to claw back that approval.

¹⁶ *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

1 to prevent any use of the property (which is not even a requirement to show a taking). Accordingly,
2 it is futile to submit any further applications with the City and any assertion that the Landowners just
3 need to go back to the City and change the wording on the top of the MDA or the other applications
4 to “Major Modification” is a red herring and just an attempt to delay this matter.

5 This Court could not have considered this futility doctrine as part of its order dismissing the
6 inverse condemnation claims, because there was no notice or a hearing on the issue. Accordingly,
7 this Court should grant reconsideration so that this futility doctrine can be properly briefed and
8 analyzed in this case.

9 **7. This Court’s Order Violates Well Established Nevada Law Related to Dismissal of**
10 **Inverse Condemnation Claims**

11 Nevada law is clear that only under "rare" circumstances is dismissal proper, such as where
12 plaintiff can prove no set of facts entitling him to relief.¹⁷ The Nevada Supreme Court has
13 recognized this “rare” circumstances standard and held that a motion to dismiss “is subject to a
14 rigorous standard of review on appeal,” that it will recognize all factual allegations as true, and draw
15 all inferences in favor of the plaintiff.¹⁸ The Court rejected the “reasonable doubt” standard and held
16 that a complaint should be dismissed “only” where it appears “beyond a doubt” that the plaintiff
17 could prove no set of facts, which, if true, would entitle the plaintiff to relief.²⁰

18 This “rigorous” standard to dismiss is especially appropriate in inverse condemnation
19 proceedings, because there is no “magic formula” in every case for determining whether particular
20 government interference constitutes a taking under the U.S. Constitution; there are “nearly infinite
21 variety of ways in which government actions or regulations can effect property interests.”²¹ In this

22
23 ¹⁷ Williams v. Gerber Prod., 552 F.3d 934, 939 (9th Cir. Ct. App. 2008).

24 ¹⁸ Buzz Stew, LLC v. City of North Las Vegas, 181 P.3d 670, 672 (2008).
25 (emphasis supplied).

26 ²⁰ Id., see also fn. 6 in Buzz Stew decision.

27 ²¹ State v. Eighth Jud. Dist. Ct., 351 P.3d 736, 741 (Nev. 2015) (citing Arkansas
28 Game & Fish Comm’s v. United States, 568 U.S. --- (2012)). *See also* Lehigh-Northampton
Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) (“There is no bright
line test to determine when government action shall be deemed a de facto taking; instead, each
case must be examined and decided on its own facts.” Id., at 985-86).

1 connection, the Courts are clear that these are “ad hoc” proceedings that require “complex factual
2 assessments.”²² Since these inverse condemnation claims are so fact intensive, it is gross error to
3 grant a motion to dismiss before the landowner has the opportunity to fully present all facts, after
4 discovery, to the court.

5 Here, this Court dismissed the Landowners’ inverse condemnation claims, which require a
6 “complex factual assessment,” without allowing the Landowners to appear and present these facts
7 in the context of an inverse condemnation hearing. This is clear error. Accordingly, this Court
8 should allow reconsideration so that the “complex factual assessment” may be presented and this
9 case can be decided on the facts.

10 **8. This Court Should Grant Reconsideration Because This Court’s Order Violates**
11 **Inverse Condemnation Law that Requires a Finding of a Taking**

12 As mentioned above, the Landowners have concurrently filed a motion for summary judgment
13 on the inverse condemnation claims. That motion clearly shows that not only was it error to dismiss
14 the Landowners’ inverse condemnation claims, but this Court should grant summary judgment on
15 liability for the inverse condemnation claims. Accordingly, this is an additional grounds to grant
16 reconsideration of this Court’s order dismissing the Landowners’ inverse condemnation claims.

17 **9. This Court’s Order Amounts to a Judicial Taking**

18 Considering the Nevada Supreme Court’s recent order recognizing and affirming the
19 development rights in the Landowners’ Property since 1986, if this Court elects to follow the
20 Crockett order that entirely ignores the Landowners’ hard zoning and vested right to develop, this
21 will be a judicial taking of the 35 Acre Property. The United States Supreme Court has held that
22 judicial action that “recharacterizes as public property what was previously private property is a
23 judicial taking.”²³ The Court explained that this is a proper taking claim, because the Taking Clause
24 is concerned with the “act” that results in the taking and does not focus on the particular
25 “government actor,” meaning the judiciary also may engage in taking actions.²⁴ Application of the

26 ²² City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 720 (1999).

27 ²³ Stop the Beach Renourishment, Inc.v. Florida Dept. of Env. Protec., 130 S.Ct. 2592
28 (2010).

²⁴ Id., at 2601.

1 Crockett order in this case would amount to a judicial taking, because the order would be applied
2 to recharacterize the Landowners' 35Acre Property from a hard zoned residential property with the
3 vested "rights to develop" (as confirmed by the Nevada Supreme Court) to a public park / open space
4 with zero developable units. This is yet another grounds to grant reconsideration of this Court's
5 order dismissing the Landowners' inverse condemnation claims.

6 **CONCLUSION**

7 Based on the foregoing, it is respectfully requested that this Court grant rehearing /
8 reconsideration of its order dismissing the Landowners' inverse condemnation claims.

9 DATED this 11th day of December, 2018.

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

11 By: /s/ James J. Leavitt

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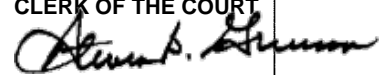
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Petitioners,

v.

Case No. A-17-758528-J
Dept. No. 16

**MOTION FOR A NEW TRIAL
PURSUANT TO NRCP 59(e)**

AND

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

Defendants.

**MOTION TO ALTER OR AMEND
PURSUANT TO NRCP 52(b)
AND/OR RECONSIDER THE
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

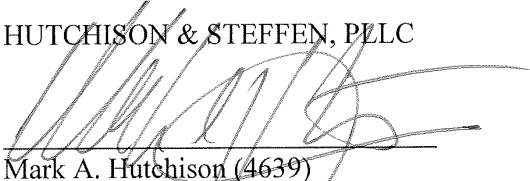
AND

**MOTION TO STAY PENDING
NEVADA SUPREME COURT
DIRECTIVES**

8
9 Petitioner 180 Land Co, LLC ("Petitioner" or "180 Land") moves the Court for a new
10 trial pursuant to NRCP 59(e), to alter or amend the judgment pursuant to NRCP 52(b), to
11 reconsider its findings of fact and conclusions of law on the petition for judicial review pursuant
12 to EDCR 2.24. Alternatively, Petitioner moves to stay these proceedings pending Nevada
13 Supreme Court directives. This motion is based on the following points and authorities, the
14 attached exhibits, and any oral argument the Court may entertain.

15 DATED this 13th day of December, 2018.

16 HUTCHISON & STEFFEN, PLLC

17 
18 Mark A. Hutchison (4639)
19 Joseph S. Kistler (3458)
20 Matthew K. Schriever (10745)

21 *Attorneys for Petitioner*
22 *180 Land Co, LLC*
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Dated this 13th day of December, 2018.

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iii

1 **POINTS AND AUTHORITIES**

2 **1. Introduction.**

3
4 On November 21, 2018, the Court entered Findings of Fact And Conclusions of Law
5 (the “Decision”) drafted by the City denying 180 Land’s Petition for Judicial Review and
6 dismissing 180 Land’s severed claims against the City for inverse condemnation. Both of
7 these determinations were erroneous as a matter of law and both of the determinations were
8 issued without consideration of the recent Nevada Supreme Court decision that directly
9 impacts and contradicts this Court’s decision. Accordingly, this Court should reconsider the
10 Decision and issue relief as requested in this motion.¹

11 **2. Factual Overview.**

12 This is one of five cases currently pending in the Nevada judicial system regarding the
13 development of certain land zoned for residential development of up to 7 units per acre and
14 formerly operated as the Badlands Golf Course in Clark County, Nevada (the “Property” or
15 “Residential Zoned Property”). The Residential Zoned Property comprises approximately 250
16 acres on eight parcels located in the City of Las Vegas (the “City”). The various parcels have
17 separate and distinct owners (each, a “Landowner,” collectively, the “Landowners”): (1) 180
18 Land owns approximately 180 acres; and (2) Seventy Acres LLC (“Seventy Acres”) owns
19 approximately 70 acres. The Landowners have submitted separate and distinct applications for
20 various parcels to develop multi-family and single-family residential properties.
21

22 This petition for judicial review concerned four land development applications
23 (“Applications”) regarding a portion of the Residential Zoned Property, approximately 35 acres
24 of 180 Land’s property (the “35 Acre Property”) to be developed into 61 large single family
25 residential lots (the “61 Large Lots”). The Petitioner did not seek zoning or rezoning of the 35
26 Acre Property since it is already zoned RPD 7 allowing development of up to 7 units per acre.
27

28 ¹ A motion for a new trial, to alter or amend and/or reconsider the findings of fact and conclusions of law
related to the dismissal of the inverse condemnation claims pursuant to NRCP 52(b), 59, and 60 and EDCR
2.24 is filed separately and concurrently with this Motion.

1 In fact, neither the City nor the intervening Queensridge homeowners deny that the Property is
2 zoned RPD 7. Rather, the opposition essentially claims that the zoning is meaningless.

3 Petitioner filed this request for judicial review after the City Council denied the
4 Applications contrary to the legal framework or correct application of NRS 278 and Title 19 of
5 the Las Vegas Municipal Code. This decision by the City Council specifically ignored the
6 recommendations of approval and analysis by both the City Planning Department Staff and the
7 Planning Commission and instead took an arbitrary and capricious position that development
8 plans for the entire 250 acre Residential Zone Property needed to be presented to the City at
9 one time rather than in market-driven separate applications for the various independent parcels
10 This position that is neither codified by the laws nor accepted as general practice standards of
11 development. In fact, the City assured the Landowner that after two years of working on
12 development of the entire 250 acres of Residential Zoned Property, a comprehensive plan
13 would be approved. This was the basis used to deny the Petitioner of its constitutional right to
14 develop the 35 Acre Property under its already approved zoning. A month after the denial, the
15 City likewise denied the development agreement submitted for the entire 250 Acres because
16 Councilman Seroka had taken office and completely disregarded the nearly two and a half
17 years of work done by the experienced City staff including the City Attorney, Planning
18 Department, and Planning Commission and replaced their work with his own legal opinions.²
19 The Decision of this Court was entered following a hearing on June 29, 2018. After the
20 hearing and related post-hearing briefing, but before entry of the Decision, *the Nevada*
21 *Supreme Court on October 17, 2018 affirmed earlier orders by the Honorable Judge*
22 *Douglas E. Smith in favor of the Landowners in related Case No. A-16-739654-C that*
23 *involved 100% of the Residential Zoned Property.*³ Specifically, the Nevada Supreme Court
24
25

26 ² Councilman Seroka ran on a platform of never allowing development on the 250 acre Residential Zoned
27 Property. His reasons for denial were nothing more than a façade to disguise his intent to entirely prevent
28 development on the Property. None of Seroka's claimed legal basis fell under NRS chapter 278 or LVMC
Title 19. See Exhibit 1 pages 144-155 August 2, 2017 Transcript of City Council Hearing.

³ See Exhibits 2, 3, 4, and 5, which chronologically provides the two Judge Smith Orders and the two
Nevada Supreme Court decisions affirming those orders. Moreover, the two Judge Smith Orders are part

1 affirmed Judge Smith's two decisions that the Landowners have the vested right to develop the
2 Residential Zoned Property ("Affirmed Smith Orders").⁴ The Affirmed Smith Orders predate a
3 a decision made by Judge Crockett ("Judge Crockett Decision")⁵ which is repeatedly
4 referenced and heavily relied upon in this Court's Decision. The Judge Crockett Decision is
5 irreconcilable with the Affirmed Smith Orders, is pending review by the Nevada Supreme
6 Court, and the opening brief has been filed.

7 The underlying Affirmed Smith Orders⁶ specifically found, "*Notwithstanding any*
8 *alleged 'open space' land use designation, the zoning on the GC Land [Residential Zoned*
9 *Property], as supported by the evidence, is R-PD7"* and **rejected** the argument that "suggests
10 the land is 'zoned' as 'open space' and that they [Queensridge homeowners] have some right to
11 prevent any modification of that alleged designation under NRS 278A."⁷ These conclusions,
12 again, are at odds with the Judge Crockett Decision, which the Court concluded was entitled to
13 preclusive effect in its Decision.
14

15 Given these conflicting decisions, the only case that can be relied on as the law of the
16 land in relation to development of any of the 250 acre Residential Zoned Property is the recent
17 Nevada Supreme Court decision affirming Judge Smith's order specifically holding that the
18 Intervenor/Queensridge owners have no right or standing to challenge development because
19 the Property has always been zoned RPD 7 with the intent to develop, and hard zoning trumps
20 any other conflicting land use plan designation.⁸

21 As a result of the recent decisions by the Nevada Supreme Court, this Court should
22 reconsider its Decision and grant the relief requested by Petitioner in the petition for judicial
23 review in line with the Affirmed Smith Orders.
24

25 of the record and referenced in this brief by the "ROR" cites when applicable. See *Peccole v. Fore Stars,*
26 *Ltd.*, 2018 WL 5095389 (Nev. 2018) (unpublished).

27 ⁴ *Id.*

⁵ See Exhibit A of Intervenor's Answering Brief.

⁶ ROR034710-ROR034734 and ROR034775-ROR034816.

⁷ ROR034710-ROR034734 at Finding #42 (emphasis supplied).

⁸ See Exhibits 2, 3, 4, and 5.

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1 On June 29, 2018, this Court heard oral argument on the Petition for Judicial Review.
2 During that hearing, this Court made specific statements that it could not change the law: “One
3 thing I can’t do is this: I can’t rewrite the statute; right?”¹¹ Yet by this Court’s Decision, it did in
4 fact change the law and adopted the argument that the land use designation governs the zoning
5 in direct contravention of NRS 278.349. Finally, this Court adopted findings of fact and
6 conclusions of law (“FFCL”) submitted by the City that belies the record in this matter, the
7 Nevada Revised Statutes, Nevada case law, and Title 19 of the Las Vegas Municipal Code.¹²

8 Importantly, these FFCL although submitted by the City are in complete contravention
9 of the City’s previously publicly stated and legally submitted positions of the interpretation of
10 their own code. In other words, the City, after three years of legally and factually supported
11 positions of approval of the development applications, now rejects their own position and their
12 own interpretation of the Nevada Revised Statutes and the Unified Development Code of the
13 Las Vegas Municipal Code. The City’s drastic change in its legal position should be rejected by
14 this Court as it conflicts with the Affirmed Smith Orders.
15

16 **A. The Residential Zoned Property was Never Part of the Queensridge CIC and**
17 **Likewise is Not Part of the Peccole Ranch Master Planned Community.**

18 The Queensridge Master Plan is a common interest community organized under NRS
19 116 (“Queensridge CIC”) and is governed by the Master Declaration of Covenants, Conditions,
20 Restrictions and Easements of Queensridge (“Queensridge Master Declaration”), recorded with
21 the Clark County Recorder’s Office on May 30, 1995.¹³ The 35 Acre Property was never
22 annexed into the Queensridge CIC and is not a part of the Queensridge CIC.¹⁴ Neither is the
23

24 ¹¹ Hearing Transcript, June 29, 2018, page 69 lines 24-25, page 70 lines 1-10.

25 ¹² For example, the City deceptively and disingenuously crafted the findings of facts and conclusions of law
26 to omit the fact that the City approved the 17 Acre Applications (Rezoning and General Plan Amendments)
and specifically found that a Title 19 “major modification” was *not required* by those applications.
ROR733-735.

27 ¹³ ROR009178-009327 (Master Declaration of Covenants, Conditions, Restrictions and Easements for
Queensridge).

28 ¹⁴ ROR023323 (Queensridge CIC Annexation History Property Per Master Declaration, showing the land
within the Queensridge CIC, and the land within the Queensridge CIC does not include the Residential
Zoned Property); ROR034710-ROR034734 at finding #53.

1 remaining acreage of Property as the Queensridge Master Declaration states in Recital B that
2 “[t]he existing 18-hole golf course commonly known as the ‘Badlands Golf Course’ is not a part
3 of the Property or the Annexable Property.”¹⁵ After the Badlands Golf Course was expanded to
4 27 holes, the Queensridge Master Declaration was recorded on August 16, 2002 entitled the
5 “Amended and Restated Queensridge Master Declaration,” stating “[t]he existing 27-hole golf
6 course commonly known as the ‘Badlands Golf Course’ is not a part of the Property or the
7 Annexable Property.”¹⁶ This is further evidenced in the recorded final map of the Queensridge
8 CIC showing all parcels within that community.

9 The Peccole Ranch Master Plan is a common interest community organized under NRS
10 116 (“Peccole Ranch CIC”) and is governed by the Master Declaration of Covenants,
11 Conditions and Restrictions (Peccole Ranch Master Declaration). The 250 acre Residential
12 Zoned Property was never annexed into the Peccole Ranch Master Planned Community, and
13 thus is likewise not a part of the Peccole Ranch Master Planned Community.¹⁸

14 On January 26, 1996, the land that comprised Peccole Ranch Phase II was expressly
15 defined by the filing of the Peccole Ranch Phase II Final Map Book 71 Page 76. The entirety of
16 the land that comprised Peccole Ranch Phase II was depicted on the Peccole Ranch Phase II
17 Final Map, and was south of Charleston. No land north of Charleston Boulevard was included
18 in Peccole Ranch Phase II, nor annexed into the Peccole Ranch CIC. Neither the Queensridge
19 CIC nor the Residential Zoned Property were annexed into the Peccole Ranch CIC, and neither
20 are part of “Peccole Ranch.” Accordingly, the Peccole Ranch Master Declaration does not and
21 cannot govern the Residential Zoned Property.

22 Additionally, the Peccole Ranch Master Plan is *not* a “Special Area Plan” as defined in
23 the City of Las Vegas 2020 Master Plan, and thus does not require the specifically defined
24

25
26
27 ¹⁵ ROR019961-019962 (portion of Master Declaration of Covenants, Conditions, Restrictions and
Easements for Queensridge, at Recital B); ROR034710-ROR034734 at finding #71.

28 ¹⁶ ROR019959-019960 (Amended and Restated Master Declaration of Covenants, Conditions, Restrictions
and Easements for Queensridge, at Recital B); ROR034710-ROR034734 at finding #72.

¹⁸ See Exhibit 7, PR Master Declaration and final map of Peccole Ranch.

1 mechanism called a “Major Modification.”¹⁹ The only other time that a major modification is
2 required under the code is for Planned Development (“PD”) districts. It is uncontested that the
3 Residential Zoned Property is not a PD district, but is a R-PD district, and thus a major
4 modification does not apply. The R-PD7 zoning has been repeatedly recognized in the
5 Affirmed Smith Orders. Even if the 35 Acre Property were in a “Special Area Plan” or a PD
6 district, the land use classification for the 35 Acre Property in the Peccole Ranch Master Plan
7 and the Queensridge CIC Master Plan is RESIDENTIAL.

8 Simply put, there is nothing to modify. The land use under R-PD7 and the Applications
9 is RESIDENTIAL, which is the same land use classification for the property as in the Peccole
10 Ranch Master Plan and the Queensridge CIC Master Plan (which expressly states it is
11 “SUBJECT TO DEVELOPMENT” and depicts residential lots on the Queensridge Design
12 Guidelines). The “PR-OS” land use designation under the 2020 Master Plan is not only
13 irrelevant because it is superseded by the underlying zoning under NRS 278.349(3)(e), but City
14 Attorney Brad Jerbic admitted on the record that the City is unable to establish that the PR-OS
15 land use designation was legally placed on the Property.
16

17 **B. The Clark County Assessor Determined that the Residential Zoned Property is**
18 **Residential rather than Open Space.**

19 The Residential Zoned Property was leased to a golf course operator although the golf
20 course land use on the Property was never legally approved by the City of Las Vegas under a
21 required plat plan or site development review. On December 1, 2016, the golf course lease was
22 terminated by the golf course operator, the golf course operator vacated the Residential Zoned
23 Property, and the Residential Zoned Property ceased to be used as a golf course.

24 _____
25 ¹⁹ “When a land use change is requested within a special area plan, a Major Modification is required. A
26 Major Modification is similar to a General Plan Amendment, but instead of amending a land use
27 designation within a sector plan, the special land use designation of a parcel within a special area plan
28 (Town Center, Lone Mountain, Grand Teton Village etc. is amended. A property owner must submit a
Major Modification (MOD) application for review by city staff, Planning Commission, and approval by
City Council. A Major Modification application is not bound by the same statutory requirements as
General Plan Amendments. The procedure for application, review, and approval of modifications to
special area plans should be similar to that for Rezoning applications.” See Exhibit 8, 2020 Master Plan
Land Use Element Page, pp. 52 & 53.

1 As a result of the Residential Zoned Property's cessation of use as a golf course, the
2 *Clark County Assessor determined that the 35 Acre Property (1) no longer fell within the*
3 *definition of open-space real property, as defined by NRS 361A.040; (2) no longer is deemed to*
4 *be used as an open-space use under NRS 361A.050, in accordance with NRS 361A.230; (3) has*
5 *been disqualified for open-space use assessment; and (4) has been converted to a higher use, in*
6 *accordance with NRS 361A.031 (collectively, the "Clark County Assessor Determinations").*²⁰
7 *On November 30, 2017, the State of Nevada State Board of Equalization approved, by*
8 *unanimous vote, the Clark County Assessor Determinations that the taxes on the 35 Acre*
9 *Property are assessed by the Clark County Assessor based on the Assessor Land Use*
10 *Classification. "12.00 – Vacant – Single Family Residential."*²¹ Thus, Clark County and the
11 State of Nevada Board of Equalization have determined that the Residential Zoned Property is
12 *not open space and that it is residential property and has been and continues to be taxed as*
13 *such.*

14
15 As a result of the cessation of golf course operations on the Residential Zoned Property
16 and the conversion to a higher use(s), meaning a use other than agricultural use or open-space
17 use, Petitioner was required by Nevada law to pay property taxes for the tax years commencing
18 in 2011 through the present based on the value of the higher use: "Vacant – Single Family
19 Residential."²² The Residential Zoned Property use is therefore neither golf course nor open
20 space. The Landowner, per the Clark County Assessor determinations, pay property taxes
21 assessed based on its zoning allowing residential use.

22 ///

23 ///

24
25 _____
26 ²⁰ Clark County Assessor Determinations, dated September 21, 2017 (emphasis supplied). Judicial notice
of this document was requested by Petitioner in its filed June 28, 2018 request.

27 ²¹ Notice of Decision from State Board of Equalization, dated November 30, 2017; Clark County Assessor's
Office "General Information" for the 35 Acre Property ("Land Use: 12.00 – Vacant – Single Family
Residential") (emphasis supplied). Judicial notice of this document was requested by Petitioner in its filed
28 June 28, 2018 request.

²² Letter from Clark County Assessor to 180 Land Co LLC, dated February 22, 2017. Judicial notice of this
document was requested by Petitioner in its filed June 28, 2018 request.

1 **C. The City Planning Staff and the Planning Commission Both Determined That 180**
2 **Land's Applications Satisfied All Legal Requirements for Residential Development.**

3 In December 2016, Petitioner submitted the Applications to the City (Tentative Map
4 "TMP" 68482;²³ Site Development Review "SDR" 68481;²⁴ Waiver "WVR" 68480;²⁵ and
5 General Plan Amendment "GPA" 68385²⁶) to develop the 35 Acre Property. The Applications
6 were for the approval of the 61 Large Lots with a density of 1.79 dwelling units per acre.²⁷ A
7 rendering of the 61 Large Lots is shown at ROR024403-024404. City Planning Staff ("Staff")
8 reviewed the Applications and issued a comprehensive Staff Report.²⁸ After review and analysis
9 of the LVMC Title 19 and all other applicable standards of review, Staff recommended the
10 approval of the Applications for the 61 Large Lots on the 35 Acre Property via a staff report
11 detailing their findings.²⁹

12 On February 14, 2017, the Planning Commission reviewed the Applications for the
13 development of the 61 Large Lots on the 35 Acre Property and approved Petitioner's TMP
14 68482, SDR 68481, and WVR 68480 applications.³⁰ A majority of the Planning Commission
15

16
17 ²³ ROR024399-024401 (Statement of Financial Interest and Application for TMP 684482).

18 ²⁴ ROR024391-024394 (Statement of Financial Interest and Application for SDR 68481).

19 ²⁵ ROR020162-020164 (Statement of Financial Interest and Application for WVR 68480).

20 ²⁶ ROR022172-022174 Statement of Financial Interest and Application for GPA 68385). Petitioner
21 submitted GPA 68385 at the request of the City. The applications substantially complied with the Las
22 Vegas 2020 Master Plan ("CLV Master Plan"). However, the CLV Master Plan designation for
23 Petitioner's Parcels is PR-OS, which stands for "Parks, Recreation and Open Space." The Mechanism for
24 matching the designation to the zoning is called a General Plan Amendment ("GPA"). Because the City
25 prefers that the land use designation and the zoning match, the City requested that a GPA be submitted
26 along with the development applications. ROR 24278. However, the GPA makes no difference in
27 consideration of applications that comport with previously granted zoning. This is because neither the
28 filing of a GPA by Petitioner, nor the approval of the GPA by the City, is legally required. NRS 278.349
provides, in pertinent part, "(3) The governing body, or planning commission if it is authorized to take final
action on a tentative map, shall consider; (e) "Conformity with the zoning ordinances and master plan,
except that if any existing zoning ordinance is inconsistent with the master plan, **the zoning ordinance
takes precedence.**" NRS 278.349(3)(e)(emphasis supplied). See ROR033987 (City Attorney Brad Jerbic
"zoning trumps [general plan.]").

29 ²⁷ ROR022145-022171 Conditions and Staff Report, ("The applicant is proposing a 61-lot gated single
family residential development on a portion of a large lot currently developed as a golf course generally
located at the southeast corner of Alta Drive and Hualapai Way....The proposed development would have a
density of 1.79 dwelling units per acre, with an average lot size of 19,871 square feet.").

30 ²⁸ See ROR022145-022171 (Conditions and Staff Report).

²⁹ See *id.* (Conditions and Staff Report at ROR022145, 022156-022159).

³⁰ ROR033924-034003 (Transcript of Planning Commission Hearing on Petitioner's applications, February
14, 2017, at lines 2112-13, 2225-26, 2233).

1 voted to approve GPA 68385, but the motion to approve failed because Title 19 requires a
2 supermajority to approve a general plan amendment.³¹ Thus, City Staff and the Planning
3 Commission determined that the 35 Acre Property applications were consistent with the R-PD7
4 zoning and met all legal requirements for proposed residential development. This Court gave
5 Staff's and the Planning Commission's recommendations no weight in issuing its Decision and
6 disregarded the existing residential zoning on the Property, which has now been affirmed by the
7 Nevada Supreme Court.

8 **D. Contrary to Staff, Planning Commission, City Attorney, and Planning Director**
9 **Evidence, the City Council Denied the Applications.**

10 On June 21, 2017, the City Council held a hearing on the Applications. During
11 that hearing, City Attorney Brad Jerbic acknowledged that the Applications were proper
12 and could not be contingent upon a master development agreement on the entirety of the
13 Residential Zoned Property.
14

15 There happen to be four other items that are not related to the
16 Development Agreement, they are standalone items: Items 131,
17 132, 133, and 134, that all relate to a request for 61 individual
home sites on the property known as Badlands.

18

19 But I don't want you to think those requests that accompany that
20 Development Agreement in 2016 have any bearing, in my opinion,
on these four requests today. *And I just want to make that part of
the record.*³²

21 Tom Perrigo, the City's Executive Director of Community Development, advised
22 the City Council that Petitioner's proposed development on the 35 Acre Property
23
24
25

26 ³¹ ROR033924-034003 (Transcript of Planning Commission Hearing on Petitioner's applications, February
27 14, 2017, at lines 2094-2106). Approval of the GPA was a ministerial act not required by law or code
because NRS 278.349 (3)e provides "...the zoning ordinance takes precedence." Also, the GPA covered all
28 of the Residential Zoned Property and the Planning Commission stated that the GPA should be for the 35
Acre Property only.

³² ROR024466-024575 (Transcript of City Council Hearing, June 21, 2017, at lines 149-51, 1096-98)
(emphasis supplied).

1 complied with the City's standards, and therefore Staff and the Planning Commission
2 recommended approval.³³

3 In addition to the lack of need for a master development agreement regarding the
4 35 Acre Property to approve the Applications discussed at the June 21, 2017 meeting,
5 there also was discussion regarding whether a "major modification" of the Peccole Ranch
6 Master Plan regarding the Residential Zoned Property was necessary to approve the
7 Applications.³⁴ In response, Director Perrigo explained that no "major modification" was
8 required.
9

10
11 City Attorney Brad Jerbic: But let me ask a question of the
12 Planning Director. Do you believe a major modification is required
13 for this application, and if so, why and if not, why not?

14 Planning Director Tom Perrigo: *Staff spent quite a bit of time*
15 *looking at this, and we do not believe a major modification is*
16 *required as part of this application.* First and foremost, the Master
17 Plan adopted by City Council specifically calls out those master
18 plan areas that are required to be changed through a major
19 modification. *This Peccole Ranch is not one of those.*³⁵ Yes, some
20 of the exhibits you've been shown discuss Peccole Ranch and a
21 whole bunch of other areas as being master plan areas, but it also
22 specifically calls out only those that require a major modification.
23 So that's first. *Peccole Ranch is not one of them.* Second, there
24 have been, and some of the exhibits you've seen have shown
25 where parcels have been changed from commercial to multi-
family, from multi-family to residential and so on. *There have been*
six actions on this property that were done without a major
modification for that very reason that it's not required. Those
actions were done through a general plan amendment and a
rezoning. What's before you now, that you're considering is a
general plan amendment, and just like those other previous actions,
they did not require a major modification.³⁶

26 ³³ ROR024466-024575 (Transcript of City Council Hearing, June 21, 2017, at lines 566-87).

27 ³⁴ ROR024222-ROR024241.

28 ³⁵ "Special area plans in which a Major Modification is required to change a land use designation include the following: Grand Canyon Village, Grand Teton Village, Cliff's Edge (Providence), Lone Mountain, Town Center, Lone Mountain West, Las Vegas Medical District, Kyle Canyon Gateway, Summerlin)." See Exhibit 8, 2020 Master Plan Land Use Element, pg. 53.

³⁶ ROR024241 (June 21, 2017 Transcript)(emphasis supplied).

1 Despite Staff's and the Planning Commission's recommended approvals, the City
2 Council denied the Applications on June 21, 2017 by a 4-3 vote.³⁷ The Court, in its
3 Decision, similarly rejected the opinions of these land use experts and thereby committed
4 clear error.

5
6 Following the City Council's vote of denial on June 21, 2017, Petitioner was
7 informed by letters dated June 28, 2017, that the Applications were denied based upon
8 the following three reasons:

- 9 (1) Significant public opposition to the proposed development
10 ("Public Opposition");
11 (2) Concerns over the impact of the proposed development on
12 surrounding residents ("Resident Impact"); and
13 (3) Concerns on piecemeal development of the Master
14 Development Plan area rather than a cohesive plan for the entire
15 area ("Piecemeal Development").³⁸

16 This petition for judicial review was thereafter filed timely on July 18, 2017.
17 After briefing and oral arguments, this Court entered its Decision, relying heavily (and
18 erroneously) on the Judge Crockett Decision wherein he held that a Title 19.10.040
19 "major modification" of the Peccole Ranch Master Development Plan was legally
20 required before the City could approve the development applications for those 17 acres.
21 Notwithstanding that the City Attorney opined that the Judge Crockett Decision is "legally
22 improper," the Applications that are the subject of this petition are entirely and materially
23 distinct from those in the Crockett case, as this petition is a review of Applications
24 seeking approval of a Tentative Map utilizing its existing zoning (R-PD7) not a rezoning
25 application (change in land use) as in the Crockett case. This Court's Decision failed to
26 recognize the significant legal distinction that the Applications for the 35 Acre Property
27

28 ³⁷ ROR024303-024305.

³⁸ ROR035183-035186.

1 were not seeking a land use change and thereby rendering the Judge Crockett Decision
2 inapplicable. The Affirmed Smith Orders (affirmed twice by the Nevada Supreme Court)
3 ruled that the Property is R-PD7 zoned for residential use and *is* developable pursuant to
4 NRS 278. The Affirmed Smith Orders govern the Applications over the inapplicable
5 Judge Crockett Decision. Under NRS 278.349(3)(e) zoning supersedes an inconsistent
6 master plan designation.³⁹

8 **E. Judge Smith's Rulings, Affirmed by the Nevada Supreme Court Twice,**
9 **Negate the Judge Crockett Decision and this Court's Decision.**

10 The recent Nevada Supreme Court opinions affirming Judge Smith's two decisions
11 arises out of a lawsuit filed by an individual homeowner in the Queensridge Community
12 (hereinafter "Queensridge Homeowner") to prevent the Landowners from developing any part
13 of the Residential Zoned Property. Similar to the arguments made by the City in this case, the
14 Queensridge Homeowner in that case alleged: (1) the Landowners had no vested right to
15 develop the Residential Zoned Property; and (2) other land use plans or CC&Rs could be
16 imposed to entirely prevent any and all development on the Landowners' Residential Zoned
17 Property.

18 Judge Smith considered significant, extensive briefing and public documents,
19 conducted lengthy hearings, and entertained significant oral argument on these two specific
20 issues and rejected them both in two detailed orders (25 and 42 pages respectively)⁴⁰, holding
21 that: (1) the Landowners' Residential Zoned Property had always been hard zoned residential;
22 (2) the Developer always intended to leave the option for residential development; (3) the
23 Landowners have the "right to develop" their Residential Zoned Property; and, (4) the
24 adjoining property owners in the Queensridge Community had no right to prevent this
25 development. Judge Smith found that the Landowners' vested rights to develop were so clear
26

27
28 ³⁹ ROR034775-ROR034816 at finding # 66.

⁴⁰ See Exhibits 2 and 3.

1 that any challenges to these rights were “frivolous” and “baseless” and thus, awarded the
2 Landowners attorney fees in the amount of \$128,131.22.⁴¹

3 Judge Smith’s relevant specific findings in regard to the Landowners’ vested right to
4 develop the Residential Zoned Property are as follows:

- 5 • On March 26, 1986, a letter was submitted to the City Planning Commission
6 requesting permission to use the Residential Zoned Property for a “golf course,”
7 however, the zoning that was sought was R-PD “as it allows the developer flexibility
8 and the City design control.” “Thus, keeping the golf course [Residential Zoned
9 Property] for potential future development as residential was an intentional part of the
10 plan.”⁴²
- 11 • Even though there is a 1986 map that shows a golf course around the location of the
12 Landowners Residential Zoned Property, “the current Badlands Golf Course
13 [Residential Zoned Property] is not the same as what is depicted on the map”⁴³ and the
14 Landowners “have the right to close the golf course and not water it.”⁴⁴
- 15 • The Zoning Bill No. Z-2001, Ordinance 5353, “demonstrates that the R-PD7 Zoning
16 was codified and incorporated into the Amended Atlas in 2001.”⁴⁵
- 17 • “[T]wo letters from the City of Las Vegas to Frank Pankratz dated December 20,
18 2014, *confirm the R-PD7 zoning on all parcels held by Fore Stars, Ltd.*”⁴⁶
- 19 • “The Court finds that the GC Land [Residential Zoned Property] owned by the
20 Developer Defendants [Landowners] has ‘hard zoning’ of R-PD7. This allows up to
21 7.49 units per acre subject to City of Las Vegas requirements.”⁴⁷
- 22 • “Notwithstanding any alleged ‘open space’ land use designation, the zoning on the
23 GC Land [Residential Zoned Property], as supported by the evidence, is R-PD7.” The
24 Court then rejected the argument that “suggests the land is ‘zoned’ as ‘open space’ and
25 that they [Queensridge homeowners] have some right to prevent any modification of
26 that alleged designation under NRS 278A.”⁴⁸

24 ⁴¹ *Id.* at findings #95 and #102.

25 ⁴² ROR034710-ROR034734 at finding #59.

26 ⁴³ *Id.* at finding #61.

27 ⁴⁴ ROR034775-ROR034816 at finding #26.

28 ⁴⁵ ROR034710-ROR034734 at finding #58; Ordinance 5353 provides “SECTION 4: All ordinances or parts
of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal
Code of the city of Las Vega, Nevada, 1983 Edition, in conflict herewith are hereby repealed.”

⁴⁶ *Id.* at finding #60 (emphasis supplied).

⁴⁷ *Id.* at finding #82; ROR034775-ROR034816 at finding #130.

⁴⁸ ROR034775-ROR034816 at finding #64 and # 132.

- 1 • Judge Smith cited the NRS 278.349(3)(e) language that supports the Landowners’
2 position that the hard residential zoning trumps any other land use designation – such as
3 PR-OS or open space / golf course – that may have been applied at any time to the
Residential Zoned Property.⁴⁹

- 4 • Based upon all of these findings, Judge Smith held “[t]he court finds that the
5 *Developer Defendants [Landowners] have the right to develop the GC Land*
6 *[Residential Zoned Property].*”⁵⁰ This finding was repeated in the subsequent order
7 twice as follows: “The zoning on the GC Land [Residential Zoned Property] dictates its
8 use and *Defendants rights to develop their land*”⁵¹ and the Landowner has the “*right to*
9 *develop their land.*”⁵²

10 Judge Smith then held that neither the Queensridge Community nor the Queensridge
11 Homeowner had the right to control or restrain the development of the Landowners’
12 Residential Zoned Property:

- 13 • The Residential Zoned Property is not a part of the Queensridge Community and,
14 therefore, is not subject to the Queensridge CC&Rs and “cannot be enforced against the
15 GC Land [Residential Zoned Property].”⁵³
- 16 • The Queensridge Community, the geographic area where the [Residential Zoned
17 Property] is located “may, but is not required to, include ... a golf course.”⁵⁴
- 18 • The Queensridge homeowners transfer documents “evidence that no such guarantee
19 [that the Residential Zoned Property would remain a golf course] was made and that
20 Plaintiffs were advised *that future development to the adjoining property [Residential*
21 *Zoned Property] could occur, and could impair their views or lot advantages.*”⁵⁵

22 Judge Smith considered public records, extensive briefing, conducted full hearings, and
23 heard extensive oral argument on the central issue of whether the Landowners have the vested
24 right to develop the Residential Zoned Property, and concluded in clear rulings that the
25 Landowners have the “right” to develop their land and no other CC&Rs, land designations, or

26 ⁴⁹ *Id.* at finding # 66.

27 ⁵⁰ *Id.* at finding #81 (emphasis supplied).

28 ⁵¹ *Id.* at finding #61 (emphasis supplied).

⁵² *Id.* at finding #130 (emphasis supplied).

⁵³ ROR034710-ROR034734 at finding #51, #53-57, #62-79; ROR034775-ROR034816 at findings #5-7,
#15-16, #24, #29, #31, #38-40, #64-65, #68-70, #88, #102, #120-124, and #135.

⁵⁴ ROR034710-ROR034734 at finding #70.

⁵⁵ ROR034775-ROR034816 at finding #13, #38, and #53 (emphasis supplied).

1 other impediments may prevent that development. The Court erroneously failed to consider
2 these findings in the Affirmed Smith Orders in rendering its Decision.

3 In the Nevada Supreme Court's affirmance of Judge Smith's decisions, the Court held
4 "[b]ecause the record supports the district court's determination that the golf course
5 [Residential Zoned Property] was not part of the Queensridge community under the original
6 CC&Rs and public map and records, regardless of the amendment, we conclude the district
7 court did not abuse its discretion in denying appellants' motion for NRCP 60(b) relief."⁵⁶ The
8 Court continued, "[a]ppellants filed a complaint alleging the golf course land [Residential
9 Zoned Property] was subject to the CC&Rs when the CC&Rs and public maps of the property
10 demonstrated that the golf course land [Residential Zoned Property] was not."⁵⁷ The Supreme
11 Court also upheld the award of attorney fees in the Landowners' favor in the amount of
12 \$128,131.22.⁵⁸ Finally, the Supreme Court denied a request for rehearing further holding that
13 the Queensridge CIC has no control over the Property as it "was never annexed into the
14 Queensridge master community."⁵⁹ Likewise the 35 Acre Property was not a part of the
15 Peccole Ranch Phase II Final Map, never annexed into the Peccole Ranch CIC, and is not
16 governed by the Peccole Ranch Master Declaration. As is fully discussed below, this Court's
17 Decision that the Landowners did not have the vested right to have their residential
18 Applications approved violates the controlling these Nevada Supreme Court decisions specific
19 to the Property.
20

21 **4. Legal Standard.**

22 NRCP 59(a) is the proper vehicle for seeking a new trial or for challenging a pretrial
23 decision of a district court resolving an action pending before it. *See AA Primo Builders, LLC*
24 *v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010) (approving motion for a new
25

26
27 ⁵⁶ Exhibit 4, pg. 2.

28 ⁵⁷ *Id.*, pg. 4.

⁵⁸ *Id.*

⁵⁹ See Exhibit 5 Order Denying Rehearing, pg. 2.

1 trial following dismissal of a complaint). “Among the basic grounds for a Rule 59(e) motion
2 are correct[ing] manifest errors of law or fact, newly discovered or previously unavailable
3 evidence, the need to prevent manifest injustice, or a change in controlling law.” *AA Primo*
4 *Builders*, 126 Nev. at 582, 245 P.3d at 1193.

5 EDCR 2.24 states, in pertinent part:

6 A party seeking reconsideration of a ruling of the court...must file
7 a motion for such relief within 10 days after service of written
8 notice of the order or judgment unless the time is shortened or
9 enlarged by order. A motion for rehearing or reconsideration must
be served, noticed, filed and heard as is any other motion.

10 The Supreme Court of Nevada has similarly stated, “A district court may reconsider a
11 previously decided issue if [1] substantially different evidence is subsequently introduced or
12 [2] the decision is clearly erroneous.” *Masonry and Tile Contractors Ass’n of Southern*
13 *Nevada v. Jolley, Urga & Wirth, Ltd.* 113 Nev. 737, 741 (Nev. 1997). A court may rehear a
14 motion even if “the facts and the law [a]re unchanged” because “the judge i[s] more familiar
15 with the case by the time the second motion [i]s heard[.]” *Harvey’s Wagon Wheel, Inc. v.*
16 *MacSween*, 96 Nev. 215, 218 (Nev. 1980). In this case, the Decision is both clearly erroneous
17 and violates controlling Nevada Supreme Court precedent for this very Residential Zoned
18 Property.

19 **5. The Court Should Reconsider Its Decision Because it is Clearly**
20 **Erroneous.**

21 **A. The Court’s Reliance on the Judge Crockett Decision that is on Appeal to the**
22 **Nevada Supreme Court was Clearly Erroneous.**

23 The Judge Crockett Decision essentially changed the law in the State of Nevada by
24 holding that a land use designation governs zoning while NRS 278.349 emphasizes that zoning
25 takes precedence. *See* NRS 278.349(3)(e). The Judge Crockett Decision further held that a
26 “conceptual” plan governed property that was not annexed into the master planned community
27 CC&Rs and used the “conceptual” plan as a non-recorded encumbrance on the Property
28 thereby invalidating the zoning and well-established law that any encumbrances on real

1 property must be recorded on that property. In furtherance of these findings, Judge Crockett
2 erroneously held that the Property is governed by Planned Development or a “PD” District
3 under Title 19.10.040 and thus subject to the procedural mechanism of a “major modification,”
4 which is identical to a rezoning. Rezoning is precisely what the City approved in the 17 acre
5 applications at issue before Judge Crockett. The Judge Crockett Decision directly contradicts
6 the Nevada Revised Statutes, Title 19 of the LVMC, and the Affirmed Smith Orders.⁶⁰

7 The Affirmed Smith Orders correctly rely upon the hard R-PD7 residential zoning
8 applicable to the Residential Zoned Property since 2001 instead of a “conceptual” plan and
9 held that: (1) the Landowners have the vested “right to develop” the Residential Zoned
10 Property (which includes the 35 Acre Property as well as the 17 acres addressed by the Judge
11 Crockett Decision) with residential use, because the entirety of the Property has always been
12 zoned residential since 2001, the developer’s intent was always to develop the property
13 residentially, and hard zoning trumps any other land use plan designation (such as the Peccole
14 Ranch “conceptual” plan); (2) the Residential Zoned Property was never part of the
15 Queensridge CIC or subject to any Queensridge CC&Rs; (3) the Queensridge homeowners
16 have no legal rights whatsoever to the Residential Zoned Property; (4) no Queensridge CC&Rs
17 or other City plan may be invoked to prevent this development; and (5) the Landowners
18 properly proceeded with the residential development by filing the appropriate parcel maps.⁶¹
19 Accordingly, consistent with the Affirmed Smith Orders, no Title 19 “major modification”
20 application is necessary – the Residential Zoned Property is already zoned residential, its
21 intended use has always been residential, and the Landowners have the “right to develop” the
22 property for this residential use.

23 It is significant that Judge Smith found that the Property is zoned R-PD7. Therefore,
24 there is nothing to “modify.” Even if the defunct Peccole Ranch Master Plan did apply to the
25 35 Acre Property, it expressly designates the 35 Acre Property as “residential.” The defunct
26 Peccole Ranch Master Plan, repealed by Ordinance 5353, only contemplated an 18 hole golf

27
28 ⁶⁰ ROR034710-ROR034734 and ROR034775-ROR034816.

⁶¹ *Id.*

1 course, and the 35 Acre Property was specifically designated as residential acreage on the
2 “conceptual” plan. This Court’s Decision contradicts the Affirmed Smith Orders.

3 It is impossible to reconcile the Judge Crockett Decision and the Affirmed Smith
4 Orders. Just one example shows this. The Affirmed Smith Orders confirms the R-PD7 hard
5 zoning applied by City ordinance to the Property and concludes that there is a “right to
6 develop” the Residential Zoned Property with residential use.⁶² On the other hand, the Judge
7 Crockett Decision entirely ignores the R-PD7 hard zoning and, instead, concludes that the
8 Residential Zoned Property is designated as open space in the City’s Master Plan and thus no
9 residential units are allowed as a result of the master plan land use designation, in conflict with
10 NRS 278.349(3)(e).

11 The Affirmed Smith Orders govern the issue regarding the inapplicability of a “major
12 modification,” as the Property is zoned “R-PD7” not “PD,” and under Nevada law zoning
13 prevails over an inconsistent master plan designation. The Affirmed Smith Orders have been
14 blessed by the Nevada Supreme Court.⁶³ The executive,⁶⁴ legislative,⁶⁵ and judicial⁶⁶ branches
15 of Nevada government all support the Affirmed Smith Orders.

16 The Affirmed Smith Orders leads to the following inescapable conclusions: (1) the
17 Landowners have the vested right to develop the Residential Zoned Property with a residential
18 use because the property is zoned residential, the intent was always to develop the property
19 residentially, and hard zoning trumps any other land use plan designation such as PR-OS (open
20 space/golf course); (2) the Residential Zoned Property never became part of the Master
21 Planned Community of Queensridge, Queensridge CIC, or subject to any Queensridge CC&Rs;
22 (3) Queensridge homeowners have no legal rights whatsoever to the Residential Zoned
23
24

25 ⁶² *Id.*

26 ⁶³ *See* Exhibits 4 and 5.

27 ⁶⁴ *See* 1984 Nev. Op. Atty. Gen. No. 6 at 3 (“Nevada legislature has always intended local zoning
ordinances to control over general statements or provisions of a master plan.”)

28 ⁶⁵ *See* NRS 278.349(3)(e).

⁶⁶ *See* Exhibits 2, 3, 4, and 5.

1 Property; and (4) no Queensridge CC&Rs or other City plan may be invoked to prevent this
2 development.

3 Because the Nevada Supreme Court issued its decision shortly before this Court entered
4 its Decision, neither the parties nor this Court were provided an opportunity to substantively
5 brief or review that decision or its implication on this case. Accordingly, and because this
6 Court's Decision is directly contrary to the Affirmed Smith Orders, this Court must reconsider
7 its Decision and grant the petition for judicial review.⁶⁷

8 **B. The Court's Decision Regarding "Public Opposition" Similarly is Clearly**
9 **Erroneous.**

10 The Court should also reconsider its Decision because public opposition is an
11 insufficient basis for striking a land-use application that is *consistent* with current zoning, in
12 *compliance* with all applicable land use laws and ordinances, and is *compatible* with
13 surrounding property, particularly when the opposition is self-serving, not based on specific
14 and substantiated objections, and not supported by evidence.⁶⁸ This principle is even more

16 ⁶⁷ For example, Finding of Facts #12 & 13 signed by this Court designates the 250 acre Residential Zoned
17 Property as drainage and open space for Phase Two of the Master Plan while the Affirmed Smith Orders
18 clearly holds that the Property is not part of the Queensridge CIC and the Peccole Ranch Phase II Final
19 Map does not include the Residential Zoned Property, nor any property north of Charleston.

20 ⁶⁸ *City of Henderson v. Henderson Auto Wrecking, Inc.*, 359 P2d 743, 743-45 (Nev. 1961); *Stratosphere*
21 *Gaming Corp. v. City of Las Vegas*, 96 P.3d 756, 760-61 (Nev. 2004); *K.G.T. Holdings, LLC v. Parish of*
22 *Jefferson*, 169 So.3d 628, 635 (La. App. 2015) (noting that the weight of public opposition is lessened if the
23 application does not seek a zoning change, is supported by the planning commission, and complies with the
24 governing development standard and criteria); *M.G. Oil Co. v. City of Rapid City*, 793 N.W. 2d 816, 823
25 (S.D. 2011). ("The opinions presented through public comment to the City Council do not satisfy the
26 language in subsection C of the ordinance. The discussion leading up to the vote indicates that the decision
27 by the City Council was not made based upon the criteria specified in the ordinance. The action by the City
28 Council was factually unsupported. Vague reservations expressed by Council members and nearby
landowners are not sufficient to provide factual support of a Board decision. We have also stated that
predictions and prophecies by neighboring property owners that a building when completed will likely
become a nuisance and annoyance cannot serve as a legal reason for local governments to deny a permit to
persons otherwise entitled thereto."); *City of Lowell v. M & N Mobile Home Park, Inc.*, 916 S.W. 2d 95
(Ark. 1996) ("The opinion of local residents, when it reflects logical and reasonable concerns, is an
appropriate factor for a planning commission or a city council to consider in zoning cases, and can help
form a rational basis for a city's legislative decision-making. . . . However, the mere fact of public
opposition to a zoning application will not supply a rational basis for denial of an application. The public
opposition must reflect logical and reasonable concerns. If the rule were otherwise, public opinion *by itself*
could justify the denial of constitutional rights and those rights would thus be meaningless.") (emphasis
supplied); *Trisko v. City of White Park*, 566 N.W.2d 349, 355-57 (Minn. Ct. App. 1997) ("A municipality
must base the denial of a conditional use permit on something more concrete than neighborhood opposition
and expression of concern for public safety."); *Scott Cty. Lumber Co. v. City of Shakopee*, 417 N.W.2d 721,

1 applicable to this Petition, when the opposition raised no issues that were not fully addressed
2 and fully rebutted by the long-time, experienced land-use professionals of the City Staff in
3 analyzing the considerations under both NRS 278 and Title 19. The development applications
4 for the 35 Acre Property were completely compatible and entirely consistent with the existing
5 and abutting residential lots.

6 The “Public Opposition” in this case, in large part, concerned the entire Residential
7 Zoned Property and the lack of a master development agreement (discussed *infra*), not the very
8 specific 35 Acre Property at issue. “Public Opposition” was always present for every
9 application filed for development of the Residential Zoned Property. The City Council
10 arbitrarily chose to ignore Public Opposition at times and rely upon it for application denials at
11 other times. Moreover, as known beyond doubt, what the “Public Opposition” wants in this
12 case is no development whatsoever on any of the Residential Zoned Property, notwithstanding
13 that the “Public Opposition” received disclosures at the time of the purchase of their
14 residences, and the Queensridge CC&Rs stated that the Residential Zoned Property was subject
15 to development and that views were not protected. In 2001, the 35 Acre Property (and the rest
16 of Residential Zoned Property) was zoned, by City of Las Vegas Ordinance 5353, exclusively
17 for single-family residential development. The 35 Acre Property is approved for single family
18 residential with up to 7.49 units per acre as long as the proposed use is compatible and
19 consistent with the surrounding area per Title 19. Thus, Title 19, not just “any perceived
20 reason,” should have been the City Council’s standard. The Court clearly erred in not
21 correcting that failure.

22 “Public Opposition” in this case was not supported by substantial evidence and was an
23 arbitrary and capricious reason for denying the Applications. The City Council’s limited
24 discretion exercisable here for this single-use property and the Applications that are *consistent*

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27 728 (Minn. Ct. App. 1988); *Perschbacher v. Freeborn Cty. Bd. Of Comm’rs*, 883 N.W.2d 637, 645 (Minn.
28 Ct. App. 2016) (finding unreliable public “testimony [that] was in the nature of vague, generalized
concerns, rather than in the nature of actual facts or experience regarding the potential impact of the project
on the neighborhood”).

1 with permitted use under the existing zoning, in full *compliance* with applicable land-use law,
2 and *compatible* with surrounding property simply does not permit denial on that basis.

3 **C. The Court’s Decision Regarding “Piecemeal Development” was Clearly**
4 **Erroneous.**

5 The Court should also reconsider its Decision related to piecemeal development
6 because no such standard or criteria exists in Title 19 or NRS 278. By forcing the
7 Landowner to enter into a master development agreement for the Residential Zoned
8 Property and basing the denial of the Applications on this requirement, the City Council
9 acted arbitrarily and capriciously.⁶⁹ The Court clearly erred in upholding the City
10 Council’s flawed decision.

11 The Affirmed Smith Orders confirm that the 35 Acre Property is zoned for
12 residential use. The Applications provide for compatible development with the
13 surrounding residential properties as City Staff and the Planning Commission
14 determined. However, once certain Queensridge homeowners opposed the proposed
15 development, the City Council’s proffered piecemeal concern became the cloak for
16 “special treatment” that was donned only after certain council members became more
17 interested in playing “politics” than they did with properly adjudicating the Applications
18 pursuant to the objective standards and criteria set forth in NRS 278 and Title 19 of the
19 Development Code.

23 ⁶⁹ *Tinseltown Cinema, LLC v. City of Olive Branch*, 158 So.3d 367 (Miss. App. Ct. 2015); *Highway Oil,*
24 *Inc. v. City of Lenexa*, 547 P.2d 330 (Kan. 1976). For the rule that the standards and criteria of the
25 Development Code should provide the basis and confines for the City’s adjudication of Petitioner’s
26 applications, none of which requested a zoning change, *see Nevada ex rel. Johns v. Gragson*, 515 P.2d 65,
27 67 (Nev. 1973) (stating that an adjudicative body’s decision on a land use application must be “confined by
28 the standards” governing the zoning and land use); *Nova Horizon, Inc. v. City Council of the City of Reno*,
769 P.2d 721, 724 (Nev. 1989) (providing that it is “inappropriate” for an adjudicative body to base its
decision on a land use application on a “de facto” consideration that does not exist within the governing
zoning and land use laws and ordinances); *M.G. Oil Co. v. City of Rapid City*, 793 N.W.2d 816 (S.D.
2011); *Rossow v. City of Lake Elmo*, 2017 WL 5661571 (Minn. Ct. App. Nov. 27, 2017); *Kling v. City*
Council of City of Newport Beach, 317 P.2d 708 (Cal. App. 1957).

1 An adjudicative body acts arbitrarily and capriciously when it denies proposed
2 development that complies with the existing zoning and is similar to surrounding uses.⁷⁰
3 In Nevada, the Supreme Court has held that a city's denial of a developer's application to
4 use his parcel in a manner that complied with the parcel's zoning was arbitrary and
5 capricious because, in large part, the city had permitted nearby parcels to be used for
6 identical businesses.⁷¹ In other words, the city had treated the developer's application
7 differently without any legal basis.

8 Similarly, in *Nova Horizon, Inc. v. City Council of the City of Reno*, 769 P.2d 721
9 (Nev. 1989), the City of Reno denied the developer's application to develop his parcel
10 with a hotel and casino in a district of Reno where other hotels and casinos were already
11 located.⁷² The planning commission recommended approval of the application, but the
12 city council denied the application on the basis that the city council had made "campaign
13 promises" not to put any more hotels and casinos in the subject district.⁷³ On appeal, the
14 Nevada Supreme Court ruled that the denial was arbitrary and capricious because, in part,
15 the proposed development was consistent with the surrounding uses.⁷⁴ Because the City
16 of Reno based its decision on improper considerations, the Nevada Supreme Court
17 reasoned that the city council failed to "adequately focus[] on the merits of the project."⁷⁵

18 Developers and land owners regularly develop parcels in a phased, market-driven
19 manner. It is financially infeasible for a developer to develop 250 acres at one time. Yet,
20 in this case, the City Council has, without legal basis, mandated that the entire
21 Residential Zoned Property be developed pursuant to a master development agreement
22 for all 250 acres and thus prevented development in accordance with existing zoning.

24 ⁷⁰ *City of Henderson v. Henderson Auto Wrecking, Inc.*, 359 P.2d 743, 743-45 (Nev. 1961); *K.G.T.*
25 *Holdings, LLC v. Parish of Jefferson*, 169 So.3d 628, 634-45 (La. App. 2015) ("Zoning regulations must be
26 uniformly applied within each district or zone of the municipality. When applications are granted in similar
situations and refused in others, the refusal to grant an application may constitute nonuniform application
of zoning ordinances that is arbitrary and capricious.").

27 ⁷¹ *Id.*

28 ⁷² *Nova Horizon, Inc. v. City Council of the City of Reno*, 769 P.2d 721, 721-22 (Nev. 1989).

⁷³ *Id.* at 722-23.

⁷⁴ *Id.* at 723-24.

⁷⁵ *Id.* at 724.

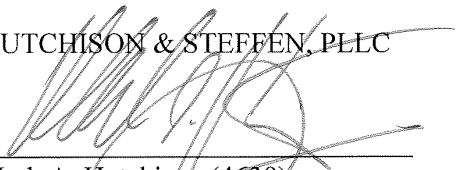
1 The City has treated Petitioner's applications disparately to other similarly-situated
2 applications because of the influence of the Queensridge homeowners. The Affirmed
3 Smith Orders make clear that the Nevada Supreme Court has determined that the
4 Queensridge CIC residents have no legal rights to the Residential Zoned Property. The
5 City's denial of the Applications is arbitrary and capricious, oppressive, and a manifest
6 abuse of discretion under the Affirmed Smith Orders. The Court's Decision approving
7 the City's action is likewise in conflict with the Affirmed Smith Orders.

8 **6. Conclusion.**

9 For the foregoing reasons, the Court should order a new trial pursuant to NRCP 59(a),
10 alter or amend judgment pursuant to NRCP 52(b), and/or reconsider its Decision and grant the
11 petition for judicial review. Alternatively, the Court should vacate the Decision and stay this
12 case until the Nevada Supreme Court renders a decision regarding the Judge Crockett Decision,
13 which is currently pending before the Nevada Supreme Court.

14 DATED this 13th day of December, 2018.

15 HUTCHISON & STEFFEN, PLLC

16 
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19 Joseph S. Kistler (3458)
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21 *Attorneys for Petitioner*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Hutchison & Steffen, PLLC, and that on this 13th day of December, 2018, I caused the above and foregoing document entitled **MOTION FOR A NEW TRIAL PURSUANT TO NRCP 59(e) AND MOTION TO ALTER OR AMEND PURSUANT TO NRCP 52(b) AND/OR RECONSIDER THE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND MOTION TO STAY PENDING NEVADA SUPREME COURT DIRECTIVES** to be served as follows:

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

☐ pursuant to EDCR 7.26, to be sent via facsimile; and/or

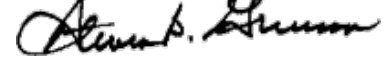
XXX pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or to the attorney(s) listed below at the address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

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Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

23 180 LAND CO LLC, a Nevada limited-liability 24 company; DOE INDIVIDUALS I through X; 25 DOE CORPORATIONS I through X; and 26 DOE LIMITED-LIABILITY COMPANIES I 27 through X, 28 Petitioners, v.	Case No. A-17-758528-J Dept. No. XVI NOTICE OF APPEAL
---	--

1	CITY OF LAS VEGAS, a political	
2	subdivision of the State of Nevada; ROE	
3	GOVERNMENT ENTITIES I through X;	
4	ROE CORPORATIONS I through X; ROE	
5	INDIVIDUALS I through X; ROE	
6	LIMITED-LIABILITY COMPANIES I	
7	through X; ROE QUASI-	
8	GOVERNMENTAL ENTITIES I through	
9	X,	
10		
11	Defendants.	
12	JACK B. BINION, an individual; DUNCAN	
13	R. and IRENE LEE, individuals and Trustees	
14	of the LEE FAMILY TRUST; FRANK A.	
15	SCHRECK, an individual; TURNER	
16	INVESTMENTS, LTD., a Nevada Limited	
17	Liability Company; ROGER P. and	
18	CAROLYN G. WAGNER, individuals and	
19	Trustees of the WAGNER FAMILY TRUST;	
20	BETTY ENGLESTAD AS TRUSTEE OF	
21	THE BETTY ENGLESTAD TRUST;	
22	PYRAMID LAKE HOLDINGS, LLC;	
23	JASON AND SHEREEN AWAD AS	
24	TRUSTEES OF THE AWAD ASSET	
25	PROTECTION TRUST; THOMAS LOVE	
26	AS TRUSTEE OF THE ZENA TRUST;	
27	STEVE AND KAREN THOMAS AS	
28	TRUSTEES OF THE STEVE AND KAREN	
	THOMAS TRUST; SUSAN SULLIVAN AS	
	TRUSTEE OF THE KENNETH J.	
	SULLIVAN FAMILY TRUST, AND DR.	
	GREGORY BIGLER AND SALLY	
	BIGLER,	
	Intervenors.	

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

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

9 DATED this 20 day of December, 2018.

11 HUTCHISON & STEFFEN, PLLC

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CERTIFICATE OF SERVICE

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

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

☐ to be served via facsimile; and/or

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

☐ to be hand-delivered;

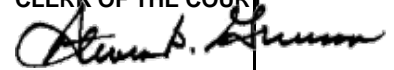
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16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

18 180 LAND COMPANY, LLC, a Nevada limited
19 liability company, DOE INDIVIDUALS I
20 through X, DOE CORPORATIONS I through X,
21 and DOE LIMITED LIABILITY COMPANIES I
22 through X,

23 Plaintiffs,

24 vs.

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

Defendant.

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

NOTICE OF ENTRY OF ORDER
***NUNC PRO TUNC* Regarding Findings of**
Fact and Conclusion of Law Entered
November 21, 2019

1 **PLEASE TAKE NOTICE** that on the 6th day of February, 2019, an Order *Nunc Pro Tunc*
2 Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018, was entered in the
3 above-captioned case, a copy of which is attached hereto.

4 Dated this 6th day of February, 2019.

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

6 By: /s/ Kermitt L. Waters

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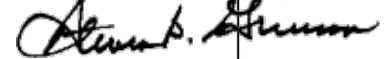
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Attorneys for Plaintiff Landowners

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendant.

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

**ORDER NUNC PRO TUNC
Regarding Findings of Fact and
Conclusion of Law Entered
November 21, 2018**

Hearing Date: January 17, 2019
Hearing Time: 9:00 a.m.

01-29-19A10:51 RCVD

ORDER NUNC PRO TUNC
Regarding Findings of Fact and Conclusions of Law Entered November 21, 2018

Plaintiff, 180 LAND COMPANY, LLC ("Plaintiff" and/or "Landowner") Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims and the City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time and the Intervenor's Joinder thereto having come for hearing on January 17, 2019 at 9:00 a.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., and Mark Hutchison, Esq., appearing for and on behalf of the Plaintiff, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of Defendant, the City of Las Vegas, and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenor. The Court having read all the papers filed by the parties and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims filed on December 11, 2018, is GRANTED, as this Court had no intention of making any findings of fact, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims as part of the Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL"). Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed *nunc pro tunc*.

IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that Defendant, City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time filed on December 21, 2018, and the Joinder thereto is DENIED AS MOOT.

IT IS SO ORDERED.

DATED this 5th day of January, 2019.


DISTRICT COURT JUDGE

Respectfully Submitted By:

LAW OFFICES OF KERRITT L. WATERS

By: 

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