IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY,

Respondents.

No. 84345

180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY,

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84640

JOINT APPENDIX, VOLUME NO. 7

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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. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Respondents.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **CITY OF LAS VEGAS' OPPOSITION TO PLAINTIFF LANDOWNERS' COUNTERMOTION FOR JUDICIAL DETERMINATION OF LIABILITY ON THE LANDOWNERS' INVERSE CONDEMNATION CLAIMS AND COUNTERMOTION TO SUPPLEMENT/AMEND THE PLEADINGS, IF REQUIRED** Hearing Date: March 19, 2019 Hearing Time: 9:00 a.m.

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I. INTRODUCTION

There is no such thing as a "motion for judicial determination of liability." No rule or procedure authorizes the Court to consider such a rogue filing. By filing it, Plaintiff 180 Land Company, LLC (together with Fore Stars, Ltd. and Seventy Acres, LLC, collectively, the "Developer") simply tries to obfuscate the legal deficiencies of its inverse condemnation claims. The Court should not be swayed by the Developer's *ultra vires* conduct.

As set forth in the City's motion for judgment on the pleadings, the Developer fails to present justiciable claims and fails to state a claim upon which relief can be granted. Where the City Council had discretionary authority to deny applications to redevelop the golf course property, the Developer has no vested rights that trigger constitutional protections. Also, the statute of limitations has run on the Developer's claims because its predecessor sought and was granted the open space designation and, then, built the golf course in accordance with that designation. Finally, because the Court has determined that Judge Crockett's Decision has preclusive effect here, the Developer's claims lack subject matter jurisdiction. The Developer must obtain a major modification of the Peccole Ranch Master Development Plan for its claims to be justiciable.

Because its claims cannot survive the City's Rule 12 challenge, the Developer's claims must be dismissed as a matter of law. And, because the Developer's claims must be dismissed as a matter of law, liability must be determined in the City's favor, not for the Developer. Denial of the Developer's countermotion is, therefore, mandated.

Finally, the Developer cannot circumvent the shortcomings in its complaint by seeking to improperly amend or supplement the pleadings. The matters that the Developer seeks to add post-date the City's denial of the 35-Acre Applications that are the subject of this lawsuit, and are the subject of the Developer's other litigation. *See* Complaints in Case Nos. A-18-775804-J; A-18-780184-C, attached hereto as **Exhibits A and B**. Amendment would be futile and would constitute impermissible claim splitting. As a result, the Developer's countermotions should be denied and this matter must be dismissed with prejudice.

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II. ARGUMENT

A. There Is No Rule That Authorizes a Motion for "Judicial Determination of Liability"

In an effort to obscure the legal shortcomings of its claims, the Developer goes on the offensive with a "Countermotion for Judicial Determination of Liability of the Landowners' Inverse Condemnation Claims." The Nevada Rules of Civil Procedure recognize no such motion, and the Developer cites no rule or procedure that allows the Court to consider such a motion. On that basis alone, the countermotion must be denied.

B. The Developer Cannot Have Liability Determined in its Favor When its Claims Must be Dismissed as a Matter of Law

Even if the Court proceeds to consider the Developer's unauthorized filing, it must nevertheless be denied because the Developer's claims must be dismissed as a matter of law for the reasons stated in the City's motion for judgment on the pleadings, which are reiterated here:

1. This Court Correctly Concluded That the Developer Lacks Vested Rights to Redevelop the Property

a. Absent Vested Rights, There Can Be No Taking As a Matter of Law

This Court has already determined that the Developer has no vested rights to have its redevelopment applications approved. *See* Findings of Fact and Conclusions of Law entered on November 21, 2018 (the "FFCL") at Conclusions of Law ¶¶35-38, 52. That determination requires that the Developer's inverse condemnation claims be dismissed. "The Fifth Amendment's Takings Clause prevents the Legislature (and other government actors) from depriving private persons ***of vested property rights***…." *Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994) (emphasis added).

> [Property interests are] of course ... not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law rules or understanding that secure certain benefits and that support claims of entitlement to those benefits. [To have such a property interest], a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

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Board of Regents v. Roth, 408 U.S. 564, 577 (1972). In other words, constitutional guarantees are only triggered by a vested right. *See Landgraf*, 511 U.S. at 266; *Nicholas v. State*, 116 Nev. 40, 44, 992 P.2d 262, 265 (2000); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). Because the Court already correctly concluded that the Developer has no vested right to redevelop the golf course, the Developer cannot state a legally cognizable constitutional claim.

b. Denial of the Redevelopment Applications Leaves the Developer With All the Same Rights it Held Previously

The Developer's purchase of the golf course on speculation that the City Council *might* exercise its discretion to allow for redevelopment of the open space/drainage easement into some other use does not alter the conclusion that it has no vested rights that confer a constitutional claim. When evaluating a takings claim, "the question is, [w]hat has the owner lost?" *Boston Chamber of Commerce v. Boston*, 217 U.S. 189, 195 (1910). If the landowner retains the same interests it had previously, there is no taking. *See Murr v. Wisconsin*, 137 S. Ct. 1933, 1937 (2017).

Under Nevada law, a vested property right is something that is "fixed and established." *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949); *see also Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 715 (2010) (noting a property right must be "established" for a taking to occur). Redevelopment applications do not meet this standard because "[i]n 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 City Council, the project proponent had no vested right to construct).[1]

[1] This is not just the law in Nevada, but nationwide. *See*, *e.g.*, *Daytona Grand, Inc. v. City of Daytona Beach, Fla.*, 490 F.3d 860, 872 (11th Cir. 2007) (interpreting Florida law); *Ellentuck v. Klein*, 570 F.2d 414, 429 (2d Cir. 1978) (interpreting New York law); *Aquino v.*

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Here, the Developer's predecessor sought and obtained the open space designation for the golf course as an amenity to its planned development and to add value to the properties surrounding the gold course. *See* FFCL at Findings of Fact ¶¶13-16, *citing* ROR 10, 32-33; 2658-60; 24073-75; 25968. At the urging of the Developer's predecessor, the City incorporated the open space designation into its master plan. *Id.* Nearly 20 years later, the Developer bought the golf course on speculation that the City might allow another use. The City's denial of the 35-Acre Applications leaves the Developer in the exact position it held when it purchased the property with the ability to continue to use the land in the same manner for which its predecessor-in-interest sought and obtained entitlements.

In other words, the Developer does not identify anything in its First Amended Complaint that has been *taken*. The Developer's unilateral decision to abandon the golf course use does not create a taking. Rather, where the developer still has the same "bundle of sticks" it had previously, there is no taking, as a matter of law, and dismissal of the inverse condemnation claims is proper. *See Murr*, 137 S. Ct. at 1937; *Application of Filippini*, 66 Nev. at 22, 202 P.2d at 537.

2. The Developer's Claims Are Time Barred Because the Parks, Recreation and Open Space Designation Has Existed Since at Least 1990, When it Was Sought and Obtained by the Developer's Predecessor

The statute of limitations has run on the Developer's challenge to the Parks, Recreation and Open Space designation for the Property because that designation has existed since as least 1990 in the Peccole Ranch Master Development Plan, Phase II, and was sought and obtained by the Developer's predecessor, and the predecessor built the golf course according to the designation. Takings claims are subject to a 15-year statute of limitations. *White Pine Lumber v. City of Reno*, 106 Nev. 778, 779, 801 P.2d 1370, 1371 (1990). A development restriction created by a predecessor landowner binds successors. *See* NRS 278.0205; *Tompkins v. Buttrum Const. Co. of Nev.*, 99 Nev. 142, 146, 659 P.2d 865, 868 (1983) (noting that successor landowner steps into shoes of predecessor, and "one who creates a restriction is not permitted to

Tobriner, 298 F.2d 674, 677 (D.C. Cir. 1961) (interpreting D.C. law); *City of Ann Arbor, Mich. v. Nw. Park Const. Corp.*, 280 F.2d 212, 221 (6th Cir. 1960) (interpreting Michigan law).

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violate it"); *Gladstone v. Gregory*, 95 Nev. 474, 480, 596 P.2d 491, 495 (1979) (holding that successor owner could not violate height restriction recorded by predecessor).

For the purpose of a statute of limitations, a landowner claiming inverse condemnation is bound by its predecessor's acceptance of regulatory conditions imposed on the land and from which the predecessor benefitted. *Wilson v. Bd. of Cty. Comm'rs of Cty. of Teton*, 153 P.3d 917, 925 (Wyo. 2007); *Serra Canyon Co. v. California Coastal Comm.*, 16 Cal. Rptr. 3d 110, 113 (Cal. Ct. App. 2004). The limitation period commenced when the regulatory action occurred, even if the predecessor chose not to challenge it. *Serra Canyon*, 16 Cal. Rptr. 3d at 113.

> There must be a limit on when a landowner can bring a takings action, especially when, as here, the landowners did not object to the conditions at the time of approval and actually took advantage of the benefit of increased density offered by the regulations. Without a restriction on the time for contesting property development conditions, the government would be perpetually exposed to unlimited takings challenges.

Wilson, 153 P.3d at 925; *see also Trimen Dev. Co. v. King Cty.*, P.2d 226, 231 (Wash. 1992) (dismissing as time barred developer's challenge to regulation that conditioned development approval on open space dedication or payment of fee in lieu of such dedication).

Here, the Developer's Amended Complaint challenges the General Plan's Parks, Recreation and Open Space designation on the Property and contends it need not seek to change that designation for its proposed residential developments of the golf course property. *See* Am. Compl. ¶¶14-16. However, the open space designation was sought and obtained by the Developer's predecessor in the 1989 Peccole Ranch Master Development Plan, as amended in 1990. *See* FFCL at Findings of Fact ¶¶11-16, *citing* 10, ROR 32, 2658-2660, 2666, 24073-75, 25821, 25968. The Developer's predecessor indicated that the Master Plan "provide[d] for the continuing development of a diverse system of open space." *See* ROR 2665. And the Developer's predecessor assumed responsibility for "open space development and landscaping." *See* ROR 2664. As a result of this action sought by the Developer's predecessor, the City then incorporated that open space designation into its General Plan. *See* FFCL at Finding of Fact ¶7, *citing* ROR 25546; *see also* ROR 2823-2831, 2854-2863.

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The master plan area is subject to the terms, requirements and commitments made by the Developer's predecessor in the Master Development Plan so that the predecessor could develop the master planned area in the manner it sought. *See* Unified Development Code 19.10.040(F)-(G). In 1990, the Developer's predecessor received approval to develop 4,247 residential units within the master planned area of Peccole Ranch Master Development Plan conditioned upon setting aside 253 acres for golf course, open space and drainage. *See* FFCL at Findings of Fact ¶¶11-16, *citing* 10, ROR 32, 2658-2660, 2666, 24073-75, 25821, 25968. Through the open space designation, the Developer's predecessor was able to satisfy the City's parks set-aside requirement and develop non-open space areas at greater densities and for greater economic benefit. *See* ROR 2660-2667. The Developer's predecessor chose the location of the open space and developed the golf course in furtherance of the development plan it submitted, deriving economic benefit from being able to sell houses that abutted or were in close proximity to an open space amenity. *See* ROR 2658-2667.

Because the Developer's claims are premised on the General Plan's Parks, Recreation and Open Space designation and the 1990 Peccole Ranch Master Development Plan's set aside of the property for open space and drainage (which were invited and accepted by the Developer's predecessor in 1990), they are time barred. *See White Pine Lumber*, 106 Nev. at 779, 801 P.2d at 1371; *Wilson*, 153 P.3d at 925.

3. The Court Lacks Subject Matter Jurisdiction Because the Developer's Claims Are Not Ripe

This Court has determined as a matter of law that Judge Crockett's Decision has preclusive effect. *See* FFCL at Conclusions of Law ¶¶57-62. Pursuant to Judge Crockett's Decision, because the Developer has not provided the City Council with an opportunity to consider and decide an application for a major modification to the Peccole Ranch Master Development Plan, the ripeness doctrine bars the Court from exercising jurisdiction over the inverse condemnation claims. If a party's claims are not ripe for review, they are not justiciable, and the Court lacks subject matter jurisdiction to review them. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010); *Resnick v. Nev. Gaming*

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Comm'n, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988). And where the Court lacks subject matter jurisdiction, dismissal is required. Nev. Const. art. 6, § 6; *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

The Nevada Supreme Court has adopted a two-part test for ripeness established by the U.S. Supreme Court, which requires courts to evaluate: "(1) the hardship to the parties of withholding judicial review, and (2) the suitability of the issues for review." *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003), *citing Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967).

a. The Issues Are Not Fit for Review

Because the Developer has yet to submit a major modification application as required by Judge Crockett's Decision, the issues presented in this case lack the fitness of review needed to satisfy the ripeness doctrine. "In gauging the fitness of the issues in a case for judicial resolution, courts are centrally concerned with whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Resnick*, 104 Nev. at 66, 752 P.2d at 233, *quoting* L. Tribe, *American Constitutional Law* 78 (2nd ed. 1988). "Alleged harm that is speculative or hypothetical is insufficient: an existing controversy must be present." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006). Here, the Court has concluded that approval of a major modification is a prerequisite to the City granting the 35-Acre Applications. *See* FFCL at Conclusions of Law ¶¶56-62. Therefore, even if the Developer possessed vested rights to redevelop the golf course (it does not), the Court nevertheless cannot consider whether the Council's denial of those applications constituted a taking.

b. Dismissal Will Not Impose Any Hardship on the Developer

Because the Developer may apply for a major modification to the Master Development Plan at any time (or could have at any time since the City Council's denial of the applications at issue), dismissal of the First Amended Complaint for lack of ripeness will impose no hardship. The ripeness doctrine "focuses on the timing of the action rather than on the party bringing the action." *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003). Dismissal for lack of

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ripeness until all contingencies and conditions precedent are satisfied does not constitute a hardship. Indeed, the Developer controls whether and when to file a major modification application but has simply chosen not to. No hardship exists here.

c. The Developer Cannot Satisfy the Additional Ripeness Requirements for Inverse Condemnation Claims

Because the Developer has not sought a major modification of the Master Development Plan, it also has not satisfied additional ripeness requirements to assert takings claims. A taking claim is not ripe unless "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985). "A final decision by the responsible state agency informs the constitutional determination whether a regulation has deprived a landowner of all economically beneficial use of the property … or defeated the reasonable investment-backed expectations of the landowner to the extent that a taking has occurred." *Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001) (internal citations and quotations omitted).

To resolve a takings claim, a court must know "the extent of permitted development on the land in question." *Id.*, *quoting MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 351 (1986)). The decisions of the U.S. Supreme Court regarding ripeness of inverse condemnation claims "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it." *MacDonald, Sommer*, 477 U.S. at 351. If a developer withdraws an application, "the application was not meaningful." *Zilber v. Town of Moraga*, 692 F. Supp. 1195, 1199 (N.D. Cal. 1988); *see also Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1455 (9th Cir. 1987), amended, 830 F.2d 968 (9th Cir. 1987) (holding that trial court erred by reaching merits of unripe takings claims because "[t]he application made by the developer was not meaningful since it was abandoned at an early stage in the application process."

Here, a major modification application is precisely the type of procedure the Supreme Court recognizes as a threshold requirement before a landowner can assert a takings claim:

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> [A] landowner may not establish a taking before a land-use authority has the opportunity, ***using its own reasonable procedures***, to decide and explain the reach of a challenged regulation. Under our ripeness rules a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon ***the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property***, including the opportunity to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory taking has not yet been established.

Palazzolo, 533 U.S. at 620-21.

Judge Crockett has already deemed the City's procedures for a major modification to be reasonable and necessary, and this Court already deemed the major modification requirement to have preclusive effect here. *See* FFCL at Conclusions of Law ¶¶56-62. As the Court already found, the Developer submitted ***and then withdrew*** a major modification application, preventing the City Council from considering it. *Id*. at Finding of Fact 33, *citing* ROR 1; 5; 6262. This is precisely the type of action that renders the inverse condemnation claims not ripe. *See Zilber*, 692 F. Supp. at 1199; *Kinzli*, 818 F.2d at 1455. Absent compliance with the major modification requirement, there has been no final determination of the Developer's rights to redevelop the Property, and the inverse condemnation claims must be dismissed on jurisdictional grounds. *See Palazzolo*, 533 U.S. at 618; *Kinzli*, 818 F.2d at 1455; *Zilber*, 692 F. Supp. at 1199.

C. The Developer Cannot Short Circuit the Litigation Process to Which the City is Entitled

In the event the Court declines to dismiss the Developer's claims, it still may not find liability in the Developer's favor in the current procedural posture of the case. Basic principles of due process require that the City be afforded all its rights to defend against the Developer's claims, including discovery. "The words due process of law, when applied to judicial proceedings, mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights." *Endicott-Johnson Corp. v. Encyclopedia Press*, 266 U.S. 285, 288 (1924) (internal quotations omitted). Respectfully, the Court must follow the Rules of Civil Procedure

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in order to determine liability.

D. The Developer's Proposed Amended Complaint Constitutes Impermissible Claim Splitting

The only matter before the Court in this case is whether the City Council's June 21, 2017 decision to deny the Developer's 35-Acre Applications constituted a taking. *See generally* First Am. Compl. The Court correctly concluded this denial was a proper exercise of the City Council's discretion. *See* FFCL. The actions that occurred after June 21, 2017 that the Developer attempts to include in its proposed its Second Amended Complaint are the subject of the Developer's other lawsuits. *Compare* First Am. Compl. to Complaints in A-18-775804-J; A-18-780184-C, attached hereto as **Exhibits A and B**. For that reason, leave to amend should be denied.

"[L]eave to amend should not be granted if the proposed amendment would be futile.… A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim." *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013), as corrected (Aug. 14, 2013) (citations omitted). Other "[s]ufficient reasons to deny a motion to amend a pleading include undue delay, bad faith or dilatory motives on the part of the movant." *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000).

Impermissible claim splitting is grounds to reject an amended complaint. *See Fairway Rest. Equip. Contracting, Inc. v. Makino*, 148 F. Supp. 3d 1126, 1129 (D. Nev. 2015). "As a general proposition, a single cause of action may not be split and separate actions maintained." *Smith v. Hutchins*, 93 Nev. 431, 432, 566 P.2d 1136, 1137 (1977) (*citing Reno Club, Inc. v. Harrah*, 70 Nev. 125, 260 P.2d 304 (1953)). When identical causes of action are pending, involving the same parties and arising from the same incident, a trial court may properly dismiss the second action. *See Fitzharris v. Phillips*, 74 Nev. 371, 376, 333 P.2d 721, 724 (1958), disapproved on other grounds by *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000). "It would be contrary to fundamental judicial procedure to permit two actions to remain pending between the same parties upon the identical cause." *Id.* "To determine whether a

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plaintiff is claim-splitting, as would support dismissal, the proper question is whether, assuming the first suit was already final, the second suit would be precluded under res judicata analysis." *Id.* A main purpose behind the rule preventing claim splitting is "to protect the defendant from being harassed by repetitive actions based on the same claim." Restatement (Second) Judgments, § 26 cmt. a; *accord* 1 Am. Jur. 2d Actions § 99.

The matters that the Developer seeks to add in its proposed new pleading are the subject of other currently pending cases and therefore amount to claim splitting. A perfunctory review of the Developer's other complaints reveals that the actions the Developer contends (at 33:1-46:11) constitute a taking are being litigated elsewhere. *See* Compl. A-18-775804-J; Compl. A-18-780184-C. Indeed, the Developer effectively concedes as much (at 4:27-5:28), broadly describing its litigation before other judges on the same matters it now seeks to incorporate into this case. Its argument (at 6:4-15) that those other cases should have preclusive effect here reinforces that the Developer is engaging in improper claim splitting.[2] *See Smith*, 93 Nev. at 432, 566 P.2d at 1137. Moreover, the 25-day statute of limitations for the Developer to challenge other actions by the City Council has long since run, rendering the proposed amendment futile. *See* NRS 278.0235.

The Developer cannot split its claims among different lawsuits before different judges and shop for the best result. *See id.* Here, the Developer seeks leave to amend for an improper purpose and in bad faith. Moreover, if the Developer cannot prove a takings without the facts alleged in its other litigation, it concedes that its claims here are not ripe. Its motion to amend or supplement its complaint should therefore be denied. *See Halcrow*, 129 Nev. at 398, 302 P.3d at 1152.

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[2] Also, the Developer's contention (at 6:16) that its other pending district court cases somehow constitute "law of the case" here is dramatically off the mark. The law of the case doctrine applies only "[w]hen an appellate court states a principle or rule of law necessary to a decision." *Hsu v. Cty. of Clark*, 123 Nev. 625, 629–30, 173 P.3d 724, 728 (2007), *quoting Wickliffe v. Sunrise Hospital*, 104 Nev. 777, 780, 766 P.2d 1322, 1324 (1988).

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III. CONCLUSION

There is no rule or procedure that authorizes the Court to consider Developer's countermotion for a "determination of liability" in its favor, and on that basis alone it must be denied. Because the Developer's claims must be dismissed as a matter of law, liability must be determined in the City's favor under NRCP 12, not the Developer's favor. Even if the Court does not dismiss the claims, the City cannot be deprived of its due process rights to defend against them. Finally, amendment would be futile because the proposed amended complaint is futile and constitutes unauthorized claim splitting. As a result, the Developer's countermotions should be denied.

Respectfully submitted this 18th day of March, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 18th day of March, 2019, a true and correct copy of the foregoing **CITY OF LAS VEGAS' OPPOSITION TO PLAINTIFF LANDOWNERS' COUNTERMOTION FOR JUDICIAL DETERMINATION OF LIABILITY ON THE LANDOWNERS' INVERSE CONDEMNATION CLAIMS AND COUNTERMOTION TO SUPPLEMENT/AMEND THE PLEADINGS, IF REQUIRED** 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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EXHIBIT “A”

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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 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-18-775804-J Dept. No.: Department 26 **PETITION FOR JUDICIAL REVIEW, COMPLAINT FOR DECLARATORY RELIEF AND INJUNCITIVE RELIEF, AND ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** **(Exempt from Arbitration – Action Seeking Review of Administrative Decision and Action Concerning Title To Real Property)**

Petitioner, by and through its attorneys of record, The Law Offices of Kermitt L. Waters, for its Petition for Judicial Review and alternative claims in inverse condemnation 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 CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X (hereinafter

collectively referred to as "ROEs"), inclusive are unknown to the Landowners at this time, who therefore sue said Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Defendants when the same are ascertained; that said Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or actions, either alone or in concert with the aforementioned defendants, resulted in the claims set forth herein.

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

7. Petitioner owns 132.92 Acres of real property generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-601-008, 138-31-702-003, and 138-31-702-004 (hereinafter referred to as the "133 Acre Property" or "Property").

Zoning Governs Existing Permitted Land Uses

8. Zoning defines what uses 'presently' are permitted, and not permitted, on a parcel.

9. A "master plan" designation, as such term is used in NRS 278 and the Las Vegas 2020 Master Plan, determines 'future' land use and is considered only when changing the zoning on a parcel.

10. General Plan Amendments and Major Modifications, as such mechanisms are defined in the Las Vegas 2020 Master Plan are not required if the proposed use complies with existing zoning on a parcel.

11. The City of Las Vegas Unified Development Code in Title 19.10.040 defines a zoning district titled "PD (Planned Development District)" and in Title 19.10.050 defines a zoning district titled "R-PD (Residential Planned Development)". The "PD" and "R-PD" zoning districts are separate and distinct from each other.

12. A "R-PD" district is not governed by the provisions of Title 19.10.040. The term "Major Modification" as used in Title 19.10.040 does not apply to a "R-PD" zoning district.

The Undisputed R-PD7 Residential Zoning

13. The existing zoning district on the 133 Acre Property is R-PD7 (Residential Planned Development District – 7.49 Units per Acre).

14. No formal action approving a plot plan, nor site development review, was ever taken by the Planning Commission, nor City Council, to allow the use of the Property as a golf course.

15. The R-PD7 zoning designation on the Property was established by Ordinance No. 5353 (Bill Z-2001-1) PASSED, ADOPTED, and APPROVED by the Las Vegas City Council on August 15, 2001 ("Ordinance 5353"). Specifically:

a. Assessor's Parcel Number 138-31-212-002 was changed from its then "Current Zoning" designation of "U(PR)" to its "New Zoning" designation "R-PD7";

b. Assessor's Parcel Number 138-31-610-002 was changed from its then "Current Zoning" designation of "U(PR)" to its "New Zoning" designation "R-PD7";

c. Assessor's Parcel Number 138-31-713-002 was changed from its then "Current Zoning" designation of "U(M)" to its "New Zoning" designation "R-PD7"; and

d. Assessor's Parcel Number 138-31-712-004 was changed from its then "Current Zoning" designation of "U(ML)" to its "New Zoning" designation "R-PD7".

16. Ordinance 5353 provided: "SECTION 4: All ordinances or parts of ordinances or section, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed."

17. Ordinance 5353 repealed any then existing master plans, including the conceptual Peccole Ranch Master Plan approved in 1990, with respect to the Property.

18. In a December 30, 2014 dated letter ("Zoning Verification Letter"), the City verified in writing that "The Subject properties are zoned R-PD7 (Residential Planned Development District – 7 Units per Acre)." This includes the 133 Acre Property.

19. At a May 16, 2018 City Council hearing, the City Attorney and the City Staff affirmed the issuance and content of the Zoning Verification Letter.

20. The City does not dispute that the Property is zoned R-PD7.

21. None of the 133 Acre Property is zoned "PD".

22. Petitioner materially relied upon the City's verification of the Property's R-PD7 vested zoning rights.

23. At all relevant times herein, Petitioner had the vested right to use and develop the 133 Acre Property under and in conformity with the existing R-PD7 zoning.

24. R-PD7 zoning allows up to 7.49 residential units per acre, subject to comparability and compatibility adjacency planning principles.

25. The Property is taxed by the Clark County Assessor based on its R-PD7 zoning and Vacant Single Family Residential use classification.

26. Petitioner's vested property rights in the 133 Acre Property is recognized under the United States and Nevada constitutions, Nevada case law, and the Nevada Revised Statutes.

The Legally Irrelevant 2016 General Plan Amendment

27. In late 2005, the City changed the Land Use Designation under its 2020 Master Plan to "PR-OS" (Parks/Recreation/Open Space). The City Attorney has on multiple occasions stated that the City is unable to establish that it complied with its legal notice and public hearing requirements when it changed the General Plan Designation on the Property to PR-OS.

28. The PR-OS designation on the Property was legally deficient and is therefore void ab initio and has no legal effect on the Property.

29. On or about December 29, 2016, and at the request of the City, Petitioner filed an application for a General Plan Amendment to change the General Plan Designation relating to the 133 Acre Property and several other parcels of real property from PR-OS to L (Low Density Residential) and the application was given number GPA-68385 ("GPA-68385" also referred to herein as the "2016 GPA").

30. The City Council denied the 2016 GPA on June 21, 2017.

31. The 133 Acre Property was also previously included, at the request of the City, as part of one master development agreement that would have allowed the development of 250.92 acres of property as a whole. At that time, the City Council advised Petitioner that the only way the City Council would allow development on the 133 Acre Property was under a master development agreement ("MDA") for the entirety of the Property (totaling 250.92 acres). On August 2, 2017, less than two months after the City Council said it was very, very close to

approving the MDA, however, the City Council voted to deny the MDA altogether, which also included the 133 Acre Property.

32. The City's denial of the 2016 GPA does not affect the R-PD7 zoning on the Property, nor Petitioner's exercising its vested property rights to develop the 133 Acre Property under the existing R-PD7 zoning.

33. The 2016 GPA was not a legal requirement under LVMC Title 19, nor NRS 278. The R-PD7 zoning on the 133 Acre Property takes precedence over the PR-OS General Plan Designation, per NRS 278.349(3)(e).

34. Whether or not Petitioner files a General Plan Amendment to remove or change the PR-OS designation does not prohibit Petitioner from exercising its vested property rights to develop the 133 Acre Property under the existing vested R-PD7 zoning.

The Unjustified Delay of the 2017 Tentative Map Applications

35. On or about October, 2017, Petitioner filed all applications required by the City for the purpose of obtaining approval on tentative maps pursuant to NRS 278 to utilize the existing vested R-PD7 zoning on the 133 Acre Property. The October 2017 applications were identified as WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-72008; TMP-72009; WVR-72010; SDR-72011; and TMP-72012 (collectively "2017 Tentative Map Applications").

36. Shortly after the acceptance of the 2017 Tentative Map Applications by the City, the Planning Staff requested that Petitioner file a General Plan Amendment to accompany 2017 Tentative Map Applications. The City Planning Staff informed Petitioner that a General Plan Amendment was being "requested only", and that it is not a requirement under City code.

37. Under protest as being legally unnecessary, Petitioner accommodated the City's request to file a General Plan Amendment application to change the designation on the Property

from PR-OS (Parks/Recreation/Open Space) to ML (Medium Low Density Residential). The application was identified as GPA-72220 ("2017 GPA").

38. The 2017 GPA was not a legal requirement under LVMC Title 19, nor NRS 278.

39. The R-PD7 zoning on the 133 Acre Property takes precedence over the PR-OS General Plan Designation, per NRS 278.349(3)(c).

40. The 2017 Tentative Map Applications and 2017 GPA were recommended for APPROVAL by the City Staff, and APPROVED by a vote of the Planning Commission.

41. The 2017 GPA and the 2017 Tentative Map Applications were scheduled to be heard by the Las Vegas City Council ("City Council") on February 21, 2018.

42. At the February 21, 2018, City Council hearing, Petitioner requested that Councilman Coffin and Councilman Seroka recuse themselves from participation on the matter based on bias and conflicts of interest. The request was denied.

43. Although the 2017 Tentative Map Applications were on the agenda for a presentation and vote by the City Council, the City Council voted to abey the items to delay them several months, stating as the basis for the delay that one of the City Council seats was vacant and that Councilman Coffin was participating by phone from abroad. The stated reasons were invalid as the required quorum was present for the City Council to proceed with the applications at the February 21, 2018 hearing. Petitioner was denied any opportunity to be heard before the vote. The City Council vote resulted in a three (3) month delay to the hearing of the 2017 Tentative Map Applications.

44. After the vote resulting in abeyance, Petitioner stated on the record that it "vehemently opposed any kind of abeyance and continued delay of this matter" as the efforts to develop the Property had already been systematically delayed by the City for many years and

that Petitioner wanted a "vote on these applications and due process and the ability for [the City Council] to hear the zoning facts."

45. The abeyance resulted in the City Council delaying the hearing of the 2017 Tentative Map Applications for three (3) months, until May 16, 2018.

The "Yohan Lowie" Bill

46. On May 16, 2018, the day the 2017 Tentative Map Applications were scheduled to be heard, the City Council passed Bill No. 2018-5, the sole and singular intent of which was to prevent any development on the 133 Acre Property (and other properties, owned by affiliates of Petitioner, upon which the former Badlands Golf Course was operated).

47. During the discussion of Bill No. 2018-5:

a. Councilman Coffin foreshadowed the City Council's plan for the 2017 Tentative Map Applications (scheduled to be heard in the City Council's afternoon session) when he admitted that if the bill were to apply to the 2017 Tentative Map Applications, it could be interpreted as having the effect of influencing the City Council's decision on them[1].

b. Councilwoman Fiori stated her opinion that "*this Bill is for one development and one development only . . . [t]his Bill is only about Badlands Golf Course [which includes the 133 Acre Property]. . . . I call it the Yohan Lowie [a principal of Petitioner] Bill.*" ("Yohan Lowie Bill")

[1] **Coffin:** Thank you, your Honor. I'm not the sponsor of the bill but I do want to weigh in as I have heard testimony. And thank you very much for conducting the recommending committee without me there Monday, I couldn't be there. Uh, and I do appreciate the fact. But I knew the bill pretty well and I know that it doesn't address the, uh, current, uh, topic du jour of a- of a certain, uh, golf course, in, uh, the western part of town.

That would be retroactive treatment and, uh, I don't see how we can draw a conclusion or a connection between a bill discussing the future, with something that's been in play for quite a long time. So I think we've got to separate those two out for one thing. One, if we were to connect these two then someone might interpret this action today as somehow influencing the discussion on Badlands and that is not what we want to do. We wanna keep it separate and keep it clean, and this bill has nothing to do with that as far as I'm concerned. Thank you very much, your honor.

48. The City Council proceeded to vote to approve the Yohan Lowie Bill, refusing to allow Petitioner to be heard to make a record of its opposition to the ordinance.

49. Councilwoman Fiori and Mayor Goodman voted against the Yohan Lowie Bill and concurred with City Staff that the current policies relating to neighborhood engagement, which have been in place for many years, are effective and the Yohan Lowie Bill code revisions are unnecessary.

The 2017 Tentative Map Applications Are Stricken From The City Council Agenda

50. Finally, seven (7) months after the filing, the 2017 Tentative Map Applications and legally irrelevant 2017 GPA were set on the afternoon agenda of the City Council hearing on May 16, 2018, the same day as the passing of the "Yohan Lowie Bill".

51. At the commencement of the afternoon session of the May 16, 2018 City Council hearing, Councilman Seroka made an unprecedented "motion to strike" the 2017 Tentative Map Applications from the agenda, in order to avoid the 2017 Tentative Map Applications from being presented and voted upon by the City Council, and to cause them to be subjected to the Yohan Lowie Bill when re-filed by Petitioner.

52. The proffered bases of Councilman Seroka's unprecedented Motion to Strike Petitioner's applications were violations of Nevada law, and contradicted the positions and opinions of the City Staff, City Attorney, and prior formal actions of the City Council.

53. During the discussion of the motion, Councilman Coffin usurped the responsibilities of the City Attorney by giving legal advice to the other City Councilmembers stating that no advance notice is necessary for a procedural motion and that there was no need to have public comment on a motion to strike.

54. Based upon information and belief, other City Councilmembers were sandbagged and confused by the unprecedented and procedurally improper Motion to Strike Petitioner's applications. Specifically:

a. Councilwoman Fiori stated that "*none of us [on the City council] had a briefing on what just occurred*" and that "*it is quite shady and I don't see how we can even proceed*" and the actions were "*very shocking*.";

b. Councilman Crear said he did not feel comfortable moving forward and did not know if he had enough information to move forward; and

c. Councilman Anthony said "*95% of what Councilman Seroka just said, I heard it for the first time. I don't know what it means, I don't understand it.*"

55. Petitioner's representative stated that just a few days earlier Petitioner's representative met with councilman Seroka and other members of the City Council to address any open issues related to the 2017 Tentative Map Applications and no mention was made of the "motion to strike" or issues related thereto. Petitioner's representative further explained that Petitioner has been being stonewalled in its efforts to develop its property for many years, and that despite full compliance with City code and City Staff requests, the City keeps changing the rules on the fly for the purpose of preventing development of the property.

Seroka's Fiction #1
'That A GPA Was Necessary Yet Time Barred'

56. Councilman Seroka's first basis for the motion to strike was a legally fictitious claim ("Fiction #1") that Petitioner's 2017 GPA was the same or similar to the 2016 GPA that was denied in June of 2017, and under the City Code the 2017 GPA could not be filed sooner than one year from the date of the denial of the 2016 GPA. This was a legal fiction, because Petitioner is not required to file a General Plan Amendment ("GPA") in order to proceed under

its existing R-PD7 zoning. Petitioner would only be required to file a GPA if it filed an application seeking to change the zoning from R-PD7 to another zoning district classification.

57. At the May 16, 2018 hearing:

a. City Planning Staff advised the City Council that the 2017 GPA was filed by Petitioner only at the City's request and that Petitioner's filing of the 2017 GPA was under protest as being legally unnecessary.

b. City Attorney Brad Jerbic and City Staff both stated on the record that a GPA was not required to be filed by Petitioner to have the Tentative Map Applications heard.

58. Under Nevada law, existing land use is governed by zoning, and only future land use (the changing of zoning) takes the general plan (also commonly referred to as a master plan) designation into consideration. A GPA is not required for the submission, consideration and approval of a tentative map application if the underlying zoning allows for the use delineated on the tentative map.

59. Whether or not the 2017 GPA was filed by Petitioner, nor heard, approved, or denied by the City Council, was irrelevant in all respects regarding the hearing of Petitioner's 2017 Tentative Map Applications.

60. NRS 278.349(3) unambiguously provides that: "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**;"

61. The City Council's striking Petitioner's 2017 Tentative Map Applications from the City Council agenda due to the "PR-OS" master plan designation was a violation of Nevada

law. Specifically, NRS 278349(3)(e) which provides that the Property's R-PD7 residential zoning rights take precedence over an inconsistent master plan designation.

62. No general plan amendment was required to be filed by Petitioner in order to have the 2017 Tentative Map Applications heard and voted upon by the City Council.

63. The courtesy filing of the 2017 GPA by Petitioner, at the specific request (but not requirement) of City Planning Staff, was an improper and illegal basis for striking Petitioner's 2017 Tentative Map Applications.

Seroka's Fiction #2
'That a "Major Modification" To A Master Plan Is Required
In Order To Proceed With The 2017 Tentative Map Applications

64. Councilman Seroka's second basis for the motion to strike was a legally fictitious claim ("Fiction #2") that a "major modification" application to the conceptual Peccole Ranch Master Plan was required to be filed concurrently with the 2017 Tentative Map Applications.

65. At the May 16, 2018 hearing City Attorney Brad Jerbic stated on the record that Petitioner had a due process right to have its 2017 Tentative Map Applications heard that day.

66. In fact, the City Council, on January 3, 2018, had previously taken formal action on that exact issue, voting 4-2 that NO MAJOR MODIFICATION of the conceptual Peccole Ranch Master Plan was necessary in order for the City Council to hear the 2017 Tentative Map Applications.

67. The January 3, 2018 formal action that Petitioner was <u>not</u> required to file a "major modification" with the 2017 Tentative Map Applications was affirmed on January 17, 2018, when the City Council DENIED Councilman Coffin's motion to rescind the January 3, 2018 NO MAJOR MODIFICATION vote.

68. Fiction #2 was illegal in that it was a violation of the formal action taken by the City Council on January 3, 2018 that NO MAJOR MODIFICATION was required, and on January 17, 2018 denying a rescission of the NO MAJOR MODIFICATION vote.

69. Under Nevada law, existing zoning on a parcel supersedes any conflicting land use designations within the Las Vegas 2020 Master Plan, Land Use Elements, Land Use Designations, Master Development Plans (including the conceptual Peccole Ranch Master Plan), Master Development Plan Areas, and Special Area Plans, as such terms are used in the Las Vegas 2020 Master Plan.

70. Notwithstanding its inapplicability with respect to development under existing zoning on a parcel, the conceptual Peccole Ranch Master Plan was repealed by Ordinance 5353 in 2001.

71. Despite having no basis in law, either substantively or procedurally, to strike Petitioner's applications, the City Council voted 5-2 in favor of striking the 2017 Tentative Map Applications, altogether conflicting with its prior formal actions to the contrary and preventing a hearing on the merits of Petitioner's 2017 Tentative Map Applications to develop its Property under its existing vested R-PD7 zoning.

72. This motion to strike the 2017 Tentative Map Applications by the City Council was not supported by substantial evidence and was arbitrary and capricious. By striking the Tentative Map Applications, the City Council entirely prevented the applications from even being heard on the merits.

73. Based on the City's actions, it is clear that the purpose of the February 21, 2018 City Council abeyance was to allow Councilman Seroka time to put his "Yohan Lowie Bill" on the May 16, 2018 morning agenda, get it passed, and then improperly strike the applications for

the 133 Acre Property causing them to fall under the Yohan Lowie Bill if they are re-filed in the future.

74. Regardless of which route Petitioner takes to develop its Property, the City gives Petitioner specific instructions on what applications to file, then after extensive delays the City Council changes the rules and denies the applications or prevents the applications from even being heard and voted upon.

75. Based upon information and belief, the City is attempting to purchase Petitioner's 133 Acre Property and is taking action to depress the market value of the Property or has placed an arbitrarily low value on the Property, thereby showing the City's bad faith intent to drive down the value of the Property so that it can purchase it at a greatly reduced value.

76. The City's actions in denying and/or striking Petitioner's applications has foreclosed all development of the 133 Acre Property in violation of Petitioner's vested right to develop the 133 Acre Property.

77. On or about May 17, 2018, Notices of Final Action were issued striking and preventing a hearing on GPA-7220; WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-72008; TMP-72009; WVR-72010; SDR-72011; TMP-72012.

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

FIRST CLAIM FOR RELIEF
(Judicial Review)

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

80. The City has a duty to refrain from exercising its entitlement and land use authority in a manner that is arbitrary and capricious.

81. The City, by engaging in the conduct set forth above, acted arbitrarily and capriciously when it struck and denied a hearing on the 2017 Tentative Map Applications.

82. The City's decision to strike and deny a hearing on the 2017 Tentative Map Applications were not supported by evidence a reasonable mind would find adequate to support such action.

83. By striking and denying a hearing on the 2017 Tentative Map Applications without substantial evidence supporting such action, the City abused its discretion.

84. The City's arbitrary and capricious action in regards to the 2017 Tentative Map Applications has caused Petitioner to suffer real and significant damages.

85. Petitioner is aggrieved by the City's action to strike and deny a hearing on the 2017 Tentative Map Applications.

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

87. Pursuant to NRS 278.3195, Petitioner is entitled to judicial review of the City's arbitrary and capricious action to strike and deny a hearing on the 2017 Tentative Map Applications and for an order reversing the City's actions regarding the 2017 Tentative Map Applications.

FIRST ALTERNATIVE CAUSE OF ACTION FOR DECLARATORY RELIEF

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

89. As a result of the PR-OS being improperly placed on the 133 Acre Property, and the City Council's action in denying Petitioner's zoning rights as a result of such designation, there is uncertainty as to its validity and application to the 133 Acre Property (although Petitioner denies that the PR-OS should even apply to the 133 Acre Property).

90. Declaratory relief is necessary to terminate or resolve the uncertainty.

91. Declaratory relief is permitted under Nevada law, including but not limited to NRS Chapter 30.

92. Therefore, Petitioner requests that this Court immediately enter an order finding the PR-OS designation on the 133 Acre Property is invalid and/or of no effect on the 133 Acre Property's R-PD7 zoning rights, thereby prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use decision, or otherwise, relating to the Property's existing zoning and to the 133 Acre Property entirely.

SECOND ALTERNATIVE CAUSE OF ACTION FOR PRELIMINARY INJUNCTION

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

94. Any action that placed a designation of PR-OS on the 133 Acre Property was without legal authority and, therefore, entirely invalid.

95. There is a reasonable and strong likelihood of success on the merits which will invalidate the improper PR-OS designation on the 133 Acre Property.

96. Continued application of the PR-OS designation on the 133 Acre Property will result in irreparable harm and cause a significant hardship on Petitioner as: 1) the 133 Acre Property is legally recognized real property and is unique in the State of Nevada; 2) the PR-OS designation on the 133 Acre Property may prevent Petitioner from using the Property for any beneficial use; 3) Petitioner relies upon the purchase and development of property, including the 133 Acre Property, to provide a livelihood for numerous individuals and continued application of the PR-OS to prevent development of the 133 Acre Property will interfere with the livelihood of these individuals; 4) under NRS 278.349(3(e) the PR-OS zoning has no applicability with respect to the existing R-PD7 zoning on the Property; and, 5) allowing the development of the 133 Acre

Property will result in significant financial benefit to the City, including but not limited to increasing the City tax base and creating additional jobs for its citizens.

97. There is no plain, adequate or speedy remedy at law.

98. Therefore, Petitioner is entitled to injunctive relief prohibiting the City or any other person, agency, or entity from applying the PR-OS to any application, land use decision, or otherwise, relating to the Property's existing zoning and/or to the 133 Acre Property entirely.

THIRD ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Categorical Taking)

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

100. Petitioner has vested rights to use and develop the 133 Acre Property.

101. The City reached a final decision that it will not allow development of Petitioner's 133 Acre Property.

102. Any further requests to the City to develop the 133 Acre Property would be futile.

103. The City's actions in this case have resulted in a direct appropriation of Petitioner's 133 Acre Property by entirely prohibiting Petitioner from using the 133 Acre Property for any purpose and reserving the 133 Acre Property undeveloped.

104. As a result of the City's actions, Petitioner has been unable to develop the 133 Acre Property and any and all value in the 133 Acre Property has been entirely eliminated.

105. The City's actions have completely deprived Petitioner of all economically beneficial use of the 133 Acre Property.

106. The City's actions have resulted in a direct and substantial impact on Petitioner and on the 133 Acre Property.

107. The City's actions result in a categorical taking of Petitioner's 133 Acre Property.

108. The City has not paid just compensation to Petitioner for this taking of its 133 Acre Property

109. The City's failure to pay just compensation to Petitioner for the taking of its 133 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

110. Therefore, Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

FOURTH ALTERNATIVE CLAIM FOR RELIEF

IN INVERSE CONDEMNATION

(Penn Central Regulatory Taking)

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

113. Petitioner has vested rights to use and develop the 133 Acre Property.

114. The City reached a final decision that it will not allow development of Petitioner's 133 Acre Property.

115. Any further requests to the City to develop the 133 Acre Property would be futile.

116. The City through its motion to strike, and its prior actions denying an application to develop the 133 Acre Property, has done so even though: 1) Petitioner's proposed 133 Acre Property development was in conformance with its zoning density and was comparable and compatible with existing adjacent and nearby residential development; 2) the Planning Commission recommended approval; and 3) the City's own Staff recommended approval.

117. The City also stated that it would allow Petitioner to develop the 133 Acre Property as part of the MDA, referenced above. Petitioner worked on the MDA for nearly two years, with numerous City-imposed and/or City requested abeyances and with the City's direct and active involvement in the drafting and preparing the MDA and the City's statements that it would approve the MDA and despite nearly two years of working on the MDA, on or about August 2, 2017, the City denied the MDA.

118. The City's actions have caused a direct and substantial economic impact on Petitioner, including but not limited to preventing development of the 133 Acre Property.

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

120. At all relevant times herein Petitioner had specific and distinct investment backed expectations to develop the 133 Acre Property.

121. These investment backed expectations are further supported by the fact that the City, itself, confirmed the Property has vested R-PD7 development rights prior to Petitioner's acquiring the 133 Acre Property.

122. The City was expressly advised of Petitioner's investment backed expectations prior to denying Petitioner the use of the 133 Acre Property.

123. The City's actions are preserving the 133 Acre Property as open space for a public use and the public is physically entering on and actively using the 133 Acre Property.

124. The City's actions have resulted in the loss of Petitioner's investment backed expectations in the 133 Acre Property.

125. The character of the City action to deny Petitioner's use of the 133 Acre Property is arbitrary, capricious, and fails to advance any legitimate government interest and is more akin

to a physical acquisition than adjusting the benefits and burdens of economic life to promote the common good.

126. The City never allowed Petitioner to be heard on the applications to develop the 133 Acre Property and never stated that Petitioner did not have a vested property right to develop the 133 Acre Property.

127. The City denied Petitioner the right to be heard on its applications to develop the 133 Acre Property.

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

129. The City has not paid just compensation to Petitioner for this taking of its 133 Acre Property.

130. The City's failure to pay just compensation to Petitioner for the taking of its 133 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

131. Therefore, Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

FIFTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Regulatory Per Se Taking)

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

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

135. The City's actions exclude the Petitioner from using the 133 Acre Property and, instead, permanently reserve the 133 Acre Property for a public use and the public is physically entering on and actively using the 133 Acre Property.

136. The City's actions have shown an unconditional and permanent taking of the 133 Acre Property.

137. The City has not paid just compensation to Petitioner for this taking of its 133 Acre Property.

138. The City's failure to pay just compensation to Petitioner for the taking of its 133 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

139. Therefore, Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

SIXTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Nonregulatory Taking)

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

142. The City actions directly and substantially interfere with Petitioner's vested property rights rendering the 133 Acre Property unusable and/or valueless.

143. The City has intentionally delayed approval of development on the 133 Acre Property and, ultimately, struck or denied any and all development in a bad faith effort to preclude any use of the 133 Acre Property and/or to purchase the 133 Acre Property at a depressed value.

144. The City's actions are oppressive and unreasonable.

145. The City's actions result in a nonregulatory taking of Petitioner's 133 Acre Property.

146. The City has not paid just compensation to Petitioner for this taking of its 133 Acre Property.

147. The City's failure to pay just compensation to Petitioner for the taking of its 133 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

148. Therefore, Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

SEVENTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Temporary Taking)

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

151. If there is subsequent Government Action or a finding by the Nevada Supreme Court, or otherwise, that Petitioner may develop the 133 Acre Property, then there has been a temporary taking of Petitioner's 133 Acre Property for which just compensation must be paid.

152. The Government has not offered to pay just compensation for this temporary taking.

153. The Government's failure to pay just compensation to Petitioner for the taking of its 133 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

154. Therefore, the Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

EIGHTH CLAIM FOR VIOLATION OF

THE LANDOWNERS' DUE PROCESS RIGHTS

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

157. The Government action in this case retroactively and without due process transformed Petitioner's vested property right to a property without any value.

158. The Government action in this case was taken without proper notice to Petitioner.

159. This Government action to eliminate or substantially change Petitioner's vested and established property rights, had the effect of depriving Petitioner of its legitimate constitutionally protected property rights.

160. This Government action was arbitrary and/or irrational and unrelated to any legitimate governmental objective or purpose.

161. This is a violation of Petitioner's substantive and procedural due process rights under the United States and Nevada State Constitutions.

162. This Government action mandates payment of just compensation as stated herein.

163. The Government action should be invalidated to return Petitioner's property rights to Petitioner thereby allowing development of the 133 Acre Property.

164. This requested relief is in excess of fifteen thousand dollars ($15,000.00).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

1. For Judicial Review of the City's denial and/or striking of the Petitioner's applications stated herein;

2. For an Order reversing the City's denial and/or striking of the Petitioner's applications stated herein;

3. Declaratory judgment with this Court immediately entering an order finding the PR-OS designation on the 133 Acre Property is invalid and of no effect on the 133 Acre Property and prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use application, decision, or otherwise, relating to the Property's existing vested zoning and to Petitioner's Property entirely;

4. Injunctive relief prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use decision, or otherwise, relating to the Property's existing zoning and to the 133 Acre Property entirely;

5. An award of just compensation according to the proof for the taking (permanent or temporary) and/or damaging of Petitioner's property by inverse condemnation;

6. Prejudgment interest commencing from the date the Government first froze the use of the 133 Acre Property which is prior to the filing of this Complaint in Inverse Condemnation;

7. Invalidation of the Government action, returning the vested property rights to Petitioner thereby allowing development of the 133 Acre Property;

8. A preferential trial setting pursuant to NRS 37.055;

9. Payment for all costs incurred in attempting to develop the 133 Acre Property;

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

11. For such further relief as the Court deems just and equitable under the circumstances.

DATED this 7th day of June, 2018.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ Kermitt 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

VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

Vickie DeHart, on behalf of Petitioner, being first duly sworn, upon oath, deposes and says: that he/she has read the foregoing **PETITION FOR JUDICIAL REVIEW, COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF, 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/her knowledge.

V DeHart

Name: Vickie DeHart, as manager

SUBSCRIBED and SWORN to before me
This 7 day of June, 2018.

NOTARY PUBLIC
LeeAnn Stewart-Schencke

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

EXHIBIT “B”

COMP
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Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

CITY OF LAS VEGAS, political subdivision of the State of Nevada, 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-18-780184-C
Dept. No.: Department 28

COMPLAINT FOR DECLARATORY RELIEF AND INJUNCITIVE RELIEF, AND VERIFIED CLAIMS IN INVERSE CONDEMNATION

(Exempt from Arbitration –Action Concerning Title To Real Property)

COMES NOW Plaintiffs, 180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., and SEVENTY ACRES, LLC, a Nevada Limited Liability Company ("Landowners") by and through its attorney of record, The Law Offices of Kermitt L. Waters, for its Complaint for Declaratory and Injunctive Relief and In Inverse Condemnation allege as follows:

PARTIES

1. Landowners are organized and existing under the laws of the State of Nevada.

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

JURISDICTION AND VENUE

5. The Court has jurisdiction over the claims set forth herein pursuant to the United States Constitution, Nevada State Constitution, and the Nevada Revised Statutes, including the Chapter 30 provisions applicable to declaratory relief actions.

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

GENERAL ALLEGATIONS

7. Landowners own three separate and distinct properties that make up approximately 65 acres of real property generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-801-002 (11.28 acres, owned by 180 LAND COMPANY, LLC); 138-31-801-003 (5.44 acres, owned by SEVENTY ACRES, LLC), and; 138-32-301-007 (47.59 acres, owned by SEVENTY ACRES, LLC) (although these are three separate and distinct parcels, the parcels will hereinafter be collectively referred to as the "65 Acres").

8. The 65 Acres with several other separate parcels of property comprises approximately 250 acres of residential zoned land (hereinafter "250 Acre Residential Zoned Land").

Zoning Governs Existing Permitted Land Uses

9. Zoning specifically defines what uses *presently* are allowable on a parcel.

10. A "master plan" designation, as such term is used in NRS 278 and the Las Vegas 2020 Master Plan, determines *future* land use and is considered only when legally changing the zoning on a parcel.

11. General Plan Amendments and Major Modifications, as such mechanisms are defined in the Las Vegas 2020 Master Plan (adopted on September 6, 2000 through ordinance 2000-62) are not required if the proposed use complies with existing zoning on a parcel.

12. The City of Las Vegas subsequently adopted the Land Use & Neighborhoods Preservation Element of the Las Vegas 2020 Master Plan on September 2, 2009, Ordinance #6056; revised with ordinance #6152 on May 8, 2012.

13. The Land Use & Neighborhoods Preservation Element establishes the City's land use hierarchy which progresses in the following ascending order: 2020 Mater Plan; Land Use Element; Master Plan Land Use Designation; Master Development Plan Areas; and Zoning Designation. In the hierarchy, the land use designation is subordinate to the zoning designation because land use designations indicate the intended use and development density for a particular area while zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses.

14. The City of Las Vegas Unified Development Code Title 19.10.040 defines a zoning district titled "PD (Planned Development District)" and Title 19.10.050 defines a zoning district titled "R-PD (Residential Planned Development)". The "PD" and "R-PD" zoning districts are

separate and distinct from each other and governed by separate and distinct provisions in the City Code.

15. An "R-PD" district is not governed by the provisions of Title 19.10.040. The term "Major Modification" as used in Title 19.10.040 does not apply to an "R-PD" zoning district.

The Undisputed R-PD7 Residential Zoning

16. The existing zoning district on the 65 Acres is R-PD7 (Residential Planned Development District – 7.49 Units per Acre).

17. Upon information and belief, no formal action approving a plot plan, nor site development review, was ever taken by the Planning Commission, nor City Council, to allow the use of the 250 Acre Residential Zoned Land as a golf course.

18. The R-PD7 zoning designation on the Property was established by Ordinance No. 5353 (Bill Z-2001-1) PASSED, ADOPTED, and APPROVED by the Las Vegas City Council on August 15, 2001 ("Ordinance 5353"). Specifically:

a. Assessor's Parcel Number 138-31-801-002 (11.28 acres, owned by 180 LAND COMPANY, LLC) was changed from its then "Current Zoning" designation of "U (M)" to its "New Zoning" designation "R-PD7";

b. Assessor's Parcel Number 138-31-801-003 (5.44 acres, owned by SEVENTY ACRES, LLC) was changed from its then "Current Zoning" designation of "U (M)" to its "New Zoning" designation "R-PD7"; and,

c. Assessor's Parcel Number 138-32-301-007 (47.59 acres, owned by SEVENTY ACRES, LLC) was changed from its then "Current Zoning" designation of "U (M)" to its "New Zoning" designation "R-PD7."

19. Ordinance 5353 provided: "SECTION 4: All ordinances or parts of ordinances or section, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of

the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed." (emphasis supplied).

20. Ordinance 5353 repealed any then existing master plans, including the conceptual Peccole Ranch Master Plan approved in 1990, with respect to the Property.

21. In a December 30, 2014, letter ("Zoning Verification Letter"), the City verified in writing that "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 Units per Acre)." This Zoning Verification Letter includes the 65 Acres.

22. At a May 16, 2018 City Council hearing, the City Attorney and the City Staff affirmed the issuance and content of the Zoning Verification Letter.

23. The City does not dispute that the Property is zoned R-PD7.

24. None of the 65 Acres is zoned "PD".

25. Landowners materially relied upon the City's verification of the Property's R-PD7 vested zoning rights.

26. At all relevant times herein, Landowners had the vested right to use and develop the 65 Acres under and in conformity with the existing R-PD7.

27. R-PD7 zoning allows up to 7.49 residential units per acre, subject to comparability and compatibility adjacency planning principles.

28. The Property is taxed by the Clark County Assessor based on its R-PD7 zoning and Vacant Single Family Residential use classification, further evidencing the vested property rights.

29. Landowners' vested property rights in the 65 Acres is recognized under the United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

The Legally Irrelevant 2016 General Plan Amendment

30. In or about late 2005, the City changed the Land Use Designation for the Property under its 2020 Master Plan to "PR-OS" (Parks/Recreation/Open Space). The City Attorney has

on multiple occasions stated that the City is unable to establish that it complied with its legal notice and public hearing requirements when it changed the General Plan Designation on the Property to PR-OS.

31. The PR-OS designation on the Property was procedurally deficient and is therefore void ab initio and has no legal effect on the Property.

32. On or about December 29, 2016, and at the request of the City, the Landowners filed an application for a General Plan Amendment to change the General Plan Designation relating to the 65 Acres and several other parcels of real property from PR-OS to L (Low Density Residential) and the application was given number GPA-68385 ("GPA-68385" also referred to herein as the "2016 GPA").

33. The City Council thereafter denied the 2016 GPA on June 21, 2017, even though the City requested that the Landowners file the GPA.

34. The City's denial of the 2016 GPA does not affect the R-PD7 zoning on the Property, nor prohibit the Landowners from exercising their vested property rights to develop the 65 Acres under the existing R-PD7 zoning.

35. The 2016 GPA was not a legal requirement under LVMC Title 19, nor NRS 278. The R-PD7 zoning on the 65 Acres takes precedence over the PR-OS General Plan Designation, per The Land Use & Preservation Elements of the Las Vegas 2020 Master Plan and per NRS 278.349(3)(e).

36. Whether or not the Landowners file a General Plan Amendment to remove or change the PR-OS designation does not prohibit the Landowners from exercising their vested property rights to develop the 65 Acres under the existing vested R-PD7 zoning.

RIPENESS AND FUTILITY

37. The Landowners' claims are ripe for adjudication as the City has already given the final word and provided a notice of final action that it will not allow any development on the 65 Acres and any further requests to develop on the 65 Acres is entirely futile as demonstrated by the continuous and repeated delays, changed positions by the City, and express and affirmative actions toward the 65 Acres that have prevented any development whatsoever on the 65 Acres.

38. The futility of submitting any further development applications is further demonstrated by the City's actions toward the several properties that make up the 65 Acres and the several other properties that comprise the 250 Acre Residential Zoned Land.

THE MASTER DEVELOPMENT AGREEMENT DENIAL

39. The 65 Acres was previously included, at the request of the City, as part of one master development agreement that would have allowed the development of the 250 Acre Residential Zoned Land (hereinafter "MDA").

40. At that time, the City affirmatively stated in public hearings that the only way the City Council would allow development on the 65 Acres was under the MDA for the entirety of the 250 Acre Residential Zoned Land.

41. Over an approximately 2.5 year period, the Landowners, at the City's demand, were required to change the MDA approximately ten (10) times and the Landowners complied with each and every City request.

42. However, on August 2, 2017, less than two months after the City Council said it was "very, very close" to approving the MDA, the City Council voted to deny the MDA altogether, which also included the 65 Acres.

43. This MDA denial is a final decision by the City that it will not allow any part of the 65 Acres to be developed and any further requests to develop are futile.

44. The City issued notice of the final decision denying the MDA on August 3, 2017.

THE 133 ACRES DENIALS

The Unjustified Delay of the 2017 Tentative Map Applications

45. Since the denial of the MDA, the City has stricken three sets of applications to develop three separate properties, also zoned RPD-7, comprising approximately 133 acres (the "133 Acres").

46. On or about October, 2017, 180 Land Company, LLC ("180 Land") filed all applications required by the City for the purpose of obtaining approval on tentative maps pursuant to NRS 278 and LVMC Title 19 to utilize the existing vested R-PD7 zoning on the 133 Acres, (which was also part of the MDA for the 250 Acre Residential Zoned Land). The October 2017 applications were identified as WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-72008; TMP-72009; WVR-72010; SDR-72011; and TMP-72012 (collectively "2017 Tentative Map Applications"). These October 2017 applications were distinct from the MDA.

47. Shortly after the acceptance of the 2017 Tentative Map Applications by the City, the Planning Staff requested that 180 Land file a General Plan Amendment to accompany the 2017 Tentative Map Applications. The City Planning Staff informed 180 Land that a General Plan Amendment was being "requested only," and that it is <u>not</u> a requirement under City code.

48. Under protest as being legally unnecessary, 180 Land accommodated the City's request and filed a General Plan Amendment application to change the designation on the 133 Acres from PR-OS (Parks/Recreation/Open Space) to ML (Medium Low Density Residential). The application was identified as GPA-72220 ("2017 GPA").

49. The 2017 GPA was not a legal requirement under LVMC Title 19, nor NRS 278.

50. The R-PD7 zoning on the 133 Acres takes precedence over the PR-OS General Plan Designation, per The Land Use & Preservation Elements of the Las Vegas 2020 Master Plan and per NRS 278.349(3)(e).

51. The 2017 Tentative Map Applications and 2017 GPA were recommended for APPROVAL by the City Staff, and APPROVED by a vote of the Planning Commission.

52. The 2017 GPA and the 2017 Tentative Map Applications were scheduled to be heard by the Las Vegas City Council ("City Council") on February 21, 2018.

53. At the February 21, 2018, City Council hearing, 180 Land requested that Councilman Coffin and Councilman Seroka recuse themselves from participation on the matter based, amongst other things on bias, conflicts of interest, and their public statements that the 133 Acres would never be developed. The request to recuse was denied.

54. Although the 2017 Tentative Map Applications were on the agenda for a presentation and vote by the City Council, the City Council voted to abey the items to delay them several months, stating as the basis for the delay that one of the City Council seats was vacant and that Councilman Coffin was participating by phone from abroad. The stated reasons were baseless as the required quorum was present for the City Council to proceed with the applications at the February 21, 2018 hearing. 180 Land was denied the opportunity to be heard before the vote. The City Council vote resulted in an additional three (3) month delay to the hearing of the 2017 Tentative Map Applications on the 133 Acres.

55. After the vote resulting in abeyance, 180 Land stated on the record that it "vehemently opposed any kind of abeyance and continued delay of this matter" as the efforts to develop the 133 Acres had already been systematically delayed by the City for years and that 180 Land wanted a "vote on these applications and due process and the ability for [the City Council] to hear the zoning facts."

56. The City took no action on the Landowners' request and allowed the abeyance.

57. The abeyance resulted in the City Council delaying the hearing of the 2017 Tentative Map Applications on the 133 Acres for three (3) months, until May 16, 2018.

The "Yohan Lowie" Bill

58. After the three month delay, on May 16, 2018, the day the 2017 Tentative Map Applications were scheduled to be heard on the 133 Acres, the City Council passed Bill No. 2018-5, the sole and singular intent of which was to prevent any development on the 133 Acres (and other properties that comprise the 250 Acre Residential Zoned Land – including the 65 Acres that is the subject of this complaint).

59. During the discussion of Bill No. 2018-5:

a. Councilman Coffin foreshadowed the City Council's plan for the 2017 Tentative Map Applications (scheduled to be heard in the City Council's afternoon session) when he admitted that if the bill were to apply to the 2017 Tentative Map Applications, it could be interpreted as having the effect of influencing the City Council's decision on them[1].

b. Councilwoman Fiore stated her opinion that "*this Bill is for one development and one development only . . . [t]his Bill is only about Badlands Golf Course [which includes the 133 Acres– and the 65 Acres that is the subject of the*

[1] **Coffin:** Thank you, your Honor. I'm not the sponsor of the bill but I do want to weigh in as I have heard testimony. And thank you very much for conducting the recommending committee without me there Monday, I couldn't be there. Uh, and I do appreciate the fact. But I knew the bill pretty well and I know that it doesn't address the, uh, current, uh, topic du jour of a- of a certain, uh, golf course, in, uh, the western part of town.

That would be retroactive treatment and, uh, I don't see how we can draw a conclusion or a connection between a bill discussing the future, with something that's been in play for quite a long time. So I think we've got to separate those two out for one thing. One, if we were to connect these two then someone might interpret this action today as somehow influencing the discussion on Badlands and that is not what we want to do. We wanna keep it separate and keep it clean, and this bill has nothing to do with that as far as I'm concerned. Thank you very much, your honor.

pending complaint]. . . . I call it the Yohan Lowie [a principal of 180 Land] Bill." ("Yohan Lowie Bill")

60. The City Council proceeded to vote to approve the Yohan Lowie Bill, refusing to allow 180 Land to be heard to make a record of its opposition to the bill/ordinance.

61. Councilwoman Fiore and Mayor Goodman voted against the Yohan Lowie Bill and concurred with City Staff that the current policies relating to neighborhood engagement, which have been in place for many years, are effective and the Yohan Lowie Bill code revisions are unnecessary.

The 2017 Tentative Map Applications for the 133 Acres Are Stricken From the City Council Agenda

62. Finally, seven (7) months after the filing, the 2017 Tentative Map Applications and legally irrelevant 2017 GPA for the 133 Acres were set on the afternoon agenda of the City Council hearing on May 16, 2018, the same day as the passing of the "Yohan Lowie Bill".

63. At the commencement of the afternoon session of the May 16, 2018 City Council hearing, Councilman Seroka made an unprecedented "motion to strike" the 2017 Tentative Map Applications from the agenda, in order to avoid the 2017 Tentative Map Applications from being presented and voted upon by the City Council, and to cause them to be subjected to the Yohan Lowie Bill when re-filed by 180 Land.

64. The proffered bases of Councilman Seroka's unprecedented motion to strike 180 Land's applications for the 133 Acres were "violations of Nevada law," an assertion of which contradicted the positions and opinions of the City Staff, City Attorney, and prior formal actions of the City Council.

65. During the discussion of the motion, Councilman Coffin usurped the responsibilities of the City Attorney by giving legal advice to the other City Councilmembers

stating that no advance notice is necessary for a procedural motion and that there was no need to have public comment on a motion to strike.

66. Based upon information and belief, other City Councilmembers were sandbagged and confused by the unprecedented and procedurally improper motion to strike 180 Land's applications to develop the 133 Acres. Specifically:

a. Councilwoman Fiore stated that "*none of us [on the City council] had a briefing on what just occurred*" and that "*it is quite shady and I don't see how we can even proceed*" and the actions were "*very shocking*.";

b. Councilman Crear said he did not feel comfortable moving forward and did not know if he had enough information to move forward; and

c. Councilman Anthony said "*95% of what Councilman Seroka just said, I heard it for the first time. I don't know what it means, I don't understand it.*"

67. 180 Land's representative stated that just a few days earlier 180 Land's representative met with councilman Seroka and other members of the City Council to address any open issues related to the 2017 Tentative Map Applications for the 133 Acres and no mention was made of the "motion to strike" or issues related thereto. 180 Land's representative further explained that 180 Land has been being stonewalled in its efforts to develop its property for many years, and that despite full compliance with City code and City Staff requests, the City keeps changing the rules on the fly for the purpose of preventing development of the property.

Seroka's Fiction #1
'That A GPA Was Necessary Yet Time Barred' for the 133 Acres

68. Councilman Seroka's first basis for the motion to strike the applications that would have allowed development of the 133 Acres was a legally fictitious claim ("Fiction #1") that 180 Land's 2017 GPA was the same or similar to the 2016 GPA that was denied in June of 2017, and under the City Code the 2017 GPA could not be filed sooner than one year from the date of the

denial of the 2016 GPA. This was a legal fiction, because 180 Land is not required to file a General Plan Amendment ("GPA") in order to proceed under its existing R-PD7 zoning. 180 Land would only be required to file a GPA if it filed an application seeking to change the zoning from R-PD7 to another zoning district classification.

69. At the May 16, 2018 hearing:

a. City Planning Staff advised the City Council that the 2017 GPA was filed by 180 Land only at the City's request and that 180 Land's filing of the 2017 GPA was under protest as being legally unnecessary.

b. City Attorney Brad Jerbic and City Staff both stated on the record that a GPA was not required to be filed by 180 Land to have the Tentative Map Applications for the 133 Acres to be heard.

70. Under Nevada law, existing land use is governed by zoning, and only future land use (the changing of zoning) takes the general plan (also commonly referred to as a master plan) designation into consideration. A GPA is not required for the submission, consideration and approval of a tentative map application if the underlying zoning allows for the use delineated on the tentative map.

71. Whether or not the 2017 GPA was filed by 180 Land, nor heard, approved, or denied by the City Council, was irrelevant in all respects regarding the hearing of 180 Land's 2017 Tentative Map Applications on the 133 Acres.

72. NRS 278.349(3) unambiguously provides that: "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**;"

73. The City took the following position in its Answering Brief filed in a petition for judicial review in Clark County District Court Case No. A-17-752344-J:

> The Land Use & Neighborhood Preservation Element is significant, *inter alia*, because it plainly establishes the City's land use hierarchy. The land use hierarchy progresses in the following *ascending order*: 2020 Master Plan; Land Use Element; Master Plan Land Use Designation; Master Development Plan Areas; and Zoning Designation. *In the hierarchy, the land use designation is subordinate to the zoning designation*, for example, because land use designations indicate the intended use and development density for a particular area, while zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses.

74. The City Council's striking 180 Land's 2017 Tentative Map Applications to develop the 133 Acres from the City Council agenda due to the "PR-OS" master plan designation was a violation of Nevada law. Specifically, NRS 278.349(3)(e) which provides that the Property's R-PD7 residential zoning rights take precedence over an inconsistent master plan designation.

75. No general plan amendment was required to be filed by 180 Land in order to have the 2017 Tentative Map Applications heard and voted upon by the City Council.

76. The courtesy filing, under protest of the 2017 GPA by 180 Land, at the specific request (but not requirement) of City Planning Staff, was an improper and illegal basis for striking 180 Land's 2017 Tentative Map Applications.

Seroka's Fiction #2
'That a "Major Modification" To A Master Plan Is Required
In Order To Proceed With the 2017 Tentative Map Applications for the 133 Acres

77. Councilman Seroka's second basis for the motion to strike the 133 Acres applications was a legally fictitious claim ("Fiction #2") that a "major modification" application

to the conceptual Peccole Ranch Master Plan was required to be filed concurrently with the 2017 Tentative Map Applications to develop the 133 Acres.

78. At the May 16, 2018 hearing City Attorney Brad Jerbic stated on the record that 180 Land had a due process right to have its 2017 Tentative Map Applications heard that day.

79. In fact, the City Council, on January 3, 2018, had previously taken formal action on that exact issue, voting 4-2 that NO MAJOR MODIFICATION of the conceptual Peccole Ranch Master Plan was necessary in order for the City Council to hear the 2017 Tentative Map Applications.

80. The January 3, 2018 formal action that 180 Land was not required to file a "major modification" with the 2017 Tentative Map Applications was affirmed on January 17, 2018, when the City Council DENIED Councilman Coffin's motion to rescind the January 3, 2018 NO MAJOR MODIFICATION vote.

81. Fiction #2 was illegal in that it was a violation of the formal action taken by the City Council on January 3, 2018 that NO MAJOR MODIFICATION was required, and on January 17, 2018 denying a rescission of the NO MAJOR MODIFICATION vote.

82. Under Nevada law, existing zoning on a parcel supersedes any conflicting land use designations within the Las Vegas 2020 Master Plan, Land Use Elements, Land Use Designations, Master Development Plans (including the conceptual Peccole Ranch Master Plan), Master Development Plan Areas, and Special Area Plans, as such terms are used in the Las Vegas 2020 Master Plan.

83. The City affirmed that zoning prevails over all other planning land use designations in its Answering Brief filed in a petition for judicial review in Clark County District Court Case No. A-17-752344-J.

84. Notwithstanding its inapplicability with respect to development under existing zoning on a parcel, the conceptual Peccole Ranch Master Plan was repealed by Ordinance 5353 in 2001.

85. On May 16, 2018, despite having no basis in law, either substantively or procedurally, to strike 180 Land's applications for the 133 Acres, the City Council voted 5-2 in favor of striking the 2017 Tentative Map Applications, altogether conflicting with its prior formal actions to the contrary and preventing a hearing on the merits of 180 Land's 2017 Tentative Map Applications to develop the 133 Acres under its existing vested property right R-PD7 zoning.

86. The motion to strike the 2017 Tentative Map Applications by the City Council was not supported by substantial evidence and was arbitrary and capricious. By striking the Tentative Map Applications, the City Council entirely prevented the applications to develop the 133 Acres from even being heard on the merits.

87. Based on the City's actions, it is clear that the purpose of the February 21, 2018 City Council abeyance was to allow Councilman Seroka time to put his "Yohan Lowie Bill" on the May 16, 2018 morning agenda, get it passed, and then improperly strike the applications for the 133 Acres causing them to fall under the Yohan Lowie Bill if they are re-filed in the future.

88. Regardless of which route 180 Land took to develop the 133 Acres, the City gave 180 Land specific instructions on which applications to file. Then, after accepting, processing and recommending 'approval' by both the City Planning Department and the City Planning Commission, the City Council extensively delayed the matter from being heard and ultimately and arbitrarily changed the requirements on the fly and improperly struck the applications preventing the applications from even being heard and voted upon.

89. Based upon information and belief, the City was attempting to acquire the entire 250 Acre Residential Zoned Land and took action to intentionally and artificially depress the value

of the 133 Acres (and the 65 Acres at issue in the pending complaint), or has publicly placed an arbitrarily low value on the Property, thereby showing the City's bad faith intent to manipulate the value of the entire 250 Acre Residential Zoned Land so that it can acquire it at a greatly reduced value.

90. The City's actions in denying and/or striking 180 Land's applications on the 133 Acres has foreclosed all development of the 133 Acres in violation of 180 Land's vested right to develop the 133 Acres.

91. On or about May 17, 2018, Notices of Final Action were issued striking and preventing a hearing on GPA-7220; WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-72008; TMP-72009; WVR-72010; SDR-72011; TMP-72012.

92. The City's actions in entirely preventing any development of the 133 Acres further establishes that the City will not allow any part of the 65 Acres to be developed and any further requests to develop are futile.

THE 35 ACRE PROPERTY DENIALS

93. A 35 Acre Property is also one of the properties that comprise the 250 Acre Residential Zoned Land and individual applications to develop the 35 Acre Property have also been summarily denied by the City.

94. 180 Land also filed all applications required by the City for the purpose of obtaining approval on tentative maps pursuant to NRS 278 to utilize the existing vested R-PD7 zoning on the 35 Acre Property, (which was also part of the MDA for the 250 Acre Residential Zoned Land). These applications were separate from the MDA for the 250 Acre Residential Zoned Land.

95. While an application for a General Plan Amendment was filed by 180 Land relating to the larger 250 Residential Zoned Land, being application number, GPA-68385; additional applications were filed by 180 Land with the City that related more particularly to the 35 Acre

Property, being Assessor's Parcel Number 138-31-201-005. Those zoning applications pertaining to the 35 Acre Property were application numbers WVR-68480; SDR-68481 and TMP-68482.

96. At all relevant times herein, 180 Land had the vested right to use and develop the 35 Acre Property, at a density of up to 7.49 residential units per acre, subject to comparability and compatibility adjacency standards.

97. This vested right to use and develop the 35 Acre Property, was confirmed by the City in writing prior to 180 Land's acquisition of the 35 Acre Property and 180 Land materially relied upon the City's confirmation regarding the Property's vested zoning rights.

98. 180 Land's vested property rights in the 35 Acre Property is recognized under the United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

99. Although the 35 Acre Property showed the General Plan Designation of PR-OS (Parks/Recreation/Open Space), that Designation was placed on the 35 Acre Property by the City without the City having followed its own proper notice requirements or procedures. Therefore, the General Plan Designation of PR-OS was shown on the property in error.

100. On or about December 29, 2016, and at the suggestion of the City, The Landowners filed with the City an application for a General Plan Amendment to change the General Plan Designation on the 250 Acre Residential Zoned Land (including the 35 Acre Property) from PR-OS (Parks/Recreation/Open Space) to L (Low Density Residential) and the application was given number GPA-68385 ("GPA-68385").

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

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

103. The development proposal for the 35 Acre Property was at all times comparable to and compatible with the existing adjacent and nearby residential development as the proposed development was significantly less dense than surrounding development with average lot sizes of one half (1/2) of an acre amounting to density of 1.79 units per acre. The adjacent Queensridge common interest community density is approximately 3.48 units per acre. To the north of the 35 Acre Property are existing residences developed on lots generally ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre. In the center of the 35 Acre Property, are existing residences developed on lots generally ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre. To the south of the 35 Acre Property are existing residences developed on lots generally ranging in size from three quarters (3/4) of an acre to one and one quarter (1¼) acre.

104. The applications to develop the 35 Acre Property met every single City Staff request and every single applicable City of Las Vegas Municipal Code section and Nevada Revised Statute.

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

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

107. After considering 180 Land's comments, and those of the public, the Planning Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's conditions.

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

109. On June 21, 2017, the City Council heard WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

110. In conjunction with this City Council public hearing, the Planning Staff, in continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482 for the 35 Acre Property, noted **"the adjacent developments are designated ML (Medium Low Density Residential) with a density cap of 8.49 dwelling units per acre. The proposed development would have a density of 1.79 dwelling units per acre…Compared with the densities and General Plan designations of the adjacent residential development, the proposed L (Low Density Residential) designation is less dense and therefore appropriate for this area, capped at 5.49 units per acre."** (emphasis supplied).

111. The Planning Staff found the density of the proposed General Plan for the 35 Acre Property compatible with the existing adjacent land use designation, found the zoning designations compatible, and found that the filed applications conform to other applicable adopted plans and policies that include approved neighborhood plans.

112. At the June 21, 2017 City Council hearing, 180 Land addressed the concerns of the individuals speaking in opposition to the 35 Acre Property development, and provided substantial evidence, through the introduction of documents and through testimony, of expert witnesses and others, rebutting each and every opposition claim.

113. Included as part of the evidence presented by 180 Land at the June 21, 2017 City Council hearing for the 35 Acre Property applications, 180 Land introduced evidence, among other things, (i) that representatives of the City had specifically noted in both City public hearings and in public neighborhood meetings, that the standard for appropriate development based on the existing R-PD7 zoning on the 35 Acre Property would be whether the proposed lot sizes were compatible with and comparable to the lot sizes of the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acre Property were compatible with and comparable to the lot sizes of the existing residences adjoining the lots proposed in the 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acre Property was *less than the density* of those already existing residences adjoining the 35 Acre Property; and (iv) that both Planning Staff and the Planning Commission recommended approval of WVR-68480, SDR-68481 and TMP-68482, all of which applications pertain to the proposed development of the 35 Acre Property.

114. Any public statements made in opposition to the various 35 Acre Property applications were either conjecture or opinions unsupported by facts; all of which public statements were either rebutted by findings as set forth in the Planning Staff report or through statements made by various City representatives at the time of the City Council public hearing or through evidence submitted by 180 Land at the time of the public hearing.

115. Despite the fact that the applications to develop the 35 Acre Property met every single City Staff request and every single applicable City of Las Vegas Municipal Code section and Nevada Revised Statute, despite Staff recommendation of approval and the recommendation

of approval from the Planning Commission, despite the substantial evidence offered by 180 Land in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385, and despite the fact that no substantial evidence was offered in opposition, the City Council denied WVR-68480, SDR-68481, TMP-68482 and GPA-68385 for the 35 Acre Property.

116. The City Council's stated reason for the denial was its desire to see, not just the 35 Acre Property, but the entire 250 Acre Residential Zoned Land, developed under one master development agreement which would include many other parcels of property that were legally subdivided and separate and apart from the 35 Acre Property.

117. At the City Council hearing considering and ultimately denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385 for the 35 Acre Property, the City Council advised 180 Land that the only way the City Council would allow development on the 35 Acre Property was under a master development agreement (MDA) for the entirety of the 250 Acre Residential Zoned Land. This is the same MDA that is referenced in the above allegations 39 through 44.

118. At the time the City Council was considering WVR-68480, SDR-68481, TMP-68482 and GPA-68385, that would allow the 35 Acre Property to be developed, the City Council stated that the approval of the MDA is "very, very close" and "we are going to get there [approval of the MDA]." The City Council was referring to the next public hearing wherein the MDA for the entire 250 Acre Residential Zoned Land would be voted on by the City Council.

119. The City Attorney stated that "if anybody has a list of things that should be in this agreement [MDA], but are not, I say these words speak now or forever hold your peace, because 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 to get it in. . . . This is where I have to use my skills and say enough is enough and that's why I said tonight 'speak now or forever hold your peace.' If somebody comes to me with an issue that they should have come to me with months ago I'm gonna ignore them 'cause that's just not fair

either. We can't continue to whittle away at this agreement [MDA] by throwing new things at it all the time. There's been two years for people to make their comments. I think we are that close."

120. On August 2, 2017, less than two months after the City Council said it was "very, very close" to approving the MDA for the 250 Acre Residential Zoned Land, the City Council voted to deny the MDA altogether.

121. The City's actions in denying the Landowners' tentative map (TMP-68482), WVR-68480, SDR-68481 and GPA-68385 and then denial of the MDA for the entire 250 Acre Residential Zoned Land foreclosed all development of the 35 Acre Property in violation of 180 Land's vested right to develop the 35 Acre Property and the denial by the City Council was not supported by substantial evidence and was arbitrary and capricious.

122. On or about June 28, 2017, Notices of Final Action were issued by the City for WVR-68480, SDR-68481, TMP-68482 and GPA-68385 stating that all applications to develop the 35 Acre Property had been denied.

123. The City's actions directed at entirely preventing any development of the 35 Acre Property further establishes that the City will not allow any part of the 250 Acre Residential Zoned Land, including the 65 Acres, to be developed and that any further requests to develop are futile.

OTHER ACTIONS DEMONSTRATING THAT THE CITY WILL NOT ALLOW DEVELOMENT OF ANY PART OF THE 65 ACRES (A TAKING) AND THAT IT IS FUTILE TO SEEK FURTHER DEVELOPMENT APPLICATIONS FROM THE CITY

124. In addition to the actions taken by the City directed at the 250 Acre Residential Zoned Land by way of the MDA, the actions directed at the 133 Acres, and the actions directed at the 35 Acre Property, as set forth above, the City has taken other actions that also firmly establish that the City will not allow any development of the 65 Acres, amounting to a taking, and it is futile

to seek further development applications from the City as the City will never allow the Landowners to develop the 65 Acres.

125. One member of the City Council ran a political campaign for the City Council, prior to being elected to the City Council, that development will not be allowed on the 65 Acres and/or the 65 Acres should be taken by eminent domain to prevent development.

126. The City has refused to approve a standard application to place a fence around certain areas of the 250 Acre Residential Zoned Land, including ponds on the Property, that were requested for security and safety reasons.

127. The City has refused to issue Trespass Complaints against the numerous and continuous trespassers even though police reports have been filed.

128. The City has refused to allow the construction of an access gate directly to the Landowners' Property from existing City streets for which the Landowners have a special right of access under Nevada law.

129. The City is even proposing an ordinance that: forces the Landowners to water all grass areas in the 250 Acre Residential Zoned Land, even though a golf course has not been operated on the property since December 1, 2016, and would now be illegal as a "non-conforming use" under Title 19; retroactively removes the Landowners' vested hard zoning and requires the Landowners to submit to a City application process and comply with development requirements that are vague and ambiguous, incredibly uneconomical, financially impossible, time consuming and impossible to meet; and imposes a conscious shocking retroactive $1,000 fine per day on the Landowners' property (without any factual or legal basis whatsoever).

130. The purpose of this new Bill proposed by the City is to create an expense without income on the Property and a development process that is so financially infeasible and timely that it renders the Property entirely unusable and valueless.

131. Based upon information and belief, the sole and express intent of these City actions is to enable the City to acquire the 250 Acre Residential Zoned Land for pennies on the dollar, and the City has sought the funds to accomplish this purpose.

132. Accordingly, it would be futile to submit any further applications with the City of Las Vegas to seek development of the 65 Acres.

133. It is clear that no development on the 65 Acres will ever be approved by the City. Therefore, the extent of the permitted development on the 65 Acres is known and final.

134. The City has forced the Landowners to leave the 65 Acres in a vacant and undeveloped condition for public use and the public is using the property.

FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF

135. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

136. As a result of the PR-OS being improperly placed on the 65 Acres, and the City Council's action in denying the Landowners' zoning rights as a result of such designation, there is uncertainty as to the validity of the PR-OS and its application to the 65 Acres (although the Landowners deny that the PR-OS applies to the 65 Acres).

137. Declaratory relief is necessary to terminate or resolve the uncertainty.

138. Declaratory relief is permitted under Nevada law, including but not limited to NRS Chapter 30.

139. Therefore, the Landowners request that this Court immediately enter an order finding the PR-OS designation on the 65 Acres is invalid and/or of no effect on the 65 Acres' R-PD7 zoning rights, thereby prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use decision, or otherwise, relating to the Property's existing zoning and to the 65 Acres entirely.

SECOND CAUSE OF ACTION FOR PRELIMINARY INJUNCTION

140. The Landowners repeat, re-allege, and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

141. Any action that placed a designation of PR-OS on the 65 Acres was without legal authority and, therefore, entirely invalid.

142. There is a reasonable and strong likelihood of success on the merits which will invalidate the improper PR-OS designation on the 65 Acres.

143. Continued application of the PR-OS designation on the 65 Acres will result in irreparable harm and cause a significant hardship on the Landowners as: 1) the 65 Acres is legally recognized real property and is unique in the State of Nevada; 2) the PR-OS designation on the 65 Acres may prevent the Landowners from using the 65 Acres for any beneficial use; 3) the Landowners rely upon the acquisition and development of property, including the 65 Acres, to provide a livelihood for numerous individuals and continued application of the PR-OS to prevent development of the 65 Acres will interfere with the livelihood of these individuals; 4) under NRS 278.349(3)(e) the PR-OS zoning has no applicability with respect to the existing R-PD7 zoning on the 65 Acres; and, 5) allowing the development of the 65 Acres will result in significant financial benefit to the City, including but not limited to increasing the City tax base and creating additional jobs for its citizens.

144. There is no plain, adequate or speedy remedy at law.

145. Therefore, the Landowners are entitled to injunctive relief prohibiting the City or any other person, agency, or entity from applying the PR-OS to any application, land use decision, or otherwise, relating to the 65 Acres's existing zoning and/or to the 65 Acres entirely.

THIRD CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Categorical Taking)

146. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

147. The Landowners have vested rights to use and develop the 65 Acres.

148. The City reached a final decision that it will not allow development of the Landowners' 65 Acres.

149. Any further requests to the City to develop the 65 Acres would be futile.

150. The City's actions in this case have resulted in a direct appropriation of the Landowners' 65 Acres by entirely prohibiting the Landowners from using the 65 Acres for any purpose and reserving the 65 Acres as undeveloped/open space.

151. As a result of the City's actions, the Landowners have been unable to develop the 65 Acres and any and all value in the 65 Acres has been entirely eliminated.

152. The City's actions have completely deprived the Landowners of all economically beneficial use of the 65 Acres.

153. The City's actions have resulted in a direct and substantial impact on the Landowners and on the 65 Acres.

154. The City's actions result in a categorical taking of the Landowners' 65 Acres.

155. The City has not paid just compensation to the Landowners for this taking of their 65 Acres

156. The City's failure to pay just compensation to the Landowners for the taking of their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

157. Therefore, the Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

FOURTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Penn Central Regulatory Taking)

159. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

160. The Landowners have vested rights to use and develop the 65 Acres.

161. The City reached a final decision that it will not allow development of the Landowners' 65 Acres.

162. Any further requests to the City to develop the 65 Acres would be futile.

163. The City also stated that it would only allow the Landowners to develop the 65 Acres as part of the MDA, referenced above. The Landowners worked on the MDA for nearly two years, with numerous City-imposed and/or City requested abeyances and with the City's direct and active involvement in the drafting and preparing the MDA and the City's statements that it would approve the MDA and despite nearly two years of working on the MDA, on or about August 2, 2017, the City denied the MDA.

164. The City's actions have caused a direct and substantial economic impact on the Landowners, including but not limited to preventing development of the 65 Acres.

165. The City was expressly advised of the economic impact the City's actions were having on the Landowners.

166. At all relevant times herein the Landowners had specific and distinct investment backed expectations to develop the 65 Acres.

167. These investment backed expectations are further supported by the fact that the City, itself, confirmed the Property has vested R-PD7 development rights prior to the Landowners acquiring the 65 Acres.

168. The City was expressly advised of the Landowners' investment backed expectations prior to denying the Landowners the use of the 65 Acres.

169. The City's actions are preserving the 65 Acres as open space for a public use and the public is physically entering on and actively using the 65 Acres.

170. The City's actions have resulted in the loss of the Landowners' investment backed expectations in the 65 Acres.

171. The character of the City action to deny the Landowners' use of the 65 Acres is arbitrary, capricious, and fails to advance any legitimate government interest and is more akin to a physical acquisition than adjusting the benefits and burdens of economic life to promote the common good.

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

173. The City has not paid just compensation to the Landowners for this taking of its 65 Acres.

174. The City's failure to pay just compensation to Landowners for the taking of their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

175. Therefore, Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

FIFTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Regulatory Per Se Taking)

177. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

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

179. The City's actions exclude the Landowners from using the 65 Acres and, instead, permanently reserve the 65 Acres for a public use and the public is physically entering on and actively using the 65 Acres.

180. The City's actions have shown an unconditional and permanent taking of the 65 Acres.

181. The City has not paid just compensation to the Landowners for this taking of their 65 Acres.

182. The City's failure to pay just compensation to the Landowners for the taking of their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

183. Therefore, the Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

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SIXTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Nonregulatory Taking)

185. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

186. The City actions directly and substantially interfere with the Landowners' vested property rights rendering the 65 Acres unusable and/or valueless.

187. The City has intentionally delayed approval of development on the 65 Acres and, ultimately, struck or denied any and all development in a bad faith effort to preclude any use of the 65 Acres and/or to purchase the 65 Acres at a depressed value.

188. The City's actions are oppressive and unreasonable.

189. The City's actions result in a nonregulatory taking of the Landowners' 65 Acres.

190. The City has not paid just compensation to the Landowners for this taking of their 65 Acres.

191. The City's failure to pay just compensation to the Landowners for the taking of their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

192. Therefore, that Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

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SEVENTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Temporary Taking)

194. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

195. If there is subsequent City Action or a finding by the Nevada Supreme Court, or otherwise, that the Landowners may develop the 65 Acres, then there has been a temporary taking of the Landowners' 65 Acres for which just compensation must be paid.

196. The City has not offered to pay just compensation for this temporary taking.

197. The City failure to pay just compensation to the Landowners for the taking of their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

198. Therefore, the Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

EIGHTH CLAIM FOR VIOLATION OF

THE LANDOWNERS' DUE PROCESS RIGHTS

200. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

201. The City action in this case retroactively and without due process transformed the Landowners' vested property right to a property without any value.

202. The City action in this case was taken without proper notice to the Landowners.

203. This City action to eliminate or substantially change the Landowners' vested and established property rights, had the effect of depriving the Landowners of their legitimate constitutionally protected property rights.

204. This City action was arbitrary and/or irrational and unrelated to any legitimate governmental objective or purpose.

205. This is a violation of the Landowners' substantive and procedural due process rights under the United States and Nevada State Constitutions.

206. This City action mandates payment of just compensation as stated herein.

207. The City action should be invalidated to return the Landowners' property rights to the Landowners thereby allowing development of the 65 Acres.

208. This requested relief is in excess of fifteen thousand dollars ($15,000.00).

PRAYER FOR RELIEF

WHEREFORE, the Landowners pray for judgment as follows:

1. Declaratory judgment with this Court immediately entering an order finding the PR-OS designation on the 65 Acres is invalid and of no effect on the 65 Acres and prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use application, decision, or otherwise, relating to the property's existing vested zoning and to the Landowners' property entirely;

2. Injunctive relief prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use decision, or otherwise, relating to the property's existing zoning and to the 65 Acres entirely;

3. An award of just compensation according to the proof for the taking (permanent or temporary) and/or damaging of the Landowners' property by inverse condemnation;

4. Prejudgment interest commencing from the date the City first froze the use of the 65 Acres which is prior to the filing of this Complaint in Inverse Condemnation;

5. Invalidation of the City action, returning the vested property rights to the Landowners thereby allowing development of the 65 Acres;

6. A preferential trial setting pursuant to NRS 37.055;

7. Payment for all costs incurred in attempting to develop the 65 Acres;

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

9. For such further relief as the Court deems just and equitable under the circumstances.

DATED this 27th day of August, 2018.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ Kermitt 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

VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

Vickie DeHart, on behalf of the Landowners, being first duly sworn, upon oath, deposes and says: that he/she has read the foregoing **COMPLAINT FOR DECLARATORY RELIEF AND INJUNCITIVE RELIEF, AND 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/her knowledge.

V. DeHart
Vickie DeHart

SUBSCRIBED and SWORN to before me
This 27th day of August, 2018.

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

Jennifer Knighton
NOTARY PUBLIC

RPLY
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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, 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, Defendants.	Case No.: A-17-758528-J Dept. No.: XVI Hearing Date: March 22, 2019 Hearing Time: 1:30 pm

LANDOWNERS' REPLY IN SUPPORT OF COUNTERMOTION FOR JUDICIAL DETERMINATION OF LIABILITY ON THE LANDOWNERS' INVERSE CONDEMNATION CLAIMS AND COUNTERMOTION TO SUPPLEMENT/AMEND THE PLEADINGS, IF REQUIRED

I. Introduction

The vast majority of the City's Opposition is simply a restatement of everything it has previously argued in the instant briefings and, therefore, has already been throughly rebutted by the Landowners in Plaintiff Landowners' Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims And Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, If Required, accordingly, to save this Court's time the same will not be readdressed here. However, the City has advanced a few nuanced arguments which are fully rebutted below.

II. Law

A. A Motion for Judicial Determination is How Liability is Established in Inverse Condemnation Cases

The City strangely argues that there is "no such thing as a 'motion for judicial determination of liability'"[1] This is not true as liability for a taking in inverse condemnation is ***always*** a judicial determination. McCarran v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (2006) ("[w]hether the government has inversely condemned private property is a question of law that we review de novo." Id. at 1121.) The question of whether a taking has occurred is based on Government action and can frequently be determined solely based on government documents (the truth and authenticity of the same are rarely in question). Therefore, this Court can review the facts as presented in the City's own documents and apply the law to those facts to make the judicial determination of a taking.

B. This is NOT a Petition for Judicial Review

The City seems forever stuck in a petition for judicial review ("PJR") wherein the Court is limited in the record it can consider and utilizes case law from other PJR cases. This is NOT a PJR. As this Court is fully aware, this is an inverse condemnation case wherein the "aggregate" of ***all*** the

[1] City of Las Vegas' Opposition to Plaintiff Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, if Required filed 3/18/19 ("City Opp"), 2:2.

City's actions must be reviewed to ascertain whether the same rises to the level of a taking requiring the payment of just compensation. Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004) ("the form, intensity, and the deliberateness of the government actions toward the property must be examined … All actions by the [government], in the aggregate, must be analyzed." Id., at 496.); McCracken v. City of Philadelphia, 451 A.2d 1046 (Pa.Cmwlth. 1982) (court should focus on the "cumulative effect" of government action and "[a] de facto taking occurs when an entity clothed with eminent domain power substantially deprives an owner of the use and enjoyment of his property" or where there is an "'adverse interim consequence' which deprives an owner of the use and enjoyment of the property." Id., at 1050).

1) This is Not a PJR So This Court Is Not Limited in the Facts it Reviews

This is not a PJR, so this Court is not limited in the facts it reviews. The City's argument that it would be improper to allow the Landowners' to amend or supplement the pleadings to add facts which "post-date the City's denial of the 35-Acre Application" is extremely misplaced and illogical. Under the City's reasoning, the day after the 35 Acre application was denied the City was free to construct City Hall on the Landowners' Property and the Landowners would not have been able to amend their pleadings to bring this fact to the Court's attention. Clearly, this is illogical and the City is flailing in it arguments.

Equally illogical and contrary to eminent domain law and practice is the City's argument that allowing the Landowners to amend their complaint to add the "actions that occurred after June 21, 2017" would be "impermissible claim splitting" because those actions are the subject of other lawsuits. (City Opp. at 11). Each lawsuit brought by the Landowners deal with separate parcels of property with separate legal ownership. The City's actions here, which will ultimately be defined as the "City Project," for purposes of NRS 37.112, has resulted in the taking of several parcels of property. This is no different than any other government project that results in the taking of several parcel of property, they are the subject of several lawsuits. As one example, the State of Nevada is wrapping up Project Neon which was the large public works project that expanded I-15 between

Sahara and the Spaghetti Bowl. This project required the taking of many properties in downtown Las Vegas and the filing of many *different lawsuits*. Under the City's "claims splitting" argument, these cases should all have been tried in one case because the taking was the result of the same government actions, Project Neon. Therefore, this "claim splitting" argument is baseless and needs no further attention. Leave to amend should be freely granted.

2) The Term *Vested Rights* As Used in PJRs is Much Different than a *Property Right* in Inverse Condemnation

The City continues to try and confuse the issues by utilizing terms from PJR cases. This is not appropriate as this is not a PJR case, which is one of legislative grace as opposed to inverse condemnation cases which are of constitutional magnitude and cannot be abridged by statute.[2] This is not a case where the City exercised its discretion and denied an owner's application to add a shed to his back yard. This is a case where the aggregate or cumulative impact of the City's actions has resulted in an owner of residentially zoned property being forced to hold his property in a vacant condition so that the City can utilize it as a City park. This is a taking of private property for public use with requires the payment of just compensation. The following further shows the stark difference between PJR legislatively based law and eminent domain constitutionally based law:

Petition for Judicial Review Law:	**Eminent Domain Law**:
City has discretion to deny land use applications. Stratosphere	If City exercises discretion to render a property valueless or useless, there is a taking. Hsu, Sisolak, Del Monte Dunes, Lucas.
There is no vested right to have a land use application granted. Stratosphere	Every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid. Sisolak.
Review is limited to the record before the City Council. Stratosphere	Court must consider the "aggregate" of all government action. Review is NOT limited to the record before a City Council. Merkur v. City of Detroit, State v. Eighth Jud. Dist. Ct., Arkansas Game & Fish Comm's v. United States.

[2] Alper v. Clark County, 93 Nev. 569, 571 P.2d 810, 812 (1977).

As this Court can see, continually citing to PJR and land use law in this constitutionally based eminent domain action is entirely improper.

C. The City's Bundle of Sticks Argument Lacks a Fundamental Understanding of Property Law

The City makes the argument that because the Landowners' Property was utilized as a golf course that this forever defines its "bundle of sticks."[3] This argument violates fundamental principles of property law. "The term 'property' includes all rights inherent in ownership, including the right to possess, ***use*** and enjoy property." Sisolak at 1120 (emphasis added). What the City is arguing is that since the Landowners were not *using* their property they forever waive that property right. Again, the City is flailing in its argument. The property at the corner of Las Vegas Boulevard and Sahara has been vacant for years. Under the City's argument, the City could prevent any development of that property, turn it into a City Park, and not trigger the constitutional right to payment of just compensation, because it has only been *used* as a vacant parcel. The law has never and will never support this argument.

D. The City's Statute of Limitations Argument is Contrary to Fundamental Understandings of How Property Transfers and Constitutional Rights Are Waived

The City argues that the Landowners' predecessor sought and obtained densities from the City more than 15 years ago and, in exchange, the City obtained certain property rights to the 35Acre Property. Assuming, in arguendo, that this argument is factually correct, which it is not, this argument is fatally flawed for many reasons. First, as shown by the cases cited by the City, a recorded document like a deed must be signed and recorded to transfer any property rights. (City Opp at 6:2 "restriction **recorded** by predecessor"(emphasis added)). The City has no such deed granting it any rights to the 35 Acre Property and, if it did, the Court certainly would have seen the same by now. Second, in the absence of a deed, such an argument would require the predecessor to waive his constitutional right to use his property or to receive just compensation for the denial of such use.

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[3] City Opp 5:10-15.

A clear principle of Constitutional law is that a valid waiver of a constitutional right must be made knowingly, voluntarily and intentionally. *Lowe Enterprises Residential Partners, LP v. Eighth Judicial District Court of Nevada,* 118 Nev. 92, 40 P.3d 405 (2002). In *Lowe,* the Nevada Supreme Court provided four factors which must be met for a party to a contract to knowingly and voluntarily waive a Fifth Amendment right. These factors include: "(1) the parties' negotiations concerning the waiver provision, if any, (2) the conspicuousness of the provision, (3) the relative bargaining power of the parties and (4) whether the waiving party's counsel had an opportunity to review the agreement." *Id.* at 411. If one of these factors is not met then the waiver is not made knowingly, voluntarily and intentionally and is not effective to relinquish a constitutional right. Neither the Landowners nor their predecessor ever waived any constitutional rights as it relates to the 35 Acre Property. In fact, as explained in the Landowners' motion for a judicial determination of liability for the taking, the City has on multiple occasions confirmed the residential use of the 35 Acre Property and its surrounding properties.

To the extent the City is arguing that because the City has a *City Plan* that listed the Landowners' Property as Parks and Open Space, and that since this *City Plan* has been around for more than 15 years that the Landowners are now barred by the statute of limitation, this too is contrary to long standing Nevada law. In Nevada, placing something on a government *plan* is resoundingly understood not to amount to a taking triggering any time barring statutes.[4] It is not the placing of a parcel of property on a plan for potential public use that is the taking, it is the

[4]"If a governmental entity and its responsible officials were held subject to a claim for inverse condemnation merely because a parcel of land was designated for potential public use on one of the several authorized plans, the process of community planning would either grind to a halt, or deteriorate to publication of vacuous generalizations regarding the future use of land. We indulge in no hyperbole to suggest that if every landowner whose property might be affected at some vague and distant future time by any of these legislatively permissible plans was entitled to bring an action in declaratory relief to obtain a judicial declaration as to the validity and potential effect of the plan upon his land, the courts of this state would be inundated with futile litigation." Sproul Homes of Nevada v. State ex rel. Dept. of Highways, 96 Nev. 441, 611 P.2d 620, 622 (1980).

enforcement of the plan, which is what the City did here when it denied the Landowners the use of their Property. And, as explained, all of these City actions to deny the Landowners' use of the 35 Acre Property occurred within 15 years (the inverse condemnation statute of limitations in Nevada) of the Landowners' filing their inverse condemnation claims.

E. The City's Argument that the Landowners have Not lost Anything is Without Merit

The City argues that the Landowners have not lost anything, that the Landowners "speculated" on a golf course and the City's denial of any use and enjoyment of the property other than open space is no harm no foul. (City Opp. 4:9-15). This is patently false. The Landowners did not speculate on anything, prior to purchasing their residentially zoned Property, the Landowners received written confirmation from the City of this residential zoning that "allows" up to 7 units per acre. (Exhibit 3: 1 App. LO 00000084). This written confirmation defeats any "speculative" argument advanced by the City at this late date. Furthermore, this City argument violates the long standing Nevada law that a landowner is entitled to the highest and best use of his property "and is not limited by the use actually made of it." Andrews v. Kingsbury Gen. Improvement Dist. No. 2, 84 Nev. 88, 436 P.2d 813, 814 (1968).

As an example, the 40 acre property located in Las Vegas to the North of McCarran International Airport on Tropicana Avenue was used as a mobile home park for more than 15 years prior to the time the County of Clark imposed height restrictions over the property. The landowner in that case filed an inverse condemnation claim asserting that the County imposed height restriction amounted to a taking of his airspace. Exactly as the City is trying to argue in this case, the County argued in that case that nothing was taken from the landowner, because he could continue to use the property for a mobile home park. This argument was resoundingly rejected by then district court judge Mark Gibbons and later the Nevada Supreme Court.[5] The reason it was rejected is, as

[5] The Law Offices of Kermitt L. Waters was counsel for the landowner in this case, which is a companion case to McCarran v. Sisolak, 122 Nev. 645 (2006) and is published as Tien Fu Hsu v. County of Clark, 123 Nev. 625 (2007).

explained, landowners in Nevada are entitled to *use* their property to its highest and best use and are not limited to the use actually made of the property.

F. Baseless Statements by the City

1) Major Modification

First, the City claims that the Landowners have not submitted a major modification, then it claims that the Landowners submitted one but then withdrew it. (City Opp at 10). As explained in the Landowners motion for judicial determination of liability for a taking, the "procedures and standards" for a major modification are identified as elements "a" through "I" of 19.10.040(D) of the City's Code. And, as explained, the Landowners met these elements "a" through "I" when they submitted the Master Development Agreement to the City. Even though the Master Development Agreement met elements "a" through "I", the City still struck the Master Development Agreement and refused development on the 35 Acre Property. Therefore, a Major Modification was submitted to the City and the City denied it.

Moreover, the Landowners also submitted a General Plan Amendment GPA, which requirements meet and far exceed all Major Modification requirements. Attached as Exhibit 109 is City Code provision 19.16.030, which identifies the City's GPA requirements and the additional steps an applicant is required to take to submit a GPA to the City. As this Court can see the GPA requirements meet and far exceed the Major Modification requirements. And, as explained, the Landowners submitted to the City Council GPA 68385, which met all of these City requirements. Exhibit 5. As explained, the City denied the GPA.

Therefore, even though the Landowners met and far exceeded the City's Major Modification requirements in the Master Development Agreement AND in GPA 68385, the City still either denied or struck the applications. Accordingly, the City's argument that the Landowners did not file for a Major Modification is misplaced.

Additionally, as discussed in the Landowners' moving papers, the City's Major Modification argument relates only to the City's exhaustion of administrative remedies / ripeness

argument. And, a ripeness analysis only applies to the Landowners' Penn Central regulatory takings claims for which the Landowners have not sought a judicial determination of liability, at this time.

2) Waters Rights

Without any citation to any document, the City makes the baseless and incorrect statement that the Landowners' sold their waters rights. Arguments of counsel are not evidence.[6] The Landowners have not sold their water rights, but even if they had this has no bearing on the City's liability for a taking, unless the City is also now admitting that it has taken the Landowners' water rights.

3) A Golf Course Use Is Uneconomic

Again, without any citation to any document, the City claims that a golf course on the Subject Property is an economic use.[7] This is a stunning statement as the City knows: 1) the operator of the golf course left because it was uneconomic; 2) the Landowners tried to get other operators to come to the golf course but none would undertake it; 3) the Landowners even offered the Queensridge Home Owners the option to lease the golf course for $1 a year, and the Home Owners declined (*Exhibit 97; 15 App LO 3709-3710*); and, 4) it is well know that golf courses across the County are being shuttered because they are not economic.

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[6] Glover v. Eight Judicial Dist. Court for State ex. Rel. County of Clark, 125 Nev.691, 705 (2009).

[7] Argument of counsel are not evidence. Id.

III. Conclusion

Based on the foregoing and the Landowners' moving papers, the Landowners respectfully request that this Court enter a judicial determination that the City has taken by inverse condemnation the 35 Acre Property based on the three taking claims alleged by the Landowners - categorical taking, regulatory per se taking, and non-regulatory/de facto taking. The Landowners also request leave to file the Proposed amended/supplemental complaint previously submitted.

Respectfully submitted this 21st day of March, 2019.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James J. Leavitt*
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Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 21st day of March, 2019, a true and correct copy of the foregoing **LANDOWNERS' REPLY IN SUPPORT OF COUNTERMOTION FOR JUDICIAL DETERMINATION OF LIABILITY ON THE LANDOWNERS' INVERSE CONDEMNATION CLAIMS AND COUNTERMOTION TO SUPPLEMENT/AMEND THE PLEADINGS, IF REQUIRED** was made by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

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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, CITY OF LAS VEGAS, a political subdivision of the State of Nevada, ROE government entities I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental I through X, Defendants.	Case No.: A-17-758528-J Dept. No. XVI **SUPPLEMENT TO APPENDIX OF EXHIBITS IN SUPPORT OF LANDOWNERS' REPLY IN SUPPORT OF COUNTERMOTION FOR JUDICIAL DETERMINATION OF LIABILITY ON THE LANDOWNERS' INVERSE CONDEMNATION CLAIMS AND COUNTERMOTION TO SUPPLEMENT/AMEND THE PLEADINGS, IF REQUIRE** **VOLUME 17** **LO 00003942-00004044**

Plaintiff Landowners hereby submit this Supplement to Appendix of Exhibits in Support of Plaintff Landowners' Reply in Support of Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, if Required., Volume 17.

Exhibit No.	Exhibit Description	Vol. No.	Bates No.
109	GPA Code and Application	17	LO 00004035-00004044

DATED this 21th day of March, 2019

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James J. Leavitt*
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AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 21th day of March, 2019, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the foregoing document(s): **SUPPLEMENT TO APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTFF LANDOWNERS' REPLY IN SUPPORT OF COUNTERMOTION FOR JUDICIAL DETERMINATION OF LIABILITY ON THE LANDOWNERS' INVERSE CONDEMNATION CLAIMS AND COUNTERMOTION TO SUPPLEMENT/AMEND THE PLEADINGS, IF REQUIRED., VOLUME 17** was made by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

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/s/ Evelyn Washington
Evelyn Washington, an employee of the
Law Offices of Kermitt L. Waters

Exhibit 109

GPA Code and Application

LO 00004035-00004044

19.16.030 General Plan Amendment

A. **Purpose**

The purpose of this Section is to set forth the procedures by which the Planning Commission and City Council will periodically review and evaluate the General Plan to ensure that it remains an accurate statement of the City's land-use goals and policies based on current data.

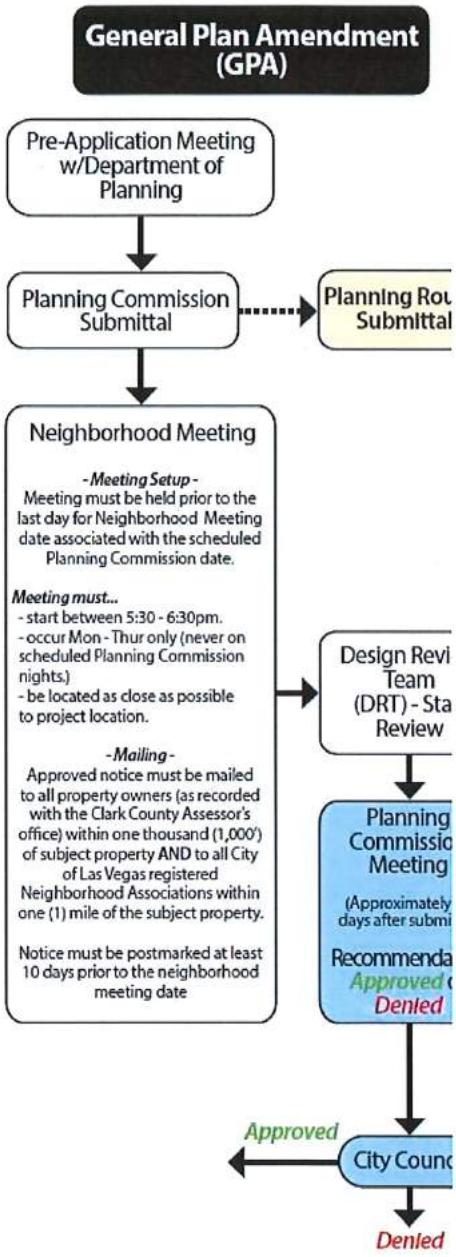
B. **Authority**

Whenever the public health, safety and general welfare requires, the City Council may, upon a resolution of the Planning Commission carried by the affirmative votes of not less than five members, or upon review of a requested General Plan Amendment which has not been approved by resolution of the Planning Commission, change the General Plan land use designation for any parcel or area of land to allow different zoning classifications. Subsequent growth and development factors in the community may be considered, among other factors, when determining whether such amendment to the General Plan promotes the public health, safety and general welfare. For purposes of this Subsection (B), the Planning Commission's resolution may be in the form of a vote reflected in the minutes of the Planning Commission meeting.

C. **Application**

1. **Initiation of Application.** A General Plan Amendment may be initiated by the Planning Commission or the City Council, or by means of an application filed by the owner(s) of record of each parcel of property proposed for a General Plan Amendment.
2. **Pre-Application Conference.** Before submitting an application for a General Plan Amendment, the owner or authorized representative shall engage in a pre-application conference with the staff of the Department to discuss preliminary land planning, including land use relationships, density, transportation systems, infrastructure facilities and landscaping and open space provisions.
3. **Form and Filing.**
   a. An application for a General Plan Amendment shall be made to the Planning Commission on a separate application form to be provided by the Department. The application shall be signed, notarized and acknowledged by the owner of record of each parcel of property. This application shall be filed with the Secretary of the Planning Commission at the office of the Department.

General Plan Amendment 19.16.030
Typical Review Process



b. In addition, any application for a General Plan Amendment shall specifically list reasons for the request ar

why the proposed amendment works to promote the public health, safety and general welfare of the com
The application shall contain a list of factors requiring comment by the applicant, including:

i. Whether there has been unanticipated growth and development of the community in the area surrounc application site or growth and development not specifically considered when the General Plan was adop

ii. Whether the proposed amendment to the General Plan will allow a zoning classification which imposes b similar to the burdens imposed by the classification currently provided for under the General Plan;

iii. Whether the amendment to the General Plan continues to promote the objectives of the General designated in NRS 278.

4. **Other Governmental Ownership.** With respect to property which is owned by the State of Nevada or the States of America, a General Plan Amendment application is sufficient if it is signed and acknowledge prospective purchaser of that property who has entered into a contract with the governmental entity to ownership of the property.

5. **Non-Property Owner.** A General Plan Amendment application is sufficient if it is signed and acknowledge lessee, a contract purchaser or an optionee of the property for which the General Plan Amendment is However, interest in that property must exist in a written agreement with the owner of record, attached to wh copy of the General Plan Amendment application and in which the owner of record has authorized the contract purchaser or optionee to sign the application. The agreement must further stipulate that the ov record consents to the filing and processing of the application.

6. **Multiple Ownership.** In the case of multiple ownership of a parcel, only one of the owners of record s required to sign the application. A list of all other owners shall be provided with the application.

7. **Quarterly Consideration.** In the interest of economy and efficiency in the processing of applications, and interest of providing for amendments to the General Plan that are orderly and well-considered in relation other and to the public interest, the Director is authorized to process applications to amend the General Plan such applications are presented to the Planning Commission and City Council on a quarterly basis. Such appli may be filed at any time, but the Director may withhold the processing of such applications in order to acc the purposes of this Paragraph. After its initial presentation to the Planning Commission or City Council, a application may be held in abeyance to and considered at any subsequent meeting. The Director may withh scheduling of related zoning applications until a meeting subsequent to the one at which propose Amendments are heard.

D. **Successive Applications**

1. **Previously Denied Application.** An application for a General Plan Amendment for a parcel in which all or a was the subject of a previous General Plan Amendment application for the same land use category, a category or a less restrictive land use category has been denied, or which has been withdrawn subsequent noticing of a public hearing, shall not be accepted until the following periods have elapsed between the date denial or withdrawal and the date of the meeting for which the proposed application would be schedulec normal course:

   a. After the first denial or any withdrawal after public notice has been given – one year.

   b. After the second or subsequent denial or withdrawal after public notice has been given - two years.

2. **Previously Withdrawn Application.** The time periods that are described in Paragraph (1) of this Subsection a otherwise would become effective because of the withdrawal of an application shall not become effective consideration of the timing and circumstances of the withdrawal, the Planning Commission or the City specifically approves the withdrawal without prejudice.

E. **Request for Abeyance**

Any applicant who wishes to have an application held in abeyance following the notice and posting of the ag the Planning Commission or the City Council shall state good cause for the request. Good cause shall be mo mere inconvenience to the applicant or lack of preparation.

F. **Planning Commission Public Hearing and Action**

1. **Hearing.** Subject to the provisions of LVMC 19.16.030(C)(7), upon receipt of a complete General Plan Amer application or an Amendment proposed by the Planning Commission or City Council, the Planning Commissi hold a public hearing.
2. **Notice**
   a. **Notice Provided.** Notice of the time, place and purpose of the hearing must be given at least 10 days bef hearing by:
      i. Publishing the notice in a newspaper of general circulation within the City;
      ii. In the case of a parcel-specific General Plan Amendment, mailing a copy of the notice to:
         A)The applicant;
         B)Each owner of real property located within a minimum of one thousand feet of the property desc the application;
         C)Each tenant of any mobile home park that is located within one thousand feet of the property desc the application;
         D)The owner of each of the thirty separately-owned parcels nearest to the property described application to the extent this notice does not duplicate the notice otherwise required by this Paragrapl
         E)Any advisory board which has been established for the affected area by the City Council; and
         F)The president or head of any registered local neighborhood organization whose organization bou are located within a minimum of one mile of the property described in the application.
   b. **Names Provided.** The Department shall provide, at the request of the applicant, the name, address and number of any person notified pursuant to Subparagraph (a)(ii)(F) above.
   c. **Additional Notice.** The Department may give additional notice of the hearing by expanding the notification or using other means of notification or both. The Department shall endeavor to provide any ad notice at least 10 days before the date of the hearing.
   d. **Signs.** In the case of a parcel-specific General Plan Amendment, notification signs shall be posted in confo with LVMC 19.16.010(D).
   e. **Parcel-Specific Amendment Defined.** For purposes of this Paragraph (2), "parcel-specific Gener Amendment" means an amendment to the land use designation assigned to one or more specific parcels, designation is found in the Land Use element of the General Plan, where the amendment is sought by or or of one or more property owners in order to develop those parcels in a particular way.
3. **Planning Commission Decision**
   a. A decision to recommend approval of a General Plan Amendment shall be by resolution of the P Commission with the affirmative votes of not less than two-thirds of the total membership of the Commiss purposes of this Subparagraph (a), the Planning Commission's resolution may be in the form of a vote refle the minutes of the Planning Commission meeting. The Planning Commission may approve or deny an app for a General Plan Amendment.
   b. In making a decision to approve the proposed General Plan Amendment, the Planning Commission shall c the facts presented at the public hearing and shall make the determinations contained in Subsection (I) Section. The Planning Commission may consider recommending:
      i. The approval of a more restrictive land use category than that set forth in the application; or
      ii. The amendment of fewer than all parcels described in the application to either the land use category rec in the application or a more restrictive land use category, but only if such parcels are distinct legal parcels
   c. Following the hearing, the Planning Commission shall make its decision to either recommend approval or d the application.
4. **Notice of Planning Commission Decision.** Following the date of its decision, the Planning Commission shall t

a report of its recommendation to the City Council. The report shall recite, among other things, the facts and r which, in the opinion of the Commission, make the approval or denial of the Amendment necessary to carry provisions and general purposes of this Title. A copy of the report shall be mailed to the applicant, agent, or l the address(es) shown on the application filed with the Secretary of the Planning Commission. A copy of the shall also be filed with the City Clerk, acting as agent for the City Council.

(Ord. 6254 §2, 05/15/13)

G. Burden of Proof

The applicant bears the burden of proof to establish that the approval of a General Plan Amendment is warrante

H. City Council Public Hearing and Action

1. **Notice and Hearing.** Subject to the provisions of LVMC 19.16.030(C)(7), the City Council shall consider a pr General Plan Amendment and the recommendation of the Planning Commission thereon at the next a meeting following the receipt of the recommendation. For applications regarding which notice of the public by the Planning Commission was required by statute or by ordinance to be mailed to property owners, the Ci shall mail written notice of the Council hearing, at least ten days before the hearing, to the property owne were notified by mail of the Planning Commission hearing, or to the current owners of record in the properties whose ownership has changed in the interim.
2. **City Council Action**
   a. **Decision.** The City Council may approve or deny a proposed General Plan Amendment. In making a dec approve the proposed General Plan Amendment, the City Council shall consider the recommendation Planning Commission and the facts presented at the public hearing. The City Council may consider:
      i. The approval of a more restrictive land use category than that set forth in the application; or
      ii. The amendment of fewer than all parcels described in the application to either the land use category rec in the application or a more restrictive land use category, but only if such parcels are distinct legal parcels
   b. **Change to More Restrictive Category.** If at the Council hearing, the applicant proposes amending the app to a more restrictive land use category, the City Council has the option to refer the application back Planning Commission for consideration.
   c. **Significant Changes.** If the applicant proposes significant changes to the application during the hearing or information is presented that significantly changes the nature and scope of the application, the request sh referred back to the Planning Commission for consideration.
3. **Notice of City Council Decision.** Following the hearing on a proposed General Plan Amendment, the City shall reach a decision concerning the proposal. The decision shall include reasons for the decision. Written n the decision shall be provided to the applicant, agent or both. A copy of the notice shall also be filed with t Clerk, and the date of the notice shall be deemed to be the date that notice of the decision is filed with t Clerk.

(Ord. 6254 §3, 05/15/13)

I. General Plan Amendment - Determinations

In order to approve a proposed General Plan Amendment, the Planning Commission and City Council must det that:

1. The density and intensity of the proposed General Plan Amendment is compatible with the existing adjace use designations;
2. The zoning designations allowed by the proposed amendment will be compatible with the existing adjace uses or zoning districts;
3. There are adequate transportation, recreation, utility, and other facilities to accommodate the uses and d permitted by the proposed General Plan designation; and

4. The proposed amendment conforms to other applicable adopted plans and policies.

J. **Certain Minor Amendments**

Notwithstanding any other provision of this Section, the City Council, upon appropriate noticing and public h may amend the General Plan, or any part thereof, without action by the Planning Commission and without limita to frequency, in order to:

1. Change a boundary that is based on a geographical feature, including , without limitation, topography, hydrographic features, wetland delineation and floodplains, when evidence is produced that the mapped loca the geographical feature is in error;
2. Reflect the alteration of the name of a jurisdiction, agency, department or district by the governing body, go board or other governing authority of the jurisdiction, agency, department or district, as applicable, or by a entity authorized by law to make such alteration; or
3. Update statistical information that is based on a new or revised study.

DEPARTMENT OF PLANNING

2019 QUARTERLY GENERAL PLAN AMENDMENT MEETING REQUIREMENTS

APPLICANT'S STEPS TO TAKE FOR ANY NEIGHBORHOOD MEETING:

*** FAILURE TO NOTICE AND HOLD NEIGHBORHOOD MEETING BY DATE REQUIRED WILL AUTOMATICALLY MOVE YOUR PROJECT MINIMALLY TO THE NEXT AVAILABLE PLANNING COMMISSION MEETING DATE.**

SETTING UP

- Meeting must be held prior to the last day for Neighborhood Meeting date in Column 4 on back.
- Determine a place and time for your meeting, within the following guidelines:
  Time: Start between 5:30-6:30.
  Days: Mon-Thurs only (never on scheduled Planning Commission nights or holidays)
  Place: Must be a commercial location (not a private residence), as close as possible to the project location, and located within the city in the same ward, if possible
- Prepare notice (see sample on following page). If the City is conducting the notification, provide information for items b through e, but do not provide a complete notice.
  Contents:
  a. Thorough description of proposed project. Include "From… To…," street address and/or Assessor Parcel Number and Ward Number
  b. Date of meeting
  c. Time of meeting; provide a start time, but do not list an end time.
  d. Place of meeting: Include room number/name and directions
  e. Contact name and phone number for night of meeting for directions/questions (contact number must be available up to and during the time of the meeting)
  f. Tentative date of Planning Commission meeting
- Fax notice or meeting information to the Department of Planning at 702.464.7499. City staff will assess for suitability of time and location. Approval or corrections to notice will be faxed back within 2 working days. DO NOT MAIL NOTICE UNTIL CITY APPROVED.

MAILING

- Approved notices must be mailed to all property owners (as recorded with the Clark County Assessor's office) within one thousand feet (1000') of subject property AND to all city of Las Vegas registered Neighborhood Associations within one (1) mile of the subject property.
- A list of all property owners and neighborhood associations and labels for same may be obtained from the Department of Planning, Case Planning Division for a nominal charge. You may request by calling702.229.6301 with a two (2) business day lead time. The City of Las Vegas can also mail the notice for a fee of $500.00. All request for mailing notices by the City must have a lead time of five (5) business days.
- Notices must be postmarked at least 10 days prior to the neighborhood meeting date.

2019 QUARTERLY GENERAL PLAN AMENDMENT MEETING REQUIREMENTS

APPLICANT'S STEPS TO TAKE FOR ANY NEIGHBORHOOD MEETING: (cont.)

MEETING

- Applicant and/or representative(s) are responsible to conduct the meeting, answer questions and open and close the facility. City staff will attend, but only to monitor.
- Applicant must ensure that someone is available to answer the phone number given at least one half (1/2) hour before and after the start time regardless of attendance.
- Applicant must remain on-site at least one half (1/2) hour after the start time regardless of attendance.

FILING

- Applicant must complete the Neighborhood Meeting Affidavit (attached) indicating time and date of meeting and attach the mailing list used along with a copy of the notice. This affidavit must be notarized.
- Affidavit with attached mailing list must be delivered to the Department of Planning, Case Planning Division, at least seventy-two (72) hours prior to the Planning Commission meeting.

Ward Numbers	Pre-Application Closing Date	Application Closing Date	Last day for Neighborhood Mailing	Last day for Neighborhood Meeting	Planning Commission Meeting Date	City Council Meeting Date
1, 3, 5		NOV. 15, 2018	DEC. 10, 2018	DEC. 20, 2018	JAN. 8, 2019	FEB. 6, 2019
2, 4, 6		DEC. 3, 2018	DEC. 23, 2018	JAN. 3, 2019	JAN. 22, 2019	FEB. 20, 2019
1, 3, 5	FEB. 4, 2019	FEB. 19, 2019	MAR. 11, 2019	MAR. 21, 2019	APR. 9, 2019	MAY 1, 2019
2, 4, 6	FEB. 18, 2019	MAR. 4, 2019	MAR. 24, 2019	APR. 4, 2019	APR. 23, 2019	MAY 15, 2019
1, 3, 5	MAY 6, 2019	MAY 20, 2019	JUN. 10, 2019	JUN. 20, 2019	JUL. 9, 2019	AUG. 7, 2019
2, 4, 6	MAY 20, 2019	JUN. 3, 2019	JUN. 23, 2019	JUL. 3, 2019	JUL. 23, 2019	AUG. 21, 2019
1, 3, 5	AUG. 5, 2019	AUG. 19, 2019	SEP. 9, 2019	SEP. 19, 2019	OCT. 8, 2019	NOV. 6, 2019
2, 4, 6	AUG. 19, 2019	SEP. 3, 2019	SEP. 23, 2019	OCT. 3, 2019	OCT. 22, 2019	NOV. 20, 2019

Pre-Applications MUST BE submitted by 11:59 P.M. on CLOSING DAYS
Applications MUST BE submitted by 4:00 P.M. on CLOSING DAYS
Applications WILL BE accepted until 5:00 P.M. on NON-CLOSING DAYS
Call 702.229.6301 for additional information

SAMPLE
NEIGHBORHOOD MEETING NOTICE

Date of meeting: Month/Day/Year
Time: Start time must be between 5:30-6:30 p.m.
(please do not list end time)
Location: Include address, room number, driving directions and/or map

Topic: General Plan Amendment (GPA-____ or relevant case number)
An application in the city of Las Vegas that is scheduled to be placed on the _____, 2019 city of Las Vegas Planning Commission Agenda.

This application (GPA-____ or relevant case number) is a request to (information taken from application). Please include what current use is and what proposed change will be. (Description of project to include; street address and/or Assessor's Parcel Number and Ward number)

With comments or questions, please contact: _____

Please provide contact name/number in case residents are unable to attend meeting and have questions.

Contact name and number for night of meeting:_____
(Contact number must be available up to and during the time of the meeting)

AFFIDAVIT OF MAILING FOR NEIGHBORHOOD MEETING

I _____, an employee of _____, being first duly sworn, deposes and says that on the day of _____, a copy of the **Neighborhood meeting notification for the date and time of _____ to be held at located _____ miles from the proposed project for a request to: (add project description)**

_____

_____

_____ the attached of which is a true and correct copy, was mailed electronically and/or deposited in the United States Mail, Postage prepaid, First Class Mail, to each person and/or organization whose name appears on the list or addresses that appear on the map attached herein.

_____

SIGNATURE

State of Nevada)
)
County of Clark))

_____ being first duly sworn, deposes and says:

SUBSCRIBED AND SWORN TO before me
this _____ day of _____, 2019.

_____
NOTARY PUBLIC in and for said County and State

Attachments:
Notice
Mailing list

DEPARTMENT OF PLANNING

GENERAL PLAN AMENDMENT SUBMITTAL REQUIREMENTS

PRE-APPLICATION CONFERENCE: A pre-application conference with a representative from the Department of Planning is required before submitting an application. It is the responsibility of the applicant to schedule the pre-application conference by submitting a completed Pre-Application Conference Request form. See Planning Commission Meeting Schedule for pre-application conference and submittal closings dates.

PRE-APPLICATION SUBMITTAL CHECKLIST: A Submittal Checklist with an **original signature** by the planner conducting the Pre-Application Conference is required.

APPLICATION/PETITION FORM: A completed Application/Petition Form is required. The application shall be signed, notarized and acknowledged by the owner of record of each parcel of property. Non-Property Owner: An application is sufficient if it is signed and acknowledged by a lessee, a contract purchaser or an optionee of the property for which the General Plan Amendment is sought. However, interest in that property must exist in a written agreement with the owner of record, attached to which is a copy of the General Plan Amendment application and in which the owner of record has authorized the lessee, contract purchaser or optionee to sign the application. The agreement must further stipulate that the owner of record consents to the filing and processing of the application and agrees to be bound by the requested General Plan Amendment.

DEED & LEGAL DESCRIPTION: In order to verify ownership, a copy of the recorded deed(s) for the subject property(ies), including exhibits and attachments, is required. The deed and all attachments must be legible. A HARD COPY OF THE LEGAL DESCIPTION MUST BE PROVIDED. **In the case of an application to Amend the Master Plan of Streets and Highways,** the legal description requirement may be waived if the applicant provides a written memo from a representative from the Department of Public Works indicating a legal description is not required. The legal description must be signed and stamped by a professional civil engineer or surveyor.

EXHIBIT (for an application to Amend the Master Plan of Streets and Highways ONLY): (6 folded and 1 rolled) showing the proposed amendment. The exhibit shall be no larger than 24”x36” and no smaller than 11X17 The exhibit must include a north arrow, the alignment of the proposed amendment, all existing street names, township, range, section, and centerline curve data.

JUSTIFICATION LETTER: A detailed letter that explains the request, the intended use of the property, and how the project meets/supports existing City policies and regulations is required. The letter shall list specific factors that explain why the proposal promotes public health, safety, and general welfare in accordance with LVMC 19.18.030.

FEES: $1000 plus $500 for notification and advertising costs.

NEIGHBORHOOD MEETING: A neighborhood meeting is required for this application.

Option 1: Postcard mailing is available through the Department of Planning for a $500 fee. You must have the meeting location, time and contact person information (contact number must be available up to and during the time of the meeting) to the Department of Planning at least **15 DAYS** prior to the meeting.

Option 2: Property owner labels are available from the Department of Planning for a $50 fee. Please include a separate letter requesting labels.

STATEMENT OF FINANCIAL INTEREST: A completed Statement of Financial Interest is required.

MSTY
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Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X, Petitioners, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Respondents.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **CITY OF LAS VEGAS' MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF WRIT PETITION TO THE NEVADA SUPREME COURT ON ORDER SHORTENING TIME** **HEARING REQUESTED** OST Hearing Date: OST Hearing Time:

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

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

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

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

Respectfully submitted this 19th day of April 2019.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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ORDER SHORTENING TIME

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

DATED this 22 day of April 2019.

DISTRICT COURT JUDGE

CR

Submitted By:

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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Debbie Leonard (NV Bar # 8260)
Amanda C. Yen (NV Bar #9726)
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DECLARATION OF GEORGE F. OGILIVIE III

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Executed this 19th day of April 2019.

/s/George F. Ogilvie III
GEORGE F. OGILVIE III

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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

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

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

II. LEGAL ARGUMENT

A. Standard of Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Standard for Issuance of Writ

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

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

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

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

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

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

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

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

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

IV. CONCLUSION

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

Respectfully submitted this 19th day of April 2019.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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Debbie Leonard (NV Bar #8260)
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CERTIFICATE OF SERVICE

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

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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EXHIBIT A

CASE NO. A-17-758528-J

DOCKET U

DEPT. XVI

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

180 LAND COMPANY LLC,
Plaintiff,
vs.
LAS VEGAS CITY OF,
Defendant.

REPORTER'S TRANSCRIPT
OF
MOTIONS

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

DISTRICT COURT JUDGE

DATED FRIDAY, MARCH 22, 2019

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

APPEARANCES:

FOR THE PLAINTIFF:

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BY: JAMES J. LEAVITT, ESQ.
BY: AUTUMN L. WATERS, ESQ.
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APPEARANCES CONTINUED:

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* * * * *

LAS VEGAS, NEVADA; FRIDAY, MARCH 22, 2019

1:36 P.M.

P R O C E E D I N G S

* * * * * * *

THE COURT: Good afternoon to everyone.

IN UNISON: Good afternoon.

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

MR. OGILVIE: Your Honor --

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

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

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

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

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

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

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

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

MR. LEAVITT: So, your Honor --

THE COURT: And we could waste a year.

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

THE COURT: I understand.

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

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

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

THE COURT: So the Court granted summary judgment?

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

Thank you, your Honor.

THE COURT: All right. Thank you, sir.

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

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

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

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

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

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

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

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

law. That's the whole standard there.

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

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

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

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

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

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

Consequently, we can move forward with this litigation.

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

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

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

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

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

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

And, Mr. Leavitt?

MR. LEAVITT: Yes, your Honor.

THE COURT: Prepare the order, sir.

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

REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

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

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

_____
PEGGY ISOM, RMR, CCR 541

EXHIBIT B

A-17-758528-J

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Judicial Review/Appeal	COURT MINUTES	March 22, 2019

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

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

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

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

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

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

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

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

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

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

EXHIBIT C

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

PLAINTIFF LANDOWNERS' EARLY CASE CONFERENCE

INITIAL DISCLOSURES *FOR PHASE I - LIABILITY* PURSUANT TO NRCP 16.1

TO: THE CITY OF LAS VEGAS, Defendant; and

TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N/A

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

DATED this 15th day of April, 2019

LAW OFFICES OF KERMITT L. WATERS

By: */s/ Autumn 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 L. WATERS, ESQ.,
Nevada Bar No. 8917

Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

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

McDonald Carano LLP
George F. Ogilvie III
Debbie Leonard
Amanda C. Yen
2300 W. Sahara Ave., Suite 1200
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gogilvie@mcdonaldcarano.com
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Las Vega City Attorney's Office
Bradford Jerbic, City Attorney
Philip R. Byrnes
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Sfloyd@lasvegasnevada.gov

/s/ Evelyn Washington
Evelyn Washington, **an Employee of the Law Offices of Kermitt L. Waters**

EXHIBIT D

RFA

LAW OFFICES OF KERMITT L. WATERS
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HUTCHISON & STEFFEN, PLLC
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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, et al., Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **PLAINTIFF LANDOWNERS' REQUESTS FOR ADMISSION TO THE CITY OF LAS VEGAS** **FIRST REQUEST**

TO: THE CITY OF LAS VEGAS, Defendant; and

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

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

GENERAL DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

(j) The "Subject Property," "subject property," "subject properties," or "Landowners' Property" includes and refers to the Landowners' Property specifically designated Clark County Assessor's Parcel Numbers as follows:

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

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

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

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

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

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

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

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

INSTRUCTIONS

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

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

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

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

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

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

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

//

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

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

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1	Map of 250 Acre Residential Zoned Land Identifying Each Parcel	1	LO 00000001
2	Bill No. Z-2001-1: Ordinance No. 5353 Dated 8.15.2001	1	LO 00000002-00000083
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22	35 Acre Applications: SDR-68481; TMP-68482; WVR-68480	4	LO 00000932-00000949
23	Staff Recommendation 6.21.17 City Council Meeting GPA-68385, WVR-68480, SDR-68481, TMP 68482	4	LO 00000950-00000976
24	8.2.17 City Council Meeting Transcript Item 8 (excerpt) and Items 53 and 51	4-5	LO 00000977-00001131
25	MDA Combined Documents	5	LO 00001132-00001179
26	Email between City Planning Section Manager, Peter Lowenstein, and Landowner representative Frank Pankratz dated 2.24.16	5	LO 00001180-00001182
27	Email between City Attorney Brad Jerbic and Landowner's land use attorney Stephanie Allen, dated 5.22.17	5	LO 00001183-00001187
28	16 versions of the MDA dating from January, 2016 to July, 2017	5-7	LO 00001188-00001835
29	The Two Fifty Development Agreement's Executive Summary	8	LO 00001836
30	City requested concessions signed by Landowners representative dated 5.4.17	8	LO 00001837
31	Badlands Development Agreement CLV Comments, dated 11-5-15	8	LO 00001838-00001845
32	Two Fifty Development Agreement (MDA) Comparison July 12, 2016 and May 22, 2017	8	LO 00001846-00001900
33	The Two Fifty Design Guidelines, evelopment Standards and Uses, comparison of the March 17, 2016 and May, 2017 versions	8	LO 00001901-00001913

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

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

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

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

DATED the 15th day of April, 2019.

LAW OFFICES OF KERMITT L. WATERS

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Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

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

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EXHIBIT E

RFP

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **PLAINTIFF LANDOWNERS' REQUEST FOR PRODUCTION OF DOCUMENTS TO THE CITY OF LAS VEGAS** **FIRST REQUEST**

TO: THE CITY OF LAS VEGAS, Defendant; and

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

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

GENERAL DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

(j) The "Subject Property," "subject property," "subject properties," or "Landowners' Property" includes and refers to the Landowners' Property specifically designated Clark County Assessor's Parcel Numbers as follows:

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

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

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

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

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

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

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

INSTRUCTIONS

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

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

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

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

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

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

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

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

REQUEST FOR PRODUCTION NO. 1:

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

A. The 1985 City of Las Vegas General Land Use Plan, including land use map, adopted January 16, 1985.

B. The Peccole Property Land Use Plan or Venetian Foothills Preliminary Development Plan, 1986.

C. The consideration and/or adoption by the City of Las Vegas of the Venetian Foothills conceptual plan or the Master Development Plan for the Venetian Foothills.

D. City of Las Vegas zoning file No. Z-00030-86, including the April 22, 1986 City Planning Commission hearing, the May 7, 1986 City Council hearing, and the May 27, 1986 City Planning Commission hearing.

E. City of Las Vegas zoning file No. Z-139-89.

F. The consideration and/or adoption by the City of Las Vegas of the "Peccole Ranch Master Plan, A Master Plan Amendment and Phase Two Re-zoning Application," dated February 6, 1990.

G. City of Las Vegas zoning file No. Z-17-90, including but not limited to the March 8, 1990 City Planning Commission hearing, and the April 4, 1990 City Council hearing.

H. City of Las Vegas zoning files Nos. Z-17-90 (1) through Z-17-90 (10), inclusive.

I. Master Development Plan Amendment, presented to the City Planning Commission, March 8, 1990.

J. The updated City of Las Vegas Master Plan for the area within which the Subject Property is located, dated March 12, 1992.

K. Southwest Sector Land Use Plan, dated January 5, 2007.

L. City of Las Vegas ZVL-57350 (Zoning Verification Letters, dated December 30, 2014).

M. Letter dated September 4, 1996, from Clyde O. Spitze to Robert Genzer, Re: Badlands Golf Course, Phase 2.

N. Letter dated October 8, 1996 from Robert S. Genzer to Clyde O. Spitze, Re: Badlands Golf Course, Phase 2.

O. City of Las Vegas zoning file TM-82-96.

P. GPA - 68385

Q. WVR - 68480

R. SDR - 68481

S. TMP - 68482

T. The Master Development Agreement for the 250 Acre Residential Zoned Land, which was denied and/or stricken at the August 2, 2017 City Council meeting, more fully identified as item 53-DIR - 70539 and item 31-Bill No. 2017-27 on the City Council Agenda for August 2, 2017.

U. City of Las Vegas Bill No. 2018-5

V. City of Las Vegas Bill No. 2018-24

W. The request for access to the Subject Property, permit L17-00198.

X. The request to construct a fence on the Subject Property, permit C17-01047.

Y. WVR - 72004

Z. SDR - 72005

AA. TMP - 72006

BB. WVR - 72007

CC. SDR - 72008

DD. TMP - 72009

EE. WVR - 72010

FF. SDR - 72011

GG. TMP - 72012

HH. GPA - 72220

II. Bill No. Z-2001-1, Ordinance 5353.

REQUEST FOR PRODUCTION NO. 2:

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

REQUEST FOR PRODUCTION NO. 3:

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

REQUEST FOR PRODUCTION NO. 4:

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

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

REQUEST FOR PRODUCTION NO. 5:

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

REQUEST FOR PRODUCTION NO. 6:

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

REQUEST FOR PRODUCTION NO. 7:

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

REQUEST FOR PRODUCTION NO. 8:

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

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

REQUEST FOR PRODUCTION NO. 9:

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

REQUEST FOR PRODUCTION NO. 10:

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

REQUEST FOR PRODUCTION NO. 11:

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

REQUEST FOR PRODUCTION NO. 12:

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

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

REQUEST FOR PRODUCTION NO. 13:

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

REQUEST FOR PRODUCTION NO. 14:

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

REQUEST FOR PRODUCTION NO. 15:

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

DATED this 15th day of April, 2019.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *Autumn Waters, Esq.*
KERMITT L. WATERS, ESQ.
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Nevada Bar No. 6032
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Nevada Bar No. 8887
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Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

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

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/s/ Evelyn Washington
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EXHIBIT F

ORD

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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, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims** Hearing Date: March 22, 2019 Hearing Time: 1:30 p.m.

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

The City of Las Vegas's (The City") Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; Plaintiff, 180 LAND COMPANY, LLC's ("Landowner") Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/amend the Pleadings, if Required; and Plaintiff Landowners' Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time along with the City's and the Intervenors' (from the Petition for Judicial Review[1]) Oppositions and the Landowners Replies[2] to the same having come for hearing on March 22, 2019 at 1:30 p.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., Mark Hutchison, Esq., and Autumn Waters, Esq., appearing for and on behalf of the Landowners, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of the City, and Todd Bice, Esq., and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenors (from the Petition for Judicial Review). The Court having read the briefings, conducted a hearing and after considering the writings and oral arguments presented and being fully informed in the premise makes the following findings of facts and conclusions of law:

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

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

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

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

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

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

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

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

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

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

A. The Landowners' Inverse Condemnation Claims

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

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

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

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

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

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

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

B. The Landowners' Property Interest

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

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

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

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

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

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

a) On March 26, 1986, a letter was submitted to the City Planning Commission requesting zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property) and the zoning that was sought was R-PD7 as it allows the developer flexibility and shows that developing the 35 Acre Property for a residential use has always been the intent of the City and all prior owners.

b) The City has confirmed the Landowners' property interest and vested right to use and develop the 35 Acre Property residentially in writing and orally in, without limitation, 1996, 2001, 2014, 2016, and 2018.

c) The City adopted Zoning Bill No. Z-2001, Ordinance 5353, which specifically and further demonstrates that the R-PD7 Zoning was codified and incorporated into the City of Las Vegas' Amended Zoning Atlas in 2001. As part of this action, the City "repealed" any prior City actions that could conflict with this R-PD7 hard zoning adopting: "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 Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed."

d) At a November 16, 2016, City Council hearing, Tom Perrigo, the City Planning Director, confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

e) Long time City Attorney, Brad Jerbic, has also confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

f) The City Planning Staff has also confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

g) The City's own 2020 master plan confirms the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

h) The City issued two formal Zoning Verification Letters dated December 20, 2014, confirming the R-PD7 zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

i) The City confirmed the Landowners' vested right to use and develop the 35 Acres prior to the Landowners' acquisition of the 35 Acres and the Landowners materially relied upon the City's confirmation regarding the Subject Property's vested zoning rights.

j) The City has approved development on approximately 26 projects and over 1,000 units in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre Property further establishing the Landowners' property interest and vested right to use and develop the 35 Acre Property.

k) The City has never denied an application to develop in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre Property further establishing the Landowners' property interest and vested right to use and develop the 35 Acre Property.

l) There has been a judicial finding that the Landowners have the "right to develop" the 35 Acre Property.

m) The Landowners' property interest and vested right to use and develop the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is so widely accepted that even the Clark County tax Assessor has assessed the property as residential for a value of approximately $88 Million and the current Clark County website identifies the 35 Acre Property "zoned" R-PD7.

n) There have been no other officially and properly adopted plans or maps or other recorded document(s) that nullify, replace, and/or trump the Landowners' property interest and vested right to use and develop the 35 Acre Property.

o) Although certain City of Las Vegas planning documents show a general plan designation of PR-OS (Parks/Recreation/Open Space) on the 35 Acre Property, that designation was placed on the Property by the City without the City having followed its own proper notice requirements or procedures. Therefore, any alleged PR-OS on any City planning document is being shown on the 35 Acre Property in error. The City's Attorney confirmed the City cannot determine how the PR-OS designation was placed on the Subject Property.

p) The 35 Acre Property has always been zoned and land use planned for a residential use. The City has argued that the Peccole Concept Plan applies to the Landowners' 35 Acre Property and that plan has always identified the specific 35 Acre Property in this case for a residential use. The land use designation where the 35 Acre Property is located is identified for a residential use under the Peccole Concept Plan and no major modification of Mr. Peccole's Plan would be needed in this specific case to use the 35 Acre Property for a residential use.

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

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

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

C. City Actions the Landowners Claim Amount to A Taking

In determining whether a taking has occurred, Courts must look at the aggregate of all of the government actions because "the form, intensity, and the deliberateness of the government actions toward the property must be examined … All actions by the [government], in the aggregate, must be analyzed." Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (*citing* Arkansas Game & Fish Comm's v. United States, 568 U.S. --- (2012)) (there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests." Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding that requires "complex factual assessments." Id., at 720.); 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).

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

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

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

1. City Denial of the 35 Acre Property Applications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. City Action #7: The City's Refusal to Even Consider the 133 Acre Property Applications.

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

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

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

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

As it is universally understood that tax assessed value is well below market value, to "Purchase Badlands and operate" for "S15 Million," (which equates to less than 6% of the tax assessed value and likely less than 1% of the fair market value) shocks the conscience. And, this shows that the City's actions are in furtherance of a City scheme to specifically target the Landowners' Property to have it remain in a vacant condition to be "turned over to the City" for a "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

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

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

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

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

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

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

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

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

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

> "[T]he Developer must still apply for a major modification of the Master Plan before a takings claim can be considered..." *Exhibit 37: 8 App LO 00001943 lines 18-20*;
>
> "Moreover, because the Developer has not sought a major modification of the Master Plan, the Court cannot determine if or to what extent a taking has occurred." *Id. at LO 00001944 lines 4-5*;
>
> "According to the Council's decision, the Developer need only file an application for a major modification to the Peccole Ranch Master Development Plan ...to have its Applications considered." *Exhibit 39: 9 App LO 00002028 lines 11-15*;
>
> "Here, the Council's action to strike the Applications as incomplete in the absence of a major modification application does not foreclose development on the Property or preclude the City from ultimately approving the Applications or other development applications that the Developer may subsequently submit. It simply held that the City would not consider the Applications without the Developer first submitting a major modification application." *Id. at LO 00002032 lines 18-22.*

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

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

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

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

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

D. The City's Argument that the Landowners have No Vested Property Right

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

E. The City's Argument that the Landowners' Taking Claims are Not Ripe

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

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

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

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

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

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

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

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

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

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

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

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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 the concerns about repetitive and unfair procedures expressed in MacDonld, Commer & Frates v. Yolo County, 477 U.S. 340, 350 n. 7, (1986) [*citing* Stevens concurring in judgment from Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172 at 205-206, 105 S.Ct. 3108 at 3126 (1985)] and that the city's decision was sufficiently final to render Del Monte Dunes' claim ripe for review." Del Monte Dunes, at 698. The "Ripeness Doctrine does not require a landowner to submit applications for their own sake. Petitioner is required to explore development opportunities on his upland parcel only if there is uncertainty as to the land's permitted uses." Palazzolo v. Rhode Island, at 622.

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

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

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

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

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

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

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

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

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

F. The City's Argument that the Statute of Limitation has Run on the Landowners Inverse Condemnation Claims

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

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

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

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

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

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

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

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

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

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

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

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

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

> "this Court had no intention of making any findings, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims as a 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." (Order filed February 6, 2019).

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

DATED this ____ day of April, 2019.

_____
DISTRICT COURT JUDGE

Respectfully Submitted By:
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