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

Electronically Filed
Aug 25 2022 03:36 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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. 93

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **SUPPLEMENT TO APPENDIX OF EXHIBITS IN SUPPORT OF CITY'S OPPOSITION TO PLAINTIFF'S MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR RELIEF AND COUNTERMOTION FOR SUMMARY JUDGMENT** **VOLUME 19**

The City of Las Vegas ("City") submits this Appendix of Exhibits in Support of the City's Opposition to Plaintiff's Motion to Determine Take and For Summary Judgement on the First, Third, and Fourth Claims for Relief and its Countermotion for Summary Judgment.

Exhibit	Exhibit Description	Vol.	Bates No.
A	City records regarding Ordinance No. 2136 (Annexing 2,246 acres to the City of Las Vegas)	1	0001-0011
B	City records regarding Peccole Land Use Plan and Z-34-81 rezoning application	1	0012-0030

Exhibit	Exhibit Description	Vol.	Bates No.
C	City records regarding Venetian Foothills Master Plan and Z-30-86 rezoning application	1	0031-0050
D	Excerpts of the 1985 City of Las Vegas General Plan	1	0051-0061
E	City records regarding Peccole Ranch Master Plan and Z-139-88 phase I rezoning application	1	0062-0106
F	City records regarding Z-40-89 rezoning application	1	0107-0113
G	Ordinance No. 3472 and related records	1	0114-0137
H	City records regarding Amendment to Peccole Ranch Master Plan and Z-17-90 phase II rezoning application	1	0138-0194
I	Excerpts of 1992 City of Las Vegas General Plan	2	0195-0248
J	City records related to Badlands Golf Course expansion	2	0249-0254
K	Excerpt of land use case files for GPA-24-98 and GPA-6199	2	0255-0257
L	Ordinance No. 5250 and Excerpts of Las Vegas 2020 Master Plan	2	0258-0273
M	Miscellaneous Southwest Sector Land Use Maps from 2002-2005	2	0274-0277
N	Ordinance No. 5787 and Excerpts of 2005 Land Use Element	2	0278-0291
O	Ordinance No. 6056 and Excerpts of 2009 Land Use & Rural Neighborhoods Preservation Element	2	0292-0301
P	Ordinance No. 6152 and Excerpts of 2012 Land Use & Rural Neighborhoods Preservation Element	2	0302-0317
Q	Ordinance No. 6622 and Excerpts of 2018 Land Use & Rural Neighborhoods Preservation Element	2	0318-0332
R	Ordinance No. 1582	2	0333-0339
S	Ordinance No. 4073 and Excerpt of the 1997 City of Las Vegas Zoning Code	2	0340-0341
T	Ordinance No. 5353	2	0342-0361
U	Ordinance No. 6135 and Excerpts of City of Las Vegas Unified Development Code adopted March 16, 2011	2	0362-0364
V	Deeds transferring ownership of the Badlands Golf Course	2	0365-0377
W	Third Revised Justification Letter regarding the Major Modification to the 1990 Conceptual Peccole Ranch Master Plan	2	0378-0381
X	Parcel maps recorded by the Developer subdividing the Badlands Golf Course	3	0382-0410
Y	EHB Companies promotional materials	3	0411-0445
Z	General Plan Amendment (GPA-62387), Rezoning (ZON-62392) and Site Development Plan Review (SDR-62393) applications	3	0446-0466
AA	Staff Report regarding 17-Acre Applications	3	0467-0482

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Exhibit	Exhibit Description	Vol.	Bates No.
BB	Major Modification (MOD-63600), Rezoning (ZON-63601), General Plan Amendment (GPA-63599), and Development Agreement (DIR-63602) applications	3	0483-0582
CC	Letter requesting withdrawal of MOD-63600, GPA-63599, ZON-63601, DIR-63602 applications	4	0583
DD	Transcript of February 15, 2017 City Council meeting	4	0584-0597
EE	Judge Crockett's March 5, 2018 order granting Queensridge homeowners' petition for judicial review, Case No. A-17-752344-J	4	0598-0611
FF	Docket for NSC Case No. 75481	4	0612-0623
GG	Complaint filed by Fore Stars Ltd. and Seventy Acres LLC, Case No. A-18-773268-C	4	0624-0643
HH	General Plan Amendment (GPA-68385), Site Development Plan Review (SDR-68481), Tentative Map (TMP-68482), and Waiver (68480) applications	4	0644-0671
II	June 21, 2017 City Council meeting minutes and transcript excerpt regarding GPA-68385, SDR-68481, TMP-68482, and 68480.	4	0672-0679
JJ	Docket for Case No. A-17-758528-J	4	0680-0768
KK	Judge Williams' Findings of Fact and Conclusions of Law, Case No. A-17-758528-J	5	0769-0793
LL	Development Agreement (DIR-70539) application	5	0794-0879
MM	August 2, 2017 City Council minutes regarding DIR-70539	5	0880-0882
NN	Judge Sturman's February 15, 2019 minute order granting City's motion to dismiss, Case No. A-18-775804-J	5	0883
OO	Excerpts of August 2, 2017 City Council meeting transcript	5	0884-0932
PP	Final maps for Amended Peccole West and Peccole West Lot 10	5	0933-0941
QQ	Excerpt of the 1983 Edition of the Las Vegas Municipal Code	5	0942-0951
RR	Ordinance No. 2185	5	0952-0956
SS	1990 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0957
TT	1996 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0958
UU	1998 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0959

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Exhibit	Exhibit Description	Vol.	Bates No.
VV	2015 aerial photograph identifying Phase I and Phase II boundaries, retail development, hotel/casino, and Developer projects, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0960
WW	2015 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0961
XX	2019 aerial photograph identifying Phase I and Phase II boundaries, and current assessor parcel numbers for the Badlands property, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0962
YY	2019 aerial photograph identifying Phase I and Phase II boundaries, and areas subject to inverse condemnation litigation, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0963
ZZ	2019 aerial photograph identifying areas subject to proposed development agreement (DIR-70539), produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0964
AAA	Membership Interest Purchase and Sale Agreement	6	0965-0981
BBB	Transcript of May 16, 2018 City Council meeting	6	0982-0998
CCC	City of Las Vegas' Amicus Curiae Brief, *Seventy Acres, LLC v. Binion*, Nevada Supreme Court Case No. 75481	6	0999-1009
DDD	Nevada Supreme Court March 5, 2020 Order of Reversal, *Seventy Acres, LLC v. Binion*, Nevada Supreme Court Case No. 75481	6	1010-1016
EEE	Nevada Supreme Court August 24, 2020 Remittitur, *Seventy Acres, LLC v. Binion*, Nevada Supreme Court Case No. 75481	6	1017-1018
FFF	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlements on 17 Acres	6	1019-1020
GGG	September 1, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Final Entitlements for 435-Unit Housing Development Project in Badlands	6	1021-1026
HHH	Complaint Pursuant to 42 U.S.C. § 1983, *180 Land Co. LLC et al. v. City of Las Vegas, et al.*, 18-cv-00547 (2018)	6	1027-1122
III	9th Circuit Order in *180 Land Co. LLC; et al v. City of Las Vegas, et al.*, 18-cv-0547 (Oct. 19, 2020)	6	1123-1127
JJJ	Plaintiff Landowners' Second Supplement to Initial Disclosures Pursuant to NRCP 16.1 in 65-Acre case	6	1128-1137
LLL	Bill No. 2019-48: Ordinance No. 6720	7	1138-1142

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Exhibit	Exhibit Description	Vol.	Bates No.
MMM	Bill No. 2019-51: Ordinance No. 6722	7	1143-1150
NNN	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 65 Acres	7	1151-1152
OOO	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 133 Acres	7	1153-1155
PPP	April 15, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 35 Acres	7	1156-1157
QQQ	Valbridge Property Advisors, Lubawy & Associates Inc., Appraisal Report (Aug. 26, 2015)	7	1158-1247
RRR	Notice of Entry of Order Adopting the Order of the Nevada Supreme Court and Denying Petition for Judicial Review	7	1248-1281
SSS	Letters from City of Las Vegas Approval Letters for 17-Acre Property (Feb. 16, 2017)	8	1282-1287
TTT	Reply Brief of Appellants 180 Land Co. LLC, Fore Stars, LTD, Seventy Acres LLC, and Yohan Lowie in *180 Land Co LLC et al v. City of Las Vegas*, Court of Appeals for the Ninth Circuit Case No. 19-16114 (June 23, 2020)	8	1288-1294
UUU	Excerpt of Reporter's Transcript of Hearing on City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents on Order Shortening Time in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J (Nov. 17, 2020)	8	1295-1306
VVV	Plaintiff Landowners' Sixteenth Supplement to Initial Disclosures in *180 Land Co., LLC v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J (Nov. 10, 2020)	8	1307-1321
WWW	Excerpt of Transcript of Las Vegas City Council Meeting (Aug. 2, 2017)	8	1322-1371
XXX	Notice of Entry of Findings of Facts and Conclusions of Law on Petition for Judicial Review in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No.A-17-758528-J (Nov. 26, 2018)	8	1372-1399
YYY	Notice of Entry of Order *Nunc Pro Tunc* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019 in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No.A-17-758528 (Feb. 6, 2019)	8	1400-1405
ZZZ	City of Las Vegas Agenda Memo – Planning, for City Council Meeting June 21, 2017, Re: GPA-68385, WVR-68480, SDR-68481, and TMP-68482 [PRJ-67184]	8	1406-1432

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Exhibit	Exhibit Description	Vol.	Bates No.
AAAA	Excerpts from the Land Use and Rural Neighborhoods Preservation Element of the City's 2020 Master Plan adopted by the City Council of the City on September 2, 2009	8	1433-1439
BBBB	Summons and Complaint for Declaratory Relief and Injunctive Relief, and Verified Claims in Inverse Condemnation in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No.A-18-780184-C	8	1440-1477
CCCC	Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No.A-18-780184-C (Dec. 30, 2020)	8	1478-1515
DDDD	Peter Lowenstein Declaration	9	1516-1522
DDDD-1	Exhibit 1 to Peter Lowenstein Declaration: Diagram of Existing Access Points	9	1523-1526
DDDD-2	Exhibit 2 to Peter Lowenstein Declaration: July 5, 2017 Email from Mark Colloton	9	1527-1531
DDDD-3	Exhibit 3 to Peter Lowenstein Declaration: June 28, 2017 Permit application	9	1532-1533
DDDD-4	Exhibit 4 to Peter Lowenstein Declaration: June 29, 2017 Email from Mark Colloton re Rampart and Hualapai	9	1534-1536
DDDD-5	Exhibit 5 to Peter Lowenstein Declaration: August 24, 2017 Letter from City Department of Planning	9	1537
DDDD-6	Exhibit 6 to Peter Lowenstein Declaration: July 26, 2017 Email from Peter Lowenstein re Wall Fence	9	1538
DDDD-7	Exhibit 7 to Peter Lowenstein Declaration: August 10, 2017 Application for Walls, Fences, or Retaining Walls; related materials	9	1539-1546
DDDD-8	Exhibit 8 to Peter Lowenstein Declaration: August 24, 2017 Email from Steve Gebeke	9	1547-1553
DDDD-9	Exhibit 9 to Peter Lowenstein Declaration: Bill No. 2018-24	9	1554-1569
DDDD-10	Exhibit 10 to Peter Lowenstein Declaration: Las Vegas City Council Ordinance No. 6056 and excerpts from Land Use & Rural Neighborhoods Preservation Element	9	1570-1577
DDDD-11	Exhibit 11 to Peter Lowenstein Declaration: documents submitted to Las Vegas Planning Commission by Jim Jimmerson at February 14, 2017 Planning Commission meeting	9	1578-1587
EEEE	GPA-72220 application form	9	1588-1590
FFFF	Chris Molina Declaration	9	1591-1605
FFFF-1	Fully Executed Copy of Membership Interest Purchase and Sale Agreement for Fore Stars Ltd.	9	1606-1622

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Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-2	Summary of Communications between Developer and Peccole family regarding acquisition of Badlands Property	9	1623-1629
FFFF-3	Reference map of properties involved in transactions between Developer and Peccole family	9	1630
FFFF-4	Excerpt of appraisal for One Queensridge place dated October 13, 2005	9	1631-1632
FFFF-5	Site Plan Approval for One Queensridge Place (SDR-4206)	9	1633-1636
FFFF-6	Securities Redemption Agreement dated September 14, 2005	9	1637-1654
FFFF-7	Securities Purchase Agreement dated September 14, 2005	9	1655-1692
FFFF-8	Badlands Golf Course Clubhouse Improvement Agreement dated September 6, 2005	9	1693-1730
FFFF-9	Settlement Agreement and Mutual Release dated June 28, 2013	10	1731-1782
FFFF-10	June 12, 2014 emails and Letter of Intent regarding the Badlands Golf Course	10	1783-1786
FFFF-11	July 25, 2014 email and initial draft of Golf Course Purchase Agreement	10	1787-1813
FFFF-12	August 26, 2014 email from Todd Davis and revised purchase agreement	10	1814-1843
FFFF-13	August 27, 2014 email from Billy Bayne regarding purchase agreement	10	1844-1846
FFFF-14	September 15, 2014 email and draft letter to BGC Holdings LLC regarding right of first refusal	10	1847-1848
FFFF-15	November 3, 2014 email regarding BGC Holdings LLC	10	1849-1851
FFFF-16	November 26, 2014 email and initial draft of stock purchase and sale agreement	10	1852-1870
FFFF-17	December 1, 2015 emails regarding stock purchase agreement	10	1871-1872
FFFF-18	December 1, 2015 email and fully executed signature page for stock purchase agreement	10	1873-1874
FFFF-19	December 23, 2014 emails regarding separation of Fore Stars Ltd. and WRL LLC acquisitions into separate agreements	10	1875-1876
FFFF-20	February 19, 2015 emails regarding notes and clarifications to purchase agreement	10	1877-1879
FFFF-21	February 26, 2015 email regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	10	1880
FFFF-22	February 27, 2015 emails regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	10	1881-1882
FFFF-23	Fully executed Membership Interest Purchase Agreement for WRL LLC	10	1883-1890

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FFFF-24	June 12, 2015 email regarding clubhouse parcel and recorded parcel map	10	1891-1895
FFFF-25	Quitclaim deed for Clubhouse Parcel from Queensridge Towers LLC to Fore Stars Ltd.	10	1896-1900
FFFF-26	Record of Survey for Hualapai Commons Ltd.	10	1901
FFFF-27	Deed from Hualapai Commons Ltd. to EHC Hualapai LLC	10	1902-1914
FFFF-28	Purchase Agreement between Hualapai Commons Ltd. and EHC Hualapai LLC	10	1915-1931
FFFF-29	City of Las Vegas' First Set of Interrogatories to Plaintiff	10	1932-1945
FFFF-30	Plaintiff 180 Land Company LLC's Responses to City of Las Vegas' First Set of Interrogatories to Plaintiff, 3rd Supplement	10	1946-1973
FFFF-31	City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1974-1981
FFFF-32	Plaintiff 180 Land Company LLC's Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1982-1989
FFFF-33	September 14, 2020 Letter to Plaintiff regarding Response to Second Set of Requests for Production of Documents	11	1990-1994
FFFF-34	First Supplement to Plaintiff Landowners Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1995-2002
FFFF-35	Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2003-2032
FFFF-36	Transcript of November 17, 2020 hearing regarding City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2033-2109
FFFF-37	February 24, 2021 Order Granting in Part and denying in part City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2110-2118
FFFF-38	April 1, 2021 Letter to Plaintiff regarding February 24, 2021 Order	11	2119-2120
FFFF-39	April 6, 2021 email from Elizabeth Ghanem Ham regarding letter dated April 1, 2021	11	2121-2123
FFFF-40	Hydrologic Criteria and Drainage Design Manual, Section 200	11	2124-2142
FFFF-41	Hydrologic Criteria and Drainage Design Manual, Standard Form 1	11	2143
FFFF-42	Hydrologic Criteria and Drainage Design Manual, Standard Form 2	11	2144-2148
FFFF-43	Email correspondence regarding minutes of August 13, 2018 meeting with GCW regarding Technical Drainage Study	11	2149-2152

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Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-44	Excerpts from Peccole Ranch Master Plan Phase II regarding drainage and open space	11	2153-2159
FFFF-45	Aerial photos and demonstrative aids showing Badlands open space and drainage system	11	2160-2163
FFFF-46	August 16, 2016 letter from City Streets & Sanitation Manager regarding Badlands Golf Course Drainage Maintenance	11	2164-2166
FFFF-47	Excerpt from EHB Companies promotional materials regarding security concerns and drainage culverts	11	2167
GGGG	Landowners' Reply in Support of Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims Etc. in *180 Land Co., LLC v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J (March 21, 2019)	11	2168-2178
HHHH	State of Nevada State Board of Equalization Notice of Decision, *In the Matter of Fore Star Ltd., et al.* (Nov. 30, 2017)	11	2179-2183
IIII	Clark County Real Property Tax Values	11	2184-2199
JJJJ	Clark County Tax Assessor's Property Account Inquiry - Summary Screen	11	2200-2201
KKKK	February 22, 2017 Clark County Assessor Letter to 180 Land Co. LLC, re Assessor's Golf Course Assessment	11	2202
LLLL	Petitioner's Opening Brief, *In the matter of 180 Land Co. LLC* (Aug. 29, 2017), State Board of Equalization	12	2203-2240
MMMM	September 21, 2017 Clark County Assessor Stipulation for the State Board of Equalization	12	2241
NNNN	Excerpt of Reporter's Transcript of Hearing in *180 Land Co. v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J (Feb. 16, 2021)	12	2242-2293
OOOO	June 28, 2016 Letter from Mark Colloton re: Reasons for Access Points Off Hualapai Way and Rampart Blvd.	12	2294-2299
PPPP	Transcript of City Council Meeting (May 16, 2018)	12	2300-2375
QQQQ	Supplemental Declaration of Seth T. Floyd	13	2376-2379
QQQQ-1	1981 Peccole Property Land Use Plan	13	2380
QQQQ-2	1985 Las Vegas General Plan	13	2381-2462
QQQQ-3	1975 General Plan	13	2463-2558
QQQQ-4	Planning Commission meeting records regarding 1985 General Plan	14	2559-2786
QQQQ-5	1986 Venetian Foothills Master Plan	14	2787
QQQQ-6	1989 Peccole Ranch Master Plan	14	2788
QQQQ-7	1990 Master Development Plan Amendment	14	2789
QQQQ-8	Citizen's Advisory Committee records regarding 1992 General Plan	14	2790-2807

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Exhibit	Exhibit Description	Vol.	Bates No.
QQQQ-9	1992 Las Vegas General Plan	15-16	2808-3257
QQQQ-10	1992 Southwest Sector Map	17	3258
QQQQ-11	Ordinance No. 5250 (Adopting 2020 Master Plan)	17	3259-3266
QQQQ-12	Las Vegas 2020 Master Plan	17	3267-3349
QQQQ-13	Ordinance No. 5787 (Adopting 2005 Land Use Element)	17	3350-3416
QQQQ-14	2005 Land Use Element	17	3417-3474
QQQQ-15	Ordinance No. 6056 (Adopting 2009 Land Use and Rural Neighborhoods Preservation Element)	17	3475-3479
QQQQ-16	2009 Land Use and Rural Neighborhoods Preservation Element	18	3480-3579
QQQQ-17	Ordinance No. 6152 (Adopting revisions to 2009 Land Use and Rural Neighborhoods Preservation Element)	18	3580-3589
QQQQ-18	Ordinance No. 6622 (Adopting 2018 Land Use and Rural Neighborhoods Preservation Element)	18	3590-3600
QQQQ-19	2018 Land Use & Rural Neighborhoods Preservation Element	18	3601-3700
RRRR	**Supplemental declaration of Seth Floyd**	**19**	**3701-3703**
RRRR-1	**Southwest Sector Land Use Map (1992)**	**19**	**3704**
RRRR-2	**10/10/1991 Planning Commission Minutes**	**19**	**3705-3707**
RRRR-3	**10/22/1991 Planning Commission Minutes**	**19**	**3708-3712**
RRRR-4	**11/14/1991 Planning Commission Minutes**	**19**	**3713-3715**
RRRR-5	**11/26/1991 Planning Commission Minutes**	**19**	**3716-3718**
RRRR-6	**12/12/1991 Planning Commission Minutes**	**19**	**3719-3726**
RRRR-7	**12/12/1991 Planning Commission Resolution adopting 1992 General Plan**	**19**	**3727-3728**
RRRR-8	**2/5/1992 City Council Meeting Minutes**	**19**	**3729**
RRRR-9	**2/18/1992 Recommending Committee Meeting Minutes**	**19**	**3730-3750**
RRRR-10	**2/19/1992 City Council Meeting Minutes**	**19**	**3751-3752**
RRRR-11	**3/12/1992 Planning Commission Meeting Minutes**	**19**	**3753-3754**
RRRR-12	**3/16/1992 Recommending Committee Meeting Minute**	**19**	**3755**
RRRR-13	**4/1/1992 City Council Meeting Minutes**	**19**	**3756-3758**
RRRR-14	**Ordinance No. 3636 (adopting new general plan)**	**19**	**3759-3761**
RRRR-15	**2/13/1992 Citizens Advisory Committee Meeting Minutes**	**19**	**3762-3765**
RRRR-16	**3/27/1991 Citizens Advisory Committee Mailout**	**19**	**3766-3775**
SSSS	**Excerpts of NRCP 30(b)(6) Designee of Peccole Nevada Corporation – William Bayne**	**19**	**3776-3789**

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Exhibit	Exhibit Description	Vol.	Bates No.
TTTT	Findings of Facts, Conclusions of Law and Order Regarding Motion to Dismiss and Countermotion to Allow More Definite Statement if Necessary and Countermotion to Stay Litigation of Inverse Condemnation Claims Until Resolution of the Petition for Judicial Review and Countermotion for NRCP Rule 56(F) Continuance	19	3790-3801
UUUU	Declaration of Christopher Molina in Support of the City's Countermotion for Summary Judgment and Opposition to Motion to Determine Property Interest	19	3802-3803
VVVV	Declaration of Seth Floyd	19	3804-3805
VVVV-1	Master planned communities with R-PD Zoning	19	3806-3810
VVVV-2	General Plan Maps for Master Planned Communities with R-PD zoning	19	3811-3815

DATED this 22nd day of September 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 22nd day of September, 2021, I caused a true and correct copy of the foregoing **SUPPLEMENT TO APPENDIX OF EXHIBITS IN SUPPORT OF CITY'S OPPOSITION TO PLAINTIFF'S MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR RELIEF AND COUNTERMOTION FOR SUMMARY JUDGMENT – VOLUME 1** to be 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 "RRRR"

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SUPPLEMENTAL DECLARATION OF SETH T. FLOYD

I, Seth T. Floyd, declare as follows:

1. I am the Director of Community Development for the City of Las Vegas. I have held this position since April 2021 and have been an employee of the City since August 1, 2017. I am one of the custodians of records for the City of Las Vegas Planning Department. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I make this declaration in support of the City's Countermotion for Summary Judgment and Opposition to Motion to Determine Property Interest.

3. The Southwest Sector Map designating the Badlands PR-OS, which is attached hereto as **Exhibit RRRR-1**, was adopted as part of a comprehensive update to the City's general plan in 1992 (the "1992 General Plan"). In adopting the Southwest Sector Map and the 1992 General Plan, the City complied with all applicable statutory requirements under NRS 278.210 and NRS 278.220, as summarized in the table below:

Requirements	Actions Taken to Comply
NRS 278.210(1): The planning commission must hold at least one public hearing before adopting a master plan or any substantial amendment thereof.	The Planning Commission held five (5) public hearings before adopting the 1992 General Plan. **Exhibit RRRR-2** (10/10/1991 minutes); **Exhibit RRRR-3** (10/22/1991 minutes); **Exhibit RRRR-4** (11/14/1991 minutes); **Exhibit RRRR-5** (11/26/1991 minutes); and **Exhibit RRRR-6** (12/12/1991 minutes).
NRS 278.210(3): The master plan and any amendment must be approved by resolution by at least two-thirds of the planning commission.	The Planning Commission unanimously approved the 1992 General Plan by resolution dated December 12, 1991. **Exhibit RRRR-6** (12/12/1991 minutes); **Exhibit RRRR-7** (Resolution).
NRS 278.210(3): The resolution must refer to the maps, descriptive matter and other matter intended to constitute the plan, and the action taken must be recorded on the map by the identifying signatures of the secretary and chair of the commission.	The resolution approved by the Planning Commission expressly included all text and land use maps considered and amended by the planning commission in the 1992 General Plan. **Exhibit RRRR-7** (Resolution). The action taken to adopt the Southwest Sector Map designating the Badlands PR-OS is recorded on the map and signed by the chairman and secretary of the planning commission. **Exhibit RRRR-1** (Southwest Sector Map)

NRS 278.210(6): An attested copy of the plan adopted by the planning commission must be certified to the city council.	The resolution adopting the 1992 General Plan was certified by the City Clerk and forwarded to the City Council. **Exhibit RRRR-7** (Resolution).
NRS 278.220(1): Upon receipt of the master plan, the city council may adopt such parts thereof as may be applied to the development of the city for a reasonable period of time ensuing.	The City Council proposed Bill No. 92-2 to adopt the 1992 General Plan, which was referred to a recommending committee comprised of the full City Council. **Exhibit RRRR-8** (2/5/1992 minutes). The City Council, sitting as a recommending committee, identified several proposed changes. **Exhibit RRRR-9** (2/18/1992 minutes).
NRS 278.220(4): If the city council desires to make changes or additions to the master plan adopted by the planning commission, it must refer the changes back to the planning commission for a report.	The City Council held a second hearing on Bill No. 92-2 and referred the proposed changes back to the Planning Commission. **Exhibit RRRR-10** (2/19/1992 minutes). The Planning Commission approved all of the proposed changes. **Exhibit RRRR-11** (3/12/1992 minutes).
NRS 278.220(3): The city council must hold at least one public hearing before adopting the master plan, with notice published in a newspaper of general circulation at least 10 days before the date of the hearing.	On March 16, 1992, the City Council held a third hearing as a recommending committee on Bill No. 92-2 and recommended approval. **Exhibit RRRR-12** (3/16/1992 Recommending Committee minutes). On April 1, 1992, the City Council approved Bill No. 92-2, which became Ordinance 3636. **Exhibit RRRR-13** (4/1/1992 minutes; **Exhibit RRRR-14** (Ord. 3636)

4. It is my understanding that Plaintiffs 180 Land Co LLC, Seventy Acres LLC, and Fore Stars Ltd. (collectively, the "Developer") contend the Southwest Sector Map designating the Badlands PR-OS was not properly adopted because the actions taken to approve the 1992 General Plan do not specifically refer to any changes to the land use designation for the Badlands. This contention has no merit for several reasons.

5. Nothing in NRS Chapter 278 requires cities to specifically identify every parcel affected by the adoption of a master plan. The Developer's reliance on a memorandum in the meeting records for Ordinance 3636 (Ex. RRRR-14) is misplaced. The memorandum lists the changes requested by the City Council and referred back to the Planning Commission pursuant to NRS 278.220(4). It does not purport to identify all parcels that had a land use designation changed by the 1992 General Plan. The Badlands is not mentioned because the City Council did not make any changes to the designation shown

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on the first map approved by the Planning Commission and under NRS 278.220(4), the City Council was only required to send the changes back to Planning Commission.

6. The Developer conflates the requirements for master plan amendments initiated by the City and amendments requested by property owners. NRS 278.210(2) requires persons requesting an amendment to hold a neighborhood meeting to explain the proposed amendment. The City's Unified Development Code conforms to NRS 278.210(2) by imposing greater notice requirements on "parcel-specific general plan amendments," which are defined as amendments "sought by or on behalf of one or more property owners in order to develop those parcels in a particular way." *See* LVMC 19.16.030(F)(2). In any event, neither rule existed in 1992. NRS 278.210(2) was not enacted until 2005 when the Nevada Legislature amended NRS 278.210. *See* 2005 Statutes of Nevada, Page 1591 (A.B. 425).

7. The Developer's argument also fails because the City had already approved the golf course in 1990 when it approved an amendment to the Peccole Ranch Master Plan. This is reflected in the community profile maps adopted under the 1985 General Plan, which were used as the basis for preparing the sector maps included in the 1992 General Plan. A citizen's advisory committee was appointed to review and update the community profile maps and the maps distributed to the committee reflected the land uses approved between 1985 and 1991. *See* **Exhibit RRRR-15** (2/13/1991 minutes). Community Profile Map 13, which included the Badlands Property, reflected the "Parks, Recreation, Open Space" designation approved by the City with the amendment to the Peccole Ranch Master Plan in 1990. *See* **Exhibit RRRR-16** (3/27/1991 mailout).

I declare under the penalty of perjury of the laws of the State of Nevada that the foregoing is true and Executed this 31st day of August 2021.

/s/ Seth T. Floyd
SETH T. FLOYD

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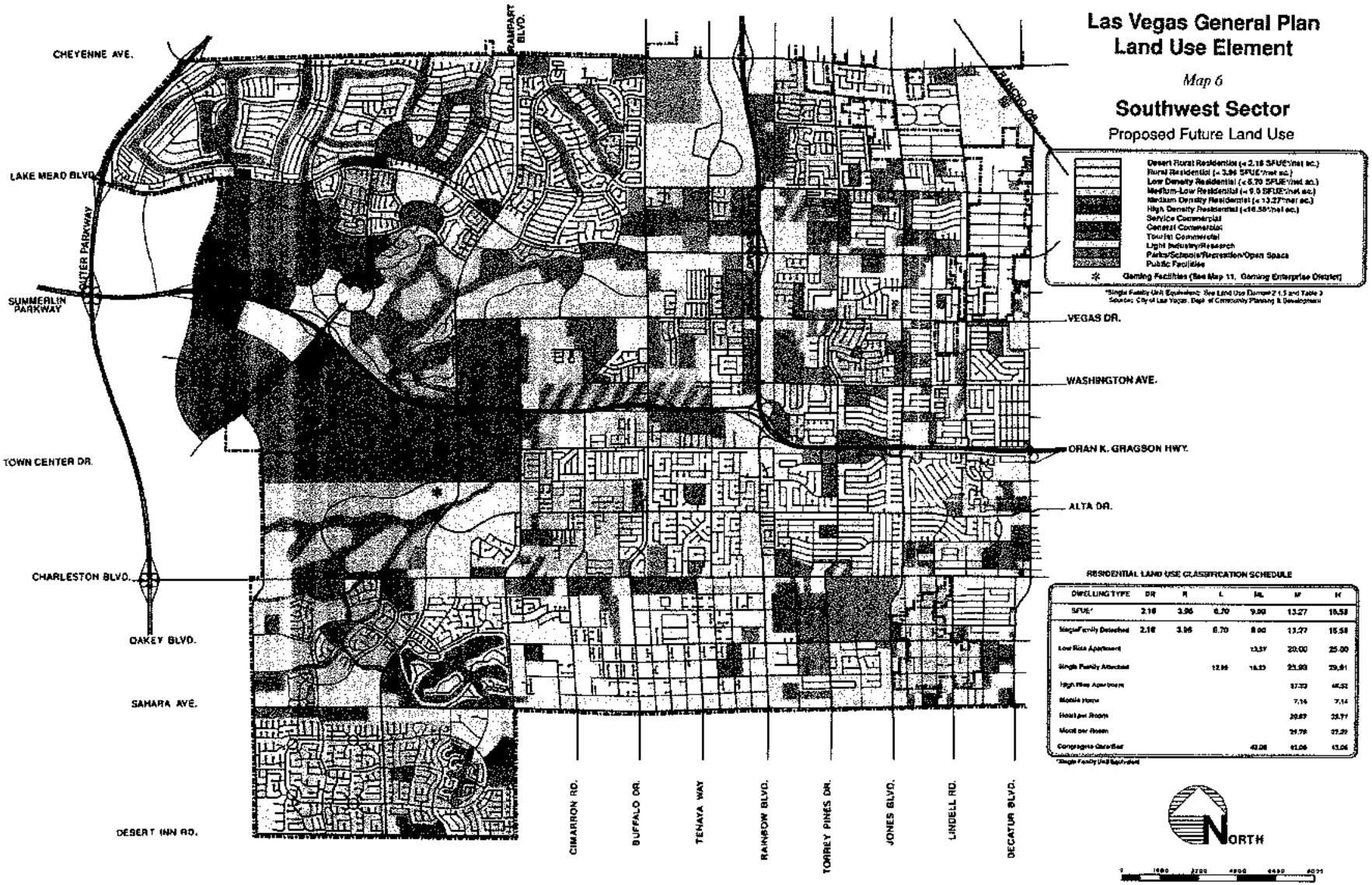
EXHIBIT "RRRR-1"

Las Vegas General Plan
Land Use Element

Map 6

Southwest Sector

Proposed Future Land Use



RESIDENTIAL LAND USE CLASSIFICATION SCHEDULE

DWELLING TYPE	DR	R	L	ML	M	H
SFUE*	2.18	3.96	6.70	9.00	13.27	16.58
Single Family Detached	2.18	3.96	6.70	9.00	13.27	16.58
Low Rise Apartment				13.37	20.00	25.00
Single Family Attached			12.99	16.33	23.93	29.91
High Rise Apartment					37.33	46.67
Mobile Home					7.14	7.14
Hotel per Room					20.67	25.71
Motel per Room					16.78	17.20
Congregate Care/Bed				42.08	41.06	43.06

*Single Family Unit Equivalent

Adopted by the Planning Commission.
March 13, 1992

Chairman
Sandra Hudgens

Secretary
Norman R. Standerfer,
Director, Dept. of Community Planning & Development

CLV052989
16565

EXHIBIT "RRRR-2"

ANNOTATED AGENDA AND FINAL MINUTES

AGENDA

City of Las Vegas

PLANNING COMMISSION

COUNCIL CHAMBERS • 400 EAST STEWART AVENUE
PHONE 386-6301

October 10, 1991

ITEM	COMMISSION ACTION
CALL TO ORDER: 6:00 P.M., Council Chambers of City Hall, 400 East Stewart Avenue, Las Vegas, Nevada.	ACTING CHAIRMAN DIXON called the meeting to order at 6:01 P.M.
ROLL CALL: Frank Dixon Acting Chairman - Present Sandra Hudgens - Present Eric Jordan - Present Brian Moffitt - Present Marsha Pippin - Excused Richard Segerblom - Present Mark Solomon - Present	STAFF PRESENT: Norman Standerfer, Director, Community Planning & Development Frank Reynolds, Deputy Director, Community Planning & Development Eugene Robichaud, Planning Aide, Community Planning & Development John McNellis, Public Works Val Steed, Chief Deputy City Attorney Linda Owens, Deputy City Clerk
ANNOUNCEMENT Satisfaction of Open Meeting Law Requirements.	GENERAL PLAN CITIZENS ADVISORY COMMITTEE MEMBERS PRESENT: Andras Babero, Co-Chairman Abe Mayhan, Co-Chairman
NOTICE: This meeting has been properly noticed and posted at the following location: Bradley Bldg., State of Nevada 2501 E. Sahara Avenue Senior Citizen Center, 450 E. Bonanza Rd. Clark County Courthouse, 200 E. Carson Avenue Court Clerk's Office Bulletin Board, City Hall Plaza City Hall Plaza, Special Outside Posting Bulletin Board	ACTING CHAIRMAN DIXON announced this meeting is in compliance with the Open Meeting Law.
1. REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN	Dixon - APPROVED PUBLIC HEARING AT 10-22-91, 6:00 P.M., NORTHWEST SECTOR OF CITY. Motion carried with Solomon and Segerblom voting "No." (Pippin excused) ACTING CHAIRMAN DIXON complimented everyone involved in the updated General Plan. The format of the plan is easy to follow. He stated the meeting format would be to first address all elements except land; then address the Land Use text; and finally address the proposed Land Use Plans. ANDRAS BABERO, Co-Chairman of the Citizens Advisory Committee, said he enjoyed working on the General Plan with developers, homeowners

ITEM	COMMISSION ACTION
1. REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN (CONTINUED)	associations, interested parties and staff. Experts in certain areas were consulted. ABE MAYHAN, Co-Chairman of the Citizens Advisory Committee, said there were 41 members on the Committee. The Committee met for approximately a year and a half to put the document together. IRENE PORTER, Executive Director of the Southern Nevada Home Builders Association, said some of their members served on the Citizens Advisory Committee to prepare the updated General Plan. The presentation of the Plan is excellent. It is readable for persons in the profession and the general public. ACTING CHAIRMAN DIXON brought up the concern property owners have in regard to crime. FRANK REYNOLDS, Deputy Director, said under Section 3, Community Facilities, it refers to crime prevention. He pointed out department heads and outside experts in various fields that gave input in the Plan. COMMISSIONER SEGERBLOM brought up the issue of water availability in the Plan. MR. STANDERFER, Director, explained the data that is in the Plan is preliminary and based on the water that the new Southern Nevada Water Authority is seeking to secure presently as new sources of water. That process will take several months and is beyond the scope of the City of Las Vegas. The Land Uses Section of the Plan does not deal with specific parcels of land. COMMISSIONER SEGERBLOM felt there should be a provision in the Plan addressing "preservation of existing neighborhoods." FRANK REYNOLDS commented that at times neighborhoods can be preserved and other times circumstances have changed in the neighborhood. COMMISSIONER MOFFITT asked if

ITEM	COMMISSION ACTION
1. REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN (CONTINUED)	there are any major changes in the Land Use Section. MR. STANDERFER pointed out that in Section 2.1.4 and 2.1.5, Land Use Classifications, a new approach is being taken to categorize land by a Development Intensity Level (DID) classification based on traffic generation. ANN GELFIE AND SANDRA YOUNG appeared in opposition. They own ten acres at the corner of Oakey and Durango. They were fearful the General Plan would have an affect of depreciating their property. SYBILL LEAVITT, owner of property at the northeast corner of Oakey and Durango, said she has a purchaser for her property and the price of the sale was based on the current General Plan of 12 units per acre. Persons that have homes in the area should know the surrounding zoning. The Public Hearing adjourned at 7:00 P.M. The Public Hearing on the Updated General Plan will be continued on 10-22-91 at 6:00 p.m. for the Northwest Sector of the city.

EXHIBIT "RRRR-3"

AGENDA

City of Las Vegas

October 22, 1991

PLANNING COMMISSION

COUNCIL CHAMBERS • 400 EAST STEWART AVENUE

PHONE 386-6301

ITEM	COMMISSION ACTION
CALL TO ORDER: 6:00 P.M., Council Chambers of City Hall, 400 East Stewart Avenue, Las Vegas, Nevada.	ACTING CHAIRMAN DIXON called the meeting to order at 6:02 P.M.
ROLL CALL: Frank Dixon Acting Chairman - Present Sandra Hudgens - Present Eric Jordan - Present Brian Moffitt - Present Marsha Pippin - Present Richard Segerblom - Present Mark Solomon - Excused	STAFF PRESENT: Norman Standerfer, Director, Community Planning & Development Frank Reynolds, Deputy Director Community Planning & Development Howard Null Community Planning & Development Eugene Robichaud, Planning Aide, Community Planning & Development Val Steed, Chief Deputy City Attorney Linda Owens, Deputy City Clerk
ANNOUNCEMENT Satisfaction of Open Meeting Law Requirements.	
NOTICE: This meeting has been properly noticed and posted at the following location: Bradley Bldg., State of Nevada 2501 E. Sahara Avenue Senior Citizen Center, 450 E. Bonanza Rd. Clark County Courthouse, 200 E. Carson Avenue Court Clerk's Office Bulletin Board, City Hall Plaza City Hall Plaza, Special Outside Posting Bulletin Board	ACTING CHAIRMAN DIXON announced this meeting is in compliance with the Open Meeting Law.
1. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN NORTHWEST SECTOR PROPOSED FUTURE LAND USE PLAN	

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN. NORTHWEST SECTOR PROPOSED FUTURE LAND USE PLAN (CONTINUED)	ACTING CHAIRMAN DIXON stated this meeting is a continuation of the public hearing on the update to the General Plan for the City of Las Vegas. The purpose of this hearing is to gather input and comments from citizens about the content of the General Plan as it is reflected in its maps and text. This session will focus on the northwest sector Future Land Use Plan. The northwest sector is bounded by Decatur Avenue on the east and Cheyenne Avenue on the south. He read the rules as to how the meeting would be conducted. FRANK REYNOLDS pointed out Community Profile Maps 11, 12 and 15 for the northwest section that were approved in 1985, and how the Northwest Citizens Advisory Committee reviewed the Profiles. On February 20, 1991 the City Council adopted the Northwest Interim Update Plan. The Sheep Mountain Homeowners Association pointed out a change in the Updated General Plan maps between Rainbow Boulevard and Tenaya Way where there was a piece that was shown as Low Density Residential that was actually D-R. This was a transfer error. Any changes that are made in the public hearings will be forwarded to the City Council. MR. STANDERFER said the reason for the Northwest Interim Plan was to determine the areas that were to be held for horse country, or D-R designation. That Plan was adopted on an interim basis and served as the basis for the final maps that came from the Citizens Advisory Committee for this sector. COMMISSIONER SEGERBLOM asked about low income or lower value housing areas. MR. STANDERFER said the General Plan does not address price ranges, just the land uses. COMMISSIONER SEGERBLOM asked about higher densities that would probably accommodate affordable housing. MR. STANDERFER said the M, M-L and

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN. NORTHWEST SECTOR PROPOSED FUTURE LAND USE PLAN (CONTINUED)	H designations permit higher density areas. FRANK REYNOLDS said affordable housing is addressed in Element 8 on a valley wide basis. The northwest only has approximately 1/5 of the multi-family housing that the other sectors have because it is a low density area. BILL STARKEY, President, Sheep Mountain Homeowners Association, said the Citizens Advisory Committee tried to accommodate commercial development, as well as lower price/higher density housing in the northwest sector. There are several ranch facilities in that area. He wants to continue integrating trail systems with parks. He requested more information on the single family equivalent unit land use designation. MR. STANDERFER said there is a section in the Land Use text that explains land use designations and the Development Intensity Level (DIL) System. On some parcels there is a latitude of land use designations allowing residential or service commercial. Therefore, it is difficult to determine commercial or residential zoning. Instead of having 6 to 12 and 12 to 20 unit designations in the Development Intensity Level process the housing types are set at the rate they generate traffic. Twelve units of single family housing cannot be developed. The highest would be in the 7 to 8 range because of streets, etc. It is now called 9 Single Family Equivalent under the R-CL. This updated Plan provides for anticipating different housing types without labeling with one or more designations. There will be further proposals brought back to the Planning Commission and City Council for a series of intensity relationships in the non-residential sector. A true Planned Unit District may be developed in the future. FRANK REYNOLDS said for the first time there is an existing Land Use Map in this updated Plan. Some calculations have been done to see what the ultimate buildout

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN. NORTHWEST SECTOR PROPOSED FUTURE LAND USE PLAN (CONTINUED)	capacity would be throughout the city. We would probably reach a water cap before we are ever completely built out. COMMISSIONER SEGERBLOM asked if there will be a shortage of low income housing? HOWARD NULL said there is affordable housing in each sector, but we don't know the amount. We are also concerned about affordable housing in relation to employment generators. We'd like to get into these types of studies in the future. MR. STANDERFER said on page 2-16 there is a phrase left off a paragraph under the section "Development Review Requirements." It should include: ....on any street or highway, <u>unless amended by the City Council.</u> ACTING CHAIRMAN DIXON observed that the southeast and southwest sections are heavily saturated with multi-family. He asked if the two and three story multi-family housing is addressed in the Plan. MR. STANDERFER said there is a great need for those kinds of apartments. COMMISSIONER SEGERBLOM asked if consideration has been given to what impact new hotels would have on the community. MR. STANDERFER said it is difficult to devise and utilize that information because there are so many variables. ACTING CHAIRMAN DIXON thought the information presented to the Commissioners may be different than now. MR. STANDERFER said staff is working towards providing a full staff report a week ahead of each meeting. ACTING CHAIRMAN DIXON asked if the beltway and floodways have been incorporated into this updated Plan. MR. STANDERFER said a decision has

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN. NORTHWEST SECTOR PROPOSED FUTURE LAND USE PLAN (CONTINUED)	not been made on the Beltway, so it will have to go through the process as the RTC narrows its exact alignment. There is material in the Plan regarding the floodways, and there is a regional entity for those improvements. ABE MAYHAN said there is an extensive master plan for flood control provided by the Flood Control District. He offered to provide that information at a subsequent meeting. ACTING CHAIRMAN DIXON said he would primarily be interested in those areas where developers are not looking at to develop but still need flood control. **NOTE: IT WAS DECIDED TO HOLD THE NEXT PUBLIC HEARING ON THE UPDATED GENERAL PLAN BETWEEN 6:00 P.M. AND 7:00 P.M. ON NOVEMBER 14, 1991 FOR THE REMAINING AREAS OF THE CITY.** The public hearing adjourned at 6:53 P.M.

EXHIBIT "RRRR-4"

ITEM	COMMISSION ACTION
CALL TO ORDER: 6:00 P.M., Council Chambers of City Hall, 400 East Stewart Avenue, Las Vegas, Nevada.	CHAIRMAN HUDGENS called the meeting to order at 6:10 P.M.
ROLL CALL: Sandra Hudgens, Chairman - Present Frank Dixon Vice Chairman - Excused Eric Jordan - Present Brian Moffitt - Excused Marsha Pippin - Present Richard Segerblom - Present Mark Solomon - Present	STAFF PRESENT: Norman Standerfer, Director, Community Planning & Development Frank Reynolds, Deputy Director Community Planning & Development Howard Null Community Planning & Development Robert Baggs, Chief, Comprehensive Planning, Community Planning & Development Hillevi Davis, Planning Aide, Community Planning & Development Val Steed, Chief Deputy City Attorney Linda Owens, Deputy City Clerk
ANNOUNCEMENT Satisfaction of Open Meeting Law Requirements.	GENERAL PLAN CITIZENS ADVISORY COMMITTEE MEMBER PRESENT: Abe Mayhan, Co-Chairman
NOTICE: This meeting has been properly noticed and posted at the following location: Bradley Bldg., State of Nevada 2501 E. Sahara Avenue Senior Citizen Center, 450 E. Bonanza Rd. Clark County Courthouse, 200 E. Carson Avenue Court Clerk's Office Bulletin Board, City Hall Plaza City Hall Plaza, Special Outside Posting Bulletin Board	CHAIRMAN HUDGENS announced this meeting is in compliance with the Open Meeting Law.
1. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN SOUTHWEST SECTOR PROPOSED FUTURE LAND USE PLAN	MEL SHIPMAN, 1113 Halite Court, said he was concerned about the portion of the General Plan between Buffalo and Washington, Vegas Drive and Cimarron. The 1985 General Plan called for 3 to 6 dwelling units per acre. What is in the area at the present time is R-PD12, R-CL, R-1, R-PD22, R-PD14 and R-PD16, or 12 to 22 units per acre. If the undeveloped area is allowed to go to 12, the whole area could be condominiums. He suggested that a strip on the west side of Buffalo be shown as 12 units per acre, and keep the rest of the area a lower density farther away from Buffalo. That

ITEM	COMMISSION ACTION
I. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN (CONTINUED)	would make it more compatible with the Summerlin area. He wants to get a density that would not allow more condominiums. FRANK REYNOLDS said on the new General Plan low density is equivalent to 6.7 single family unit equivalents (SFUE) and medium-low density is 9 SFUE dwelling units per acre. Having a buffer of medium-low on the west side of Buffalo Drive against the medium directly east of Buffalo and keeping the area north of the existing low density, single family would be a reasonable solution. COMMISSIONER SOLOMON said a Nevada Power Company line runs through the parcel Mr. Shipman is concerned about. He asked Mr. Shipman if he felt the power line has an effect on that property. MEL SHIPMAN answered in the affirmative, but the persons that purchased the property were aware of the power line. JERRY JOHNSTON, 1113 Byorick Way, felt the power line does not have a great impact on the property being discussed. COMMISSIONER SOLOMON felt the power line is an issue. ABE MAYHAN said the impact of the power line is that there's a 100 foot right-of-way under which no buildings can be built. ANN GELFIE, property owner, and MARK BRANDENBURG, son, appeared together stating Ann Gelfie owns 10 acres on the southeast corner of Oakey and Durango. Oakey has been closed off west of Durango as a major thoroughfare. She was heavily assessed for road improvements and will be dealing with a wash. They objected to any changes in the General Plan that would limit her ability to develop the property. Her property goes right up next to a school. ABE MAYHAN pointed out on a map that the recommendation for Ann Gelfie's property is to be low

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN (CONTINUED)	density. ANN GELFIE AND MARK BRANDENBURG said she did not want to change the zoning. There is a block wall across the street on Durango Drive. There are businesses in that area. FRANK REYNOLDS pointed out there is a lot of low density in the area. NORMAN STANDERFER said her property carries ML, or 12 units per acre, under the old General Plan. The new General Plan designates this property as L, or 6.7 single family units per acre and 12.9 condominiums units. She would not lose any property value. ABE MAYHAN said there are two R developments in the area of Ann Gelfie's property. If the area surrounding the R developments would be designated as L, that would have minimal impact on the other properties. FRANK REYNOLDS said individual properties were not looked at in updating the General Plan, just land use relationships. The land from the school to Durango Drive could be one uniform land use and L would be appropriate. CHAIRMAN HUDGENS said after the public hearings the Commissioners will have meetings to discuss various amendments to the proposed Plan prior to the updated General Plan being forwarded to the City Council. ADJOURNMENT: The meeting adjourned at 6:51 p.m.

EXHIBIT "RRRR-5"

ITEM	COMMISSION ACTION
CALL TO ORDER: 6:00 P.M., Council Chambers of City Hall, 400 East Stewart Avenue, Las Vegas, Nevada.	CHAIRMAN HUDGENS called the meeting to order at 6:08 P.M.
ROLL CALL: Sandra Hudgens, Chairman - Present Frank Dixon Vice Chairman - Excused Eric Jordan - Present Brian Moffitt - Present Marsha Pippin - Present Richard Segerblom - Present Mark Solomon - Present	STAFF PRESENT: Norman Standerfer, Director, Community Planning & Development Frank Reynolds, Deputy Director Community Planning & Development Howard Null, Administrative Officer, Community Planning & Development Robert Baggs, Chief, Comprehensive Planning, Community Planning & Development Hillevi Davis, Planning Aide, Community Planning & Development Val Steed, Chief Deputy City Attorney Linda Owens, Deputy City Clerk
ANNOUNCEMENT Satisfaction of Open Meeting Law Requirements.	GENERAL PLAN CITIZENS ADVISORY COMMITTEE MEMBER PRESENT: Abe Mayhan, Co-Chairman CHAIRMAN HUDGENS announced this meeting is in compliance with the Open Meeting Law.
NOTICE: This meeting has been properly noticed and posted at the following location: Bradley Bldg., State of Nevada 2501 E. Sahara Avenue Senior Citizen Center, 450 E. Bonanza Rd. Clark County Courthouse, 200 E. Carson Avenue Court Clerk's Office Bulletin Board, City Hall Plaza City Hall Plaza, Special Outside Posting Bulletin Board	
1. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN SOUTHEAST SECTOR PROPOSED FUTURE LAND USE PLAN	Segerblom - CONSIDER GENERAL PLAN RECOMMENDATIONS AND VOTE ON ENTIRE GENERAL PLAN ON DECEMBER 12, 1991. Unanimous (Dixon and Pippin excused) CHAIRMAN HUDGENS stated the area being discussed tonight is from Decatur Boulevard eastward and the city limits on the north, east and south. A final hearing will be held to discuss all the recommended changes. ERIK KING, 617 Kenny Way, was concerned about the zoning change at the northeast corner of

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN (CONTINUED) SOUTHEAST SECTOR PROPOSED FUTURE LAND USE PLAN	Charleston and Campbell. Currently this area is residential, except for a strip along Charleston Boulevard that is commercial. The commercial goes back to the school on Palomino Lane. This is an update of the Master Plan of 1985. It appears there was a change to commercial which lapsed. It should revert back to residential. MR. REYNOLDS said all parcels that were rezoned since the maps were adopted in August of 1985 were used as a starting point. The parcel in his neighborhood which was rezoned to service commercial which has expired and has reverted back to residential. ERIK KING said on the southeast there is a strip of service commercial frontage. In discussing with the neighborhood group, the intent was not to make this any deeper. In 1985 this was a condition. The intent was just to keep commercial frontage and not to put commercial in neighborhoods. He wants to keep it residential. Traffic flow will increase and there is a school on Palomino Lane. He is not opposed to changing the density. He was also concerned about the property on the northwest corner of Shetland and Charleston. There is commercial property that goes back so far and then residential behind it. On the new map the lot behind the commercial, which is now residential, is going to be zoned commercial. CAROL JARVIS, 606 Lacy Lane, said one side of Shetland is deeper than on the northeast side. We were here three months ago when there was an application to change from residential to commercial, which was on the west side of Shetland. Wasden Elementary School only has one entrance so residential will keep the traffic down. COMMISSIONER SOLOMON asked how this area was changed to service commercial when it was defeated on a rezoning application. MR. NULL said there was a previous

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND RECOMMENDATION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN (CONTINUED) SOUTHEAST SECTOR PROPOSED FUTURE LAND USE PLAN	request to rezone this property to C-D and the north part of the parcel was amended to P-R. Now there is a new zoning case. The S-C classification includes P-R zoning as well as C-I, C-D, C-C, etc. Staff has the policy that once a rezoning is approved, it is shown on the Community Profiles. Since the City Council has not taken any action on the new zoning case, staff had nothing to go by so it was left. MR. REYNOLDS said all persons who have identified themselves at the General Plan public hearing meetings will be notified that the final meeting will be on December 12, 1991. ADJOURNMENT: The meeting adjourned at 6:36 P.M.

EXHIBIT "RRRR-6"

ANNOTATED AGENDA AND FINAL MINUTES

AGENDA

City of Las Vegas

December 12, 1991

PLANNING COMMISSION

COUNCIL CHAMBERS • 400 EAST STEWART AVENUE

ITEM	COMMISSION ACTION
CALL TO ORDER: 6:00 P.M., Council Chambers of City Hall, 400 East Stewart Avenue, Las Vegas, Nevada.	CHAIRMAN HUDGENS called the meeting to order at 6:10 P.M.
ROLL CALL: Sandra Hudgens, Chairman - Present Frank Dixon Vice Chairman - Present Eric Jordan - Excused Brian Moffitt - Present Marsha Pippin - Excused Richard Segerblom - Present Mark Solomon - Present	STAFF PRESENT: Norman Standerfer, Director, Community Planning & Development Frank Reynolds, Deputy Director Community Planning & Development Howard Null, Administrative Officer, Community Planning & Development Robert Baggs, Chief, Comprehensive Planning, Community Planning & Development John McNellis, Public Works Val Steed, Chief Deputy City Attorney Linda Owens, Deputy City Clerk
ANNOUNCEMENT Satisfaction of Open Meeting Law Requirements.	GENERAL PLAN CITIZENS ADVISORY COMMITTEE MEMBER PRESENT: Abe Mayhan, Co-Chairman
NOTICE: This meeting has been properly noticed and posted at the following location: Bradley Bldg., State of Nevada 2501 E. Sahara Avenue Senior Citizen Center, 450 E. Bonanza Rd. Clark County Courthouse, 200 E. Carson Avenue Court Clerk's Office Bulletin Board, City Hall Plaza City Hall Plaza, Special Outside Posting Bulletin Board	CHAIRMAN HUDGENS announced this meeting is in compliance with the Open Meeting Law.
1. CONTINUATION OF THE REVIEW AND ADOPTION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN.	Dixon - ADOPTED UPDATED CITY OF LAS VEGAS GENERAL PLAN Unanimous (Jordan and Pippin excused)

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND ADOPTION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN. (CONTINUED)	NOTE: There was a unanimous vote in the affirmative from the four Commissioners present to hold the public hearing but not vote on the adoption of the General Plan. Commissioner Segerblom arrived after the vote and it was decided to continue the public hearing and vote on whether to adopt the updated General Plan. The required majority to adopt the General Plan is five members of the Planning Commission.
	CHAIRMAN HUDGENS called the meeting to order at 6:10 P.M.
	MR. REYNOLDS pointed out there is one revision to the proposed General Plan under Land Use Element, Page II-16, Subsection B., Development Review Requirements, last sentence of paragraph 1 to: "Unless otherwise adopted by the City Council, no level of service shall be established on a designated street or highway which results in a peak hour travel capacity Level of Service D."
	GUY SAWDERS, 1809 South Valley View, appeared to represent homeowners along Valley View in the area south of Oakey to Sahara. The traffic count shows this is a thoroughfare for emergency vehicles, large trucks, private cars, etc. There is a school zone in front of his house and the children have a problem crossing the street. This is not a residential area. Between Meadows Lane south to Tropicana Boulevard there are only 12 houses on Valley View; between Oakey to Sahara only four houses. He submitted pictures of the area and a petition with seven signatures and one letter requesting a zone change from residential to professional office or commercial. He contacted all the houses involved.
	MR. REYNOLDS stated traffic on

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND ADOPTION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN. (CONTINUED)	major thoroughfares has increased. Staff recognizes certain areas need more study. In some cases zoning might have to be applied for on a case-by-case basis at a later date. GUY SAWDERS said he has his house for sale, but is unable to sell it because of all the traffic on Valley View. COMMISSIONER SEGERBLOM felt there would be the same amount of traffic if this area was developed professional office. GUY SAWDERS said there would be enough parking on his property for an office use as well as on the other properties along Valley View. CHAIRMAN HUDGENS suggested he appear before the Planning Commission for a zone change and not a change on the General Plan. MR. STANDERFER said this is a subdivision that was permitted 20 years ago but now lots on major street frontages back up to those streets. All 12 lots should get together and apply for a zone change. COMMISSIONER SOLOMON felt this property should be considered in a zone change. MR. STANDERFER said that once this General Plan is adopted, when requests come in for rezoning, there is a section in the Land Use Element that says if this request for rezoning is not consistent with the Plan, than it be published as a request to amend the Plan. RILEY CANNON, 1908 Valley View, said due to the heavy traffic none of the property owners can sell their houses so some have rented them out and moved into another area. This is no longer a residential area. COMMISSIONER SOLOMON felt the houses facing Valley View have a concern, but not those on side

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND ADOPTION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN. (CONTINUED)	streets. MR. REYNOLDS reviewed the matrix presented at the meeting which described the public and Citizens Advisory Committee/staff comments on land use changes in each of the three City sectors. He indicated that the updated Master Plan of Streets and Highways should also be considered for adoption at this time as part of the General Plan. The matrix shows no citizen comments or changes in the northwest sector. The comments for the southwest and southeast sectors are as shown on the attached matrix. Also, a new map was presented at the meeting. JOHN McNELLIS, Department of Public Works, said in the northwest portion of the city there are numerous County islands. When an annexation comes into the City it has to be determined as to the street classification. There has to be continuity going through County islands. There has been a deletion of Peak Drive between Rainbow and Buffalo. There was an overpass designation for Peak Drive to cross the Oran K. Gragson Highway. When it is taken off the Master Plan, that means it will not be an 80 or 100 foot wide street. Is that giving direction to staff that we may not even want it as a street? MR. STANDERFER thought the maps were approved by all the departments that were concerned. MR. REYNOLDS expressed his opinion that this Plan should be adopted because it includes updates of annexations. Small, fine tunings could be made. He agreed with Mr. McNellis that there should be continuity between County and City lands. Whatever is adopted at this meeting will be a recommendation to the City Council, but it can be revised by the City Council for a final version. COMMISSIONER SEGERBLOM asked what a Special Design Road is.

ITEM	COMMISSION ACTION
1. CONTINUATION OF THE REVIEW AND ADOPTION OF THE UPDATED CITY OF LAS VEGAS GENERAL PLAN. (CONTINUED)	JOHN McNELLIS said it is a road that has some type of drainage channel within its center or along side. One of these roads is Buffalo where there is a channel that goes down the center. MR. STANDERFER explained that it's the responsibility of the Planning Commission to adopt the Plan. That adopted Plan goes before the City Council for review. If they want to change the Plan, those changes must be referred back to the Planning Commission for review. CHAIRMAN HUDGENS read the General Plan Resolution. CHIEF DEPUTY CITY ATTORNEY STEED amended the Resolution by changing the third WHEREAS to read: "WHEREAS, the General Plan includes the mandatory and optional subjects described in the 1989 Nevada Revised Statutes (N.R.S.), Chapter 278;" and changed the last paragraph after the words General (Master) Plan to include: "as considered and amended by the Commission on the date set below." To be reviewed by the City Council on 1/22/92. The public hearing adjourned at 7:05 P.M.

NORTHWEST SECTOR

LAND USE PLAN PORTION
GENERAL PLAN PUBLIC HEARING
October 22, 1991

1985 PLAN	1991 CAC/STAFF LAND USE PLAN RECOMMENDATION	PUBLIC COMMENT	CAC/STAFF RESPONSE	PLANNING COMMISSION RECOMMENDATION
No public comments on NW sector.				

SOUTHWEST SECTOR

LAND USE PLAN PORTION
GENERAL PLAN PUBLIC HEARING
November 14, 1991

1985 PLAN	1991 CAC/STAFF LAND USE PLAN RECOMMENDATION	PUBLIC COMMENT	CAC/STAFF RESPONSE	PLANNING COMMISSION RECOMMENDATION
CP7 SE corner Durango and Oakey - ML/L entire area	L - 10 ac along Durango R - Balance of property	ML - 10 ac along Durango L - Balance of Property	L - entire parcel	
CP9 SW corner Vegas and Buffalo - L entire area	L/ML	ML - west side of Buffalo L - Balance of property	Agree with public comment	

CP = Community Profile Map

SOUTHEAST SECTOR

LAND USE PLAN PORTION
GENERAL PLAN PUBLIC HEARING
November 26, 1991

1985 COMMUNITY PROFILE MAP	1991 CAC/STAFF LAND USE PLAN RECOMMENDATION	PUBLIC COMMENT	CAC/STAFF RECOMMENDATION	PLANNING COMMISSION RECOMMENDATION
CP5 R - NE corner Charleston and Campbell Drive.	SC - P-R ROI expired 1989 (Z-72-89)	L or ML - entire area that is north of C-D zoned lots.	Agree	
CP5 R - second lot north of Charleston on westside of Shetland	Same as 1985 Plan	R - Same as 1985 Plan.	Agree	

CP = Community Profile Map

EXHIBIT "RRRR-7"

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LAS VEGAS, NEVADA, ADOPTING THE GENERAL (MASTER) PLAN FOR THE CITY OF LAS VEGAS

WHEREAS, the City of Las Vegas has adopted a General Plan to guide the growth and development of the City; and

WHEREAS, the General Plan has been reviewed and amended periodically since its adoption, most recently in 1985; and

WHEREAS, the General Plan includes the mandatory and optional subjects described in the 1989 Nevada Revised Statutes (N.R.S.), Chapter 278; and

WHEREAS, the City desires to maintain its proper role in shaping future development within its existing and potential boundaries; and

WHEREAS, the City of Las Vegas has determined that a comprehensive review and assessment of the General Plan is desirable in light of changing fiscal, social and technical and development conditions; and

WHEREAS, a Citizens General Plan Advisory Committee developed and reviewed the future land use plan maps, the Downtown Development Plan Map, and the revised Master Plan of Streets and Highways; and

WHEREAS, a series of public hearings was held before the Planning Commission during the period of October 10 through December 12, 1991, and at the conclusion of said public hearings the Planning Commission adopted the General Plan with the following elements:

Land Use	Economic Development
Community Facilities	Housing
Infrastructure	Urban Design
Circulation	Environmental Quality
Public Finance	Historic Preservation

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Las Vegas hereby adopts the General (Master) Plan as considered and amended by the Commission in the date set forth below which includes: all text, including the goals, objectives, policies and programs and the evaluation and implementation matrix; future land use maps; the Downtown Development Plan and the Master Plan of Streets and Highways.

PASSED and ADOPTED this 12th day of December, 1991.

SANDRA HUDGENS, CHAIRMAN

ATTEST:

Kathleen M. Tighe, City Clerk

EXHIBIT "RRRR-8"

ITEM	ACTION
VIII. NEW BILLS TO BE REFERRED TO A STUDY COMMITTEE OR RECOMMENDING COMMITTEE	
A. Bill No. 92-2 -- Adopts a New General Plan for the City of Las Vegas, Nevada Sponsored by: Councilman Scott Higginson	First Reading and Referred - FULL COUNCIL 2/18/92 Recommending Committee 2/19/92 Agenda
B. Bill No. 92-3 -- Adopts the City of Las Vegas Water Distribution Authorization Program Sponsored by: Councilman Scott Higginson	First Reading and Referred - COUNCILMAN HIGGINSON AND MAYOR JONES 2/18/92 Recommending Committee 2/19/92 Agenda (11:35-11:42)

EXHIBIT "RRRR-9"

ANNOTATED AGENDA
RECOMMENDING COMMITTEE MEETING
4:00 P.M., COUNCIL CHAMBERS
CITY HALL, 400 EAST STEWART AVENUE

FEBRUARY 18, 1992

ATTENDANCE: Mayor Jones
Councilman Nolen
Councilman Adamsen
Councilman Higginson
Councilman Hawkins
Bill Noonan, City Manager
Tom McPherson, Deputy City Manager
Larry Barton, Deputy City Manager
Jan Bruner, Assistant City Manager
Val Steed, Chief Deputy City Attorney
Emmett Lally, Deputy City Attorney
Frank Reynolds, Deputy Director, Community Planning and Development
Howard Null, Administrative Officer of Special Projects, Community Planning and Development
Richard Welch, Director, Economic & Urban Development
John Schlegel, Deputy Director, Community Planning and Development
Marge Hether, Acting Director, Business Activity
Robert Baggs, Chief of Comprehensive Planning, Community Planning and Development
Eric King, Development Officer, Economic & Urban Development

CALL TO ORDER: Called to order by Councilman Nolen at 4:15 p.m.

ANNOUNCEMENT MADE: Meeting noticed and posted at the following locations:

Downtown Transportation Center, City Clerk's Board
Senior Citizen Center, 450 E. Bonanza Road
Election Department, 333 S. Sixth Street
Court Clerk's Office Bulletin Board, City Hall Plaza
City Hall Plaza, Special Outside Posting Bulletin Board

1. BILL NO. 92-2 - ADOPTS A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA
Committee: Full Council

JOHN SCHLEGEL advised the Council what the General Plan contained.

COUNCILMAN HIGGINSON made several recommended changes to the General Plan.

COUNCILMAN ADAMSEN also recommended some changes to the General Plan.

COUNCILMAN NOLEN said he does not have any concerns with the General Plan.

COUNCILMAN HAWKINS said his concerns have already been incorporated into the General Plan.

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COUNCILMAN HIGGINSON pointed out that the changes can be incorporated into the General Plan, but State Law requires that the changes be reviewed by the Planning Commission.

VAL STEED said after the General Plan is reviewed by the Planning Commission the City Council will have another opportunity to review it.

JAMES McCALL appeared stating he has a concern about a 20 acre parcel that runs 660 feet north by 1320 feet east at the northeast corner of Washington and Buffalo which is designated to be medium to low density. He did not feel it is suitable for medium to low density because of the surrounding area. The Buffalo drainage ditch went through this parcel when the ditch was realigned. He would like this parcel rezoned to commercial.

COUNCILMAN HIGGINSON recommended that parcel be designated as general commercial and medium to low density.

COUNCILMAN NOLEN felt the Gaming Enterprise Zones should be indicated in the General Plan.

COUNCILMAN NOLEN made a motion to refer the General Plan back to the Planning Commission for their review and comments on the changes. Motion carried unanimously.

NOTE: A Verbatim Transcript made a part of these minutes.

2. BILL NO. 92-3 - ADOPTS THE CITY OF LAS VEGAS WATER DISTRIBUTION AUTHORIZATION PROGRAM

Committee: Councilman Higginson and Mayor Jones

COUNCILMAN HIGGINSON said there will be 7,444 acre feet of water available for the City. He felt a process other than a first come first serve basis must be used to allocate that water. The system outlined in this bill insures the least amount of public funds be expended to meet public services by establishing a point system which encourages growth in those areas which will have the least impact on public needs and public services. It does not interfere with the zoning process. This provides legal protection and can respond to changes in the marketplace.

JAMES McCALL brought up the fact that there are a lot of water wells in Las Vegas.

BOB WEIDEN, Commercial Marketing Group, appeared stating he was concerned about the project reservation categories.

RON REISS, Realtor, 3625 South Mojave, appeared stating he was concerned

RECOMMENDING COMMITTEE MEETING
TUESDAY, FEBRUARY 18, 1992

TRANSCRIPT - Item No. 2 - BILL NO. 92-2 - ADOPTS A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA

MAYOR JONES: Okay, we'll go back to Bill No. 92-2 which adopts a new General Plan for the City of Las Vegas. Committee is Full Council. This is in regards to the proposed updated Master Plan.

DEPUTY CITY MANAGER BARTON: Yes, Your Honor, Mr. Schlegel would like to point out a few of the salient points and some for your review because they are changes or additions to our current procedures, so I'll ask Mr. Schlegel at this time.

JOHN SCHLEGEL, DEPUTY DIRECTOR, COMMUNITY PLANNING AND DEVELOPMENT: Mr. Standerfer has asked me to make several points regarding the General Plan, just to highlight these for you.

COUNCILMAN HIGGINSON: John, before you go any further, could we state clearly for the record that the Council wishes Norm the best and wish he were here and hope you'll pass that on to him and make that an official part of the record that we're sorry he's not here. I know, I talked to him this morning and he's turning over and over in that bed trying to get out of it to get over here because these are two very important issues to him and he's not able to be here. I think we should reflect that as far as our concerns and interests in his welfare.

COUNCILMAN ADAMSEN: In fact, I kind of expected a speaker phone hook up similar to the one that I had when I was at home incapacitated.

CITY MANAGER BILL NOONAN: He wants a copy of the tape.

JOHN SCHLEGEL: All right, let me begin. First of all, the General Plan is a package. Many times in reviewing a General Plan we focus on the land use maps and look at the General Plan solely in this term. However, it's important to keep in mind that the General Plan includes statements of policy, a section which goes into detail on evaluation and implementation processes. It also includes the Downtown Development Plan and the Master Plan of Streets and Highways, so you're reviewing that whole package. Second, I'd like to read a couple statements from the Plan regarding relationship of zoning to land use planning which I think underscore the importance of this document. Based upon Nevada State -- Case Law, the Courts upheld that the Master Plan is a standard that commands deference and a presumption of applicability and Nevada Supreme Court has held that Master Plans in Nevada must be accorded substantial compliance while Nevada Statutes require that the zoning authority must adopt zoning regulations that are in substantial agreement with the Master Plan. Third, there's, there are a number of statements contained within the evaluation and implementation section of the General Plan that need to be brought to your attention, so that you understand them. These could lead to the certain changes in our procedures for handling changes in land use

TRANSCRIPT - Item No. 2 - BILL NO. 92-2 - ADOPTS A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA

classification. First of all, it is the intent of the City -- these are statements from the General Plan that I'm going to read. "It is the intent of the City Council that no development permit subdivision of land for application for zoning change may be recommended, authorized, approved or issued by any administrative official, board or commission or by the City Council unless such development activity is determined to be in compliance and consistent with the adopted future land use plan, land use classification system and development review policies which are contained within the General Plan. Also, no application for subdivision of land or change in zoning district classification which would have the effect of permitting use of land or structures in a manner inconsistent with the land use plan and/or the land use classification system may be approved without a plot, without filing a simultaneous request to the City Council to consider a formal planned amendment, nor for such zoning change to be approved the City Council must hold a Public Hearing to consider Planning Commission recommendations and formally amend, and formally amend the land use map and/or land use classification; and, finally, no land use variance which would have the effect of permitting use density or intensity of land or structures in a manner inconsistent with the land use and/or land use classification system shall be approved." I wanted to read the statements to you so that you were aware, in case you hadn't been, that those types of changes would be, would come about as a result of adopting this Plan. Basically, we're following those types of procedures now in the way we process rezonings, but this would formalize the process and instill that discipline of considering the General Plan into your land use decisions. And that's all I have to present.

MAYOR JONES: Any comments from the Board?

COUNCILMAN HIGGINSON: Well, which end do you want to start at?

MAYOR JONES: Let's start out down here.

COUNCILMAN HIGGINSON: Well, all right, I met with staff earlier today and went over several concerns with the General Plan in the northwest sector and I appreciate them responding to those concerns quickly. Let me find the maps so we can take care of some of them, because they indicated there were some that they were unaware of and agreed with some changes that need to be made. Staff, in reference to my map that in the numbers we attached to those. Item No. 5 which is the Elkhorn Ranch property, for the Council's, we're on Map No. 5, Northwest Sector. This is that large area located north of Elkhorn and east of U.S. 95 which is currently indicated to be a medium low density. The current zoning on Elkhorn Ranch is less than,

TRANSCRIPT - Item No. 2 - BILL NO. 92-2 - ADOPTS A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA

right around six units per acre and, therefore, it's my recommendation that that be changed to reflect a low density residential which would then make it concurrent with the existing zoning and staff has indicated they concur with that, so I would like to have that recommendation changed by the time this comes back before us in March, on our March 4th meeting. Is that the meeting?

JOHN SCHLEGEL: That would be the first meeting this would be eligible for adoption.

COUNCILMAN HIGGINSON: Okay. Bill, do you see where I'm at?

BILL STARKEY: Yes, sir.

COUNCILMAN HIGGINSON: Okay. That should be a low density. You don't need the medium running up next to the D-R and the R. That should be a buffer zone ( ) and that's what zoned that. That's why it was zoned at six units to an acre. Also, even though it is located in the County, if you'll notice in the center of the D-R zoning there just north of Tropical Parkway some hash marks indicating a commercial area, I believe, Bill, aren't those the old orchards that are no longer in effect in the County and staff has indicated that should be rolled over to a Desert Rural designation and eliminate the commercial because the commercial activity no longer exists there.

BILL STARKEY: No, sir, that's the place where Bob Taylor's Original Ranch House is currently located. There's a small -- it's my understanding and can't verify it that there's a small commercial segment on both sides of --

COUNCILMAN HIGGINSON: Right.

BILL STARKEY: Right there in that location.

COUNCILMAN HIGGINSON: Yeah, it was on both sides and staff put it on just one side and my recommendation to staff is that we determine what area Bob Taylor's Ranch House is operating and leave the commercial there, but take the rest of the Desert Rural. Even though it's in the County, our Master Plan needs to reflect that.

BILL STARKEY: Yes, sir.

COUNCILMAN HIGGINSON: Over along Decatur at Elkhorn you'll see a little nub of service commercial in there and, staff, have you had a chance to research that. Was that included in the Interim Northwest Plan? That reflects somewhat what North Las Vegas is doing on our eastern border there. They've put in a fairly high intensity commercial nub there and I just want to make sure that was part of the Interim Plan that was worked on with that community.

FRANK REYNOLDS, DEPUTY Yes, it does along Elkhorn where they have a higher

TRANSCRIPT - Item No. 2 - BILL NO. 92-2 - ADOPTS A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA

DIRECTOR, COMMUNITY PLANNING AND DEVELOPMENT : density gaming, commercial and high density residential use, that's like a buffer between the R-D, R --

COUNCILMAN HIGGINSON: And that was a part of the Interim Plan that was met with all these --

FRANK REYNOLDS: Yes, sir.

COUNCILMAN HIGGINSON: Thank you. That can remain that way then. Item No. 9 on my map, staff, for the rest of Council's indication, this is on Lone Mountain Road just west of Torrey Pines where we have the medium low turning at an angle and coming down Lone Mountain. My recommendation is that we keep that as low. Would you find out if that was part of the Interim Plan to have that foot, if you will, on the tail end of it?

FRANK REYNOLDS: The Interim Plan was substantially different. We did not have as much detail. The whole area on north and east of Lone Mountain and Rancho were shown as, at that time, R, so what you're suggesting is non-conformance. The actual little strip of medium low along there which is the new part so you're suggesting keeping that going parallel to Rancho and not making it turn to the east would be appropriate.

COUNCILMAN HIGGINSON: Okay, and then that also kicks over to the area bounded by Lone Mountain and Torrey Pines, the southwest, or southeast sector there, of taking that to the same low zoning, giving the low buffer through there that we've planned all along away from the commercial that runs along Rancho.

FRANK REYNOLDS: Yes, sir, the only thing beyond our discussion earlier was that the western edge of that, there is some commercial just to the west of, would be Torrey Pines, and it was, maybe add a little buffer on each side of Torrey Pines to the existing commercial.

COUNCILMAN HIGGINSON: I can tell you, you don't need it. There's already five homes along there.

FRANK REYNOLDS: Okay.

COUNCILMAN HIGGINSON: There's already five homes there of half acre estate, or half acre homes, R-E, and therefore, the low zoning you'd be buffering the sidewalks--

FRANK REYNOLDS: Yes, sir.

COUNCILMAN HIGGINSON: -- because those homes are already in existence, so I would recommend in my area as indicated on your Maps 9 and 10, that that be amended to a low density there. And, then, No. 11 on my map, Craig Road on the east side of the Oran K. Gragson Expressway, this City Council has twice denied commercial zoning on those two parcels of land because of the gravel haul route and until such time as the gravel haul route goes away, I

TRANSCRIPT - Item No. 2 - BILL NO. 92-2 - ADOPTS A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA

would recommend that that maintain itself as an M-L density. If at such time the gravel haul route goes away, the property owners could certainly come and request commercial zoning there. That would give us sufficient reason for deviation from the General Plan, to say the gravel route's no longer there and I think the Council has indicated fairly strongly in association with the people who live in the area that we don't want commercial there at this time and I think that it would not be wise for us to include it in our General Plan which could then be used against us in a court of law. So, I would make recommendation that the area bounded on the north and south side of Craig Road just east of the Oran K. Gragson remain at medium low which is appropriate there.

FRANK REYNOLDS: West of Gragson, you mean.

COUNCILMAN HIGGINSON: West, yes, thank you. Also, on the Residential Land Use Clarification Schedule and I've had this conversation with Mr. Standerfer, as I mentioned this morning. My recommendation for another amendment would be under the Mobile Home category that the densities under low and medium low be eliminated and that Mobile Home classification of 7.14 be allowed in the medium and high density areas and that congregate care be eliminated from the low area. And I know Councilman Adamsen had a concern about one of the others, but this way for the Council's edification I don't think it's appropriate in a large area of R-1 to have it be a part of our General Plan that Mobile Homes can be located in the center of an R-1 neighborhood and that would eliminate it if you take it out of the low and medium low densities or designations, if you remove the mobile home category from there and also the congregate care centers are inappropriate in my opinion in the low density area and should be eliminated from there as well.

COUNCILMAN ADAMSEN: And I would concur with that, Councilman Higginson, and take it one step further. We have in the medium density category the low-rise apartments classified as 20 units per acre, but then single-family attached 23.93. What would staff's response be to the question that on the medium density that we take that back to 18 to keep that in the previous category that we've looked at. Take 18 on the low-rise apartment, then allow single-family attached which is "For Sale Condominiums" up to 23.93, then the high density would be from 18 to 25 units under the high density residential from the medium.

JOHN SCHLEGEL: Run that by me one more time.

COUNCILMAN ADAMSEN: Medium density - low-rise apartments.

JOHN SCHLEGEL: Right.

COUNCILMAN ADAMSEN: Instead of having only the difference of 3.93

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between the low-rise apartment and the single-family attached, what's your response to taking the low-rise apartment back down to 18 and having that spread instead of being approximately 4 units per acre be more realistic for medium density and that would be 6 units per acre and then allow 18 to 25 going from medium to high.

JOHN SCHLEGEL: That seems reasonable.

COUNCILMAN ADAMSEN: And one more question I have as it relates to something that we did in the Master Plan Amendment back in late '87-'88, Abe, were you going to speak on this as it relates to Westcliff from Cimarron west because I had a question from staff. You have it striped which is low to medium low which if you take in the current development trends of the neighborhood you would see single-family or you'd see a beltway of low along Westcliff and then more of a medium low to the north, so rather than having diagonal stripes have a horizontal stripe along Westcliff from Cimarron almost to Durango and then have the stripe designation north of the low density buffer that we'd have on the north side of Westcliff west of Cimarron.

ABE MAYHAN: You're talking about splitting it at the 600 foot marker halfway between Parkway and Westcliff.

COUNCILMAN ADAMSEN: Exactly and we have existing development of that nature currently. I would like to see that reflected in this Plan update. Do you -- would you concur with that as the representative of the Westcliff Homeowners' Association, Abe?

ABE MAYHAN: Yes, since you're bringing that front section 600 feet down.

COUNCILMAN ADAMSEN: Down below and then put the diagonal stripe above it 600 feet back which would be in conformance with what is currently being developed there. I would just like to see some continuity. There was also the question of West Charleston at Fort Apache/Rampart where they intersect. We currently have an ongoing application there. With that application forthcoming would we want to be proactive and take a look at that corner as it relates to commercial and eliminating the residential, low residential, just immediately north of the commercial on the northeast corner of West Charleston?

JOHN SCHLEGEL: I don't believe they've come forward totally with that proposal yet. I think we're aware of what they're proposing to do in there but --

COUNCILMAN ADAMSEN: We've taken the first step inasmuch as we're reverted to acreage, the zoning for that classification immediately north of the commercial.

JOHN SCHLEGEL: Perhaps the land owner ought to step forward and

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make -- let us know exactly what the proposal would be for that, that corner.

COUNCILMAN ADAMSEN: Okay. So you don't think it would be appropriate at this time to make that reflection in this Master Plan?

JOHN SCHLEGEL: Well, that's, that's up to you. I just don't know what we can put on the map since we really don't have anything on a drawing yet to show us what they had in mind.

COUNCILMAN ADAMSEN: Well, what I have seen from the developer is commercial and with the first step we've taken of reverting it to acreage it's my understanding that the application is forthcoming. While we're in the process of doing this Master Plan Update, I thought that should be incorporated so that again people that look at the Master Plan as a guide know what is intended for that particular area at the times they may be purchasing or developing homes in that area.

JOHN SCHLEGEL: Well, we can do that but we're going to need to get a map from the land owner.

COUNCILMAN ADAMSEN: Okay.

JOHN SCHLEGEL: To incorporate that change into this map.

COUNCILMAN ADAMSEN: Let's see if we can do that and do it expeditiously between now and the March 4th meeting.

JAMES McCALL: When may I interject some comment here?

COUNCILMAN ADAMSEN: When we're, I imagine --

JAMES McCALL: At the end when all these --

COUNCILMAN HIGGINSON: I would imagine after all the Council has their comments.

COUNCILMAN ADAMSEN: The vast majority now of Ward 2 lies in master planned communities and we're getting to the point where we don't have a lot of infill. We have that County island, John, on West Sahara north up to about Oakey. There's a question in there as whether we wanted to make that Desert Rural or Rural inasmuch as it's almost completely developed. I would prefer to see that in the Desert Rural/Rural category and not have any low density in terms of that County island even though it's not under control in the event that we, at some point in the future, annex that County island that is north of Sahara right around Lindell, Lindell Road.

JOHN SCHLEGEL: Councilman, I'm sorry we were distracted on something else.

COUNCILMAN ADAMSEN: All right. John, it's pretty much taken care of but it's something I'd like you to get with me

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between now and March 4th. Because it's a County island I would just like to see it actually reflect the Desert Rural in that County island north of Sahara, west of Lindell Road, to approximately Jones. And that would conclude my remarks at this time.

COUNCILMAN NOLEN: I don't have anything. I, you know, I've basically looked over the plans for Ward 3 and there's not a lot of planning required there. It's pretty well laid out what's always been there so I don't see a lot of changes. As far as the other changes that yourself and Councilman Higginson have been referring to, these are your areas and I feel that I have to concur with the representative of those areas. So, I feel comfortable with it so far.

COUNCILMAN HIGGINSON: We appreciate that. Mr. Hawkins.

COUNCILMAN HAWKINS: Of course, I don't agree with anything that's been said here today -- No, I'm only kidding -- only kidding. I only have two concerns and I can have these addressed by staff at a later date; the one piece being now at Bonanza and Rancho and Dove Ministries, and the other piece being the largest piece in my ward which, if anybody's interested in developing, it's the piece between Vegas Drive and Lake Mead on Martin Luther King, if anybody's interested in developing; and that would be the only areas but I'll save those for our next meeting.

JOHN SCHLEGEL: Do you need to see a land use designation change on the map?

COUNCILMAN HAWKINS: I'm not sure yet. We've gone over this in redevelopment and I believe it's been covered and I've talked to some people that's on our Planning Commission, especially about the parcels on Alta and Charleston, Martin Luther King and Rancho dealing with the hospital. They told me that those changes had been made so those, those would be my only areas but right now today I have no comments on those. So, right now I'm fine with the way it sets.

COUNCILMAN HIGGINSON: Your Honor, in talking to Mr. Steed, he indicates to me that these changes can be incorporated but that the State Law requires that it then go back to the Planning Commission for their comment because of the changes we've made, is that correct?

CHIEF DEPUTY CITY ATTORNEY VAL STEED: That's correct, Councilman. The Council will then have, you know, the opportunity to ignore whatever comment the Planning Commission makes, if that's the choice, but they have to have the opportunity to review these comments.

COUNCILMAN HIGGINSON: I'm sure there's public comment. I see Jim coming forward and there may be others, Your Honor, but I think what we ought to do is ask

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staff to make these changes and adjustments that have been raised by Councilman Adamsen and myself and the ones Councilman Hawkins is concerned about and get it before the Planning Commission immediately for their comment and they can, staff can certainly represent us as to our current, concerns and reasons for making some of these changes and at which time then it can then come back to the Council with the Planning Commission's comments to our changes.

MAYOR JONES: Good. And, what?

COUNCILMAN ADAMSEN: I was going to ask Abe if he had anything to comment.

MAYOR JONES: This is a Public Hearing. Might as well open it up at this point. Jim.

JAMES McCALL: James McCall and I have a concern in an area of Councilman Higginson's which would be the northeast corner of Washington and Buffalo. There's a 20 acre parcel there that runs 660 feet north by 1320 feet east at the northeast corner of Washington and Buffalo which is designated to be medium to low density.

COUNCILMAN HIGGINSON: Our favorite corner, Jim.

JAMES McCALL: Beg your pardon.

COUNCILMAN HIGGINSON: Our favorite corner.

JAMES McCALL: Sure. That particular parcel is 450 feet off of the proposed Buffalo/Summerlin Interchange, full interchange there, 450 feet to this parcel. It's on a hundred foot front street and 80 foot wide side street. There's commercial abutting it immediately to the west. There's R-PD14 to the north, new proposed R-PD13.26 to the south and I really don't feel that this is suitable for medium to low density. I feel neither it's suitable for commercial. It's almost impossible to get a major anchor tenant of a market of any size to come to a site less than 20 acres. This parcel was devastated when the new alignment of the Buffalo ditch went through. It went from the middle of Buffalo to the 16th line to the east which cut this parcel. It was a nice 40 acre parcel, cut it in half into two 20's. Therefore I'm -- and with the new construction that is about to commence on the Buffalo Interchange I now come forward and ask that this be rezoned to commercial. I've not done it previously because there was no need to come in and get a zoning until you have a preferred use for it. However, now I'm up against a new Master Plan and the new Master Plan calls for the same zoning that is there. Why? Probably because they said, "Well, it's there; let's go on to the next item." But I think in all due honesty and with justification to good planning and good zoning which we're all here to try and accomplish today that this should

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be upgraded to a commercial site. If you're 450 feet off of a full interchange on 100 foot street and 80 foot side street, if that doesn't command commercial I don't know what does. I certainly wouldn't build a children's playground there.

COUNCILMAN HIGGINSON: I would hope not. Where are you in the zoning process, Jim. You gone before Planning?

JAMES McCALL: I'm in front of this Council on March the 4th, the same day that you're about to adopt this Plan or have scheduled to adopt this Plan. I was recommended de --

COUNCILMAN HIGGINSON: You're the one caught -- you're caught in the crease then.

JAMES McCALL: Yeah, I was recommended denial by the Planning Department. Why, I don't know, because they said, "Geez, it's a great looking project and it's a good site but doesn't conform to the Master Plan." I said, "Yeah, the Master Plan's out of date. That's why we're changing it."

COUNCILMAN NOLEN: I think that's a standard recommendation, Jim, that they do if it doesn't comply. It has nothing -- that's pretty much standard. It certainly doesn't mean that staff had any, yeah, any negative feeling.

JAMES McCALL: Our personal conversation reflected a difference than that but they have to go by the rules and regulations they have to play by. The Planning Commission, about five of the seven, possibly four of the seven, agreed that it was the proper location for commercial but then they looked at each other for about three minutes before anybody could figure out what kind of a motion to make. Finally, somebody said, "Oh, you're waiting for a motion? I'll make a motion to deny." And everybody said, "Whew, boy, let's -- all green lights to deny, so I figured my relief would be the intellect of this Council when I got in front of you and that you would recognize good zoning when it came in front of you and therefore I think it should be an amendment at this time on your Master Plan that it should be amended to a commercial rather than a medium to low density.

COUNCILMAN HIGGINSON: I tell you, I had a conversation with staff earlier today on this piece, in my lengthy conversation, knowing of your pending application and I, too, concur that it has commercial potential and would recommend that rather than in the new Master Plan putting it strictly commercial that we have a commercial and medium/low as combination with the hash mar--, the slash marks, because I, I don't know what else to do with it. I don't feel comfortable taking it completely commercial at this point until I have a chance to hear from my

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constituents, as I've told you before, but I, but I concur that it has commercial potential and therefore using that magic hash mark, or diagonal lines, we can certainly amend the General Plan to reflect commercial or medium low because, frankly, they're, they're somewhat equal in my mind as to impact on communities.

JAMES McCALL: Well, had I come in and, and acquired this or gone through the zoning process a year ago, or two years ago, or three years ago, I probably would have had no problem because there was nobody in the area. My problem is I waited a little long and Mr. Richard Plaster is building a housing project to the north that abuts me on the east portion of this property and consequently there was one young lady who went out and decided that she needed to get all kinds of signatures and protests against a shopping center which they will all use, if and when it's ever instituted, because it's a convenience for them, so you do have 180 protestors against this on a list. None of them showed up, one woman with a list was all.

COUNCILMAN HIGGINSON: I, I concur. If you had -- if you'd been here three years ago before those homes were built and made the same arguments that it's on the corner of 100 foot wide and 80 foot wide street, with an interchange, the Master Plan at that time would have been five and a half years old and said, you know, here's the reasons to deviate. This Council would have had reason to deviate from the Master Plan.

JAMES McCALL: Only, only problem was that at that time the City had made their agreement with Summa and there could be no interchange on that Summerlin Freeway for ten years and you people do not like people to come in and zone their property without a use for it, just to zone it and hold it. That has been a long standing policy of the Council.

COUNCILMAN NOLEN: I think one of the comments that you said, and, you know, the concern I had, it is a hundred foot right-of-way and it is an 80 foot right-of-way; and I think to, to do it and/or is basically a cop out. It's got to be commercial. We've got places all over this community where because we didn't realize things were going to grow that fast, we've got people's homes fronting on major right-of-way, or major roads, coming out and it's just a hazard getting out of your, out of your own driveway and I think that we need to bite the bullet and say, "Look, because of those situations and because of the interchange there, this is justifiably commercial and that's what it should be and then it's clear to anybody that buys or purchases in that area they know. It's not an and/or or -- and a confusing thing.

COUNCILMAN HIGGINSON: We also have under medium low density, we have a lot of apartment complexes that support, that sit on the same situations with 100 foot wide and 80

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foot wides and that's why --

COUNCILMAN NOLEN: 450 feet from a full interchange?

COUNCILMAN HIGGINSON: Yeah, and that's why having it, having it as a hash, to me, is more appropriate and then this Council, to use Councilman Nolen's statement, can bite the bullet at the time the zoning comes forward and pick which one they feel is appropriate based on the requests of the applicant, but the General Plan to serve as a guide, I think, should be in this situation a guide in that area.

JAMES McCALL: Well, the problem is, which General Plan, the one you're about to adopt or the other one which is outdated?

COUNCILMAN HIGGINSON: As I say, you're in the crease, so I would make my recommendation to staff, along with the other items that I indicated, that that parcel of land be striped to reflect commercial and/or medium low.

COUNCILMAN ADAMSEN: General commercial or service commercial?

COUNCILMAN HIGGINSON: General commercial.

JAMES McCALL: Thank you -- and I hope on the fourth you've had time to reflect as to the decision and the direction that this Council should go. Thank you.

COUNCILMAN NOLEN: You'll tell us then whether we have wisdom or not?

MAYOR JONES: Are there others that wish to be heard on this agenda item before we close the Public Hearing?

COUNCILMAN ADAMSEN: Just one quick question for staff. In the Gaming Enterprise Zone we had calls for gaming district in master planned communities. I want to make sure that they're accurately reflected and designated, particularly as it relates to Ward 2.

MAYOR JONES: In particular? Good.

COUNCILMAN ADAMSEN: Specifically.

MAYOR JONES: Specifically, and in particular, good.

JOHN SCHLEGEL: The Gaming Enterprise District package is done under licensing provisions Code and we haven't incorporated those into the General Plan simply because we don't treat those as zoning matters. The Codes that would implement this General Plan are other than the provision, other than the part of the Code that deals with the Gaming Enterprise Zone.

COUNCILMAN ADAMSEN: John, I understand that, but someone relying on the Master Plan or the General Plan, and not

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knowing about the Gaming Enterprise District, could be confused as it relates to the Gaming Enterprise Districts allowed in master planned communities and I would like to delineate that someway so that someone relying on the General Plan would know that those are already master planned and have been since 1982 and so...

JOHN SCHLEGEL: Perhaps what we could do then is include it as an informational item. Are you talking about putting it right on the land use plan or have it as a separate informational item within the report?

COUNCILMAN NOLEN: I think, I think basically what you're getting at, and I agree with you, is there somewhere in the Master Plan, because I don't think that the average citizen would, would, if he's concerned about the General Plan, would know to, not only do I have to check the General Plan, I better run over here and check Licensing and see about getting Enterprise Zones, so I believe somewhere in that, this whole document, it ought to reflect, though, so that people can know whether it's done as an informational item, or whatever, something that will trigger in somebody's mind that there is gaming, casino type-operations, or authorized at this location and that's what you're looking to do, isn't it?

COUNCILMAN HIGGINSON: Yeah, I concur. I think the solution is, as you know, we have the zoning designation T-C, or not zoning, the General Plan designation of Tourist Commercial which is basically what we're saying - Casino.

COUNCILMAN NOLEN: Yeah, that might solve it, yeah.

COUNCILMAN HIGGINSON: And just make sure the T-C is in the appropriate areas. I look at the Northwest sector and the Gaming Enterprise Zones indicated by the Santa Fe which, of course, is built and the property owned by, I believe, Mr. Schwartz north of Ann Road which is included, is designated as Tourist Commercial. Now, you may want to change that designation to Tourist Commercial/Casino--

COUNCILMAN ADAMSEN: Exactly.

COUNCILMAN HIGGINSON: -- or Casino Tourist or something like that and then indicate within those master planned communities where that's going to be. I know, for example, with Jack Sommers' property we're not certain yet where that is, but it wouldn't hurt to have an island out there in the middle somewhere with that hash mark 'cause someone's going to come pick up this map determining whether to buy a home or to move or to buy property in an area and they need to have that accurately reflected to them, that there is, there is already approved Tourist Commercial/Casino, or whatever you want to call it, on a particular piece of land. So, in my

district, particularly up to the Jack Sommers' property I also note the commercial's missing on the Jack Sommers' piece. There's some commercial down in that one corner that ought to be designated even though it's within a master planned community that's R-PD3 or whatever it is, we ought to indicate where the commercial uses are, to the best of our knowledge at this time.

COUNCILMAN ADAMSEN: And either in front of or behind Tourist Commercial, put in parentheses "Casino" or "Possible Casino," something to send up the flag for those people looking for that objection so that they are able to see it, understand it, are not confused, and then come back and say, "You didn't divulge it" at a later date.

JOHN SCHLEGEL: I understand the intent of what you want to accomplish and we'll find a way to do that.

ABE MAYHAN: Could I offer a comment on that? I don't believe that designating an area "possible use" within that community is reasonable. I think that we should stick by the precise boundaries already designated by this Enterprise District and apply them with an overlay on one of these maps is appropriate, but I don't think an estimated position is the valid way to do that.

COUNCILMAN ADAMSEN: No, I was not in favor of an estimated position because we have the Gaming Enterprise Zones laid out. Granted it's in another division under Licensing, and the average person who goes to look at a General Plan to buy a house is not going to be aware that they need to do that and I think this could solve a future problem for us by designating it and highlighting it at this time.

COUNCILMAN NOLEN: So what, what action is required today, Val? Do we need to take any action to refer it back?

FRANK REYNOLDS: Councilman, I would like to ask our Attorney a question that may answer your question. Can we refer in the General Plan -- can we just show and then reference the Gaming Enterprise District so everyone understands exactly what the boundaries are and then we put in, we show the commercial planned uses that are required but I agree that to show a new designation that also shows gaming on it, I don't think that would be legal. My basic question is, Counselor, can we just reference and even copy a map of the Gaming Enterprise Zone, so everyone is aware of that. Would that be a problem?

CHIEF DEPUTY CITY ATTORNEY VAL STEED: Yeah, I think either refer to the map or have some kind of overlay that indicates that it's informational only. I think the problem then, the problem that we have with the Gaming Enterprise District is the Statute in the Ordinance talk about how those things, or how that district has changed and I don't think the Council would want to go back through a full, or

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Master Planned Amendment just because the district was going to be changed, so I think if it's made clear that it's informational or refer to the map itself on some zoning map, I think that would suffice. As far as Councilman Nolen's question, I think it would be appropriate to refer this -- take a vote to refer it back to the Planning Commission for their comments.

COUNCILMAN HIGGINSON: With the changes.

COUNCILMAN NOLEN: That will be my motion. With the changes that I move that we refer it back to the Planning Commission for their review and comments on our changes. Then it will come back before us at our, the appropriate meeting which will be what, I believe the fifth of March.

MAYOR JONES: Fourth of March.

COUNCILMAN NOLEN: Fourth of March.

COUNCILMAN HIGGINSON: Can you get it to the Planning by the fourth of March?

COUNCILMAN ADAMSEN: That was my question.

COUNCILMAN NOLEN: If not, whatever the appropriate Council meeting after their action. Okay. That will be my motion. Okay, that will be the motion.

COUNCILMAN HIGGINSON: Could I ask one question of the maker of the motion? I want to make sure that, that what goes to the Planning Commission is for their comment, but what comes back to us reflects the decisions and options that we've put down now with maybe their comments delineated out with for each of those changes.

COUNCILMAN NOLEN: I think that's the intent of the motion. Certainly the Planning Commission cannot override anything that has been brought forward today. They can only make comments and recommendations based on those comments and those items that we've discussed and on the overall plan; and that's the intent of the motion.

COUNCILMAN HIGGINSON: Thank you.

JOHN SCHLEGEL: As I understand it then, what you're taking back to the Planning Commission then are your suggested amendments to what was presented to you and then they will come back to you with a recommendation on your comments.

COUNCILMAN NOLEN: Yes.

MAYOR JONES: Further comments? All in favor? (Unanimous vote) Post.

(END OF DISCUSSION)

/cmp

CITY OF LAS VEGAS

INTER-OFFICE MEMORANDUM

Date

13 February 1992

TO: Mayor Jan Laverty Jones
Councilman Bob Nolen
Councilman Arnie Adamsen
Councilman Scott Higginson
Councilman Frank Hawkins, Jr.

FROM:
Norman Standerfer, Director
Community Planning and Development

SUBJECT:

BACK-UP FOR RECOMMENDING COMMITTEE MEETING OF FEBRUARY 18, 1992, ITEM NO.1: BILL NO. 92-2: ADOPT A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS

COPIES TO:

William Noonan, City Manager
Larry Barton, Deputy City Mgr.
Tom Mc Pherson, Dep. City Mgr.
Jan Bruner, Assistant City Mgr.
Richard Welch, Director, DEUD
Kathy Tighe, City Clerk
Val Steed, Chief Dep. City Atty.
Bob Sylvain, Deputy City Atty.
Frank Reynolds, Dep. Dir., CP&D
Larry Bender, Chief, Redevelop.

The proposed, updated General Plan for the City of Las Vegas is a revision of the existing General Plan which is comprised of two volumes:

- The General Plan Policy Document, adopted on January 16, 1985
- The General Plan Community Profiles Map Document, adopted on August 7, 1985

A. Outline of Procedure Followed to Update the General Plan:

- Completion of the "Las Vegas 2000 and Beyond" strategic planning program with input of over 300 citizens.
- Appointment by City Council of 18 member Northwest Citizens Advisory Committee to develop Interim Northwest Area General Plan to deal with immediate growth concerns. Interim Plan adopted by City Council on February 20, 1991.
- Appointment by City Council of 35 member General Plan Citizens Advisory Committee (CAC), and formation of General Plan Technical Advisory Committee (TAC) comprised of City department heads.
- Review and update of 1985 General Plan in numerous meetings of the Citizens Advisory Committee, with assistance by staff of Planning and other City departments:
  - Policy Document update (City-wide Goals, Objectives, Policies and Programs)
  - Community Profile Map update (future land use designations), including review of all City land parcels
- Staff preparation, and review and recommendation by CAC and TAC, of expanded format General Plan to include specific elements on Land Use, Community Facilities, Infrastructure, Circulation, Public Finance, Economic Development, Housing, Urban Design, Environmental Quality and Natural Resource Conservation, and Historic Preservation. These elements are in conformance with NRS Section 278.160.
- Completion of five public hearings by the Planning Commission, including one for each of the three sectors of the City (Northwest, Southwest and Southeast) to review proposed text and future land use designations. Only four public comments* were received.

B. Highlights of Major New Concepts Proposed in Updated General Plan:

- Aggregation of 16 individual Community Profile Area maps into three "sector" scale proposed future land use maps (Northwest, Southwest and Southeast) to provide a broader scope of reference for land use and circulation relationships.
- Concurrent review and adoption of the Downtown/West Las Vegas Development Plan in conjunction with the Department of Economic and Urban Development**.
- Preparation, with input of Henderson, North Las Vegas, and Clark County, of generalized Valley-wide scale Future Land Use Plan Map.

Continued

* See attached matrix of public comments

** See Item No. 5, Bill No. 92-6, on Recommending Committee Agenda for February 18

- Introduction of a new approach to categorization of proposed future land uses based on establishing Development Intensity Levels (D.I.L.) by traffic generation, rather than typical land use designations, for all land parcels. In place of the former range of residential densities (example: 3-6 du/ac* for Low Density Residential districts), a new Single Family Unit Equivalent (SFUE) designation (example: 6.70 du/ac for Low Density Residential) is proposed. This approach also allows other types of dwelling units (such as single family attached units, high rise apartments and others**) in the same land use district, based on traffic generation of each type of dwelling unit. Traffic generation data were developed from national traffic engineering standards.
- Development of Goals, Objectives, Policies and Programs by CAC for each of the ten Elements identified in Section A above. Highlights include programs for Development Intensity Level (D.I.L.) Studies, Water Allocation, Neighborhood and Housing Planning, Downtown Development Plan Implementation, Valley-wide Intergovernmental Planning Coordination, and Circulation Planning including update and adoption of the Master Plan of Streets and Highways.
- Preparation of an Evaluation and Implementation Matrix (EIM) for each of the General Plan Elements to provide:
  - a method of measuring the implementation progress of the General Plan
  - a budgeting and work task document for the programs of each General Plan element

* du/ac = dwelling units per acre

** See attached comparison chart of existing and proposed (D.I.L.) Future Land Use Categories

GENERAL PLAN PUBLIC HEARING COMMENTS

1985 PLAN	1991 CAC/STAFF LAND USE PLAN RECOMMENDATION	PUBLIC COMMENT	CAC/STAFF RESPONSE	PLANNING COMMISSION RECOMMENDATION
NORTHWEST SECTOR - LAND USE PLAN PORTION GENERAL PLAN PUBLIC HEARING - October 22, 1991				
No public comments on NW sector.				Adopt NW Land Use sector, as proposed.
SOUTHWEST SECTOR - LAND USE PLAN PORTION GENERAL PLAN PUBLIC HEARING - November 14, 1991				
CP* 7 SE corner Durango and Oakey - ML/L entire area	L - 10 ac along Durango R - Balance of property	ML - 10 ac along Durango L - Balance of property	L - entire parcel	Adopt L - entire parcel
CP 9 SW corner Vegas and Buffalo - L entire area	L/ML	ML - west side of Buffalo L - Balance of property	Agree with public comment	Adopt ML - west side of Buffalo L - Balance of property
SOUTHEAST SECTOR - LAND USE PLAN PORTION GENERAL PLAN PUBLIC HEARING - November 26, 1991				
CP 5 R - NE corner Charleston and Campbell	SC - P-R ROI expired 1989 (Z-72-89)	L or ML - entire area that is north of C-D zoned lots	Agree	Adopt L for entire area north of C-D zoned lots
CP 5 R - second lot north of Charleston on westside of Shetland	Same as 1985 Plan	R - Same as 1985 Plan	Agree	Adopt with same R designation as shown on 1985 General Plan Community Profile map

* CP = Community Profile Map

General Plan Future Land Use Categories

Existing	Categories		Proposed Development Intensity Level (DIL): SFUE*								
			SFUE	SFD	LRA	SFA	HRA	MH	HR	MR	CC
(0-2 du/ac)	DR	Desert Rural Residential	2.18	2.18							
(0-3 du/ac)	R	Rural Residential	3.96	3.96							
(3-6 du/ac)	L	Low Density Residential	6.70	6.70		12.09		7.14			32.08
(6-12 du/ac)	ML	Medium-Low Density Res.	9.00	9.00	13.57	16.23		7.14			43.08
(12-20 du/ac)	M	Medium Density Res.	13.27	9.00	20.00	23.93	37.23	7.14	20.67	29.78	43.08
(20+ du/ac)	H	High Density Residential	16.58	9.00	25.00	29.91	46.52	7.14	25.77	37.22	43.06
	SC	Service Commercial									
	GC	General Commercial									
	TC	Tourist Commercial									
	LI/R	Light Industry/Research									
	P	Parks/Recreation/Open Space									
	S	School									
	PF	Public Facilities									

Source: Dept. of Community Planning & Development

***SFUE = Single Family Unit Equivalent**
SFD = Single Family Detached
LRA = Low Rise Apartment
SFA = Single Family Attached
HRA = High Rise Apartment
MH = Mobile Home
HR = Hotel per Room
MR = Motel per Room
CC = Congregate Care/Bed

EXHIBIT "RRRR-10"

ITEM	ACTION
VI. REPORTS FROM COMMITTEES	
A. RECOMMENDING COMMITTEES	
BILL ELIGIBLE FOR ADOPTION AT THIS MEETING	
1. BILL NO. 92-1 - CREATES SPECIAL IMPROVEMENT DISTRICT NO.1431 (CRESCENT DRIVE). Committee: Councilmen Higginson and Adamsen First Reading - 1/22/92 First Publication: 2/5/92 Recommending Committee - 2/3/92 ADOPTION at the 2/19/92 City Council meeting. City Council - 2/5/92 No Action Taken	HIGGINSON - Second Reading and BILL ADOPTED - UNANIMOUS Clerk to proceed with second publication **** No discussion was held. (10:47)
BILLS ELIGIBLE FOR ADOPTION AT A LATER MEETING (SEE "RECOMMENDATION" FOR SPECIFIC BILL)	
2. BILL NO. 92-2 - ADOPTS A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA Committee: Full Council First Reading - 2/5/92 First Publication: NONE Recommending Committee - 2/18/92 REFERRED BACK TO PLANNING COMMISSION	BILL REFERRED back to Planning Commission

City of Las Vegas

AGENDA DOCUMENTATION

CITY COUNCIL MINUTES
MEETING OF
FEB 19 1992

Date: 0355
February 5, 1992

TO:
The City Council

FROM:
Val Steed
Chief Civil Deputy Attorney

SUBJECT:

Bill No. 92-2: Adopts a new General Plan for the City of Las Vegas, Nevada

PURPOSE/BACKGROUND

This bill will adopt a new General Plan for the City. The new Plan was adopted by the Planning Commission on December 12, 1991. The Plan will become effective upon the adoption and publication of this bill, although many of the regulatory-related aspects of the Land Use Element of the Plan will be implemented by future ordinances.

Details concerning the Plan and how it differs from the current Plan will be provided in memorandum form by the Department of Community Planning and Development.

FISCAL IMPACT

NONE

RECOMMENDATIONS

This Bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

Agenda Item

VI.A.2

3752

CLV305899

16622

EXHIBIT "RRRR-11"

ITEM	COMMISSION ACTION
DIRECTOR'S BUSINESS: 1. CONSIDERATION OF CHANGES TO GENERAL PLAN PROPOSED BY CITY COUNCIL	Solomon - APPROVED CHANGES TO GENERAL PLAN AS PRESENTED. Unanimous (Segerblom and Pippin excused) FRANK REYNOLDS stated the City Council Recommending Committee, on 2/18/92, reviewed the comments and recommendations from the Planning Commission's public hearings. There were several items they would like to revise: Map 5 - Northwest Sector Future Land Use: 1. A portion of the parcel at Rainbow and Centennial was revised back from General Commercial to O-R. This area was non-conforming commercial and excessive. 2. Parcel at northeast corner of U.S. 95 and Elkhorn, which is Elkhorn Ranch, was R-PD6. That density needs to be reduced from ML to L. 3. Lone Mountain east of U.S. 95 has been reduced from L-ML to L. It was not felt the buffer of ML needed to be brought around the corner. 4. Parcel at southeast corner of Lone Mountain and Torrey Pines has been reduced from L-ML to L. 5. Parcels north and south of Craig, west of Gragson, reduce from Service Commercial to ML to more properly reflect that area. 6. Parcel at northwest corner of Ann and Buffalo was shown as ML/L. The eastern two-thirds of the development is L and the western one-third is R. On all three maps on the Residential Land Use classification under the Development Intensity Level the single family use equivalents, they decided to remove the Optional Mobile Home designation from both the Low and Medium Low categories and to delete the Congregate Care Bed Facility as an option under the Single Family Equivalency. Gaming Enterprise Districts have been shown on Map

ITEM	COMMISSION ACTION
DIRECTOR'S BUSINESS: 1. CONSIDERATION OF CHANGES TO GENERAL PLAN PROPOSED BY CITY COUNCIL (CONTINUED)	11. Map 6 - Southwest Sector Future Land Use Map: 1. The parcel at the northeast corner of Buffalo and Washington, was revised from Medium Low to Medium Low/Service Commercial. 2. Parcel at the northwest corner of Cimarron and Westcliff was revised from Low/Medium Low to Low. 3. Parcel in vicinity of Rampart/Durango and Charleston/Alta; revise to conform to revised Peccole Ranch Master Plan (SC and L). 4. The County island between Jones and Lindell, between Sahara and Charleston, the actual land uses in there were field checked and instead of the Low they are D-R. The General Plan also shows the gaming activities approved for Summerlin and one for Peccole Ranch. This will go back to the Recommending Committee and be approved by the City Council on 4/1/92. There was no one present to speak in opposition. To be heard by the Recommending Committee on 3/16/92 and City Council on 4/1/92. (8:58-9:11)

EXHIBIT "RRRR-12"

COMMITTEE recommended Bill No. 91-61 be held in abeyance until the May 18, 1992 Recommending Committee meeting.

5. BILL NO. 92-2 - ADOPTS A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA
Committee: Full Council

MAYOR JONES said the only issue that has been voiced to her is from developers that any change to this Plan requires an Amendment to the Plan, rather than a deviation.

NORMAN STANDERFER said if someone applies for a zoning that's not consistent with the Plan, it's automatically taken in as a Plan Amendment and a hearing will be held on a Plan Amendment at the same time.

COUNCILMAN ADAMSEN said with an Amendment to the Plan it will assist the Council. If the development trends are following the marketplace, then that eliminates the reason for justification for the deviation from the General Plan. This will enable the Plan to be continuously updated.

NORMAN STANDERFER said in processing a Plan Amendment the Council will get staff background and analysis of what is going on so it would not be a spot Plan Amendment. Staff would recommend changing whatever is logical in the area, not just one piece at a time if it's time to do that. That way the Plan will not get out of date.

COUNCILMAN HIGGINSON said after it's in operation for a period of time those on the Development Committee will be more appreciative of it. If we do decide that a certain area is okay and we should let R-1 in that area, or whatever it might be, then we will do it for the whole area, not just that one parcel. It insures the other landowners can get the same zoning. He asked what the reaction was from the Planning Commission members as to the Council's recommended changes.

NORMAN STANDERFER said the Planning Commission adopted the Council's recommendations across the board.

DEPUTY CITY MANAGER BARTON said two years ago the City Council gave staff the authority to prepare this Plan in-house and three additional persons were hired. The previous plan that had been done by a consultant was cumbersome and unsatisfactory.

COMMITTEE recommended adoption of Bill No. 92-2 at the 4/1/92 City Council meeting.

6. BILL NO. 92-9 - DEFINES "RESORT HOTEL" AND INCLUDES PROVISIONS FOR A BAR, RESTAURANT, LOBBY, AND GUESTROOMS EXCEEDING 200; PERMITS FOOD COOKING FACILITIES IN GUESTROOMS OF HOTELS LICENSED FOR NONRESTRICTED GAMING.
Committee: Full Council

COUNCILMAN HIGGINSON said a public hearing was held just prior to this Recommending Committee meeting. This Bill was amended at the public hearing.

COMMITTEE recommended adoption of Bill No. 92-9 at the 4/1/92 City Council meeting as per First Amendment.

7. BILL NO. 92-12 - ANNEXATION NO. A-9-91(A), PROPERTY LOCATED: ON THE NORTHWEST CORNER OF ANN ROAD AND BRADLEY ROAD; PETITIONED BY: DOUGLAS BORLASE, ET AL; ACREAGE: APPROXIMATELY 20 ACRES OF LAND; ZONED: R-E (COUNTY ZONING) R-E (CITY EQUIVALENT).
Committee: Councilmen Higginson and Adamsen

EXHIBIT "RRRR-13"

ITEM	ACTION
VI. REPORTS FROM COMMITTEES	
A. RECOMMENDING COMMITTEES	
BILLS ELIGIBLE FOR ADOPTION AT THIS MEETING	HIGGINSON - Second Reading and BILL ADOPTED - UNANIMOUS (Jones excused)
1. BILL NO. 92-2 - ADOPTS A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA Committee: Full Council First Reading - 2/5/92 First Publication: R-J - 3/19/92 Recommending Committee - 2/18/92 REFERRED BACK TO PLANNING COMMISSION City Council - 2/19/92 NO ACTION TAKEN Recommending Committee - 3/16/92 ADOPTION at the 4/1/92 City Council meeting.	Clerk to proceed with second publication **** No discussion was held. (9:52 to 9:54)
2. BILL NO. 92-6 - AMENDS THE REDEVELOPMENT PLAN IN EFFECT FOR THE REDEVELOPMENT AREA BY DELETING THEREFROM AND ADDING THERETO VARIOUS DEFINITIONS OF DESIGNATED LAND USE PERMITTED IN THE REDEVELOPMENT AREA AND CHANGING SOME OF THE DESIGNATED LAND USES. Committee: Councilmen Nolen and Hawkins First Reading: 2/5/92 First Publication: R-J - 3/19/92 Recommending Committee - 2/18/92 To be adopted at the same time as Bill No. 92-2 which has been referred back to the Planning Commission. City Council - 2/19/92 NO ACTION TAKEN NOTE: BILL TO BE ADOPTED AT THE SAME TIME AS BILL NO. 92-2.	NOLEN - Second Reading and BILL ADOPTED - UNANIMOUS Clerk to proceed with second publication **** NOTE: Previous motion by Nolen to amend BILL FAILED with Higginson, Adamsen and Jones voting "NO". NOTE: VERBATIM TRANSCRIPT MADE PART OF FINAL MINUTES. (9:54 to 9:58)

Thomas E. McDonald
APPROVED AGENDA ITEM

3756

CITY OF LAS VEGAS

INTER-OFFICE MEMORANDUM

Date

March 13, 1992

TO: Mayor Jan Laverty Jones
Councilman Bob Nolen
Councilman Arnie Adamsen
Councilman Scott Higginson
Councilman Frank Hawkins, Jr.

FROM: Norman Standerfer, Director
Community Planning and Development

SUBJECT:

BACK-UP FOR RECOMMENDING COMMITTEE MEETING OF MARCH 16, 1992 ITEM NO.4: BILL NO. 92-2: ADOPT A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS

COPIES TO:

William Noonan, City Manager
Larry Barton, Deputy City Mgr.
Tom Mc Pherson, Dep. Cty Mgr.
Jan Bruner, Assistant City Mgr.
Richard Welch, Director, DEUD
Kathy Tighe, City Clerk
Val Steed, Chief Dep. City Atty
Bob Sylvain, Deputy City Atty.
Frank Reynolds, Deputy Dir.
Larry Bender, Chf. Urban. Dev.

The Planning Commission, at their meeting of March 12, 1992, reviewed the revisions to the General Plan proposed by the City Council Recommending Committee at their February 18, 1992 meeting. They concurred with all revisions and unanimously adopted the General Plan with these revisions:

- Revise Land Use Element Table 3, and Residential Land Use Classification Schedule on legend of all Sector Future Land Use Maps, to:
  - Delete Mobile Home (7.14) notation from L and ML categories
  - Delete Congregate Care/Bed notation from L category

- Map 5: NW Sector Future Land Use
  - Parcel at Rainbow/Centennial: revise from GC to DR
  - Parcel at NE corner US95/Elkhorn (Elkhorn Ranch): revise from ML to L (=R-PD 6)
  - Parcel at NE corner US95/Lone Mountain: delete segment of ML along Lone Mtn. (to L)
  - Parcel at SE corner Lone Mountain/Torrey Pines: revise from L/ML to L
  - Parcels at Gragson/W. Craig: revise from SC to ML
  - Parcel at NW corner Ann/Buffalo: revise from ML/L to L (east 2/3); R west (1/3)
  - Show "Gaming Facility" reference

- Map 6: SW Sector Future Land Use
  - Parcel at NE corner Buffalo/Washington: revise from ML to ML/SC
  - Parcel at NW corner Cimmaron/Westcliff: revise from L/ML to L
  - Parcel in vicinity of Rampart/Durango and Charleston/Alta: revise to conform to revised Peccole Ranch Master Plan (SC and L)

  - Parcel in vicinity of Jones/Lindell and Sahara/Charleston (County island): revise to DR
  - Show "Gaming Facility" reference

- Map 7: SE Sector Future Land Use
  - No revisions

- Make new (11" x 17") Gaming Enterprise Zone Map to include in Land Use Element as an informational item only (new Map No. 11)

City of Las Vegas

CITY COUNCIL MINUTES
MEETING OF

331

AGENDA DOCUMENTATION

Date: February 5, 1992

TO: The City Council

CITY COUNCIL MINUTES
APR 01 1992

FROM: Val Steed
Chief Civil Deputy Attorney

SUBJECT:

Bill No. 92-2: Adopts a new General Plan for the City of Las Vegas, Nevada

PURPOSE/BACKGROUND

This bill will adopt a new General Plan for the City. The new Plan was adopted by the Planning Commission on December 12, 1991. The Plan will become effective upon the adoption and publication of this bill, although many of the regulatory-related aspects of the Land Use Element of the Plan will be implemented by future ordinances.

Details concerning the Plan and how it differs from the current Plan will be provided in memorandum form by the Department of Community Planning and Development.

FISCAL IMPACT

NONE

RECOMMENDATIONS

This Bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

Agenda Item

VI.A.1.

3758

CLV218632

16631

EXHIBIT "RRRR-14"

BILL NO. 92-2

ORDINANCE No. 3636

AN ORDINANCE TO ADOPT A NEW GENERAL PLAN FOR THE CITY OF LAS VEGAS, NEVADA, INCLUDING MANDATORY AND OPTIONAL ELEMENTS THEREOF AS REQUIRED BY CHAPTER 278 OF NEVADA REVISED STATUTES; AMENDING TITLE 19, CHAPTER 2, SECTION 20, OF THE MUNICIPAL CODE OF THE CITY OF LAS VEGAS, NEVADA, 1983 EDITION, TO REFLECT THE ADOPTION OF SAID PLAN; PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH.

Sponsored By:
Councilman Scott Higginson

Summary: Adopts a new General Plan for the City of Las Vegas, Nevada.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The General Plan of the City of Las Vegas, Nevada, adopted by the Planning Commission on December 12, 1991, and approved for adoption by the City Council on the 1st day of April, 1992, is hereby adopted as the master plan for the City as required by Chapter 278 of Nevada Revised Statutes (NRS). The General Plan includes mandatory and optional elements described in NRS Chapter 278 and includes text, future land use maps, the Downtown Development Plan, and the Master Plan of Streets and Highways. The General Plan shall be on file in the office of the Department of Community Planning and Development.

SECTION 2: Title 19, Chapter 2, Section 20, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

19.02.020: (A) This Title is adopted in order to conserve and promote the public health, safety, morals and general welfare of the City and the present and future inhabitants of the City.

(B) This Title is adopted in conformity with and in consonance with the Comprehensive General Master [Plans] Plan of the City of Las Vegas [as adopted by the City Council on March 2, 1960, and February 5, 1975.], the initial version of which was

adopted in 1960 and the most recent version of which was adopted on April 1, 1992. In this regard this Title is designed to improve the safety and convenience and lessen congestion in the public streets, to provide adequate protection against fire, panic and other dangers, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sanitary sewerage, storm drainage, schools, parks, recreation and other public conveniences and necessities, to maintain the character of land uses in the various property districts, to conserve the value of land and buildings and protect investment in same, and to encourage the [utmost property] most desirable uses of the land.

(C) This Title is adopted to protect the character, social advantages and economic stability of the residential, commercial, industrial and other areas within the City and to assure the orderly, efficient and beneficial development of such areas.

SECTION 3: The adoption of the General Plan referred to in this Ordinance shall not be deemed to modify or invalidate any proceeding, zoning designation, or development approval that occurred before the adoption of the Plan nor shall it be deemed to affect the Zoning Map adopted by and referred to in LVMC 19.02.040.

SECTION 4: The General Plan adopted by this Ordinance and any of its constituent elements may be amended by resolution of the City Council, subject to applicable procedures and requirements set forth in Nevada Revised Statutes; provided, however, that any repealer, replacement, or comprehensive amendment of or to the General Plan shall be by means of ordinance.

SECTION 5: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional or

invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas, Nevada, hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 6: All ordinances or parts of ordinances, 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.

PASSED, ADOPTED AND APPROVED this 1st day of April, 1992.

APPROVED:

By _____
JAN LAVERTY JONES, MAYOR

OK
NS
4-6-92

ATTEST:

_____
KATHLEEN M. TIGHE, CITY CLERK

EXHIBIT "RRRR-15"

CITY OF LAS VEGAS
CITIZENS GENERAL PLAN ADVISORY COMMITTEE
MINUTES

February 13, 1991

CALL TO ORDER:

The meeting was called to order by Co-chairman Abe Mayhan at 7:50 p.m. in the board room of PriMerit Bank, 3300 West Sahara Avenue (at Spanish Oaks), Las Vegas, Nevada.

Members Present:

Ms. Diana Bossard	Pentacore Engineering
Ms. Dusty Dickens	Clark County School District
Mr. Steven Lum	Attorney
Mr. Abe Mayhan*	Westcliff Property Owners Association
Ms. Cindy Ossello	Citizen
Mr. E. T. Paulus	Accountant
Mr. Tom Schalk	PriMerit Bank
Mr. Robert A. Surowiec	Section 3 & 4 Homeowners Association
Ms. Melodie Swanson	Section 3 & 4 Homeowners Association
Mr. James Veltman	Summerlin/Howard Hughes Properties
Mr. Roger Wirth	Section 3 & 4 Homeowners Association

Members Absent:

Ms. Ellie Ahern	Sheep Mountain Homeowners Association
Mr. Foad Akhavan	West Coast Builders
Mr. Andras Babero*	Las Vegas Planning Commission
Mr. Ysidro Barron	Architect
Mr. Barry Becker	Becker Enterprises
Mr. Neil Blackburn	ACME Electric
Mr. Joe Caddel	VTN Nevada
Mr. Jeff Chain**	Seven Valleys Realty Co.
Mr. Charles Clay	Centel
Mr. Art Clayton	Citizen
Mr. James Cobb**	Citizen
Ms. Denise Cook	Lucchesi and Associates
Mr. Edward DeLorenzo	Winchester Town Board
Ms. Jody Ellison	Lewis Homes
Ms. Anna Essayian	Lone Mountain Citizens Advisory Council
Ms. Cappy Hayes**	VTN
Ms. Sandra Hudgens	Las Vegas Planning Commission
Ms. Lillian Jacobson	Sheep Mountain Homeowners Association
Ms. Mary Kozlowski	Greater Las Vegas Association of Realtors
Mr. Joe McNamee	Silk Purse Ranch
Mr. Brad Nelson	American Nevada Corporation
Mr. Robert Sherer	Northwest Citizens Association

*Co-Chairman
**Appointed February 6, 1991

3762

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16637

Mr. Lee Stickney	Tanglewood Homeowners Association
Mr. James E. Stroh	JMA Architects & Engineers, Inc.
Mr. David Wert	Clark County Dept. of Comprehensive Planning
Ms. Donna Williams	Citizen

Others in Attendance:

Mr. Norman Standerfer	Director, Dept. of Community Planning & Development
Mr. Frank Reynolds	Deputy Director, Advanced Planning Dept. of Community Planning & Development
Mr. Robert Baggs, Jr.	Chief, Comprehensive Planning, Advanced Planning, Dept. of Community Planning & Development
Mr. Lanc Gross	Design Technician, Advanced Planning Dept. of Community Planning & Development
Mr. Howard Null	Administrative Officer, Special Projects Dept. of Community Planning & Development
Ms. Jory Stewart	Senior Planner, Advanced Planning Dept. of Community Planning & Development

ANNOUNCEMENT:

Mr. Null announced that this meeting is in compliance with the Nevada Open Meeting Law.

NOTICE:

This meeting has been properly noticed and posted at the following locations:

Bradley Building, State of Nevada, 2501 E. Sahara Avenue
City Hall Plaza, Special Outside Posting Bulletin Board
Clark County Courthouse, 200 East Carson Avenue
Court Clerk's Office Bulletin Board, City Hall Plaza
Senior Citizen Center, 450 E. Bonanza Road

ITEM 1: Approval of January 2, 1991 Minutes.

Minutes of January 2, 1991 were approved as mailed.

ITEM 2: Co-chairmen's and Additional Announcements.

Co-chairman Mayhan indicated that copies of the General Plan Policy Document update were available (dated January 30, 1991). Any additional corrections to be made will be part of the update to the General Plan expected in March. He then introduced Frank Reynolds who spoke about the next phase of the General Plan update process (outline for Phase II of the General Plan update process - the Review of the Community Profile Document maps, was distributed). He indicated that phase I of the review and update of the General Plan Policy Document - the revision of the goals, objectives, policies and programs - had been completed. A Technical Advisory Committee of City department directors, a representative from the Department of Finance and Computer Services, and the Deputy City Manager for Community Services, are now involved with staff in updating the General Plan. It is expected that many of the programs in the Policy Document will be used as

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department line items in the budget process. He pointed out that the critical path for major elements of the General Plan calls for its publication by the end of July. He indicated that this meeting is the first of the Phase II Task, which is to review and update the Community Profile Document of the General Plan. There are 16 Community Profile Maps, with number 12 being atypical in that it has a different scale in order to cover a large northwest area of the City. These 16 maps will be aggregated into 3 sector maps as shown in the passout. These sector maps will be similar in scale to the NW Area Interim update to the General Plan. The General Plan will also contain a City scale map and a Valley-wide scale map. He indicated that the updated Community Profile maps to be reviewed by the Committee indicate all the approved zoning changes since they were adopted on August 7, 1985. Staff has also recommended changes to adjacent land parcels affected by these rezonings. He stated that at the end of the short presentation by Howard Null on how the Community Profiles were prepared, Director Norm Standerfer will take a few minutes to talk about the land use "development intensity level" process.

ITEM 3: Distribution of Final Draft of General Plan Policy Document. See Item 2.

ITEM 4: General Plan Community Profile Document Map Background and Process Presentation.

Howard Null indicated that the Community Profile maps were prepared to assist Planning Commission and City Council members in their recommendations on zoning applications, and that they constitute the short-range (5 year) portion of the General Plan. He then indicated how staff prepared the profile maps describing the symbols on the original profile presentation map. The revised profile maps indicate developed areas in a pattern. The revised maps indicate the zoning changes (since August '85) in purple, and staff recommendations in green. He briefly indicated that the profile maps would be aggregated into three sector maps (NW, SW and SE) for the General Plan update.

At this point, Norman Standerfer addressed the Committee and introduced the land use "development intensity level" process. The land use maps in the existing General Plan are two extremes; a very generalized land use plan map and, at the other end of the scale, detailed zoning maps (the Community Profiles). The zoning pattern underlying the land use, depicts a point in time and not necessarily what is taking place in a rapidly changing area. The General Plan depicts generalized future land use, and the zoning map is an implementation tool for specific land parcels.

The General Plan land use map must be usable to be followed; the Zoning Ordinance is static and does not reflect problems of rapid urbanization; what is actually taking place.

He indicated we need to end the confusion between land use and zoning. We don't want to pick the precise location of specific land uses. What is needed is to provide a level of impact for a general area that will permit a variety of land uses with the same intensity. As an example, land use equivalency can be based on peak hour vehicle trip generation. He then gave some examples of residential intensity produced by several land use classifications. Instead of the rigid

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land use designation legend on the Community Profile maps, what is needed is a flexible legend that permits a variety of uses having equivalent impacts. Once land use equivalences are determined, then planning is necessary for high density corridors, such as Tonopah Highway, that will be worked out with adjacent neighborhoods.

ITEM 5: Committee Review and Recommendations for Community Profile Maps #11, 12, and 15.

The Committee then broke into two groups for detailed review of the Community Profile maps for the Northwest Area. The Subcommittees working on Infrastructure/Transportation and Economic Development/Housing met with Howard Null and staff to review Community Profile #11; the Future Land Use and Community Facilities Subcommittees met with Frank Reynolds and staff to review Community Profile Map 15. These maps will be discussed again at our next meeting to answer any questions, and we will proceed with maps #8, 9, 10 and 12. The Subcommittees broke into groups at 7:35 p.m. and reconvened at 8:25 p.m.

ITEM 6: Set Date for Next Meeting/Adjournment.

Discussion ensued concerning the time between Committee meetings. Due to the desire of members to review land uses in the field, as well as staff preparation time, it was determined that there should be three weeks between meetings. The next meeting will be held March 6, 1991 at 6:30 p.m. Staff was also instructed to mail out copies of the Community Profile Maps being reviewed, to aid in the field work.

The meeting adjourned at 8:45 p.m.

NORMAN R. STANDERFER, DIRECTOR
DEPT. OF COMMUNITY PLANNING & DEVELOPMENT

3765

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16640

EXHIBIT "RRRR-16"

TO: Citizens General Plan Advisory Committee
Andras Babero and Abe Mayhan, Co-Chairmen

FROM: Advanced Planning Staff

SUBJECT: Community Profiles

COPIES: Norman Standerfer, Director
Howard Null, Administrative Officer
Robert Baggs, Chief, Comprehensive Planning
Jory Stewart, Senior Planner
Kathy Somers, Management Analyst II

DATE: March 27, 1991

Enclosed is an additional set of map reductions for Community Profiles 8, 9, and 10, and two sets of maps for Community Profiles 7, 13 and 16, to facilitate your field inspection of areas that may be marked with a pattern. You may also want to inspect profile areas that are unmarked and provide us with comments on land use trends. These designations have been recommended by staff. Land use(s) and residential densities are indicated by the capital letter(s) within the patterned area (see map legend).

Two maps are provided for each profile. Please mark each site with your comments and turn in a map to staff by the next meeting (April 10th). You may send it to staff before the meeting (address indicated below), so a consensus for each site can be determined. Staff will assume you agree with their recommendation if a site is unmarked. If you specify a change, please state the reason why. Also, review areas with others and solicit their opinions.

Please print your name and the names of other contributors on each map.

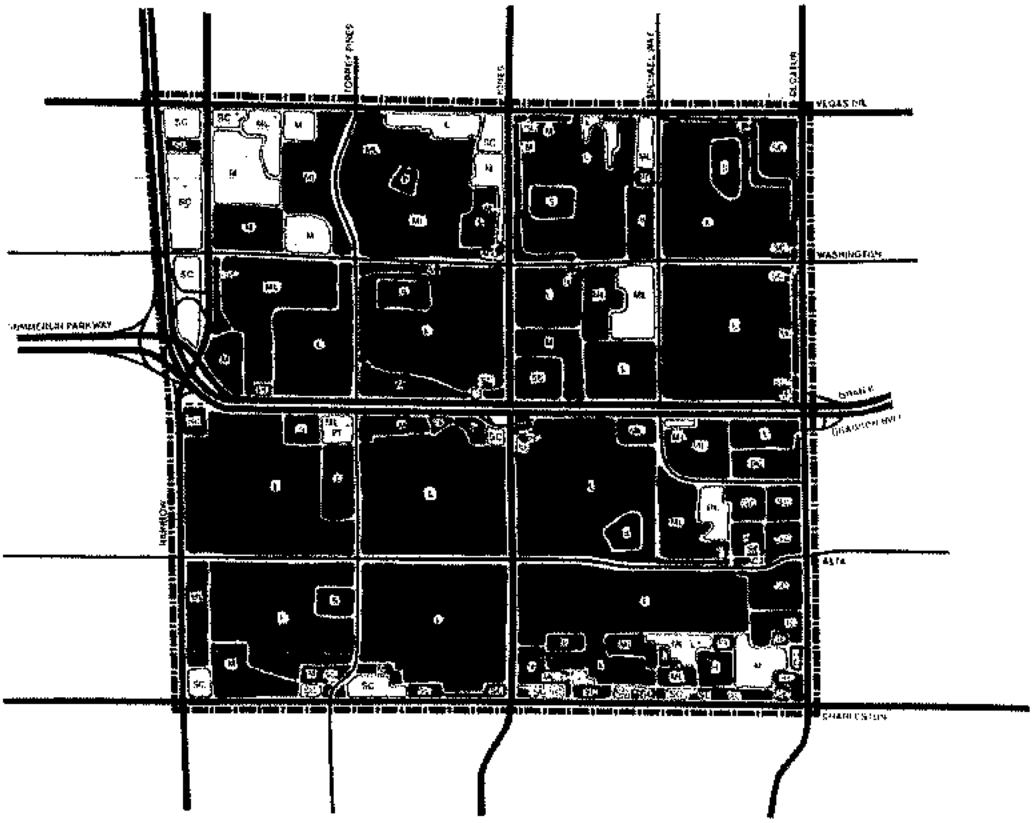
Maps can be sent to:

Frank E. Reynolds, Deputy Director
Advanced Planning
Dept. of Community Planning & Development
Las Vegas City Hall
400 E. Stewart
Las Vegas, NV 89101

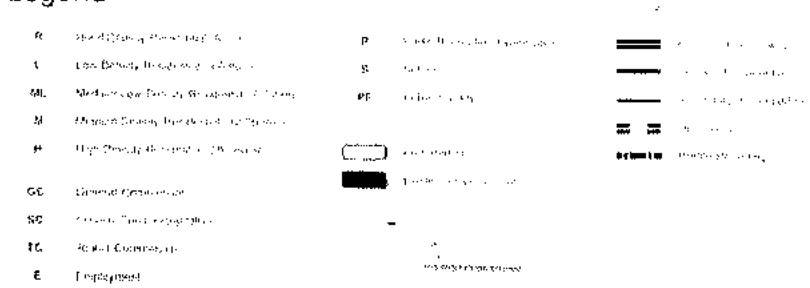
If you have any questions, you may call staff at 799-6878. Staff greatly appreciates your efforts in helping to build a better community.

HN:JG.3

City of Las Vegas
general plan



Legend



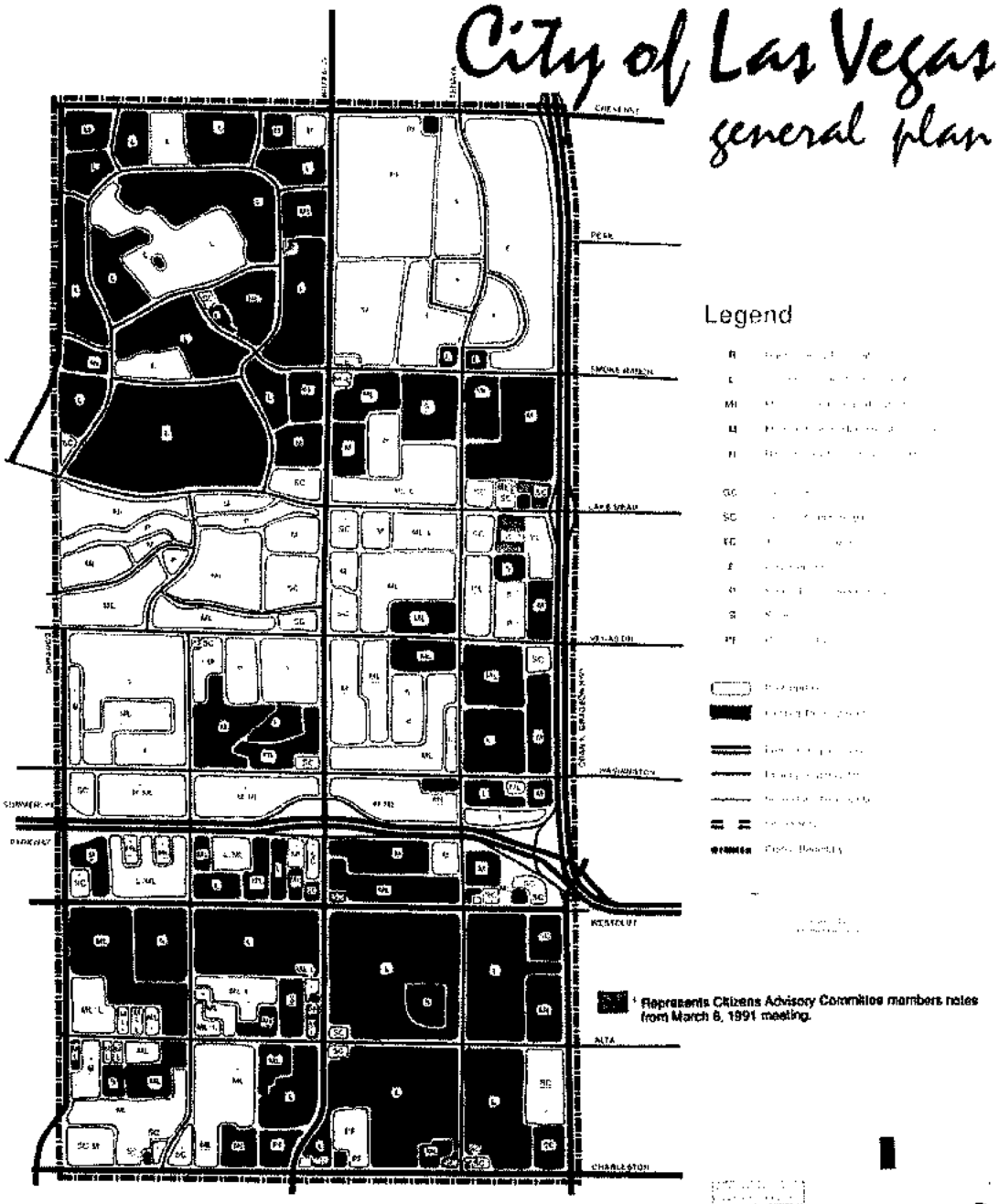
8

3767

CLV053472

16643

City of Las Vegas general plan

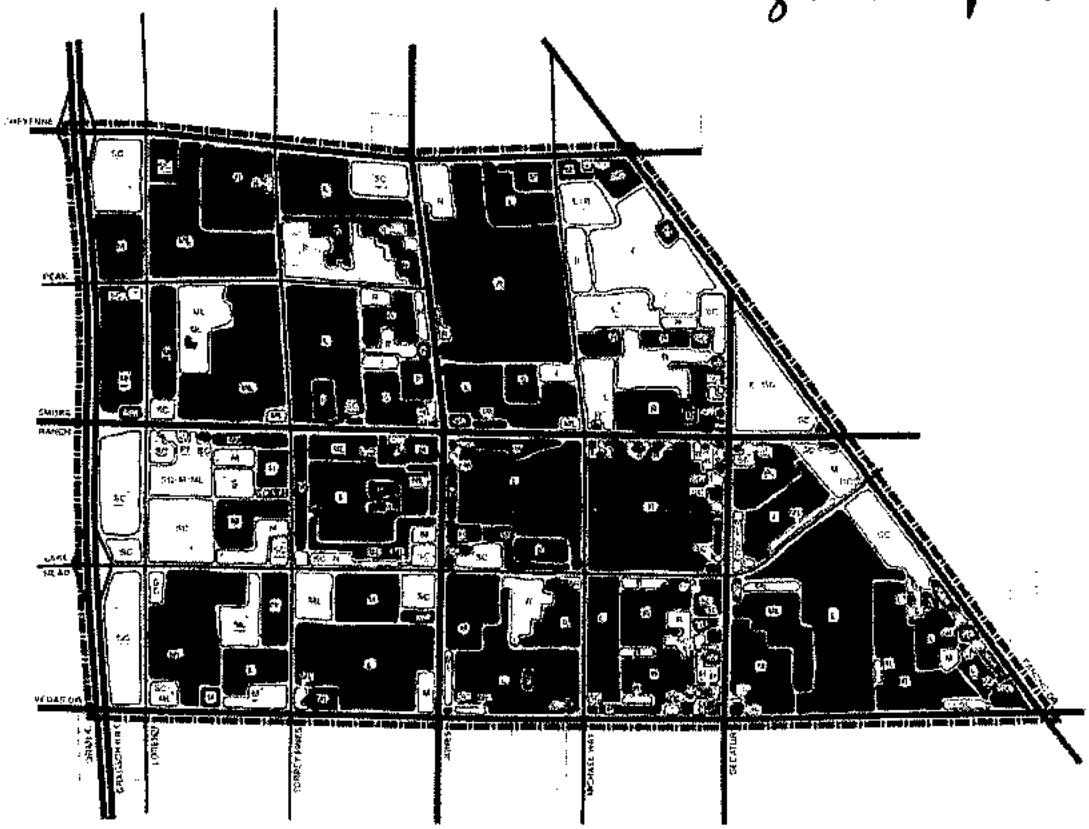


3768

CLV053473

16644

City of Las Vegas
general plan



Legend

R	P	
L	S	
ML	PF	
M		
H		
GC		
SC		
FC		
E		

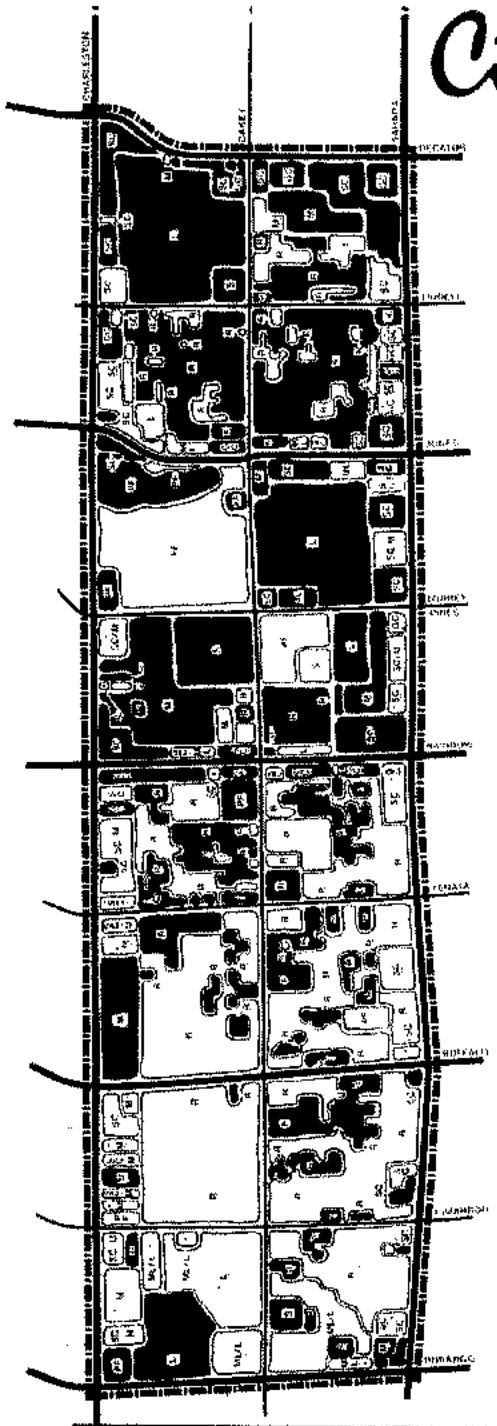
Community Profile 10

3769

CLV053474

16645

City of Las Vegas
general plan



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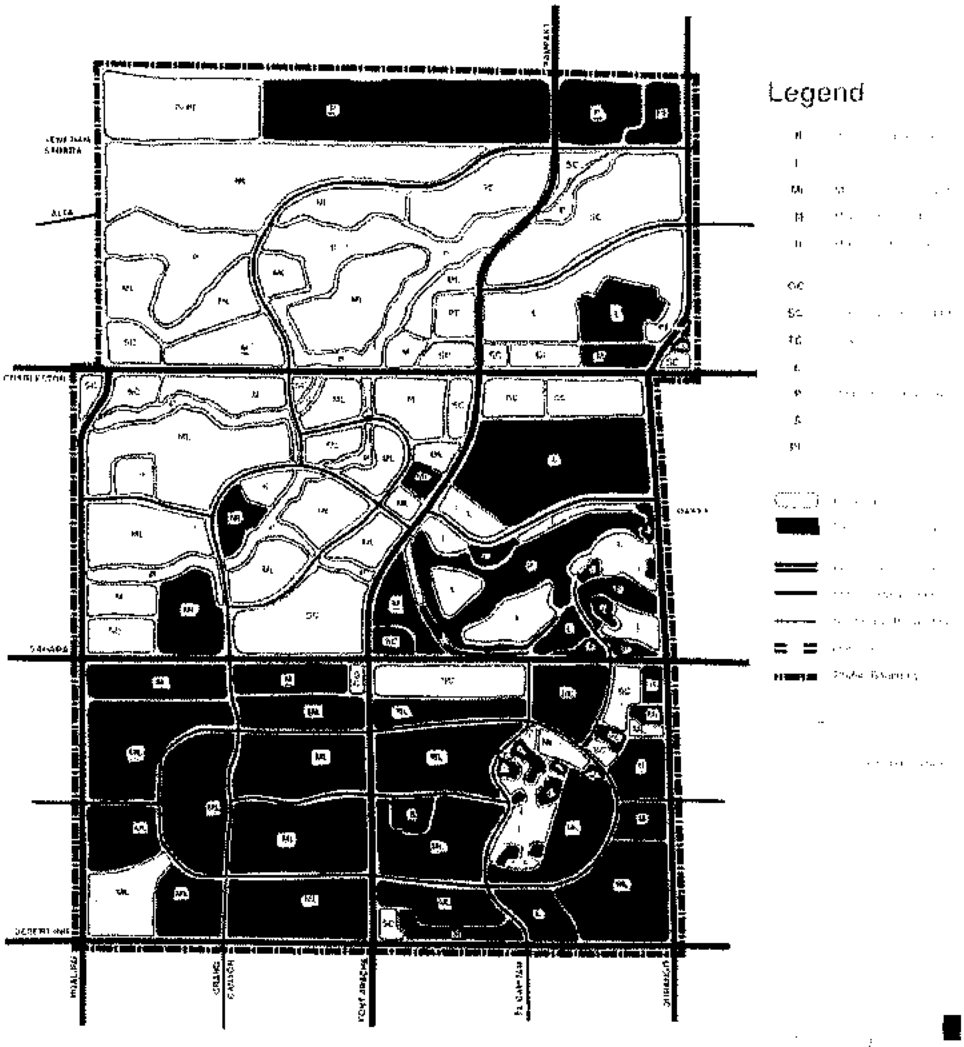
Community Profile 7

3770

CLV053475

16646

City of Las Vegas
general plan



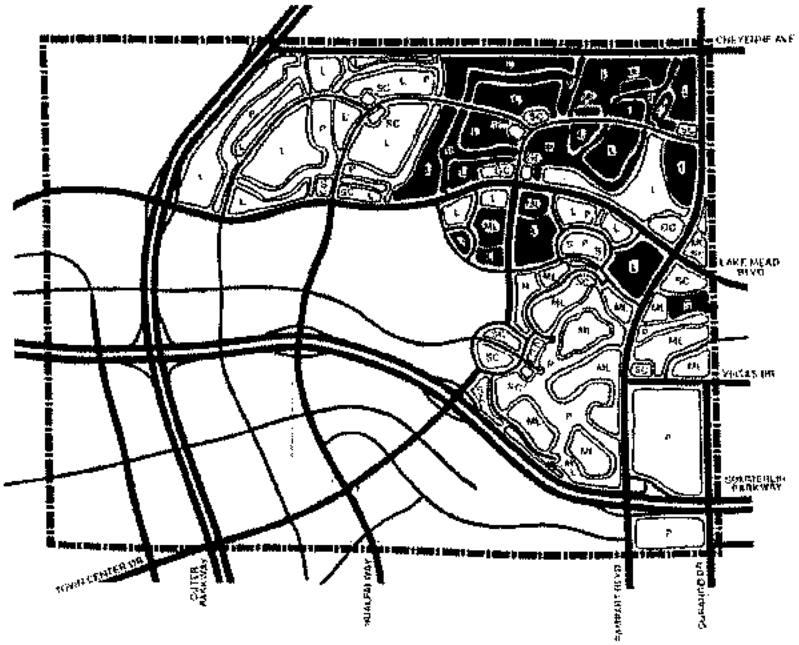
Community Profile 13

3771

CLV053476

16647

City of Las Vegas
general plan



Legend

R	High Density Residential (12+ du/ac)
L	Low Density Residential (1-4 du/ac)
ML	Medium-Low Density Residential (4-8 du/ac)
M	Medium Density Residential (8-12 du/ac)
H	High Density Residential (12+ du/ac)
GC	General Commercial
SC	Service Commercial Center
TC	Special Commercial
E	Employment
P	Parks, Recreation/Conservation
S	Schools
PF	Public Facility

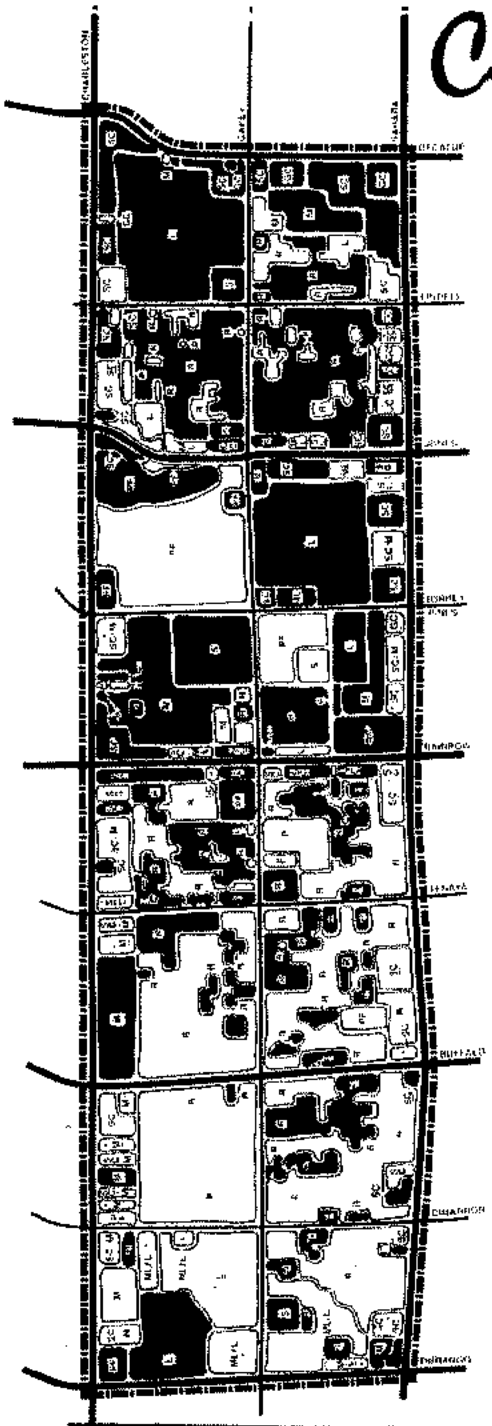
Community Profile 16

3772

CLV053477

16648

City of Las Vegas
general plan



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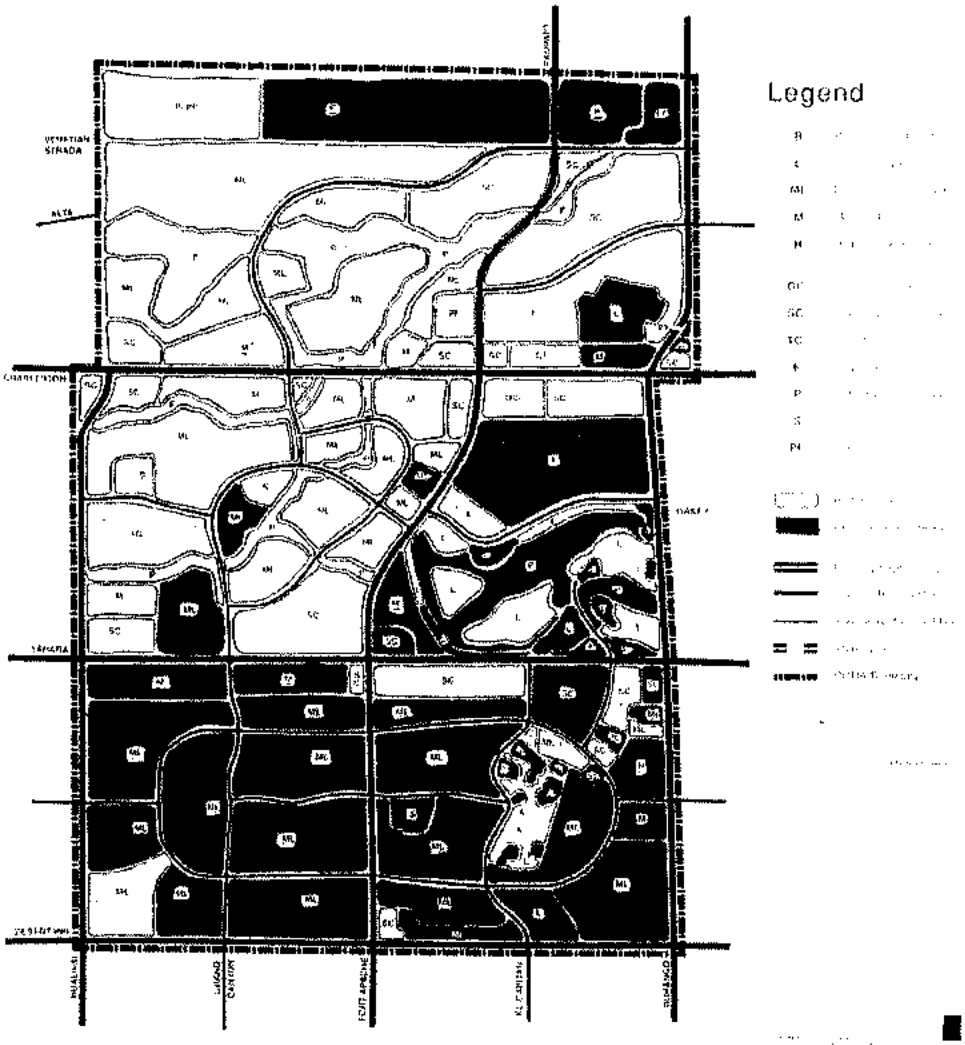
Community Profile 7

3773

CLV053478

16649

City of Las Vegas
general plan



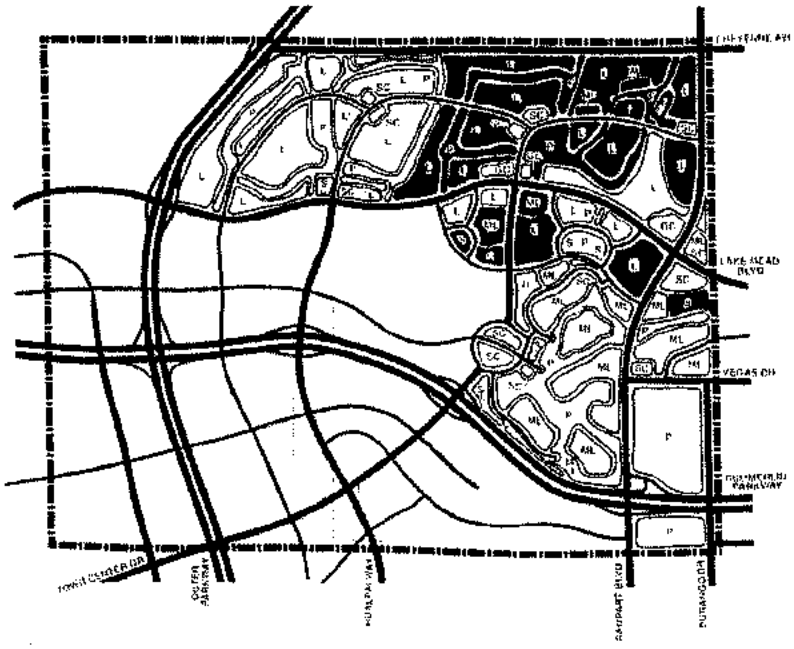
Community Profile 13

3774

CLV053479

16650

City of Las Vegas
general plan



Legend

R	Rural Density Residential
L	Low Density Residential
ML	Medium Low Density Residential
M	Medium Density Residential
H	High Density Residential
GC	General Commercial
SC	Service Commercial/Mixed
TC	Town Center
E	Entertainment
P	Parks Recreation/Open Space
S	Schools
PF	Public Facilities

Community Profile 16

3775

CLV053480

16651

EXHIBIT "SSSS"

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 180 LAND CO LLC, A Nevada)
limited liability company,)
5 FORE STARS, LTD., a Nevada)
limited liability company and)
6 SEVENTY ACRES, LLC, a Nevada)
limited liability company, DOE)
7 INDIVIDUALS I-X, DOE)
CORPORATIONS I-X, and DOE)
8 LIMITED LIABILITY COMPANIES)
I-X,)
9)
)
10 Plaintiffs,)
)
11 vs.)CASE NO.: A-17-758528-J
)DEPT. NO.: XVI
12 CITY OF LAS VEGAS, a)
political subdivision of the)
13 State of Nevada; ROE)
GOVERNMENT ENTITIES I-X; ROE)
14 CORPORATIONS I-X; ROE)
INDIVIDUALS I-X; ROE)
15 LIMITED-LIABILITY COMPANIES)
I-X; ROE QUASI GOVERNMENTAL)
16 ENTITIES I-X,)
)
17)
Defendants.)
18)

19

20 CONFIDENTIAL VIDEOCONFERENCE DEPOSITION OF

21 NRCP 30(b)(6) DESIGNEE OF PECCOLE-NEVADA CORPORATION

22 WILLIAM BAYNE

23 LAS VEGAS, NEVADA; FRIDAY, JULY 16, 2021

24 REPORTED BY: JOHANNA VORCE, CCR NO. 913

25 JOB NO.: 777801

1 I believe Clyde Spitze was at a couple of those
2 meetings as well at Bad- -- we met at the Badlands Golf
3 Course Country Club at the restaurant in there. And we --
4 we talked several -- talked to Hyatt several times. And
5 then afterwards, at some point, Mr. Lowie -- he might have
6 even walked -- walked through the middle of one of those
7 meetings. I can't remember. But anyways, he found out, was
8 upset, didn't feel that we had the -- the ability to do what
9 we were contemplating doing, and then brought forth the
10 lawsuit.
11 BY MR. OGILVIE:
12 **Q. Do you have an understanding as to why he had that**
13 **belief?**
14 A. After doing a little bit of research and
15 understanding the situation more, I think it was because
16 there was a -- there was a conversation, at some point,
17 between him and other members of my family about, at some
18 point, he would want to potentially buy the golf course.
19 And so I felt -- I think he felt like we were not being
20 honorable to that conversation.
21 **Q. Okay. So let me -- let me just take a slight**
22 **detour and -- and discuss this negotiation with Hyatt, or**
23 **the background of the negotiation with Hyatt.**
24 **It was -- or was it -- was it Peccole -- the**
25 **Peccole Family's understanding that it had an ability to**

1 **develop the golf course?**
2 A. We've always had the understanding that we could
3 develop on the golf course. It was -- it's never been our
4 intent to get rid of the golf course. So there was never a
5 point in our family where we discussed just turning the golf
6 course completely off and doing away with the golf course.
7 But it always has been our intent -- we need to enhance the
8 golf course and figure out a way for it to become a
9 financially viable operation, whether that means adding a
10 tennis club, whether that means adding a larger clubhouse
11 that can support weddings and venues, whether that means
12 adding a few lots here and there where we can carve out some
13 lots onto the golf course. Those were all things that we
14 had contemplated and talked about over the years.
15 **Q. Okay.**
16 A. But never talked about not having a golf course.
17 (Defendant's Exhibit 20 was marked
18 for identification.)
19 BY MR. OGILVIE:
20 **Q. Let me direct your attention to what's been marked**
21 **as Exhibit 20. Exhibit 20 is a Planning & Development**
22 **Department -- City of Las Vegas Planning & Development**
23 **Department Application/Petition Form that the -- I'm just**
24 **going to go through it top to bottom.**
25 **The application/petition for a general plan**

1 **Q. And is that his signature?**
2 A. Well, I wasn't there when he signed it, but that
3 looks like his signature.
4 **Q. Okay. The representative is Moreno & Associates,**
5 **contact Greg Borgel.**
6 **Do you know of an individual by the name of Greg**
7 **Borgel?**
8 A. I do know an individual by the name of Greg
9 Borgel.
10 **Q. Did he perform land use regulation work for -- on**
11 **behalf of Fore Stars?**
12 A. At about that time, when Clyde stopped, they did
13 use Greg Borgel, and they also used another company. The
14 name will come to me in a second. We used DC Wallace for a
15 few things. Roy Clark I think is his name, I think.
16 **Q. Okay.**
17 (Defendant's Exhibit 22 was marked
18 for identification.)
19 BY MR. OGILVIE:
20 **Q. Let me direct your attention to what's been marked**
21 **as Exhibit 22. It is an August 31st, 2005 letter from**
22 **Cherie Guzman at JMA Architecture Studios. It is described**
23 **as "Queensridge Townhomes, Justification Letter/Project**
24 **Description," and it indicates that, "We are requesting a**
25 **general plan amendment for the development of a 34-unit**

1 **townhome project." It goes on to talk about the project a**
2 **little bit. The last sentence of the first paragraph says,**
3 **"The general plan designation is PROS and the site is zoned**
4 **R-PD7."**
5 **Do you see that?**
6 A. I do.
7 **Q. Do you have an understanding whether -- in**
8 **August 2005, whether the Peccole Family understood that the**
9 **general plan designation for the Badlands property was PROS?**
10 A. Having gone back through our history a little bit
11 and going through some of our documents, I think we had an
12 understanding that it was -- the general plan was PROS
13 because we would often go in when we got tax bills, and the
14 tax bills would come in, and then we would go ahead and --
15 and fight to get the tax bills reduced because it was under
16 a general plan designation of PROS. So I would say we did
17 understand that.
18 **Q. Okay.**
19 MR. LEAVITT: And just to lodge a continuing
20 objection on that, George. Lacks foundation and also calls
21 for a legal conclusion.
22 MR. OGILVIE: Duly noted.
23 THE COURT REPORTER: Was that Mr. Leavitt?
24 MR. OGILVIE: Yes, that was Mr. Leavitt.
25 (Defendant's Exhibit 23 was marked

1 have -- we don't have a subpoena on it, and so just
2 voluntarily producing it makes me a little uneasy.
3 MR. OGILVIE: Well, okay.
4 MR. WILLIAMS: But why don't you guys talk about
5 it after the deposition and then see if you can work it out,
6 and then I'll have it in my office, I'm sure, by no later
7 than Monday. Billy gives me stuff pretty quickly.
8 BY MR. OGILVIE:
9 **Q. Okay. So this appraisal that you believe was**
10 **conducted on Fore Stars in 2010, I think that's the year you**
11 **said, do you have a recollection as to the appraised value**
12 **of Fore Stars?**
13 A. Yes, I do. It's $3.9 million.
14 **Q. And then --**
15 A. That did not -- let me clarify. That did not
16 include the operational assets, nor did that include the
17 water rights.
18 **Q. Okay.**
19 A. That was just for the -- the fee simple property.
20 **Q. Okay. And I think you indicated that the -- your**
21 **recollection of the operational assets, essentially the**
22 **equipment, was -- was less than 2- or $300,000?**
23 A. Yeah. I don't -- I don't remember the exact
24 number, but it -- it didn't -- it didn't strike me when we
25 got it that it was very much money.

1 THE COURT REPORTER: I'm sorry, I'm sorry, you
2 have to slow down. You're talking too fast. Can you start
3 over?
4 THE WITNESS: Yeah.
5 THE COURT REPORTER: "I didn't have to pay any
6 assignment assumption agreements. I didn't have to do
7 anything because basically Mr. Lowie would have stepped in."
8 THE WITNESS: He would have stepped in to Fore
9 Stars' position. And by stepping into Fore Stars' position,
10 there was no need for an assignment and assumption
11 agreements, and so it -- it just made it cleaner. That was
12 part of the reason that we -- we contemplated switching.
13 That's not all the reason, but that's -- that's a chunk of
14 it.
15 BY MR. OGILVIE:
16 **Q. Was part of the reason also the claim of a first**
17 **right of refusal by some third-party other than Mr. Lowie's**
18 **entities?**
19 A. No. Actually, we settled that before we -- no,
20 that's not why.
21 The other part of the reason for switching to a
22 securities agreement was I felt it gave us more protection
23 as we went forward, not knowing how or what Yohan would do
24 from a development standpoint. It was my family's intention
25 to always keep the golf course. And because that was our

1 intention, we weren't very nervous about developing on the
2 golf course. But we didn't know exactly what Yohan would
3 do, and so that was another way to kind of buffer us from --
4 from what he chose to do.
5 **Q. When you say "buffer" you, buffer you from what?**
6 A. Liability.
7 **Q. Okay.**
8 A. I didn't want to try to go back in and rep and
9 warranty everything that Fore Stars or my family had ever
10 done or said. It was too complicated and it's too old. And
11 so if I switch it to a securities agreement, he's Fore
12 Stars.
13 MR. OGILVIE: Okay. Let's move forward. We
14 jumped ahead a little bit there, but let's move forward with
15 another document, another e-mail.
16 (Defendant's Exhibit 34 was marked
17 for identification.)
18 BY MR. OGILVIE:
19 **Q. Exhibit 34 is an e-mail exchange between Henry**
20 **Lichtenberger, Yohan Lowie, yourself, and Todd Davis. And**
21 **there's an e-mail -- initial e-mail from Mr. Lichtenberger.**
22 **It says, "I have received consent from the Peccole Family**
23 **for the revised purchase terms as it relates to the**
24 **$3 million that was initial drafted as a term note."**
25 **What -- do you have an understanding of what**

1 Queensridge Towers and Fore Stars. And this is the document
2 that finalized the transfer back to Fore Stars of the
3 two-point-something acres that was the subject of the
4 election for -- to conclude the clubhouse improvements
5 agreement, correct?
6 A. Yep.
7 Q. So you -- is it true and accurate to say that as
8 of the date of this document, November 14th, 2014, that you
9 had resolved that Golf Course Clubhouse Improvements
10 Agreement?
11 A. Yes. And that's -- the purchase price went from
12 12 to 15.
13 Q. When you say "the purchase price," you're talking
14 about the purchase price of Fore Stars --
15 A. Fore Stars.
16 Q. -- and the water rights?
17 A. That is correct.
18 (Defendant's Exhibit 43 was marked
19 for identification.)
20 BY MR. OGILVIE:
21 Q. Directing your attention to what's been marked as
22 Exhibit 43. It is an e-mail exchange and "Membership
23 Interest Purchase and Sale Agreement" from -- the e-mail is
24 from Mr. Lichtenberger to you, Yohan Lowie, and Todd Davis
25 dated -- what did I say -- November 26th, 2014. The

1 attached -- and Mr. Lichtenberger says, "Attached is initial
2 draft of the Stock Purchase Agreement for the Golf Course."
3 So this -- and he goes on to say in the second
4 sentence, "The document differs greatly from the former
5 draft of the Asset Purchase Agreement so creating a marked
6 version would not be very beneficial."
7 And so the attachment -- the second through, what,
8 20th page, whatever it is, of Exhibit 43 is the first
9 iteration of a purchase and sale agreement for the entity,
10 as opposed to the prior iterations that were for the assets
11 of the entity, correct?
12 A. That's correct.
13 Q. And this is this -- references the fact that Fore
14 Stars owns the real property that constitutes the Badlands
15 Golf Course, and WRL LLC is the entity that owns the water
16 rights that are appertinent to the golf course, correct?
17 A. That is correct. Yeah, that was correct.
18 Q. And if we go to page 2, the purchase price now, as
19 a result of the lot line adjustment agreement between
20 Queensridge Towers and Fore Stars from November 14th, 2014,
21 is $15 million because you are now transferring that
22 additional two-point-something acres where the clubhouse
23 sits?
24 A. That's correct.
25 Q. Under Section --

1 A. Well, yeah. It's -- it's worth -- it's worth that
2 money because not only are we transferring the additional --
3 we're transferring the clubhouse.
4 **Q. Right.**
5 A. We got the clubhouse back.
6 **Q. Right.**
7 A. Okay.
8 **Q. So you're valuing the clubhouse, you and -- in**
9 **this case --**
10 A. It wasn't just that additional two acres. It
11 was -- it was the clubhouse --
12 **Q. The club -- okay.**
13 A. -- meaning we had the clubhouse.
14 **Q. The real property and the improvements?**
15 A. Yeah.
16 **Q. And you're valuing that at $3 million?**
17 A. Yeah.
18 **Q. So in Section 2.01(b), it talks about a**
19 **feasibility period.**
20 **Is that like a -- do you have an understanding**
21 **that that was the purchaser's due diligence period?**
22 A. Yes.
23 **Q. And it was 30 days from the effective date,**
24 **effective date being -- oh, not actually -- not filled in at**
25 **this point because it's just a draft, right?**

1 A. That is my belief.
2 Q. Mr. Leavitt asked you some questions about
3 valuation, and you said you -- your knowledge is that the
4 value was $15 million total as of December 1st, 2014.
5 That $15 million total, that's for the -- the --
6 what ultimately became the purchase agreement for WRL and
7 the purchase agreement of Fore Stars, correct?
8 A. And the business interest, yes.
9 Q. Okay. And the business interest.
10 And then Mr. -- addressing -- addressing
11 Mr. Leavitt's quote of Mr. Molina's declaration, which I'm
12 paraphrasing, Lowie paid -- Mr. Lowie paid less than $4 1/2
13 million for the golf course.
14 You know how he came to that, that valuation,
15 right? He took the $7 1/2 million and reduced it by the
16 value of the equipment that you testified was worth no more
17 than 2- or $300,000, so let's -- let's call it $100,000,
18 just for sake of the question. So it reduces the $7 1/2
19 million purchase price of Fore Stars to 7.4 for the real
20 property. And then the -- the 250 acres that's at issue in
21 these lawsuits doesn't include the property -- the
22 two-point-something acres that you valued at $3 million that
23 you got in the -- in the election by Queensridge Towers on
24 the Clubhouse Improvements Agreement. So reducing that --
25 call it 7.4 by $3 million, that would be less than $4 1/2

1 **million for the 250-acre golf course, correct?**
2 MS. HAM: I'll make an objection on the record to
3 the form of the question.
4 MR. LEAVITT: Yeah. And it lacks foundation and
5 assumes evidence not in -- or assumes facts not in evidence.
6 It's speculative, conjectural, and confusing.
7 Do you have another one?
8 MR. WILLIAMS: Objection; vague and ambiguous.
9 BY MR. OGILVIE:
10 **Q. You can answer.**
11 A. I got to learn how this objection stuff works.
12 I mean, based on what you said, I don't have an
13 argument.
14 MR. OGILVIE: Okay. I don't have anything
15 further.
16 FURTHER EXAMINATION
17 BY MR. LEAVITT:
18 **Q. Okay. Let me ask a question here, though.**
19 **Because previously I asked you if it was true that Mr. Lowie**
20 **paid less than $4.5 million for the land, and you said that**
21 **was not true, correct?**
22 A. It was not. The purchase and sales securities
23 agreement was for 7.5 million.
24 **Q. Okay.**
25 A. But if you want to do the math that way --

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
) SS
3 COUNTY OF CLARK)

4 I, Johanna Vorce, Certified Court Reporter, do
5 hereby certify:
6 That I reported the taking of the deposition of
7 the witness, WILLIAM BAYNE, commencing on Friday, July 16,
8 2021, at 9:10 a.m.
9 That prior to being examined, the witness was by
10 me duly sworn to testify to the truth.
11 That I thereafter transcribed my shorthand notes,
12 and the typewritten transcript of said deposition is a
13 complete, true, and accurate transcription of said shorthand
14 notes.
15 That a request has been made to review the
16 transcript.
17 I further certify that I am not a relative or
18 employee of an attorney or counsel of any party involved in
19 said action, nor a relative or employee of the parties
20 involved, nor a person financially interested in said
21 action.
22 Dated this 27th day of July, 2021.
23
24 Johanna Vorce, CCR No. 913
25

EXHIBIT "TTTT"

Electronically Filed
7/29/2021 2:54 PM
Steven D. Grierson
CLERK OF THE COURT

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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/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, Defendants/Respondents.	CASE NO.: A-18-775804-J DEPT. NO.: 26 **[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER REGARDING** **MOTION TO DISMISS** **AND** **COUNTERMOTION TO ALLOW MORE DEFINITE STATEMENT IF NECESSARY AND COUNTERMOTION TO STAY LITIGATION OF INVERSE CONDEMNATION CLAIMS UNTIL RESOLUTION OF THE PETITION FOR JUDICIAL REVIEW AND COUNTERMOTION FOR NRCP RULE 56(F) CONTINUANCE**

Plaintiff/Petitioner 180 Land Company, LLC filed its Petition for Judicial Review, Complaint for Declaratory Relief, and Alternative Verified Claims in Inverse Condemnation (the "Complaint") to challenge the decision by the City of Las Vegas ("City") to strike its applications to redevelop a portion of the former Badlands Golf Course consisting of 132.92 acres (the "133-Acre Applications").

On August 27, 2018, the City filed a motion to dismiss the Complaint (the "Motion"). Plaintiff/Petitioner opposed the Motion and filed a Countermotion To Allow More Definite Statement If Necessary And Countermotion To Stay Litigation Of Inverse Condemnation Claims Until Resolution Of The Petition For Judicial Review And Countermotion For NRCP Rule 56(f) Continuance (collectively, "the Countermotions"). Having reviewed the briefs submitted in support of and in opposition to the Motion and Countermotions, conducted a hearing on January 15, 2019, considered the written and oral arguments presented, and being fully informed in the premises, the Court makes the following findings of facts and conclusions of law.

I. FINDINGS OF FACT

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

1. This is one of several cases concerning efforts by Plaintiff/Petitioner and its affiliates, Seventy Acres LLC, and Fore Stars Ltd., (collectively, the "Developer") to redevelop the former Badlands Golf Course (the "Badlands Property") into a housing development.

2. The Badlands Property consists of 250.92 acres located between Alta Drive (to the north), Charleston Boulevard (to the south), Rampart Boulevard (to the east), and Hualapai Way (to the west). Complaint ¶ 7, 31.

3. In 1989, the original master plan applicant, William Peccole/Western Devcor, Inc. sought approval of a master development plan for 1,716.30 acres referred to as Peccole Ranch Master Development Plan. Ex. 2 (020-038).[1]

---

[1] All references to exhibits herein are to the exhibits attached to the City's Motion. Pursuant to NRS 47.130 and 47.150, the Court takes judicial notice of the publicly available documents submitted as exhibits to the City's Motion as well as the dockets in Case No. A-17-758528-J Case No. A-17-752344-J and Nevada Supreme Court Case No. 75481.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
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4. On February 15, 1989, the City Council approved the Peccole Ranch Master Plan and a related application to rezone 448.8 acres in Phase I. Ex. 2 (020) at p.1.

5. On April 4, 1990, the City Council approved an amendment to the 1989 Peccole Ranch Master Plan and a related application to rezone 996.4 acres in Phase II. Ex. 2 (020-038).

6. To satisfy the City's open space requirements, the master plan applicant was required to set aside 212 acres of land in Phase II for a golf course, thereby providing the overall Peccole Ranch Master Plan with 253.07 net acres for golf course, open space and drainage. Ex. 2(027, 029, 035) at pp. 10, 12, 18.

7. Pursuant to the Peccole Ranch Master Plan, the Developer's predecessor built the golf course on approximately 250 acres, and the golf course operated until it came under the Developer's ownership. Ex. 4(046-051).

8. Through a number of successive conveyances, Peccole Ranch Partnership's interest in the Badlands Property was transferred to an entity called Fore Stars, Ltd. Ex. 9(135).

9. On March 4, 2015, Fore Stars, Ltd. was acquired (through various entities and family limited partnerships) by the same principals who own EHB Companies LLC, Paul Dehart, Vicki Dehart, Yohan Lowie and Frank Pankratz. *Id.*

10. On June 18, 2015, Fore Stars, Ltd. transferred 178.27 acres to 180 Land Company, LLC and 70.52 acres to Seventy Acres, LLC, while retaining 2.13 acres. *Id.*

11. Subsequently, the Developer began applying for land use approvals to convert the Badlands golf course into residential and commercial development.

B. The Open Space General Plan Designation for the Badlands Property

12. The open space designation for the Badlands Property sought by the Developer's predecessor and approved by the City in 1990 was subsequently incorporated into the City's General Plan starting in 1992. The Badlands Property is identified in the City's General Plan as Parks, Recreation, and Open Space ("PR-OS"). Ex. 3(040-044).

13. The Developer's predecessors built the Badlands Property as golf course and open space.

14. On November 15, 2015, the Developer filed applications for a General Plan

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Amendment (GPA-62387), Re-Zoning (ZON-62392), and Site Development Plan Review (SDR-62393) seeking to develop a 17.49-acre portion of the golf course property. The General Plan Amendment application sought to change the General Plan designation from PR-OS to high density residential (GPA-62387). Ex. 7. The Developer's application acknowledged the PR-OS designation for the Badlands Property, and nowhere in the application did the Developer contend that the PR-OS designation was improper. Ex. 7(109).

15. Similarly, in February 2016, the Developer filed an application for a general plan amendment applicable to the entire Badlands Property (GPA-63599). Motion Ex. 8. The Developer's application materials again recognized the existing PR-OS designation, and the Developer did not object to that designation. Ex. 8(127-130).

16. In conjunction with GPA-63599, the Developer filed an application for a major modification of the Peccole Ranch Master Development Plan (MOD-63600), which the Developer named the "2016 Peccole Ranch Master Plan." Ex. 9.

17. The Developer subsequently requested to withdraw its major modification application without prejudice, which the City Council approved. Ex. 1(009-011).

18. On February 15, 2017, the City Council approved the 17-Acre Applications.

19. Certain nearby homeowners filed a petition for judicial review regarding the Council's decision to approve the 17-Acre Applications. *See Jack B. Binion, et al v. The City of Las Vegas, et al.*, Eighth Judicial District Court, Case No. A-17-752344-J, which was assigned to the Honorable James Crockett.

20. On March 5, 2018, Judge Crockett granted the homeowners' petition for judicial review in Case No. A-17-752344-J, ruling as a matter of law that Title 19.10.040 of the City's Unified Development Code required the Council to first approve a major modification to the Peccole Ranch Master Development Plan before any other development applications could be approved ("Judge Crockett's Order"). Ex. 1.

21. As relevant here, Judge Crockett's Order contained the following findings of fact and conclusions of law:

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- On the maps of the City's General Plan, the land for the golf course/open space drainage is expressly designated as PR-OS, meaning Parks/Recreation/Open Space. *See* Ex. 1(006) at 5:13-14.
- There are no residential units permitted in an area designated as PR-OS. *Id.*
- The City's failure to require or approve a major modification of the Peccole Ranch Master Plan was legally fatal to the City's approval of the applications at issue because, under the City's Code, the City was required to first approve a major modification, which was never done. Ex. 1(014) at 13:4-8.

22. The Developer appealed Judge Crockett's Order. The City did not. The Developer's appeal is pending before the Nevada Supreme Court as Case No. 75481.

C. The 133-Acres Applications at Issue in this Petition for Judicial Review

23. In October 2017, the Developer filed applications to develop a 133-acre portion of the Badlands Golf Course. The applications sought waivers of the City's development requirements, site development plan review, tentative map applications and a general plan amendment ("the 133-Acre Applications"). Compl. ¶¶7, 35.

24. The 133-Acre Applications came before the City Council for consideration on May 16, 2018. Ex. 11.

25. The City Council voted to strike the 133-Acre Applications as incomplete for two reasons. Ex. 11

26. First, the 133-Acre Applications did not include an application for a major modification, as Judge Crockett's Order required. Compl. ¶64.

27. Second, the application for a general plan amendment violated the City's Unified Development Code §19.16.030(D) because it was duplicative of one that had been filed within the previous 12-month period. Compl. ¶¶7, 56.

28. The Developer then filed this action. In response, the City filed the Motion.

29. The City's Motion sought dismissal of the petition for judicial review and the alternative claims for relief~~on the following grounds~~:

a. ~~The Court~~ lacks subject matter jurisdiction because ~~the Developer's~~ claims are not ripe ~~until the Developer gives the Council the opportunity~~ to consider and

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decide a major modification application, as required by Judge's Crockett Order, and Judge Crockett's Order has preclusive effect on this case.

b. The Developer's claims for relief are time barred because the Developer's predecessor sought and obtained the parks, recreation and open space designation in the City's General Plan and Peccole Ranch Master Development Plan, which has existed since at least 1992, and then built the golf course to satisfy the City's parks requirement.

c. The Developer waived any challenge to the requirement for a General Plan Amendment or major modification to the Peccole Ranch Master Development Plan because its predecessor failed to challenge the restrictions imposed by the City when it approved the Peccole Ranch development.

d. The Developer's constitutional claims fail as a matter of law because the Developer has no vested rights to have its redevelopment applications approved for the following reasons:

i. The Council retains discretion to deny redevelopment applications.

ii. Compatible zoning does not deprive the Council of its discretion to deny redevelopment applications.

iii. NRS 278.349(e) does not confer any vested rights.

iv. Absent a vested right to have its redevelopment applications approved, the Developer cannot state a cognizable constitutional claim.

e. The Council's decision to comply with Judge Crockett's Order, as a matter of law, cannot be deemed arbitrary and capricious.

f. Injunctive relief is a remedy, not a cause of action.

30. The Developer filed its opposition to the Motion and filed the Countermotions.

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II. CONCLUSIONS OF LAW

Without reaching any other issues raised by the parties, the Court makes the following conclusions of law:

1. Based on the doctrine of issue preclusion, Judge Crockett's Order has preclusive effect on this case.

2. Issue preclusion applies when the following elements are satisfied: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008).

3. Having taken judicial notice of Judge Crockett's Order, the Court concludes that the issue of whether a major modification of the Peccole Ranch Master Development Plan is a prerequisite to the Council's consideration of the 133-Acre Applications is identical to the issue Judge Crockett decided in *Jack B. Binion, et al v. The City of Las Vegas, et al,* A-17-752344-J.

4. Judge Crockett's Order requires the Developer to seek and obtain a major modification of the Master Plan before submitting applications to redevelop the Badlands Property.

5. The Court rejects Petitioner's argument that the issue here is not the same because it involves a different set of applications from those before Judge Crockett; that is a distinction without a difference. "Issue preclusion cannot be avoided by attempting to raise a new legal or factual argument that involves the same ultimate issue previously decided in the prior case." *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 259, 321 P.3d 912, 916–17 (2014).

6. Judge Crockett's Order in Case No. A-17-752344-J was on the merits and has become final for purposes of issue preclusion. A judgment is final for purposes of issue preclusion if it is "sufficiently firm" and "procedurally definite" in resolving an issue. *See Kirsch v. Traber*, 134 Nev., Adv. Op. 22, 414 P.3d 818, 822–23 (Nev. 2018) (citing Restatement (Second) of

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Judgments § 13 & cmt. g). "Factors indicating finality include (a) that the parties were fully heard, (b) that the court supported its decision with a reasoned opinion, and (c) that the decision was subject to appeal." *Id.* at 822-823 (citations and punctuation omitted). The Developer's appeal of Judge Crockett's Order (NSC Case No. 75481) confirms that it was a final decision on the merits.

7. The Developer was a party to the action in which Judge Crockett's Order issued and/or in privity with those parties. The Complaint indicates that the Plaintiff/Petitioner here (i.e. 180 Land Company, LLC) and the named defendant in Case No. A-17-752344-J, Seventy Acres, LLC ("Seventy Acres"), are affiliates under common ownership and control, such that issue preclusion would apply to both. Compl. ¶46.

8. For purposes of preclusion doctrines, a "party" is one who is "directly interested in the subject matter, and had a right to make defense, or to control the proceeding, and to appeal from the judgment." *See Paradise Palms Cmty. Ass'n v. Paradise Homes*, 89 Nev. 27, 30, 505 P.2d 596, 598 (1973), *citing Bernhard v. Bank of Am. Nat. Trust & Sav. Ass'n*, 122 P.2d 892 (Cal. 1942).

9. Additionally, in numerous public proceedings, the Developer represented that 180 Land Company, LLC, Seventy Acres LLC, and Fore Stars Ltd. are affiliates under common ownership and control. In matters before the City Council, the Developer represented that the 250.92 Badlands Property was acquired by Fore Stars, Ltd., whose stock was then "acquired (through various entities and family limited partnerships) by the same principals as EHB Companies LLC." Ex. 9(135). Fore Stars then transferred most of the 250.92 acres to two affiliates: 180 Land Co., LLC (178.27 acres) and Seventy Acres, LLC (70.52 acres) and retained the remaining 2.13 acres. (*Id.*).

10. The three affiliated entities – 180 Land Company, LLC; Seventy Acres LLC; and Fore Stars, Ltd. – are all managed by EHB Companies, LLC, which, in turn, is managed by Yohan Lowie. Ex. 9.

11. Based on the Developer's representations, for purposes of determining issue preclusion, 180 Land Co., LLC; Seventy Acres LLC; and Fore Stars, Ltd. should be deemed parties to Case No. A-17-752344-J. *See Paradise Palms*, 89 Nev. at 30, 505 P.2d at 598.

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12. Even if the Plaintiff/Petitioner here were not deemed a "party" to Case No. A-17-752344-J, it is in privity with Seventy Acres under an adequate representation analysis. In *Mendenhall v. Tassinari*, 133 Nev. Adv. Op. 78, 403 P.3d 364, 369 (2017), the Supreme Court found that privity existed between certain entities and its corporate parent because of a "substantial identity" between them. This is consistent with the Restatement (Second) of Judgments §59(3), which looks at common ownership among entities for the purpose of evaluating whether a judgment as to one entity is conclusive on another.

13. With identical ownership and management, the interests of Seventy Acres and 180 Land Company were completely aligned with respect to the subject matter of Case No. A-17-752344-J, and Seventy Acres therefore adequately represented 180 Land Company's interests there. Moreover, in each of the pending court cases relating to the development of the Badlands Property in which both 180 Land Company and Seventy Acres are named parties, and of which the Court has taken judicial notice, the two entities have never filed separate pleadings or motions and have always been represented together by the same counsel to advance their collective interests. As a result, privity exists between Seventy Acres and 180 Land Company for purposes of issue preclusion.

14. The issue of whether a major modification is required for redevelopment of the Badlands Property was actually and necessarily litigated in Case No. A-17-752344-J. "When an issue is properly raised and is submitted for determination, the issue is actually litigated." *Alcantara*, 130 Nev. at 262, 321 P.3d at 918 (internal punctuation and quotations omitted) (citing *Frei v. Goodsell*, 129 Nev. 403, 407, 305 P.3d 70, 72 (2013)). "Whether an issue was necessarily litigated turns on 'whether the common issue was necessary to the judgment in the earlier suit.'" *Id.* (citing *Tarkanian v. State Indus. Ins. Sys.*, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994)). Since Judge Crockett's Order was entirely dependent on the issue of whether a major modification of the Peccole Ranch Master Development Plan was a prerequisite to redevelopment of the golf course into houses, the issue was necessarily litigated.

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12. Given the substantial identity of interest among 180 Land Company, LLC and Seventy Acres, LLC, it would be improper to permit 180 Land Company, LLC to circumvent Judge Crockett's Order with respect to the issues that were fully adjudicated.

13. Because Judge Crockett's Order has preclusive effect here, the Developer must submit a major modification application for the Las Vegas City Council's consideration and approval before the City Council may consider any redevelopment applications for the Badlands golf course.

14. Because Judge Crockett's Order requires that the Developer get approval of a major modification, and no such approval was obtained before the Developer submitted its 133-Acre Applications, the City Council properly struck the Developer's 133-Acre Applications, and the Petition for Judicial Review must be denied. However, the Developer's alternative claims for inverse condemnation may proceed in the ordinary course.

15. The Court declines to address any other issues raised by the parties.

ORDER

Accordingly, **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that:

1. The City's Motion to Dismiss is **GRANTED IN PART** as to the Petition for Judicial Review on the grounds of issue preclusion.
2. The Petition for Judicial Review is **DENIED** without prejudice should Judge Crockett's Order be overturned on appeal.
3. The Developer's Countermotion to Allow More Definite Statement If Necessary And Countermotion To Stay Litigation Of Inverse Condemnation Claims Until Resolution Of The Petition For Judicial Review And Countermotion For NRCP Rule 56(F) Continuance are **DENIED AS MOOT** as to the Petition for Judicial Review.

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4. The Developer's alternative claims for inverse condemnation may proceed in the ordinary course.

DATED: October 2, 2019.

THE HONORABLE GLORIA STURMAN
District Court Judge

Submitted By:

McDONALD CARANO LLP

By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 29th day of July, 2021, a true and correct copy of the foregoing **[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER REGARDING MOTION TO DISMISS AND COUNTERMOTION TO ALLOW MORE DEFINITE STATEMENT IF NECESSARY AND COUNTERMOTION TO STAY LITIGATION OF INVERSE CONDEMNATION CLAIMS UNTIL RESOLUTION OF THE PETITION FOR JUDICIAL REVIEW AND COUNTERMOTION FOR NRCP RULE 56(F) CONTINUANCE** 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 "UUUU"

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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, Defendants.	Case No.: A-18-775804-J Dept No.: XXVI **DECLARATION OF CHRISTOPHER MOLINA IN SUPPORT OF THE CITY'S COUNTERMOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO MOTION TO DETERMINE PROPERTY INTEREST**

I, J. Christopher Molina, declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada and an associate in the law firm of McDonald Carano LLP, co-counsel for Defendant City of Las Vegas (the "City"). I make this declaration in support of the City's Countermotion for Summary Judgment and Opposition to Motion to Determine Property Interest.

2. A true and correct copy of excerpts of the deposition of Peccole-Nevada Corporation's NRCP 30(b)(6) designee held on July 16, 2021 is attached as Exhibit SSSS to the City's Supplement to Appendix of Exhibits in Support of City's Countermotion for Summary Judgment and Opposition to Motion to Determine Property Interest.

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

DATED: August 31, 2021.

/s/ J. Christopher Molina
J. Christopher Molina

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EXHIBIT "VVVV"

SUPPLEMENTAL DECLARATION OF SETH T. FLOYD

I, Seth T. Floyd, declare as follows:

1. I am the Director of Community Development for the City of Las Vegas. I have held this position since April 2021 and have been an employee of the City since August 1, 2017. I am one of the custodians of records for the City of Las Vegas Planning Department. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I make this declaration in support of the City's Countermotion for Summary Judgment and Opposition to Motion to Determine Property Interest.

3. The purpose of the R-PD zoning district is to encourage flexibility and innovation in residential development. R-PD zoning is intended to promote enhanced residential amenities through the efficient consolidation of open space. To that end, the R-PD zoning district permitted a variety of open space uses such as parks, trails, golf courses, and other similar uses.

4. Canyon Gate, Desert Shores, Lakes at Sahara, Los Prados, and Painted Desert (collectively, the "Master Planned Communities") are examples of projects developed with substantial open space uses under the R-PD zoning designation.

5. A true and correct copy of a zoning map for each of the Master Planned Communities is attached hereto as **Exhibit VVVV-1**. The zoning maps show how the open space areas and the surrounding residential uses are part of the same R-PD zoning district established for that community.

6. A true and correct copy of a general plan map for each Master Planned Community is attached hereto as **Exhibit VVVV-2**. The general plan maps show how: (i) the areas devoted to open space uses in the Master Planned Communities are designated PR-OS (parks/recreation/open space) in the City's general plan; and (ii) the areas developed with housing have a general plan designation that permits a residential density greater than zero, such as M (medium) or ML (medium low).

7. The open space uses in each of the Master Planned Communities (i.e., golf courses and/or manmade lakes) were included in and made a part of the R-PD zoning district established for those communities. The PR-OS general plan designation is therefore consistent with zoning.

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8. The following table identifies the zoning and general plan designations for both the residential and open space areas in each of the Master Planned Communities:

	Zoning: Residential & Open Space Areas	General Plan: Residential Areas Only	General Plan: Open Space Areas Only
Canyon Gate	R-PD4	L	PR-OS
Desert Shores	R-PD5	L	PR-OS
Lakes at Sahara	R-PD3	L / ML	PR-OS
Los Prados	R-PD9	ML	PR-OS
Painted Desert	R-PD5	ML	PR-OS

9. In order to develop residential uses on property designated PR-OS, the City's general plan must be amended to a designation that permits housing.

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

Executed this 10th day of September 2021.

/s/ Seth T. Floyd
SETH T. FLOYD

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EXHIBIT "VVVV-1"

City of Las Vegas

ZONING
Canyon Gate

- Canyon Gate
- U - (GPA Designation) Undeveloped
- R-PD - Residential Planned Development
- R-1 - Single Family Residential
- R-3 - Medium Density Residential
- R-CL - Single Family Compact-Lot
- C-1 - Limited Commercial
- C-2 - General Commercial

SOURCE: City of Las Vegas Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819

Grid maps are normally produced only to meet the needs of the City Due to continued development activity the map may be out of date.

Prepared by
Geographic Information System
Planning & Development Dept.
702-229-6301

Printed: Monday, August 9, 2021

16687

City of Las Vegas

ZONING
Desert Shores

SOURCE: City of Las Vegas - Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819

Geographic Information System
Planning & Development Dept
702-229-6301

Printed: Monday, August 9, 2021

16688

City of Las Vegas

ZONING
Lakes At Sahara

- Lakes At Sahara
- R-PD - Residential Planned Development
- R-1 - Single Family Residential
- R-CL - Single Family Compact-Lot
- R-3 - Medium Density Residential
- C-1 - Limited Commercial
- C-2 - General Commercial
- C-V - Civic

SOURCE: City of Las Vegas - Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78619

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702-229-6531

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City of Las Vegas

ZONING
Los Prados

- Los Prados
- R-E - Residence Estates
- R-D - Single Family Residential-Restricted
- R-PD - Residential Planned Development
- R-1 - Single Family Residential
- R-CL - Single Family Compact-Lot
- C-1 - Limited Commercial

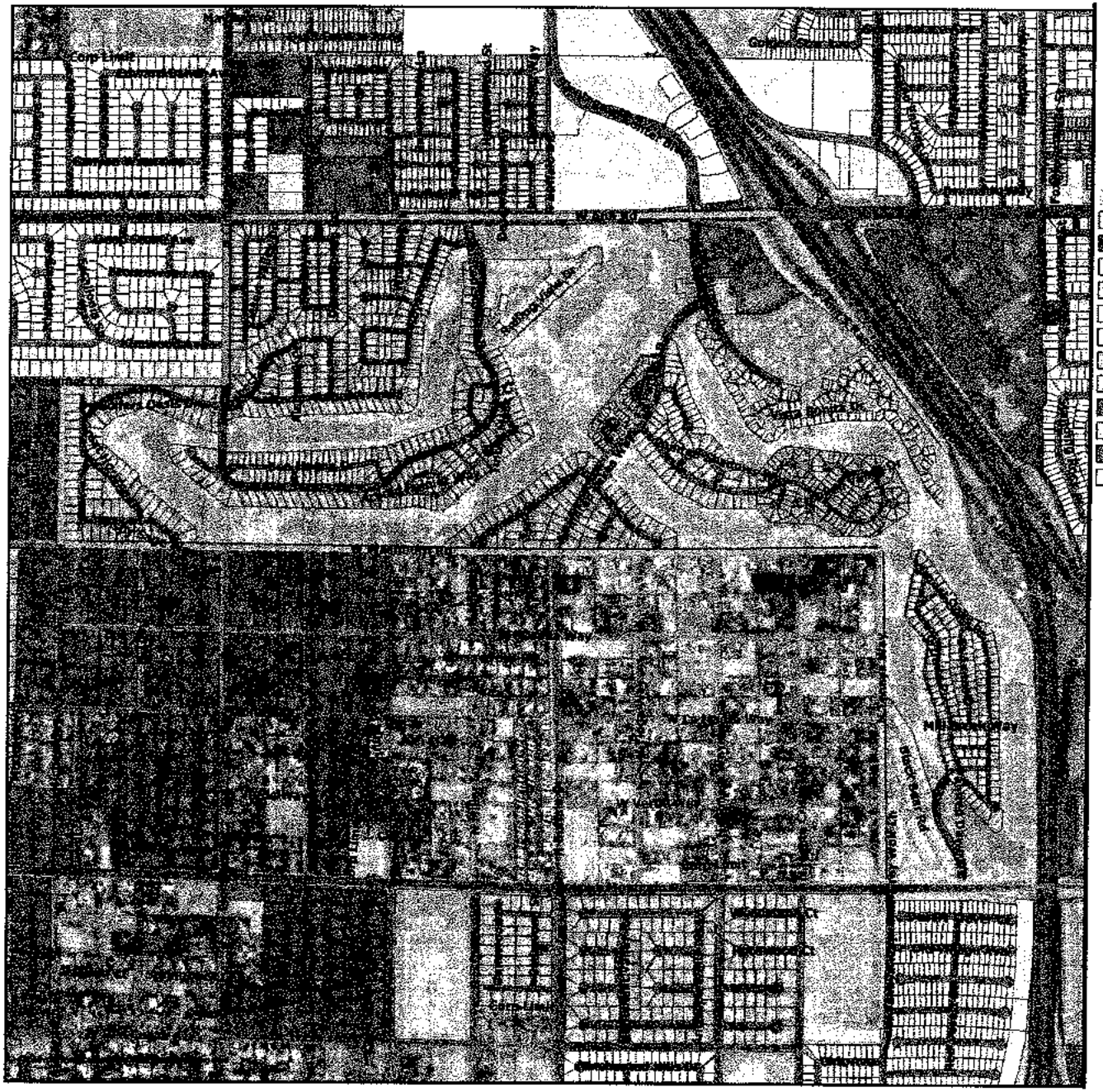
SOURCE: City of Las Vegas, Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819

Geographic Information System
Planning & Development Dept.
702-229-6551

Printed: Monday, August 9, 2021

16690



City of Las Vegas

ZONING
Painted Desert

- Painted Desert
- U - (GPA Designation) Undeveloped
- R-E - Residence Estates
- R-D - Single Family Residential-Restricted
- R-PD - Residential Planned Development
- R-1 - Single Family Residential
- R-CL - Single Family Compact-Lot
- R-3 - Medium Density Residential
- P-R - Professional Offices and Parking
- C-2 - General Commercial
- C-V - Civic
- PD - Planned Development
- T-C - Town Center

SOURCE: City of Las Vegas, Planning and Development Department

GLV Data Revised: August 19, 2020 ZON-76619

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Geographic Information System
Planning & Development Dept.
702-229-6501

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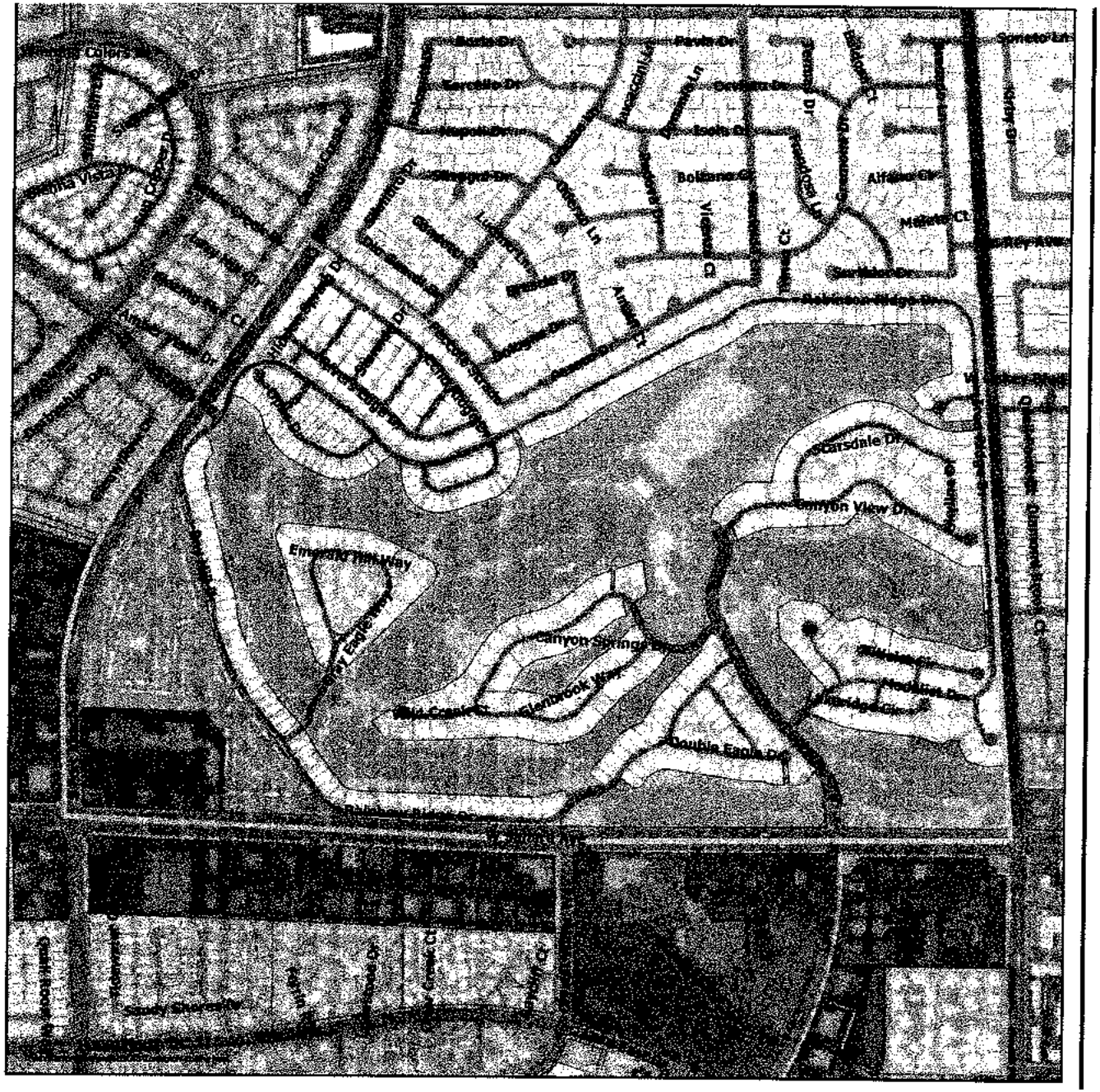
16691

EXHIBIT "VVVV-2"



City of Las Vegas

Future Land Use
Canyon Gate

- Canyon Gate
- Rural
- Low
- Medium
- Medium Low
- Medium Low Attached
- Transit Oriented Corridor -2
- Transit Orented Development - 2
- Service Commercial
- Parks/Recreation/Open Space

SOURCE: City of Las Vegas, Planning and Development Department

CLV Data Revised: August 18, 2020 ZCH-78819

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Geographic Information System
Planning & Development Dept
702-229-6301

Printed: Tuesday, August 10, 2021

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City of Las Vegas

Future Land Use
Desert Shores

- Desert Shores
- Low
- Medium Low
- Medium
- Light Industry / Research
- Neighborhood Mixed Use Center
- Service Commercial
- Parks/Recreation/Open Space
- Public Facilities

SOURCE: City of Las Vegas, Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819

Geographic Information System

Printed Tuesday, August 10, 2021

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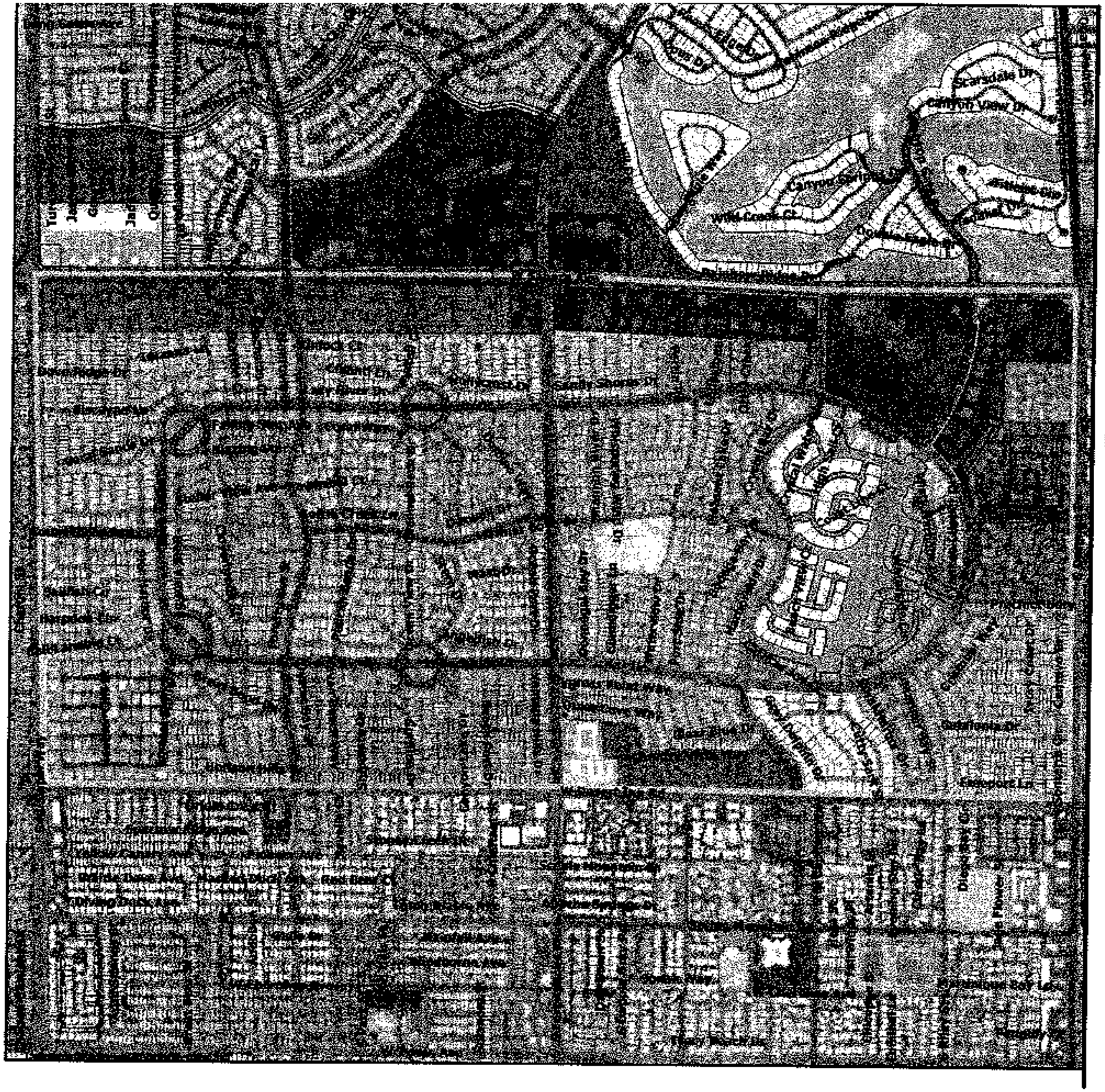

City of Las Vegas

Future Land Use
Lakes At Sahara

- Lakes At Sahara
- Low
- Medium Low
- Medium Low Attached
- Medium
- High
- Neighborhood Mixed Use Center
- Transit Oriented Corridor -2
- Transit Orented Development - 2
- Service Commercial
- Parks/Recreation/Open Space
- Public Facilities

SOURCE: City of Las Vegas, Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-76819

Geographic Information System

Printed: Tuesday, August 10, 2021

16695

City of Las Vegas

Future Land Use
Los Prados

- Los Prados
  - Rural
  - Low
  - Medium Low
  - Service Commercial
- Parks/Recreation/Open Space

SOURCE: City of Las Vegas - Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819

GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity the maps are constantly out of date.

Geographic Information System
Planning & Development Dept
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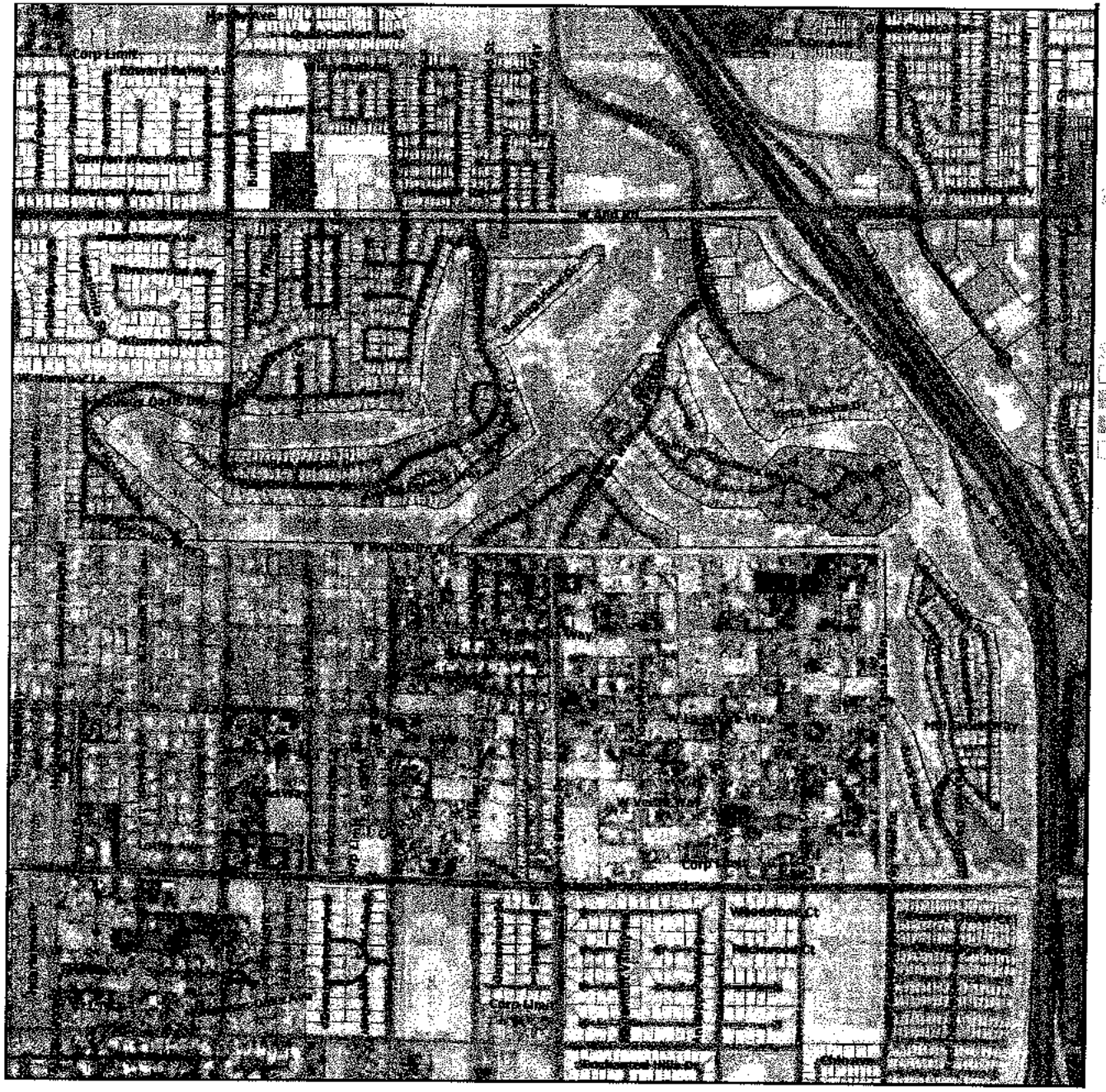

City of Las Vegas

Future Land Use
Painted Desert

- Painted Desert
- Rural Neighborhood Preservation
- Desert Rural
- Rural
- Low
- Medium Low
- Medium
- Neighborhood Mixed Use Center
- Transit Oriented Development - 2
- Office
- Parks/Recreation/Open Space
- Public Facilities
- Town Center

SOURCE: City of Las Vegas, Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819

Geographic Information System
Planning & Development Dept
702-229-6551

Printed: Tuesday, August 10, 2021

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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 **SUMMARY OF PRIOR RULINGS RELEVANT TO HEARING ON LANDOWNERS' MOTION TO DETERMINE TAKE** **Hearing Date: September 23, 2021** **Hearing Time: 1:30 p.m.**

I. INTRODUCTION

This Court has entered several rulings in this case, leaving just one issue for the hearing commencing on September 23, 2021 – whether the City engaged in actions (of which the "aggregate" must be reviewed) to take the Landowners' 35 Acre Property for which the Landowners had the right to use for single family and multi family residential.

II. RULING ON INVERSE CONDEMNATION PROCEDURE

On October 12, 2020, this Court entered Findings of Fact and Conclusions of Law (FFCL) on the proper two-step procedure (two "distinct sub-inquiry") that "must" be followed in this inverse condemnation case. This Court held that the Court "must" **first** determine the "property interest" or "bundle of sticks" owned by the Landowners prior to any alleged taking actions by the City. **Second,** this Court held, it "must determine" whether the City actions alleged by the Landowners constitute a taking of that "property interest" or "bundle of sticks." *See Attached Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest,"* Exhibit 1 to Landowners' Motion to Determine Take, filed on March 26, 2021 (hereinafter "MSJ Exhibit"), p. 4:4-11. Judge Jones heard extensive arguments for two days and entered FFCLs in the 17 Acre Case, also holding that this two-step, distinct sub-inquiry process must be followed in Nevada inverse condemnation proceedings. *See Attached Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest [17 Acre Case],"* MSJ Exhibit 199.

III. RULING ON THE FIRST "PROPERTY INTEREST" OR "BUNDLE OF STICKS" ISSUE

This Court "heard extensive oral arguments" on September 17, 2020, on the **first** distinct sub-inquiry, namely, what property interest or "bundle of sticks" the Landowners had in their 35 Acre Property prior to the City interfering with that property interest. This Court held that the Landowners had the right to use their 35 Acre Property for single family and multi family residential uses prior to the City interfering with that property right:

> 16. Therefore, the Court bases its property interest decision on eminent domain law.
>
> 17. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); Clark County v. Alper, 100 Nev. 382 (1984).
>
> 18. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least 1990.

19. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi family residential as the legally permissible uses on R-PD7 zoned properties.

20. Therefore, the Landowners' Motion to Determine Property Interest is GRANTED in its entirety and it is hereby ORDERED that:

1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and,

2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

See Attached Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest," MSJ Exhibit 1, p. 4:19–5:8.

After two days of extensive argument, Judge Jones entered the same ruling on September 16, 2021, in the 17 Acre Case, finding: 1) the City "conceded the R-PD7 zoning" (3:13-14); 2) Judge Jones cited to **6 Nevada Supreme Court** inverse condemnation and eminent domain decisions that hold "zoning" governs the property interest determination in Nevada inverse condemnation proceedings (pp. 5-6); 3) Judge Jones also cited to facts showing that the relevant three City of Las Vegas Departments have always relied on "zoning" to determine property rights in Las Vegas (pp. 6-8); and, 4) Judge Jones concluded that "[t]he legally permitted uses by right of the 17 Acre Property are single-family and multi-family residential." *See Attached Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest [17 Acre Case],"* MSJ Exhibit 199.

Similarly, another District Court Judge held, in a matter involving the Landowners and the Queensridge homeowners, that the zoning on the entire 250 Acre Land (that includes the 35 Acre Property) is "R-PD7" and this zoning "dictates its use and Defendants [Landowners] rights to develop their land." MSJ Exhibit 27, 17:11-12, 26-28. The Nevada Supreme Court affirmed. MSJ Exhibits 28 and 29.

///

Therefore, this Court (and others) has already decided the **first** sub-inquiry - the property rights issue or, stated another way, the "bundle of sticks" the Landowners had prior to the City interfering with that property right. This means that the sole and only issue at the September 23, 2021, hearing is whether the City engaged in actions to take that underlying property interest.

IV. RULING ON THE CITY ACTIONS THAT MUST BE CONSIDERED WHEN DECIDING THE TAKE ISSUE

This Court has also entered an order that all City actions "in the aggregate" must be considered when deciding the take issue: "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." *See attached*, MSJ Exhibit 8, pp. 8:9-9:2.

V. RULING ON THE LAW TO APPLY TO DECIDE THE PENDING TAKE ISSUE

This Court has also entered an order that eminent domain and inverse condemnation law, not Petition for Judicial Review (PJR) law, must be used to decide the take issue. This Court has entered several orders rejecting the City's attempt to apply PJR law and, instead, held that eminent domain and inverse condemnation law should apply to decide the take issue in this case. *See e.g. Attached Order Denying City's Motion for Judgment on the Pleadings, etc.*, MSJ Exhibit 8, pp. 21-23; *See also attached,* MSJ Exhibit 1, 4:14-18; *See also attached,* MSJ Exhibit 7, 11:13-22. Specifically, this Court held "Because of these different evidentiary standards, the Court concludes that its conclusions of law regarding the petition for judicial review do not control its consideration of the [Landowners'] inverse condemnation claims." *See attached,* MSJ Exhibit 7:20-22. Judge Jones also held in the 17 Acre Case that PJR law should not be used in these inverse condemnation cases. *See Attached,* MSJ Exhibit 199, pp. 11-12. The Nevada Supreme Court just three months ago adopted the same rule, holding in the case of City of Henderson v. Eighth Judicial Dist. Ct., 137 Nev. Adv. Op. 26 (June 24, 2001), that a

PJR claim and other civil claim are like "water and oil, the two will not mix." Finally, this Court made this very clear to the City's privately-retained counsel at a very recent hearing in this matter as follows:

> "Wait. Wait. Wait. Wait...the law as it relates to petitions for judicial review are much different than a civil litigation seeking compensation for inverse condemnation, sir...the standards are different. . . . I mean, it's a totally different – it's an administrative process versus a full-blown jury trial in this case. It's different completely." *May 13, 2021, hearing transcript on City's motion to reconsider discovery issues, at 69:20-70:7.*

VI. RULING ON THE CITY'S MASTER PLAN PR-OS ARGUMENT

This Court has also entered an order rejecting the City's PR-OS Master Plan land use argument. First, the only place this PR-OS Master Plan argument could be relevant is during the **first sub-inquiry,** property interest arguments, and the City presented its PR-OS Master Plan land use argument during the "extensive argument" on the property interest issue and this Court rejected the PR-OS argument, holding that "zoning must be relied upon to determine a landowners' property interest in an eminent domain case." *See Attached,* MSJ Exhibit 1, 4:20-21. Judge Jones also rejected the PR-OS argument in detail in the 17 Acre Case, holding: 1) Nevada law requires that zoning must be used to decide the property interest issue, not a master plan PR-OS designation; 2) even if there was a PR-OS master plan land use designation, NRS 278.349(3)(e) states "zoning takes precedence" over any other master plan land use designation; 3) the only legally adopted Master Plan land use designation for the 250 Acre Property was "Medium" residential and there is no evidence this was legally changed to PR-OS; and 4) the City's own long-time City Attorney Brad Jerbic, confirmed there was never a legal change to PR-OS on the 250 Acre Land on the City's master plan. *See attached,* MSJ Exhibit 199, pp. 13-14. In all, Nevada District Courts and the Nevada Supreme Court have <u>ten times</u> rejected the City's PR-OS argument.

VII. RULING ON RIPENESS

This Court entered a decision very early in this case that the Landowners' inverse condemnation "claims were ripe because 180 Land [the Landowners] obtained a final decision from the City regarding

the property at issue and 'a final decision by the responsible state agency informs the constitutional determination whether a regulation has deprived a landowner of 'all economically beneficial use' of the property.' *Palazzolo v. Rhode Island,* 533 U.S. 606, 618, 121 S.Ct. 2448, 2458 (2001)."

VIII. CONCLUSION

After substantial litigation in this matter, the sole and narrow issue for the September 23, 2021, evidentiary hearing is whether the City engaged in actions (of which the "aggregate" must be reviewed) to take the Landowners' 35 Acre Property for which the Landowners had the right to use for single family and multi family residential and that sole and narrow issue should be decided based upon United States and Nevada inverse condemnation law, not PJR law.

DATED this 22nd day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt

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Attorneys for Plaintiffs Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 22nd day of September, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **SUMMARY OF PRIOR RULINGS RELEVANT TO HEARING ON LANDOWNERS' MOTION TO DETERMINE TAKE** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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/s/ Sandy Guerra
an employee of the Law Offices of Kermitt L. Waters

Exhibit 1

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Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, and FORE STARS, Ltd., 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 **FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** Hearing Date: September 17, 2020 Hearing Time: 9:00 a.m.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd (hereinafter Landowners), brought Plaintiff Landowners' Motion to Determine Property Interest before the Court on September 17, 2020, with James Jack Leavitt, Esq of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' corporate counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilve III Esq. and Andrew Schwartz, Esq. appearing for and on behalf

of the Defendant, City of Las Vegas (hereinafter the City). Having reviewed all pleadings and attached exhibits filed in this matter and having heard extensive oral arguments on September 17, 2020, in regards to Plaintiff Landowners' Motion to Determine Property Interest, the Court hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff 180 Land Company, LLC is the owner of an approximately 35 acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005 (hereinafter 35 Acre Property).

2. The Landowners' Motion to Determine Property Interest requests this Court enter an order that: 1) the 35 Acre Property is hard zoned R-PD7 as of the relevant September 14, 2017, date of valuation; and, 2) that the permitted uses by right under the R-PD7 zoning are single-family and multi-family residential.

3. In their submitted briefs, the Landowners and the City presented evidence that the 35 Acre Property has been zoned R-PD7 since at least 1990, including: 1) Z-17-90, Resolution of Intent to Rezone the 35 Acre Property to R-PD7, dated March 8, 1990 (Exhibit H to City's Opposition, Vol. 1:00193); and, Ordinance 5353, passed by the City of Las Vegas City Council in 2001, which hard zoned the 35 Acre Property to R-PD7 and repealed anything in conflict (Exhibit 10 to Landowners' Motion).

4. In response to the Landowners' inquiry regarding zoning prior to purchasing the 35 Acre Property, on December 30, 2014, the City of Las Vegas Planning & Development Department provided the Landowners a Zoning Verification Letter, stating, in part: 1) the 35 Acre Property is "zoned R-PD7 (Residential Planned Development District - 7 unites per acre);" 2) "[t]he density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.); and 3) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Exhibit 3 to Landowners' Motion.

5. The City stated in its opposition to the Landowners' motion that the R-PD7 zoning on the 35 Acre Property "is not disputed." City's Opposition to Motion to Determine Property Interest, 10:17-18.

6. As stated in the City Zoning Verification Letter provided to the Landowners on December 30, 2014, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal Code (hereinafter LVMC), Title 19.

7. LVMC 19.10.050 is entitled "R-PD Residential Planned Development District" and is the applicable section of the LVMC used to determine those permitted uses on R-PD7 zoned properties in the City of Las Vegas. Exhibit 5 to Landowners' Motion.

8. LVMC 19.10.050 (C) lists as "Permitted Land Uses" on R-PD zoned properties "[s]ingle-family and multi-family residential." Id.

9. LVMC 19.10.050 (A) also provides that "the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts." Id. The standard residential districts are listed on the City Land Use Table, LVMC 19.12.010. Exhibit 6 to Landowners' Motion. The R-2 residential district listed on the City Land Use Table is the standard residential district most comparable to the R-PD7 zoning, because R-PD7 allows up to 7 units per acre[1] and R-2 allows 6-12 units per acre.[2] The "permitted" uses under the R-2 zoning on the City Land Use Table include "Single Family, Attached" and "Single-Family, Detached" residential uses. LVMC 19.12.010, Exhibit 6 to Landowners' Motion.

10. Table 1 to the City Land Use Table provides that if a use is "permitted" in a certain zoning district then "the use is permitted as a principle use in that zoning district by right." Id.

11. "Permitted Use" is also defined at LVMC 19.18.020 as "[a]ny use allowed in a zoning district as a matter of right." Exhibit 8 to Landowners' Motion.

12. The Landowners have alleged that the City of Las Vegas has taken the 35 Acre Property by inverse condemnation, asserting five (5) separate inverse condemnation claims for relief, a

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[1] *See* City Zoning Verification Letter, Exhibit 3 to Landowners' Motion and LVMC 19.10.050 (A), Exhibit 5 to Landowners' Motion.

[2] *See* LVMC 19.06.100, Exhibit 7 to Landowners' Motion.

Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking, and a Temporary Taking.

CONCLUSIONS OF LAW

13. The Nevada Supreme Court has held that in an inverse condemnation, such as this, the District Court Judge is required to make two distinct sub inquiries, which are mixed questions of fact and law. ASAP Storage, Inc., v. City of Sparks, 123 Nev. 639 (2008); McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006). First, the District Court Judge must determine the "property interest" owned by the landowner or, stated another way, the bundle of sticks owned by the landowner prior to any alleged taking actions by the government. *Id.* Second, the District Court Judge must determine whether the government actions alleged by the landowner constitute a taking of the landowners property. *Id.*

14. The Landowners' Motion to Determine Property Interest narrowly addresses this first sub inquiry and, accordingly, this Court will only determine the first sub inquiry.

15. In addressing this first sub inquiry, this Court has previously held that: 1) "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims;"[3] and, 2) "[a]ny 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."[4]

16. Therefore, the Court bases its property interest decision on eminent domain law.

17. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); Clark County v. Alper, 100 Nev. 382 (1984).

18. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least 1990.

---

[3] Exhibit 18 to Landowners' Reply, App. at 0026 / 23:7-8

[4] Exhibit 18 to Landowners' Reply, App. at 0010 / 7:26-27

19. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi family residential as the legally permissible uses on R-PD7 zoned properties.

20. Therefore, the Landowners' Motion to Determine Property Interest is **GRANTED** in its entirety and it is hereby **ORDERED** that:

1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and,

2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

DATED this 9th day of October, 2020.

DISTRICT COURT JUDGE

Respectfully Submitted By:

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Attorneys for Plaintiff Landowners

Submitted to and Reviewed by:

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By: *Declined signing*
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Exhibit 7

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Attorneys for 180 Land Company, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **~~[PROPOSED]~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF'S MOTION FOR A NEW TRIAL, MOTION TO ALTER OR AMEND AND/OR RECONSIDER THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND MOTION TO STAY PENDING NEVADA SUPREME COURT DIRECTIVES**

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

Intervenors.

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

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

I. FINDINGS OF FACT

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

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

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

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

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

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

7. The Developer 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

C. The Developer's Repetition of its Previous Arguments is Not Grounds for Reconsideration

8. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

cannot satisfy its burden of showing "clear error." The Developer has failed to show that the Court's previous conclusion that the City Council did not abuse its discretion was clearly erroneous.

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

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

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

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

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

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

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

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

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

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

J. Effect On The Developer's Inverse Condemnation Claims

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

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

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

ORDER

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

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

DATED: May 6th, 2019.

TIMOTHY C. WILLIAMS
District Court Judge

CB + TCW

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Exhibit 8

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Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **ORDER 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 "$15 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 ~~6th day of April~~ May 14, 2019. CJ

DISTRICT COURT JUDGE

Respectfully Submitted By:
LAW OFFICES OF KERMITT L. WATERS

By: _____

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Exhibit 199

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD; SEVENTY ACRES LLC, a Nevada liability company; DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITIES COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE government entities I though X, ROE LIMITED LIABILITY COMPANIES I though X, ROE quasi-governmental I through X, Defendants.	Case No.: A-18-773268-C Dept No.: XXIX **FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** **Hearing Date: August 13, 2021** **Hearing Time: 8:30 a.m.**

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Case Number: A-18-773268-C

Plaintiffs, FORE STARS, LTD. and SEVENTY ACRES LLC, a Nevada Limited Liability Company (hereinafter Landowners), brought Plaintiff Landowners' Motion to Determine "Property Interest" before the Court at an evidentiary hearing on August 13, 2021, with Kermitt L. Waters, Esq., and James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' in-house counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III, Esq. and Christopher J. Molina, Esq., of McDonald Carano. Andrew Schwartz, Esq. of Shute, Mihaly & Weinberger, LLP, and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq. with the City Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter "City"). Having reviewed all pleadings and attached exhibits filed in this matter, and having heard extensive oral arguments at the evidentiary hearing, the Court enters, based on the evidence presented, the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Landowners are the owner of an approximately 17.49 Acre parcel of property generally located near the southwest corner of Rampart Blvd and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel number 138-32-301-005 (hereinafter "17 Acre Property").

2. On April 20, 2018, the Landowners filed a complaint alleging that the City took their property by inverse condemnation.

3. The Nevada Supreme Court has held that in an inverse condemnation action, such as this, the District Court Judge is required to make two distinct sub inquiries, which are mixed questions of fact and law. ASAP Storage, Inc., v. City of Sparks, 123 Nev. 639 (2008); McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006). First, the District Court Judge must determine the "property interest" owned by the landowner or, stated another way, the "bundle of sticks" owned by the landowner prior to any alleged taking actions by the government. *Id.* Second, the District

Court Judge must determine whether the government actions alleged by the landowner constitute a taking of the landowners property. *Id.*

4. The Landowners filed a motion requesting that this Court enter a finding on the first sub-inquiry to determine the property interest / "bundle of property sticks" they had in their 17 Acre Property prior to any alleged City interference with the use of the 17 Acre Property and prior to the filing of the Complaint in this matter. Specifically, the Landowners request a finding that the 17 Acre Property was hard zoned R-PD7 and re-zoned to R-3 and that the legally permissible uses of the 17 Acre Property, pursuant to the R-PD7 and R-3 zoning, were single-family and multi-family residential uses.

5. As the Landowners' request narrowly addresses this first sub inquiry, this Court will only determine the first sub inquiry, at this time.

<u>The R-PD7 Zoning and the Landowners' Due Diligence</u>

6. The City conceded the R-PD7 zoning at the evidentiary hearing and the evidence presented confirms this R-PD7 zoning.

7. Landowner Exhibit 30, Bates numbers 000443 – 000480, particularly the zoning action and map on bates numbers 000449-451, and 462, is evidence that on May 20, 1981, the City of Las Vegas City Commission (now the City Council), at a public hearing, zoned the 17 Acre Property for a residential use (R-PD7).

8. Landowners' Exhibit 31, Bates numbers 000481 – 482, is evidence that on April 4, 1990, the City Council, at a public hearing, confirmed the R-PD7 zoning on the 17 Acre Property.

9. Landowners' Exhibit 8, Bates numbers 000104 – 185 is evidence that on August 15, 2001, the City Council, at a public hearing, adopted Ordinance 5353 that confirmed the R-PD7 zoning on the 17 Acre Property and states "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."

10. The Landowners presented further evidence that from 2001 through 2014, prior to acquiring the 17 Acre Property, they engaged in significant due diligence to confirm the zoning and developability of the 17 Acre Property and, during this approximately 14 year period, the City of Las Vegas Planning Department, on numerous occasions, confirmed the residential zoning on the 17 Acre Property, that the residential zoning governed the development of the 17 Acre Property, and this residential zoning conferred the right to develop the 17 Acre Property residentially. Exhibit 5, 000042, para. 6; 000043, para. 8; Exhibit 6, 000068, pp. 74-75.

11. The Landowners presented further evidence that, to complete their due diligence just prior to acquiring the 17 Acre Property, they requested and obtained from the City a "Zoning Verification Letter" on December 30, 2014, which states, in part: 1) the 17 Acre Property is "zoned R-PD7 (Residential Planned Development District - 7 units per acre);" 2) "the R-PD District is intended to provide for flexibility and innovation in residential development;" 3) "[t]he density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example. R-PD4 allows up to four units per gross acre.); and 4) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Exhibit 7.

12. The City also did not contest during the evidentiary hearing that the residential zoning information was provided to the Landowners as part of their due diligence prior to acquiring the 17 Acre Property.

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The R-3 Zoning

13. The parties agree that, prior to the April 20, 2018, filing of the complaint in this matter, on February 15, 2017, the City of Las Vegas re-zoned the 17 Acre Property to R-3, for the construction of 435 residential units. Exhibit 3, 000015:8-9; Exhibit 5, at 000263-275.

Zoning and the Likelihood of a Re-Zoning Governs the Property Interest Determination in Nevada Inverse Condemnation Cases

The Nevada Supreme Court

14. Nevada Supreme Court precedent provides that zoning and the likelihood of re-zoning governs the property interest determination in this inverse condemnation case.

15. In the inverse condemnation case of McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006), the Nevada Supreme Court, in the section entitled "The Property," determined Mr. Sisolak's property rights, relying on zoning: "During the 1980's, Sisolak bought three adjacent parcels of land for investment purposes, which were each zoned for the development of a hotel, a casino, or apartments." Sisolak, at 651. Zoning was also used to determine the compensation due Mr. Sisolak. Sisolak, at 672.

16. In the inverse condemnation case of Clark County v. Alper, 100 Nev. 382, 390 (1984), the Nevada Supreme Court held, "when determining the market value of a parcel of land at its highest and best use, due consideration should be given to those zoning ordinances that would be taken into account by a prudent and willing buyer."

17. In the eminent domain case of City of Las Vegas v. C. Bustos, 119 Nev. 360, 362 (2003), the Nevada Supreme Court affirmed a district court, concluding "the district court properly considered the current zoning of the property, as well as the likelihood of a zoning change." *See also* County of Clark v. Buckwalter, 974 P.2d 1162, 59 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh'g sub nom. Alper v. State, 621 P.2d 492, 878 (Nev. 1980); Andrews v. Kingsbury Gen. Imp. Dist. No. 2, 436 P.2d 813, 814 (Nev. 1968).

18. The Court relies on both inverse condemnation and direct eminent domain cases, because the Nevada Supreme court has held, "inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles applied to formal condemnation proceedings." County of Clark v. Alper, 100 Nev. 382, 391 (1984).

The Nevada Legislature

19. Nevada Revised Statutes also provide that zoning is of the highest order when determining property rights in the State of Nevada. NRS 278.349(3)(e) provides if "any existing zoning ordinance is inconsistent with the master plan, the zoning takes precedence."

The Nevada Executive Branch

20. The Court also finds persuasive Attorney General Opinion 84-06, which finds that "[i]n 1977, the Nevada Legislature declared its intention that zoning ordinances take precedence over provisions contained in a master plan" and that the Legislature's "recent enactment buttresses our conclusion that the Nevada Legislature always intended local zoning ordinances to control over general statements or provisions of a master plan." Exhibit 23.

Three City Departments

21. The Court also finds persuasive that the three departments at the City which would provide an opinion on the adoption, interpretation, and application of zoning at the City of Las Vegas have confirmed zoning is of the highest order when determining property rights.

22. The City Planning Department confirmed zoning is of the highest order: 1) zoning trumps everything; 2) "if the land use [master plan] and the zoning aren't in conformance, then the zoning would be the higher order entitlement; 3) and "a zone district gives a property owner property rights." Exhibit 6, 000068, pp. 74-75; Exhibit 46, 000608, p. 53:4-6; Exhibit 54 (LO Appx. Ex. 160 at 005007, p. 242:5-6.

23. The City Attorney's Office confirmed that zoning is of the highest order. Veteran City Attorney Brad Jerbic stated, in speaking directly about this property, "the rule is the hard zoning, in my opinion, does trump the General Plan [Master Plan] designation. Exhibit 17, p. 000227:1787-1789. Veteran deputy City attorney Phil Byrnes and Brad Jerbic submitted pleadings to the Eighth Judicial District, which state: 1) "in the hierarchy, the land use designation [master plan] is subordinate to the zoning designation;" 2) "zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses;" and, 3) a master plan is a "planning document" and a land use designation on a master plan "was a routine planning activity that had no legal effect on the use and development" of affected property. Exhibit 24, 000253:8-12; Exhibit 26, 000282-283.

24. The City Tax Assessor's department confirmed that zoning is of the highest order. After the Landowners acquired the 17 Acre Property, the Clark County Tax Assessor, who is "ex officio, the City Assessor of the City" (City Charter Sec. 3.120), was required to determine the "full cash value" of the 17 Acre Property by "considering the uses to which it may lawfully be put" and "any legal or physical restrictions" pursuant to NRS 361.227(1). The assessor determined the use of the 17 Acre Property to be "residential" based on the "zoning designation: R-PD7," placed a value of $88 million on the entire 250 Acre Property, and has been taxing the Landowners approximately $1 million per year based on this lawful "residential" use. The City does not contest this tax evidence. *See* Exhibit 40 (LO Appx. Ex. 49, Bates number 001164-001179); Exhibit 41 (LO Appx. Ex. 52, Bates number 001184-001189, specifically, 001185); Exhibit 53 (LO Appx. Ex. 151, Bates number 004831-4836); Exhibit 53 (LO Appx. Ex. 152, Bates number 004837-4861).

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25. Evidence was also presented at the evidentiary hearing that the City's 2050 Master Plan states that zoning is "the law" and the Master Plan is a "policy." Exhibit 44, Bates number 000595.

26. Finally, the Court finds persuasive that in litigation involving adjoining landowners, who were trying to stop residential development on the 17 Acre Property, the District Court held "the zoning on the GC Land [250 Acre Property] dictates its use and Defendants [Landowners] rights to develop their land. Exhibit 55 (LO Appx. Ex. 173, Bates number 005123-5167, specifically 0005142:11-12).

27. Based on the foregoing, the Court will rely on zoning to determine the property rights issue in this matter. Specifically, the Court will consider "the current zoning of the property, as well as the likelihood of a zoning change" as directed by the Nevada Supreme Court in City of Las Vegas v. C. Bustos, 119 Nev. 360, 362 (2003).

28. As the evidence is undisputed that the 17 Acre Property had R-PD7 zoning since 1981 and was re-zoned to R-3 on February 15, 2017, the Court turns to the RPD-7 and R-3 zoning to determine the property rights issue.

Legally Permissible Uses of R-PD7 and R-3 Zoned Properties

General Zoning Standards

29. As stated in the City's official Zoning Verification Letter provided to the Landowners on December 30, 2014, Exhibit 7, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal Code (hereinafter "LVMC") Title 19. Therefore, the Court looks to the LVMC for guidance on the legally permitted uses of property zoned R-PD7.

30. LVMC 19.18.020 (Words and Terms Defined) defines Zoning District as "An area designated on the Official Zoning Map in which certain uses are permitted and certain others are not permitted, all in accordance with this Title."

31. LVMC 19.18.020 (Words and Terms Defined) defines Permitted Uses as "Any use allowed in a zoning district as a matter of right if it is conducted in accordance with the restrictions applicable to that district. Permitted uses are designated in the Land Use Table by the Letter 'P.'"

32. LVMC 19.16.090 is entitled "Rezoning" and section (O) states that once zoning is in place, "[s]uch approval authorizes the applicant to proceed with the process to develop and/or use the property in accordance with the development and design standards and procedures of all City departments and in conformance with all requirements and provisions of the City of Las Vegas Municipal Code."

R-PD7 Zoning

33. LVMC 19.10.050 is the part of the LVMC directly applicable to the R-PD7 zoning on the 17 Acre Property. The "R" in P-PD7 zoning stands for "residential. Section (A) identifies the "Intent of the R-PD District" and states that "the R-PD District has been to provide for flexibility and innovation in residential development" and section (C) lists as the "Permitted Land Uses," "Single family and multi-family residential." Exhibit 10.

34. The City Attorney at the time, Brad Jerbic, further stated in regards to the R-PD7 zoning on the 17 Acre Property that the City "Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in and develop." Landowners' Exhibit 16, Transcript, 10.18.16 Special Planning Comm. Meeting, 000225:3444-3445.

R-3 Zoning

35. In regards to R-3 zoning. LVMC 19.12.010(B) is the City Code "Land Use Table" which identifies those uses "permitted as a principle use in that zoning district by right" with a "P" designation. The R-3 zoning lists "multi-family residential," "single family attached," and "single family detached" with a "P" designation, meaning these are uses "permitted as a principle use in [the R-3] zoning district by right."

36. Accordingly, the R-PD7 and R-3 zoning on the 17 Acre Property provide the Landowners the right to use the 17 Acre Property for single family residential and multi-family residential uses. In fact, the City conceded this issue when it re-zoned the 17 Acre Property to R-3 and granted the 435 residential units on February 15, 2017, prior to the filing of the complaint in this matter. *See* Exhibit 3, 000015:8-9.

The Judge Williams Order in the 35 Acre Case

37. The Court also takes notice of the property interest order entered by Judge Williams in the 35 Acre Case, which addressed the same issue before this Court, except that the 35 Acre Property was not yet re-zoned to R-3 prior to the filing of the Complaint in that matter.

38. Judge Williams held: 1) "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims" as they are entirely different types of proceedings; 2) "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;" 3) "Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case [citations omitted];" and. 4) "the Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi-family residential as the legally permissible uses on R-PD7 zoned properties." Exhibit 2.

39. Judge Williams then concluded, "1) "the 35 Acre Property is hard zoned R-PD7 at all relevant time herein; and, 2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential." Exhibit 2.

40. The Court finds Judge Williams order in the 35 Acre Case to be persuasive as it is on the same issue now pending before this Court.

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Petition for Judicial Review Law

41. The Court declines the City's request to apply petition for judicial review rules from the cases of Stratosphere Gaming Corp., v. City of Las Vegas, 120 Nev. 523 (2004); Nova Horizon v. City of Reno, 105 Nev. 92 (1989); Am. W. Dev. Inc. v. City of Henderson, 111 Nev. 804 (1995), Boulder City v. Cinnamon Hills Assoc., 110 Nev. 238 (1994); Tigh v. Von Goerken, 108 Nev. 440 (1992) and other petition for judicial review cases cited by the City. The Nevada Supreme Court very recently held in City of Henderson v. Eighth Judicial Dist. Ct, 137 Nev. Adv. Op. 26 (June 24, 2001) that petition for judicial review actions are entirely distinct from other civil actions - "[c]ivil actions and judicial review actions are distinct types of legal proceedings. ... Thus the district court's role is entirely different in hearing a petition for judicial review, where the district court functions in a quasi-appellate role distinct from its usual role as a trial court." The Court concluded that "petitions for judicial review of land use decisions pursuant to NRS 278.3195 are distinct from civil actions, and as such, they cannot be joined together" and "[t]o conclude otherwise would allow confusingly hybrid proceedings in the district courts, wherein the limited appellate review of an administrative decision would be combined with broad, original civil trial matters." Id. This is an inverse condemnation case, not a petition for judicial review case, and the Nevada Supreme Court inverse condemnation cases, cited above, set forth the rule for deciding the property interest in this inverse condemnation case. Therefore, it would be improper to apply petition for judicial review law (that has limited review) in this inverse condemnation action (that includes broad, original review).

42. The Court also declines the City's request to apply the petition for judicial review order from the 35 Acre Case entered by Judge Williams for the reasons stated above. Moreover, Judge Williams himself held "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims."

Exhibit 2, 000012:14-16. Additionally, the Judge Williams 35 Acre petition for judicial review order was based, in part, on the Crockett Order [that adopted the PR-OS] and the Crockett Order has been reversed by the Nevada Supreme Court (Exhibit 4). Finally, as explained, Judge Williams granted the Landowners' motion to determine property interest in the inverse condemnation side of the 35 Acre Case (Exhibit 2), which is directly relevant to the pending issue, not the questionable petition for judicial review order.

43. The Court also declines the City's request to apply the petition for judicial review order from the 133 Acre Case entered by Judge Sturman for the reasons stated above. Moreover, Judge Sturman's petition for judicial review order expressly states that, "Without reaching any other issued raised by the parties, the Court makes the following conclusions of law: 1. Based on the doctrine of issue preclusion, Judge Crockett's Order has preclusive effect on this case." Eighth Judicial District Court case no. A-18-775804-J, filing dated July 29, 2021, p. 7:2-5. And, the Crockett Order has been reversed by the Nevada Supreme Court. Exhibit 4.

44. Finally, the City's petition for judicial review law is inconsequential as the City conceded the R-PD7 zoning and conceded the use of the 17 Acre Property for 435 residential units when it re-zoned the property to R-3 zoning to allow this use on February 15, 2017.

<u>The Herndon Order</u>

45. The Court also declines the City's request to apply the Herndon Order from the 65 Acre Case. Judge Herndon stated at the end of his order that his ruling was very limited to the ripeness doctrine and that ripeness holding "renders further court inquiry unnecessary." Eighth Judicial District Court case no. A-18-780184-C, filed on December 30, 2020, p. 35:5-8. Judge Herndon also specifically held that "the court believes that addressing the merits of any of the remaining issues would be unwise as there are companion cases still pending with similar issues and any ruling by this court on the remaining issues could be construed as having preclusive effect

in the other pending court actions, much like the then controlling Crockett Order [now reversed] was previously perceived to have had in both the 35-Acre Property case and the 133-Acre Property case." Id., p. 35:9-14. Therefore, Judge Herndon did not reach the merits of the pending property interest issue and, moreover, it would be improper for this Court to rely on the Herndon Order where Judge Herndon himself held it should not be relied upon.

The Master Plan Land Use as Parks, Recreation, Open Space (PR-OS) Issue

46. The Court declines the City's request to apply the City Master Plan, in place of zoning, to determine the property interest in this inverse condemnation case.

47. First, as stated above, Nevada Supreme Court precedent relies on zoning to determine the property interest in inverse condemnation and eminent domain proceedings, not a master plan land use designation. In this same connection, as explained above, three City departments – Planning, the City Attorney's Office, and Taxation – have confirmed that zoning is applied to determine property rights. The City tax department in 2016 used "residential" based on the "zoning designation: R-PD7," as the "lawful" use of the 17 Acre Property in order to collect taxes from the Landowners in the amount of $1 million per year for the past five years and back taxes upon conversion pursuant to NRS 361A.280. To allow the City to shift positions in this inverse condemnation action, where it may be liable to pay compensation, and now claim that the residential zoning is not used to determine the "lawful" use of the property, but instead the master plan PR-OS designation should be applied, violates basic and fundamental notions of fairness and justice.

48. Second, even if there was a PR-OS land use designation on the City's Master Plan, zoning would still apply to determine the property interest issue, because NRS 278.349(3)(e) provides if "any existing zoning ordinance is inconsistent with the master plan, the zoning takes precedence."

49. Third, Landowners' Exhibit 30, specifically Bates numbers 000443-448, and Exhibit 42 (LO Appx. Ex. 6, specifically Bates numbers 000051 and 000069) are evidence that the first City Master Plan designation for the 17 Acre Property was MED and ML, which is the land use designation for a residential use for 6-12 residential units per acre and which is consistent with the R-PD7 zoning that legally permits up to 7 residential units per acre. And, the City has failed to present the evidence showing that this original MED and ML City Master Plan land use designation was ever legally changed from MED and ML to PR-OS, pursuant to the legal requirements set forth in NRS Chapter 278 and LVMC 19.16.030. *See* Exhibit 56 (LO Appx. Exs. 177 and 178), listing the requirements to make a parcel specific amendment to the City's Master Plan.

50. Fourth, City Attorney, Brad Jerbic, confirmed the City Attorney's Office researched the alleged PR-OS Master Plan land use designation and determined there was never a proper change to PR-OS on the City's Master Plan: "There is absolutely no document that we could find that really explains why anybody thought it should be changed to PR-OS, except maybe somebody looked at a map one day and said, hey look, it's all golf course. It should be PR-OS. I don't know." Exhibit 18, Bates number 000228:1943-1948.

51. The Court also declines the City's request to find the Landowners conceded to a PR-OS master plan land use designation. The Landowners presented evidence that they vehemently objected in writing to any alleged PR-OS designation on any part of the 250 Acre Property and, when requested by the City to file a GPA application that references the PR-OS designation, the Landowners submitted the GPA application with a letter stating the GPA application was "<u>submitted under protest</u>." Exhibit 56 (LO Appx. Exs. 180 and 182).

52. Finally, the City's 25-day statute of limitations argument does not apply here, because the Landowners are not challenging a change to the PR-OS on the City's master plan, they maintain, and the Court agrees, that the evidence shows a PR-OS change never occurred

The "Condition" Issue

53. The Court also declines the City's request to find there is a "condition" that the 17 Acre Property remain a golf course and open space into perpetuity.

54. There is no evidence that there is any such alleged condition or that the alleged condition was ever properly recorded at the Clark County Recorder's Office in the 17 Acre Property chain of title.

55. Moreover, "a grantee can only be bound by what he had notice of, not the secret intentions of the grantor." Diaz v. Ferne, 120 Nev. 70, 75 (2004). *See also* In re Champlain Oil Co. Conditional Use Application, 93 A.3d 139 (Vt. 2014) ("land use regulations are in derogation of private property rights and must be construed narrowly in favor of the landowner." Id., at 141); Hoffmann v. Gunther, 666 N.Y.S.2d 685, 687 (S.Ct. App. Div. 2nd Dept. N.Y. 1997) (not every item discussed at a hearing becomes a "condition" to development, rather the local land use board has a duty to "clearly state" the conditions within the approval ordinance without reference to the minutes of a proceeding. Id., at 687).

The Purchase Price Issue

56. The Court declines the City's request to apply the purchase price the Landowners paid to acquire all of the assets of Fore Stars, Ltd., the entity that owned the entire 250 Acre Property (that includes the 17 Acre Property) in 2015, as one of the guiding factors to decide the property rights issue.

57. The City cites no Nevada law where a court relied on the purchase price to decide the pending property rights issues and the six Nevada Supreme Court inverse condemnation and

direct condemnation cases referenced above uniformly relied on zoning, not a purchase price paid for a property, to determine the property rights issue.

58. Moreover, although the City presented evidence of what the purchase price for the Fore Stars, Ltd. entity may have been, the Landowners referenced the deposition of the principle, Yohan Lowie, that occurred one day prior to the hearing in this matter, on August 12, 2021, and argued that, in that deposition, Mr. Lowie laid out in detail the approximately 14 years of due diligence and work done to acquire the 250 Acre Property, the extensive consideration that was involved in the acquisition, amounting to approximately $100 million and $45 million of direct monetary compensation, which is contrary to the purchase price presented by the City.

Therefore, the Landowners' request that the Court determine the property interest is **GRANTED** in its entirety and it is hereby **ORDERED** that:

1) The determination of the property interest in this inverse condemnation action must be based on inverse condemnation and eminent domain law;

2) Nevada inverse condemnation and eminent domain law provides that zoning must be relied upon to determine the Landowners' property interest prior to any alleged City interference with that property interest;

3) The 17 Acre Property has been hard zoned R-PD7 since 1981 and was re-zoned to R-3 prior to the filing of the Complaint in this matter;

4) The Las Vegas Municipal Code lists single-family and multi-family residential as legally permissible uses on R-PD7 and R-3 zoned properties by right;

5) The legally permitted uses by right of the 17 Acre Property are single-family and multi-family residential; and

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///

6) The 17 Acre Property has at all times since 1981 been designated as "M" (residential) on the City's Master land use plan.

9/15/21

RESPECTFULLY SUBMITTED BY:

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD,, a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	Case No. A-17-758528-J DEPT. NO.: XVI **CITY'S SUMMARY OF PRIOR RULINGS RELEVANT TO HEARING ON DISPOSITIVE MOTIONS** **Hearing Date: September 23, 2021** **Hearing Time: 1:30 PM**

INTRODUCTION

At the eleventh hour, on the eve of the Court's hearing on the dispositive motions, the Developer filed an improper "Summary of Prior Rulings" that it claims are relevant to the hearing. This "summary" is unsanctioned, especially given that the parties' motions have been fully briefed. As a result, the City respectfully requests that the Court ignore this improper filing.

However, should the Court consider the Developer's summary, the City requests that the Court also consider several relevant rulings that the Developer omitted. These rulings contradict the Developer's contention that many of the issues that are central to determining liability for a take have been decided and that the issues before the Court are therefore narrow. To the contrary, this Court's order on the Developer's Property Interest Motion should not be construed to resolve many of the central issues that remain open for decision.

I. This Court and others have already decided that zoning does not grant property or vested rights to the approval of a permit and that the PR-OS designation is valid.

A. This Court has found that zoning does not grant property rights.

Contrary to the Developer's contention that this Court has decided that zoning grants the Developer has a right to use its property as it chooses without City discretion, this Court previously determined just the opposite. This Court held in denying the Developer's Petition for Judicial Review ("PJR") that zoning does not grant any rights to property owners, no less a "property" or "vested" right to approval of a permit application, because the state has delegated to cities broad discretion in determining whether to approve building permit applications:

> The decision of the City Council to grant or deny applications for a general plan amendment, rezoning, and site development plan review is a discretionary act. . . . A zoning designation does not give the developer a vested right to have its development applications approved. . . *Stratosphere Gaming*, 120 Nev. at 527, 96 P.3d at 759-60 [(2004)] (holding that because City's site development review process under Title 19.18.050 involved discretionary action by Council, the project proponent had no vested right to construct). . . . In that the Developer asked for exceptions to the rules, its assertion that approval was somehow mandated simply because there is RPD-7 zoning on the property is plainly wrong. It was well within the Council's discretion to determine that the Developer did not meet the criteria for a General Plan Amendment or Waiver found in the Unified Development Code and to reject the Site Development Plan and Tentative Map application, accordingly, ***no matter the zoning designation***. ¶ The Court rejects the Developer's attempt to distinguish the *Stratosphere* case, which concluded that the very same decision-making process at issue here was squarely within the Council's discretion, no matter that the property was zoned for the proposed use. . . . The Court rejects the Developer's argument that the RPD-7 zoning designation on the Badlands Property somehow required the Council to approve its Applications. ¶ Statements from planning staff or the City Attorney that the Badlands Property has an RPD-7 zoning designation do not alter this conclusion.

Judge Williams FFCL Denying Developer's PJR, Ex. XXX at 1385-86, 1391-92 (emphasis added).

Insofar as the Court rejects the application of the above analysis to the Developer's regulatory taking claims because the Court's conclusions were rendered in the context of a PJR rather than a complaint for a taking, the City respectfully requests that the Court revisit this determination because it is contrary to all law. While PJRs and taking actions provide two different processes and remedies for allegedly excessive government action, they are based on the same underlying Nevada law of property and land use regulation. A PJR is simply a procedure and remedy. *There is no substantive law of PJRs.* Surely, the state cannot maintain two parallel systems of property and land use regulatory law depending on the procedure and remedy chosen by the aggrieved property owner. The Developer thus proposes an absurd rule that the City Council has discretion over development applications if the owner then sues by PJR, but has no discretion if the owner then sues for a taking.

B. Judge Herndon similarly found that landowners do not have the fundamental constitutional right to develop land for a particular purpose.

Judge Herndon found, consistent with this Court, that landowners do not have a fundamental constitutional "right" to use land for a particular purpose. He noted that, "[i]n the United States, planning commissions and city councils have broad authority to limit land uses to protect health, safety, and welfare. Because the right to use land for a particular purpose *is not a fundamental constitutional right*, courts generally defer to the decisions of legislatures and administrative agencies changed with regulating land use." Ex. CCCC at 1496-97.

C. This Court upheld the validity of the PR-OS land use designation.

Furthermore, contrary to the Developer's assertion that the Court has rejected the Developer's "PR-OS Master Plan land use argument," this Court follows the Supreme Court in holding that the PR-OS designation is valid:

> The Developer purchased its interest in the Badlands Golf Course knowing that the City's General Plan showed the property as designated for Parks Recreation and Open Space (PR-OS) and that the Peccole Ranch Master Development Plan identified the property as being for open space and drainage, as sought and obtained by the Developer's predecessor. . . . The City's General Plan provides the benchmarks to ensure orderly development. A city's master plan is the "standard that commands deference and presumption of applicability." . . . [T]the City properly required that the Developer obtain approval of a General Plan Amendment in order to proceed with any development.

Judge Williams FFCL Denying Developer's PJR, Ex. XXX at 1392-94.

Moreover, to the extent the Developer contends the PR-OS designation is relevant only to its motion regarding whether it has a property interest, it cites no authority, because there is none. The PR-OS designation directly undercuts the Developer's argument that the City is liable for a take, and therefore it is relevant to the hearing on liability, whatever the Developer may say to the contrary.

II. Judge Sturman upheld the validity of the PR-OS land use designation.

Like this Court and Judge Herndon, Judge Sturman also held in the 133-Acre case that "The open space designation for the Badlands Property sought by the Developer's predecessor and approved by the City in 1990 was subsequently incorporated into the City's General Plan starting in 1992. The Badlands Property is identified in the City's General Plan as Parks, Recreation, and Open Space ("PR-OS")." Findings of Fact and Conclusions of Law Etc. filed 7/29/21 in 133-Acre case No. A-18-775804-J at 3.

III. Judge Herndon[1] has directly contradicted the Developer's contentions.

A. Judge Herndon upheld the validity of the PR-OS designation.

Contrary to the Developer's argument that the PR-OS designation is irrelevant or has been rejected, Judge Herndon also agreed with this Court and Judge Sturman that the City has designated the property PR-OS since 1992:

> Since 1992, the City's General Plan has designated the Badlands for parks, recreation, and open space, a designation that does not permit residential development. . . . Each ordinance of the City Council updating the Land Use Element of the General Plan since 2005 has approved the designation of the Badlands as PR-OS, and the description of the PR-OS land use designation has remained unchanged.

Ex. CCCC at 1485-86.

[1] The Developer wrongly contends that Judge Trujillo "set aside" Judge Herndon's conclusion of law that the Developer's categorical and *Penn Central* claims are unripe. Judge Trujillo has not issued any orders setting aside or modifying Judge Herndon's well-supported and well-reasoned opinion.

B. Jude Herndon's conclusions of law lead to the conclusion that the City could not have taken another part of the Badlands

Judge Herndon also held that the Developer segmented the Badlands and was allowed substantial development of 435 luxury units on the Badlands. Therefore, the City could not have taken the Badlands or any part thereof. It is clear that the Developer segmented the Badlands and cannot now claim that the 35-Acre Property is the parcel as a whole. As Judge Herndon concluded:

> **<u>The Developer's acquisition and segmentation of the Badlands</u>**
>
> . . . At the time the Developer bought the Badlands, the golf course business was in full operation. The Developer operated the golf course for a year and, then, in 2016, voluntarily closed the golf course and recorded parcel maps subdividing the Badlands into nine parcels. The Developer transferred 178.27 acres to 180 Land Co. LLC ("180 Land") and 70.52 acres to Seventy Acres LLC ("Seventy Acres"), leaving Fore Stars with 2.13 acres. . . . Each of these entities is controlled by the Developer's EHB Companies LLC. . . The Developer then segmented the Badlands into 17, 35, 65, and 133-acre parts and began pursuing individual development applications for three of the segments, despite the Developer's intent to develop the entire Badlands.

Ex. CCCC at 1490.

C. Judge Herndon held the Developer's taking claims are not ripe.

Judge Herndon also addressed the ripeness issue raised by Developers. Contrary to the Developer's contention in its "summary" that the taking claims were ripe because the Developer obtained a final decision, Judge Herndon found that the case was not ripe.

Judge Herndon found that before the Developer can sue the City for a taking of the 65-Acre Property, it was incumbent on the Developer to file and have denied at least two applications to develop *the individual 65-Acre Property*. Judge Herndon held: "The Developer has failed to meet its burden to show that its regulatory takings claims are ripe. The Nevada Supreme Court requires that a regulatory takings claimant file at least two applications to develop "the property at issue." *State*, 131 Nev. at 419-20, 351 P.3d." Ex. CCCC at 1506; *id.* at 1505 ("A regulatory takings claim is not ripe unless it is "clear, complete, and unambiguous" that the agency has "drawn the line, clearly and emphatically, as to the sole use to which [the property] may ever be put." *Hoehne v. County of San Benito*, 870 F.2d 529, 533 (9th Cir. 1989). *The property owner* bears a heavy burden to show that a public agency's decision to restrict development of property is final. *Id.*" [emphasis added]). Like the 65-Acre case, the Developer clearly has not met that burden.

In concluding the Developer's taking claims for the 65-Acre Property were not ripe, Judge Herndon also rejected the Developer's arguments of futility. The Developer contends that after the City Council denied the MDA, further application to develop the 35-Acre Property would be futile, citing *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999). Judge Herndon rejected the same argument in the 65-Acre case:

> The Developer contends that this case is similar to *Del Monte Dunes* because the Developer conducted detailed and lengthy negotiations over the terms of the MDA with City staff and made many concessions and changes to the MDA requested by the staff before the MDA was presented to the City Council with the staff's recommendation of approval. Concessions and changes to the MDA requested by staff and a staff recommendation of approval, however, do not count for ripeness. The City Council, not the staff, is the decision-maker for purposes of a regulatory taking. An application must be made to the City Council, and if denied, at least a second application to the City Council must be made and denied before a takings claim is ripe.

Ex. CCCC at 1512-13. Judge Herndon further concluded that the City's adoption of Bills 2018-05 and 2018-24 do not show futility:

> [T]he Developer's reliance on Bills 2018-5 and 2018-24 in support of its claim of futility is misplaced. The bills imposed new requirements that a developer discuss alternatives to the proposed golf course redevelopment project with interested parties and report to the City and other requirements for the application to develop property. They were designed to increase public participation and did not impose substantive requirements for the development project, and did not prevent the Developer from applying to redevelop the 65-Acre Property. Moreover, the second bill was adopted in the Fall of 2018 after the Developer filed this action for a taking, so could have had no effect on the 65-Acre Property. The bill could not have taken property that was allegedly already taken. Both bills were repealed in January 2020, and are therefore inapplicable to show futility.

Id. at 1513.

CONCLUSION

Not only is the Developer's "summary" inappropriate, unsanctioned, and far too late to be considered before the hearing on the parties' dispositive motions, but it is contradicted by orders of this Court and others, which the Developer failed to raise to the Court's attention. The City therefore respectfully requests that the Court ignore the Developer's "summary," or in the alternative consider the other authorities omitted by the Developer.

DATED: September 03, 2021

By _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the City of Las Vegas, and that on the 23rd day of September, 2021, I caused a true and correct copy of the foregoing **CITY'S SUMMARY OF PRIOR RULINGS RELEVANT TO HEARING ON DISPOSITIVE MOTIONS** to be 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/ Cindy Kelly
An employee of City of Las Vegas

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