IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

No. 84345

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84640

AMENDED JOINT APPENDIX VOLUME 65

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq.
Nevada Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq.
Nevada Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq.
Nevada Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq.
Nevada Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877

Attorneys for 180 Land Co., LLC and Fore Stars, Ltd.

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott, Esq.
Nevada Bar No. 4381
bscott@lasvegasnevada.gov
Philip R. Byrnes, Esq.
pbyrnes@lasvegasnevada.gov
Nevada Bar No. 166
Rebecca Wolfson, Esq.
rwolfson@lasvegasnevada.gov
Nevada Bar No. 14132
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629

Attorneys for City of Las Vegas

CLAGGETT & SYKES LAW FIRM
Micah S. Echols, Esq.
Nevada Bar No. 8437
micah@claggettlaw.com
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone

Attorneys for 180 Land Co., LLC and Fore Stars, Ltd.

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Nevada Bar No. 3552
gogilvie@mcdonaldcarano.com
Amanda C. Yen, Esq.
ayen@mcdonaldcarano.com
Nevada Bar No. 9726
Christopher Molina, Esq.
cmolina@mcdonaldcarano.com
Nevada Bar No. 14092
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Telephone: (702)873-4100

LEONARD LAW, PC
Debbie Leonard, Esq.
debbie@leonardlawpc.com
Nevada Bar No. 8260
955 S. Virginia Street Ste. 220
Reno, Nevada 89502
Telephone: (775) 964.4656

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
schwartz@smwlaw.com
California Bar No. 87699
(admitted pro hac vice)
Lauren M. Tarpey, Esq.
ltarpey@smwlaw.com
California Bar No. 321775
(admitted pro hac vice)
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272

Attorneys for City of Las Vegas

44. It is up to the Council – through its discretionary decision making – to decide whether a change in the area or conditions justify the development sought by the Developer and how any such development might look. *See Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723.

45. The Clark County Assessor's assessment determinations regarding the Badlands Property did not usurp the Council's exclusive authority over land use decisions. The information cited by the Developer in support of this argument is not part of the record on review and therefore must be disregarded.[1] *See C.A.G.*, 98 Nev. at 500, 654 P.2d at 533. The Council alone and not the County Assessor, has the sole discretion to amend the open space designation for the Badlands Property. *See* NRS 278.020(1); *Doumani*, 114 Nev. at 53, 952 P.2d at 17.

46. The Applications included requests for a General Plan Amendment and Waiver. 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. UDC 19.00.030, 19.16.030, 19.16.050, 19.16.100, 19.16.130.

47. 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." *Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723; *see also City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 266, 236 P.3d 10, 12 (2010) ("Master plans contain long-term comprehensive guides for the orderly development and growth for an area."). Substantial compliance with the master plan is required. *Nova*, 105 Nev. at 96-97, 769 P.2d at 723-24.

48. By submitting a General Plan Amendment application, the Developer acknowledged that one was needed to reconcile the differences between the General Plan

---

[1] The documents attached as Exhibits 2-5 to Petitioner's points and authorities are not part of the Record on Review and are not considered by the Court. *See C.A.G.*, 98 Nev. at 500, 654 P.2d at 533. The documents attached as Exhibit 1, however, were inadvertently omitted from the Record on Review but were subsequently added by the City. *See Errata to Transmittal of Record on Review* filed June 20, 2018; ROR 35183-86.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

designation and the zoning. (ROR 32657). Even if the Developer now contends it only submitted the General Plan Amendment application at the insistence of the City, once the Developer submitted the application, nothing required the Council to approve it. Denial of the GPA application was wholly within the Council's discretion. *See Nevada Contractors*, 106 Nev. at 314, 792 P.2d at 33.

49. The Court rejects the Developer's contention that NRS 278.349(3)(e) abolishes the Council's discretion to deny land use applications.

50. First, NRS 278.349(3) merely provides that the governing body "shall consider" a list of factors when deciding whether to approve a tentative map. Subsection (e) upon which the Developer relies, however, is only one factor.

51. In addition, NRS 278.349(3)(e) relates only to tentative map applications, and the Applications at issue here also sought a waiver of the City's development standards, a General Plan Amendment to change the PR-OS designation and a Site Development Plan review. A tentative map is a mechanism by which a landowner may divide a parcel of land into five or more parcels for transfer or development; approval of a map alone does not grant development rights. NRS 278.019; NRS 278.320.

52. Finally, NRS 278.349(e) does not confer any vested rights.

53. "[M]unicipal entities must adopt zoning regulations that are in substantial agreement with the master plan." *See Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112, *quoting Nova Horizon*, 105 Nev. at 96, 769 P.2d at 723; NRS 278.250(2).

54. The City's Unified Development Code states as follows:

> Compliance with General Plan
> Except as otherwise authorized by this Title, approval of all Maps, Vacations, Rezonings, *Site Development Plan Reviews*, Special Use Permits, Variances, *Waivers*, Exceptions, Deviations and Development Agreements shall be consistent with the spirit and intent of the General Plan. UDC 19.16.010(A).
>
> It is the intent of the City Council that all regulatory decisions made pursuant to this Title be consistent with the General Plan. For purposes of this Section, "consistency with the General Plan" means not only consistency with the Plan's land use and density designations, but also consistency with all policies and programs of the General Plan, including those that promote compatibility of uses and densities, and orderly development consistent with available resources. UDC 19.00.040.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

55. Consistent with this law, the City properly required that the Developer obtain approval of a General Plan Amendment in order to proceed with any development.

E. The Doctrine of Issue Preclusion Bars Petitioner from Relitigating Issues Decided by Judge Crockett

56. The Court further concludes that the doctrine of issue preclusion requires denial of the Petition for Judicial Review.

57. 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).

58. Having taken judicial notice of Judge Crockett's Order, the Court concludes that the issue raised by Intervenors, which once again challenges the Developer's attempts to develop the Badlands Property without a major modification of the Master Plan, is identical to the issue Judge Crockett decided issue in *Jack B. Binion, et al v. The City of Las Vegas, et al,* A-17-752344-J. The impact the Crockett Order, which the City did not appeal, requires both Seventy Acres and Petitioner to seek a major modification of the Master Plan before developing the Badlands Property. 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. Adv. Op. 28, 321 P.3d 912, 916–17 (2014).

59. Judge Crockett's decision in *Jack B. Binion, et al v. The City of Las Vegas, et al,* 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 Judgments § 13 & cmt. g). "Factors indicating finality include (a) that the parties were fully heard, (b) that the court supported its decision with a reasoned opinion, and (c) that the decision was subject to appeal." *Id.* at 822-823 (citations and punctuation omitted). Petitioner's appeal of the Crockett Order confirms that it was a final decision on the merits.

60. The Court reviewed recent Nevada case law and the expanded concept of privity, which is to be broadly construed beyond its literal and historic meaning to encompass relationships where there is "substantial identity between parties, that is, when there is sufficient commonality of interest." *Mendenhall v. Tassinari*, 133 Nev. Adv. Op. 78, 403 P.3d 364, 369 (2017) (quoting *Tahoe–Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1081–82 (9th Cir. 2003) (internal quotation marks omitted). Applying the expanded concept of privity, the Court considered the history of the land-use applications pertaining to the Badlands Property and having taken judicial notice of the Federal Complaint, the Court concludes there is a substantial identity of interest between Seventy Acres and Petitioner, which satisfies the privity requirement. Petitioner's argument that it is not in privity with Seventy Acres is contradicted by the Federal Complaint, which reveals that Seventy Acres and Petitioner are under common ownership and control and acquired their respective interests in the Badlands Property through an affiliate, Fore Stars, Ltd.

61. The issue of whether a major modification is required for development of the Badlands Property was actually and necessarily litigated. "When an issue is properly raised and is submitted for determination, the issue is actually litigated." *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. at 262, 321 P.3d at 918 (internal punctuation and quotations omitted) (citing *Frei v. Goodsell*, 129 Nev. 403, 407, 305 P.3d 70, 72 (2013)). "Whether an issue was necessarily litigated turns on 'whether the common issue was necessary to the judgment in the earlier suit.'" *Id.* (citing *Tarkanian v. State Indus. Ins. Sys.*, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994)). Since Judge Crockett's decision was entirely dependent on this issue, the issue was necessarily litigated.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

62. Given the substantial identity of interest among Seventy Acres, LLC and Petitioner, it would be improper to permit Petitioner to circumvent the Crockett Order with respect to the issues that were fully adjudicated.

63. Where Petitioner has no vested rights to have its development applications approved, and the Council properly exercised its discretion to deny the applications, there can be no taking as a matter of law such that Petitioner's alternative claims for inverse condemnation must be dismissed. *See Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994) ("The Fifth Amendment's Takings Clause prevents the Legislature (and other government actors) from depriving private persons of vested property rights except for a 'public use' and upon payment of 'just compensation.'"); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949).

64. Further, Petitioner's alternative claims for inverse condemnation must be dismissed for lack of ripeness. *See Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1230-31, 122 Nev. 877, 887 (2006).

65. "Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief." *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988), *quoting Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

66. Here, Petitioner failed to apply for a major modification, a prerequisite to any development of the Badlands Property. *See* Crockett Order. Having failed to comply with this necessary prerequisite, Petitioner's alternative claims for inverse condemnation are not ripe and must be dismissed.

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

ORDER

Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Petition for Judicial Review is DENIED.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Petitioner's alternative claims in inverse condemnation are hereby DISMISSED.

DATED: 11/18, 2018.

TIMOTHY C. WILLIAMS
District Court Judge

Submitted By:

McDONALD CARANO LLP

By: /s/
George F. Ogilvie III, Esq. (NV Bar #3552)
Debbie Leonard (NV Bar #8260)
Amanda C. Yen (NV Bar #9726)
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bradford R. Jerbic (NV Bar #1056)
Philip R. Byrnes (NV Bar #166)
Seth T. Floyd (NV Bar #11959)
495 S. Main Street, 6th Floor
Las Vegas, NV 89101

Attorneys for City of Las Vegas

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of November, 2018, a true and correct copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION FOR JUDICIAL REVIEW** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

EXHIBIT “YYY”

Electronically Filed
2/6/2019 3:41 PM
Steven D. Grierson
CLERK OF THE COURT

NEOJ
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

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 **NOTICE OF ENTRY OF ORDER *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019**

PLEASE TAKE NOTICE that on the 6th day of February, 2019, an Order *Nunc Pro Tunc* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018, was entered in the above-captioned case, a copy of which is attached hereto.

Dated this 6th day of February, 2019.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *Kermitt L. Waters*
KERMITT L. WATERS, ESQ., NBN 2571
JAMES JACK LEAVITT, ESQ., NBN 6032
MICHAEL A. SCHNEIDER. ESQ., NBN 8887
AUTUMN WATERS, ESQ., NBN 8917
704 S. 9th Street
Las Vegas, NV 89101

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 6th day of February, 2019, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019,** was made by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

McDonald Carano LLP
George F. Ogilvie III
Debbie Leonard
Amanda C. Yen
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
dleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

Las Vegas City Attorney's Office
Bradford Jerbic
Philip R. Byrnes
Seth T. Floyd
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

Pisanelli Bice, PLLC
Todd L. Bice, Esq.
Dustun H. Holmes, Esq.
400 S. 7th Street
Las Vegas, Nevada 89101
tlb@pisanellibice.com
dhh@pisanellibice.com

/s/ Evelyn Washington
An Employee of the Law Offices of Kermitt L. Waters

ONPT
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **ORDER *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018** Hearing Date: January 17, 2019 Hearing Time: 9:00 a.m.

ORDER *NUNC PRO TUNC*
Regarding Findings of Fact and Conclusions of Law Entered November 21, 2018

Plaintiff, 180 LAND COMPANY, LLC ("Plaintiff" and/or "Landowner") Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims and the City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time and the Intervenors' Joinder thereto having come for hearing on January 17, 2019 at 9:00 a.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., and Mark Hutchison, Esq., appearing for and on behalf of the Plaintiff, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of Defendant, the City of Las Vegas, and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenors. The Court having read all the papers filed by the parties and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims filed on December 11, 2018, is GRANTED, as this Court had no intention of making any findings of fact, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims as part of the Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL"). Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed *nunc pro tunc*.

IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that Defendant, City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time filed on December 21, 2018, and the Joinder thereto is DENIED AS MOOT.

IT IS SO ORDERED.

DATED this 5th day of February, 2019.

DISTRICT COURT JUDGE

TCW

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By:_____
KERMITT L. WATERS, ESQ., NBN 2571
JAMES JACK LEAVITT, ESQ., NBN 6032
MICHAEL A. SCHNEIDER. ESQ., NBN 8887
AUTUMN WATERS, ESQ., NBN 8917
704 S. 9th Street
Las Vegas, NV 89101

Attorneys for Plaintiff

Reviewed and Approved By:

McDonald Carano LLP

By: *Declined to Sign*
George F. Ogilvie III, Esq., NBN 3552
Debbie Leonard, Esq., NBN 8260
Amanda C. Yen, Esq., NBN 9726
2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102

Attorneys for Defendant, City of Las Vegas

PISANELLI BICE PLLC

By: *None Responsive*
Todd L. Bice, Esq., NBN 4534
Dustun H. Holmes, Esq., NBN 12776
Kirill V. Mikhaylov, Esq., NBN 13538
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Attorneys for Intervenors

EXHIBIT “ZZZ”

City of Las Vegas

AGENDA MEMO - PLANNING

CITY COUNCIL MEETING DATE: JUNE 21, 2017
DEPARTMENT: PLANNING
ITEM DESCRIPTION: - APPLICANT/OWNER: 180 LAND COMPANY, LLC

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

CASE NUMBER	*RECOMMENDATION*	*REQUIRED FOR APPROVAL*
GPA-68385	Staff recommends APPROVAL.	
WVR-68480	Staff recommends APPROVAL, subject to conditions:	GPA-68385
SDR-68481	Staff recommends APPROVAL, subject to conditions:	GPA-68385 WVR-68480
TMP-68482	Staff recommends APPROVAL, subject to conditions:	GPA-68385 WVR-68480 SDR-68481

**** NOTIFICATION ****

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 32

NOTICES MAILED
1,025 - GPA-68385 (By City Clerk)
255 - WVR-68480 and SDR-68481 (By City Clerk)
255 - TMP-68482 (By City Clerk)

APPROVALS
24 - GPA-68385
0 - WVR-68480 and SDR-68481
0 - TMP-68482

PROTESTS
121 - GPA-68385
67 - WVR-68480 and SDR-68481
60 - TMP-68482

SS

CLV180816
1406

** CONDITIONS **

WVR-68480 CONDITIONS

Planning

1. Approval of a General Plan Amendment (GPA-68385) and approval of and conformance to the Conditions of Approval for Site Development Plan Review (SDR-68481) and Tentative Map (TMP-68482) shall be required, if approved.

2. This approval shall be void two years from the date of final approval, unless exercised pursuant to the provisions of LVMC Title 19.16. An Extension of Time may be filed for consideration by the City of Las Vegas.

3. All City Code requirements and design standards of all City Departments must be satisfied, except as modified herein.

SDR-68481 CONDITIONS

Planning

1. The single family residential subdivision shall be limited to no more than 61 residential lots.

2. The residential subdivision shall be gated.

3. A separate HOA from that of the Queensridge HOA shall be created.

4. Sidewalks shall be installed on one side of each street within the residential subdivision.

5. Landscaping within the community shall meet or exceed City standards. Palm trees are a permitted plant material within common lots and buildable lots.

6. Development within the community shall be limited to single-family residential homes only.
7. Building heights shall not exceed 46 feet.

SS

8. A minimum home size of 3,000 square feet on lots less than or equal to 20,000 square feet in size shall be required.
9. A minimum home size of 3,500 square feet on lots over 20,000 square feet in size shall be required.

10. Perimeter and interior walls shall be composed of decorative block wall, wrought iron fencing or a combination of both. Perimeter decorative block walls are to comply with Title 19 requirements.

11. No construction shall occur during the hours of 8:00 pm and 6:00 am.

12. The subdivision's associated CC&Rs are to include design guidelines generally compatible with the Queensridge design guidelines.

13. Approval of a General Plan Amendment (GPA-68385) and approval of and conformance to the Conditions of Approval for a Waiver (WVR-68480) and Tentative Map (TMP-68482) shall be required, if approved.

14. This approval shall be void two years from the date of final approval, unless exercised pursuant to the provisions of LVMC Title 19.16. An Extension of Time may be filed for consideration by the City of Las Vegas.

15. All development shall be in conformance with the site plan, date stamped 01/25/17 and landscape plan, date stamped 01/26/17, except as amended by conditions herein.

16. All necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Department of Building and Safety.

17. These Conditions of Approval shall be affixed to the cover sheet of any plan set submitted for building permit.

SS

18. The standards for this development shall include the following:

Standard	Lots less than or equal to 20,000 sf*	Lots greater than 20,000 sf
Minimum Lot Size	10,000 sf	20,000 sf
Building Setbacks:		
• Front yard to private street or access easement	30 feet	35 feet
• Side yard	5 feet	7.5 feet
• Corner side yard	12.5 feet	15 feet
• Rear yard	25 feet	30 feet

Standard	Lots less than or equal to 20,000 sf*	Lots greater than 20,000 sf
Accessory structure setbacks:		
• Porte cochere to private street	15 feet	15 feet
• Side loaded garage to side yard property line	15 feet	15 feet
• Patio covers and/or 2nd story decks	20 feet	20 feet
• Separation from principal dwelling	6 feet	6 feet
• Side yard	5 feet	5 feet
• Corner side yard	5 feet	5 feet
• Rear yard	5 feet	5 feet
Building Heights:		
• Principal dwelling	46 feet	46 feet
• Accessory structures	25 feet	30 feet
• Floors	2 stories on slab or over basement	3 stories on lots greater than 35,000 sf; otherwise 2 stories
Permitted uses	Single family residence and accessory structures**	Single family residence and accessory structures**

*Includes Lots 1, 2 and 24.
**Accessory structures may have a trellis or canopy attached to the principal dwelling.

19. A technical landscape plan, signed and sealed by a Registered Architect, Landscape Architect, Residential Designer or Civil Engineer, must be submitted prior to or at the same time as Final Map submittal. A permanent underground sprinkler system is required, and shall be permanently maintained in a satisfactory manner; the landscape plan shall include irrigation specifications. Installed landscaping shall not impede visibility of any traffic control device.

SS

20. No turf shall be permitted in the non-recreational common areas, such as medians and amenity zones in this development.

21. A fully operational fire protection system, including fire apparatus roads, fire hydrants and water supply, shall be installed and shall be functioning prior to construction of any combustible structures.

22. All City Code requirements and design standards of all City Departments must be satisfied, except as modified herein.

Public Works

23. Correct all Americans with Disabilities Act (ADA) deficiencies on the public sidewalks adjacent to this site in accordance with code requirements of Title 13.56.040, if any, to the satisfaction of the City Engineer concurrent with development of this site.

24. Meet with the Fire Protection Engineering Section of the Department of Fire Services to discuss fire requirements for the proposed subdivision. The design and layout of all onsite private circulation and access drives shall meet the approval of the Department of Fire Services. Curbing on one side of the 32-foot private streets shall be constructed of red concrete and shall be in accordance with the adopted Fire Code (Ordinance #6325). The required curb coloring, painting, and signage shall be privately maintained in perpetuity by the Homeowner's Association.

25. All landscaping and private improvements installed with this project shall be situated and maintained so as to not create sight visibility obstructions for vehicular traffic at all development access drives and abutting street intersections.

26. Coordinate with the Sewer Planning Section of the Department of Public Works to determine the appropriate location and depth of public sewer lines servicing this site prior to approval of construction drawings for this site. Provide appropriate Public Sewer Easements for all public sewers not located within existing public street right-of-way. Construct paved vehicular access to all new Public Sewer Manholes proposed east of this site concurrent with on-site development activities. No structures, and no trees or vegetation taller than three feet shall be allowed within any Public Sewer Easements.

SS

27. A Drainage Plan and Technical Drainage Study must be submitted to and approved by the Department of Public Works prior to the issuance of any building or grading permits or submittal of any construction drawings, whichever may occur first. Provide and improve all drainageways recommended in the approved drainage plan/study. The developer of this site shall be responsible to construct such neighborhood or local drainage facility improvements as are recommended by the City of Las Vegas Neighborhood Drainage Studies and approved Drainage Plan/Study concurrent with development of this site. The Drainage Study required by TMP-68482 may be used to satisfy this condition.

28. Site Development to comply with all applicable conditions of approval for TMP-68482 and any other site related actions.

TMP-68482 CONDITIONS

Planning

1. Approval of the Tentative Map shall be for no more than four (4) years. If a Final Map is not recorded on all or a portion of the area embraced by the Tentative Map within four (4) years of the approval of the Tentative Map, this action is void.

2. Approval of a General Plan Amendment (GPA-68385) and approval of and conformance to the Conditions of Approval for Waiver (WVR-68480) and Site Development Plan Review (SDR-68481) shall be required, if approved.

3. Street names must be provided in accordance with the City's Street Naming Regulations.

4. A fully operational fire protection system, including fire apparatus roads, fire hydrants and water supply, shall be installed and shall be functioning prior to construction of any combustible structures.

5. In conjunction with creation, declaration and recordation of the subject common-interest community, and prior to recordation of the Covenants, Codes and Restrictions ("CC&R"), or conveyance of any unit within the community, the Developer is required to record a Declaration of Private Maintenance Requirements ("DPMR") as a covenant on all associated properties, and on behalf of all current and future property owners. The DPMR is to include a listing of all privately owned and/or maintained infrastructure improvements, along with assignment of maintenance responsibility for each to the common interest community or the respective individual property owners, and is to provide a brief

description of the required level of maintenance for privately maintained components. The DPMR must be reviewed and approved by the City of Las Vegas Department of Field Operations prior to recordation, and must include a statement that all properties within the community are subject to assessment for all associated costs should private maintenance obligations not be met, and the City of Las Vegas be required to provide for said maintenance. Also, the CC&R are to include a statement of obligation of compliance with the DPMR. Following recordation, the Developer is to submit copies of the recorded DPMR and CC&R documents to the City of Las Vegas Department of Field Operations.

6. All development is subject to the conditions of City Departments and State Subdivision Statutes.

Public Works

7. Grant all required public easements (sewer, drainage, fire, etc.) that are outside the boundaries of this site prior to or concurrent with the recordation of a Final Map for this site.

8. Correct all Americans with Disabilities Act (ADA) deficiencies on the public sidewalks adjacent to this site in accordance with code requirements of Title 13.56.040, if any, to the satisfaction of the City Engineer concurrent with development of this site.

9. Private streets must be granted and labeled on the Final Map for this site as Public Utility Easements (P.U.E.), Public Sewer Easements, and Public Drainage Easements to be privately maintained by the Homeowner's Association.

10. Meet with the Fire Protection Engineering Section of the Department of Fire Services to discuss fire requirements for the proposed subdivision. The design and layout of all onsite private circulation and access drives shall meet the approval of the Department of Fire Services. Curbing on one side of the 32-foot private streets shall be constructed of red concrete and shall be in accordance with the adopted Fire Code (Ordinance #6325). The required curb coloring, painting, and signage shall be privately maintained in perpetuity by the Homeowner’s Association.

11. All landscaping and private improvements installed with this project shall be situated and maintained so as to not create sight visibility obstructions for vehicular traffic at all development access drives and abutting street intersections.

SS

12. Coordinate with the Sewer Planning Section of the Department of Public Works to determine the appropriate location and depth of public sewer lines servicing this site prior to approval of construction drawings for this site. Provide appropriate Public Sewer Easements for all public sewers not located within existing public street right-of-way. Construct paved vehicular access to all new Public Sewer Manholes proposed east of this site concurrent with on-site development activities. No structures, and no trees or vegetation taller than three feet, shall be allowed within any Public Sewer Easements.

13. A working sanitary sewer connection shall be in place prior to final inspection of any units within this development. Full permanent improvements on all major access streets, including all required landscaped areas between the perimeter wall and adjacent public street, shall be constructed and accepted by the City prior to issuance of any building permits beyond 50% of all units within this development. All off-site improvements adjacent to this site, including all required landscaped areas between the perimeter walls and adjacent public streets, shall be constructed and accepted prior to issuance of building permits beyond 75%. The above thresholds notwithstanding, all required improvements shall be constructed in accordance with the Title 19.

14. A Drainage Plan and Technical Drainage Study must be submitted to and approved by the Department of Public Works prior to the issuance of any building or grading permits or submittal of any construction drawings, whichever may occur first. Provide and improve all drainageways recommended in the approved drainage plan/study. The developer of this site shall be responsible to construct such neighborhood or local drainage facility improvements as are recommended by the City of Las Vegas Neighborhood Drainage Studies and approved Drainage Plan/Study concurrent with development of this site.

15. The approval of all Public Works related improvements shown on this Tentative Map is in concept only. Specific design and construction details relating to size, type and/or alignment of improvements, including but not limited to street, sewer and drainage improvements, shall be resolved prior to approval of the construction plans by the City. No deviations from adopted City Standards shall be allowed unless specific written approval for such is received from the City Engineer prior to the recordation of a Final Map or the approval of subdivision-related construction plans, whichever may occur first. Approval of this Tentative Map does not constitute approval of any deviations. If such approval cannot be obtained, a revised Tentative Map must be submitted showing elimination of such deviations. We note that curved sewers are not allowed and do not comply with City Standards.

SS

** STAFF REPORT **

PROJECT DESCRIPTION

The applicant is proposing a 61-lot gated single-family residential development on a portion of a large lot currently developed as a golf course generally located at the southeast corner of Alta Drive and Hualapai Way. The development would feature custom homes and contain small open space and park areas.

ISSUES

- A General Plan Amendment is requested from PR-OS (Parks/Recreation/Open Space) to L (Low Density Residential) on the primary parcel (that makes up the Badlands Golf Course.
- A Waiver of Title 19.02 is requested to allow 32-foot wide private streets with a private sidewalk and landscape easement on one side and another landscape easement on the other side where 47-foot wide streets including sidewalks on both sides are required within a proposed gated development. Staff supports this request.
- A Site Development Plan Review for a single-family residential development on this site is required for all planned developments zoned R-PD (Residential Planned Development). The proposal includes developer-proposed standards for development of the site.
- A Tentative Map is requested for a 61-lot single-family residential subdivision on a 34.07-acre parcel, which is a portion of the primary golf course parcel that is the subject of the proposed General Plan Amendment.
- A Parcel Map (PMP-64285) dividing the majority of the Badlands Golf Course into four separate lots, including a 34.07-acre lot at the southeast corner of Alta Drive and Hualapai Way that defines the extent of the proposed residential development, was recorded on 01/24/17. Although Assessor's Parcel Numbers have not yet been assigned, recordation of the Parcel Map has created four legal lots with valid legal descriptions.

ANALYSIS

The subject parent parcel (APN 138-31-702-002) is a significant portion of a developed golf course that is located within the Peccole Ranch Master Plan. The parcel is zoned R-PD7 (Residential Planned Development – 7 Units per Acre), allowing up to 7.49 dwelling units per acre spread out across the zoning district. The proposed L (Low Density Residential) General Plan designation allows density up to 5.49 dwelling units per acre, which is consistent with the density permitted by the existing R-PD7

SS

zoning across the Peccole Ranch Master Plan area. The approved 1990 Peccole Ranch Master Plan indicates that the subject area is planned for both single family residential and golf course/open space/drainage uses. Over time, the development pattern in this area did not follow the master plan as approved.

Title 19.16.110 states that "except as otherwise authorized by this Title, approval of all Maps, Vacations, Rezonings, Site Development Plan Reviews, Special Use Permits, Variances, Waivers, Exceptions, Deviations and Development Agreements shall be consistent with the spirit and intent of the General Plan." Within the area known as the Peccole Ranch Master Plan, the 1992 General Plan for the City of Las Vegas designated the proposed golf course area P (Parks/Recreation/Open Space) and the various residential areas around the proposed golf course as ML (Medium Low Density Residential). As other uses within the Peccole Ranch Master Plan were proposed that deviated from the established General Plan or zoning, a General Plan Amendment or Rezoning was required for consistency with the General Plan. As the proposed land area is no longer intended for a golf course or open space, but instead for residential development, an amendment to the General Plan is necessary and appropriate.

As a Residential Planned Development, density may be concentrated in some areas while other areas remain less dense, as long as the overall density for this site does not exceed 7.49 dwelling units per acre. Therefore, portions of the subject area can be restricted in density by various General Plan designations. A closer examination of the existing development reveals that single-family lots adjacent to the golf course average 12,261 square feet and a density of 3.55 units per acre along Queen Charlotte Drive west of Regents Park Road, an average of 11,844 square feet and a density of 3.68 units per acre along Verlaine Court and an average of 42,806 square feet and a density of 1.02 units per acre along Orient Express Court west of Regents Park Road. Each of these adjacent developments are designated ML (Medium Low Density Residential) with a density cap of 8.49 dwelling units per acre. The proposed development would have a density of 1.79 dwelling units per acre, with an average lot size of 19,871 square feet. In addition, open space and planned park areas are included as required for all new R-PD developments. Compared with the densities and General Plan designations of the adjacent residential development, the proposed L (Low Density Residential) designation is less dense and therefore appropriate for this area, capped at 5.49 units per acre.

Open space is provided in the form of three small park areas totaling approximately 62,000 square feet. Approximately 44,000 square feet or 1.01 acres of the development must consist of usable open space, which this proposal meets. An eight-foot buffer and six-foot wrought iron fence would separate the proposed "D" Avenue from Orient Express Court to the south. These areas are all common lots to be privately maintained.

SS

Title 19.04 requires private streets to be developed to public street standards, which require 47-foot wide streets with sidewalks on both sides of the street, as well as either a three-foot amenity zone with street trees or a five-foot planting zone on the adjacent private properties. This is to allow adequate space for vehicular travel in both directions, as well as a safe environment for pedestrians, bicycles and other modes of transportation. In the existing adjacent residential developments, the streets range in size from 36 feet to 40 feet in width with wide roll curbs. In addition, the San Michelle North development abutting this site to the north also contains a four-foot sidewalk, six-foot amenity zone and three-foot landscape strip within a common element on the north side of Queen Charlotte Drive. The side streets in that development contain the 36-foot private roadway with a four-foot sidewalk and five-foot amenity zone on one side contained in a private easement for a total sectional width of 45 feet.

The applicant is requesting a street section comparable to San Michelle North, with proposed 32-foot private streets with 30-inch roll curbs, a four-foot sidewalk and three-foot private landscape easement on one side and a five-foot private landscape easement on the other side for a total sectional width of 44 feet. A 32-foot wide street will allow for emergency vehicle access while still permitting parking on one side. Red colored concrete and signage will be required to clearly mark the side of the street with no parking. This design is comparable to the private streets in the adjacent gated subdivisions along the golf course. Staff can support the Waiver request with conditions that include a requirement for the applicant to coordinate with the Fire Protection Engineering Section of the Department of Fire Services to discuss the design and layout of all onsite private circulation and access drives to meet current fire codes.

The Site Development Plan Review describes two lot types with different development standards; those that contain 20,000 square feet or less and those containing greater than 20,000 square feet. However, three lots (Lots 1, 2 and 24) are included with the "20,000 square feet or less" classification for consistency of development. Development standards for lots that are 20,000 square feet or less are generally consistent with R-D zoned properties, while those in the category greater than 20,000 square feet are generally consistent with R-E zoned properties. Some exceptions include building height, which is proposed to be 40-50 feet where 35 feet is the requirement in the standard zoning districts, and patio covers, which are treated the same as second story decks unlike in the Unified Development Code. The additional height is comparable to existing residential dwellings in the R-PD7 zoning district. It is noted that no building height restriction was conditioned for the existing residential development surrounding the subject property.

The submitted Tentative Map contains the elements necessary for a complete submittal. The natural slope from west to east across the site is approximately 2.5 percent. Per Title 19, a development having a natural slope of greater than two percent is allowed to contain up to six-foot retaining walls and eight-foot screen walls on the perimeter, with a maximum height of 12 feet. A 10-foot combined perimeter wall consisting of no more

than six feet of retaining is proposed along Hualapai Way, set back 20 feet from the property line. Only the screen wall would be visible from Hualapai Way. A six-foot screen wall or fence is proposed on the east perimeter at Regents Park Road.

The submitted north-south cross section depicts maximum natural grade at two percent across this site. Per Title 19, a development with natural slope of two percent or greater is allowed to contain up to six-foot retaining walls and eight-foot screen walls on the perimeter, with a maximum height of 12 feet. The retaining walls along the northern property line are shown as maximum six-foot retaining walls, with a maximum of 10 feet of both retaining and screening. From the adjacent properties, no more than 10 feet of wall or wrought iron fencing would be visible.

Per Title 19.04.040, the Connectivity Ratio requirement does not apply for R-PD developments. In addition, per Title 19.04.010, where a proposed development is adjacent to existing improvements, the Director of Public Works has the right to determine the appropriateness of implementing Complete Streets standards, including connectivity. In this case, Public Works has determined that it would be inappropriate to implement the connectivity standards, given the design of the existing residential development and configuration of available land for development.

FINDINGS (GPA-68385)

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

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

   The density of the proposed General Plan Amendment is compatible with the existing adjacent land use designations, which include ML (Medium Low Density Residential), MLA (Medium Low Attached Density Residential) and PR-OS (Parks/Recreation/Open Space); the L (Low Density Residential) designation is less dense than any of these residential land use designations. However, as a Residential Planned Development, density may be concentrated in some areas while other areas remain less dense.

SS

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

   The overall residential development, including the proposed site and surrounding adjacent residential development, is zoned R-PD7 (Residential Planned Development – 7 Units per Acre), which is allowed by the proposed amendment. Additionally, the zoning districts allowed by the proposed L (Low Density Residential) designation would be less dense than the existing R-PD7 zoning district.

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

   Additional streets, utilities and open space amenities would be constructed or extended to support the residential uses permitted by the proposed General Plan Amendment to L (Low Density Residential).

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

   The proposed General Plan Amendment is consistent with the Peccole Ranch Master Plan, which designates the subject area for single family residential uses.

FINDINGS (WVR-68480)

Staff supports Title 19 requirements for streets within the city, which require private streets to be developed to public street standards. The Unified Development Code requires 47-foot wide private streets that contain sidewalks on both sides. However, none of the existing residential developments with private streets in this area adhere to this standard. The applicant is proposing streets that provide similar amenities and widths to the adjacent private streets, once private easements are granted. This configuration would be more compatible with the surrounding development than the required 47-foot streets. Build-out of the proposed streets will not cause an undue hardship to the surrounding properties and will allow for fire access and limited on-street parking. Therefore, staff recommends approval of the requested waiver, with conditions.

FINDINGS (SDR-68481)

In order to approve a Site Development Plan Review application, per Title 19.16.100(E) the Planning Commission and/or City Council must affirm the following:

SS

1. **The proposed development is compatible with adjacent development and development in the area;**

   The proposed residential lots throughout the subject site are comparable in size to the existing residential lots directly adjacent to the proposed lots. The development standards proposed are compatible with those imposed on the adjacent lots. Several small park and open space amenities are provided for the benefit of residents.

2. **The proposed development is consistent with the General Plan, this Title, the Design Standards Manual, the Landscape, Wall and Buffer Standards, and other duly-adopted city plans, policies and standards;**

   The proposed development would be consistent with the General Plan if the plan is concurrently amended to L (Low Density Residential) or a lower density designation. The proposal for single-family residential and accessory uses is consistent with the approved 1990 Peccole Ranch Master Plan, which designates the subject area for single family uses. The proposed R-PD development is consistent with Title 19 requirements for residential planned developments prior to the adoption of the Unified Development Code. However, streets are not designed to public street standards as required by the Unified Development Code Title 19.04, for which a waiver is necessary.

3. **Site access and circulation do not negatively impact adjacent roadways or neighborhood traffic;**

   Site access is proposed from Hualapai Way through a gate that meets Uniform Standard Drawing specifications. The street system does not connect to any existing streets and therefore should not negatively affect traffic within the existing residential areas.

4. **Building and landscape materials are appropriate for the area and for the City;**

   Custom homes are proposed on the subject lots, which will be subject to future permit review. Landscape materials are drought tolerant and appropriate for this area.

5. **Building elevations, design characteristics and other architectural and aesthetic features are not unsightly, undesirable, or obnoxious in appearance; create an orderly and aesthetically pleasing environment; and are harmonious and compatible with development in the area;**

SS

Custom homes are proposed on the subject lots, which will be subject to future permit review against the proposed development standards.

6. **Appropriate measures are taken to secure and protect the public health, safety and general welfare.**

Development of this site will be subject to building permit review and inspection, thereby protecting the public health, safety and general welfare.

FINDINGS (TMP-68482)

The submitted Tentative Map is in conformance with all Title 19 and NRS requirements for tentative maps.

BACKGROUND INFORMATION

Related Relevant City Actions by P&D, Fire, Bldg., etc.	
12/17/80	The Board of City Commissioners approved the Annexation (A-0018-80) of 2,243 acres bounded by Sahara Avenue on the south, Hualapai Way on the west, Ducharme Avenue on the north and Durango Drive on the east. The annexation became effective on 12/26/80.
04/15/81	The Board of City Commissioners approved a General Plan Amendment (Agenda Item IX.B) to expand the Suburban Residential Land Use category and add the Rural Density Residential category generally located north of Sahara Avenue, west of Durango Drive.
	The Board of City Commissioners approved a Generalized Land Use Plan (Agenda Item IX.C) for residential, commercial and public facility uses on the Peccole property and the south portion of Angel Park lying within city limits. The maximum density of this plan was 24 dwelling units per acre.
05/20/81	The Board of City Commissioners approved a Rezoning (Z-0034-81) from N-U (Non-Urban) to R-1 (Single Family Residence), R-2 (Two Family Residence), R-3 (Limited Multiple Residence), R-MHP (Residential Mobile Home Park), R-PD7 (Residential Planned Development), R-PD8 (Residential Planned Development), P-R (Professional Offices and Parking), C-1 (Limited Commercial), C-2 (General Commercial) and C-V (Civic) generally located north of Sahara Avenue, south of Westcliff Drive and extending two miles west of Durango Drive. The Planning Commission and staff recommended approval.

SS

Related Relevant City Actions by P&D, Fire, Bldg., etc.	
05/07/86	The City Council approved the Master Development Plan for Venetian Foothills on 1,923 acres generally located north of Sahara Avenue between Durango Drive and Hualapai Way. The Planning Commission and staff recommended approval. This plan included two 18-hole golf courses and a 106-acre regional shopping center. [Venetian Foothills Master Development Plan]
	The City Council approved a Rezoning (Z-0030-86) to reclassify property from N-U (Non-Urban) (under Resolution of Intent) to R-PD4 (Residential Planned Development), P-R (Professional Offices and Parking), C-1 (Limited Commercial), and C-V (Civic) on 585.00 acres generally located north of Sahara Avenue between Durango Drive and Hualapai Way. The Planning Commission and staff recommended approval. [Venetian Foothills Phase One]
02/15/89	The City Council considered and approved a revised master development plan for the subject site and renamed it Peccole Ranch to include 1,716.30 acres. Phase One of the Plan is generally located south of Charleston Boulevard, west of Fort Apache Road. Phase Two of the Plan is generally located north of Charleston Boulevard, west of Durango Drive, and south of Charleston Boulevard, east of Hualapai Way. The Planning Commission and staff recommended approval. A condition of approval limited the maximum number of dwelling units in Phase One to 3,150. [Peccole Ranch Master Development Plan]
02/15/89	The City Council approved a Rezoning (Z-0139-88) on 448.80 acres from N-U (Non-Urban) under Resolution of Intent to R-PD4, P-R, C-1 and C-V to R-PD7 (Residential Planned Development – 7 Units per Acre), R-3 (Limited Multiple Residence) and C-1 (Limited Commercial). [Peccole Ranch Phase One]
04/04/90	The City Council approved an amendment to the Peccole Ranch Master Development Plan to make changes related to Phase Two of the Plan and to reduce the overall acreage to 1,569.60 acres. Approximately 212 acres of land in Phase Two was planned for a golf course. The Planning Commission and staff recommended approval. [Peccole Ranch Master Development Plan]
	The City Council approved a Rezoning (Z-0017-90) from N-U (Non-Urban) (under Resolution of Intent to multiple zoning districts) to R-3 (Limited Multiple Residence), R-PD7 (Residential Planned Development – 7 Units per Acre) and C-1 (Limited Commercial) on 996.40 acres on the east side of Hualapai Way, west of Durango Drive, between the south boundary of Angel Park and Sahara Avenue. A condition of approval limited the maximum number of dwelling units for Phase Two of the Peccole Ranch Master Development Plan to 4,247 units. The Planning Commission and staff recommended approval. [Peccole Ranch Phase Two]

SS

Related Relevant City Actions by P&D, Fire, Bldg., etc.	
12/05/96	A (Parent) Final Map (FM-0008-96) for a 16-lot subdivision (Peccole West) on 570.47 acres at the northeast corner of Charleston Boulevard and Hualapai Way was recorded [Book 77 Page 23 of Plats]. The golf course was located on Lot 5 of this map.
08/14/97	The Planning Commission approved a request for a Site Development Plan Review [Z-0017-90(20)] for a proposed 76-lot single family residential development on 36.30 acres south of Alta Drive, east of Hualapai Way. Staff recommended approval.
03/30/98	A Final Map (FM-0190-96) for a four-lot subdivision (Peccole West Lot 10) on 184.01 acres at the southeast corner of Alta Drive and Hualapai Way was recorded [Book 83 Page 61 of Plats].
03/30/98	A Final Map [FM-0008-96(1)] to amend portions of Lots 5 and 10 of the Peccole West Subdivision Map on 368.81 acres at the northeast corner of Charleston Boulevard and Hualapai Way was recorded [Book 83 Page 57 of Plats].
10/19/98	A Final Map (FM-0027-98) for a 45-lot single family residential subdivision (San Michelle North) on 17.41 acres generally located south of Alta Drive, east of Hualapai Way was recorded [Book 86 Page 74 of Plats].
12/17/98	A Final Map (FM-0158-97) for a 21-lot single family residential subdivision (Peccole West – Parcel 20) on 20.65 acres generally located south of Alta Drive, east of Hualapai Way was recorded [Book 87 Page 54 of Plats].
09/23/99	A Final Map (FM-0157-97) for a 41-lot single family residential subdivision (Peccole West – Parcel 19) on 15.10 acres generally located south of Alta Drive, east of Hualapai Way was recorded [Book 91 Page 47 of Plats].
06/18/15	A four-lot Parcel Map (PMP-59572) on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 120 Page 49 of Parcel Maps].
11/30/15	A two-lot Parcel Map (PMP-62257) on 70.52 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 120 Page 91 of Parcel Maps].
01/12/16	The Planning Commission voted [6-0] to hold requests for a General Plan Amendment (GPA-62387) from PR-OS (Parks/Recreation/Open Space) to H (High Density Residential), a Rezoning (ZON-62392) from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-4 (High Density Residential) and a Site Development Plan Review (SDR-62393) for a proposed 720-unit multi-family residential development in abeyance to the March 8, 2016 Planning Commission meeting at the request of the applicant.

SS

Related Relevant City Actions by P&D, Fire, Bldg., etc.	
03/08/16	The Planning Commission voted [7-0] to hold GPA-62387, ZON-62392 and SDR-62393 in abeyance to the April 12, 2016 Planning Commission meeting at the request of the applicant.
03/15/16	A two-lot Parcel Map (PMP-63468) on 53.03 acres at the southwest corner of Alta Drive and Rampart Boulevard was recorded [Book 121 Page 12 of Parcel Maps].
04/12/16	The Planning Commission voted [7-0] to hold GPA-62387, ZON-62392 and SDR-62393 in abeyance to the May 10, 2016 Planning Commission meeting at the request of the applicant.
04/12/16	The Planning Commission voted [7-0] to hold requests for a Major Modification (MOD-63600) of the 1990 Peccole Ranch Master Plan; a Development Agreement (DIR-63602) between 180 Land Co., LLC, et al. and the City of Las Vegas; a General Plan Amendment (GPA-63599) from PR-OS (Parks/Recreation/Open Space) to DR (Desert Rural Density Residential) and H (High Density Residential); and a Rezoning (ZON-62392) from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-E (Residence Estates) and R-4 (High Density Residential) on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard in abeyance to the May 10, 2016 Planning Commission meeting at the request of the applicant.
05/10/16	The Planning Commission voted [7-0] to hold GPA-62387, ZON-62392 and SDR-62393 in abeyance to the July 12, 2016 Planning Commission meeting at the request of City staff.
	The Planning Commission voted [7-0] to hold MOD-63600, GPA-63599, ZON-63601 and DIR-63602 in abeyance to the July 12, 2016 Planning Commission meeting at the request of City staff.
07/12/16	The Planning Commission voted [5-2] to hold GPA-62387, ZON-62392 and SDR-62393 in abeyance to the October 11, 2016 Planning Commission meeting.
	The Planning Commission voted [5-2] to hold MOD-63600, GPA-63599, ZON-63601 and DIR-63602 in abeyance to the October 11, 2016 Planning Commission meeting.
08/09/16	The Planning Commission voted [7-0] to rescind the action taken on 07/12/16 to hold GPA-62387, ZON-62392 and SDR-62393 in abeyance to the October 11, 2016 Planning Commission meeting. Action was then taken to reschedule the hearing of these items at a special Planning Commission meeting on 10/18/16.
08/09/16	The Planning Commission voted [7-0] to rescind the action taken on 07/12/16 to hold MOD-63600, GPA-63599, ZON-63601 and DIR-63602 in abeyance to the October 11, 2016 Planning Commission meeting. Action was then taken to reschedule the hearing of these items at a special Planning Commission meeting on 10/18/16, at which they were recommended for denial.

SS

Related Relevant City Actions by P&D, Fire, Bldg., etc.	
11/16/16	At the applicant's request, the City Council voted to Withdraw Without Prejudice requests for a Major Modification (MOD-63600) of the 1990 Peccole Ranch Master Plan; a Development Agreement (DIR-63602) between 180 Land Co., LLC, et al. and the City of Las Vegas; a General Plan Amendment (GPA-63599) from PR-OS (Parks/Recreation/Open Space) to DR (Desert Rural Density Residential) and H (High Density Residential); and a Rezoning (ZON-62392) from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-E (Residence Estates) and R-4 (High Density Residential) on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard. The Planning Commission recommended denial; staff recommended approval.
	The Planning Commission voted to hold in abeyance to the January 18, 2017 City Council meeting a General Plan Amendment (GPA-62387) from PR-OS (Parks/Recreation/Open Space) to H (High Density Residential), a Rezoning (ZON-62392) from R-PD7 (Residential Planned Development – 7 Units per Acre) to R-4 (High Density Residential) and a Site Development Plan Review (SDR-62393) for a proposed 720-unit multi-family residential development on 17.49 acres at the southwest corner of Alta Drive and Rampart Boulevard. The Planning Commission and staff recommended approval.
01/10/17	The Planning Commission voted to hold in abeyance to the February 14, 2017 Planning Commission meeting GPA-68385 [PRJ-67184].
01/18/17	The City Council voted to hold in abeyance to the February 15, 2017 City Council meeting GPA-62387, ZON-62392 and SDR-62393 at the applicant's request.
01/24/17	A four-lot Parcel Map (PMP-64285) on 166.99 acres at the southeast corner of Alta Drive and Hualapai Way was recorded [File 121 Page 100 of Parcel Maps].
02/14/17	The Planning Commission voted to recommend APPROVAL on the following requests: • Waiver (WVR-68480) TO ALLOW 32-FOOT PRIVATE STREETS WITH A SIDEWALK ON ONE SIDE WHERE 47-FOOT PRIVATE STREETS WITH SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT • Site Development Plan Review (SDR-68481) FOR A PROPOSED 61-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT • Tentative Map (TMP-68482) FOR A 61-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]

SS

Related Relevant City Actions by P&D, Fire, Bldg., etc.	
02/14/17	The Planning Commission vote resulted in a TIE which is tantamount to DENIAL on a request for a General Plan Amendment (GPA-68385) which is a FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO: L (LOW DENSITY RESIDENTIAL) on 166.99 acres at the southeast corner of Alta Drive and Hualapai Way (APN 138-31-702-002), Ward 2 (Beers) [PRJ-67184].
03/15/17	The City Council voted to hold the following four related items in abeyance to the April 19, 2017 City Council meeting. • General Plan Amendment (GPA-68385) which is a FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO: L (LOW DENSITY RESIDENTIAL) • Waiver (WVR-68480) TO ALLOW 32-FOOT PRIVATE STREETS WITH A SIDEWALK ON ONE SIDE WHERE 47-FOOT PRIVATE STREETS WITH SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT • Site Development Plan Review (SDR-68481) FOR A PROPOSED 61-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT • Tentative Map (TMP-68482) FOR A 61-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]
04/19/17	The City Council voted to hold the following four related items in abeyance to the May 17, 2017 City Council meeting. • General Plan Amendment (GPA-68385) which is a FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO: L (LOW DENSITY RESIDENTIAL) • Waiver (WVR-68480) TO ALLOW 32-FOOT PRIVATE STREETS WITH A SIDEWALK ON ONE SIDE WHERE 47-FOOT PRIVATE STREETS WITH SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT • Site Development Plan Review (SDR-68481) FOR A PROPOSED 61-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT • Tentative Map (TMP-68482) FOR A 61-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]

SS

Related Relevant City Actions by P&D, Fire, Bldg., etc.	
05/17/17	The City Council voted to hold the following four related items in abeyance to the June 21, 2017 City Council meeting. • General Plan Amendment (GPA-68385) which is a FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO: L (LOW DENSITY RESIDENTIAL) • Waiver (WVR-68480) TO ALLOW 32-FOOT PRIVATE STREETS WITH A SIDEWALK ON ONE SIDE WHERE 47-FOOT PRIVATE STREETS WITH SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT • Site Development Plan Review (SDR-68481) FOR A PROPOSED 61-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT • Tentative Map (TMP-68482) FOR A 61-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]

Most Recent Change of Ownership	
11/16/15	A deed was recorded for a change in ownership on APN 138-31-702-002.

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

Pre-Application Meeting	
09/29/16	A pre-application meeting was held to discuss submittal requirements for Site Development Plan Review and Tentative Map applications. The applicant proposed 30-foot wide private streets with 30-inch roll curbs. Staff indicated that a Waiver would be necessary to deviate from public street standards. There was concern that the long and narrow streets would come into conflict with fire codes and that the applicant should work with staff to address these issues. In addition, the applicant was advised that a parcel map currently in review would need to be recorded prior to these items being notified for hearing.
12/06/16	The requirement for a General Plan Amendment and neighborhood meeting was added to the original submittal checklist.

SS

Neighborhood Meeting	
01/09/17	A neighborhood meeting was held at the Badlands Golf Course Clubhouse at 9119 Alta Drive, Las Vegas, Nevada. Approximately 50 members of the public were in attendance, as well as seven members of the development team, one City Council Ward staff member and one Department of Planning staff member. The applicant set up display boards showing the proposed General Plan Amendment. At sign in, neighbors were given a handout describing the request, which noted that the item had been requested to be abeyed to the February 14, 2017 Planning Commission meeting. No formal presentation was given; instead, members of the public were invited to examine the request and approach development team members with any questions.

Field Check	
01/05/17	The site contains a well-maintained golf course surrounded by existing single-family residential dwellings.

Details of Application Request	
Site Area	
Net Acres (GPA)	166.99
Net Acres (WVR/SDR/TMP)	34.07

Surrounding Property	***Existing Land Use Per Title 19.12***	***Planned or Special Land Use Designation***	***Existing Zoning District***
Subject Property	Commercial Recreation/Amusement (Outdoor) – Golf Course	PR-OS (Parks/Recreation/Open Space)	R-PD7 (Residential Planned Development – 7 Units per Acre)
North	Multi-Family Residential (Condominiums) / Club House	GTC (General Tourist Commercial)	PD (Planned Development)
	Hotel/Casino	SC (Service Commercial)	C-1 (Limited Commercial)
	Office, Medical or Dental		

SS

Surrounding Property	*Existing Land Use Per Title 19.12*	*Planned or Special Land Use Designation*	*Existing Zoning District*
North	Single Family, Detached	ML (Medium Low Density Residential)	R-PD7 (Residential Planned Development – 7 Units per Acre)
		MLA (Medium Low Attached Density Residential)	R-PD10 (Residential Planned Development – 10 Units per Acre)
South	Office, Other Than Listed	SC (Service Commercial)	C-1 (Limited Commercial)
	Single Family, Detached	ML (Medium Low Density Residential)	R-PD7 (Residential Planned Development – 7 Units per Acre)
	Single Family, Attached	M (Medium Density Residential)	R-PD10 (Residential Planned Development – 10 Units per Acre)
	Multi-Family Residential		R-3 (Medium Density Residential)
East	Shopping Center	SC (Service Commercial)	PD (Planned Development)
	Office, Other Than Listed		C-1 (Limited Commercial)
	Mixed Use	GC (General Commercial)	C-2 (General Commercial)
	Utility Installation	PF (Public Facilities)	C-V (Civic)
	Single Family, Attached	M (Medium Density Residential)	R-PD10 (Residential Planned Development – 10 Units per Acre)
West	Single Family, Detached	SF2 (Single Family Detached – 6 Units per Acre)	P-C (Planned Community)
	Golf Course	P (Parks/Open Space)	

SS

Surrounding Property	*Existing Land Use Per Title 19.12*	*Planned or Special Land Use Designation*	*Existing Zoning District*
West	Multi-Family Residential	MF2 (Medium Density Multi-family – 21 Units per Acre)	

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

DEVELOPMENT STANDARDS

Pursuant to Las Vegas Zoning Code Title 19.06.040 prior to Ordinance 6135 (March 2011), the Development Standards within an R-PD District are established by the Site Development Plan. The following standards are proposed by the applicant:

Standard	**Lots less than or equal to 20,000 sf***	**Lots greater than 20,000 sf**
Minimum Lot Size	10,000 sf	20,000 sf
Building Setbacks:		
• Front yard to private street or access easement	30 feet	35 feet
• Side yard	5 feet	7.5 feet
• Corner side yard	12.5 feet	15 feet
• Rear yard	25 feet	30 feet
Accessory structure setbacks:		
• Porte cochere to private street	15 feet	15 feet
• Side loaded garage to side yard property line	15 feet	15 feet
• Patio covers and/or 2nd story decks	20 feet	20 feet
• Separation from principal dwelling	6 feet	6 feet
• Side yard	5 feet	5 feet
• Corner side yard	5 feet	5 feet
• Rear yard	5 feet	5 feet

SS

Standard	Lots less than or equal to 20,000 sf*	Lots greater than 20,000 sf
Building Heights: • Principal dwelling • Accessory structures • Floors	 40 feet 25 feet 2 stories on slab or over basement	 50 feet 30 feet 3 stories on lots greater than 35,000 sf; otherwise 2 stories
Permitted uses	Single family residence and accessory structures**	Single family residence and accessory structures**
Lot Coverage	Bound by setbacks	Bound by setbacks

*Includes Lots 1, 2 and 24.
**Accessory structures may have a trellis or canopy attached to the principal dwelling.

Existing Zoning	***Permitted Density***	***Units Allowed***
R-PD7	7.49 du/ac	1,250 (based on 166.99 acres)
Proposed Zoning	***Permitted Density***	***Units Allowed***
N/A	N/A	N/A
General Plan	***Permitted Density***	***Units Allowed***
PR-OS	N/A	N/A
Proposed General Plan	***Permitted Density***	***Units Allowed***
L	5.49 du/ac	916 (based on 166.99 acres)

Pursuant to Title 19.06.040, the following standards apply:

Landscaping and Open Space Standards				
Standards	***Required***		***Provided***	***Compliance***
	Ratio	***Trees***		
Buffer Trees: • North • South • East • West	 1 Tree / 20 Linear Feet N/A N/A 1 Tree / 20 Linear Feet	 10 Trees N/A N/A 43 Trees	 15 Trees 81 Trees 0 Trees 47 Trees	 Y N/A N/A Y

SS

CLV180840
1430

Pursuant to Title 19.06.040, the following standards apply:

Landscaping and Open Space Standards					
Standards	***Required***		***Provided***		***Compliance***
	Ratio	***Trees***			
TOTAL PERIMETER TREES			**53 Trees**	**143 Trees**	**Y**
LANDSCAPE BUFFER WIDTHS					
Min. Zone Width					
• North	6 Feet			20 Feet	Y
• South	0 Feet			0 Feet	Y
• East	0 Feet			0 Feet	Y
• West	6 Feet			20 Feet	Y
Wall Height	Not required		6' wrought iron or CMU adjacent to Orient Express Ct. Stepped retaining/ screen wall not exceeding 10' adjacent to Verlaine Ct. and existing lots to the north 10' retaining/screen wall adjacent to Hualapai Way		Y

Open Space – R-PD only							
Total Acreage	***Density***	***Required***			***Provided***		***Compliance***
		Ratio	***Percent***	***Area***	***Percent***	***Area***	
34.07 ac	1.8	1.65	2.97%	1.01 ac	6.22%	2.12 ac	Y

Street Name	***Functional Classification of Street(s)***	***Governing Document***	***Actual Street Width (Feet)***	***Compliance with Street Section***
Alta Drive	Major Collector	Master Plan of Streets and Highways Map	84	Y
Hualapai Way	Primary Arterial	Master Plan of Streets and Highways Map	98	N

SS

CLV180841
1431

19.04.040 Connectivity		
Transportation Network Element	***# Links***	***# Nodes***
Internal Street	9	0
Intersection – Internal	0	5
Cul-de-sac Terminus	0	3
Intersection – External Street or Stub Terminus	0	0
Intersection – Stub Terminus w/ Temporary Turn Around Easements	0	0
Non-Vehicular Path - Unrestricted	0	0
Total	9	8

	Required	***Provided***
Connectivity Ratio (Links / Nodes):	**N/A**	**1.13**

Pursuant to Title 19.08 and 19.12, the following parking standards apply:

Parking Requirement							
Use	***Gross Floor Area or Number of Units***	***Required***			***Provided***		***Compliance***
		Parking Ratio	*Parking*		*Parking*		
			Regular	Handi-capped	Regular	Handi-capped	
Single Family, Detached	61 units	2 spaces per unit	122				
Accessory Structure (Class I) [Casita]	61 casitas	1 additional space per lot	61				
TOTAL SPACES REQUIRED			183		183		Y
Regular and Handicap Spaces Required			183	0	183	0	Y

Waivers		
Requirement	***Request***	***Staff Recommendation***
Private streets must meet public street standards unless waived (47' minimum with L-curbs and sidewalks on both sides of the street)	To allow 32' wide private streets with 30" roll curbs with sidewalk on one side (easement) in a gated community	Approval

SS

EXHIBIT “AAAA”

LAND USE & RURAL NEIGHBORHOODS PRESERVATION ELEMENT

LAS VEGAS 2020 MASTER PLAN

Adopted by
City Council 9-02-09

1433

CLV084015

11573

LAND USE HIERARCHY

The land use hierarchy of the city of Las Vegas is designed to progress from broad to specific. In descending order, the land use hierarchy progresses in the following order: 2020 Master Plan; Land Use Element; Master Plan Land Use Designation; Master Development Plan Areas; and Zoning Designation. The following is a brief explanation of the role assumed by each level of the land use hierarchy.

LAS VEGAS 2020 MASTER PLAN

In 2001, the city of Las Vegas adopted the 2020 Master Plan, which provided a broad and comprehensive policy direction for future land use planning. Within this document, the city was divided into four strategy areas whose boundaries were roughly adopted from the 1992 General Plan Sector Plans. The areas are defined as the Downtown Reurbanization Area, Neighborhood Revitalization Area, Newly Developing Area, and Recently Developed Area.[13] Within these areas, broad goals, objectives, and policies were developed in order to direct planning efforts until the year 2020.

LAND USE ELEMENT

Within the Land Use and Rural Neighborhoods Preservation Element, the city is divided into the Centennial Hills Sector, Southeast Sector, Southwest Sector, and the Downtown Area. The sector plans have the same geographical boundaries as the four strategy areas (Downtown Reurbanization, Neighborhood Revitalization, Newly Developing, and Recently Developed) identified in the 2020 Master Plan.

While the 2020 Strategy Areas and Land Use Element Sector Plans have different names, the objectives and policies developed for each Strategy Area in the Master Plan also directs future planning policy for each corresponding Sector Plan.

13 Recently Developed Area was added through a revision of the 2020 Master Plan dated July 6, 2005 (GPA-6363).

The following list depicts the 2020 Master Plan Strategy Areas and their Land Use and Rural Neighborhoods Preservation Element equivalents.

2020 Plan Strategy Area	Land Use & Rural Neighborhoods Preservation Element
Downtown Reurbanization Area	Downtown Area
Neighborhood Revitalization Area	Southeast Sector Plan
Newly Developing Area	Centennial Hills Sector Plan
Recently Developed Area	Southwest Sector Plan

MASTER PLAN DESIGNATION

The Master Plan designation determines its future land use. There are 17 land use designations within the Master Plan that allow for various residential, commercial, industrial, and public facility uses. Within each designation, a specific set of zoning districts are allowed.

MASTER DEVELOPMENT PLAN AREAS AND SPECIAL LAND USE DESIGNATION

Master planned areas are comprehensively planned developments with a site area of more than eighty acres.[14] Other special area plans are intended for neighborhood and other smaller areas where it is determined that a more detailed planning direction is needed. These areas are located throughout the city and are listed by Sector Plan in the Future Land Use section of this element.

Some plan areas have separate land use designations that are unique to that particular plan. These special land use designations are described within the Description of Master Plan Land Use Designations subsection of the Future Land Use section of this element.

ZONING

Zoning is the major implementation tool of the Master Plan. The use of land as well as the intensity, height, setbacks, and associated parking needs of a development are regulated by zoning district requirements. Each Master Plan designation has specific zoning categories that are compatible, and any zoning or rezoning request must be in substantial agreement with the Master Plan as required by Nevada Revised Statutes 278.250 and Title 19.00 of the Las Vegas Municipal Code. The land use tables within the Future Land Use section of this element depict the allowable zoning districts for each Master Plan designation.

14 Certain infill developments may receive a waiver from the eighty-acre requirement.

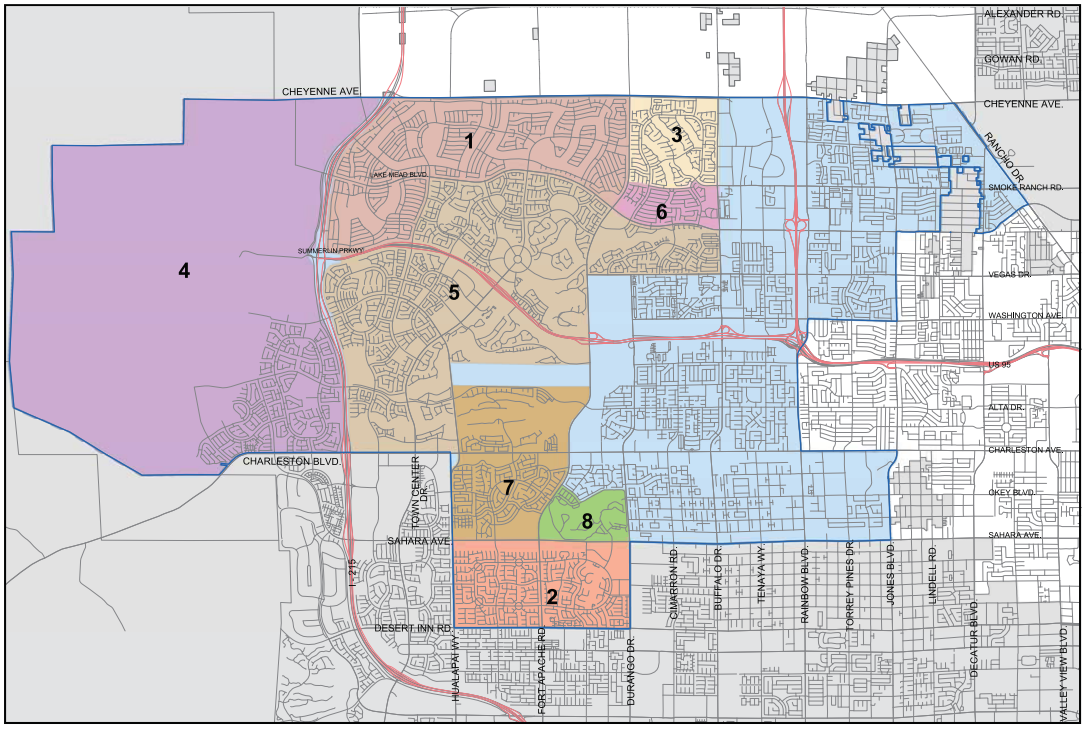
SOUTHWEST SECTOR

The Southwest Sector of the Master Plan is located along Cheyenne Avenue to the north, portions of Rainbow and Jones Boulevard to the east, the Bruce Woodbury Beltway to the west, and the city limit boundaries to the south. Many of the city's more recently developed areas such as Summerlin and the Lakes are located within the Southwest Sector Plan. The following Master Development Plan Areas are located within the Southwest Sector:

Canyon Gate	Desert Shores
The Lakes	Peccole Ranch
South Shores	Summerlin North
Summerlin West	Sun City

LU_RNP Ele;Plans-MPlan;indd;rs09/02/09
1436

Exhibit 4:
Southwest Sector Map



Printed: November 18, 2008

1 Sun City
2 The Lakes
3 Desert Shores
4 Summerlin West
5 Summerlin North
6 South Shores
7 Peccole Ranch
8 Canyon Gate
Southwest Sector
Freeway

SC (Service Commercial) – The Service Commercial category allows low to medium intensity retail, office, or other commercial uses that serve primarily local area patrons, and that do not include more intense general commercial characteristics. Examples include neighborhood shopping centers, theaters, and other places of public assembly and public and semi-public uses. This category also includes offices either singly or grouped as office centers with professional and business services. The Service Commercial category may also allow mixed-use development with a residential component where appropriate.

GC (General Commercial) – The General Commercial category generally allows retail, service, wholesale, office and other general business uses of a more intense commercial character. These uses may include outdoor storage or display of products or parts, noise, lighting or other characteristics not generally considered compatible with adjoining residential areas without significant transition. Examples include new and used car sales, recreational vehicle and boat sales, car body and engine repair shops, mortuaries, and other highway uses such as hotels, motels, apartment hotels and similar uses. The General Commercial category allows Service Commercial uses, and may also allow mixed-use development with a residential component where appropriate.

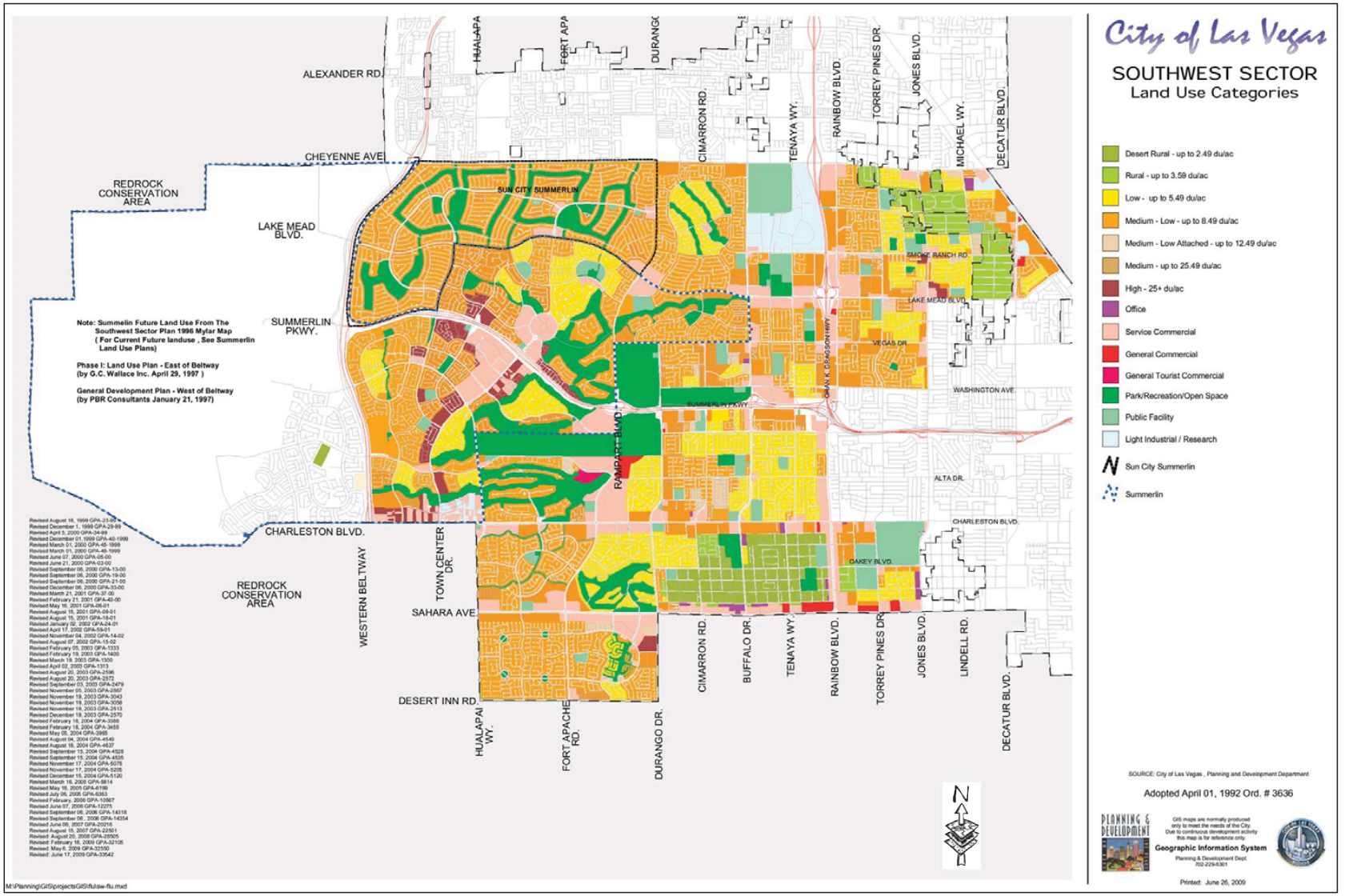
LI/R (Light Industry/Research) – The Light Industry/Research category allows areas appropriate for clean, low-intensity (non-polluting and non-nuisance) industrial uses, including light manufacturing, assembling and processing, warehousing and distributions, and research, development and testing laboratories. Typical supporting and ancillary general uses are also allowed. This category may also allow mixed-use development with a residential component as a transition to less-intense uses where appropriate.

OTHER

TC (Town Center) – The Town Center category is intended to be the principal employment center for the Northwest and is a mixed-use development category. As compatibility allows, a mix of uses can include: mall facilities; high-density residential uses; planned business, office and industrial parks; and recreational uses.

PR-OS (Parks/Recreation/Open Space) – The Parks/Recreation/Open Space category allows large public parks and recreation areas such as public and private golf courses, trails, easements, drainage ways, detention basins, and any other large areas or permanent open land.

Map 3: Southwest Sector Land Use



11579

CLV084087

EXHIBIT “BBBB”

SUMM
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONSI through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendants.	Case No.: A-18-780184-C Department 28 Dept. No.: _____ **SUMMONS - CIVIL**

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): **CITY OF LAS VEGAS, political subdivision of the State of Nevada**

1. If you intend to defend this lawsuit, within 30 days after this Summons is served on you, exclusive of the day of service, you must do the following:

(a) File with the Clerk of this Court whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with in the appropriate filing fee.

(b) Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to respond will result in a judgement of default against you for the relief demanded in the complaint, which could result in taking of money or property or other relief requested in the complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivision, agencies, officers, employees, board members, commission members, and legislators each have 45 days after service of this Summons within which to file an answer or other responsive pleading to the complaint.

STEVE D. GRIERSON, CLERK OF THE COURT

By: Mary Anderson 8/30/2018
Deputy Clerk Date

Mary Anderson

Issued at the request of:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *Autumn Waters*
KERMITT L. WATERS, ESQ. (NBN 2571)
JAMES J. LEAVITT, ESQ. (NBN 6032)
MICHAEL SCHNEIDER, ESQ. (NBN 8887
AUTUMN WATERS, ESQ. (NBN 8917)
704 S. 9th Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff Landowners

COMP
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-18-780184-C
Dept. No.: Department 28

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

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

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

PARTIES

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

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

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

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

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

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

Zoning Governs Existing Permitted Land Uses

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

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

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

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

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

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

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

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

The Undisputed R-PD7 Residential Zoning

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Legally Irrelevant 2016 General Plan Amendment

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

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

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

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

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

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

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

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

RIPENESS AND FUTILITY

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

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

THE MASTER DEVELOPMENT AGREEMENT DENIAL

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

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

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

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

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

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

THE 133 ACRES DENIALS

The Unjustified Delay of the 2017 Tentative Map Applications

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

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

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

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

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

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

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

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

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

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

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

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

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

The "Yohan Lowie" Bill

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

69. At the May 16, 2018 hearing:

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

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

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

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

72. NRS 278.349(3) unambiguously provides that: "The governing body, or planning commission if it is authorized to take final action on a tentative map, shall consider: (e) Conformity with the zoning ordinances and master plan, except that **if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence**;"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE 35 ACRE PROPERTY DENIALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF

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

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

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

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

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

SECOND CAUSE OF ACTION FOR PRELIMINARY INJUNCTION

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Categorical Taking)

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

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

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

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

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

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

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

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

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

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

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

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

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

FOURTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Penn Central Regulatory Taking)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIFTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Regulatory Per Se Taking)

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

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

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

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

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

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

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

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

//

//

SIXTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Nonregulatory Taking)

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

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

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

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

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

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

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

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

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

//

//

//

SEVENTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Temporary Taking)

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

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

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

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

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

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

EIGHTH CLAIM FOR VIOLATION OF

THE LANDOWNERS' DUE PROCESS RIGHTS

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, the Landowners pray for judgment as follows:

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

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

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

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

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

6. A preferential trial setting pursuant to NRS 37.055;

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

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

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

DATED this 27th day of August, 2018.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ Kermitt L. Waters
KERMITT L. WATERS, ESQ.
Nevada Bar. No.2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

Vickie DeHart, on behalf of the Landowners, being first duly sworn, upon oath, deposes and says: that he/she has read the foregoing **COMPLAINT FOR DECLARATORY RELIEF AND INJUNCITIVE RELIEF, AND ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** and based upon information and belief knows the contents thereof to be true and correct to the best of his/her knowledge.

V. DeHart
Vickie DeHart

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

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

Jennifer Knighton
NOTARY PUBLIC

EXHIBIT “CCCC”

NEFF
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Seth T. Floyd (NV Bar No. 11959)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	Case No.: A-18-780184-C Dept. No. III **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment was entered in the above-referenced case on the 30th day of December, a copy of which is attached hereto.

. . .

. . .

. . .

. . .

DATED this 30th day of December 2020.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Amanda C. Yen (NV Bar No. 9726)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Seth T. Floyd (NV Bar No. 11959)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 30th day of December, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT** 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.

Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Michael A. Schneider, Esq.
Autumn L. Waters, Esq.
LAW OFFICES OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Email: info@kermittwaters.com
jim@kermittwaters.com
michael@kermittwaters.com
autumn@kermittwaters.com

Mark A. Hutchison
Joseph S. Kistler
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Facsimile: (702) 385-2086
Email: mhutchison@hutchlegal.com
jkistler@hutchlegal.com

EHB COMPANIES
Elizabeth Ghanem Ham, Esq.
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117
Email: EHam@ehbcompanies.com

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, LTD, SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	Case No. A-18-780184-C Dept. No. III **FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT**

Departmental History

The instant matter was filed in the Eighth Judicial District Court (hereinafter referred to by "Department" designations) by Plaintiff's 180 Land Company, LLC et al. (hereinafter "Developer") on August 28, 2018, and assigned to Judge Israel in Department 28. Based on a peremptory challenge filed by the Defendant City of Las Vegas (hereinafter "City"), the matter was reassigned on February 5, 2019, to Judge Silva in Department 9. The peremptory challenge was subsequently reversed and the matter was reassigned back to Department 28 on February 22, 2019.

Thereafter, on March 12, 2019, Department 28 recused itself from hearing the matter and it was again reassigned to Department 9. Based on a new peremptory challenge filed by

the Developer, the matter was reassigned on April 26, 2019, to Department 8, which was at that time vacant pending the appointment of a new judge.

Prior to the appointment of the new Department 8 judge, the matter was removed to Federal Court on August 22, 2019. In September, 2019, Judge Atkin was appointed to Department 8. On October 24, 2019, the matter was remanded back to State Court by the Federal Court.

On November 6, 2019, Department 8 recused itself and the matter was then reassigned to Judge T. Jones in Department 10. Department 10 presided over the case until September, 2020. At that time, a caseload reassignment occurred and the matter was reassigned to this court, Department 3.

Procedural History

The instant case centers on disputes between the Developer and the City over property formerly known as the Badlands Golf Course. Based on those disputes, Developer filed a series of inverse condemnation actions in the Eighth Judicial District Court. The actions are each specific to separate parcels of land and are commonly identified by the acreage at issue.

The instant matter is commonly referred to as the "65-Acre Property case" and was filed, as stated above, on August 28, 2018. Pending before Judge Williams in Department 16 is Case A758528, the "35-Acre Property case," which was filed on July 18, 2017. Pending before Senior Judge Bixler is Case A773228, the "17-Acre Property case," which was filed on April 20, 2018. Lastly, pending before Judge Sturman in Department 26 is Case A775804, the "133-Acre Property case," which was filed on June 7, 2018.

Also relevant and of note is the fact that the above four inverse condemnation actions were preceded by Case A752344, the "Crockett case" which was filed on March 10, 2017, and assigned to Judge Crockett in Department 24. That matter also dealt with the "17-Acre Property" and was a Petition for Judicial Review filed by a group of citizens challenging the

decision of the City to grant Developer's application to develop that particular property. Judge Crockett granted the Petition for Judicial Review over the objection of both the Developer and the City. Developer then appealed and the City filed an amicus brief in support of the Developer. The Nevada Supreme Court reversed Judge Crockett's decision by way of an order filed March 5, 2020. By then, however, Developer had filed the "17-Acre Property case" now pending before Senior Judge Bixler.

On November 9, 2020, City filed the instant Motion for Summary Judgment (hereinafter "Motion"). On November 23, 2020, Developer filed their Opposition and a Countermotion to Determine the Two Inverse Condemnation Sub-Inquiries in the Proper Order (hereinafter "Countermotion"). On December 9, 2020, City filed a Motion to Strike Developer's Countermotion (hereinafter "Motion to Strike"). The pending motions have been fully briefed.

The court held a lengthy hearing on the pending motions on December 16, 2020. Appearing remotely were James J. Leavitt, Elizabeth Ghanem Ham, Autumn Waters and Michael Schneider on behalf of the Developer, and George F. Ogilvie III, Andrew Schwartz and Philip R. Byrnes on behalf of the City. The court made an initial ruling denying the City's Motion to Strike, finding that the relief requested was proper for a countermotion as it simply asked this court to engage in a certain legal analysis format if and when it addressed the merits of the City's summary judgement request, and to make certain findings, if necessary, in favor of Developer based on that legal analysis.

Regarding the Summary Judgment Motion and the Countermotion, the Court having reviewed the pleadings and exhibits in the instant case, and, where relevant and necessary, in the companion cases, and having considered the written and oral arguments presented, and being fully informed in the premises, makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

I. The Badlands as open space for Peccole Ranch

1. In 1980, the City approved William Peccole's petition to annex 2,243 acres of undeveloped land to the City. Ex. A at 1-11.[1] Mr. Peccole's intent was to develop the entire parcel as a master planned development. *Id.* at 1. After the annexation, the City approved an integrated plan to develop the land with a variety of uses, called the "Peccole Property Land Use Plan." Ex. B at 12-18. In 1986, Mr. Peccole requested approval of an amended master plan featuring two 18-hole golf courses, one of which was in the general area where the Badlands golf course was later developed. Ex. C at 31-33; Ex. WW.

2. In 1988, the Peccole Ranch Partnership ("Peccole") submitted a revised master plan known as the Peccole Ranch Master Plan ("PRMP") and an application to rezone 448.8 acres for the first phase of development ("Phase I"). Ex. E at 62-93. In 1989, the City approved the PRMP and Phase I rezoning application, after Peccole agreed to limit the overall density in Phase I and reserve 207.1 acres for a golf course and drainage in the second phase of development ("Phase II") of the PRMP. *Id.* at 96-97.

3. In 1989, the City included Peccole Ranch in a Gaming Enterprise District ("GED"), which allowed Peccole to develop a resort hotel in the PRMP so long as Peccole provided a recreational amenity such as an 18-hole golf course. Ex. G at 114-124, 130, 135-37. Peccole reserved 207 acres for a golf course to satisfy this requirement. Ex. E at 96, 98; Ex. G at 123-124.

4. In 1990, Peccole applied to amend the PRMP for Phase II. Ex. H at 138-161. The revised PRMP highlighted an "extensive 253-acre golf course and linear open space system winding throughout the community [that] provides a positive focal point while creating a

[1] References to lettered Exhibits are to the Exhibits contained in the City's Appendix. References to numbered Exhibits and/or "LO Appx" Exhibits are to the Exhibits contained in the Developer's Appendix.

mechanism to handle drainage flows." *Id.* at 145. The City approved the Phase II rezoning application under a resolution of intent subject to all conditions of approval for the revised PRMP. *Id.* at 183-94.

II. The PR-OS General Plan designation of the Badlands

5. 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. On April 1, 1992, the City Council adopted a new Las Vegas General Plan, including revisions approved by the Planning Commission. Ex. I at 195-204, 212-18. The 1992 General Plan included maps showing the existing land uses and proposed future land uses. *Id.* at 246. The future land use map for the Southwest Sector designated the area set aside by Peccole for an 18-hole golf course as "Parks/Schools/ Recreation/Open Space." *Id.* at 248. That designation allowed "large public parks and recreation areas such as public and private golf courses, trails and easements, drainage ways and detention basins, and any other large areas of permanent open land." *Id.* at 234-35.

6. From 1992 to 1996, Peccole developed the 18-hole golf course in the location depicted in the 1992 General Plan, and a 9-hole course to the north of the 18-hole course. *Compare id.* at 248 *with* Ex. TT; *see also* Ex. J, UU. The 9-hole course was also designated "P" for "Parks" in the City's General Plan as early as 1998. *See* Ex. K. The Badlands 18-hole and 9-hole golf courses, totaling 250 acres, remain in the same configuration today. When the City Council adopted a new General Plan in 2000 to project growth over the following 20 years ("2020 Master Plan"), it retained the "parks, recreation, and open space" [PR-OS] designation. Ex. L at 265; compare *id.* at 269 with Ex. I at 234-35, 248. Beginning in 2002, the City's General Plan maps show the entire Badlands designated as PR-OS. Ex. M at 274-77.

7. In 2005, the City Council incorporated an updated Land Use Element in the 2020 Master Plan. Ex. N at 278-82. This 2005 Land Use Element designated all 27 holes of the

Badlands golf course as PR-OS for "Park/Recreation/Open Space." *Id.* at 291. 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. *See* Ex. O at 292, 300-01 (Ordinance #6056 9/2/2009); Ex. P at 302-04, 316-17 (Ordinance #6152 5/8/2011); Ex. Q at 318, 331-32 (Ordinance #6622 6/26/2018).

III. The R-PD7 zoning of the Badlands

8. In 1972, the City established R-PD7 zoning (Residential-Planned Unit Development, 7 units/acre). Ex. R. "The purpose of a Planned Unit Development [was] to allow a maximum flexibility for imaginative and innovative residential design and land utilization in accordance with the General Plan." *Id.* at 333. The "PD" in R-PD stands for "Planned Development." Planned Development zoning, generally applicable to larger development sites, "permits planned-unit development by allowing a modification in lot size and frontage requirements under the condition that other land in the development be set aside for parks, schools, or other public needs." *Zoning*, *Black's Law Dictionary* (11th ed. 2019). The R-PD district in the Las Vegas Uniform Development Code was intended "to promote an enhancement of residential amenities by means of an efficient consolidation and utilization of open space, separation of pedestrian and vehicular traffic and a homogeneity of use patterns." Ex. R at 333. "As a[n R-PD7] Residential Planned Development, density may be concentrated in some areas while other areas remain less dense, as long as the overall density for this site does not exceed 7.49 dwelling units per acre. Therefore, portions of the subject area can be restricted in density by various General Plan designations." Ex. ZZZ at 1414-15.

9. During the 1990's, the City approved rezoning requests by a resolution of intent, meaning that a rezoning was provisional until the rezoned property was developed. Once rezoned property was developed, the City would adopt an ordinance amending the Official

Zoning Map Atlas to make the rezoning permanent. *See, e.g.* Ex. S at 341. In 1990, the City adopted a resolution of intent to rezone the 996.4 acres in Phase II in accordance with the amended PRMP. Ex. H at 189-94. To obtain the City Council's approval of tentative R-PD7 zoning for housing lining the fairways of a golf course, Peccole agreed to set aside 211.6 acres for a golf course and drainage. *Id.* at 159, 163-165, 167-168, 171-172, 187-188.

10. In 2001, the City amended the Zoning Map to rezone to R-PD7 the Phase II property previously approved for R-PD7 zoning under the resolution of intent. Ex. T at 345-61. In 2011, the City discontinued the R-PD zoning district for new developments, replacing the R-PD zoning category with "PD." The City, however, did not alter the R-PD7 zoning of the Badlands and surrounding residential areas of Phase II. Ex. U at 363.

IV. The Developers due diligence in acquiring the Badlands property

11. The principals of the Developer are accomplished and professional developers that have constructed more homes and commercial development in the vicinity of the 65-Acre Property than any other person or entity and, through this work, gained significant information about the entire 250-Acre Residential Zoned Land (which includes the 65-Acre Property).[2] *LO Appx. Ex. 22*, Decl. Lowie. They have extensive experience developing luxurious and distinctive commercial and residential projects in Las Vegas, including but not limited to: (1) One Queensridge Place, which consists of two 20-floor luxury residential high rises; (2) Tivoli Village at Queensridge, an Old World styled mixed-used retail, restaurant, and office space shopping center; (3) over 300 customs homes, and (4) multiple commercial shopping centers to name a few. *LO Appx. Ex. 22*, Decl. Lowie, at 00534, p. 1, para. 2. The Developer principles live in the Queensridge common interest community and One Queensridge Place (which is adjacent to the 250 Acre Residential Zoned Land) and are

[2] Yohan Lowie, one of the Landowners' principles, has been described as the best architect in the Las Vegas valley. *LO Appx. Ex 21* at 00418-419.

the single largest owners within both developments having built over 40% of the custom homes within Queensridge. Id.

12. In 1996, the principals of the Developer began working with William Peccole and the Peccole family (referred to as "Peccole") to develop lots adjacent to the 250-Acre Residential Zoned Land within the common interest community commonly known as "Queensridge" (the "Queensridge CIC") and consistently worked together with them in the area on property transactions thereafter. *LO Appx. Ex. 22*, Decl. Lowie, at 00534, p. 1, para. 3.

13. In or about 2001, the principals of the Developer learned from Peccole that the Badlands Golf Course was zoned R-PD7. *LO Appx. Ex 22*, Decl. Lowie, at 00535, p. 2, para. 4. They further learned that Peccole had never imposed any restrictions on the use of the 250-Acre Property and that the 250-Acre Property would eventually be developed. Id. Peccole further informed the Developer that the 250-Acre Residential Zoned Land is "developable at any time" and "we're never going to put a deed restriction on the property." Id. The Land abuts the Queensridge CIC. Id.

14. In or about 2001, the principals of the Developer retained legal counsel to confirm Peccoles' assertions and counsel advised that the 250-Acre Residential Zoned Land is "Not A Part" of the Queensridge CIC, the Land was residentially zoned, there existed rights to develop the Land, the Land was intended for residential development and that as a homeowner within the Queensridge CIC, according to the Queensridge Covenants, Conditions and Restrictions (the "CC&Rs") they had no right to interfere with the development of the 250-Acre Residential Zoned Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 5.

15. In 2006, Mr. Lowie met with the highest ranking City planning official, Robert Ginzer, and was advised that: 1) the entire 250-Acre Residential Zone Land is zoned R-PD7; and, 2) there is nothing that can stop development of the property. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 6.

16. With this knowledge and understanding, the principals of the Developer then obtained the right to purchase all five separate parcels that made up the 250-Acre Residential Zoned Land and continued their due diligence and investigation of the Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 6.

17. In November 2014, the Developer was given six months to exercise their right to purchase the 250-Acre Residential Zoned Land and conducted their final due diligence prior to closing on the acquisition of the Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2-3, para. 6. The Developer met with the two highest ranking City Planning officials at the time, Tom Perrigo and Peter Lowenstein, and asked them to confirm that the entire 250-Acre Residential Zoned Land is developable and if there was "anything" that would otherwise prevent development and the City Planning Department agreed to do a study that took approximately three weeks. Id.; *LO Appx. Ex. 23* at 00559-560, pp. 66-67; 69:15-16; 70:13-16 (Lowie Depo, Binion v. Fore Star).

18. After three weeks the City Planning Department reported that: 1) the 250-Acre Residential Zoned Land was hard zoned and had vested rights to develop up to 7 units an acre; 2) "the zoning trumps everything;" and, 3) any owner of the 250-Acre Residential Zoned Land can develop the property. *LO Appx. Ex. 22*, Decl. Lowie, at 00536, p. 3, para. 8; *LO Appx. Ex. 23* at 00561, pp. 74-75, specifically, 75:13; 74:22-23; 75:12 (Lowie Depo, Binion v. Fore Star).

19. The Developer requested that the City adopt its three-week study in writing as the City's official position in order to conclusively establish the developability of the entire 250-Acre Residential Zoned Land prior to closing on the acquisition of the property. *LO Appx. Ex 22*, Decl. Lowie, at 00536, p. 3, para. 9. The City agreed and provided the City's official position through a "Zoning Verification Letter" issued by the City Planning & Development Department on December 30, 2014, stating: 1) "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 units per acre;" 2) "The density allowed in the R-PD District shall be reflected by a numerical designation for that

district. (Example, R-PD4 allows up to four units per gross acre.);" 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." Id.; *LO Appx. Ex. 23* at 00561-562, pp. 77:24-25, 80:20-21.

20. Their due diligence now complete, Developer was ready to complete the acquisition of the subject property.

V. The Developer's acquisition and segmentation of the Badlands property

21. In early 2015, Peccole owned the Badlands through a company known as Fore Stars Ltd ("Fore Stars"). Ex. V at 365-68; Ex. VV. In March 2015, the Developer acquired Fore Stars, thereby acquiring the 250-Acre Badlands. Ex. W at 379; Ex. AAA. 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. Ex. QQQ at 1160; Ex. X at 382-410; Ex. XX. 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. Ex. W at 379; *see also* Ex. V at 370-77. Each of these entities is controlled by the Developer's EHB Companies LLC. *See* Ex. V at 371 and 375 (deeds executed by 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. *See* Ex. HH; Ex. BBB; Ex. LL; Ex. Z. At issue in this case is a 65-Acre parcel of the Badlands owned by 180 Land, Fore Stars, and Seventy Acres (the "65-Acre Property"). *See* Complaint for Declaratory Relief and Injunctive Relief, and Verified Claims in Inverse Condemnation filed Sept. 5, 2018 ("Compl.") ¶ 7.

VI. The City's approval of 435 luxury housing units on the 17-Acre Property

22. In November 2015, the Developer, acknowledging the need to make application to the City in order to develop a parcel of property, applied for a General Plan Amendment, Re-Zoning, and Site Development Plan Review to redevelop the 17-Acre Property from golf course use to luxury condominiums ("17-Acre Applications"). Ex. Z at 446-66. The 17-Acre Applications sought to change the General Plan designation from PR-OS, which did not permit residential development, to H (High Density Residential) and the zoning from R-PD7 to R-4 (High Density Residential). *Id.* at 449-52. The Planning Staff Report for the 17-Acre Applications noted that the proposed development required a Major Modification Application to amend the PRMP. Ex. AA at 470. In 2016, the Developer submitted a Major Modification Application and related applications, but later that year withdrew the applications. Ex. BB at 483-94; Ex. CC.

23. In February 2017, the City Council approved the 17-Acre Applications for 435 units of luxury housing and approved a rezoning to R-3, along with a General Plan Amendment to change the land use designation from PR-OS to Medium Density Residential. Ex. DD at 586, 587-89, 591-97; Ex. SSS. In approving the 17-Acre Applications, the City did not require the Developer to file a Major Modification Application.

VII. The homeowners' challenge to the City's approval of the 17-Acre Applications

24. After the City approved the 17-Acre Applications, nearby homeowners filed a Petition for Judicial Review of the City's approval, which was assigned to Judge Crockett in Department 24. Ex. EE at 599, 609 (the "Crockett Order"). On March 5, 2018, Judge Crockett granted the homeowners' petition over the objection of both the Developer and the City, vacating the City's approval on the grounds that the City Council was required to approve a Major Modification Application before approving applications to redevelop the Badlands. *Id.* at 598, 610-11. The Developer appealed the Crockett Order. *See* Ex. DDD.

Although the City did not appeal the Crockett Order, it did file an amicus brief in support of the Developer's position that a Major Modification Application was not required. Ex. CCC.

25. Following Judge Crockett's decision invalidating the City's approval, the Developer filed a lawsuit (the 17-Acre case) against the City, the Eighth Judicial District Court, and Judge Crockett. Ex. GG at 631, 632, 639. The City removed that case to federal court. Following a remand order, the 17-Acre case is now pending before Senior Judge James Bixler. On December 9, 2020 Judge Bixler denied the City's motion to dismiss the 17-Acre Complaint.

26. Ultimately, the Nevada Supreme Court reversed Judge Crockett's decision granting the Petition for Judicial Review. In its Order of Reversal filed March 5, 2020, the Nevada Supreme Court found that a Major Modification Application was not required to develop the 17-Acre Property because the City's UDC required Major Modification Applications for property zoned PD, but not property zoned R-PD. Ex. DDD. The Supreme Court subsequently denied rehearing and en banc reconsideration and issued a remittitur, rendering its determination final. Ex. EEE. The Supreme Court's decision was consistent with the City's argument in the District Court in support of it's granting of Developer's application, and in its amicus brief that a Major Modification Application was not required to develop the 17-Acre Property. Ex. CCC at 1003-06. The District Court thereafter, consistent with the Nevada Supreme Court's decision, entered an Order on November 6, 2020, denying the petition for judicial review. *See* Ex. RRR.

27. The Nevada Supreme Court's reversal of the Crockett Order reinstated the City's approval of the Developer's applications to develop the 17-Acre Property. Ex. DDD. The City provided the Developer with notice of that fact by letter on March 26, 2020. Ex. FFF at 1019. The City's letter explained that once remittitur issued in the Nevada Supreme Court's order of reversal, "the discretionary entitlements the City approved for [the Developer's] 435-unit project on February 15, 2017 . . . will be reinstated." *Id.* The City also notified the Developer that the approvals would be valid for two years after the date of the

remittitur. *Id.* On September 1, 2020, the City notified the Developer that the Nevada Supreme Court had issued remittitur, the City's original approval of 435 luxury housing units on the 17-Acre Property had been reinstated, and the Developer is free to proceed with its development project. Ex. GGG at 1021. The City again notified the Developer that the approvals would be extended for two years after the date of the remittitur. *Id.*

VIII. The 35-Acre Applications

28. While the 17-Acre Applications were pending, the Developer filed applications to redevelop the 35-Acre Property ("35-Acre Applications"). Ex. HH; Compl. ¶ 32. On June 21, 2017, the City Council denied the 35-Acre Applications due to significant public opposition to the proposed development, concerns over the impact of the proposed development on surrounding residents, and concerns on piecemeal development of the Master Development Plan area rather than a cohesive plan for the entire area. Ex. 46; *see also* Ex. II at 673-78. Developer did not submit a second application to develop the 35-Acre Property.

The Developer filed a petition for judicial review and complaint for a taking (the 35-Acre Property case), which was assigned to Judge Williams in Department 16. Ex. JJ at 680, 692. Judge Williams concluded that substantial evidence supported the Council's denial of the 35-Acre Applications, that Judge Crockett's Decision had preclusive effect, and the Developer had no vested right under the R-PD7 to approval of its application. Ex. KK at 780-82, 789-92. The Developer filed an amended complaint alleging inverse condemnation claims, which is also currently pending before Judge Williams, following the City's removal to federal court and subsequent remand. *See 180 Land Co. v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J.

IX. The Master Development Application

29. Before the City denied the 35-Acre Applications, the Developer sought a new Master Development Agreement (MDA) for the entire Badlands, including the 35-Acre Property. Ex. LL; Ex. II at 679. On August 2, 2017, the City Council disapproved the MDA by a vote of 4-3. Ex. MM at 880-82; Compl. ¶¶ 39, 42. The Developer did not seek judicial review of the City's decision to deny the development agreement.

X. The 133-Acre Applications

30. In October 2017, the Developer filed applications to redevelop the 133-Acre Property ("133-Acre Applications"). Compl. ¶ 46. On May 16, 2018, after the Crockett Order but before the Nevada Supreme Court's reversal of said order, the City Council voted to strike the 133-Acre Applications as incomplete because they did not include an application for a Major Modification, as the Crockett Order required. Compl. ¶¶68, 77, 85; Ex. BBB at 989-98.

31. The Developer filed a petition for judicial review (the 133-Acre Property case) challenging the City's action to strike the 133-Acre Applications and a complaint for a taking and other related claims. That action was assigned to Judge Sturman in Department 26, who dismissed the petition for judicial review on the grounds that the parties were bound by the Crockett Order and, therefore, the Developer's failure to file a Major Modification Application was valid grounds for the City to strike the application. Judge Sturman allowed the Developer's inverse condemnation claims to proceed. Ex. NN. The City removed the case to federal court, and it has since been remanded back to state court.

XI. The 65-Acre Applications

32. To date, there has been no evidence presented to the court that Developer has submitted any development applications to the City for consideration of a proposed development of the individual 65-Acre parcel. As noted above, there was a Master

Development application, Ex. LL; Ex. II at 679, that was eventually denied by the City but no individual applications for the 65-Acre property.

XII. The increase in value of the Badlands due to the City's approval of 435 units on the 17-Acre Property

33. Under the Membership Purchase and Sale Agreement between the Peccole Family and the Developer, the Developer purchased the 250-Acre Badlands Golf Course for $7,500,000, or $30,000 per acre ($7,500,000/250 acres = $30,000). Ex. AAA at 966. This figure does not represent the total cost to Developer as there were clearly monies spent during its due diligence process (Developer has stated that the total cost for due diligence and purchase was $45 million). $7,500,000 is however the stated figure, per the Purchase and Sale Agreement, that Developer paid for the actual property. Ex. UUU at 1300.

34. The Developer contends in its Initial Disclosures that if the Badlands can be developed with housing, it is worth $1,542,857 per acre. Ex. JJJ at 1135-36.[3] Thus, according to the Developer's own evidence, the City's approval of 435 housing units in the Badlands has increased the value of the 17-Acre Property alone to $26,228,569 (17 x $1,542,857 = $26,228,569), thereby quadrupling the Developer's property purchase investment in the Badlands. Furthermore, the Developer still owns the remaining 233 acres with the potential to continue golf course use or develop the remaining acreage.

35. Even if the Developer paid $45 million for the Badlands as it contends, or $180,000/acre ($45,000,000/250 acres = $180,000/acre), the City's approval of 435 housing units in the Badlands has increased the value of the Badlands by $23,168,569 (the City's approval improved the value of each acre in the 17-Acre Property from $180,000 to

[3] The Developer's Initial Disclosures in the 35-Acre case make the same claim. Ex. VVV at 1319. Both initial disclosures are based in part on the Lubawy appraisal of 70 acres of the Badlands that includes the entire 17-Acre Property and a portion of the 65-Acre Property. Ex. QQQ at 1165. The Lubawy appraisal assumed that the land being appraised could be developed with medium density housing. *Id.* at 1196-97.

$1,542,857, an increase of $1,362,857 per acre ($1,362,857 x 17 = $23,168,569).

CONCLUSIONS OF LAW

The instant motion and countermotion pose three areas of inquiry for the court's consideration. First, a discussion of the legal frame work surrounding the issue of a regulatory taking. Second, a discussion of whether or not the instant claims by the Developer are ripe for court action. And third, if necessary, a discussion of the merits of the Developer's claims under summary judgment standards.

I. The Legal Framework

A. City's liability for a regulatory taking is a question of law

1. Under NRCP 56(a), summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The non-moving party must "'set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.'" *Id.* (quoting *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110 825 P.2d 588, 591 (1992)).

2. Whether the government has inversely condemned private property is a question of law. *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 661, 137 P.3d 1110, 1121 (2006).

B. A regulatory taking requires extreme interference with the use or value of property

1. Courts generally defer to the exercise of land use regulatory powers by the legislative and executive branches of government

3. In 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 charged with regulating land use. The United States Supreme Court declared that the Court does "not sit to determine whether a particular housing project is or is not desirable," since "[t]he concept of the public welfare is broad and inclusive." *Berman v. Parker*, 348 U.S. 26, 33 (1954). Instead, where the legislature and its authorized agencies "have made determinations that take into account a wide variety of uses," it is "not for [the courts] to reappraise them." *Id.*

4. The role of the courts in overseeing land use regulation is limited to cases of the most extreme restrictions on the use of private property under the regulatory takings doctrine. The narrow scope of the doctrine stems from the separation of powers between the legislative and executive branches of government and the judicial branch. *See, e.g., West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 399 (1937) (judicial restraint respects the political questions doctrine and separation of powers because it requires that the courts refrain from replacing the policy judgments of lawmakers and regulators with their own with regard to non-fundamental constitutional rights); *Gorieb v. Fox*, 274 U.S. 603, 608 (1926) ("State Legislatures and city councils, who deal with the situation from a practical standpoint, are better qualified than the courts to determine the necessity, character, and degree of regulation which these new and perplexing conditions . . . require; and their conclusions should not be disturbed by the courts, unless clearly arbitrary and unreasonable.").

5. Nevada's Constitution expressly prohibits any one branch of government from impinging on the functions of another. *Secretary of State v. Nevada State Legislature,* 120 Nev. 456, 466, 93 P.3d 746, 753 (2004). The Nevada State Constitution provides that the state government "shall be divided into three separate departments" and prohibits any person authorized to exercise the powers belonging to one department to "exercise any functions, appertaining to either of the others" except where expressly permitted by the Constitution. Nev. Const. art. 3 § 1.

6. Separation of powers "is probably the most important single principle of government." *Blackjack Bonding v. Las Vegas Mun. Ct.*, 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000). Within this framework, Nevada has delegated broad authority to cities to regulate land use for the public good. The State has specifically authorized cities to "address matters of local concern for the effective operation of city government" by "[e]xpressly grant[ing] and delegat[ing] to the governing body of an incorporated city all powers necessary or proper to address matters of local concern so that the governing body may adopt city ordinances and implement and carry out city programs and functions for the effective operation of city government." NRS 268.001(6), (6)(a).

7. "Matters of local concern" include "[p]lanning, zoning, development and redevelopment in the city." NRS 268.003(2)(b). "For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land." NRS 278.020(1); *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 254, 439 P.2d 219, 222 (1968) (upholding a county's authority under NRS 278.020 to require an applicant for a special use permit to present evidence that the use is necessary to the public health and welfare of the community).

8. As a charter city, the City has the right to "regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land within those districts" and "[e]stablish and adopt ordinances and regulations which relate to the subdivision of land." Las Vegas City Charter § 2.210(1)(a), (b). Cities in Nevada limit the height of buildings, the uses permitted and the location of uses on property, and many other aspects of land use that could have an impact on the community. *See, e.g.*, *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 239, 871 P.2d 320, 321 (1994) (upholding City's denial of building permit application); *State ex rel. Davie v. Coleman*, 67 Nev. 636, 641, 224 P.2d 309, 311 (1950) (upholding Reno ordinance establishing land use plan and restricting use of land).

2. To avoid encroaching on the responsibilities and authority of other branches of government, courts intervene in land use regulation only in cases of extreme economic burden on the property

9. In its Third through Seventh Causes of Action, the Developer alleges a variety of types of takings under the Fifth Amendment of the United States Constitution, which provides "nor shall private property be taken for public use, without just compensation," and its counterpart in Article 1, Section 8 of the Nevada Constitution. The Just Compensation Clause of the Fifth Amendment was originally intended to require compensation only for eminent domain – *i.e.*, direct government takings. *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992). In 1922, the Supreme Court held that a regulation that "goes too far," such that it destroys all or nearly all of the value or use of property, equivalent to an eminent domain taking, can require the regulatory agency to compensate the property owner for the value of the property before the regulation was imposed. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922); *Lingle v. Chevron U.S.A.*, 544 U.S. 528, 539 (2005). This type of inverse condemnation that does not involve a physical occupation of private property by the government, but rather alleges excessive regulation of the property owner's use of the property, is known as a "regulatory taking."[4] Under separation of powers, however, courts intervene in regulation of land use by the legislative and executive branches of government only in cases of (1) extreme regulation where the economic impact of the regulation is equivalent to an eminent domain taking, wiping out or nearly wiping out the use of value of the property, similar to a physical ouster of the owner by eminent domain, or (2) interference with reasonable investment-backed expectations. *Lingle*, 544 US. at 539 (categorical and *Penn Central* regulatory takings test both "aim[] to identify regulatory actions that are

[4] The Developer conflates eminent domain and inverse condemnation. The two doctrines have little in common. In eminent domain, the government's liability for the taking is established by the filing of the action. The only issue remaining is the valuation of the property taken. In inverse condemnation, by contrast, the government's liability is in dispute and is decided by the court. If the court finds liability, then a judge or jury determines the amount of just compensation.

functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain").[5]

10. The Nevada Supreme Court has established an identical test, requiring an extreme economic burden to find liability for a regulatory taking. *State v. Eighth Judicial. Dist. Ct.*, 131 Nev. 411, 419, 351 P.3d 736, 741 (2015) (to effect a regulatory taking, the regulation must "'completely deprive an owner of all economically beneficial use of her property'") (quoting *Lingle*, 544 U.S. at 538); *Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993) (regulation must deny "all economically viable use of [] property" to constitute a taking under either categorical or *Penn Central* tests); *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35 (taking requires agency action that "destroy[s] all viable economic value of the prospective development property").

11. The Developer cites to numerous statements and actions of the City Council, individual Council members, City officials, and City staff that the Developer contends were unfair to the Developer. Because courts defer to the authority of local government to regulate land use for the public good, the regulatory takings doctrine is not concerned with the soundness or fairness of government regulation of land use. Because the regulation is presumed valid in regulatory takings cases, it is inappropriate to delve into the validity of or the motives underlying the regulation:

> The notion that . . . a regulation nevertheless "takes" private property for public use merely by virtue of its ineffectiveness or foolishness is untenable. [The] inquiry [as to a regulation's validity] is logically prior to and distinct from the question whether a regulation effects a taking, for the Takings Clause presupposes that the government has acted in pursuit of a valid public purpose. The Clause expressly requires compensation where government takes private property "for public use." It does not bar government from interfering with property rights, but

---

[5] In settling the test for a regulatory taking, *Lingle* resolved inconsistencies in prior federal and state court decisions. The *Lingle* opinion was unanimous and had no footnotes, indicating that the Supreme Court intended to bring clarity and simplicity to the regulatory takings doctrine.

> rather requires compensation "in the event of otherwise proper interference amounting to a taking.

Lingle, 544 U.S.at 543 (citing *First English Evangelical Lutheran Church v. Cty. of Los Angeles*, 482 U.S. 304, 315 (1987)); *cf. Sproul Homes of Nev. v. State ex rel. Dept. of Highways*, 96 Nev. 441, 445, 611 P.2d 620, 622 (1980) (judicial interference by mandamus, not by inverse condemnation, is appropriate if an agency's action was arbitrary or accompanied by manifest abuse). Assuming the truth of the Developer's allegations regarding the statements and actions of the City Council, individual Council members, City officials, and City staff, they are not relevant unless they can be shown to result in a wipeout or near wipeout of use and value or interfere with the Developer's reasonable investment-backed expectations.

12. A requirement that regulatory agencies pay compensation to property owners for regulation short of a wipeout would encroach on the powers of the legislative and executive branches of government to regulate land use to promote the general health, safety, and welfare. *Lingle*, 544 U.S. at 544 ("[R]equir[ing] courts to scrutinize the efficacy of a vast array of state and federal regulations" to determine whether they substantially advance legitimate state interests is "a task for which courts are not well suited. Moreover, it would empower-and might often require-courts to substitute their predictive judgments for those of elected legislatures and expert agencies."); *id.* at 537 (recognizing compensable regulatory takings only when the effect of government regulation is tantamount to a direct appropriation or ouster). As a result, a regulation is not a taking unless it virtually wipes out all the economic value or use of the property, because only then is it the functional equivalent of eminent domain. *Id.* at 539. Moreover, a standard for public liability for a regulatory taking that merely reduces the use or value of private property without destroying the use or value would lose its connection to the United States and Nevada Constitutions because that regulation would not be the functional equivalent of an eminent domain taking. *Id.* at 539.

13. Complying with government regulation, like the alleged regulation of the redevelopment of the Badlands in this case, is simply a cost of doing business in a complex society. "'[G]overnment regulation—by definition—involves the adjustment of rights for the public good.'" *Id.* at 538 (quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979)); *see also Mahon*, 260 U.S. at 413 ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 133 (1978) ("Legislation designed to promote the general welfare commonly burdens some more than others.").

3. The Developer alleges a categorical and *Penn Central* regulatory taking

14. The Developer has alleged two types of regulatory takings: categorical and *Penn Central*. A categorical taking occurs either when a regulation results in a permanent physical invasion of property, or when a regulation "completely deprive[s] an owner of 'all economically beneficial us[e]' of her property." *Lingle*, 544 U.S. at 538 (quoting *Lucas*, 505 U.S. at 1019). A *Penn Central* taking is determined based on review of several factors; "[p]rimary" among them is "'[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.'" *Id.* at 538-39 (quoting *Penn Central*, 438 U.S. at 124. "[E]conomic impact is determined by comparing the total value of the affected property before and after the government action." *Colony Cove Props. v. City of Carson*, 888 F.3d 445, 451 (9th Cir. 2018). Under both the categorical and the *Penn Central* takings tests, the only regulatory actions that cause takings are those "that are functionally equivalent to the classic taking in

which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539.[6]

15. To be the functional equivalent of eminent domain, the challenged regulatory action must cause a truly "severe economic deprivation" to the plaintiff. *Cienega Gardens v. United States*, 503 F.3d 1266, 1282 (Fed. Cir. 2007); see also *MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 F.3d 1118, 1127 (9th Cir. 2013) (81% diminution in value not sufficient to show a taking); *Concrete Pipe and Products of Cal., Inc. v. Construction Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 645 (1993) (citing cases in which diminutions of 75% and 92.5% insufficient to show a taking); *William C. Haas & Co., Inc. v. City and County of San Francisco*, 605 F.2d 1117, 1120 (1979) (95% diminution not a taking); *Pace Res., Inc. v. Shrewsbury Twp.*, 808 F.2d 1023, 1031 (3d Cir. 1987) (89% diminution in property value not a taking); *Brace v. United States*, 72 Fed. Cl. 337, 357 (2006) ("diminutions well in excess of 85 percent" required to show a taking).

16. The Developer cites several federal cases finding a taking even where the diminution in value was less than 100%. *E.g.*, *Formanek v. United States*, 26 Cl.Ct. 332 (Fed. Cl. Ct. 1992) (finding a taking where government action resulted in 88% decline in value). Even though the Developer's cases were decided before *Lingle* clarified the regulatory takings doctrine in 2005 to require that liability for a taking can be found only where government action wipes out or nearly wipes out the economic value of property, the cases cited did require a near wipeout of value before a finding of a taking.

17. The Developer also relies on *Tien Fu Hsu v. County of Clark*, 173 P.3d 724 (Nev. 2007); *Sisolak*, 137 P.3d 1110; *Arkansas Game & Fish Comm. v. United States*, 568 U.S. 23

[6] The Developer's "categorical" and "regulatory per se" takings are the same thing. The majority in *Lucas v. S.C. Coastal Council* classified economic wipeouts and physical takings resulting from government regulation as "categorical" takings, while the dissent characterized the same test as a "per se" standard. 505 U.S. at 1015, 1052 (Blackmun, J., dissenting). A unanimous Supreme Court in *Lingle* also uses the terms interchangeably. 544 U.S. at 538. Similarly, the Nevada Supreme Court in *Sisolak* refers to physical takings interchangeably as "categorical" and "per se." 122 Nev. at 662-63, 137 P.3d at 1122-23).

(2012); *ASAP Storage v. City of Sparks*, 123 Nev. 639 (2008); and *Richmond Elks Hall Assoc. v. Richmond Red. Agency*, 561 F.2d 1327 (9th Cir. Ct. App. 1977) for the contention that regulation that "substantially impairs" or "direct[ly] interfere[s] with or disturb[s]" the owner's property can give rise to a regulatory taking. These cases are physical takings cases (*Tien*, *Sisolak*, *Arkansas*, and *ASAP*) or precondemnation cases (*Richmond*) and are inapplicable. The Developer also contends that takings are defined more broadly in Nevada than in federal law, citing *Vacation Village, Inc. v. Clark County*, 497 F.3d 902 (9th Cir. 2007). *Vacation Village*, however, concludes only that physical takings are broader in Nevada, not regulatory takings, citing *Sisolak*. *Id.* at 915-16. The scope of agency liability for regulatory takings in Nevada is identical to the federal standard. *See State*, 131 Nev. at 419, 351 P.3d at 741 (2015); *Kelly*, 109 Nev. at 649-50, 855 P.2d at 1034; *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35.

18. To support its contention that the test for a regulatory taking is less deferential to the agency action than as established in *Lingle*, *Penn Central*, *Concrete Pipe*, *Colony Cove*, *State*, *Kelly*, and *Boulder City*, the Developer cites to a 2008 amendment to Article 1, Section 22 of the Nevada Constitution to allow owners of property taken by eminent domain to recover for damage to their property from the construction of a public improvement. This amendment concerns eminent domain and has no bearing on the test for a regulatory taking claim.

19. The Developer claims that the City has taken the 65-Acre Property because it did not comply with NRS 37.039, which sets out requirements for agencies exercising eminent domain to acquire property for open space. Because the City did not condemn the 65-Acre Property or any other portion of the Badlands, this statute does not apply.

II. The Ripeness Issue

20. A regulatory takings claim is ripe only when the landowner has filed at least one application that is denied and a second application for a reduced density or a variance that is

also denied. *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 191 (1985), *overruled on other grounds by Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019) ("*Williamson County*"); *see also Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001) ("[T]he final decision requirement is not satisfied when a developer submits, and a land-use authority denies, a grandiose development proposal, leaving open the possibility that lesser uses of the property might be permitted."); *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 351-53 (1986) (at least two applications required to ripen takings claim).

21. The Nevada Supreme Court has fully embraced the final decision requirement:

> Generally, courts only consider ripe regulatory takings claims, and "a claim that the application of government regulations effects a taking of a property interest ***is 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. . . [The] regulatory takings claim is unripe for review for a failure to file any land-use application with the City. And although Ad America contends that exhaustion was futile because there was a de facto moratorium on developing property within Project Neon's path, the record does not support this contention. The opinion of Ad America's political consultant, which was based on alleged statements from only one of seven City Council members, is insufficient to establish the existence of such a moratorium." (emphasis added).

State v. Eighth Jud. Dist. Ct., 131 Nev. at 419-20, 351 P.3d at 742 (quoting *Williamson County*, 473 U.S. at 186). Because the Nevada Supreme Court follows *Williamson County*, the courts of this state require that at least two applications be denied before finding that a regulatory takings claim is ripe.

22. 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.*

23. 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 at 742.

24. The Developer filed this action seeking damages for a taking of the 65-Acre Property only. *See* Compl. ¶7. The Developer has submitted no evidence that it has filed any application, much less two or more, to redevelop the individual 65-Acre Property, and obviously, no subsequent application for a variance, reduced density, or alternate project. As such, Developer has provided City with no individual 65-Acre Property application to consider and the City cannot be said to have reached a "clear, complete, and unambiguous" decision and that the City has "drawn the line, clearly and emphatically, as to the sole use to which [the 65-Acre Property] may ever be put." *Hoehne*, 870 F.2d at 533.

25. It can certainly be said that Developer may have very well been frustrated with what had occurred. Its first application was approved, only to then find itself being sued by a group of homeowners, thereafter receiving an unfavorable District Court ruling necessitating a Nevada Supreme Court appeal and the perceived need to file multiple lawsuits. That frustration does not, however, excuse the necessity of first making application to develop the 65-Acre Property before filing the instant case against the City alleging a taking of that property. This is especially true where, as here, Developer chose to file four separate court actions specifically directed at each individual parcel of property that Developer alleged was taken.

26. It must also be noted that fifty percent (50%) of Developer's applications directed to the individual properties were approved. Their first application for the 17-Acre Property was approved by the city. The application for the 35-Acre Property was denied. The application for the 133-Acre Property was deemed incomplete because of the then controlling Crockett Order and it was never resubmitted. And, as stated above, no application was ever submitted for the 65-Acre Property at issue in the instant case.

27. This court holds that any argument that proffering a development proposal for the 65-Acre Property would be futile is without merit as the City approved fifty percent (50%) of the individual applications it received, and felt it had legal authority to consider. This court would be engaging in inappropriate speculation were it to try and guess at what type of proposal Developer would have made for the 65-Acre Property and what type of response the City would have provided.

28. The Developer argued that the denial of the Master Development Agreement (MDA) also plays into the futility argument but the court finds that stance to be unpersuasive. To begin, the MDA was made after the individual 17-Acre Property proposal was made (which was approved) and after there was an application pending before the City for the development of the individual 35-Acre Property. Any denial of the MDA proposal while multiple individual proposals were pending and/or already approved cannot be said to be at all unreasonable. Moreover, even if the MDA denial was considered as part of the futility argument, the City would still have granted one-third (1/3) of the Developer's three proposals with the fourth proposal being deemed incomplete. As such, Developer's argument still places this court in the position of having to speculate about a possible 65-Acre Property proposal and the possible response by the City. Lastly, Developer made its 133-Acre Property application after the City denied the MDA. As such, it is clear that Developer did not believe that the MDA denial rendered further individual property development applications futile, rather, Developer chose to only proceed with the application for the 133-Acre Property.

29. The City's actions simply cannot be said to have been so "clear, complete, and unambiguous" as to excuse the need for Developer to propose a development plan for the 65-Acre Property before Developer made the choice to seek court intervention for that specific parcel of property.

30. To the extent Developer argues that the approval of the 17-Acre Property was somehow vacated and therefore no applications could be said to have been granted by the

City, the Court finds this position to also be without merit. There is no evidence that the City has taken any action to limit the Developer's proposed use of the 17-Acre Property for 435 luxury housing units. The Developer's contention that the City "nullified" the 435-unit approval is without any support in the evidence. The Developer's contention that the City's declining to extend the 17-Acre approvals after Judge Crockett invalidated the approvals means that the City "nullified" the approvals is frivolous. The City supported Developer and opposed Judge Crockett's Order at the trial court level and in the Nevada Supreme Court, where the City filed an amicus brief requesting that the Supreme Court reverse the Crockett Order and reinstate the 17-Acre Property approvals. Ex. CCC.

31. Prior to the Supreme Court's Order of Reversal, the 17-Acre Property approvals were legally void and there was nothing to extend. If the City had attempted to extend the approvals, the City could arguably have been in contempt of Judge Crockett's Order. *See* NRS 22.010(3) (disobedience or resistance to any lawful writ or order issued by the court shall be deemed contempt); *see also Edwards v. Ghandour*, 123 Nev. 105, 116, 159 P.3d 1086, 1093 (2007) (a judgment has preclusive effect even when it is on appeal), *abrogated on other grounds by Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1053-54, 194 P.3d 709, 712-13 (2008). After the Supreme Court reinstated the approvals, the City had no power to nullify the approvals even if it had intended to do so. And it evidenced no intent to do so. To the contrary, upon reinstatement, the City twice wrote to the Developer extending the approvals for two years after the date of the remittitur. Ex. FFF at 1019; Ex. GGG at 1021. The Court accordingly rejects the Developer's argument that the City "nullified" the City's approval of 435 luxury housing units on the 17-Acre Property. All evidence establishes the opposite. The 17-Acre approvals are valid, and the Developer may proceed to develop 435 luxury housing units on the 17-Acre Property.

32. The Developer argues that it is not subject to the final decision ripeness rule adopted by the United States and Nevada Supreme Courts because the "taking is known." This argument is circular and is rejected. The Court cannot determine whether the City has

"gone too far" unless the City denies specific applications to develop the property.

33. The Developer also argues that the final decision ripeness requirement adopted in *State* and *Kelly* has been eliminated because takings are "self-executing," citing *Knick* and *Alper v. Clark County*, 93 Nev. 569, 572, 571 P.2d 810, 811-12 (1977). *Knick* had nothing to do with final-decision ripeness, nor would it because the claimant in *Knick* alleged a physical taking. A physical taking is not subject to final-decision ripeness. *Knick*, 139 S.Ct. at 2169 ("the validity of [the] finality requirement . . . is not at issue here." The only issue in *Knick* was whether takings claims could be brought in the first instance in federal court. *Id.* at 2179.

34. In *Alper*, the Nevada Supreme Court stated that, "as prohibitions on the state and federal governments," the taking clauses of the state and federal constitutions are "self-executing," meaning that "they give rise to a cause of action regardless of whether the Legislature has provided any statutory procedure authorizing one." 93 Nev. at 572, 571 P.2d at 811-12. Thus, the "self-executing" nature of the taking clauses means only that the taking clauses do not need to be implemented by statute. Being self-executing does not mean, as the Developer asserts, that payment of just compensation is automatically due without first satisfying the requirement to obtain a final agency decision. The Developer further contends that *Alper* proscribes the ripeness requirement as a "barrier[] or precondition[]" to a taking claim. To the contrary, the Nevada Supreme Court in *Alper* did not address the ripeness requirement of taking claims. Instead, it held that the state's Six Months' Claims Statutes codified in NRS 244.245 and NRS 244.250, which require that a claimant presents his or her claim to a County before suing the County, do not apply to actions in inverse condemnation. *Alper*, 93 Nev. at 570, 572.

35. The Developer asserts that its *Penn Central* regulatory taking claim is ripe because the City disapproved the Developer's MDA for the entire Badlands. The MDA, while it included parts of the 65-Acre Property, covered the entire 250-acre Badlands outside of the 17-Acre Property, development on which the City had already approved. Ex. LL at 801. It did not constitute an application to develop the 65-Acre Property standing alone,

which is "the property at issue." *See State*, 131 Nev. at 419. The City's denial of the MDA, therefore, is not considered an application to develop the 65-Acre Property for purposes of ripeness. Even assuming that it was an application to develop the 65-Acre Property standing alone, the Developer's regulatory takings claim would not be ripe until the Developer files at least one additional application. Again, the Developer has presented no evidence that it has done so.

36. The Court also does not consider the MDA to constitute an initial application to develop the 65-Acre Property for purposes of a final decision because the MDA was not the specific and detailed application required for the City to take final action on a development project. *See* Ex. LL at 810-19 (general outline of proposed development in the Badlands). The MDA divided the Badlands into four "Development Areas" and proposed permitted uses, maximum densities, heights, and setbacks for the four areas. *Id.* at 812, 814. For Development Areas 2 and 3, which contained portions of the 65-Acre Property, the MDA proposed a maximum residential density of 1,669 housing units, and the Developer was to have the right to determine the number of units developed on each Area up to the maximum density. *Id.* at 813-14. The indefinite nature of the MDA is also evident from the uncertainty expressed about various uses. For example: "[t]he Community is planned for a mix of single family residential homes and multi-family residential homes including mid-rise tower residential homes"; "[a]ssisted living facilit(ies) . . . may be developed within Development Area 2 or Development Area 3"; and "additional commercial uses that are ancillary to multifamily residential uses shall be permitted." *Id.* at 812. Finally, the MDA provided that [t]he Property shall be developed as the market demands . . . and at the sole discretion of Master Developer." *Id.* at 814. Accordingly, the MDA was not clear as to how many housing units would eventually be built in the 65-Acre Property. Nor was the City Council apprised by the MDA of the types and locations of uses, the dimensions or design of buildings, or the amount and location of access roads, utilities, or flood control on the 65-Acre Property. *See id.* at 813-16.

37. Given the uncertainty in the MDA as to what might be developed on the 65-Acre Property, the Court cannot determine what action the City Council would take on a proposal to develop only the 65-Acre Property. This once again places the court in the untenable position of having to speculate about what the City might have done, said speculation being improper.

38. The MDA also did not constitute a valid set of land use applications for the 65-Acre Property. A development agreement is not a substitute for the required UDC Applications. The UDC states that "all the procedures and requirements of this Title shall apply to the development of property that is the subject of a development agreement." UDC 19.16.150(D). To develop the 65-Acre Property even after an MDA were approved, the Developer would be required to file a Site Development Review application and seek a General Plan Amendment. *See* Ex. LL at 819 (City would process "all applications, including General Plan Amendments, in connection with the Property"); *id.* at 820 ("Master Developer shall satisfy the requirements of the Las Vegas Municipal Code section 19.16.100 for the filing of an application for a Site Development Plan Review").

39. Developer had applied for the required Site Development Review and General Plan Amendment in applying for the original 17-Acre Property application and was therefore clearly aware of the requirements. The version of the MDA the City Council rejected on August 2, 2017 acknowledged that the Developer must comply with all "Applicable Rules," defined as the provisions of the "Code and all other uniformly-applied City rules, policies, regulations, ordinances, laws, general or specific, which were in effect on the Effective Date." *Id.* at 804, 810. Similarly, the MDA indicated that the property would be developed "in conformance with the requirements of NRS Chapter 278, and as otherwise permitted by law." *Id.* at 802. Because the Developer did not submit any of the site-specific development applications related to the 65-Acre Property, the City Council's denial of the MDA did not constitute a final decision by the City Council regarding what development would be permitted on the 65-Acre Property.

40. The Developer contends that following the City's denial of the MDA, it would have been futile to file the UDC Applications to develop the 65-Acre Property. As with the earlier discussion on futility, the court finds Developer's position here to be unpersuasive. The Developer cites no evidence for its statement that the City insisted that the MDA was the only application it would accept to develop the 65-Acre Property. The Developer previously acknowledged that City Councilmembers expressed a preference for a holistic plan addressing the entire Badlands. Ex. WWW at 1323. Such a preference does not indicate a refusal to consider other options. Indeed, the City did consider—and approve—significant development on the 17-Acre Property within the Badlands, indicating that the City is open to considering development of this area.

41. The Developer contends that *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999) supports the claim that it would be futile to file any application to develop the 65-Acre Property. In *Del Monte Dunes*, the City reviewed and denied five separate applications to develop the property, each of which proposed a lower density than the previous application. 526 U.S. at 695-96. The Court affirmed the Ninth Circuit's holding that the plaintiff had satisfied the final decision ripeness requirement. *Id.* at 698-99, 723. Unlike *Del Monte Dunes*, the Developer here has filed no application specific to the 65-Acre Property. Even if the MDA is considered an application, the ripeness rule applied in *Del Monte Dunes* requires at least a second application.

42. 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.

43. Furthermore, the 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. As such, it could not have had any effect on the 65-Acre Property. The bill could not have taken property that was allegedly already taken. Both bills were also repealed in January 2020, and are therefore inapplicable to show futility. *See* Exs. LLL, MMM.

44. At the City Council hearing on the MDA, no Councilmember indicated that he/she would not approve development of the Badlands at a reduced density if the Developer submitted a revised development agreement. *See* Ex. WWW at 1365-70. The vote to deny the MDA was 4-3 (*id.* at 1370). Therefore, had a modified proposal been made regarding the MDA, it was only necessary for one of the four members who voted to deny the application to became satisfied with the proposed changes, for it to be approved. And it must be noted that two of the four City Councilmembers who voted against the MDA are no longer members. Indeed, four of the seven members of the City Council that heard the MDA are no longer on the Council.

45. Much of the commentary about the MDA from Councilmembers at the public hearing indicates that they may approve a lower density development. For example, Councilmember Coffin, who voted against the MDA, stated that he would support "some sort of development agreement" for the Badlands. Ex. WWW at 1327; *see also id.* at 1328 (Badlands "still could be developed if you paid attention to [preserving the desert landscape]"). Similarly, Councilmember Seroka, who voted to deny the MDA, noted that

three different drafts of the development agreement had been circulated in the previous week (*id.* at 1362); he had insufficient time to review and understand the version of the agreement before the City Council (*id.*); the proposed residential development was too dense (*id.* at 1361-62); and the development agreement contained no timeline for development of the Badlands (*id.* at 1363). Seroka explained that "a reasonable and equitable development agreement is possible, but this is not it," and that the Developer could resubmit a development agreement for the Council's consideration. *Id.* at 1365-66. Similarly, the majority of citizens testifying at the City Council hearing on the development agreement indicated not that they were opposed to all development of the Badlands, but rather that the density of residential development proposed in the agreement was excessive. *E.g.*, *id.* at 1339, 1344-45, 1350, 1353-55, 1357-60.

46. The City's disapproval of the MDA falls short of the "clear, complete, and unambiguous" proof that the agency has "drawn the line, clearly and emphatically, as to the sole use to which the [65-Acre Property] may ever be put." *Hoehne*, 870 F.2d at 533. Even if the MDA were considered to be an initial application, Nevada law requires that the Developer file at least one additional application and have that denied before its regulatory takings claims are ripe for adjudication.

47. In sum, Developer chose to file applications to develop each of the three other individual properties at issue in the aforementioned cases, while also filing a MDA. Developer chose not to file any application for the individual 65-Acre Property at issue in this case before instituting this court action, which is specific to the individual 65-Acre Property. The City indicated a willingness to reasonably consider the applications and has granted one of the two individual applications that were proposed, while denying a third due to the then controlling Crockett Order. The City was not, however, given an opportunity to evaluate an application for the individual 65-Acre Property. The court does not find that filing an application for the 65-Acre Property would have been futile. Accordingly, the Court concludes that the Developer's categorical and *Penn Central* regulatory takings claims are

unripe and the Court has no jurisdiction over the claims. The Court grants summary judgment to the City on that ground.

III. The Remaining Issues

48. Because the court finds that the failure to have made an application to the City in regard to the development of the individual 65-Acre Property renders the Developer's claims in the instant case unripe, that decision is fatal to Developer's case and renders further court inquiry unnecessary.

49. Moreover, the court believes that addressing the merits of any of the remaining issues would be unwise as there are three 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 was previously perceived to have had in both the 35-Acre Property case and the 133-Acre Property case.

ORDER

IT IS HEREBY ORDERED THAT the City's Motion for Summary Judgment is **GRANTED** and Developer's Countermotion is **DENIED** as **MOOT.**

Dated this 29 day of December 2020.

Douglas W. Herndon, District Court Judge