

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.

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. 84345

Electronically Filed
Sep 30 2022 09:15 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 84640

**AMENDED
JOINT APPENDIX
VOLUME 93, PART 2**

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EXHIBIT “RRRR-14”

BILL NO. 92-2

ORDINANCE No. 3636

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

Sponsored By: Councilman Scott Higginson Summary: Adopts a new General Plan for the City of Las Vegas, Nevada.

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

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

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

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

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

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

14 (C) This Title is adopted to protect the character,
15 social advantages and economic stability of the residential, com-
16 mercial, industrial and other areas within the City and to assure
17 the orderly, efficient and beneficial development of such areas.

18 SECTION 3: The adoption of the General Plan referred
19 to in this Ordinance shall not be deemed to modify or invalidate
20 any proceeding, zoning designation, or development approval that
21 occurred before the adoption of the Plan nor shall it be deemed
22 to affect the Zoning Map adopted by and referred to in LVMC
23 19.02.040.

24 SECTION 4: The General Plan adopted by this Ordi-
25 nance and any of its constituent elements may be amended by reso-
26 lution of the City Council, subject to applicable procedures and
27 requirements set forth in Nevada Revised Statutes; provided,
28 however, that any repealer, replacement, or comprehensive amend-
29 ment of or to the General Plan shall be by means of ordinance.

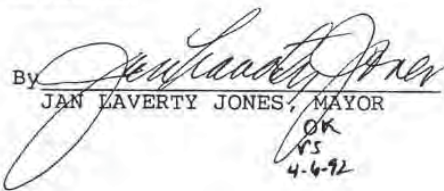
30 SECTION 5: If any section, subsection, subdivision,
31 paragraph, sentence, clause or phrase in this ordinance or any
32 part thereof, is for any reason held to be unconstitutional or

1 invalid or ineffective by any court of competent jurisdiction,
2 such decision shall not affect the validity or effectiveness of
3 the remaining portions of this ordinance or any part thereof.
4 The City Council of the City of Las Vegas, Nevada, hereby
5 declares that it would have passed each section, subsection, sub-
6 division, paragraph, sentence, clause or phrase thereof irrespec-
7 tive of the fact that any one or more sections, subsections, sub-
8 divisions, paragraphs, sentences, clauses or phrases be declared
9 unconstitutional, invalid or ineffective.

10 SECTION 6: All ordinances or parts of ordinances,
11 sections, subsections, phrases, sentences, clauses or paragraphs
12 contained in the Municipal Code of the City of Las Vegas, Nevada,
13 1983 Edition, in conflict herewith are hereby repealed.

14 PASSED, ADOPTED AND APPROVED this 1st day of April,
15 1992.

16 APPROVED:

17
18 By 
JAN LAVERTY JONES, MAYOR

19 ATTEST:

20
21 
KATHLEEN M. TIGHE, CITY CLERK

EXHIBIT “RRRR-15”

CITY OF LAS VEGAS
CITIZENS GENERAL PLAN ADVISORY COMMITTEE
MINUTES

February 13, 1991

CALL TO ORDER:

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

Members Present:

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

Members Absent:

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

*Co-Chairman

**Appointed February 6, 1991

Mr. Lee Stickney
Mr. James E. Stroh
Mr. David Wert
Ms. Donna Williams

Tanglewood Homeowners Association
JMA Architects & Engineers, Inc.
Clark County Dept. of Comprehensive Planning
Citizen

Others in Attendance:

Mr. Norman Standerfer
Mr. Frank Reynolds

Director, Dept. of Community Planning & Development
Deputy Director, Advanced Planning

Mr. Robert Baggs, Jr.

Dept. of Community Planning & Development
Chief, Comprehensive Planning, Advanced Planning,
Dept. of Community Planning & Development

Mr. Lanc Gross

Design Technician, Advanced Planning

Mr. Howard Null

Dept. of Community Planning & Development
Administrative Officer, Special Projects

Ms. Jory Stewart

Dept. of Community Planning & Development
Senior Planner, Advanced Planning
Dept. of Community Planning & Development

ANNOUNCEMENT:

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

NOTICE:

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

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

ITEM 1: Approval of January 2, 1991 Minutes.

Minutes of January 2, 1991 were approved as mailed.

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

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

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

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

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

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

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

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

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

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

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

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

ITEM 6: Set Date for Next Meeting/Adjournment.

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

The meeting adjourned at 8:45 p.m.


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

EXHIBIT “RRRR-16”

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

FROM: Advanced Planning Staff

SUBJECT: Community Profiles

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

DATE: March 27, 1991

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

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

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

Maps can be sent to:

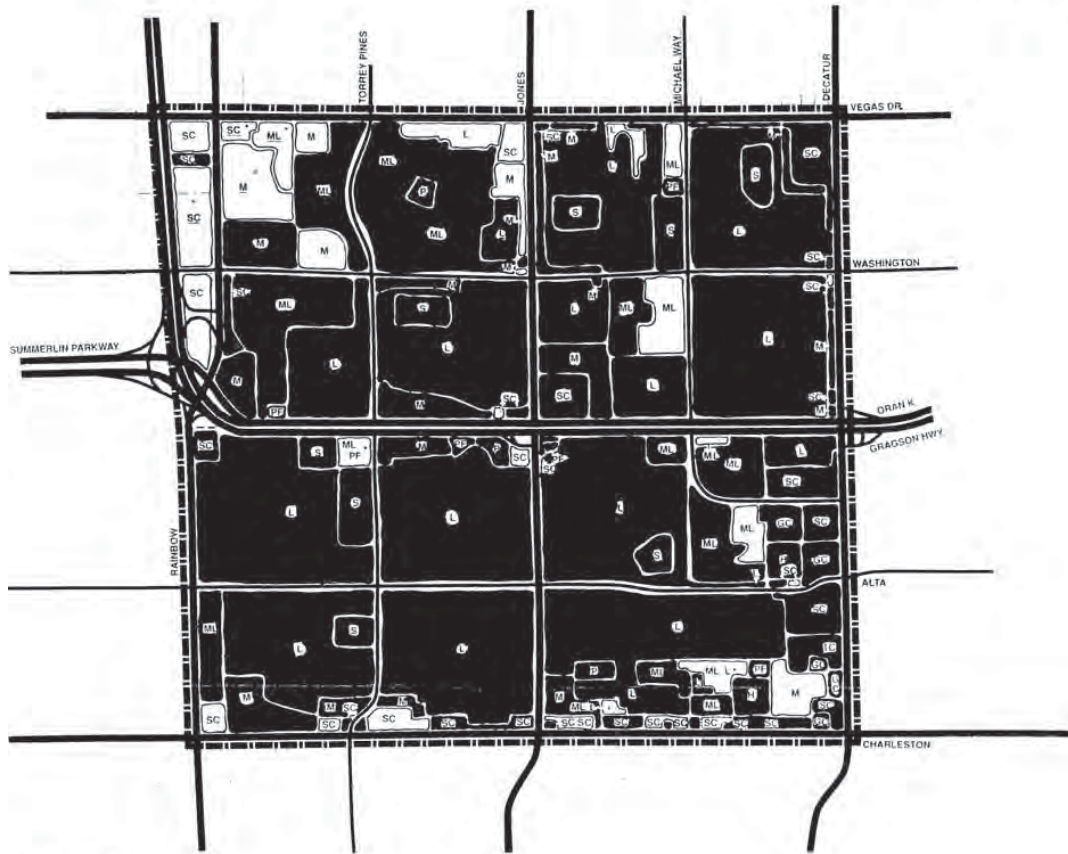
Frank E. Reynolds, Deputy Director
Advanced Planning
Dept. of Community Planning & Development
Las Vegas City Hall
400 E. Stewart
Las Vegas, NV 89101

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

HN:JG.3

City of Las Vegas

general plan



Legend

R	Rural Density Residential: 0-2 du/acre	P	Dark Recreation/OpenSpace	---	Low Density Residential
L	Low Density Residential: 3-6 du/acre	S	Signal	---	Primary Thoroughfare
ML	Medium Low Density Residential: 6-12 du/acre	PF	Public Facility	---	Secondary Thoroughfare
M	Medium Density Residential: 12-20 du/acre		Proposed Urban	---	Interchange
H	High Density Residential: 20+ du/acre		Existing Urban	---	Freight Boundary
GC	General Commercial		Lighting/landscape		
SC	Service Commercial/Office				
TC	Town Center Commercial				
E	Employment				



Community Profile

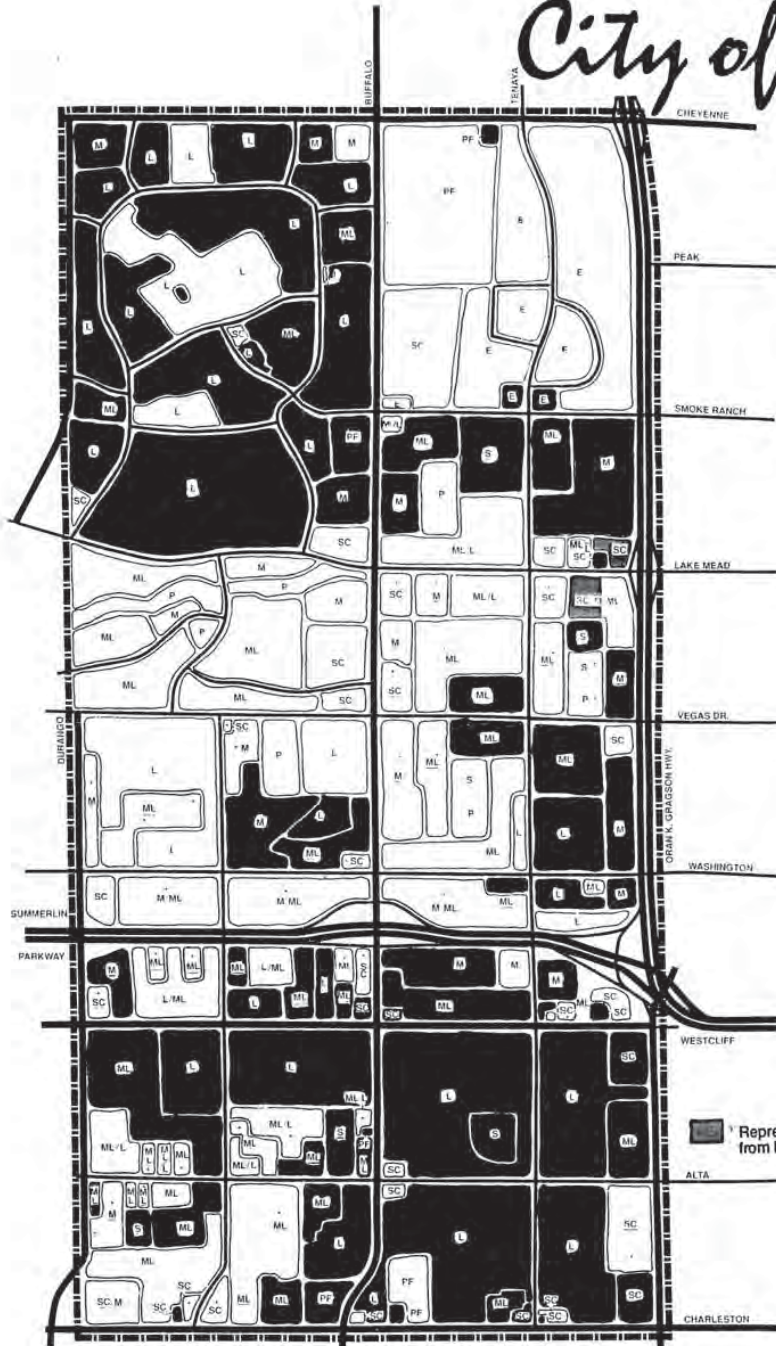
8

3767

CLV053472

16643

City of Las Vegas general plan



Legend

- R Residential Density, Single-Family (R-1)
- L Low Density Residential (L-1)
- ML Medium Density Residential (ML-1)
- M Medium Density Residential (M-1)
- H High Density Residential (H-1)

- GC General Community
- SC Special Community (SC-1)
- TC Town Center
- E Employment
- P Parks, Recreation, and Open Space
- S School
- PF Public Facility

- Proposed Use
- Existing Development
- Future Freeway
- Primary Freeway
- Secondary Freeway
- Interchange
- Police Boundary

Map scale: 1 inch = 1 mile
1:62,500

Represents Citizens Advisory Committee members notes from March 6, 1991 meeting.



Community Profile 9


3768

CLV053473

16644

R	Right Density Residential: 0-3 du/acre
L	Low Density Residential: 3-6 du/acre
ML	Medium Low Density Residential: 6-12 du/acre
M	Medium Density Residential: 12-20 du/acre
H	High Density Residential: 20+ du/acre
GC	General Commercial
SC	Service Commercial/Office
TC	Tourist Commercial
E	Employment

P	Parks-Recreation/OpenSpace
S	School
PF	Public Facility

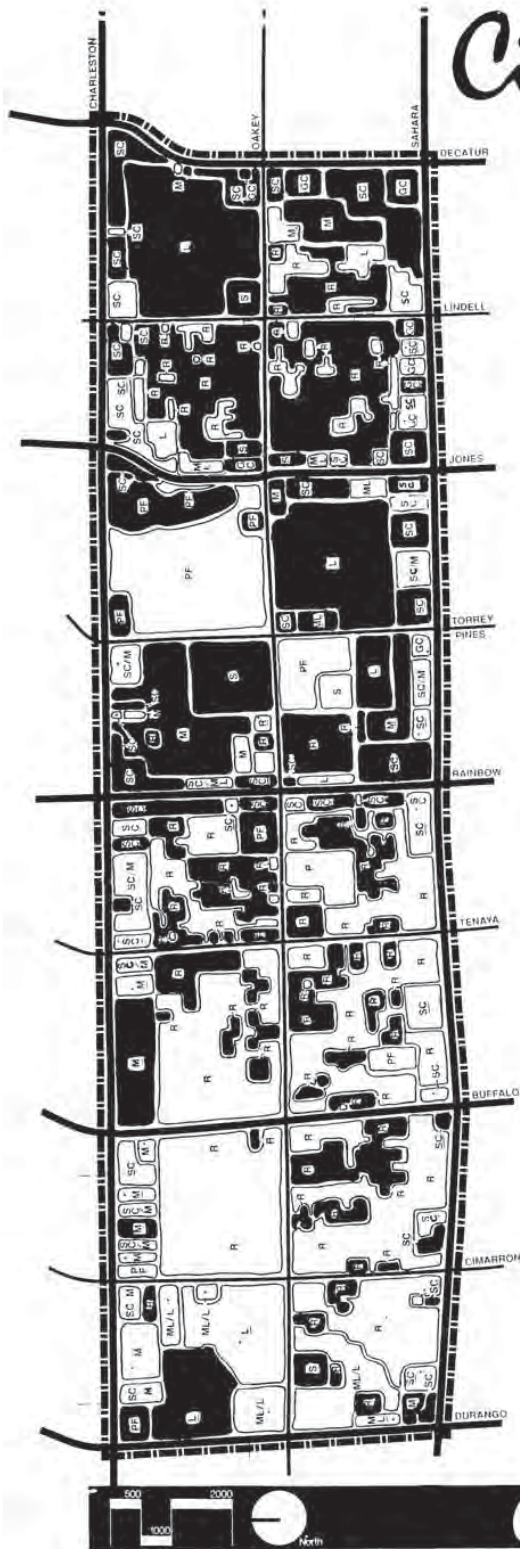
 Pending User(s)

 Freeway/Expressway
 Primary Thoroughfare
 Secondary Thoroughfare
 Interchange
 Profile Boundary



Community Profile 10

City of Las Vegas general plan



Legend

- R Residential Medium Density Residential (R-MD)
- L Low Density Residential (L-DR)
- ML Medium Low Density Residential (ML-DR)
- M Medium Density Residential (M-DR)
- H High Density Residential (H-DR)
- GC General Commercial
- SC Service Center/Office
- TC Transit Center/Station
- E Employment
- P Public Recreation/Open Space
- S School
- PF Public Facility

- Prohibit Urban
- Existing Development
- Freeway Expressway
- Primary Thoroughfare
- Secondary Thoroughfare
- Arterials
- Profile Boundary

Scale: 1 inch = 1 mile
1 inch = 1 mile
1 inch = 1 mile

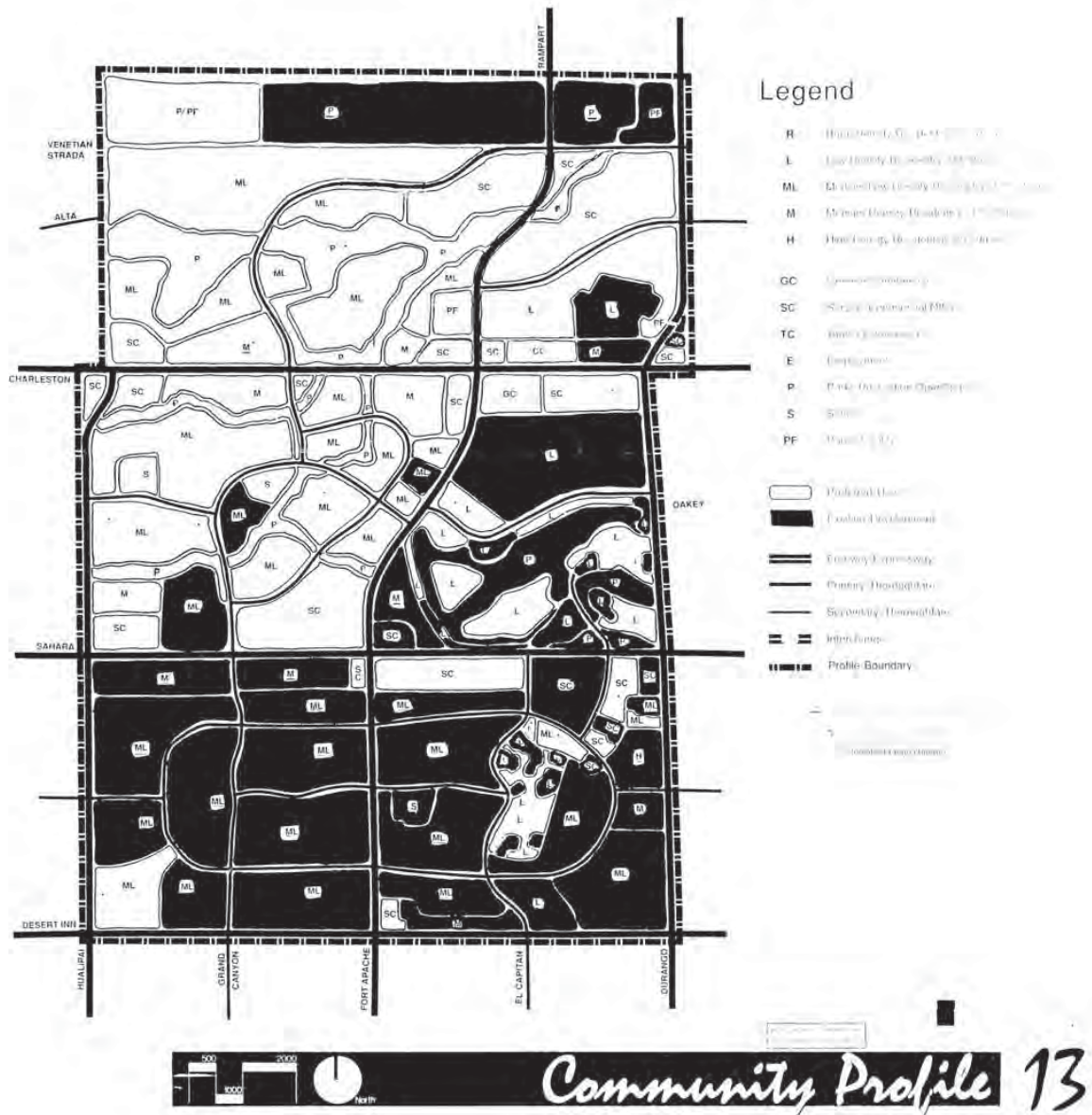
Community Profile 7

3770

CLV053475

16646

City of Las Vegas general plan

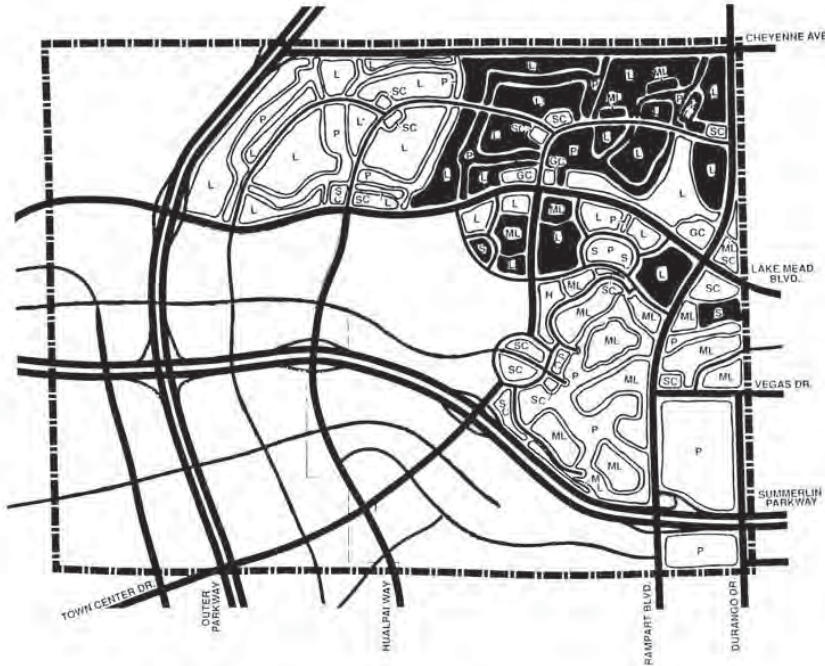


3771

CLV053476

16647

City of Las Vegas general plan



Legend

- R Rural Density Residential 0-3 du/ac
- L Low Density Residential 3-6 du/ac
- ML Medium Low Density Residential 6-12 du/ac
- M Medium Density Residential 12-20 du/ac
- H High Density Residential 20+ du/ac

- GC General Commercial
- SC Service Commercial/Office
- TC Tourist Commercial
- E Employment
- P Parks, Recreation/Open Space
- S School
- PF Public Facility

- Existing Use/lot
- Existing Development
- Freeway/Expressway
- Primary Thoroughfare
- Secondary Thoroughfare
- Interchange

Scale: 1" = 1/2 Mile
 Date: 1/1/2000
 By: [Name]
 Checked: [Name]



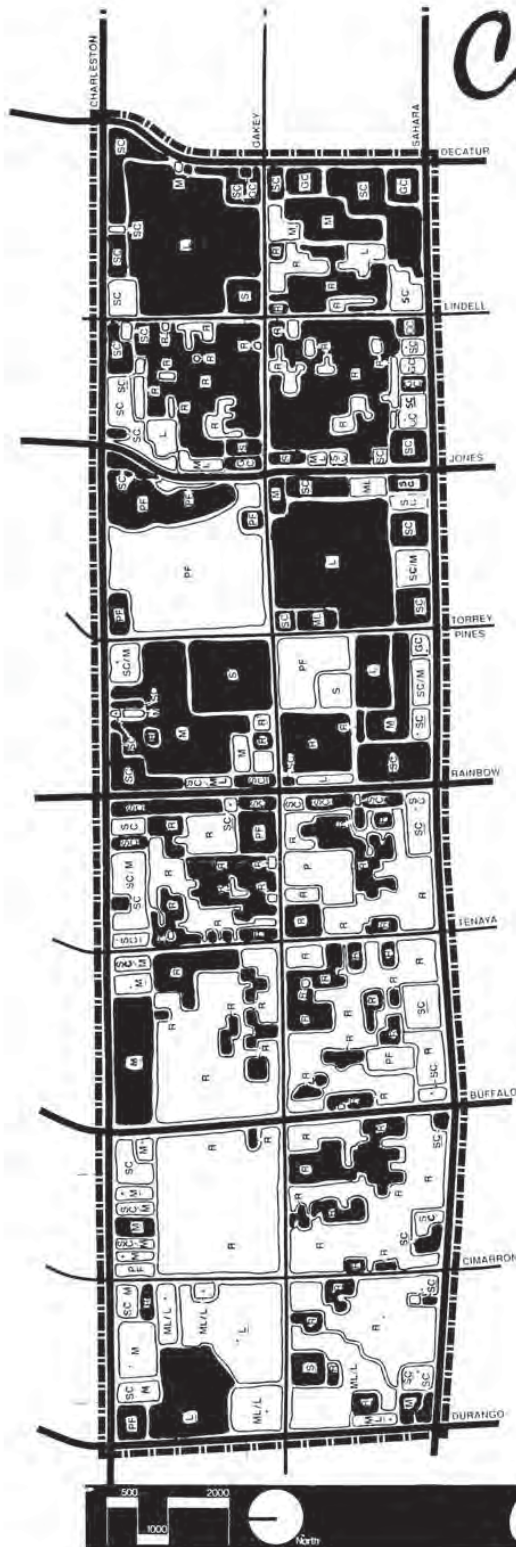
Community Profile 16

3772

CLV053477

16648

City of Las Vegas general plan



Legend

- R - Residential, Single-Family, 10,000 sq ft
- L - Low Density Residential, 10,000 sq ft
- ML - Medium Density Residential, 10,000 sq ft
- M - Medium Density Residential, 10,000 sq ft
- H - High Density Residential, 10,000 sq ft
- GC - General Commercial, 10,000 sq ft
- SC - Single-Family Commercial, 10,000 sq ft
- TC - Town Center Commercial, 10,000 sq ft
- E - Employment, 10,000 sq ft
- P - Public (Government, Educational, etc.)
- S - School
- PF - Public Facility

- - Protected Area
- - Urban Development
- == - Freeway/Expressway
- - Primary Thoroughfare
- - Secondary Thoroughfare
- - Interchange
- - Profile Boundary

Scale: 1 inch = 1 mile
 (Note: Not for use in planning
 and zoning decisions)

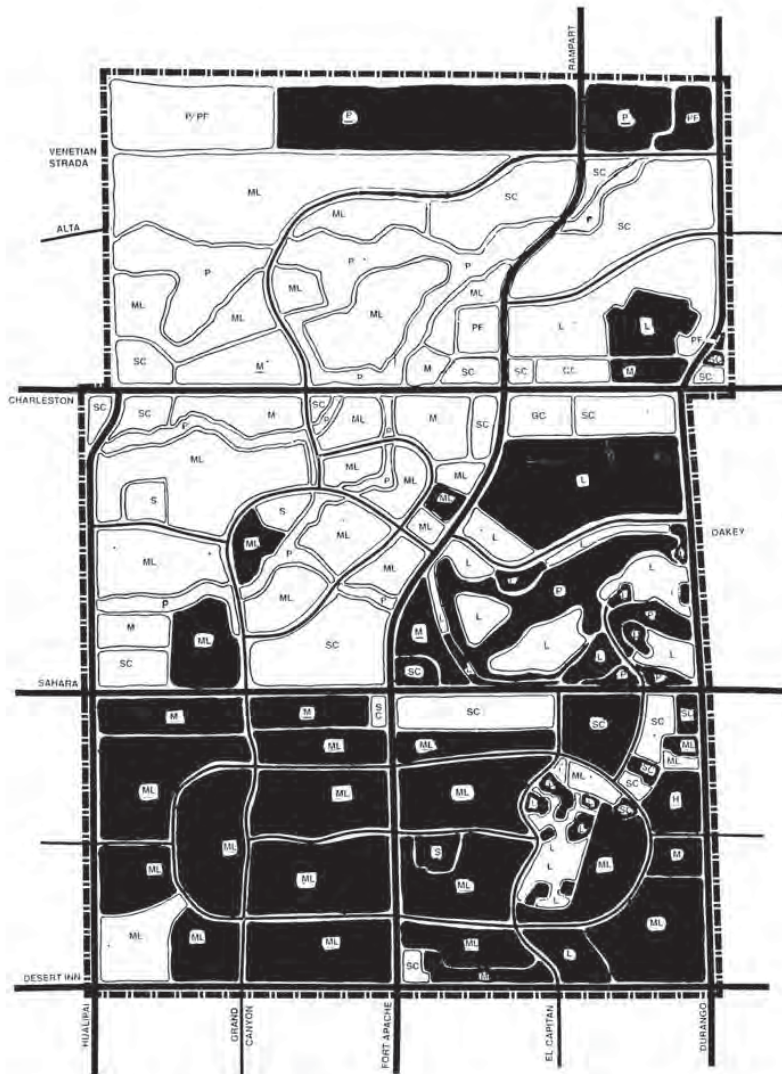
Community Profile 7

3773

CLV053478

16649

City of Las Vegas general plan



Legend

- R Regional Employment
- L Low Density Residential
- ML Medium Density Residential
- M Medium Density Residential Medium Density
- H Heavy Residential
- GC General Commercial
- SC Special Commercial
- TC Town Center
- E Employment
- P Public Use
- S Schools
- PF Public Facilities

- Proclamation
- Future Development
- Future Employment
- Future Transportation
- Secondary Transportation
- Intersections
- Profile Boundary



Community Profile 13

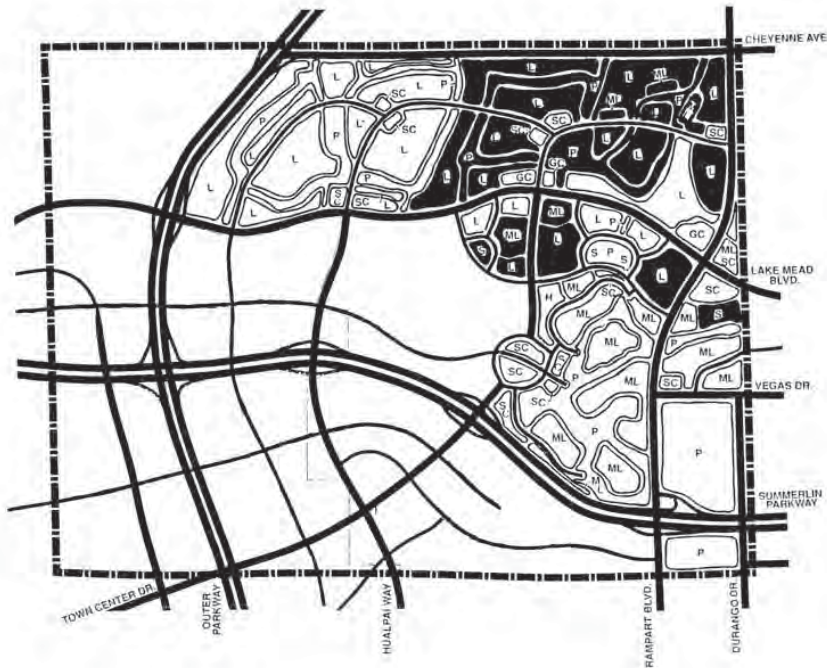
3774

CLV053479

16650

City of Las Vegas

general plan



Legend

- R Rural Density Residential 0-3 du/ac
- L Low Density Residential 3-6 du/ac
- ML Medium Low Density Residential 6-12 du/ac
- M Medium Density Residential 12-20 du/ac
- H High Density Residential 20+ du/ac

- GC General Commercial
- SC Service Commercial/Office
- TC Tourist Commercial
- E Employment
- P Parks Recreation/OpenSpace
- S School
- PF Public Facility

- Preferred Use(s)
- Existing Development
- Freeway Expressway
- Primary Thoroughfare
- Secondary Thoroughfare
- Interchange

Map: All Property Labeled & with Designation
 Date: Jan 1, 2000
 Prepared: 1/1/2000



Community Profile 16

3775

CLV053480

16651

EXHIBIT “SSSS”

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3			
4	180 LAND CO LLC, A Nevada)	
	limited liability company,)	
5	FORE STARS, LTD., a Nevada)	
	limited liability company and)	
6	SEVENTY ACRES, LLC, a Nevada)	
	limited liability company, DOE)	
7	INDIVIDUALS I-X, DOE)	
	CORPORATIONS I-X, and DOE)	
8	LIMITED LIABILITY COMPANIES)	
	I-X,)	
9)	
)	
10	Plaintiffs,)	
)	
11	vs.)	CASE NO.: A-17-758528-J
)	DEPT. NO.: XVI
12	CITY OF LAS VEGAS, a)	
	political subdivision of the)	
13	State of Nevada; ROE)	
	GOVERNMENT ENTITIES I-X; ROE)	
14	CORPORATIONS I-X; ROE)	
	INDIVIDUALS I-X; ROE)	
15	LIMITED-LIABILITY COMPANIES)	
	I-X; ROE QUASI GOVERNMENTAL)	
16	ENTITIES I-X,)	
)	
17)	
	Defendants.)	
18	_____)	
19			
20	CONFIDENTIAL VIDEOCONFERENCE DEPOSITION OF		
21	NRCP 30(b)(6) DESIGNEE OF PECCOLE-NEVADA CORPORATION		
22	WILLIAM BAYNE		
23	LAS VEGAS, NEVADA; FRIDAY, JULY 16, 2021		
24	REPORTED BY: JOHANNA VORCE, CCR NO. 913		
25	JOB NO.: 777801		

1 I believe Clyde Spitze was at a couple of those
2 meetings as well at Bad- -- we met at the Badlands Golf
3 Course Country Club at the restaurant in there. And we --
4 we talked several -- talked to Hyatt several times. And
5 then afterwards, at some point, Mr. Lowie -- he might have
6 even walked -- walked through the middle of one of those
7 meetings. I can't remember. But anyways, he found out, was
8 upset, didn't feel that we had the -- the ability to do what
9 we were contemplating doing, and then brought forth the
10 lawsuit.

11 BY MR. OGILVIE:

12 Q. Do you have an understanding as to why he had that
13 belief?

14 A. After doing a little bit of research and
15 understanding the situation more, I think it was because
16 there was a -- there was a conversation, at some point,
17 between him and other members of my family about, at some
18 point, he would want to potentially buy the golf course.
19 And so I felt -- I think he felt like we were not being
20 honorable to that conversation.

21 Q. Okay. So let me -- let me just take a slight
22 detour and -- and discuss this negotiation with Hyatt, or
23 the background of the negotiation with Hyatt.

24 It was -- or was it -- was it Peccole -- the
25 Peccole Family's understanding that it had an ability to

1 **develop the golf course?**

2 A. We've always had the understanding that we could
3 develop on the golf course. It was -- it's never been our
4 intent to get rid of the golf course. So there was never a
5 point in our family where we discussed just turning the golf
6 course completely off and doing away with the golf course.
7 But it always has been our intent -- we need to enhance the
8 golf course and figure out a way for it to become a
9 financially viable operation, whether that means adding a
10 tennis club, whether that means adding a larger clubhouse
11 that can support weddings and venues, whether that means
12 adding a few lots here and there where we can carve out some
13 lots onto the golf course. Those were all things that we
14 had contemplated and talked about over the years.

15 **Q. Okay.**

16 A. But never talked about not having a golf course.

17 (Defendant's Exhibit 20 was marked
18 for identification.)

19 BY MR. OGILVIE:

20 **Q. Let me direct your attention to what's been marked**
21 **as Exhibit 20. Exhibit 20 is a Planning & Development**
22 **Department -- City of Las Vegas Planning & Development**
23 **Department Application/Petition Form that the -- I'm just**
24 **going to go through it top to bottom.**

25 **The application/petition for a general plan**

1 **Q. And is that his signature?**

2 A. Well, I wasn't there when he signed it, but that
3 looks like his signature.

4 **Q. Okay. The representative is Moreno & Associates,**
5 **contact Greg Borgel.**

6 Do you know of an individual by the name of Greg
7 Borgel?

8 A. I do know an individual by the name of Greg
9 Borgel.

10 **Q. Did he perform land use regulation work for -- on**
11 **behalf of Fore Stars?**

12 A. At about that time, when Clyde stopped, they did
13 use Greg Borgel, and they also used another company. The
14 name will come to me in a second. We used DC Wallace for a
15 few things. Roy Clark I think is his name, I think.

16 **Q. Okay.**

17 (Defendant's Exhibit 22 was marked
18 for identification.)

19 BY MR. OGILVIE:

20 **Q. Let me direct your attention to what's been marked**
21 **as Exhibit 22. It is an August 31st, 2005 letter from**
22 **Cherie Guzman at JMA Architecture Studios. It is described**
23 **as "Queensridge Townhomes, Justification Letter/Project**
24 **Description," and it indicates that, "We are requesting a**
25 **general plan amendment for the development of a 34-unit**

1 townhome project." It goes on to talk about the project a
2 little bit. The last sentence of the first paragraph says,
3 "The general plan designation is PROS and the site is zoned
4 R-PD7."

5 Do you see that?

6 A. I do.

7 Q. Do you have an understanding whether -- in
8 August 2005, whether the Peccole Family understood that the
9 general plan designation for the Badlands property was PROS?

10 A. Having gone back through our history a little bit
11 and going through some of our documents, I think we had an
12 understanding that it was -- the general plan was PROS
13 because we would often go in when we got tax bills, and the
14 tax bills would come in, and then we would go ahead and --
15 and fight to get the tax bills reduced because it was under
16 a general plan designation of PROS. So I would say we did
17 understand that.

18 Q. Okay.

19 MR. LEAVITT: And just to lodge a continuing
20 objection on that, George. Lacks foundation and also calls
21 for a legal conclusion.

22 MR. OGILVIE: Duly noted.

23 THE COURT REPORTER: Was that Mr. Leavitt?

24 MR. OGILVIE: Yes, that was Mr. Leavitt.

25 (Defendant's Exhibit 23 was marked

1 have -- we don't have a subpoena on it, and so just
2 voluntarily producing it makes me a little uneasy.

3 MR. OGILVIE: Well, okay.

4 MR. WILLIAMS: But why don't you guys talk about
5 it after the deposition and then see if you can work it out,
6 and then I'll have it in my office, I'm sure, by no later
7 than Monday. Billy gives me stuff pretty quickly.

8 BY MR. OGILVIE:

9 Q. Okay. So this appraisal that you believe was
10 conducted on Fore Stars in 2010, I think that's the year you
11 said, do you have a recollection as to the appraised value
12 of Fore Stars?

13 A. Yes, I do. It's \$3.9 million.

14 Q. And then --

15 A. That did not -- let me clarify. That did not
16 include the operational assets, nor did that include the
17 water rights.

18 Q. Okay.

19 A. That was just for the -- the fee simple property.

20 Q. Okay. And I think you indicated that the -- your
21 recollection of the operational assets, essentially the
22 equipment, was -- was less than 2- or \$300,000?

23 A. Yeah. I don't -- I don't remember the exact
24 number, but it -- it didn't -- it didn't strike me when we
25 got it that it was very much money.

1 THE COURT REPORTER: I'm sorry, I'm sorry, you
2 have to slow down. You're talking too fast. Can you start
3 over?

4 THE WITNESS: Yeah.

5 THE COURT REPORTER: "I didn't have to pay any
6 assignment assumption agreements. I didn't have to do
7 anything because basically Mr. Lowie would have stepped in."

8 THE WITNESS: He would have stepped in to Fore
9 Stars' position. And by stepping into Fore Stars' position,
10 there was no need for an assignment and assumption
11 agreements, and so it -- it just made it cleaner. That was
12 part of the reason that we -- we contemplated switching.
13 That's not all the reason, but that's -- that's a chunk of
14 it.

15 BY MR. OGILVIE:

16 Q. Was part of the reason also the claim of a first
17 right of refusal by some third-party other than Mr. Lowie's
18 entities?

19 A. No. Actually, we settled that before we -- no,
20 that's not why.

21 The other part of the reason for switching to a
22 securities agreement was I felt it gave us more protection
23 as we went forward, not knowing how or what Yohan would do
24 from a development standpoint. It was my family's intention
25 to always keep the golf course. And because that was our

1 intention, we weren't very nervous about developing on the
2 golf course. But we didn't know exactly what Yohan would
3 do, and so that was another way to kind of buffer us from --
4 from what he chose to do.

5 **Q. When you say "buffer" you, buffer you from what?**

6 **A. Liability.**

7 **Q. Okay.**

8 **A. I didn't want to try to go back in and rep and**
9 **warranty everything that Fore Stars or my family had ever**
10 **done or said. It was too complicated and it's too old. And**
11 **so if I switch it to a securities agreement, he's Fore**
12 **Stars.**

13 **MR. OGILVIE: Okay. Let's move forward. We**
14 **jumped ahead a little bit there, but let's move forward with**
15 **another document, another e-mail.**

16 (Defendant's Exhibit 34 was marked
17 for identification.)

18 BY MR. OGILVIE:

19 **Q. Exhibit 34 is an e-mail exchange between Henry**
20 **Lichtenberger, Yohan Lowie, yourself, and Todd Davis. And**
21 **there's an e-mail -- initial e-mail from Mr. Lichtenberger.**
22 **It says, "I have received consent from the Peccole Family**
23 **for the revised purchase terms as it relates to the**
24 **\$3 million that was initial drafted as a term note."**

25 **What -- do you have an understanding of what**

1 Queensridge Towers and Fore Stars. And this is the document
2 that finalized the transfer back to Fore Stars of the
3 two-point-something acres that was the subject of the
4 election for -- to conclude the clubhouse improvements
5 agreement, correct?

6 A. Yep.

7 Q. So you -- is it true and accurate to say that as
8 of the date of this document, November 14th, 2014, that you
9 had resolved that Golf Course Clubhouse Improvements
10 Agreement?

11 A. Yes. And that's -- the purchase price went from
12 12 to 15.

13 Q. When you say "the purchase price," you're talking
14 about the purchase price of Fore Stars --

15 A. Fore Stars.

16 Q. -- and the water rights?

17 A. That is correct.

18 (Defendant's Exhibit 43 was marked
19 for identification.)

20 BY MR. OGILVIE:

21 Q. Directing your attention to what's been marked as
22 Exhibit 43. It is an e-mail exchange and "Membership
23 Interest Purchase and Sale Agreement" from -- the e-mail is
24 from Mr. Lichtenberger to you, Yohan Lowie, and Todd Davis
25 dated -- what did I say -- November 26th, 2014. The

1 attached -- and Mr. Lichtenberger says, "Attached is initial
2 draft of the Stock Purchase Agreement for the Golf Course."

3 So this -- and he goes on to say in the second
4 sentence, "The document differs greatly from the former
5 draft of the Asset Purchase Agreement so creating a marked
6 version would not be very beneficial."

7 And so the attachment -- the second through, what,
8 20th page, whatever it is, of Exhibit 43 is the first
9 iteration of a purchase and sale agreement for the entity,
10 as opposed to the prior iterations that were for the assets
11 of the entity, correct?

12 A. That's correct.

13 Q. And this is this -- references the fact that Fore
14 Stars owns the real property that constitutes the Badlands
15 Golf Course, and WRL LLC is the entity that owns the water
16 rights that are appertinent to the golf course, correct?

17 A. That is correct. Yeah, that was correct.

18 Q. And if we go to page 2, the purchase price now, as
19 a result of the lot line adjustment agreement between
20 Queensridge Towers and Fore Stars from November 14th, 2014,
21 is \$15 million because you are now transferring that
22 additional two-point-something acres where the clubhouse
23 sits?

24 A. That's correct.

25 Q. Under Section --

1 A. Well, yeah. It's -- it's worth -- it's worth that
2 money because not only are we transferring the additional --
3 we're transferring the clubhouse.

4 Q. Right.

5 A. We got the clubhouse back.

6 Q. Right.

7 A. Okay.

8 Q. So you're valuing the clubhouse, you and -- in
9 this case --

10 A. It wasn't just that additional two acres. It
11 was -- it was the clubhouse --

12 Q. The club -- okay.

13 A. -- meaning we had the clubhouse.

14 Q. The real property and the improvements?

15 A. Yeah.

16 Q. And you're valuing that at \$3 million?

17 A. Yeah.

18 Q. So in Section 2.01(b), it talks about a
19 feasibility period.

20 Is that like a -- do you have an understanding
21 that that was the purchaser's due diligence period?

22 A. Yes.

23 Q. And it was 30 days from the effective date,
24 effective date being -- oh, not actually -- not filled in at
25 this point because it's just a draft, right?

1 A. That is my belief.

2 Q. Mr. Leavitt asked you some questions about
3 valuation, and you said you -- your knowledge is that the
4 value was \$15 million total as of December 1st, 2014.

5 That \$15 million total, that's for the -- the --
6 what ultimately became the purchase agreement for WRL and
7 the purchase agreement of Fore Stars, correct?

8 A. And the business interest, yes.

9 Q. Okay. And the business interest.

10 And then Mr. -- addressing -- addressing
11 Mr. Leavitt's quote of Mr. Molina's declaration, which I'm
12 paraphrasing, Lowie paid -- Mr. Lowie paid less than \$4 1/2
13 million for the golf course.

14 You know how he came to that, that valuation,
15 right? He took the \$7 1/2 million and reduced it by the
16 value of the equipment that you testified was worth no more
17 than 2- or \$300,000, so let's -- let's call it \$100,000,
18 just for sake of the question. So it reduces the \$7 1/2
19 million purchase price of Fore Stars to 7.4 for the real
20 property. And then the -- the 250 acres that's at issue in
21 these lawsuits doesn't include the property -- the
22 two-point-something acres that you valued at \$3 million that
23 you got in the -- in the election by Queensridge Towers on
24 the Clubhouse Improvements Agreement. So reducing that --
25 call it 7.4 by \$3 million, that would be less than \$4 1/2

1 million for the 250-acre golf course, correct?

2 MS. HAM: I'll make an objection on the record to
3 the form of the question.

4 MR. LEAVITT: Yeah. And it lacks foundation and
5 assumes evidence not in -- or assumes facts not in evidence.
6 It's speculative, conjectural, and confusing.

7 Do you have another one?

8 MR. WILLIAMS: Objection; vague and ambiguous.

9 BY MR. OGILVIE:

10 Q. You can answer.

11 A. I got to learn how this objection stuff works.

12 I mean, based on what you said, I don't have an
13 argument.

14 MR. OGILVIE: Okay. I don't have anything
15 further.

16 FURTHER EXAMINATION

17 BY MR. LEAVITT:

18 Q. Okay. Let me ask a question here, though.
19 Because previously I asked you if it was true that Mr. Lowie
20 paid less than \$4.5 million for the land, and you said that
21 was not true, correct?

22 A. It was not. The purchase and sales securities
23 agreement was for 7.5 million.

24 Q. Okay.

25 A. But if you want to do the math that way --

REPORTER'S CERTIFICATE

1
2 STATE OF NEVADA)
3) SS
4 COUNTY OF CLARK)

5 I, Johanna Vorce, Certified Court Reporter, do
6 hereby certify:

7 That I reported the taking of the deposition of
8 the witness, WILLIAM BAYNE, commencing on Friday, July 16,
9 2021, at 9:10 a.m.

10 That prior to being examined, the witness was by
11 me duly sworn to testify to the truth.

12 That I thereafter transcribed my shorthand notes,
13 and the typewritten transcript of said deposition is a
14 complete, true, and accurate transcription of said shorthand
15 notes.

16 That a request has been made to review the
17 transcript.

18 I further certify that I am not a relative or
19 employee of an attorney or counsel of any party involved in
20 said action, nor a relative or employee of the parties
21 involved, nor a person financially interested in said
22 action.

23 Dated this 27th day of July, 2021.

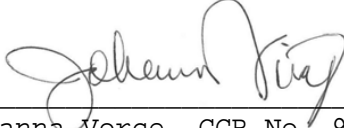
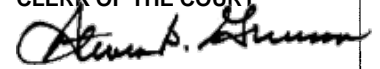
24 
25 Johanna Vorce, CCR No. 913

EXHIBIT “TTTT”



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs/Petitioners,

v.

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

Defendants/Respondents.

CASE NO.: A-18-775804-J

DEPT. NO.: 26

**[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER REGARDING**

MOTION TO DISMISS

AND

**COUNTERMOTION TO ALLOW MORE
DEFINITE STATEMENT IF
NECESSARY AND COUNTERMOTION
TO STAY LITIGATION OF INVERSE
CONDEMNATION CLAIMS UNTIL
RESOLUTION OF THE PETITION FOR
JUDICIAL REVIEW AND
COUNTERMOTION FOR NRCP
RULE 56(F) CONTINUANCE**

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

6 On August 27, 2018, the City filed a motion to dismiss the Complaint (the “Motion”).
7 Plaintiff/Petitioner opposed the Motion and filed a Countermotion To Allow More Definite
8 Statement If Necessary And Countermotion To Stay Litigation Of Inverse Condemnation Claims
9 Until Resolution Of The Petition For Judicial Review And Countermotion For NRCP Rule 56(f)
10 Continuance (collectively, “the Countermotions”). Having reviewed the briefs submitted in
11 support of and in opposition to the Motion and Countermotions, conducted a hearing on January
12 15, 2019, considered the written and oral arguments presented, and being fully informed in the
13 premises, the Court makes the following findings of facts and conclusions of law.

14 **I. FINDINGS OF FACT**

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

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

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

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

25
26
27 ¹ All references to exhibits herein are to the exhibits attached to the City’s Motion. Pursuant to
28 NRS 47.130 and 47.150, the Court takes judicial notice of the publicly available documents
submitted as exhibits to the City’s Motion as well as the dockets in Case No. A-17-758528-J Case
No. A-17-752344-J and Nevada Supreme Court Case No. 75481.

1 4. On February 15, 1989, the City Council approved the Peccole Ranch Master Plan
2 and a related application to rezone 448.8 acres in Phase I. Ex. 2 (020) at p.1.

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

5 6. To satisfy the City's open space requirements, the master plan applicant was
6 required to set aside 212 acres of land in Phase II for a golf course, thereby providing the overall
7 Peccole Ranch Master Plan with 253.07 net acres for golf course, open space and drainage. Ex.
8 2(027, 029, 035) at pp. 10, 12, 18.

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

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

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

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

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

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

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

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

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

1 Amendment (GPA-62387), Re-Zoning (ZON-62392), and Site Development Plan Review (SDR-
2 62393) seeking to develop a 17.49-acre portion of the golf course property. The General Plan
3 Amendment application sought to change the General Plan designation from PR-OS to high
4 density residential (GPA-62387). Ex. 7. The Developer's application acknowledged the PR-OS
5 designation for the Badlands Property, and nowhere in the application did the Developer contend
6 that the PR-OS designation was improper. Ex. 7(109).

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

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

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

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

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

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

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

28 ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 15 i. ~~The Council retains discretion to deny redevelopment applications.~~
- 16 ii. ~~Compatible zoning does not deprive the Council of its discretion to~~
17 ~~deny redevelopment applications.~~
- 18 iii. ~~NRS 278.349(e) does not confer any vested rights.~~
- 19 iv. ~~Absent a vested right to have its redevelopment applications approved,~~
20 ~~the Developer cannot state a cognizable constitutional claim.~~

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

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

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

25 ...

26 ...

27 ...

28 ...

1 **II. CONCLUSIONS OF LAW**

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

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

6 2. Issue preclusion applies when the following elements are satisfied: (1) the issue
7 decided in the prior litigation must be identical to the issue presented in the current action; (2) the
8 initial ruling must have been on the merits and have become final; (3) the party against whom the
9 judgment is asserted must have been a party or in privity with a party to the prior litigation; and
10 (4) the issue was actually and necessarily litigated. *Five Star Capital Corp. v. Ruby*, 124 Nev.
11 1048, 1055, 194 P.3d 709, 713 (2008).

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

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

19 5. The Court rejects Petitioner's argument that the issue here is not the same because
20 it involves a different set of applications from those before Judge Crockett; that is a distinction
21 without a difference. "Issue preclusion cannot be avoided by attempting to raise a new legal or
22 factual argument that involves the same ultimate issue previously decided in the prior case."
23 *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 259, 321 P.3d 912, 916–17
24 (2014).

25 6. Judge Crockett's Order in Case No. A-17-752344-J was on the merits and has
26 become final for purposes of issue preclusion. A judgment is final for purposes of issue preclusion
27 if it is "sufficiently firm" and "procedurally definite" in resolving an issue. *See Kirsch v. Traber*,
28 134 Nev., Adv. Op. 22, 414 P.3d 818, 822–23 (Nev. 2018) (citing Restatement (Second) of

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

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

10 8. For purposes of preclusion doctrines, a “party” is one who is “directly interested in
11 the subject matter, and had a right to make defense, or to control the proceeding, and to appeal
12 from the judgment.” *See Paradise Palms Cmty. Ass’n v. Paradise Homes*, 89 Nev. 27, 30, 505
13 P.2d 596, 598 (1973), *citing Bernhard v. Bank of Am. Nat. Trust & Sav. Ass’n*, 122 P.2d 892 (Cal.
14 1942).

15 9. Additionally, in numerous public proceedings, the Developer represented that 180
16 Land Company, LLC, Seventy Acres LLC, and Fore Stars Ltd. are affiliates under common
17 ownership and control. In matters before the City Council, the Developer represented that the
18 250.92 Badlands Property was acquired by Fore Stars, Ltd., whose stock was then “acquired
19 (through various entities and family limited partnerships) by the same principals as EHB
20 Companies LLC.” Ex. 9(135). Fore Stars then transferred most of the 250.92 acres to two
21 affiliates: 180 Land Co., LLC (178.27 acres) and Seventy Acres, LLC (70.52 acres) and retained
22 the remaining 2.13 acres. (*Id.*).

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

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

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

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

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

...

...

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

4 ¹⁶ Because Judge Crockett's Order has preclusive effect here, the Developer must
5 submit a major modification application for the Las Vegas City Council's consideration and
6 approval before the City Council may consider any redevelopment applications for the Badlands
7 golf course.

8 ¹⁷ Because Judge Crockett's Order requires that the Developer get approval of a
9 major modification, and no such approval was obtained before the Developer submitted its 133-
10 Acre Applications, the City Council properly struck the Developer's 133-Acre Applications, and
11 the Petition for Judicial Review must be denied. However, the Developer's alternative claims for
12 inverse condemnation may proceed in the ordinary course.

13 ¹⁸ The Court declines to address any other issues raised by the parties.

14
15 **ORDER**

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

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

25 ...

26 ...

27 ...

28 ...


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

DATED: October 2, 2019.


THE HONORABLE GLORIA STURMAN
District Court Judge

Submitted By:

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Approved as to Form and Content:

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Attorneys for 180 Land Company, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 29th day of July, 2021, a true and correct copy of the foregoing **[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER REGARDING MOTION TO DISMISS AND COUNTERMOTION TO ALLOW MORE DEFINITE STATEMENT IF NECESSARY AND COUNTERMOTION TO STAY LITIGATION OF INVERSE CONDEMNATION CLAIMS UNTIL RESOLUTION OF THE PETITION FOR JUDICIAL REVIEW AND COUNTERMOTION FOR NRCP RULE 56(F) CONTINUANCE** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic

An employee of McDonald Carano LLP

EXHIBIT “UUUU”

DECL

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Attorneys for Defendant City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-775804-J

Dept No.: XXVI

**DECLARATION OF
CHRISTOPHER MOLINA IN
SUPPORT OF THE CITY'S
COUNTERMOTION FOR
SUMMARY JUDGMENT AND
OPPOSITION TO MOTION TO
DETERMINE PROPERTY
INTEREST**

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I, J. Christopher Molina, declare as follows:

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

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

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

DATED: August 31, 2021.

/s/ J. Christopher Molina
J. Christopher Molina

EXHIBIT “VVVV”

SUPPLEMENTAL DECLARATION OF SETH T. FLOYD

I, Seth T. Floyd, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

Executed this 10th day of September 2021.

/s/ Seth T. Floyd
 SETH T. FLOYD

EXHIBIT “VVVV-1”

ZONING Canyon Gate

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

SOURCE: City of Las Vegas , Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819










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-  Desert Shores
-  R-PD - Residential Planned Development
-  N-S - Neighborhood Service
-  C-1 - Limited Commercial
-  C-PB - Planned Business Park
-  C-V - Civic
-  P-C - Planned Community

CLV Data Revised: August 19, 2020 ZON-78819











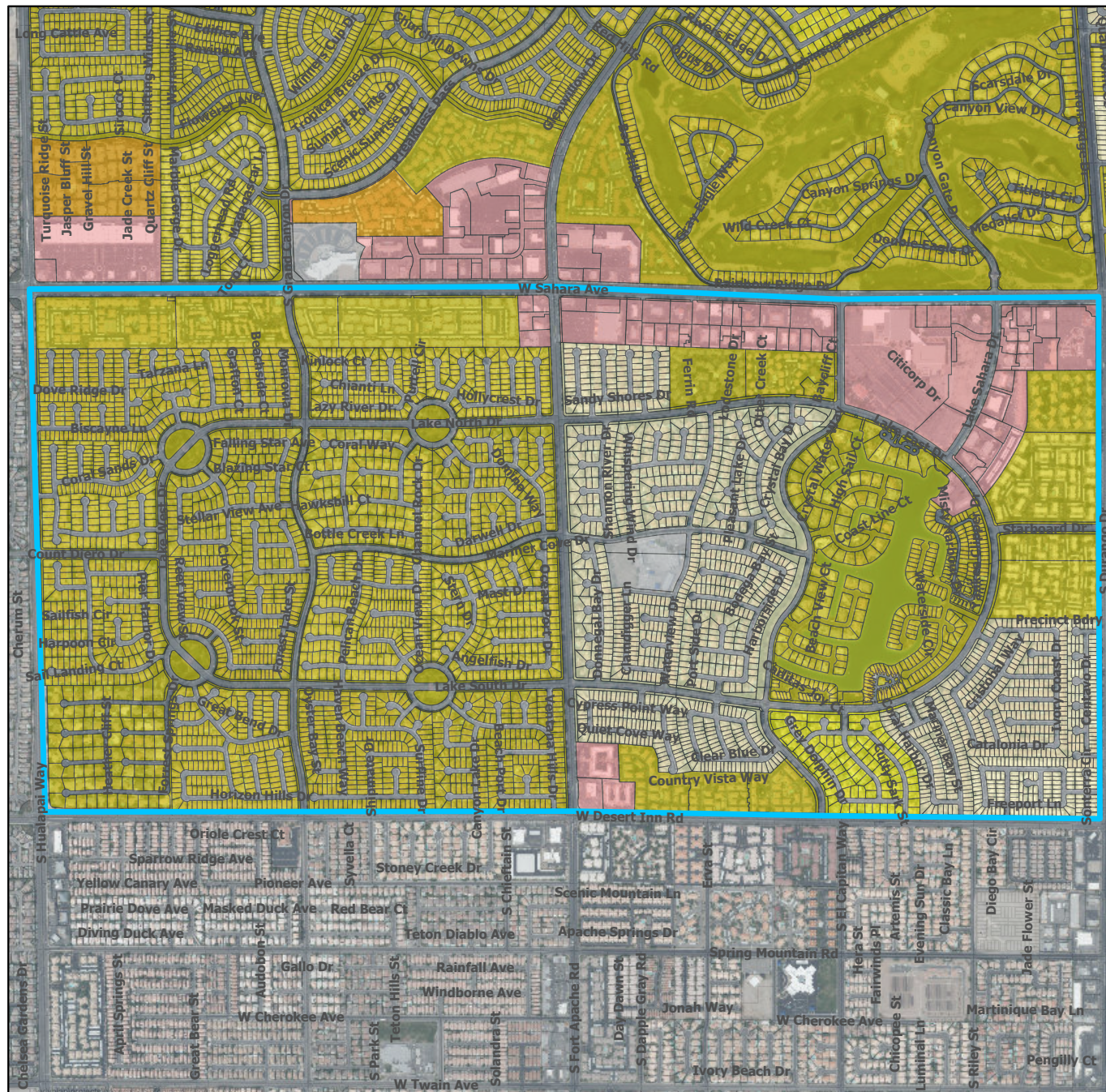
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ZONING Lakes At Sahara

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



SOURCE: City of Las Vegas, Planning and Development Department

CLV Data Revised: August 19, 2020 ZON-78819



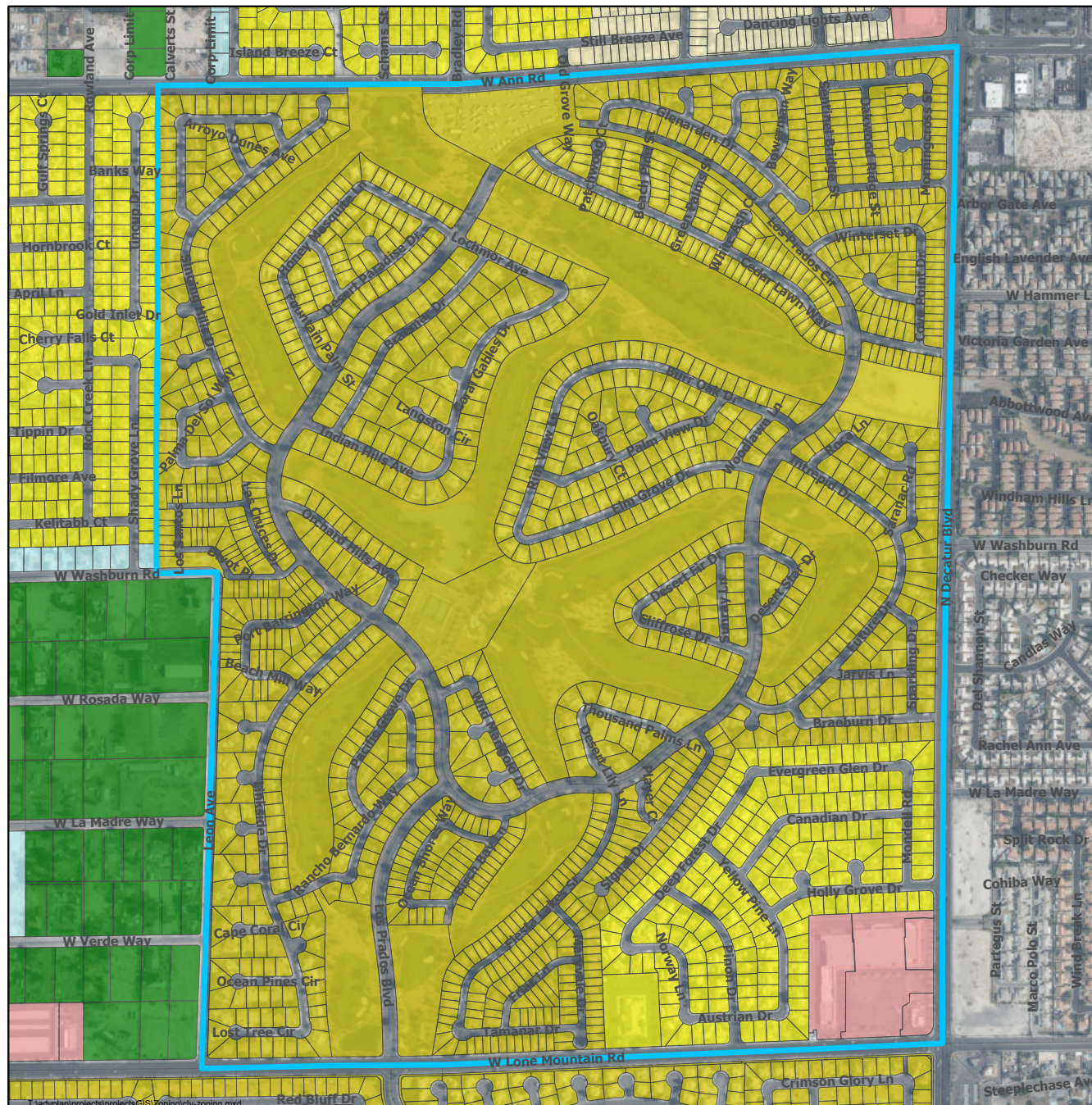
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ZONING Los Prados

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



SOURCE: City of Las Vegas , Planning and Development Department

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ZONING
Painted Desert

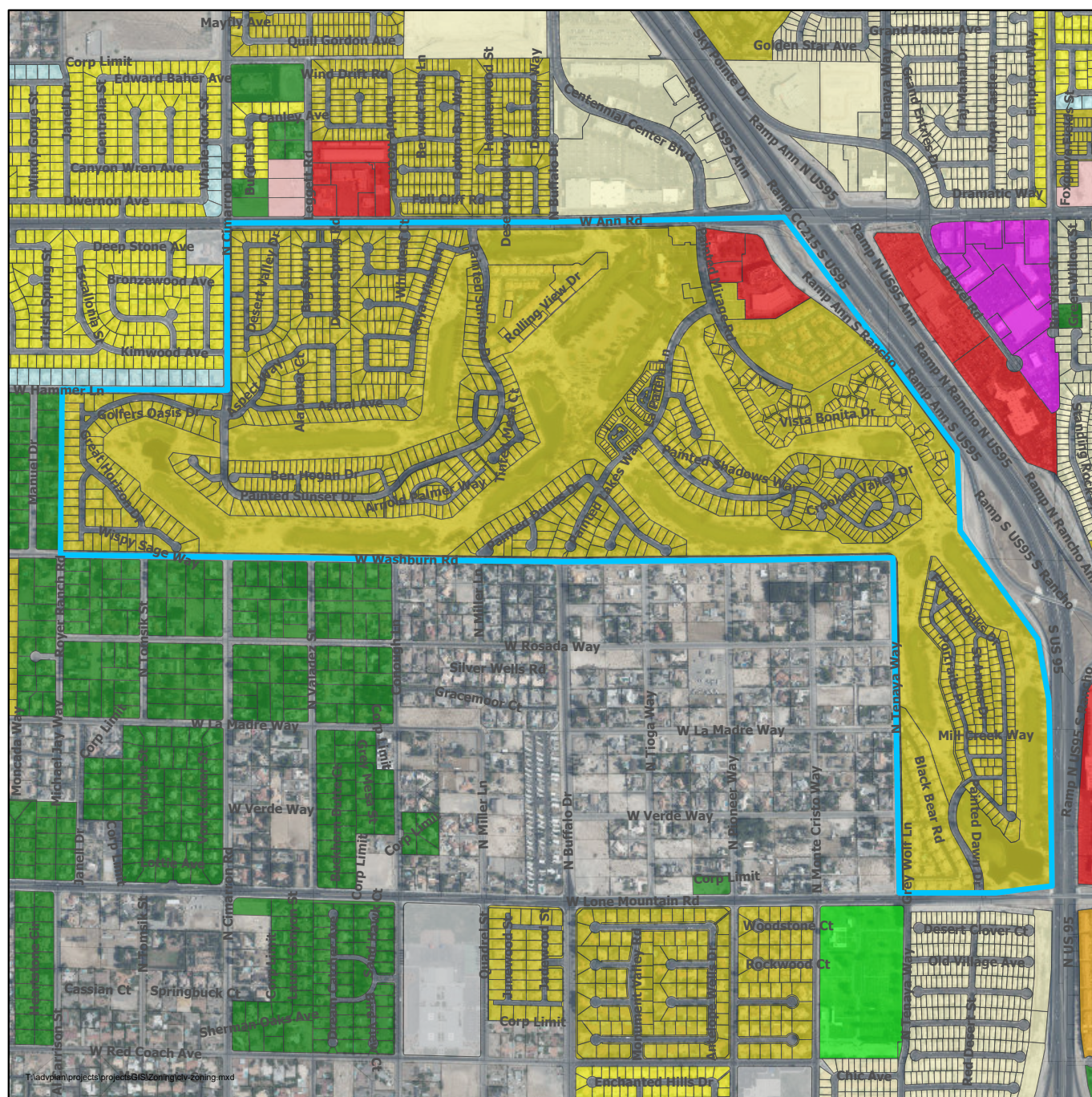


EXHIBIT “VVVV-2”

Future Land Use Canyon Gate

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



SOURCE: City of Las Vegas , Planning and Development Department

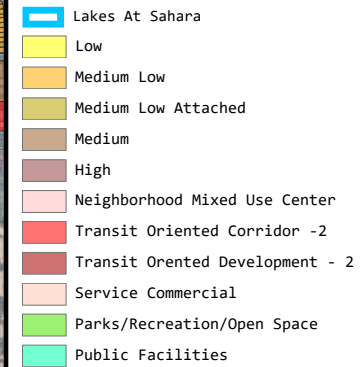
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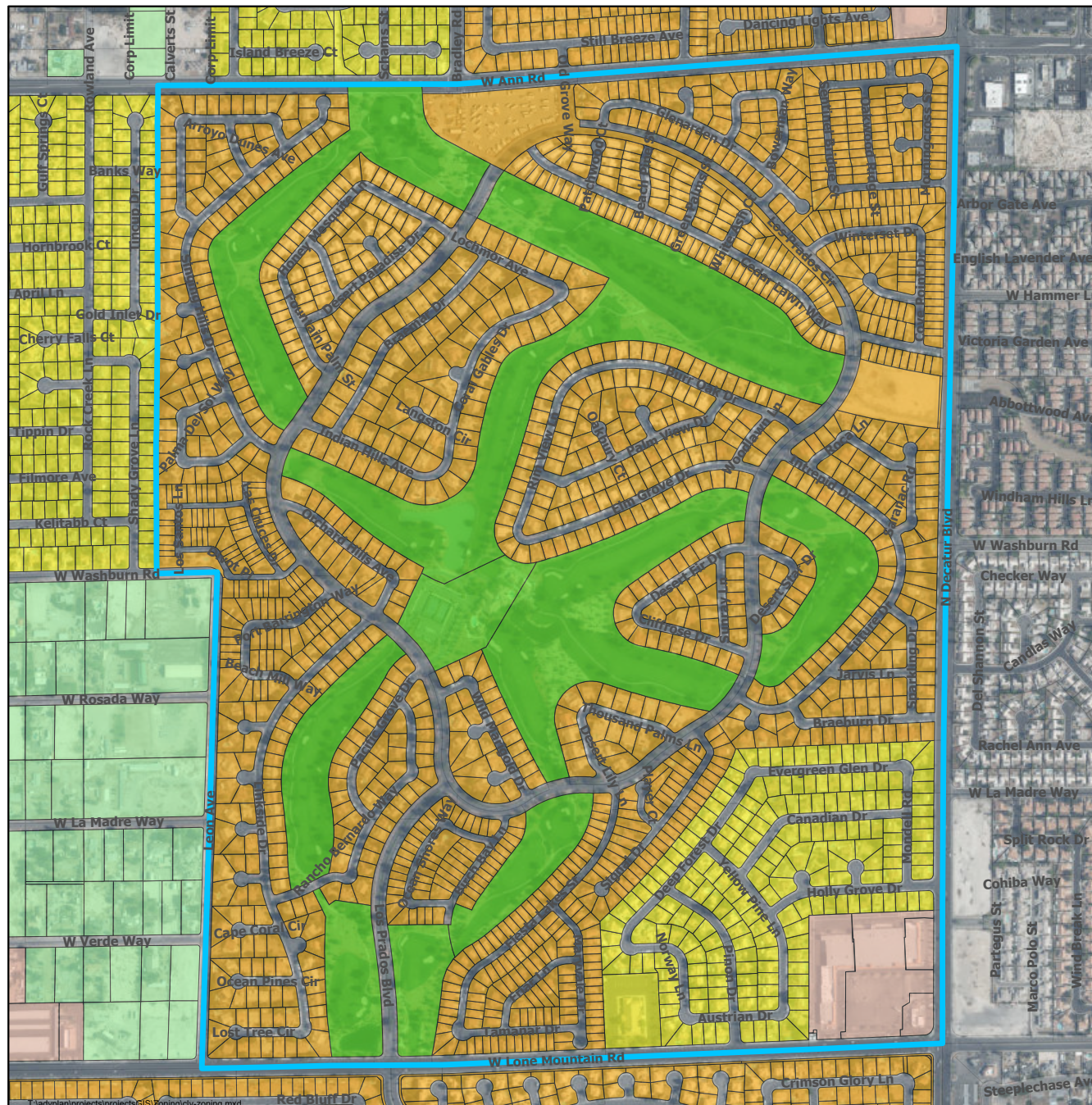
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Future Land Use Los Prados

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



SOURCE: City of Las Vegas, Planning and Development Department

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Future Land Use Painted Desert

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

SOURCE: City of Las Vegas , Planning and Development Department

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