

## **Supplemental Material**

**Town of Gardnerville Board Meeting October 1, 2024**

**Item No. 6**

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00103577201909397040390393

KAREN ELLISON, RECORDER

APN# Multiple-See pg. 1

Recording Requested by/Mail to:

Name: Tom Dallaire/Sam BoothAddress: Community Development DirectorCity/State/Zip: Douglas County

Mail Tax Statements to:

Name: NA

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

2019 Development Agreement Park Ranch Holdings & Douglas County**Title of Document** (required)

----- (Only use if applicable) -----

The undersigned hereby affirms that the document submitted for recording  
DOES contain personal information as required by law: (check applicable)

     Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)     Judgment – NRS 17.150(4)     Military Discharge – NRS 419.020(2)\_\_\_\_\_  
Signature\_\_\_\_\_  
Printed Name

This document is being (re-)recorded to correct document # 2019-933727, and is correcting  
\*Note: Document 2019-933727 was rescinded by BOCC action and subsequently the attached development agreement was approved and adopted  
on December 3, 2019, via Ordinance Number 2019-1556-A

FILED

NO. 2019.217

12-16-19  
DATE

DOUGLAS COUNTY CLERK  
MINDEN, NV

BY [Signature] DEPUTY

2019 AMENDED DEVELOPMENT AGREEMENT

DOUGLAS COUNTY

&

PARK RANCH HOLDINGS, LLC

EXHIBITS A THRU G

APNs: 1320-20-000-018; 1320-29-501-002;  
1320-28-000-023; 1320-21-000-014; 1320-28-  
000-024; 1320-28-000-025; 1320-28-000-028;  
1320-28-000-030; 1320-28-000-031; 1320-33-  
001-011; 1320-33-001-015; 1320-34-002-001;  
1320-34-001-028; 1320-27-002-035; 1320-28-  
000-017; 1320-20-000-017; 1320-21-000-015;  
1320-21-000-016; 1320-29-601-003; 1320-28-  
000-029; 1320-29-000-015; 1320-28-000-022;  
1320-28-000-027; 1320-32-501-021; 1320-32-  
501-020; 1320-33-001-016; 1320-33-001-009;  
1320-33-001-010; 1320-33-001-012; 1320-33-  
001-013; 1320-33-001-014; and 1320-31-000-  
016; 1319-25-000-021; 1319-25-000-020;  
1319-24-000-007; 1319-23-000-013; 1319-26-  
000-004.

**AFTER RECORDATION RETURN TO:**  
Douglas County Community Development  
Office Attn: Tom Dallaire

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned hereby affirms that this document submitted for recording does not contain the social security number of any person or persons. (NRS 239B.030)

## **PARK RANCH HOLDINGS, LLC DEVELOPMENT AGREEMENT**

Douglas County, a political subdivision of the State of Nevada ("County"), and Park Ranch Holdings, LLC, a Nevada limited liability company assigned Business ID No. 20131610733 whose address is 1300 Buckeye Road Suite A, Minden, NV ("Owner"), enter into this development agreement ("Agreement") to ensure the timely construction of Muller Parkway, the development of land in accordance with Douglas County requirements, and to ensure certain vested development rights for the real property proposed for development by Owner pursuant to this Agreement, which real property comprises approximately 1,044 acres as illustrated in **Exhibit A** attached to this Agreement (the "Property").

### **1. RECITALS**

1.1 County is authorized, pursuant to Nevada Revised Statutes 278.0201 to 278.0207, inclusive, and Douglas County Code 20.400.010 to 20.400.060, to enter into a binding development agreement with persons having legal or equitable interests in real property located within the County to establish long range plans for the development of such property.

1.2 Owner holds legal title to the Property. Owner is the successor in interest to Park Cattle Company, LLC. On January 6, 2005, County approved a development agreement between County and Park Cattle Company, LLC, recorded as Document No. 635615 obligating Park Cattle Company to dedicate to County right-of-way 105 feet wide in an alignment across the parcels generally described on a drawing called "Muller Parkway, Final Right-of-Way Exhibit" attached thereto (the "Original Agreement"). The purpose of the dedication was to allow construction by County of a portion of a regional bypass road called Muller Parkway within the public right of



way. On October 11, 2007, County approved the "First Amendment to the Development Agreement for Park Cattle Company for the Muller Parkway Extension" ("First Amendment") to revise the alignment and width of the right-of-way. The revised right-of-way was depicted by an exhibit attached to the First Amendment. Under the terms of these previous agreements, the County was obligated to construct Muller Parkway "within seven (7) years of the recording of such instruments of dedication, or within five (5) years of acquisition of right of way on adjacent property to the South APN 1320-34-002-001" (the "Ashland Park Property"), however no construction has taken place. The Parties therefore desire to enter into a second amendment which will supersede the Original Agreement as amended, acknowledging that all right-of-way previously dedicated pursuant to the terms of the Original Agreement or First Amendment thereto shall revert to Owner as set forth in NRS 244.276.

1.3 Because of changed conditions as well as past changes made to the Douglas County Master Plan and the amendment to the Master Plan contemplated by this Agreement, County and Park now desire to enter into this Agreement to: dedicate a new 205 foot public right of way across the Property for Muller Parkway and drainage improvements; dedicate a new public right-of-way across APN 1320-20-000-017 immediately north of the existing right-of-way to increase the width by approximately 105 feet; grant an easement to County on APN 1320-31-000-016 for the purpose of installing drainage culverts below Highway 88; establish the financial obligations of each party to construct Muller Parkway through the Ashland Park Property; set a deadline for the County to construct at least two lanes of Muller Parkway from Monterra to Stodick Estates; establish a maximum of two thousand five hundred (2,500) residential dwelling units which Owner is entitled to develop within the Property; and to preclude the County from rescinding the Property's Receiving Area Land Use designation for at least thirty years from the Effective Date (as that date is defined in Section 2.9 of this Agreement).

1.4 The Property currently has a Master Plan Land Use designation of Agriculture. Concurrent herewith or immediately preceding consideration of this Agreement, County staff is seeking to update the Douglas County Master Plan Land Use Map to designate the Property as Receiving Area and to eliminate approximately 1,044 acres of Receiving Area designation from Owner's property in the Topaz Ranch Estates vicinity illustrated on **Exhibit B**. This Agreement is conditioned upon the completion and approval by the Douglas County Board of County Commissioners (the "Board") of such update to the Master Plan Land Use Map.

1.5 Owner and County acknowledge and agree that prior to entering into this Agreement appropriate legal advice and counsel was sought and that both Owner and County made a voluntary informed decision to enter into this Agreement in good faith. Owner and County further acknowledge and agree that substantial benefits will accrue to Owner as a result of entering into this Agreement, including a vested development right to develop the Property in accordance with this Agreement, a certainty in the particular on-site and off-site improvements that may be required by County, and a certainty in the land use fees or obligations which may be imposed by the County.

1.6 County additionally acknowledges that certain public objectives it wishes to attain will be furthered by this Agreement, including right-of-way acquisition for Muller Parkway and additional drainage improvements, an easement for the Highway 88 culverts, financial contributions by Owner towards Muller Parkway construction costs, and implementation of the Master Plan goals and objectives. The benefits of this Agreement will further the comprehensive planning objectives contained in the Master Plan and provide public benefits such as fulfilling long

term transportation goals established by the Master Plan Transportation Element for the County by providing important roadway improvements and removing approximately ninety nine existing homes in the Town of Minden from the FEMA 100 Year Flood Zone.

NOW THEREFORE, County and Owner agree as follows:

## 2. SELECTED DEFINITIONS

2.1 “Existing Development Approvals” means all permits, agreements and other entitlements approved, issued, or otherwise in existence on or before the Effective Date, which include, without limitation, Master Plan and zoning designations, tentative or final subdivision maps, parcel maps, design review, site improvement permits, variances, special use permits, and building permits.

2.2 “Master Plan” means the Douglas County Master Plan adopted April 18, 1996 by Resolution 96R-17, as amended from time to time.

2.3 “Owner” means Park Ranch Holdings, LLC, and other persons or entities or associations which hold any legal or equitable interest in the Property. “Owner” also includes any successors-in-interest to any or all of the foregoing.

2.4 “Property” means the property illustrated in Exhibit A, and includes the development of the Property as contemplated by this Agreement and approved by the County.

2.5 “Public Improvements” means any on-site or off-site improvements or facilities relating to the Property that will be offered for dedication to the County. Improvements include, but are not limited to, all streets, curbs, gutters, medians, parkways, pedestrian and bike paths, sidewalks, street lights, storm drains, and traffic signals or directional devices.

2.6 “Public Utilities” means infrastructure used to deliver water, sewer, natural gas, electricity, telephone, cable television, and telecommunication or fiber optics to the Property, together with all equipment and easements dedicated for these utilities.

2.7 “Reservation of Authority” means the rights and authority exempted from the vested development rights in section 5 of this Agreement and reserved to the County under further County approvals in section 7 of this Agreement.

2.8 “Vested Development Rights” means the irrevocable right to develop the Property in accordance with this Agreement, including the construction of two thousand five hundred (2,500) residential dwelling units as set forth in Sections 3 and 7.1, the Douglas County Code in effect as of the Effective Date to the extent such code provisions do not conflict with this Agreement, and the existing development approvals. The County, however, may unilaterally modify or amend Vested Development Rights to comply with future state or federal laws or regulations that supersede this Agreement.

2.9. “Effective Date” means the date upon which Ordinance 2019-1556 adopting this Agreement becomes effective.

### 3. PROPERTY DESCRIPTION

The Property includes approximately one thousand forty-four (1,044) acres adjacent to the Towns of Minden and Gardnerville, Nevada, east of U.S. Highway 395. The Property contains a significant portion of the future Muller Parkway. The Property is currently zoned Agricultural—19 acre (approximately 965 acres) and Rural Agriculture – 5 acre minimum lot size (79 acres). The proposed Master Plan update will convert the Property's land use designation from Agricultural to Receiving Area.

Development of the Property is planned to include a variety of residential uses, however no "big box" commercial development of a commercial building in excess of 30,000 square feet of commercial space shall be allowed on the Property. The Property may be developed to the density and intensity permitted by existing and future development approvals. A more thorough description of future development of the Property will be set out in future maps, in improvement plans submitted for approval to the County Engineer, and applications for specific plans or planned development(s).

The Property shall be subject to a strict development limitation entitling Owner to develop and construct two thousand five hundred (2,500) residential dwelling units, subject to the Douglas County Building Permit Allocation and Growth Management Ordinance codified in Chapter 20.650 of the Douglas County Code, as amended prior to the Effective Date. The 2,500 unit cap shall be subject to corresponding reductions in the number of units Owner is entitled to develop pursuant to Section 7.1 of this Agreement if the Board approves any future zoning map amendment(s) to non-residential zoning other than Public Facilities. The Property shall not be subject to any Land Use designation changes without the consent of Owner or its successor(s)-in-interest for a period of not less than thirty (30) years from the Effective Date. However, the failure by Owner or its successor(s)-in-interest to timely cure a default under the terms of this Agreement may result in the revocation of the Receiving Area Land Use designation from the Property at the sole discretion of the Board. Because Owner has relinquished the Receiving Area Land Use designation for certain other property owned by Owner as a prerequisite for entering into this Agreement, in the event such a revocation occurs, Owner shall be entitled to the restoration of the Receiving Area Land Use designation for such other property as it existed on the Effective Date.

### 4. VESTED DEVELOPMENT RIGHTS

4.1 General Right to Develop. Subject to the terms of this Agreement, Owner has the right to develop the Property in accordance with the Vested Development Rights. The permitted uses of the Property, the density and intensity of use, the provisions for the reservation or dedication of land for public purposes, the phasing of the construction of public facilities, the standards for the design, improvements, and construction of the project, and other terms and conditions of development applicable to the Property are those set forth in this Agreement, in the Existing Development Approvals and the Douglas County Code in effect as of the Effective Date. Any amendment(s) to the current zoning of the Property may be processed according to County Code.

4.2 Master Plan. Owner has a Vested Development Right to the Master Plan Land Use Designation of the Property as Receiving Area and County hereby agrees not to unilaterally

rescind the Property's Receiving Area Land Use designation for a period of not less than thirty (30) years from the Effective Date.

4.3 Zoning. Owner has a Vested Development Right to receive zoning designations for the Property that are consistent with its Land Use designation as Receiving Area and with the development permitted by this Agreement.

## 5. OWNER'S OBLIGATIONS

5.1 Right-of-Way. Concurrent herewith, Owner shall offer to dedicate to the County public right-of-way approximately 205 feet wide, 15,295 feet long, and comprising approximately 75.7 acres by way of the grant, bargain and sale deed attached hereto as **Exhibit C** in the location described in **Exhibit D** and as depicted on the drawing identified as **Exhibit E** for use as Muller Parkway, multi-modal path(s) and additional drainage facilities. Owner shall also dedicate to the County additional public right-of-way approximately 100 feet in width across the entirety of APN 1320-20-000-017 immediately north of the existing 91.5 feet right-of-way in the location described in **Exhibit D** and illustrated on the drawing attached as **Exhibit E** by way of the same grant, bargain and sale deed. County shall promptly accept Park's offers of dedication. Any portion of the Muller Parkway right-of-way previously dedicated to County pursuant to the Original Agreement or the First Amendment thereto which is not within the right-of-way dedicated under this Agreement shall revert to Park by the process set forth in NRS 244.276. The Parties acknowledge that County's receipt of federal funding for the construction of Muller Parkway may necessitate the acquisition of additional right-of-way from Owner to, for example, accommodate bus stops, bus turnouts and/or autonomous bus routes. The Parties agree to negotiate in good faith for the acquisition of additional right-of-way necessitated by external requirements without the use of eminent domain proceedings. County shall pay to Owner the fair market value of such additional right-of-way should it become required.

5.2 Easement for Highway 88 Culverts. On or before January 3, 2020, Owner shall grant to County an easement on APN 1320-31-000-016 for the purpose of installing drainage culverts below Highway 88 described and illustrated in **Exhibit F**. The Parties agree to cooperate in good faith with each other and the County's agent Bender Rosenthal Inc. to execute the easement and any documents related thereto.

### 5.3 Muller Parkway Financial Contribution.

(a) County shall construct two lanes of Muller Parkway within the deeded right-of-way across the Ashland Park Property identified on **Exhibit E** from the northern Ashland Park Property parcel boundary south to Toler Lane for a total distance of approximately 2,604 linear feet. Owner and County agree to equally share the costs and expenses of constructing such two-lane segment of Muller Parkway across the Ashland Park Property in accordance with or exceeding the specifications contained in the County's Standard Detail for a 2 Lane Urban Arterial. The Parties acknowledge that design modifications to the Standard Detail for 2 Lane Urban Arterial may be required should County elect to construct four lanes of Muller Parkway and/or receive federal funding involving grant requirements which deviate from County's standard design. The Parties agree to cooperate in good faith to finalize the design criteria prior to the commencement of any construction. Notwithstanding County's decision to construct four lanes of Muller Parkway or to construct the road with enhanced design features County desires or which are required as a condition of receiving federal funding, Owner's obligation shall be only to share in the costs of

constructing two lanes of Muller Parkway meeting the County Standard Detail for a 2 Lane Urban Arterial in effect on the Effective Date. County shall complete construction of Muller Parkway through the Ashland Park Property within six (6) years of the Effective Date. The Parties agree that construction of the sidewalk(s) may be deferred until construction commences on adjacent onsite phase(s) of development of the Property, at which time Owner shall be responsible for the cost of construction for a pedestrian sidewalk of standard width as set forth in the County Code as of the Effective Date. County shall either not require or shall bear the cost of any enhancement of the sidewalk to include any multi-modal component. In the event that Owner desires to construct two lanes of Muller Parkway through the Ashland Park Property before County has commenced construction or entered into a contract for the construction of the road, Owner shall have the right to construct the road and County shall pay to Owner half of all material and construction expenses related thereto in the manner set forth in Section 5.3(b).

(b) When construction of the segment of Muller Parkway crossing the Ashland Park Property commences, County shall remit to Owner monthly requests for payment of half of all material and construction expenses related thereto. Requests for payment shall be submitted to Owner no later than thirty (30) days after the end of each month and include a summary of the expenditures reported. Owner shall promptly remit payment(s) to County no later than thirty (30) days after the payment request date(s). Failure by Owner to timely remit payment pursuant to this Paragraph shall constitute a default.

5.4 Water and Sewer. All new development within the Property shall be connected to municipal water and sewer utilities. Owner agrees to cooperate in good faith with the Town of Minden or other water service provider to locate and install infrastructure reasonably necessary to provide water service to the Property, including but not limited to new well(s). No new septic systems shall be approved or installed on the Property.

5.5 Standards and Code. Commencement and completion of the public facilities must conform to the applicable requirements of Nevada Revised Statutes and of the Douglas County Code in effect on the Effective Date. Owner shall pay all fees adopted by the County now and in the future, and the development of the Property shall be subject to the Douglas County Building Permit Allocation and Growth Management Ordinance in effect on the Effective Date. Development of the Property must comply with all applicable County ordinances and Title 20 of the Douglas County Code in effect on the Effective Date.

5.6 Cooperation. Owner agrees that it will cooperate with County in the implementation of this Agreement and to obtain all necessary applications, approvals, permits or to meet other requirements which are or may be necessary to implement this Agreement, including any requirements that may be imposed by receipt of or application for a Better Utilizing Investment to Leverage Development ("BUILD") grant. Owner's cooperation under this section shall not include any financial contributions or payment of costs. Nothing contained in this paragraph, however, shall be construed as an implicit pre-approval by County of any future permits necessary for the development of any property owned by the Owner.

5.7 Right of Entry. During the term of this Agreement and upon advance notice, Owner shall permit the County and its agents, employees and contractors to enter upon the Property and/or APN 1320-31-000-016 for the purpose of conducting survey work, drainage studies, site visits and similar undertakings reasonably related to the funding and construction of Muller

Parkway, or to install and maintain culverts or other drainage facilities upon the Property or APN 1320-31-000-016. Owner further agrees to promptly execute such instrument(s) necessary to the submission of a BUILD grant application acknowledging the County's right of entry and/or any documentation reasonably related to FEMA funding or other grant opportunities.

5.8 Klauber Ranch Easements and Conservation. Prior to the commencement of the development of the Property, Owner agrees to restrict any additional development on Owner's Klauber Ranch properties known as APNs 1319-25-000-021 and 1319-25-000-020 (collectively, "Klauber Ranch") through the use of deed restrictions or a conservation easement pursuant to either Douglas County Code Chapter 20.500, "Transfer Development Rights" or Douglas County Code section 20.714.020, "Clustered Development." Owner shall retain the right to construct six single-family dwellings on the Klauber Ranch Property to replace the six residential structures currently in existence thereon; provided, however, each such residential dwelling is on a parcel no larger than two acres that is not in a Special Flood Hazard Area. County shall approve the application to strip density from Klauber Ranch to apply towards development of the first residential dwelling units constructed on the Property. Concurrent with such deed restrictions or conservation easement placed on Klauber Ranch and County's approval of the application of density to the Property as set forth in this section, County will not deny an application to develop the Property using the density derived from the Klauber Ranch Property for the reason that any portion of Muller Parkway to be constructed as set forth in this Agreement has not been constructed or because the portion of the Property proposed to be developed is in a Special Flood Hazard Area. Owner further agrees to restrict all water rights to Klauber Ranch and dedicate to the County an approximately 7,330 foot-long trail easement immediately south of and parallel to Muller Lane across Klauber Ranch and Owner's properties identified as APNs 1319-24-000-007, 1319-23-000-013 and 1319-26-000-004. Owner and County agree to cooperate in good faith to determine the appropriate width and precise location of said easement. The Parties acknowledge that the water rights appurtenant to the Klauber Ranch parcels comprise approximately 90.95 acre feet per season and are identified in Application No. 87805 on file with the Nevada State Engineer.

5.9 Detention Ponds. The Parties acknowledge that, although County intends to install certain drainage facilities in conjunction with Muller Parkway, additional detention ponds may be required on Owner's parcel(s) in the area zoned "Industrial" immediately east of the Property. Owner and County agree to use their best efforts to determine the size and location of such detention pond(s) and ensure their timely construction, including consultation with and approval from the Douglas County Water Conveyance Advisory Committee. The Parties further acknowledge that, because such detention pond(s) will materially benefit both the Property and the County, the Parties will share equally the cost of constructing such ponds with the Owner.

## 6. COUNTY'S OBLIGATIONS

6.1 Muller Parkway Construction. County must commence and substantially complete the construction of at least two lanes of Muller Parkway in the location identified on Exhibit E beginning at the existing 91.5 feet public road right-of-way on APN 1320-20-000-017, thence southeast to the northern boundary of the Ashland Park Property for a total distance of approximately 12,691 linear feet at County's sole cost and expense, including seven access points as depicted in the attached Exhibit G. County shall also construct two lanes of Muller Parkway within the deeded right-of-way across the Ashland Park Property identified on Exhibit E from the

northern Ashland Park Property parcel boundary, then south to Toler Lane for a total distance of approximately 2,604 linear feet. Owner and County agree to equally share the costs and expenses of constructing such two-lane segment of Muller Parkway across the Ashland Park Property in accordance with the specifications contained in the Standard Detail for a 2 Lane Urban Arterial or such modified design as may be agreed to by the Parties to meet federal funding requirements and/or should County elect to construct four lanes of Muller Parkway. County shall complete the construction of both segments of Muller Parkway as described above within six (6) years of the Effective Date. The Parties agree that construction of the sidewalk(s) may be deferred until construction commences on adjacent onsite phase(s) of development of the Property, at which time Owner shall be responsible for the cost of constructing a pedestrian sidewalk of standard width as set forth in the County Code as of the Effective Date. County shall either not require or shall bear the cost of any enhancement of the sidewalk to include a multi-modal component. In the event that Owner desires to construct two lanes of Muller Parkway as illustrated in **Exhibit E** before County has commenced construction or entered into a contract for the construction of those segments of Muller Parkway, Owner shall have the right to construct the road and County shall pay to Owner 100% of all material and construction expenses, except for the Ashland Park segment, for which the County shall pay to Owner 50% of all material and construction expenses, in each case in the manner set forth in Section 5.3(b). Failure by County to timely construct Muller Parkway as set forth in the Agreement shall constitute a default which, if uncured, shall result in the reversion to Owner of all rights-of-way conveyed to County by Owner pursuant to this Agreement with the exception of the easement(s) on APN 1320-31-000-016. Any such reversion shall be by the process set forth in NRS 244.276.

6.2 If County constructs the segment of Muller Parkway illustrated in **Exhibit E** prior to the development of the portion of the Property lying west of the Muller Parkway right-of-way by Owner, County shall construct that segment of Muller Parkway in such a way as to preserve the conveyance of irrigation water originating east of Muller Parkway to the portion of Owner's land lying west of Muller Parkway.

6.3 Periodic Review. In accordance with the provisions of NRS 278.0205 and 278.02053, County shall review the progress of the Owner at least once every twenty-four (24) months to ensure that Owner has complied with the terms of this Agreement. Upon completion of this review, the County shall give notice to the Owner in writing of the results of the review. Within thirty (30) days of mailing written notice to the Owner, the County must place a copy of the results of its review on the agenda of the Board for consideration and action. If the Board determines that Owner has not complied with the terms of this Agreement, the Board may cancel or amend this Agreement as provided in NRS 278.0205 and Douglas County Code section 20.720.060.

6.4 Cooperation. The County agrees that it will cooperate with Owner in the implementation of this Agreement. Owner agrees that it will cooperate with County in the implementation of this Agreement.

## 7. FURTHER COUNTY APPROVALS

7.1 Zoning Map Amendment(s). The County retains a Reservation of Authority to review, pursuant to Chapter 20.610 of the Douglas County Code, future zoning map amendment(s) for the Property. The Parties acknowledge that Owner's contractual right to develop two thousand

five hundred units within the Property pursuant to this Agreement and the designation of the Property as Receiving Area shall be deemed sufficient to support the findings necessary for approval of zoning map amendment application(s) for single family residential zoning submitted by Owner pertaining to the Property. The Parties further acknowledge that Owner may apply for a zoning map amendment to "Light Industrial" zoning for a portion of the Property lying southwest of the future Muller Parkway which is immediately adjacent to existing "Light Industrial" zoned properties. The Parties agree that if the Board approves a zoning map amendment application(s) changing any portion(s) of the Property to non-residential zoning other than "Public Facilities," that a corresponding reduction to the number of units Owner is entitled to develop on the Property pursuant to Sections 2.8 and 3 of this Agreement shall be made. Such reduction(s) to Owner's unit cap shall be calculated on the basis of an assumed density of 2.4 units per acre. Accordingly, if a zoning map amendment is approved for a 100 acre portion of the Property to "Light Industrial" or other non-residential zoning, the Owner's unit cap shall be reduced by 240 units from 2,500 to 2,260 units.

7.2 Subdivision Map. The County retains a Reservation of Authority to review, in accordance with NRS 278.320, *et seq.*, any tentative and final map(s), and to disapprove any application for a final map if the final map is not prepared in accordance with the tentative map conditions and application requirements for a final map. The County grants to the Owner a period of three (3) years for the presentation of the final map prepared in accordance with the tentative map for the entire area for which a tentative map has been approved. The time requirements set forth in NRS 278.468 apply to this Agreement unless a longer time for filing is permitted by this Agreement.

7.3 The failure of County to approve a Zoning Map Amendment for any application requesting residential zoning as set forth in Section 7.1 or a tentative or final map as set forth in Section 7.2 shall result in a termination of this Agreement and County shall forthwith deed back to Owner all rights-of-way and easements deeded to County, except as to the easement for the culverts under Highway 88 and, as to that easement, County shall pay to Owner the fair market value of such easement as of the Effective Date.

#### 8. CONSISTENT WITH MASTER PLAN

The County agrees that the terms of this Agreement are consistent with the Master Plan, as amended through the Effective Date.

#### 9. TERM

The term of this Agreement will be thirty (30) years from the Effective Date.

#### 10. BINDS ONLY PARTIES AND SUCCESSORS-IN-INTEREST

The terms of this Agreement bind only the parties to this Agreement and their successors, grantees, and assigns. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. This Agreement does not create, and may not be construed as creating, any third-party rights of action in any other person or entity.

#### 11. EVENTS OF DEFAULT



11.1 Default Procedure. In the event of any alleged default of any material terms or conditions of this Agreement, the party alleging a default must give the other party not less than ninety (90) days' notice in writing specifying the nature of the alleged default and the manner in which the default may be satisfactorily cured. After notice and the expiration of the ninety (90) day period, the non-defaulting party to this Agreement, at its option, may determine that the default has been cured or declare that the Agreement has been breached and may institute legal proceedings pursuant to this Agreement. If the County is the non-defaulting party, it may give notice of intent to terminate pursuant to NRS 278.0205; provided, however, if the default is not of the type that could reasonably be cured within ninety (90) days, no action against the defaulting party may be taken during such time that the defaulting party is diligently working to cure the default. If notice of intent to terminate is given by the County, the matter must be scheduled for consideration and review by the Board at a public hearing. Following consideration of the facts and evidence presented in the review before the Board, the County may give written notice of termination of this Agreement to Owner. Owner will have the opportunity to be heard orally and in writing before the Board prior to any termination by County.

11.2 Events of Default. The following constitute events of default under this Agreement:

- (a) County's failure to commence or complete construction in accordance with section 6.1 of this Agreement.
- (b) Owner's failure to remit payment in accordance with section 5.3 of this Agreement.
- (c) An action taken by the County which is not related to its health, safety or welfare powers, and which directly and substantially affects Owner's rights under this Agreement or Owner's ability to fully perform its obligations under this Agreement.
- (d) A material breach by Owner or by the County of any provision of this Agreement.

11.3 Acts of God. Performance by either Party hereto shall not be deemed to be in breach or default where delays or breaches are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, avalanches, inclement weather, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities not parties to this Agreement, the enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, or similar bases for excused performance. If written notice of such delay is given by the delayed Party to the other Party within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, as may be mutually agreed upon. In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. County shall not be held liable to Owner for consequential, exemplary, incidental or punitive damages as a result of its failure to review or approve permits and entitlements in a timely manner.

## 12. REMEDIES

12.1 No Monetary Damages. The County and the Owner agree that neither party would have entered into this Agreement if it were to be liable for damages under or with respect to this Agreement, except for the amounts for which obligations arise under this Agreement.

Accordingly, the County and the Owner may pursue any remedy at law or equity available for breach, except that the County will not be liable to the Owner or to any other person for any monetary damages whatsoever, except for the amounts for which it is obligated in this Agreement and any costs or attorney's fees.

12.2 Specific Performance. The County and the Owner agree that neither party would have entered into this Agreement if they were unable to obtain the approvals cited in this Agreement, the vested rights and public facilities as consideration for this Agreement. Accordingly, each party may sue the other party for specific performance of the approvals. The County may also sue for the installation of those facilities that are necessary to the public's health, safety or welfare if Owner defaults under this Agreement and fails or refuses to perform as required in this Agreement.

### 13. NOTICES

All notices under this Agreement shall be sent, via first class certified return receipt mail, to the following addresses:

Park Ranch Holdings, LLC

Attn: David Park, Manager  
1300 Buckeye Road Suite A  
Minden, Nevada 89423  
Telephone:

with a copy to:

Oshinski & Forsberg, Ltd.  
Attn: Mark Forsberg, Esq.  
504 E. Musser St. Suite 202  
Carson City, NV 89701  
Telephone: (775) 301-4250

and, if the party so to be served is the County, addressed to the County as follows:

Douglas County Community Development  
Attn: Director  
1594 Esmeralda Avenue  
Minden, NV 89423  
Telephone: (775) 782-6201

### 14. MERGER

This Agreement constitutes the entire understanding of the parties and all prior negotiations and understandings are merged into this Agreement. This Agreement does not modify any presently existing conditions of approval for the Property.

### 15. AMENDMENTS

This Agreement may be amended by the parties by a written agreement that is adopted by the County through an ordinance in compliance with NRS 278.020 through 278.0207, inclusive. Within the limits granted by the County Code, the director of Community Development may make and approve minor modifications to this Agreement that are requested by Owner; provided that minor modifications will not affect the term of this Agreement, the permitted uses of the Property, or the dedication of the right-of-way, easements and Public Facilities required by this Agreement.

#### 16. SEVERABILITY

It is declared to be the intention of the parties that the sections, paragraphs, sentences, clauses, and phrases of this Agreement, or of the County ordinance adopting the same, are severable. If any phrase, clause, sentence, paragraph, or section of this Agreement, or of the County ordinance adopting same, is declared unconstitutional or invalid by a valid and final judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement, or of the County ordinance adopting same.

#### 17. AGREEMENT CONDITIONAL

This Agreement is conditioned upon the concurrent approval of the pending update to the Master Plan Land Use Map(s) changing the Land Use Designation of the Property to Receiving Area, and neither Party has any obligation hereunder until that occurrence. In the event that County does not approve said pending update to the Master Plan Land Use Map(s), as presented or as modified, this Agreement shall terminate.

County and Owner recognize that the construction of Muller Parkway requires the performance of County and parties to other development agreements with County and agree that if one or more of such developers fails to fulfill its obligations with respect to the construction of Muller Parkway or the dedication of right-of-way for Muller Parkway, or does not comply with the terms of its respective development agreement either voluntarily or by non-action, so long as Owner has timely performed all of its obligations under this Agreement, County will not impose on Owner any conditions that are made necessary or expedient by the failure of other persons to construct any portion of Muller Parkway.

#### 18. RECITALS AND EXHIBITS

The Recitals and all Exhibits to this Agreement are incorporated herein by this reference.

#### 19. LAW AND FORUM

The laws of Nevada shall govern the interpretation and enforcement of this Agreement. Owner and County agree that the Ninth Judicial District Court, located in Douglas County, Nevada, will be the forum for any litigation arising as a result of this Agreement.

County will not waive, and instead intends to assert, all available defenses under NRS Chapter 41 to limit liability as a political subdivision of the State of Nevada. Owner agrees that the County is under no legal or equitable obligation to enter into this Agreement and that the

County elects to be a party to this Agreement as a discretionary act in furtherance of its governmental policies relating to the development of property in the County.

21. AUTHORITY

Any individual signing this Agreement on behalf of the respective Parties represents that he or she is authorized by such Party and has the power to enter into this Agreement, and by such person's act such Party is bound hereto.

{Signatures on the following page.}

///

///

///

///

///

///

This agreement is effective on the effective date of Ordinance 2019-1556-A.

**PARK RANCH HOLDINGS LLC,**  
a Nevada limited liability company

By: David Park

David Park, Manager

Date: 12-4-19

**DOUGLAS COUNTY, NEVADA, a**  
political subdivision of the State of  
Nevada

By: William B. Penzel

William B. Penzel, Chairman

Date: 12-05-2019

Attest:

Kathryn Lewis  
Douglas County Clerk

STATE OF NEVADA )

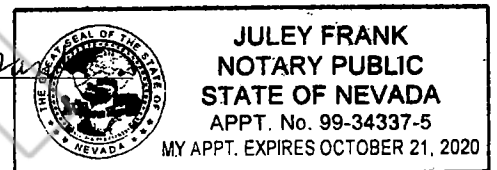
DOUGLAS COUNTY )

) ss.

On this 4<sup>th</sup> day of December, 2019, before me, the undersigned, a Notary Public in and for said state, personally appeared David Park, personally known or proved to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Juley Frank  
NOTARY PUBLIC



STATE OF NEVADA )

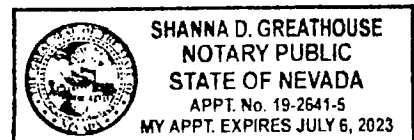
DOUGLAS COUNTY )

) ss.

On this 5<sup>th</sup> day of December, 2019, before me, the undersigned, a Notary Public in and for said state, personally appeared William B. Penzel, personally known or proved to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

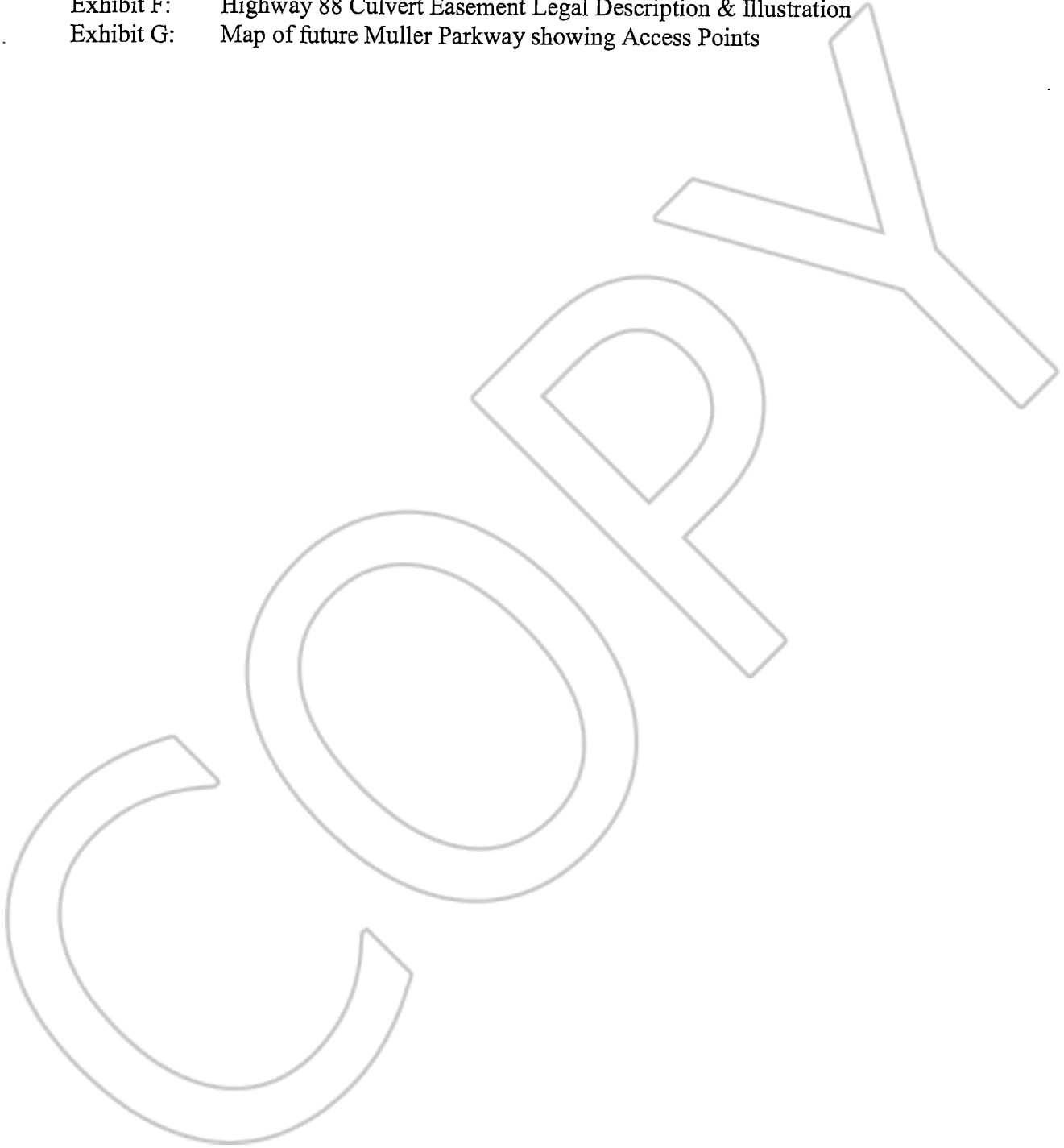
WITNESS my hand and official seal.

Shanna D. Greathouse  
NOTARY PUBLIC



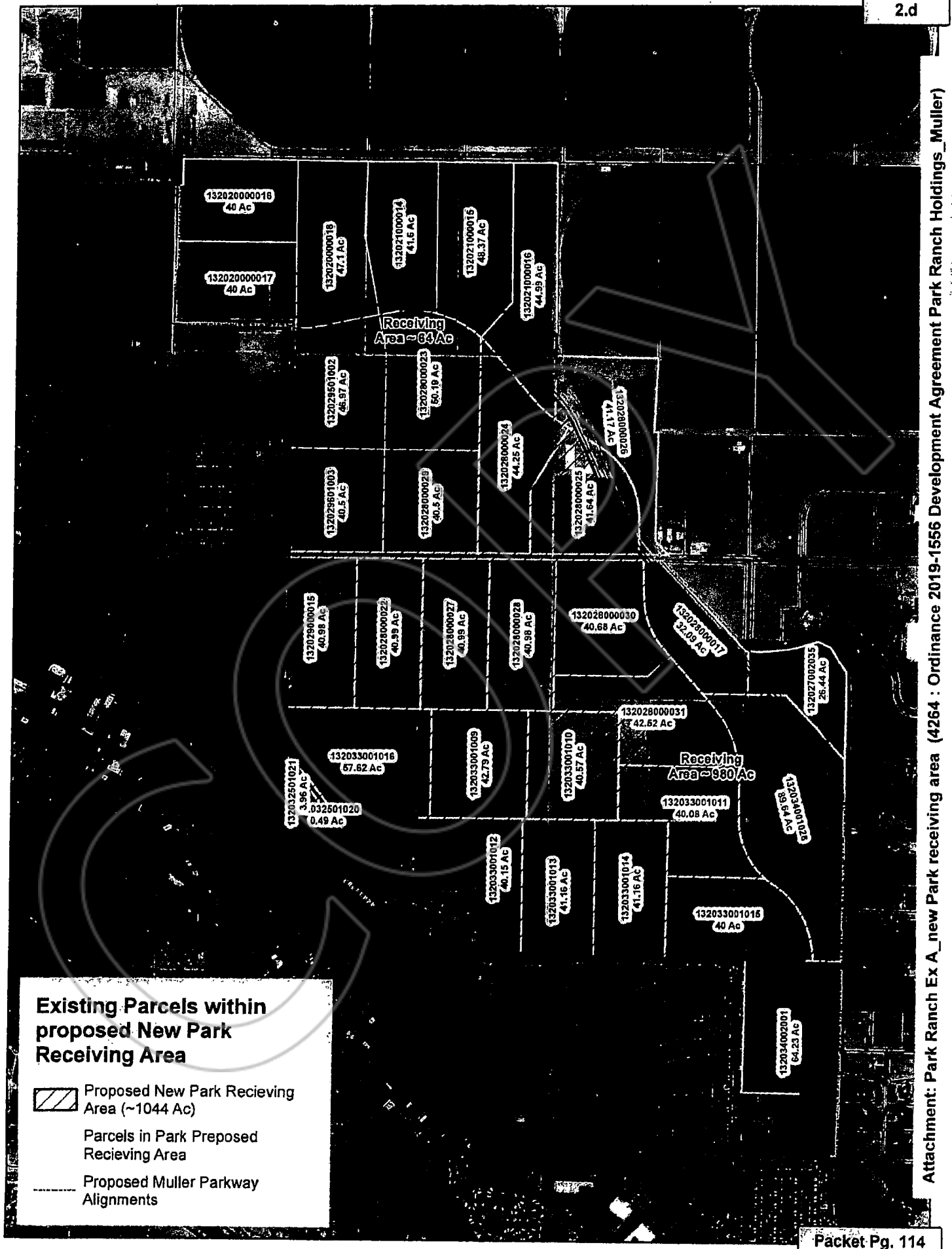
Exhibits-

- Exhibit A: Map of the Property (1,044 acres exclusive of the 76ac. alignment of Muller)
- Exhibit B: Map of Receiving Area being stripped from Owner's land near Topaz
- Exhibit C: Form of Grant, Bargain and Sale Deed
- Exhibit D: Right-of-Way Legal Description
- Exhibit E: Right-of-Way Map
- Exhibit F: Highway 88 Culvert Easement Legal Description & Illustration
- Exhibit G: Map of future Muller Parkway showing Access Points



**EXHIBIT A**

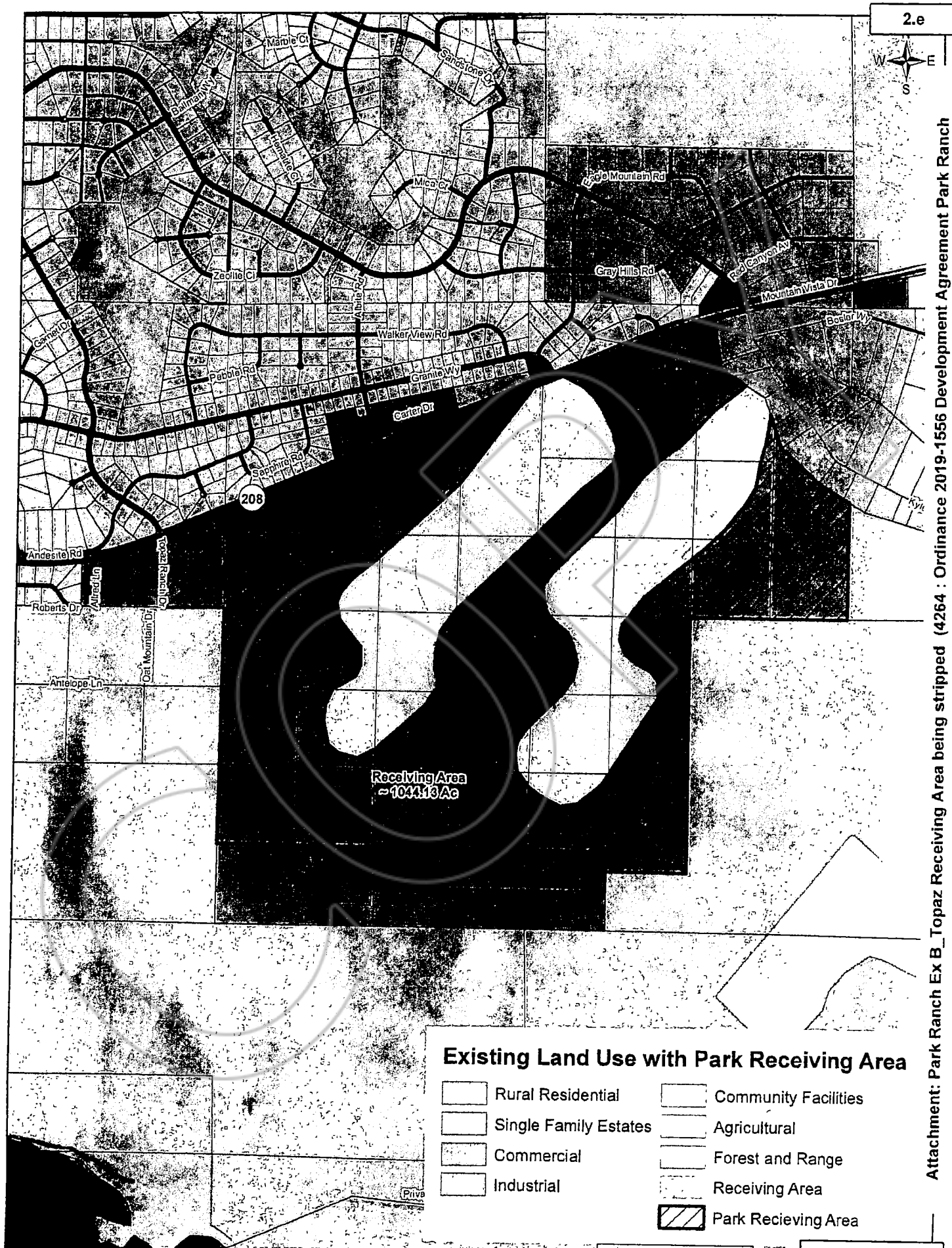
COPY





**EXHIBIT B**

COPY



**EXHIBIT C**

COPY

APNs: 1320-20-000-017; 1320-20-000-018; 1320-29-501-002; 1320-28-000-023; 1320-28-000-024; 1320-28-000-025; 1320-28-000-028; 1320-28-000-017; 1320-27-002-035; 1320-34-001-028; 1320-34-002-001; 1320-28-000-030; 1320-28-000-031; 1320-33-001-011; 1320-33-001-015; 1320-34-002-001; 1320-21-000-015; 1320-21-000-016; 1320-29-601-003; 1320-28-000-029; 1320-29-000-015; 1320-28-000-022; 1320-28-000-027; 1320-32-501-021; 1320-32-501-020; 1320-33-001-016; 1320-33-001-009; 1320-33-001-010; 1320-33-001-012; 1320-33-001-013; 1320-33-001-014; and 1320-31-000-002;

1320-31-000-002

RECORDING REQUESTED BY:

Oshinski & Forsberg, Ltd.  
504 E. Musser St., Suite 302  
Carson City, NV 89701

RECORDER'S USE

SPACE ABOVE THIS LINE FOR

The undersigned hereby affirms that this document submitted for recording does not contain the social security number of any person or persons. (NRS 239B.030)

**GRANT, BARGAIN & SALE DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Park Ranch Holdings, LLC**, a Nevada limited liability company, hereby grants, bargains, sells and conveys to Douglas County, a political subdivision of the State of Nevada, that certain real property situated in the County of Douglas, State of Nevada, more particularly described on **Exhibit A** and illustrated on **Exhibit B**, attached hereto and by reference made a part hereof.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

Excluding all Water Rights.

WITNESS my hand this 4<sup>th</sup> day of Dec, 2019.

PARK RANCH HOLDINGS, LLC

By: David Frank

Its: Manager

STATE OF NEVADA )

) ss.

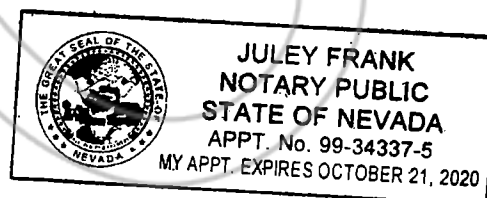
COUNTY OF Douglas )

On this 4<sup>th</sup> day of December, 2019, before me, the undersigned, a Notary Public in and for the State of Nevada, personally appeared, personally known or proved to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Juley Frank

NOTARY PUBLIC



**EXHIBIT D**

COPY

**DESCRIPTION  
PROPOSED MULLER PARKWAY**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A strip of land for public purposes located within portions of Sections 28, 33 & 34, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

**BEGINNING** at the southeast corner of Adjusted Parcel 25-080-07 as shown on the Record of Survey to Support a Boundary Line Adjustment for Rhoda Chichester Revocable Trust, Robert L. Chichester Jr., Ross J. Chichester & Lester Leroy and Anita Thran Stodick Family Trust, filed for record June 21, 1995 in the office of Recorder, Douglas County, Nevada as Document No. 364543, said point falling on the northerly right-of-way line of Toler Lane;

thence along said northerly right-of-way line of Toler Lane, North 89°20'18" West, 259.39 feet;

thence along the arc of a curve to the right, having a radius of 130.00 feet, central angle of 57°00'43", arc length of 129.36 feet, and chord bearing and distance of North 14°34'47" East, 124.09 feet;

thence along the arc of a reverse curve to the left, having a radius of 100.00 feet, central angle of 42°06'03", arc length of 73.48 feet, and chord bearing and distance of North 22°02'07" East, 71.84 feet;

thence North 00°59'06" East, 4,432.59 feet;

thence along the arc of a curve to the left, having a radius of 1,447.50 feet, central angle of 44°44'56", arc length of 1,130.52 feet, and chord bearing and distance of North 21°23'22" West, 1,102.01 feet;

thence North 43°45'50" West, 2,243.28 feet;

thence along the arc of a curve to the left, having a radius of 1,297.50 feet, central angle of 16°44'23", arc length of 379.08 feet, and chord bearing and distance of North 52°08'02" West, 377.74 feet;

thence North 60°30'13" West, 169.48 feet;

thence along the arc of a curve to the right, having a radius of 552.50 feet, central angle of 26°24'31", arc length of 252.41 feet, and chord bearing and distance of North 47°17'57" West, 252.41 feet;

thence along the arc of a reverse curve to the left, having a radius of 100.00 feet, central angle of 41°35'35", arc length of 72.59 feet, and chord bearing and distance of North 54°53'29" West, 71.01 feet;

thence along the arc of a reverse curve to the right, having a radius of 130.00 feet, central angle of 58°16'21", arc length of 132.22 feet, and chord bearing and distance of North 46°33'06" West, 126.59 feet to a point on the southerly right-of-way line of Buckeye Road;

thence along said southerly right-of-way line of Buckeye Road, South 89°29'43" East, 440.26 feet;

thence South 43°15'48" East, 1,655.08 feet;  
thence South 43°58'59" East, 1,981.44 feet to a point on the easterly boundary of Adjusted Parcel 52 per the Record of Survey to Support a Boundary Line Adjustment for Park Cattle Company, filed for record October 30, 2008 in said office of Recorder as Document No. 732299;

thence along said easterly boundary of Adjusted Parcel 52, South 00°59'06" West, 2,649.79 feet to a point on the easterly boundary of said Adjusted A.P.N. 25-080-07;

thence along said easterly boundary of Adjusted A.P.N. 25-080-07 the following courses:

South 00°59'56" West, 647.43 feet;  
South 89°01'29" East, 8.92 feet;  
South 01°15'34" West, 1,950.89 feet to the **POINT OF BEGINNING**,  
containing 41.58 acres, more or less.

**TOGETHER WITH:**

A strip of land for public purposes located within portions of Sections 20, 21, 28 & 29, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

**COMMENCING** at the northwest corner of Adjusted Parcel 26 as shown on the Map of Division into Large Parcels for Edgewood Companies, filed for record June 15, 2009 in said office of Recorder, as Document No. 745140, said point falling on the easterly right-of-way line of Heybourne Road;

thence along said easterly right-of-way line of Heybourne Road, South 00°48'13" West, 984.08 feet to the **POINT OF BEGINNING**;

thence South 89°30'10" East, 1,549.21 feet;

thence along the arc of a curve to the right, having a radius of 1,502.50 feet, central angle of 31°06'31", arc length of 815.78 feet, and chord bearing and distance of South 73°56'55" East, 805.79 feet;

thence South 58°23'39" East, 131.56 feet;

thence along the arc of a curve to the left, having a radius of 1,197.50 feet, central angle of 30°59'32", arc length of 647.75 feet, and chord bearing and distance of South 73°53'25" East, 639.88 feet;

thence South 89°23'11" East, 1,226.14 feet;

thence along the arc of a curve to the right, having a radius of 1,502.50 feet, central angle of 65°33'06", arc length of 1,719.00 feet, and chord bearing and distance of South 56°36'38" East, 1,626.77 feet;

thence South 23°50'05" East, 1,769.09 feet;

thence South 43°15'48" East, 248.30 feet to a point on the northerly right-of-way line of Buckeye Road;

thence along said northerly right-of-way line of Buckeye Road, North 89°29'43" West, 363.62 feet;

thence along the arc of a curve to the right, non-tangent to the preceding course,



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07/15/19

Page 3 of 3

having a radius of 130.00 feet, central angle of  $06^{\circ}12'29''$ , arc length of 14.09 feet, and chord bearing and distance of North  $21^{\circ}31'44''$  East, 14.08 feet;

thence along the arc of a reverse curve to the left, having a radius of 100.00 feet, central angle of  $48^{\circ}28'03''$ , arc length of 84.59 feet, and chord bearing and distance of North  $00^{\circ}23'57''$  East, 82.09 feet;

thence North  $23^{\circ}50'05''$  West, 1,768.64 feet;

thence along the arc of a curve to the left, having a radius of 1,297.50 feet, central angle of  $65^{\circ}33'06''$ , arc length of 1,484.46 feet, and chord bearing and distance of North  $56^{\circ}36'38''$  West, 1,404.82 feet;

thence North  $89^{\circ}23'11''$  West, 1,226.14 feet;

thence along the arc of a curve to the right, having a radius of 1,402.50 feet, central angle of  $30^{\circ}59'32''$ , arc length of 758.64 feet, and chord bearing and distance of North  $73^{\circ}53'25''$  West, 749.42 feet;

thence North  $58^{\circ}23'39''$  West, 131.56 feet;

thence along the arc of a curve to the left, having a radius of 1,297.50 feet, central angle of  $31^{\circ}06'32''$ , arc length of 704.48 feet, and chord bearing and distance of North  $73^{\circ}56'55''$  West, 695.86 feet to the southeasterly terminus of Muller Parkway;

thence along the easterly right-of-way line of said Muller Parkway, North  $00^{\circ}30'18''$  East, 91.50 feet to the northeasterly terminus of said Muller Parkway;

thence along the easterly right-of-way line of said Muller Parkway, North  $89^{\circ}30'10''$  West, 1,522.17 feet;

thence along the arc of a curve to the right, having a radius of 27.50 feet, central angle of  $90^{\circ}18'23''$ , arc length of 43.34 feet, and chord bearing and distance of North  $44^{\circ}20'58''$  West, 38.99 feet to a point on said easterly right-of-way line of Heybourne Road;

thence along said easterly right-of-way line of Heybourne Road, North  $00^{\circ}48'13''$  East, 85.85 feet to the **POINT OF BEGINNING**, containing 34.10 acres, more or less.

The total combined acreage of this description is 75.68 acres, more or less.

The Basis of Bearing of this description is identical to the Map of Division into Large Parcels for Edgewood Companies, filed for record June 15, 2009 in the office of Recorder, Douglas County, Nevada as Document No. 745140.

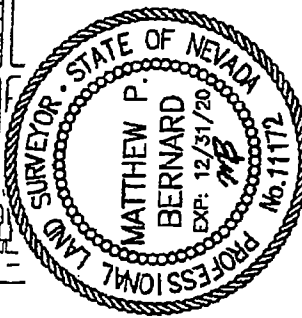
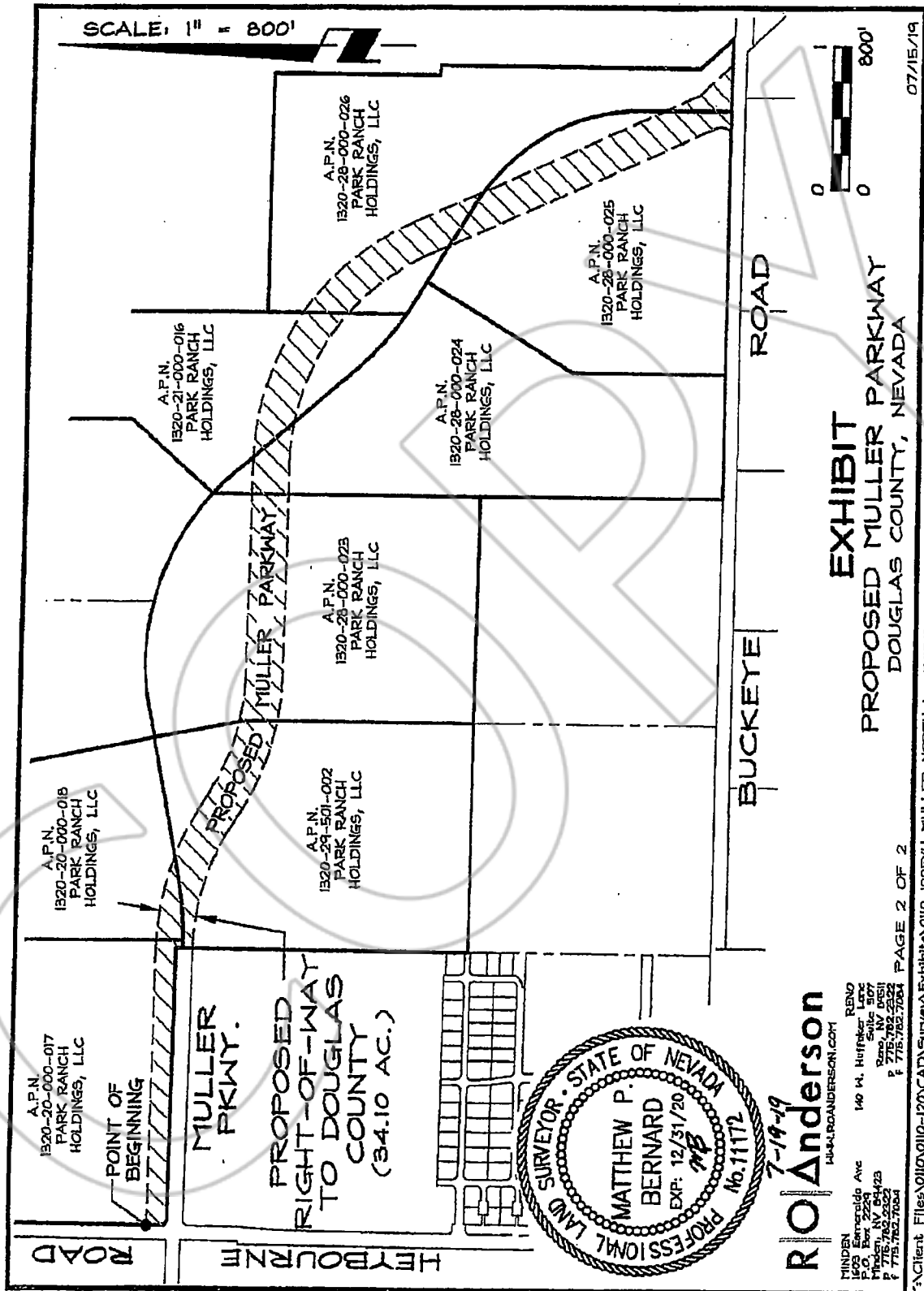
Prepared By: R.O. ANDERSON ENGINEERING, INC.  
Matthew P. Bernard, PLS 11172  
P.O. Box 2229  
Minden, Nevada 89423



7-19-19

**EXHIBIT E**

COPY

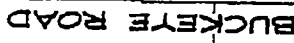


**RO Anderson**  
7-19-19  
HULL AND ANDERSON, CO.

MINDEN  
1609 Enterprise Ave  
Minden, NV 89423  
P 775.762.7023  
F 775.762.7024

RENO  
140 W. Huffaker Lane  
Suite 507  
Reno, NV 89501  
P 775.762.7023  
F 775.762.7024

7-19-19



WWW.ROANDERSON.COM

RENO  
140 W. Hufferd Lane  
Suite 507  
Reno, NV 89511  
P 775.782.2322  
F 775.782.7054

PROPOSED MULLER PARKWAY  
DOUGLAS COUNTY, NEVADA

07/15/19

Y:\Client Files\0110\0110-120\CAD\Survey\Exhibits\0110-120EXH-MULLER-SOUTH.dwg 7/19/2019 3:06:06 PM Ding Schmuddebusch

**EXHIBIT F**

COPY

**EXHIBIT "A"**  
**PUBLIC DRAINAGE EASEMENT**  
**LEGAL DESCRIPTION**

PARK RANCH HOLDINGS, LLC  
APN 1320-31-000-016

A portion of Lot 1 of Section 31 in Township 13 North, Range 20 East, M.D.B. & M., Douglas County, Nevada, more particularly described as follows:

**BEGINNING** at a point on the westerly right of way line of State Route 88 at approximate Engineer's Station "O1" 35+18.21, from which point the Southwest corner of said Section 31 bears South 30°49'18" West, 4955.87 feet distance;

**THENCE** North 79°19'18" West, 149.18 feet;

**THENCE** North 68°00'22" West, 188.19 feet;

**THENCE** North 86°03'39" West, 309.99 feet;

**THENCE** North 01°34'25" East, 120.03 feet;

**THENCE** South 88°43'50" East, 308.66 feet;

**THENCE** South 74°03'46" East, 84.17 feet;

**THENCE** South 69°16'40" East, 181.49 feet;

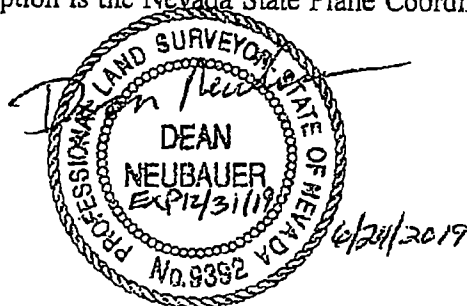
**THENCE** North 89°03'44" East, 71.81 feet to the westerly right of way line of State Route 88;

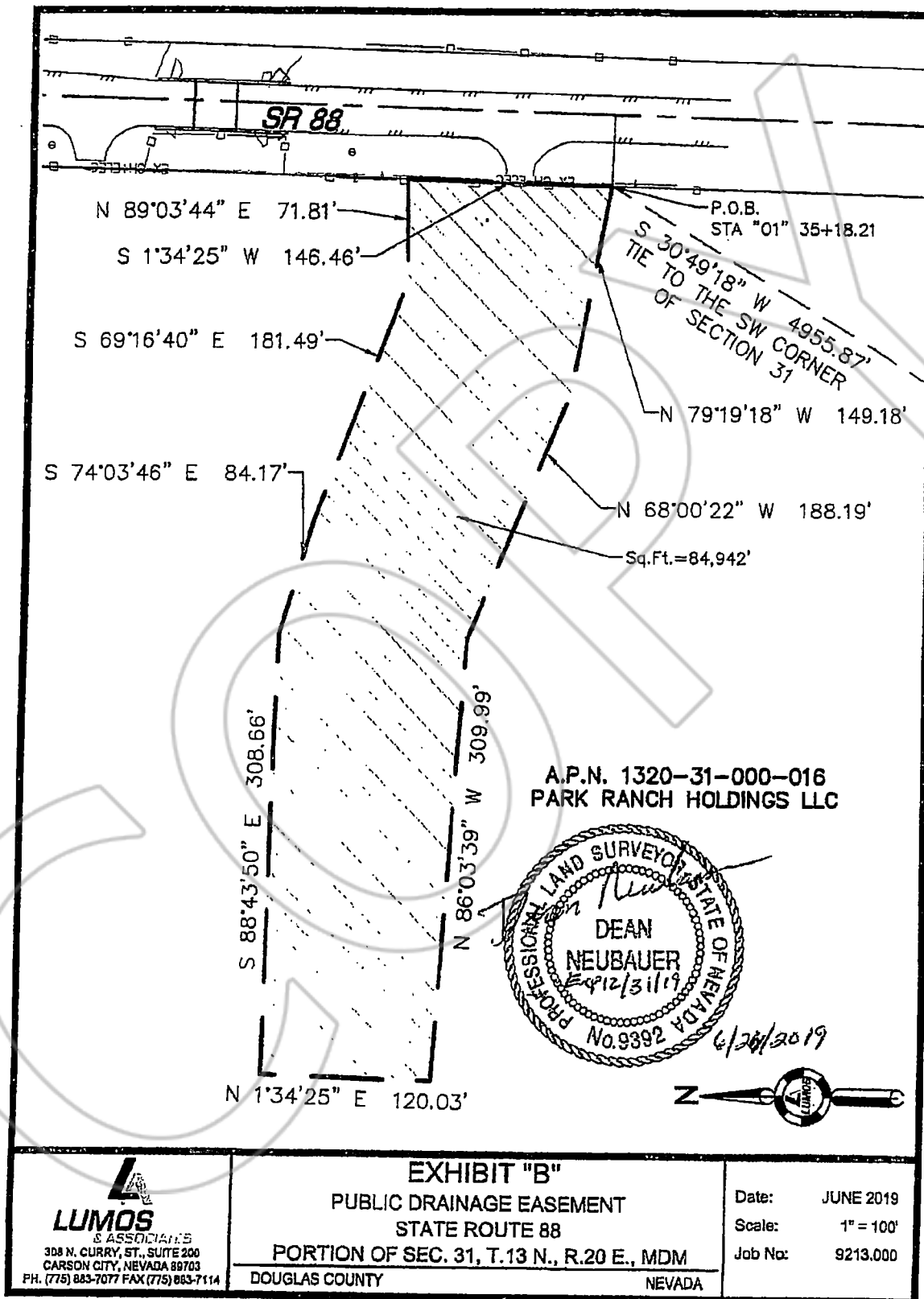
**THENCE** along the westerly line of State Route 88, South 01°34'25" West, 146.46 feet to the **POINT OF BEGINNING**.

This easement contains 84,942 square feet more or less.

The basis of bearings for this legal description is the Nevada State Plane Coordinate System of 1983, West Zone, NAD 83/94.

Prepared under the supervision of  
Dean Neubauer, P.L.S. 9392  
800 E. College Parkway  
Carson City, NV 89706





LUMOS  
& ASSOCIATES  
308 N. CURRY, ST., SUITE 200  
CARSON CITY, NEVADA 89703  
PH. (775) 883-7077 FAX (775) 883-7114

# EXHIBIT "B"

PUBLIC DRAINAGE EASEMENT  
STATE ROUTE 88

PORTION OF SEC. 31, T.13 N., R.20 E., MDM

DOUGLAS COUNTY

NEVADA

Date: JUNE 2019

Scale: 1" = 100'

Job No: 9213.000

**EXHIBIT "A"**  
**TEMPORARY CONSTRUCTION EASEMENT**  
**LEGAL DESCRIPTION**

PARK RANCH HOLDINGS, LLC  
APN 1320-31-000-016

A portion of Lot 1 of Section 31 in Township 13 North, Range 20 East, M.D.B. & M., Douglas County, Nevada, more particularly described as follows:

**BEGINNING** at a point on the westerly right of way line of State Route 88 at approximate Engineer's Station "O1" 35+28.33, from which point the Southwest corner of said Section 31 bears South 30°52'44" West, 4947.03 feet distance;

**THENCE** North 79°19'18" West, 151.77 feet;

**THENCE** North 68°00'22" West, 187.59 feet;

**THENCE** North 86°03'39" West, 318.00 feet;

**THENCE** North 01°34'25" East, 139.57 feet;

**THENCE** South 88°43'50" East, 319.89 feet;

**THENCE** South 74°03'46" East, 85.87 feet;

**THENCE** South 69°16'40" East, 180.00 feet;

**THENCE** North 89°03'44" East, 70.33 feet to the westerly right of way line of State Route 88;

**THENCE** along the westerly line of State Route 88, South 01°34'25" West, 166.60 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM**

A Public Drainage Easement being a portion of Lot 1 of Section 31 in Township 13 North, Range 20 East, M.D.B. & M., Douglas County, Nevada, more particularly described as follows:



**BEGINNING** at a point on the westerly right of way line of State Route 88 at approximate Engineer's Station "01" 35+18.21, from which point the Southwest corner of said Section 31 bears South 30°49'18" West, 4955.87 feet distance;

**THENCE** North 79°19'18" West, 149.18 feet;

**THENCE** North 68°00'22" West, 188.19 feet;

**THENCE** North 86°03'39" West, 309.99 feet;

**THENCE** North 01°34'25" East, 120.03 feet;

**THENCE** South 88°43'50" East, 308.66 feet;

**THENCE** South 74°03'46" East, 84.17 feet;

**THENCE** South 69°16'40" East, 181.49 feet;

**THENCE** North 89°03'44" East, 71.81 feet to the westerly right of way line of State Route 88;

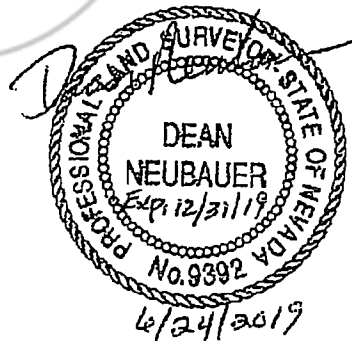
**THENCE** along the westerly line of State Route 88, South 01°34'25" West, 146.46 feet to the **POINT OF BEGINNING**.

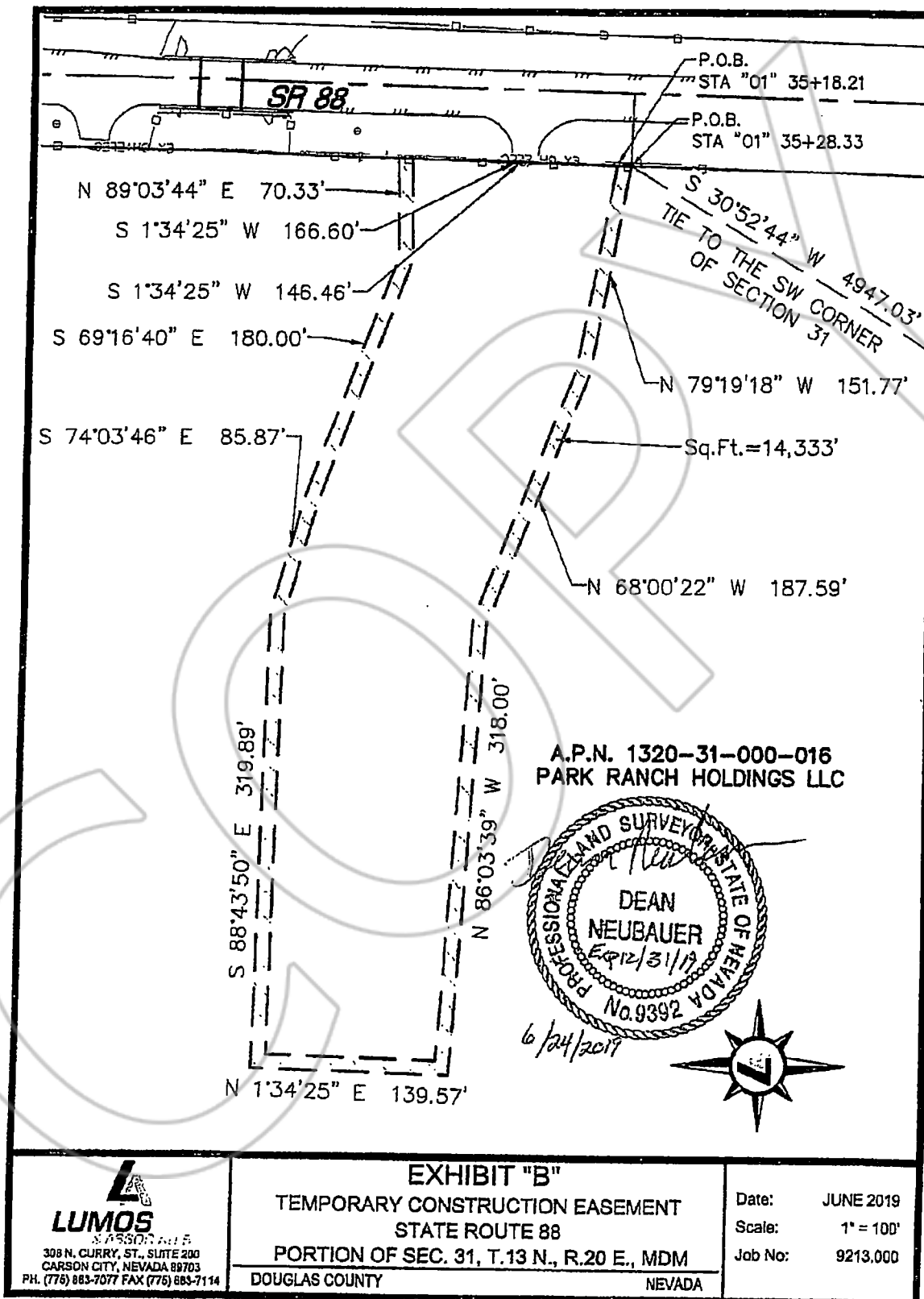
This public drainage easement contains 84,942 square feet more or less.

This temporary construction easement contains 14,333 square feet more or less.

The basis of bearings for these legal descriptions is the Nevada State Plane Coordinate System of 1983, West Zone, NAD 83/94.

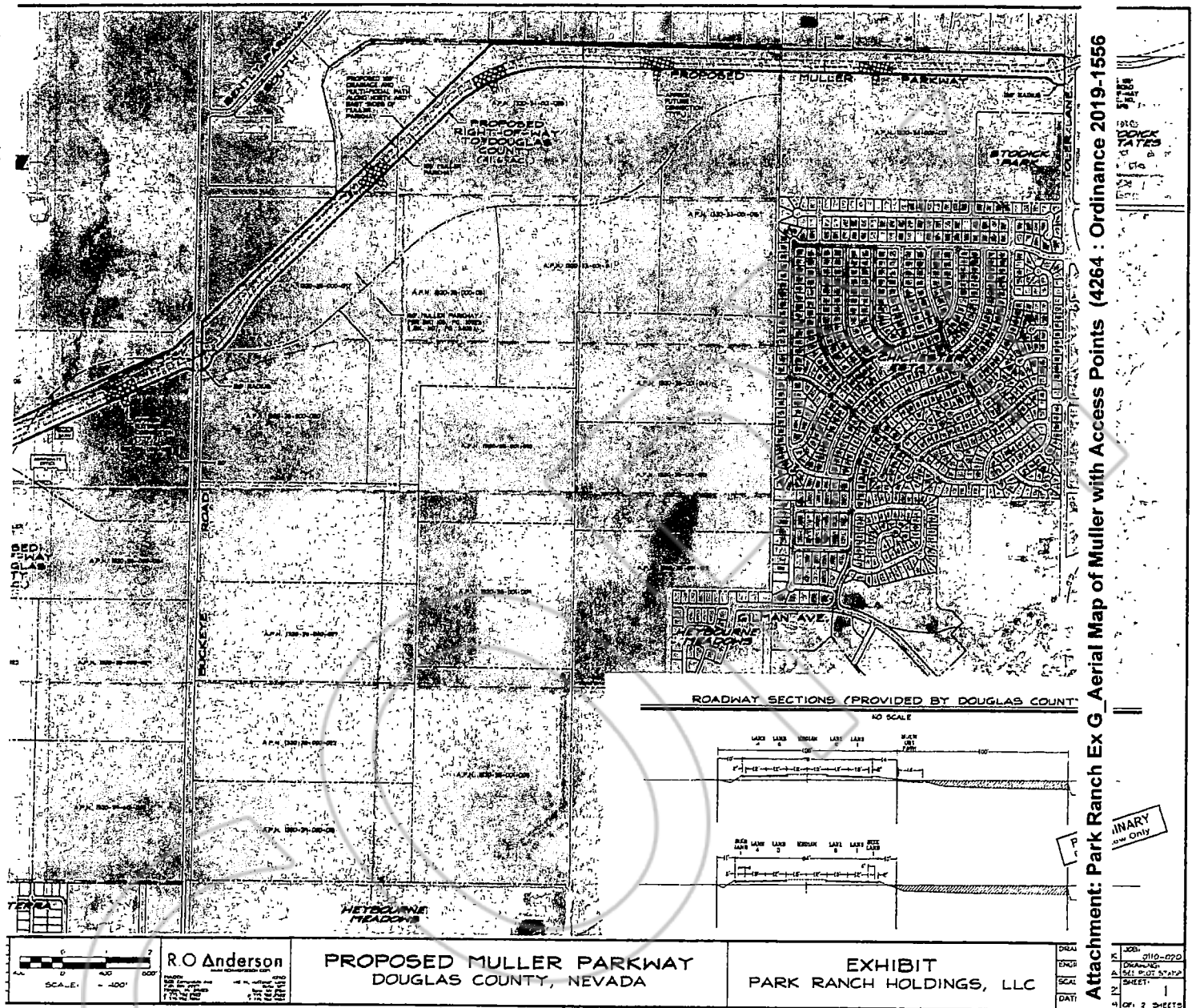
Prepared under the supervision of  
Dean Neubauer, P.L.S. 9392  
308 N. Curry Street, Suite 200  
Carson City, NV 89703





**EXHIBIT G**

COPY



Douglas County

State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

16th day of April 2019

By [Signature] Deputy

## **Park Ranch Holding Motion for a Preliminary injunction**

RECEIVED

AUG - 8 2024

Douglas County  
District Court Clerk

FILED

2024 AUG -8 PH 2:32

REBECCA EDWARDS  
CLERK

BY *J. F.* DEPUTY

DARREN J. LEMIEUX, Nevada Bar No. 9615  
LUCY C. CROW, Nevada Bar 15203  
BRITTNI A. TANENBAUM, Nevada Bar 16013  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
One East Liberty Street, Suite 300  
Reno, Nevada 89501  
Tel: 775.823.2900  
Fax: 775.823.2929  
Email: DLEmieux@lewisroca.com  
LCrow@lewisroca.com  
BTanenbaum@lewisroca.com

*Attorneys for Real Party in Interest Park Ranch  
Holdings, LLC*

IN THE NINTH JUDICIAL DISTRICT COURT OR THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

ASHLAND PARK, LLC, a Nevada limited  
liability Company,

Plaintiff,

v.

DOUGLAS COUNTY, a political subdivision  
of the State of Nevada,

Defendant,

PARK RANCH HOLDINGS, LLC, a Nevada  
limited liability company,

Real Party in Interest.

Case No.: 2023-CV-00085

Dept. No. I

**PARK RANCH HOLDINGS, LLC's  
MOTION FOR A PRELIMINARY  
INJUNCTION AGAINST DOUGLAS  
COUNTY**

Pursuant to NRS 33.010 and Rule 65 of the Nevada Rules of Civil Procedure ("NRCP"), Real Party In Interest Park Ranch Holdings, LLC ("Park Ranch") hereby moves this Court for a preliminary injunction against Defendant Douglas County ("County"), enjoining the County from (a) beginning or continuing construction of Muller Parkway without Park Ranch's written approval of the final design criteria for Muller Parkway and associated drainage infrastructure because the County's current plans for construction and lack of plans for drainage infrastructure are fatally flawed and will cause irreparable harm to Park Ranch and (b) encroaching upon Park

1 Ranch's property without Park Ranch's written consent and County's payment of fair market  
2 value for the affected parcels.

3 This Motion is based upon all pleadings on file herein, the following memorandum of  
4 points and authorities, the declaration of David Park, the declaration of Todd Cochran, PE, the  
5 attached exhibits, and any oral argument or hearing on this matter that the Court entertains.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Even though Park Ranch has repeatedly objected to the County's proposed plans for  
9 Muller Parkway, the County has ignored those objections, awarded contracts for the construction  
10 of Muller Parkway, and is proceeding with construction based on its flawed, incomplete, and  
11 unacceptable plans. If the County is allowed to proceed, the County will deprive Park Ranch of  
12 its development rights and use of its land. To prevent irreparable injury to Park Ranch, a  
13 preliminary injunction must issue to stop the County from proceeding with fatally flawed plans  
14 for construction and no plans for floodwater mitigation, and to stop the County from needlessly  
15 encroaching upon Park Ranch Property.

16 Nearly five years ago, the County and Park Ranch entered into the Development  
17 Agreement wherein Park Ranch agreed to grant the County an enlarged right-of-way through  
18 Park Ranch Property for Muller Parkway and drainage infrastructure; in exchange, the County  
19 agreed to grant Park Ranch vested development rights for residential communities. Given that  
20 Muller Parkway will run through Park Ranch Property, the Development Agreement requires the  
21 County to work in good faith with Park Ranch "to finalize the design criteria *prior to* the  
22 commencement of *any* construction."<sup>1</sup>

23 Breaching the Development Agreement, the County has repeatedly ignored Park Ranch's  
24 grave concerns regarding the County's proposed plans and submission to the Federal Emergency  
25 Management Agency ("FEMA")—both of which are deeply and fatally flawed. As attested to by  
26 Todd Cochran, an experienced engineer with an expertise in hydrology, the County's proposed  
27 plans and FEMA submission are riddled with errors. To identify only a few issues, the County's  
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<sup>1</sup> **Ex. 5** § 5.3 (emphasis added).

1 proposed plans encroach upon Park Ranch Property and fail to mitigate floodwater with adequate  
2 drainage infrastructure, and the County's submission to FEMA is based on inconsistent inputs  
3 and equations that fail to quantify the damage to Park Ranch Property as a result of the County's  
4 construction. Not only will these immense errors irreparably harm Park Ranch, but they violate  
5 the County's own regulations and design standards that expressly forbid diverting floodwater  
6 onto other properties. Despite that the County's plans are disastrous and unlawful, on August 2,  
7 2024, the County awarded a second contract for construction of the portion of Muller Parkway  
8 that runs through Park Ranch Property.

9 The County must be enjoined from proceeding with construction. Park Ranch satisfies its  
10 burden for a preliminary injunction because the County's actions are directly contrary to the  
11 Development Agreement, breaching it and the covenant of good faith and fair dealing. And it is  
12 well-established that damage to real property is irreparable,<sup>2</sup> including when it is caused by  
13 floodwater.<sup>3</sup> Because Park Ranch will succeed on the merits and the County threatens to  
14 irreparably harm the Park Ranch Property, a preliminary injunction should issue to enjoin the  
15 County from (a) beginning or continuing construction of Muller Parkway without written  
16 approval from Park Ranch approving of the final design criteria for Muller Parkway and  
17 associated drainage infrastructure and (b) encroaching upon Park Ranch's property without Park  
18 Ranch's written consent and the County's payment of fair market value for the affected parcels.

## 19 **II. BACKGROUND**

### 20 **A. Park Ranch Property**

21 Flooding is a well-documented hazard in Douglas County and much of Douglas County  
22 lies in a floodplain, posing a risk of loss of life. *See, e.g.*, Douglas County Consolidated  
23 Development Code ("DCCDC") § 20.50.030 ("Portions of Douglas County are subject to  
24 periodic inundation by flood waters which may result in loss of life and property, health and  
25 safety hazards, disruption of commerce and governmental services, extraordinary public  
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27 <sup>2</sup> *Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987); *Invs. v. Bank of Am., NA*,  
585 F. App'x 742, 743 (9th Cir. 2014).

28 <sup>3</sup> *Richland/Wilkin Joint Powers Auth. v. United States Army Corps of Eng'rs*, 826 F.3d 1030,  
1038 (8th Cir. 2016); *Spire STL Pipeline LLC v. 3.31 Acres of Land*, No. 4:18-CV-1327-RWS-  
DDN, 2018 WL 6528667, at \*2 (E.D. Mo. Dec. 12, 2018).



1 expenditures for flood protection and relief, and impairment of the tax base, all of which  
2 adversely affect the public health, safety and general welfare.”).

3 Park Ranch owns dozens of parcels of property in Douglas County to the east of Minden  
4 and Gardnerville (together, these parcels are the “Park Ranch Property”).<sup>4</sup> See **Ex. 1** ¶ 3. Park  
5 Ranch also owned APN 1320-34-002-001 before conveying it to Plaintiff Ashland Park  
6 (“Ashland”) on July 17, 2020 (“Ashland Property,” together with Park Ranch Property, the  
7 “Property”). See **Ex. 4**. Two watercourses impact the Property. **Ex. 2** ¶ 3. Buckeye Creek impacts  
8 the northern portion of the Park Ranch Property while Pine Nut Creek impacts the southern  
9 portion of the Park Ranch Property and the Ashland Park Property. *Id.* These watercourses are  
10 prone to inundation by flood waters from snowmelt and other weather events. *Id.*

11 **B. The 2019 Development Agreement**

12 To alleviate traffic in Douglas County, the County long ago began exploring options to  
13 construct a bypass to the east of Minden and Highway 395 where the Property is located. **Ex. 1**  
14 ¶ 6. This bypass came to be known as Muller Parkway. *Id.* After several breached agreements  
15 with Park Ranch’s affiliated predecessor-in-interest and years of the County delaying construction  
16 of Muller Parkway, on December 3, 2019, Park Ranch and the County entered into the 2019  
17 Development Agreement (“Development Agreement”). **Ex. 5**. In the simplest terms, through the  
18 Development Agreement, Park Ranch agreed to grant the County a right-of-way over the  
19 Property to construct Muller Parkway (and enlarged that right-of-way for drainage infrastructure),  
20 and the County agreed to provide Park Ranch with rights to develop portions of the Property into  
21 residential communities. See, e.g., *id.* §§ 1.3, 1.5, 1.6.

22 By entering into the Development Agreement, Park Ranch secured vested development  
23 rights to develop 2,500 residential dwelling units on the Property, a certainty in the improvements  
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25 <sup>4</sup> The Park Ranch Property is comprised of the following APNs: 1320-28-000-040, 1320-34-001-  
26 035, 1320-33-001-015, 1320-33-001-011, 1320-28-000-039, 1320-33-001-014, 1320-33-001-  
27 013, 1320-33-001-012, 1320-33-001-010, 1320-33-001-009, 1320-33-001-016, 1320-28-000-028,  
1320-28-000-027, 1320-28-000-022, 1320-29-000-015, 1320-20-000-016, 1320-20-000-021,  
1320-20-000-022, 1320-20-000-023, 1320-21-000-014, 1320-21-000-017, 1320-21-000-015,  
1320-21-000-019, 1320-21-000-018, 1320-28-000-034, 1320-28-000-044, 1320-28-000-047,  
28 1320-28-000-046, 1320-29-501-003, 1320-29-601-003, 1320-28-000-042. **Ex. 1** ¶ 3. APN 1320-  
34-001-035 is owned by an affiliate of Park Ranch, which shares common ownership. *Id.*

1 that would be required by the County for the development, and a certainty in the land use fees and  
2 obligations that would be required by the County for the development. *Id.* §§ 1.3, 1.5. For the  
3 County’s benefit, the Development Agreement accomplished many of the County’s “public  
4 objectives,” “including right-of-way acquisition for Muller Parkway and additional drainage  
5 improvements, an easement for the Highway 88 culverts, financial contributions by [Park Ranch  
6 or its successors-in-interest] towards Muller Parkway construction costs, and implementation of  
7 the Master Plan goals and objectives.” *Id.* § 1.6. In the event the County required an additional  
8 right-of-way, the County and Park Ranch agreed to “negotiate in good faith for the acquisition of  
9 [an] additional right-of-way necessitated by external requirements without the use of eminent  
10 domain proceedings,” provided that the County pay “fair market value” for the land. *Id.* § 5.1.

11 The proposed location and construction of Muller Parkway will interfere with the  
12 watercourses that flow through the Property, namely Buckeye Creek and Pine Nut Creek. **Ex. 1**  
13 ¶ 5; **Ex. 2** ¶ 7. The County was aware of this issue *before* the Board of County Commissioners  
14 (“BoCC”) adopted the Development Agreement. *See generally* **Ex. 6**. The publicly available  
15 agenda packet for the December 3, 2019, BoCC meeting concerning the County’s Master Plan  
16 and the Development Agreement included a Question & Answer for the BoCC and the public.  
17 *See id.* at Packet Pgs. 253-62. In that Question & Answer, the County explained that drainage  
18 improvements were “necessary” and “[w]ith the construction of drainage infrastructure up stream  
19 in the Pinenut and Buckeye washes, the eastern areas of the towns of Minden and Gardnerville  
20 would be removed from the current flood plain.” *Id.* at Packet Pg. 262. Along the same lines, the  
21 County explained that Muller Parkway “would be constructed *in tandem with regional drainage*  
22 *improvements*,” and “[w]hen completed, *such improvements will directly benefit the County* by  
23 providing a major transportation route around Minden and Gardnerville as well as critical  
24 emergency access for first responders.” *Id.* at Packet Pg. 257 (emphasis added); *see also id.* at  
25 Packet Pg. 44 (explaining the Development Agreement requires Park Ranch “to dedicate  
26 approximately 76 acres of right-of-way for Muller Parkway . . . as well as construction of regional  
27 drainage improvements.”). Indeed, the County represented that the drainage infrastructure it  
28 intended to install “would further serve as a buffer between the existing properties and Muller

1 [Parkway].” *Id.* at Packet Pg. 46. Drainage infrastructure is necessary because of the sever risk of  
2 flooding. *Id.* at Packet Pgs. 47-48. As explained in the Memorandum provided by Community  
3 Development Director, Tom Dallaire,

4       New hydrological models indicate the Carson River’s likelihood of severe  
5 flooding has been underestimated. A rare event of a spring snowmelt storm that  
6 also drifts over the Pine Nut Mountains could introduce historic levels of flooding  
7 in the Valley. The Plan proposes developing a series of detention parks and trail  
8 systems woven together with the future Muller Parkway.

9 *Id.* at Packet Pg. 48. Planning Manager Sam Booth explained that the purpose of the drainage  
10 infrastructure was to protect surrounding agricultural property (*i.e.*, Park Ranch Property) and  
11 protect the community at large. *Id.* at Packet Pg. 84 (“Also as part of the discussion is the  
12 development agreement with Park Ranch Holdings . . . It will conserve agricultural land in the  
13 floodplain[ and] provides important drainage and stormwater projects to protect the  
14 community.”).

15       Knowing that Muller Parkway would impact these Pine Nut and Buckeye Creeks, the  
16 County and Park Ranch recognized the right-of-way would also be for installation of “drainage  
17 improvements” and that the “County intends to install certain drainage facilities in conjunction  
18 with Muller Parkway.” **Ex. 5** §§ 1.6, 5.9; *see also id.* §§ 5.1, 5.7, Exhibit G;<sup>5</sup> **Ex. 6** at Packet Pg.  
19 257 (“If the Park Ranch Holdings Development Agreement is approved, the property owner  
20 would dedicate the right-of-way . . . needed to construct Muller Parkway and the necessary  
21 drainage improvements to the County. The right-of-way will accommodate . . . drainage  
22 facilities.”).

23       At the same time the County intended to install drainage infrastructure, the County knew  
24 Park Ranch intended to develop the Property for residential use. *See, e.g.*, **Ex. 5**. §§ 1.3, 1.5; *see*  
25 *also* **Ex. 6** at Packet Pg. 43 (County staff representing to the public that Muller Parkway would be  
26 surrounded by “future neighborhoods”). Indeed, the benefit of the bargain to Park Ranch was  
27 securing the residential development rights and the ability to develop homes in an area where the

28 <sup>5</sup> Exhibit G to the Development Agreement shows the County intended to install a drainage ditch  
adjacent to Muller Parkway. *See* **Ex. 5** at Exhibit G.

1 County had mitigated flood hazards. *See* **Ex. 5** § 1.5.

2 For the portion of Muller Parkway that passes through Park Ranch Property, the cost and  
3 expenses of constructing the Parkway and all associated drainage infrastructure are solely borne  
4 by the County. *Id.* § 6.1 (stating the County bears the “sole cost and expense”); *id.* at Exhibits E  
5 & G. The Development Agreement repeatedly recognizes *the County* will install the drainage  
6 infrastructure, never shifting the burden of installation or expenses to Park Ranch. *See generally*  
7 *id.* This is logical since Park Ranch granted the right-of-way to the County without monetary  
8 payment for the 75.68 acres. *See generally id*; *see also* **Ex. 7**. It follows that the County bears the  
9 expenses to construct a road for public use, infrastructure to ensure the public is not subject to  
10 unreasonable harm when using the Parkway, and adequate drainage infrastructure to ensure the  
11 surrounding properties (including Park Ranch Property) are not adversely impacted by the  
12 County’s project. *See, e.g., Ex. 6* at Packet Pg. 84 (“Also as part of the discussion is the  
13 development agreement with Park Ranch Holdings . . . It will conserve agricultural land in the  
14 floodplain[ and] provides important drainage and stormwater projects to protect the  
15 community.”).

16 Because Muller Parkway passes through Park Ranch Property, the County and Park Ranch  
17 are required “to cooperate in good faith to finalize the design criteria *prior to* the commencement  
18 of *any* construction.” **Ex. 5** § 5.3 (emphasis added); *see also id.* § 6.4 (agreeing to cooperate in the  
19 implementation of the Development Agreement). Park Ranch may elect to construct Muller  
20 Parkway of its own accord and, if Park Ranch does so, it too must cooperate with the County in  
21 good faith. *See id.* §§ 6.1, 5.3.

22 The County defaults under the Development Agreement if the County fails to timely  
23 construct Muller Parkway, takes action “which is not related to its health, safety or welfare  
24 powers, and which directly and substantially affects Owner’s rights under this Agreement or  
25 Owner’s ability to fully perform its obligations under this Agreement,” or materially breaches the  
26 Development Agreement. *Id.* § 11.2. The County has 90 days to cure a default. *Id.* § 11.1. If the  
27 default is left uncured, Park Ranch may “declare that the Agreement has been breached and may  
28 institute legal proceedings pursuant to th[e] Agreement.” *Id.* Although the County and Park

1 Ranch agreed that neither may recover monetary damages for violations of the Development  
2 Agreement (with the exception of attorneys' fees and amounts owed under the Agreement), either  
3 party "may pursue any remedy at law or equity available for breach." *Id.* § 12.1.

4 C. **The County Fails to Finalize the Plans with Park Ranch, Threatens to Flood**  
5 **Park Ranch Property, and Attempts to Encroach Upon Park Ranch Property**

6 On April 7, 2020, Park Ranch conveyed the right-of-way (comprised of 75.68 acres) to the  
7 County as contemplated by the Development Agreement and without the exchange of a monetary  
8 payment for the acreage. *See Ex. 7; Ex. 1* ¶ 8. The County slowly began preparing plans and  
9 seeking funding for the construction of Muller Parkway. *See, e.g., Ex. 8* at 55:4-7 (County  
10 Commissioner Gardner testifying the County "ha[s] been allocating funds over the last several  
11 years specifically for the building of Muller Parkway").

12 One year later, when discussing those plans, the County recognized that it could not  
13 unfairly burden the Park Ranch Property with flooding from the waterways impacted by the  
14 construction of Muller Parkway. *See Ex. 9* (County Engineer Jeremy Hutchings, stating that the  
15 plans were intended to "keep from unfairly burdening David Park with more flood flows to his  
16 property than has historically gone there" and noting that although some concepts are feasible for  
17 drainage, "it may be unfairly burdening David Park's piece"). Despite its staff's recognition of  
18 these issues, the County made little progress to ensure the Park Ranch Property was not flooded  
19 and Muller Parkway was fully funded. *See, e.g., Ex. 8* at 62:16-63:13 (County Commissioner  
20 Gardner testifying that the County "desire[s] to resolve some of our stormwater mitigation," but  
21 "haven't identified funding sources"); *Ex. 10* (Former County Manager Patrick Cates explaining,  
22 as recited in the minutes from the June 16, 2022 meeting, that "Muller Parkway currently is  
23 funded to construct two lanes with County funds as required under the Park Ranch Development  
24 Agreement. But we are still chasing federal dollars to be able to complete the entire scope of  
25 Muller Parkway which would include four lanes, roundabouts, multimodal path, flood control  
26 projects").

27 By the summer of 2022, three years later, the County had still not secured funding,  
28 finalized plans, or applied for a Conditional Letter of Map Revision ("CLOMR"), which is

prerequisite to constructing Muller Parkway required by the FEMA. **Ex. 1** ¶ 10. Becoming increasingly concerned about the County’s lack of progress, on October 12, 2022, Park Ranch invoked Section 6.1 of the Development Agreement and informed the County that Park Ranch intended to construct Muller Parkway. **Ex. 11**. A week later, the County assured Park Ranch that the project design was complete, construction would begin in April or May 2023, and the road would be complete within one year. **Ex. 12**. All of these assurances were false.

### 1. The County’s Proposed Plans for Construction of Muller Parkway

The County did not provide Park Ranch with 100 percent plans (“Proposed Plans”) until November 2023—an entire year after the County asserted the plans were complete and more than six months after the County was supposed to start construction. *Compare Ex. 1* ¶ 12 *with Ex. 12*; *see also Ex. 15*. On April 10, 2024, the Regional Transportation Commission (“RTC”) awarded a nearly \$12 million contract for construction of Muller Parkway to Qualcon Construction, Inc. (“Qualcon”) based on the Proposed Plans and without providing any notice to Park Ranch. *See Ex. 13*. The Proposed Plans show that the County intends to construct Muller Parkway outside of the right-of-way and encroach upon Park Ranch Property. *See Ex. 1* ¶ 13; **Ex. 20** at 6 (Deputy District Attorney A.J. Hames, stating “[Park Ranch] notes that the County’s plans include encroachment onto [Park Ranch] land. This is true, and has been true since at least October 2023”). The County has never identified any external reason for these encroachments, as required by the Development Agreement (*see Ex. 20* at 6; *see also Ex. 5* § 5.1), nor did the County inform Park Ranch that the Proposed Plans show encroachments upon Park Ranch Property. **Ex. 1** ¶ 13. Park Ranch learned of the encroachment from a third-party engineer. *Id.*

The Proposed Plans also show the County intends to flood Park Ranch Property, among other surrounding properties.<sup>6</sup> This is evident from analyses performed by the County’s own

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<sup>6</sup> The County’s plans to mitigate flooding were always insufficient. *Compare Ex. 6 with Ex. 14*. During the BoCC meeting adopting the Development Agreement, Community Development Director Tom Dallaire explained, “The addition of the 100 foot [right-of-way] would convey floodwaters or the flow of the 200 to 300 CFS...., which the County “need[s] to go around the towns.” **Ex. 6** at Packet Pg. 123, 120. “Cfs” stands for “cubic feet per second,” and is the measurement for the rate of water movement. **Ex. 2** ¶ 17. The County’s preliminary assessment of 200 to 300 cfs was a gross underestimate. *See Ex. 14*. The County’s hydrology consultant, JE Fuller, estimated the “peak discharge for Buckeye Creek at 7,655 cfs”—30 times more than the County’s assessment. *Id.*

1 hydrology consultant, JE Fuller. **Ex. 14.** On August 31, 2023, JE Fuller advised the County that  
2 “runoff generated by the Buckeye Creek Watershed cannot be contained within Buckeye Creek  
3 *and floods the properties around the Muller Parkway alignment and the properties downstream.*”  
4 *Id.* (emphasis added). The results of JE Fuller’s analysis showed that “regardless of the peak  
5 discharge, the properties owned by the Park Ranch Holdings . . . will be impacted by runoff  
6 breaking out of the main channel of Buckeye Creek and flowing west primarily as sheet flow  
7 towards the Carson River.” *Id.* In some areas, this flooding will have a depth of two feet. *Id.*  
8 Although the County is informed about these issues, the County’s Proposed Plans do not include  
9 the flood control channel (or any other adequate plan) to mitigate flooding. **Ex. 2 ¶ 8.**

10 Todd Cochran—a certified professional engineer with more than 20 years of experience  
11 and an expertise in advanced hydrology and hydraulics related to stormwater management,  
12 drainage, and flood control systems—conducted an in-depth analysis of the Proposed Plans and  
13 the County’s CLOMR submission. **Ex. 2 ¶¶ 2-6.** He has determined that the County’s Proposed  
14 Plans, CLOMR submission, and complete lack of planning for drainage infrastructure are grossly  
15 deficient and will cause permanent damage to the Park Ranch Property. **Ex. 2 ¶¶ 8-22; see also**  
16 *infra* § II(C)(2)). With respect to the Proposed Plans Mr. Cochran has concluded that the County  
17 has failed to propose a feasible method to control floodwater and “[t]he only feasible mitigation  
18 for the redirected flood flows would be to construct a series of detention basins or a flood control  
19 channel.” *Id.* ¶ 8. But the County’s Proposed Plans do not include either solution, and thus the  
20 plans do not mitigate floodwater from Buckeye Creek or Pine Nut Creek that will inevitably be  
21 discarded onto Park Ranch Property. *Id.*

## 22 **2. The County’s Deficient CLOMR Application**

23 The County purportedly applied for a CLOMR on May 14, 2023, but none has been issued  
24 yet. *See Ex. 16.* The County failed to provide sufficient information to FEMA, and FEMA has  
25 repeatedly requested additional information from the County. *See Exs. 16, 17.* As recently as May  
26 16, 2024, FEMA requested information from the County for the CLOMR application because—  
27 one year later—the County’s application remained deficient. **Ex. 17.** In its request, FEMA  
28 explained that the County’s maps and models still lacked “essential information,” including



1 information on flooding sources and hydraulically significant structures, and that the County's  
2 plans were inconsistent with one another. *Id.* FEMA also noted that the County's plans would  
3 result in an increase in base flood elevations and asked the County to evaluate alternatives that  
4 would not result in an increase in flood levels or explain why alternatives are not feasible. *Id.* at 6.  
5 FEMA, correctly, suspects that the County's plans to flood Park Ranch Property are unnecessary  
6 and improper. *See id.* In response to FEMA's concerns, the County (through JE Fuller) provided  
7 an updated submission to FEMA on June 24 and 26, 2024, including a revised hydrology model  
8 ("CLOMR Model"). *See Ex. 18.*

9 Mr. Cochran conducted an in-depth review of the CLOMR Model and the County's  
10 FEMA submissions. *See Ex. 2* ¶ 6. He has concluded the CLOMR submittal remains substantially  
11 and fatally deficient because it does not account for pre-and post-construction conditions. *Id.* ¶ 9.  
12 These deficiencies "can lead to large increases in the volume of floodwaters and erosion of the  
13 Park Ranch Property and other serious property damage." *Id.* Mr. Cochran has identified the  
14 following, non-exhaustive deficiencies. *Id.* ¶¶ 10-22.

15 First, the CLOMR submittal does not account for floodwater mitigation during  
16 construction and prior to completion of Muller Parkway. *Id.* ¶ 10. (explaining this analysis is  
17 commonly referred to as an "interim floodplain analysis"). Meaning, the County has not proposed  
18 a plan to manage floodwater during the months or years that it takes the County to construct  
19 Muller Parkway, leaving the floodwaters wholly unmitigated during that time period. *Id.*

20 Second, the CLOMR Model does not compare "apples to apples." *Id.* ¶ 11. The primary  
21 purpose of FEMA's review is to compare the existing conditions of the floodplain ("Existing  
22 Conditions") with the conditions resulting from the proposed construction of Muller Parkway  
23 ("Proposed Conditions"). *Id.* ¶ 11. The County's CLOMR Model fails to accurately compare the  
24 Existing Conditions with the Proposed Conditions because the County used different inputs and  
25 calculations in its models for each. *See id.* ¶¶ 11-13 & Figures 1-2. Specifically, the County's  
26 input for the terrain of the land differs between the Existing Conditions model and the Proposed  
27 Conditions model.<sup>7</sup> *Id.* ¶¶ 12-13. Terrain is a vital input for hydrology models because the terrain

28 \_\_\_\_\_  
<sup>7</sup> The terrain shows the ground elevations and characteristics of the land. *Id.*

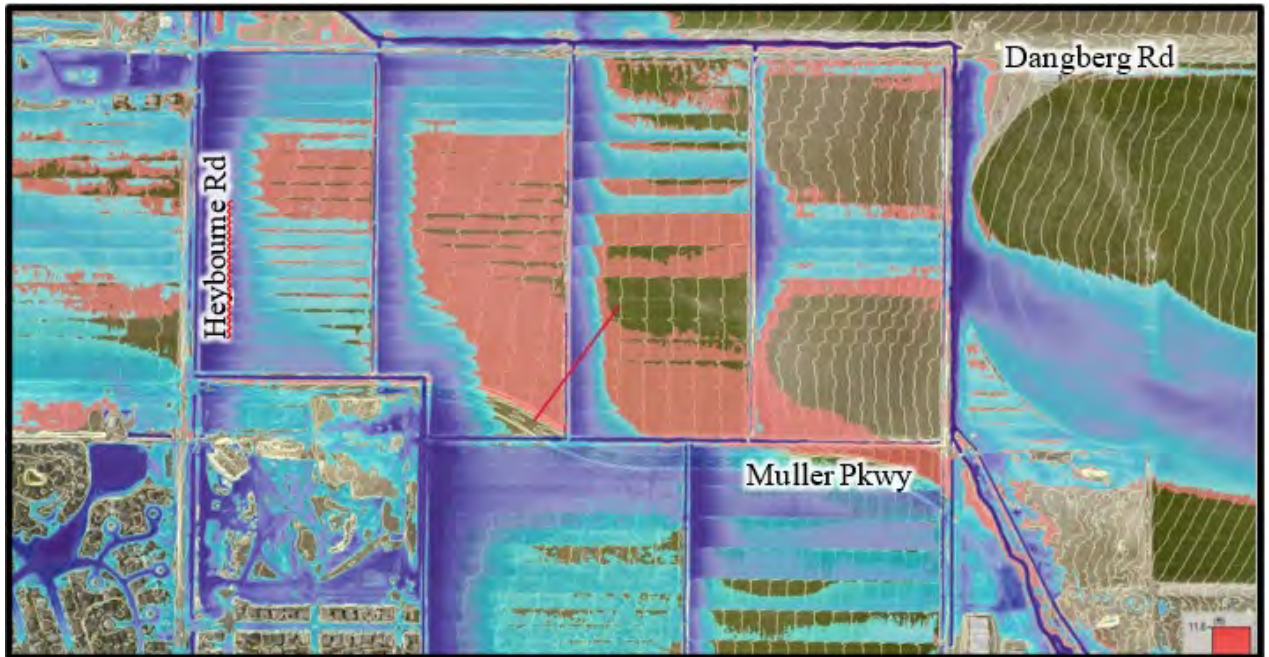


1 of the land impacts flood flows, depths, and velocities. *Id.* Because the County failed to use the  
2 same terrain in its models, the County’s upstream flood flows, depths, and velocities differ  
3 between the Existing Conditions and Proposed Conditions. *Id.* These differences will lead to  
4 incorrectly designed drainage infrastructure downstream, significantly increasing flood depths  
5 and velocities on Park Ranch Property. *Id.* In addition, the County used different equations to  
6 calculate the flow of floodwater. *Id.* ¶ 14. The County used the simplified “diffusion wave”  
7 method in the Existing Conditions but used the “full momentum” method in the Proposed  
8 Conditions. *Id.* The two contradictory methods result in significant differences in flood depths  
9 and velocities. *Id.* In short, the CLOMR Model fails to show the actual change that will occur as a  
10 result of the County’s proposed construction. *Id.*

11 Third, the County’s modeling of irrigation canals is incorrect and does not meet FEMA  
12 standards, resulting in more inaccurate data being used by the County. *Id.* ¶ 15. Irrigation canals  
13 are man-made channels that are constructed to carry water to agricultural fields. *Id.* These canals  
14 are quickly filled and overtopped during storm events due to the very mild slopes of the channels.  
15 *Id.* The County’s CLOMR Model assumes these canals are empty when a flood occurs, which is  
16 neither correct nor realistic. *Id.* Mr. Cochran explained, “These issues create diversions in some  
17 areas and storage of flood flows in other areas that do not accurately represent actual flooding  
18 conditions within the watershed.” *Id.* That is why it is standard practice to analyze the canals with  
19 a flow that would occur during a large flooding event. *Id.* Therefore, the CLOMR Model does not  
20 accurately represent actual flooding conditions, such as flows and depths, within the Muller  
21 Parkway area. *Id.*

22 Fourth, the County failed to include culverts upstream from Muller Parkway in the  
23 CLOMR Model. *Id.* ¶ 16. FEMA identified 43 culverts that have a potential to impact flows in the  
24 CLOMR Model. *Id.*; see also **Ex. 17** at DC017610. When questioned about these culverts, JE  
25 Fuller responded that the “structures” are still being surveyed and will be added to the model  
26 later. **Ex. 2** ¶ 16. These culverts should have already been included in the CLOMR Model  
27 because they impact the accuracy of the flows, making it impossible to evaluate the full extent of  
28 the impact from the County’s proposed construction. *Id.*

Fifth, even if the CLOMR Model used accurate inputs and equations, the CLOMR Model shows the County intends to flood Park Ranch Property. *Id.* ¶¶ 17-18 & Figure 3. The County has proposed increasing the flow of floodwater from 128 cfs in the Existing Conditions to 1,197 cfs in the Proposed Conditions. *Id.* Figure 3 below shows the drastic increase of floodwater caused by the County's proposed construction with red identifying an increase in the floodwater elevation and blue showing the existing floodwater elevation. *Id.* This immense increase will cause soil erosion and other property damage, harming Park Ranch's ability to use and develop the land in the future. *Id.*



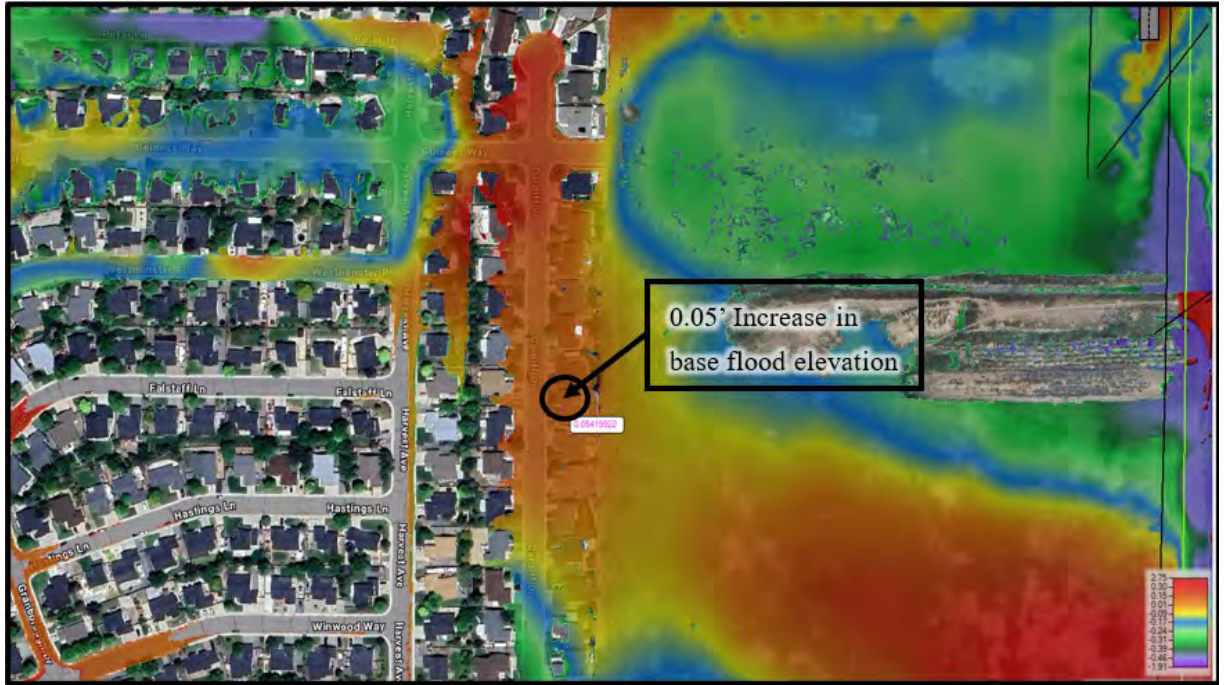
**Figure 3 - Flows Depths at Evaluation Line (Red) for Existing Conditions Flow (Blue) and Proposed Conditions Flow (Red)**

*Id.* ¶ 18 & Figure 3. And the County's CLOMR Model no longer accounts for any floodwater flowing from the Ashland Park Property to the Park Ranch Property, ignoring this segment of Muller Parkway altogether. *Id.* ¶ 19. It is obvious that the County intends to allow Ashland Park to divert water onto the Park Ranch Property. *Id.*

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Setting aside the Park Ranch Property, the County's CLOMR Model floods other surrounding properties where homes already exist and are occupied by families, as shown in Figure 4 below. *See id.* ¶ 20.



**Figure 4: Water Surface Increase Comparing Existing Conditions to Proposed Conditions**

In short, the County's Proposed Plans and CLOMR submissions, including the CLOMR Model and supporting documentation, are riddled with errors. *See Ex. 2* ¶¶ 7-22. The County has failed to account for floodwater during construction of Muller Parkway, failed to compare analogous terrains and calculations (instead, comparing models based on different terrains and different calculations), failed to properly account for existing irrigation channels and culverts, and used inaccurate inputs for its analyses. *See id.* The County's failings risk irreparable harm to Park Ranch's Property and existing homes. *Id.* Alone these errors are significant, but they are not exhaustive. In his professional experience, Mr. Cochran has determined that "[i]t is critical that Muller Parkway not be constructed until a comprehensive plan and design are completed for mitigating floodplain impacts due to the construction of the Muller Parkway." *Id.* ¶ 21.

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### 3. The County Fails to Cure Its Defaults

On April 24, 2024, Park Ranch served a Notice of Default upon the County, explaining, once again, that the Proposed Plans encroach upon Park Ranch Property and the CLOMR application (and associated analyses and plans for drainage infrastructure) will adversely impact the Park Ranch Property by failing to meaningfully address flooding from Buckeye Creek and Pine Nut Creek. **Ex. 19.** Park Ranch informed the County that it is in default of the Development Agreement because it failed to finalize the design criteria with Park Ranch and took action that directly and substantially impacts Park Ranch's rights under the Development Agreement. *See infra* § IV(A).

On May 14, 2024, the County responded that it had no obligation to confer in good faith with Park Ranch Property to finalize the plans for Muller Parkway outside of the Ashland Park Property (regardless of the fact the remainder of Muller Parkway runs through Park Ranch Property). *See Ex. 20* at 1-2. At the same time, the County recognized that its current plans did not mitigate flooding from Buckeye Creek and Pine Nut Creek, and proposed three alternatives to address flooding: first, obtaining a drainage easement to redirect flooding onto Park Ranch Property; second, mitigating floodwater upstream with detention ponds; or, third, simply allowing Muller Parkway to overtop and do nothing. *See id.* at 7-9. The County also asserted it was allowed to encroach upon Park Ranch Property pursuant to the Development Agreement, Section 5.1. *Id.* at 6.

On June 20, 2024, Park Ranch responded it was open to discussing detention ponds or the sale of the impacted acreage but would not agree to selling piecemeal segments of the property. *See Ex. 21* at 2-3. Park Ranch explained that the County's third option, allowing Muller Parkway to overtop, "would be dangerous and cause irreparable damage to [Park Ranch P]roperty." *Id.* at 2. With respect to the encroachment, Park Ranch reminded the County that Section 5.1 requires the parties to negotiate in good faith for the acquisition of additional rights-of-way, but those rights-of-way must be "necessitated by *external* requirements," which the County never identified. *Id.* at 4 (quoting **Ex. 5** § 5.1) (emphasis added). The County never responded, and the cure period ended on July 23, 2024, without the County curing its defaults. *See Ex. 3* ¶ 11.



To date, the County has failed to correct its Proposed Plans and CLOMR application. Instead of working in good faith with Park Ranch to finalize the design criteria prior to commencing construction, the County has made it clear that it intends to proceed with construction based upon its insufficient Proposed Plans and CLOMR Model. *See, e.g., Ex. 20* at 5 (County stating it will continue to “update[] its plans and proceed[] with construction”). On August 2, 2024 (and again without notice to Park Ranch), the RTC awarded another bid for construction of Muller Parkway to Qualcon—this time for “the section from the Buckeye Road roundabout to the northwestern property line of the Park Ranch Holdings property.” *See Ex. 22* at 69. The plans for this section are riddled with deficiencies and, if the County proceeds as it plans, it will irreparably harm Park Ranch. *See generally Ex. 2.*

### **III. LEGAL STANDARD**

This Court may issue a preliminary injunction on notice to the adverse party. *See* NRCP 65(a). “A party seeking the issuance of a preliminary injunction bears the burden of establishing (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party’s conduct, if allowed to continue, will cause irreparable harm.” *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243, 246 (2001); *see also* NRS 33.010. “In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest.” *Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

### **IV. A PRELIMINARY INJUNCTION SHOULD ISSUE**

A preliminary injunction should issue to stop the County from beginning construction that will irreparably harm the Park Ranch Property and deprive Park Ranch of the very benefits to which it is entitled under the Development Agreement (namely, development of the Property). The plain and unambiguous language of the Development Agreement requires the County to finalize the design criteria for Muller Parkway with Park Ranch *prior to* commencing construction. The County has refused to do so, warranting relief to enforce the Development Agreement and hold the County responsible for breaching the Agreement.

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1           **A. Park Ranch Will Succeed on the Merits of its Claims**

2           Park Ranch seeks a declaration from this Court that the County cannot begin construction  
3 of Muller Parkway without Park Ranch's approval of the design criteria (*see* **Ex. 5** § 5.3), cannot  
4 encroach upon the Park Ranch Property without obtaining an additional right-of-way necessitated  
5 by external forces and paying full market value to Park Ranch for the affected parcels (*id.* § 5.1),  
6 and must construct, install, and pay for drainage infrastructure for Muller Parkway that does not  
7 adversely impact the Park Ranch Property or deprive Park Ranch of its vested development rights  
8 (*id.* §§ 1.5, 1.6, 5.9; *see also id.* at §§ 5.1, 5.7).<sup>8</sup> *See* Mot. Leave to Am. & Supp. Compl. (July 24,  
9 2024) at Exhibit 1 ("Proposed Am. Compl.") ¶¶ 67-72. Park Ranch alleges that the County has  
10 breached the Development Agreement and the implied covenant of good faith and fair dealing by  
11 failing to cooperate in good faith to finalize the design criteria prior to the commencement of  
12 construction, seeking to adversely impact the Park Ranch Property with floodwater, and seeking  
13 to forcefully encroach on Park Ranch Property outside of the right-of-way. *Id.* ¶¶ 73-87. Park  
14 Ranch will succeed on its claims for declaratory relief, breach of contract, and breach of the  
15 implied covenant of good faith and fair dealing.

16           **1. Park Ranch Will Obtain Declaratory Relief**

17           Before declaratory relief may be granted, there are four elements that must be met:

18           (1) there must exist a justiciable controversy; that is to say, a controversy in which  
19 a claim of right is asserted against one who has an interest in contesting it; (2) the  
20 controversy must be between persons whose interests are adverse; (3) the party  
21 seeking declaratory relief must have a legal interest in the controversy, that is to  
say, a legally protectable interest; and (4) the issue involved in the controversy  
must be ripe for judicial determination.

22           *Guarini v. Main*, 132 Nev. 974, 2016 WL 412824, \*2 (2016).

23           Each of these elements are met here. First, there is a justiciable controversy because Park  
24 Ranch has an interest in the construction of Muller Parkway and its impact upon Park Ranch

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25           <sup>8</sup> On July 24, 2024, Park Ranch filed its Motion for Leave to Amend and Supplement Complaint  
26 in Intervention. *See* Mot. Leave to Am. & Supp. Compl. (July 24, 2024). Therein, Park Ranch  
27 seeks leave to amend and supplement its allegations against the County, amend and supplement  
28 its existing claims for declaratory relief and breach of the implied covenant of good faith and fair  
dealing, and bring claims anew for breach of contract and specific performance. *See generally id.*  
"The court should freely give leave when justice so requires." NRCP 15(a)(2).

Property. *See generally* **Ex. 5**. Second, Park Ranch’s interests are adverse to the County to the extent that the County seeks to construct Muller Parkway in a manner that will harm Park Ranch or otherwise violate the Development Agreement. *See generally* **Ex. 2**; **Ex. 1** ¶¶ 14-16; **Ex. 5**. Third, Park Ranch’s property interests are legally protected by the law and the Development Agreement. *See, e.g.,* **Ex. 5** § 12.1 (providing Park Ranch “any remedy at law or equity available for breach”). Fourth, issues regarding the County’s construction of Muller Parkway are ripe for review because withholding judicial review could irreparably harm Park Ranch and NRS Chapter 30 permits the Court to issue declaratory relief construing contracts. *See Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006) (stating the considerations for ripeness are “(1) the hardship to the parties of withholding judicial review, and (2) the suitability of the issues for review”); NRS 30.040; NRS 30.050.

Therefore, the contract interpretation issues before this Court are appropriate for declaratory relief. “The objective of interpreting contracts is to discern the intent of the contracting parties.” *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (internal quotations and citation omitted). Traditional rules of contract interpretation accomplish that result. *Id.* “[T]he initial focus is on whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written.” *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012). “A contract is ambiguous if its terms may *reasonably* be interpreted in more than one way, but ambiguity does not arise simply because the parties disagree on how to interpret their contract.” *Nevada State Educ. Ass’n v. Clark Cnty. Educ. Ass’n*, 137 Nev. 76, 83-84, 482 P.3d 665, 673 (2021) (emphasis added). “In particular, an interpretation is not reasonable if it makes any contract provisions meaningless, or if it leads to an absurd result.” *Id.*; *see also Reno Club, Inc. v. Young Inv. Co.*, 64 Nev. 312, 325, 182 P.2d 1011, 1017 (1947) (“A contract should not be construed so as to lead to an absurd result.”).

Pertinent here, Park Ranch seeks a declaration that the County (1) cannot begin construction of Muller Parkway without Park Ranch’s approval of the design criteria (*see* **Ex. 5** § 5.3), (2) must construct, install, and pay for drainage infrastructure for Muller Parkway that does not adversely impact Park Ranch Property or deprive Park Ranch of its vested development

rights (*id.* §§ 1.5, 1.6, 5.9; *see also id.* at §§ 5.1, 5.7), and (3) cannot encroach upon the Park Ranch Property without obtaining an additional right-of-way necessitated by external forces and without payment of full market value (*id.* § 5.1).

**a. *The County's Obligation to Finalize the Design for Muller Parkway with Park Ranch Prior to Construction***

Section 5.3 of the Development Agreement is clear: "The Parties agree to cooperate in good faith to finalize the design criteria prior to the commencement of any construction." **Ex. 5** § 5.3 (emphasis added). This provision unambiguously requires the County to finalize the design criteria with Park Ranch prior to the start of construction, and the same would be true if Park Ranch constructed Muller Parkway under Section 6.1.<sup>9</sup> *See id.* The County has failed to satisfy its obligations under Section 5.3.

The County's Proposed Plans and CLOMR application are grossly deficient. *See supra* § II(C)(1)-(2); **Ex. 2 ¶¶** 7-22. Instead of working with Park Ranch to remedy these deficiencies, the County has proceeded with its Proposed Plans by awarding another contract for construction of Muller Parkway to Qualcon on August 2, 2024, and has proceeded with its flawed CLOMR application, repeatedly submitting incomplete updates and inadequate revisions to FEMA without consulting Park Ranch. *See supra* § II(C)(1)-(2); **Ex. 2 ¶¶** 9-20; **Ex. 22**. It is evident from the County's actions that the County has already finalized its plans to the exclusion of Park Ranch. Indeed, the County has explicitly informed Park Ranch that the County intends to proceed notwithstanding Park Ranch's objections. *See Ex. 20* at 5.

In an attempt to justify its actions, the County has argued that the "good faith" provision in Section 5.3 only applies to the portion of Muller Parkway that passes through the Ashland Park Property, and not to the remaining portions that pass through Park Ranch Property. *See Ex. 20*. The County's argument directly contradicts the clear and unambiguous language of the Development Agreement and would lead to an absurd result. Under the County's interpretation of Section 5.3, the County could deprive Park Ranch of its ability to control the plans for the portion of Muller Parkway that runs through, and directly impacts, Park Ranch Property. *See id.*

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<sup>9</sup> Section 6.1 allows Park Ranch to construct Muller Parkway and seek reimbursement from the County. *See Ex. 5* § 6.1.



1 Similarly, under the County’s interpretation, and if Park Ranch invoked its right to construct  
2 Muller Parkway under Section 6.1, Park Ranch could deprive the County of its ability to control  
3 the plans, costs, and expenses to construct the portion of Muller Parkway that runs through Park  
4 Ranch Property. *See id.*; **Ex. 5** §§ 5.3, 6.1.

5 Neither party contemplated vesting the other with unilateral and expansive rights to  
6 finalize the construction plans to the exclusion of the other, which is precisely why the good faith  
7 provision in Section 5.3 exists and requires the parties to finalize the plans prior to the  
8 commencement of “any” construction. **Ex. 5** § 5.3. Accordingly, Park Ranch will successfully  
9 obtain a declaration that the County cannot begin construction of Muller Parkway without Park  
10 Ranch’s approval of the design criteria (and vice versa).

11 ***b. The County Cannot Adversely Impact the Park Ranch Property or***  
12 ***Deprive Park Ranch of its Vested Development Rights***

13 Neither the Development Agreement nor applicable law allow the County to adversely  
14 impact the Park Ranch Property and deprive Park Ranch of its rights. *See Ex. 5* §§ 1.5, 1.6, 5.1,  
15 5.7, 5.9, 11.2; *e.g.*, Douglas County Consolidated Development Code (“DCCDC”) § 20.50.080;  
16 Design Criteria and Improvement Standards (“DCIS”) § 6.1.3.

17 Pursuant to Section 11.2 of the Development Agreement, it is a default for the County to  
18 take any action that “is not related to its health, safety or welfare powers, and which directly and  
19 substantially affects [Park Ranch’s] rights under this Agreement.” **Ex. 5** § 11.2. The Development  
20 Agreement secured Park Ranch’s vested rights to develop a 2,500-unit residential community  
21 adjacent to Muller Parkway. *See id.* §§ 1.3, 1.5. Now, the County seeks to flood that very  
22 property and deprive Park Ranch of the rights it obtained through the Agreement in which it gave  
23 the County nearly 80 acres of land without payment for it. The County’s proposed construction of  
24 Muller Parkway “directly and substantially affects” Park Ranch’s rights and the County cannot  
25 articulate a reason why it must flood and irreparably damage Park Ranch Property in furtherance  
26 of its “health, safety, or welfare powers.” **Ex. 5** § 11.2.

27 The County’s regulations and standards prohibit the County from taking the action it now  
28 attempts. Pursuant to Douglas County Consolidated Development Code 20.50.080, new

1 construction and other development cannot have an “adverse impact,” meaning “the proposed  
2 development, when combined with all other existing and anticipated development, will not  
3 increase the water surface elevation of the base flood more than one foot at any point within the  
4 community.” DCCDC § 20.50.080. The County’s Design Criteria and Improvement Standards  
5 provide the “*minimum* standards for the design, construction, repair, and alterations of streets . . .  
6 drainage, . . . and all appurtenances thereto within Douglas County.” *See* DCIS § 1.1. Under  
7 Section 6.1.3 of the DCIS, all drainage must be “reasonable,” which means “[d]ownstream  
8 properties shall not be unreasonably burdened with increased flow rates, negative impacts, or  
9 unreasonable changes in manner of flow from upstream properties” and “[d]rainage problems  
10 shall not be diverted from one location to another.” *See* DCIS § 6.1.3 (emphasis added). Ignoring  
11 its own regulations and standards, the County intends to unreasonably change the flow of  
12 Buckeye Creek and Pine Nut Creek, burdening Park Ranch Property with increased flow rates.  
13 *See supra* § II(C)(1)-(2).

14 To ensure both the public and Park Ranch are not adversely impacted by the well-known  
15 flooding issues that plague Douglas County (and so the County could comply with its own  
16 regulations and standards), the County repeatedly recognized that the right-of-way would be  
17 enlarged for the construction of drainage infrastructure. *See Ex. 5* §§ 1.6, 5.9; *see also id.* at §§  
18 5.1, 5.7. Now, the County seeks to renege on its agreement to use the right-of-way to install the  
19 necessary drainage infrastructure to the detriment of Park Ranch. *See Ex. 2* ¶ 8. The County has  
20 not, and cannot, provide a reason for doing so in furtherance of its health, safety, or welfare  
21 powers. To the contrary, the County’s plans endanger the safety of those who will be travelling  
22 on Muller Parkway and will prevent it from being designated as an emergency access route.  
23 Therefore, Park Ranch will successfully obtain a declaration that the County must construct and  
24 install drainage infrastructure that does not adversely impact the Park Ranch Property or deprive  
25 Park Ranch of its vested development rights.

26 ***c. The County Does Not Have Unfettered Rights to Encroach on  
Park Ranch Property under the Development Agreement***

27 The County’s plans to encroach upon the PR Agricultural Property—and pay Park Ranch  
28 nominal compensation for piecemeal portions of the affected parcels—deprives Park Ranch of the

1 fair market value of the land, to which Park Ranch is entitled under the Development Agreement.  
2 *See* **Ex. 5** § 5.1. The County *admits* that its current plans encroach upon Park Ranch Property but  
3 has nevertheless threatened to proceed. *See, e.g., Ex. 20* at 6. Therefore, Park Ranch will  
4 successfully obtain a declaration that the County cannot encroach upon Park Ranch Property  
5 without obtaining consent and paying full market value for an additional right-of-way  
6 necessitated by external forces.

7 **2. Park Ranch Will Also Succeed on its Contract Claims**

8 **a. The County Breached the Development Agreement**

9 To establish a breach of contract, the claimant must show “(1) the existence of a valid  
10 contract, (2) that the plaintiff performed, (3) that the defendant breached, and (4) that the breach  
11 caused the plaintiff damages.” *Iliescu, Tr. of John Iliescu, Jr. & Sonnia Iliescu 1992 Fam. Tr. v.*  
12 *Reg’l Transp. Comm’n of Washoe Cnty.*, 138 Nev. Adv. Op. 72, 522 P.3d 453, 458 (Nev. App.  
13 2022).

14 There is no dispute that the Development Agreement is a valid and existing contract. *See,*  
15 *e.g., Answer & Countercl. at 2 ¶ 7.* There is also no meaningful dispute that Park Ranch has fully  
16 performed under the Agreement by granting a right-of-way to the County for construction of  
17 Muller Parkway, granting an easement for the drainage culverts beneath Highway 88 in Minden,  
18 dedicating a trail easement, and deed-restricting the Klauber Ranch Property. *See, e.g., Ex. 8* at  
19 43:18-21 (during the deposition of County Commissioner Mark Gardner, he was asked, “[D]o  
20 you know whether Park Ranch Holdings has fulfilled its obligations under the 2019 development  
21 agreement?” and he responded, “To my understanding they have.”); *see also Ex. 7.* The first and  
22 second elements are satisfied.

23 With respect to the third and fourth elements, the County breached the Development  
24 Agreement by (1) failing to cooperate in good faith to finalize the design plans and criteria prior  
25 to the commencement of construction, (2) attempting to adversely impact Park Ranch Property  
26 with floodwater, and (3) seeking to forcefully encroach on Park Ranch Property outside the right-  
27 of-way without any external need to justify such encroachments and without paying full market  
28 value for the impacted land. *See supra* § IV(A)(1)(a)-(c). These breaches have damaged Park

1 Ranch. Park Ranch has been forced to expend its own resources for a hydrology consultant to  
2 review the County's Proposed Plans and CLOMR application because the County has failed to  
3 cooperate with Park Ranch and sought to adversely impact its Property. *See Ex. 1* ¶ 9. In addition,  
4 the County has repeatedly threatened to encroach upon Park Ranch Property without paying fair  
5 market value, as required by the Development Agreement. *See Ex. 5* § 5.1. The Development  
6 Agreement allows for the recovery of damages "for the amounts for which [the County] is  
7 obligated in this Agreement and any costs or attorney's fees." *Id.* § 12.1. The County is obligated  
8 to avoid adversely impacting Park Ranch Property and must pay the fair market value for any  
9 encroachments. But even if the County were not required to do so, the County is nevertheless  
10 liable for breach because "nominal" harm and attorneys' fees satisfy this final element. *See, e.g.,*  
11 *Page v. Walser*, 46 Nev. 390, 213 P. 107, 113 (1923) (ruling that "nominal damages" are  
12 sufficient for a breach claim); *see also Petroleum Wholesale, L.P. v. Sagebrush 66 Inv. Co.*, No.  
13 3:19-cv-00516-MMD-WGC, 2021 WL 5108756, at \*4 (D. Nev. Aug. 23, 2021) ("Plaintiff raises  
14 nominal damages, which the Nevada Supreme Court has found to be a viable form of damage for  
15 breach of contract claims," and, again applying Nevada law, "attorney fees and costs are also  
16 viable damages for Plaintiff's breach of contract claim").

17 Accordingly, Park Ranch will successfully show that the County breached the  
18 Development Agreement, warranting preliminary injunctive relief to stop the County from  
19 irreparably harming Park Ranch Property.

20 ***b. The County Breached the Implied Covenant of Good Faith and***  
21 ***Fair Dealing***

22 "The covenant of good faith and fair dealing prohibits arbitrary or unfair acts by one party  
23 that work to the disadvantage of the other." *APCO Constr., Inc. v. Helix Elec. of Nevada, LLC*,  
24 138 Nev. 282, 285, 509 P.3d 49, 53 (2022) (internal quotation marks and citation omitted).  
25 "When one party performs a contract in a manner that is unfaithful to the purpose of the contract  
26 and the justified expectations of the other party are thus denied," the covenant is breached. *Hilton*  
27 *Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991) (finding  
28 the quoted language a proper jury instruction). Neither party may "do anything to destroy or

1 injure the right of the other to receive the benefits of the contract.” *Id.* To prevail on a claim for  
2 breach of the implied covenant of good faith and fair dealing, the plaintiff must show “(1) the  
3 existence of a contract between the parties; (2) that the defendant breached its duty of good faith  
4 and fair dealing by acting in a manner unfaithful to the purpose of the contract; and (3) the  
5 plaintiff’s justified expectations under the contract were denied.” *Rosas v. GEICO Cas. Co.*, 365  
6 F. Supp. 3d 1123, 1127 (D. Nev. 2019) (relying upon Nevada law). “A plaintiff can recover  
7 damages for breach of the covenant of good faith and fair dealing [e]ven if a defendant does *not*  
8 breach the express terms of a contract.” *APCO Constr., Inc.*, 138 Nev. at 285, 509 P.3d at 53  
9 (internal quotation marks and citation omitted) (alteration in original) (emphasis added).

10 Even if the County did not directly breach the express terms of the Development  
11 Agreement, the County nevertheless breached the implied covenant of good faith and fair dealing  
12 by acting contrary to the purpose of the Development Agreement. The County’s actions—  
13 refusing to finalize the plans with Park Ranch prior to commencing construction and attempting  
14 to flood and encroach upon Park Ranch Property—deprives Park Ranch of the very benefit for  
15 which it bargained in the Development Agreement: the ability to develop the Park Ranch  
16 Property for residential use. At every turn, the County has withheld information from Park Ranch,  
17 ignored Park Ranch’s concerns, and deprived Park Ranch of its right to finalize the plans *with* the  
18 County. *See Ex. 5* § 5.3. Moreover, the County’s attempt to inundate Park Ranch Property with  
19 floodwater will deprive Park Ranch of use of the property, denying Park Ranch its justified  
20 expectation that its property would not be irreparably harmed by Muller Parkway. The County’s  
21 actions, inactions, delays, and secrecy have sought to “destroy” and “injure” Park Ranch’s  
22 benefits under the Development Agreement and thus breached the implied covenant of good faith  
23 and fair dealing. *See Hilton Hotels Corp.*, 107 Nev. at 234, 808 P.2d at 923.

24 The first requirement for a preliminary injunction is satisfied because Park Ranch has  
25 shown that it is likely to succeed on the merits of its claims for declaratory relief, breach of  
26 contract, and breach of the implied covenant of good faith and fair dealing. *S.O.C., Inc.*, 117 Nev.  
27 at 408, 23 P.3d at 246.

1           **B.     If Allowed to Proceed, the County will Irreparably Harm Park Ranch**

2           “[R]eal property and its attributes are considered unique and loss of real property rights  
3 generally results in irreparable harm.” *Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029,  
4 1030 (1987) (ruling that “the district court erred in holding otherwise”). “The Nevada Supreme  
5 Court has viewed the loss of real property as irreparable harm even where the real property’s  
6 putative owner is a corporate entity, and where the real property is to be used for a commercial  
7 purpose.” *Invs. v. Bank of Am., NA*, 585 F. App’x 742, 743 (9th Cir. 2014).

8           Flooding can cause irreparable injury to land, especially where it limits the use of the land.  
9 *See, e.g., Richland/Wilkin Joint Powers Auth. v. United States Army Corps of Eng’rs*, 826 F.3d  
10 1030, 1038 (8th Cir. 2016) (affirming district court’s issuance of a preliminary injunction and  
11 explaining that “[f]looding of a plaintiff’s lands would certainly cause injury to their specific  
12 environmental interests, because it would severely limit their use of the flooded lands”); *Spire*  
13 *STL Pipeline LLC v. 3.31 Acres of Land*, No. 4:18-CV-1327-RWS-DDN, 2018 WL 6528667, at  
14 \*2 (E.D. Mo. Dec. 12, 2018) (affirming magistrate judge’s preliminary injunction and rejecting  
15 argument that “flooding is speculative and cannot support a finding of likelihood of irreparable  
16 harm”). The risk of flooding provides ample grounds for issuance of a preliminary injunction.  
17 *E.g., Richland*, 826 F.3d at 1038; *Spire*, 2018 WL 6528667, at \*2.

18           The Park Ranch Property cannot be unflooded, and Muller Parkway cannot be unbuilt.  
19 The County’s Proposed Plans fail to mitigate floodwater caused by the County’s construction and  
20 the CLOMR application is based on false premises (namely, incongruent inputs and equations).  
21 *See supra* § II(C)(2). Despite Park Ranch’s objections, the County has proceeded with its  
22 deficient plans, including by awarding a contract to Qualcon for construction on August 2, 2024,  
23 and continuing to provide FEMA with incorrect information. *See Ex. 22; Ex. 2 ¶¶ 9-20*. If the  
24 County is allowed to proceed with its grossly deficient plans, Park Ranch Property will be  
25 flooded and erode, and Park Ranch will be robbed of the ability to develop the property for  
26 residential use—the very benefit that Park Ranch obtained through the Development Agreement.  
27 **Ex. 1 ¶ 9; Ex. 5 §§ 1.3, 1.5, 1.6**. The immense harm threatened by the County’s actions cannot be  
28 remedied with monetary damages because Park Ranch’s real property rights are unique to each

1 parcel. *See Dixon*, 103 Nev. at 416, 742 at 1030. Moreover, even if monetary damages could  
2 remedy the harm to Park Ranch, such damages are unavailable under the Development  
3 Agreement.<sup>10</sup> *See Ex. 5* § 12.1.

4 Now that the Muller Parkway construction contract has been awarded and the CLOMR  
5 process has begun, it will be difficult (if not impossible) for Park Ranch to correct the County's  
6 failures unless the County is enjoined, and Park Ranch is allowed to either assume construction of  
7 Muller Parkway or, at a minimum, the County cooperates with Park Ranch in good faith to  
8 resolve the deficiencies in the County's plans. *See, e.g., Sierra Club v. Marsh*, 872 F.2d 497, 504  
9 (1st Cir. 1989) ("The difficulty of stopping a bureaucratic steam roller, once started, still seems to  
10 us . . . a perfectly proper factor for a district court to take into account in assessing that risk, on a  
11 motion for a preliminary injunction."); *Richland/Wilkin*, 826 F.3d at 1037 (quoting same). Park  
12 Ranch does not ask the Court to permanently halt the County from constructing Muller Parkway.  
13 Rather, Park Ranch asks the Court to enforce the unambiguous terms of the Development  
14 Agreement and stop the County from beginning construction without Park Ranch's approval of  
15 the final design criteria, which includes the plans for construction, drainage infrastructure, and the  
16 CLOMR. *See Ex. 5* § 5.3. The Development Agreement expressly requires the County to confer  
17 in good faith with Park Ranch "*prior to the commencement of any construction.*" *Id.* § 5.3  
18 (emphasis added). But the County has deliberately evaded its obligation and that evasion  
19 threatens to irreparably harm the Park Ranch Property.

20 Because Park Ranch will succeed on the merits and be irreparably harmed absent an  
21 injunction, Park Ranch has satisfied its burden. The County must be enjoined from beginning  
22 construction of Muller Parkway without written approval from Park Ranch approving of the final  
23 design criteria for Muller Parkway and associated drainage infrastructure, and the County must be  
24 required to confer in good faith with Park Ranch to finalize the design criteria for Muller  
25 Parkway, associated drainage infrastructure, and the CLOMR.

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27 <sup>10</sup> Section 12.1 of the Development Agreement states, "[T]he County and the Owner may pursue  
28 any remedy at law or equity available for breach, except that the County will not be liable to the  
Owner or to any other person for any monetary damages whatsoever, except for the amounts for  
which it is obligated in this Agreement and any costs or attorney's fees."



1           **C.     The Hardship of the Injunction Upon the County is Nil Compared to the**  
2           **Hardship Upon Park Ranch if the County Proceeds**

3           If the injunction is issued, the County must correct the egregious deficiencies in its  
4 Proposed Plans and CLOMR application prior to beginning construction of Muller Parkway.  
5 Although the County must expend some resources to comply with the Development Agreement  
6 and the law, this is not a hardship. *See, e.g., F.T.C. v. World Wide Factors, Ltd.*, 882 F.2d 344,  
7 347 (9th Cir. 1989) (affirming issuance of an injunction where “there is no oppressive hardship to  
8 defendants in requiring them to comply with the FTC Act” (internal quotations omitted)); *Meta*  
9 *Platforms, Inc. v. Ates*, No. 22-CV-03918-TSH, 2023 WL 4035611, at \*9 (N.D. Cal. May 1,  
10 2023) (enjoining a violation of a contract “presents little to no hardship”); *Vector Media S., LLC*  
11 *v. Starlin Tours of Hollywood, Inc.*, 2021 WL 4913488, at \*7 (C.D. Cal. Aug. 4, 2021) (rejecting  
12 contention that “merely requiring [defendant] to perform under the parties’ contract is unduly  
13 burdensome” and finding that “[t]he balance of hardships therefore tips in favor of [plaintiff]”);  
14 *Facebook, Inc. v. Sluchevsky*, No. 19-CV-01277-JSC, 2020 WL 5823277, at \*9 (N.D. Cal. Aug.  
15 28, 2020) (finding balance of hardships weighed in favor of issuance where injunction “would  
16 only require Defendants to comply with the law”). Even if compliance were a hardship upon the  
17 County, that hardship is outweighed by the hardship upon Park Ranch, being irreparable damage  
18 to its property. *See supra* §§ II(C)(1)-(2); *see also* **Ex. 1** ¶ 9; *see generally* **Ex. 2**.

19           **D.     The Public’s Interest Favors Issuing the Injunction**

20           The public’s interests in safe transportation and protecting property weigh in favor of an  
21 injunction. If the County constructs Muller Parkway as currently planned, Muller Parkway will  
22 flood during large storm events, posing a hazard to travelers and preventing emergency access  
23 use. *See supra* § II(C)(1)-(2). Moreover, the County will flood homes that already exist, harming  
24 those residents in addition to Park Ranch. *Id.* In contrast, there are *no* risks to the public’s safety  
25 or homes by stopping the County from proceeding with fatally flawed construction plans and no  
26 plans for drainage infrastructure.

27           Moreover, the public has an interest in the enforcement of the law, especially when that  
28 law pertains to environmental issues. *See, e.g., Richland/Wilkin Joint Powers Auth.*, 826 F.3d at



1 1043 (explaining the public has an interest in enforcement of the Environmental Protection Act).  
2 This includes enforcement of the Douglas County Code, which prohibits the County from  
3 adversely impacting Park Ranch Property, and the Design Criteria and Improvement Standards,  
4 which prohibit the County from diverting its drainage issues onto Park Ranch Property. *See*  
5 DCCDC § 20.50.080; DCIS § 6.1.3. Therefore, the public's interest favors issuing an injunction.

6 **V. CONCLUSION**

7 For the foregoing reasons, a preliminary injunction should issue enjoining the County  
8 from (a) beginning or continuing construction of Muller Parkway without written approval from  
9 Park Ranch approving of the final design criteria for Muller Parkway and associated drainage  
10 infrastructure and (b) encroaching upon Park Ranch's property without Park Ranch's agreement  
11 and payment of fair market value for the affected parcels.

12 **AFFIRMATION PURSUANT TO NRS 239B.030**

13 The undersigned affirms that this document does not contain the social security of any  
14 person.

15 DATED this 8th day of August, 2024.

16 LEWIS ROCA ROTHGERBER CHRISTIE  
17 LLP

18  
19 By: 

20 Darren J. Lemieux, Bar No. 9615  
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22 Brittini A. Tanenbaum, Bar No. 16013  
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28 *Attorneys for Real Party in Interest Park  
Ranch Holdings, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP and that on this 8th day of August, 2024, I caused the foregoing **PARK RANCH HOLDINGS, LLC's MOTION FOR A PRELIMINARY INJUNCTION AGAINST DOUGLAS COUNTY** to be served via email to the following parties:

JAMES R. CAVILIA  
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*Attorneys for Real Party in Interest Park Ranch  
Holdings, LLC*

**IN THE NINTH JUDICIAL DISTRICT COURT OR THE STATE OF NEVADA  
IN AND FOR DOUGLAS COUNTY**

ASHLAND PARK, LLC, a Nevada limited  
liability Company,

Plaintiff,

v.

DOUGLAS COUNTY, a political subdivision  
of the State of Nevada,

Defendant,

PARK RANCH HOLDINGS, LLC, a Nevada  
limited liability company,

Real Party in Interest.

Case No.: 2023-CV-00085

Dept. No. I

**EXHIBITS TO PARK RANCH  
HOLDINGS, LLC's MOTION FOR A  
PRELIMINARY INJUNCTION  
AGAINST DOUGLAS COUNTY**

**(EXHIBITS 1-22)**

Real Party In Interest Park Ranch Holdings, LLC, hereby submits its Exhibits to the Motion  
For A Preliminary Injunction Against Douglas County.

///

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<b>Exhibit No.</b>	<b>Description</b>	<b>No. of Pages</b>
1	Declaration of David Park in Support of Park Ranch Holdings, LLC's Motion for Preliminary Injunction	4
2	Declaration of Todd Cohran in Support of Park Ranch Holdings, LLC's Motion for Preliminary Injunction	8
3	Declaration of Darren Lemieux in Support of Park Ranch Holdings, LLC's Motion for Preliminary Injunction	2
4	Grant, Bargain, Sale Deed from Park Ranch Holdings, LLC to Ashland Park, LLC, recorded on July 17, 2020	5
5	2019 Amended Development Agreement, DC011512	39
6	Excerpts of the Agenda Packet for the December 3, 2019, Board of County Commissioners' Meeting	63
7	Grant, Bargain, Sale Deed from Park Ranch Holdings, LLC to Douglas County, recorded on April 22, 2020	10
8	Transcript Excerpt of the April 17, 2024, Deposition of Mark Gardner	6
9	Email from Jeremy Hutchings to Tom Dallaire, dated August 10, 2024, re: Ashland Muller Parkway – Culverts at Toler, DC001392	3
10	Excerpts of the minutes of the June 16, 2022, meeting of the Board of County Commissioners	3
11	October 12, 2022, Letter from Mark Forsberg to Tom Dallaire re: Park Ranch Holdings	3
12	October 19, 2022, Letter from Douglas Ritchie to Mark Forsberg re: Park Ranch Holdings	2
13	Excerpt of the Agenda Packet for the April 10, 2024, meeting of the Regional Transportation Commission	3
14	August 31, 2023, Memorandum from JE Fuller to CA Group, DC030561	3
15	Proposed Plans for Muller Parkway (cover page only), DC015653	1
16	July 27, 2023, Letter from the Federal Emergency Management Agency to JE Fuller, DC017601	4
17	May 16, 2024, Letter from the Federal Emergency Management Agency to JE Fuller, DC017605	8
18	June 25, 2024, Email from Jeremy Hutchings to David Park and Mary Anne Martin, re: Muller – CLOMR Resubmittal Status, and attachment thereto: Technical Support Data Notebook for a Conditional Letter of Map Revision	57
19	April 24, 2024, Notice of Default Letter to Douglas County	8
20	May 14, 2024, Response Letter from Douglas County	11
21	June 20, 2024, Response Letter from Park Ranch Holdings, LLC	5
22	Excerpt of the Agenda Packet for the August 2, 2024, meeting of the Regional Transportation Commission	8

DATED this 8th day of August, 2024.

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LEWIS ROCA ROTHGERBER CHRISTIE  
LLP

By: /s/ Darren Lemieux  
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Ranch Holdings, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP and that on this 8<sup>th</sup> day of August, 2024, I caused the foregoing **EXHIBITS TO PARK RANCH HOLDINGS, LLC's MOTION FOR A PRELIMINARY INJUNCTION AGAINST DOUGLAS COUNTY (EXHIBITS 1-22)** to be served via email to the following parties:

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/s/ Dawn M. Hayes  
Employee of Lewis Roca Rothgerber Christie LLP

# **EXHIBIT 1**

Declaration of David Park in Support of Park Ranch Holdings, LLC's Motion for Preliminary Injunction

**EXHIBIT 1**

**DECLARATION OF DAVID PARK IN SUPPORT OF PARK RANCH HOLDINGS,  
LLC's MOTION FOR PRELIMINARY INJUNCTION AGAINST DOUGLAS COUNTY**

I, DAVID PARK, declare as follows:

1. I am over the age of eighteen (18) years and competent to testify to the matters set forth herein, and I make this declaration based on my personal knowledge and in support of Park Ranch's Motion for Preliminary Injunction Against Douglas County ("Motion").

2. I am the Manager of Real Party in Interest Park Ranch Holdings, LLC ("Park Ranch") and hold a Bachelor of Science degree in Agricultural Engineering from California Polytechnic State University, San Luis Obispo. As the Manager of Park Ranch, I have extensive experience with land management, including development and navigating hydrology issues associated with floodwater and irrigation in Douglas County, Nevada and surrounding counties.

3. Park Ranch owns dozens of parcels of property in Douglas County, Nevada to the east of Minden and Gardnerville (together, these parcels are the "Park Ranch Property"). The Park Ranch Property is comprised of the following APNs: 1320-28-000-040, 1320-34-001-035, 1320-33-001-015, 1320-33-001-011, 1320-28-000-039, 1320-33-001-014, 1320-33-001-013, 1320-33-001-012, 1320-33-001-010, 1320-33-001-009, 1320-33-001-016, 1320-28-000-028, 1320-28-000-027, 1320-28-000-022, 1320-29-000-015, 1320-20-000-016, 1320-20-000-021, 1320-20-000-022, 1320-20-000-023, 1320-21-000-014, 1320-21-000-017, 1320-21-000-015, 1320-21-000-019, 1320-21-000-018, 1320-28-000-034, 1320-28-000-044, 1320-28-000-047, 1320-28-000-046, 1320-29-501-003, 1320-29-601-003, 1320-28-000-042. APN 1320-34-001-035 is owned by an affiliate of Park Ranch, which shares common ownership. The APNs for these parcels have changed over the years with some being retired after Park Ranch and the County entered into the Development Agreement, discussed below.

4. Park Ranch also owned APN 1320-34-002-001 before conveying it to Plaintiff Ashland Park ("Ashland") on July 17, 2020 ("Ashland Property," together with Park Ranch Property, the "Property"). Attached as **Exhibit 4** to the Motion is true and correct copy of the Grant, Bargain, Sale Deed to Ashland for APN 1320-34-002-001, recorded on July 17, 2020.

5. Two watercourses impact the Property. Buckeye Creek impacts the northern portion



1 of the Park Ranch Property while Pine Nut Creek impacts the southern portion of the Park Ranch  
2 Property and the Ashland Park Property. These watercourses are prone to inundation by flood  
3 waters from snowmelt and other weather events.

4 6. To alleviate traffic in Douglas County, the County initiated discussions with me and  
5 the Park family to construct a bypass through the Property. That bypass is now known as Muller  
6 Parkway.

7 7. After several agreements with Park Ranch's affiliated predecessor-in-interest and  
8 years of the County delaying construction of Muller Parkway, on December 3, 2019, Park Ranch  
9 and the County entered into the 2019 Development Agreement ("Development Agreement"), which  
10 was adopted by ordinance. Attached as **Exhibit 5** to the Motion is a true and correct copy of the  
11 Development Agreement recorded on December 16, 2019. Attached as **Exhibit 6** to the Motion is  
12 a true and correct copy of excerpts of the agenda packet for the Board of County Commissioners'  
13 Meeting on December 3, 2019.

14 8. On April 7, 2020, Park Ranch conveyed the right-of-way comprised of 75.68 acres  
15 to the County as contemplated by the Development Agreement and without the exchange of a  
16 monetary payment for the acreage. Attached to the Motion as **Exhibit 7** is a true and correct copy  
17 of the Grant, Bargain, & Sale Deed to the County, recorded on April 22, 2020.

18 9. The proposed location and construction of Muller Parkway will interfere with the  
19 watercourses that flow through the Property, namely Buckeye Creek and Pine Nut Creek. If the  
20 County does not install proper drainage infrastructure to mitigate floodwater from Buckeye Creek  
21 and Pine Nut Creek caused by the construction of Muller Parkway, the County could cause Park  
22 Ranch Property to flood and erode. I believe that the impacts of this floodwater will alter the state  
23 of the property and drastically decrease its value, including because it will deprive Park Ranch of  
24 the ability to develop residential communities on the Park Ranch Property.

25 10. By the summer of 2022, to the best of my knowledge, the County had not secured  
26 funding, finalized plans, or applied for a Conditional Letter of Map Revision ("CLOMR"), and I  
27 became concerned with the County's lack of progress. On October 12, 2022, Park Ranch invoked  
28 Section 6.1 of the Development Agreement and informed the County that Park Ranch intended to

1 construct Muller Parkway. Attached to the Motion as **Exhibit 11** is a true and correct copy of the  
2 October 12, 2022, letter from Park Ranch’s former counsel, Mark Forsberg, to the County.

3 11. On October 19, 2022, the County responded and assured me that the plans for Muller  
4 Parkway were complete. Attached as **Exhibit 12** to the Motion is a true and correct copy of the  
5 October 19, 2022, response from Chief Civil Deputy District Attorney Douglas Ritchie to Mark  
6 Forsberg.

7 12. The County did not provide me with the 100 percent plans for Muller Parkway  
8 (“Proposed Plans”) until November 2023. Attached to the Motion as **Exhibit 15** is a true and correct  
9 copy of the first page of the Proposed Plans, dated September 19, 2023, and produced by the County  
10 in this action as DC015653. These are the most recent plans that the County has provided to me.

11 13. The Proposed Plans show the County intends to encroach on Park Ranch Property  
12 outside of the deeded right-of-way. The County, however, never informed me of these  
13 encroachments. Instead, I learned about the encroachments from a private engineer.

14 14. County Engineer Jeremy Hutchings and I have discussed the encroachments on  
15 numerous occasions. During those discussions, Mr. Hutchings has requested that Park Ranch sell  
16 piecemeal portions of the parcels impacted by the encroachments. This is unacceptable to Park  
17 Ranch because selling piecemeal portions of the parcels will drastically decrease the value of each  
18 impacted parcel.

19 15. Although I have repeatedly tried to confer with the County in good faith to resolve  
20 Park Ranch’s concerns about the Proposed Plans and CLOMR submission, the County has withheld  
21 information from me and refused to correct the significant errors in its Proposed Plans and CLOMR  
22 submission.

23 16. On June 25, 2024, the County provided me with their most recent CLOMR  
24 submission, a Technical Support Data Notebook for Conditional Letter of Map Revisions, prepared  
25 by the County’s hydrology consultant, JE Fuller. Attached to the Motion as **Exhibit 18** is a true  
26 and correct copy of Mr. Hutchings’ email to me with the corresponding attachment.

27 ///

28 ///

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

3 EXECUTED this 7th day of August, 2024.

4   
5  
6 DAVID PARK

# **EXHIBIT 2**

Declaration of Todd Cohran in Support of  
Park Ranch Holdings, LLC's  
Motion for Preliminary Injunction

**EXHIBIT 2**

**DECLARATION OF JEFFREY TODD COCHRAN IN SUPPORT OF PARK RANCH HOLDINGS, LLC's MOTION FOR PRELIMINARY INJUNCTION AGAINST DOUGLAS COUNTY**

I, JEFFREY TODD COCHRAN, declare as follows:

1. I am over the age of eighteen (18) years and competent to testify to the matters set forth herein. I make this declaration in support of Park Ranch's Motion for a Preliminary Injunction Against Douglas County ("Motion").

2. I am a Senior Vice President at House Moran Consulting, Inc., which is a civil engineering firm focused on water resources and floodplain management. I have a Bachelor of Civil Engineering from the Georgia Institute of Technology and am a certified Professional Engineer and Certified Floodplain Manager. My expertise is in advanced hydrology and hydraulics related to stormwater management, drainage, and flood control systems. I have extensive experience with hydrologic and hydraulic modeling, Federal Emergency Management Agency ("FEMA") flood studies and revisions, and the design of flood mitigation/control systems.

3. I am informed and understand that Park Ranch Holdings, LLC ("Park Ranch") owns numerous parcels in Douglas County, referred to as the "Park Ranch Property" for purposes of the Motion, and together with the Ashland Park Property, referred to as the "Property." Two watercourses impact the Property. Buckeye Creek impacts the northern portion of the Park Ranch Property while Pine Nut Creek impacts the southern portion of the Park Ranch Property and the Ashland Park Property. These watercourses are prone to inundation by floodwaters from snowmelt and other weather events.

4. I have been retained by Park Ranch to evaluate Douglas County's proposed plans for construction of Muller Parkway and the associated application for a Conditional Letter of Map Revision ("CLOMR") required by FEMA, including to evaluate whether those plans and CLOMR submittal will adversely impact the Park Ranch Property by diverting flows from Buckeye Creek and Pine Nut Creek.

5. A CLOMR is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations

1 (“BFEs”), or the Special Flood Hazard Area (“SFHA”).

2 6. I conducted an in-depth review of (1) the County’s plans for construction of Muller  
3 Parkway dated September 19, 2023, and produced by the County as DC015653 (“Proposed Plans”),  
4 (2) numerous submissions by the County’s consultant, JE Fuller, to FEMA relating to Muller  
5 Parkway, including JE Fuller’s hydrology models (“CLOMR Model”), reports, appendices, and  
6 Technical Support Data Notebook for Conditional Letter of Map Revision, provided on June 24  
7 and 26, 2024, and (3) FEMA’s letters to JE Fuller dated July 27, 2023, and May 16, 2024, regarding  
8 the County’s CLOMR application submission and the deficiencies in that submission. I have also  
9 reviewed numerous documents in the productions of the County, CA Group, and JE Fuller.

10 7. From my in-depth review of these documents, I have concluded that the proposed  
11 location and construction of Muller Parkway will interfere with the watercourses and floodplains  
12 created by these watercourses that flow through the Property, namely Buckeye Creek and Pine Nut  
13 Creek. The County’s Proposed Plans, CLOMR submission, and lack of planning for drainage  
14 infrastructure are deficient and will cause permanent damage to the Park Ranch Property.

15 8. With respect to the Proposed Plans, the County has not included flood control  
16 channels or adequate floodwater mitigation infrastructure. The construction of Muller Parkway will  
17 redirect flood flows from Buckeye Creek and Pine Nut Creek. The only feasible mitigation for the  
18 redirected flood flows would be to construct a series of detention basins or a flood control channel.  
19 A flood control channel would significantly concentrate the flow at the intersection of the proposed  
20 Muller Parkway and US 395 and would need to be conveyed west of US 395 to the East Fork  
21 Carson River. The County’s Proposed Plans do not include detention basins nor an adequate flood  
22 control channel. Therefore, I have determined that the Proposed Plans do not mitigate floodwater  
23 from Buckeye Creek or Pine Nut Creek that will be discharged onto Park Ranch Property.

24 9. With respect to the County’s CLOMR submissions, there are numerous deficiencies  
25 evident from the CLOMR Model and Technical Support Data Notebook for Conditional Letter of  
26 Map Revision (“TSD Notebook”). The County’s CLOMR submission does not accurately account  
27 for pre-and post-construction conditions. These deficiencies can lead to large increases in the  
28 volume of floodwaters and erosion of the Park Ranch Property and other serious property damage.

10. The CLOMR submittal does not account for floodwater mitigation during construction and prior to completion of Muller Parkway. This omitted analysis is commonly referred to as an “interim floodplain analysis,” and is critical to ensure that floodplain impacts on adjacent property owners are adequately addressed at each phase of construction until the full roadway is complete.

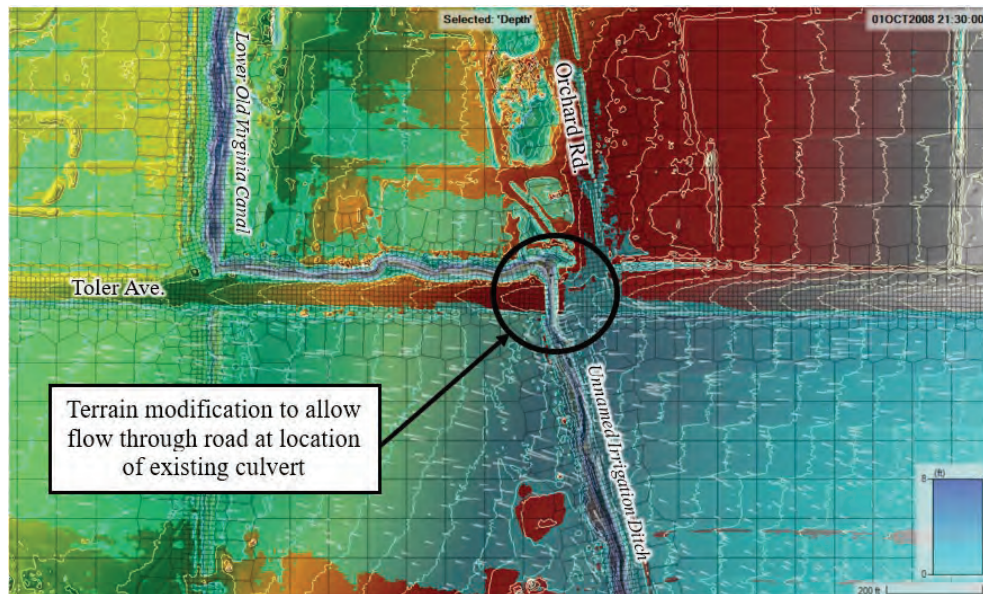
11. The CLOMR Model draws comparisons from two different methods based on two different calculations; meaning, the CLOMR Model does not compare “apples to apples.” The primary purpose of FEMA’s review is to compare the existing conditions of the floodplain (“Existing Conditions”) with the conditions resulting from the proposed construction of Muller Parkway (“Proposed Conditions”). I have concluded that CLOMR Model fails to accurately compare the Existing Conditions with the Proposed Conditions because JE Fuller, working on behalf of the County, used different inputs and calculations in its models for each.

12. Specifically, there are considerable differences between the existing and proposed terrains in the CLOMR Model. Terrains are a representation of the ground elevations and are an important input in the 2D hydraulic model. The terrain differences result in vastly different models, but JE Fuller nevertheless compares the models as if they have the same terrain. This is problematic because there are increases in the flood flows far upstream of Muller Parkway in the Buckeye Creek and Pine Nut Wash watersheds. The flood flows, depths, and velocities should be the same in both existing and proposed conditions upstream of the proposed parkway. These differences in floodplain elevations (and depths) result in different flow paths, flow rates, and flow depths at Muller Parkway. The differences in model results make evaluating the impact of the proposed Muller Parkway impossible to quantify. This can lead to incorrectly designed drainage and flood control infrastructure that significantly increases flood depths and velocities on surrounding properties.

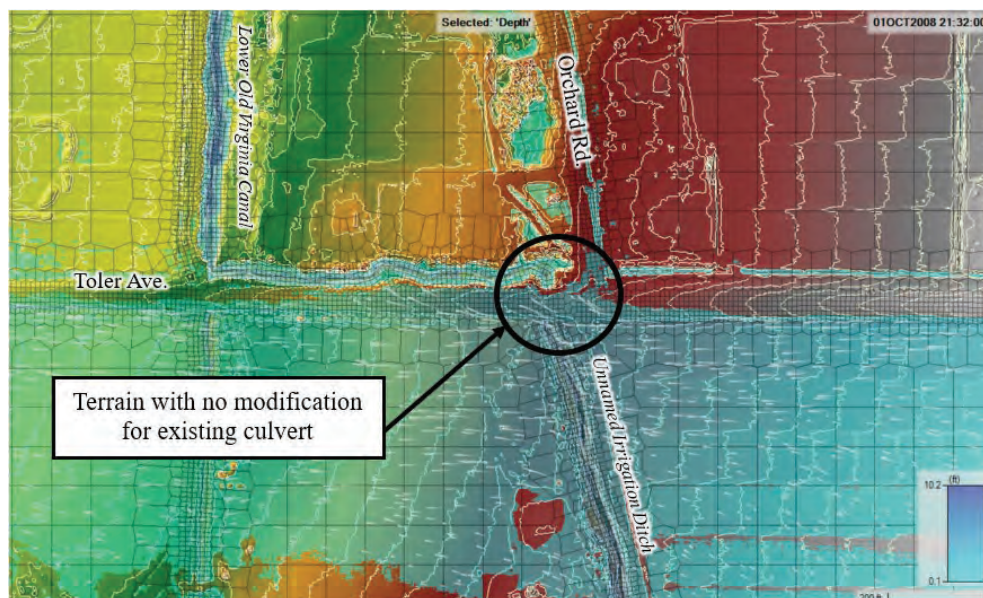
13. To illustrate the significant impact of the different terrains, I prepared **Figure 1** and **Figure 2** below. At Toler Avenue, there is an unnamed irrigation canal crossing the road, approximately 100 feet west of Orchard Road and 670 feet east of the Lower Old Virginia Canal. The CLOMR Model does not include the culvert but does make a modification to the ground



surface (*i.e.*, terrain) in the Existing Conditions model to allow flow to cross the road in the location of the culvert. This is represented in **Figure 1**. In the Proposed Conditions model, there is no modification. Flood flows back up behind the road and is diverted to the west on the south side of Toler Avenue in the Proposed Conditions model. These differences in the model significantly affect the flows around the proposed Muller Parkway to the north of Toler Avenue. These differences do not allow for an “apples to apples” comparison of the impacts of the proposed Muller Parkway on floodplain elevations, flow depths, and velocities.



**Figure 1: Existing Conditions Terrain—Modified Terrain**



**Figure 2: Proposed Conditions Terrain—Not Modified Terrain**



14. Similarly, the Existing and Proposed Conditions models are run with different equation sets and computational time steps. The Existing Conditions model uses a simplified calculation method, while the Proposed Conditions model uses a more detailed method, leading to significant differences in flood predictions. The Existing Conditions model uses the Diffusion Wave equation set with a 2-second computational timestep. The Proposed Conditions model uses the Full Momentum (SWE-ELM) with a 0.1 second computational timestep. The Diffusion Wave is only allowed by FEMA if it can be shown that there are no significant differences between the Diffusion Wave and Full Momentum methods. The two methods result in significant differences in flood depths and velocities with the SWE-ELM method being more accurate but more computationally intensive. The magnitude of the difference is difficult to quantify due to the differences in the terrains.

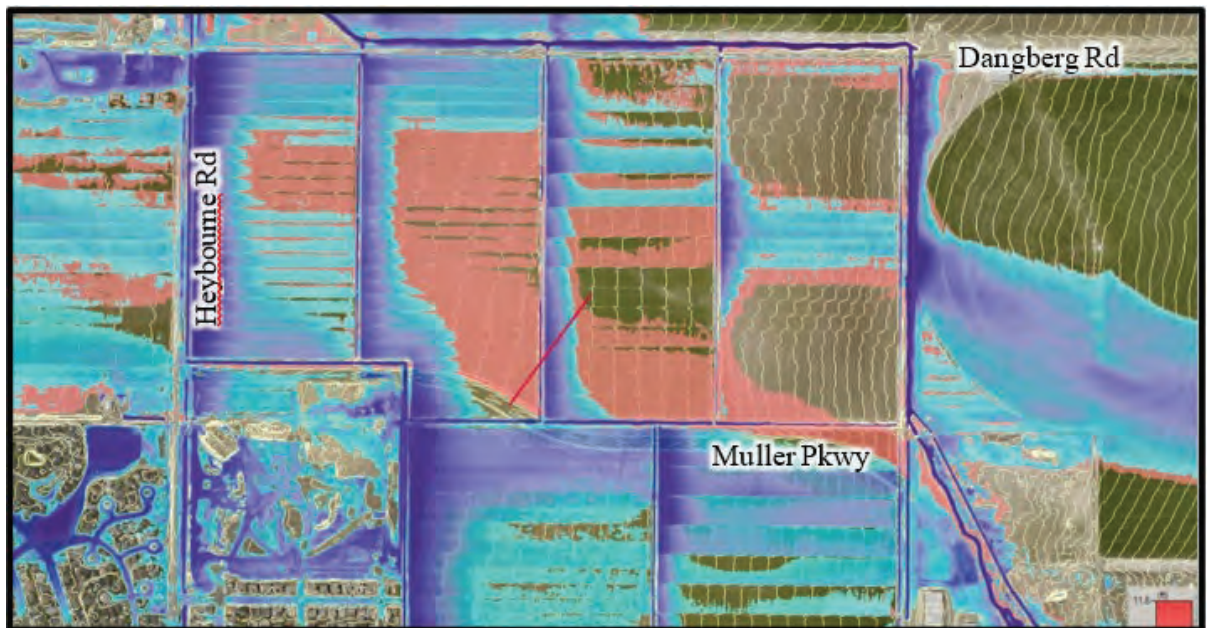
15. I have also determined that the CLOMR Model incorrectly modeled irrigation canals, falling short of FEMA standard. The irrigation canals are man-made channels that were constructed to carry water from the East Fork Carson River to agricultural fields. Although the primary purpose is to provide irrigation water, they are quickly filled and overtopped during large storm events due to the very mild slopes of the channels. The standard of practice within the region is to not include flood storage or conveyance from irrigation canals/ditches when modeling FEMA floodplains. The canals are modeled as though they are empty when a flood occurs. The canals should be modeled with a flow consistent with inflows from the East Fork Carson River that would be likely to occur during a large flooding event, which is included in the effective FEMA hydraulic models for Buckeye Creek. Inconsistencies in the terrain data for both Existing and Proposed Conditions do not accurately represent the canal sizes and culverts/diversion structures. These issues create diversions in some areas and storage of flood flows in other areas that do not accurately represent actual flooding conditions within the watershed. This leads to inaccurate flows and depths within the Muller Parkway project area.

16. In the May 16, 2024, FEMA comment letter, the FEMA reviewer noted 43 culverts that have a potential to impact flows in the CLOMR Model. In the County's/JE Fuller's CLOMR submission, JE Fuller stated that structures (*i.e.*, culverts) are still being surveyed and will be added

to the model at a later time. The inclusion or exclusion of the culverts should have been completed before finalizing the drainage/flood control design for the parkway since many of these culverts are upstream of Muller Parkway. This oversight brings into question the accuracy of the flows being modeled for Muller Parkway, making it difficult to evaluate the full extent of the floodplain impacts.

17. Even with these errors and the County's failure to properly assess the impact of the construction of Muller Parkway, the CLOMR Model shows increased peak flows on Park Ranch Property. Flow rate is measured by "cfs" or "cubic feet per second." Approximately 0.5 mile east of Heybourne Road, on the north side of Muller Parkway, the peak flow increases from 128 cfs in Existing Conditions to 1,197 cfs in proposed conditions. Although the flood depths are not increased by greater than 1-foot, there is a significant impact to the property that will cause additional flooding extents and erosion. The additional flow will result in soil erosion and other property damage.

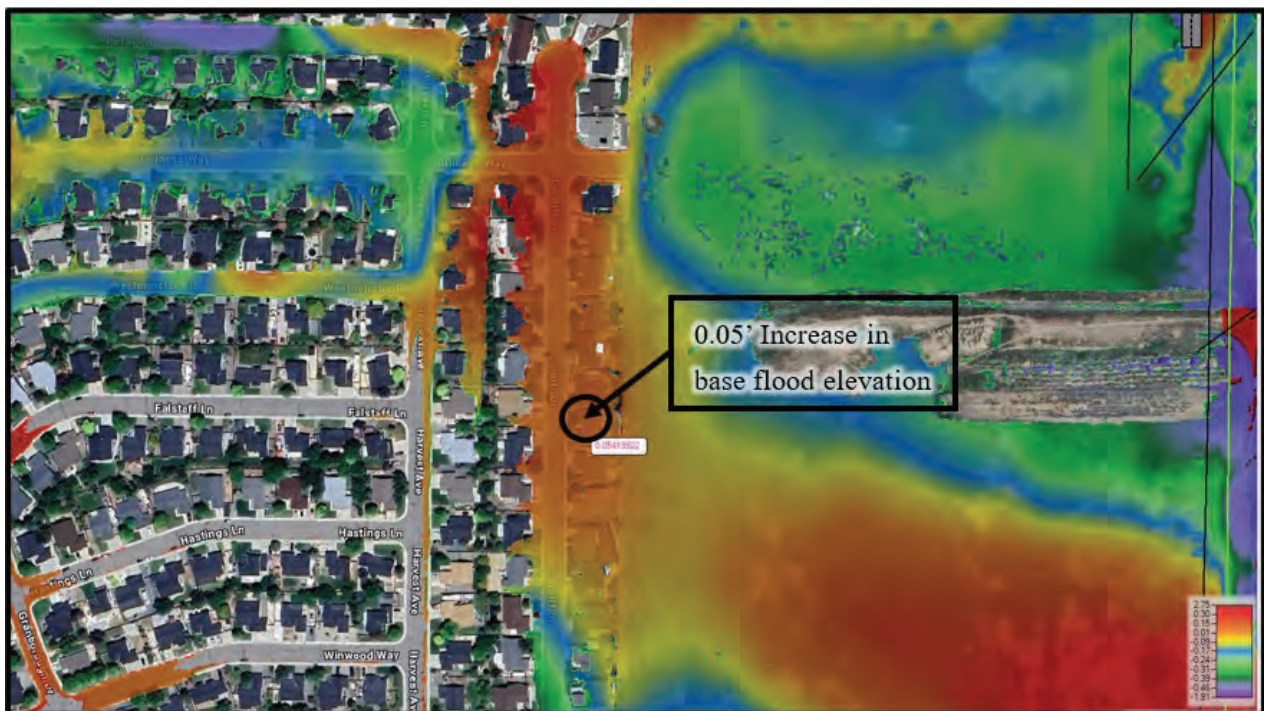
18. To illustrate the increased peak flows on Park Ranch Property, I prepared **Figure 3**. The blue shading shows Existing Conditions while the red shading shows the Proposed Conditions. **Figure 3** shows the County's proposed construction of Muller Parkway will result in significant increases flow on Park Ranch Property.



**Figure 3 - Flows Depths at Evaluation Line (Red) for Existing Conditions Flow (Blue) and Proposed Conditions Flow (Red)**

19. The County's CLOMR Model no longer accounts for any floodwater flowing from the Ashland Park Property to the Park Ranch Property, ignoring this segment of Muller Parkway and failing to account for increased flows from construction of that portion of Muller Parkway. The floodwaters from that segment of Muller Parkway are likely to be diverted onto the Park Ranch Property when Muller Parkway is constructed on the Ashland Park Property.

20. The County's CLOMR Model predicts increases in flood levels at surrounding properties where homes already exist and are occupied by families, which FEMA does not allow. Specifically, the CLOMR model shows "rises" (i.e., increases in 100-year water surface elevations, also referred to as "base flood elevations") at existing structures. FEMA does not allow any rise for existing buildings/structures. FEMA defines a rise as an increase in the base flood elevations of 0.01 feet or greater. For example, the existing home to the west of the proposed Ashland Park development on Cardiff Drive has an increase of 0.05 feet in the CLOMR model. To illustrate, I prepared **Figure 4** below that shows increases in flood elevations in yellow and red.



**Figure 4: Water Surface Increase Comparing Existing Conditions to Proposed Conditions**

21. It is critical that Muller Parkway not be constructed until a comprehensive plan and design are completed for mitigating floodplain impacts due to the construction of the Muller



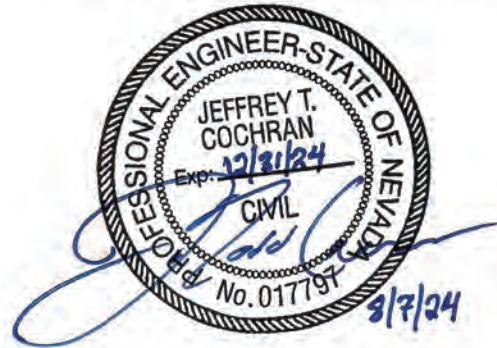
1 Parkway.

2 22. Given the significant negative impacts on the properties surrounding the Muller  
3 Parkway and the lack of adequate floodplain analysis, it is my professional opinion that the County  
4 should be halted from constructing Muller Parkway until a comprehensive and compliant floodplain  
5 analysis and design is completed.

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

8 EXECUTED this 8th day of August, 2024.

9  
10  
11   
12 J. TODD COCHRAN, P.E., CFM  
13 Nevada PE License No. 017797



# **EXHIBIT 3**

Declaration of Darren Lemieux in Support of  
Park Ranch Holdings, LLC's  
Motion for Preliminary Injunction

**EXHIBIT 3**

**DECLARATION OF DARREN J. LEMIEUX IN SUPPORT OF PARK RANCH HOLDINGS, LLC's MOTION FOR PRELIMINARY INJUNCTION AGAINST DOUGLAS COUNTY**

I, DARREN J. LEMIEUX, declare as follows:

1. I am a partner with the law firm of Lewis Roca Rothgerber Christie LLP ("Lewis Roca"), and counsel for Real Party in Interest Park Ranch Holdings, LLC ("Park Ranch") in this case. I make this declaration in support of the Park Ranch's Motion for Leave to Amend and Supplement Complaint in Intervention ("Motion").

2. Attached to the Motion as **Exhibit 8** is a true and correct copy of an excerpt of the deposition of Mark Gardner on April 17, 2024.

3. Attached to the Motion as **Exhibit 9** is a true and correct copy of an email from Jeremy Hutchings to Tom Dallaire, dated August 10, 2021, which the County produced in this action as DC001392.

4. Attached to the Motion as **Exhibit 10** is a true and correct copy of an excerpt of the minutes from the June 16, 2022, meeting of the Board of County Commissioners, available at [https://douglascountynv.granicus.com/ViewPublisher.php?view\\_id=1](https://douglascountynv.granicus.com/ViewPublisher.php?view_id=1).

5. Attached to the Motion as **Exhibit 13** is a true and correct copy of an excerpt of the agenda packet for the April 10, 2024, meeting of the Regional Transportation Commission, available at [https://douglascountynv.granicus.com/ViewPublisher.php?view\\_id=1](https://douglascountynv.granicus.com/ViewPublisher.php?view_id=1). The minutes for the April 10, 2024, meeting have not been posted yet.

6. Attached to the Motion as **Exhibit 14** is a true and correct copy of a Memorandum from Christopher Rod of JE Fuller to Chad Anson of the CA Group, dated August 31, 2023, re: Flood Inundation Comparison, which the County produced in this action as DC030561.

7. Attached to the Motion as **Exhibit 14** is a true and correct copy of a letter from the Federal Emergency Management Agency to JE Fuller regarding Case No. 23-09-0865R, dated July 27, 2023, which the County produced in this action as DC017601.

8. Attached to the Motion as **Exhibit 15** is a true and correct copy of a letter from the Federal Emergency Management Agency to JE Fuller regarding Case No. 23-09-0865R, dated May 16, 2024, which the County produced in this action as DC017605.

1           9.       Attached to the Motion as **Exhibit 19** is a true and correct copy of a letter from  
2 former counsel for Park Ranch, Mark Forsberg, to A.J. Hames, Jenifer Davidson, and Tom Dallaire,  
3 dated April 24, 2024, re: NOTICE OF DEFAULT – 2019 DEVELOPMENT AGREEMENT.

4           10.      Attached to the Motion as **Exhibit 20** is a true and correct copy of a letter from A.J.  
5 Hames to me, dated May 14, 2024, in response to Park Ranch's April 24, 2024, letter.

6           11.      Attached to the Motion as **Exhibit 21** is a true and correct copy of a letter from me  
7 to A.J. Hames and Tom Dallaire, dated June 20, 2024, in response to the County's May 14, 2024,  
8 letter. To date, I have not received a response to my June 20, 2024, letter.

9           12.      Attached to the Motion as **Exhibit 22** is a true and correct copy of an excerpt of the  
10 agenda packet for the August 2, 2024, meeting of the Regional Transportation Commission,  
11 available at [https://douglascountynv.granicus.com/ViewPublisher.php?view\\_id=1](https://douglascountynv.granicus.com/ViewPublisher.php?view_id=1). The minutes  
12 for the August 2, 2024, meeting have not been posted yet.

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

15           EXECUTED this 7th day of August, 2024.



18  
19           DARREN J. LEMIEUX

# **EXHIBIT 4**

Grant, Bargain, Sale Deed from Park Ranch  
Holdings, LLC to Ashland Park, LLC,  
recorded on July 17, 2020

**EXHIBIT 4**



DOUGLAS COUNTY, NV **2020-949361**  
RPTT:\$20475.00 Rec \$40.00  
\$20,515.00 Pgs=4 **07/17/2020 03:14 PM**  
TICOR TITLE - GARDNERVILLE  
KAREN ELLISON, RECORDER

WHEN RECORDED MAIL TO:  
Ashland Park, LLC , a Nevada limited liability  
company  
1571 Putter Lane  
Gardnerville, NV 89460

MAIL TAX STATEMENTS TO:  
Ashland Park, LLC , a Nevada limited liability  
company  
1571 Putter Lane  
Gardnerville, NV 89460

Escrow No. 2004077-RLT

The undersigned hereby affirms that this document  
submitted for recording does not contain the social  
security number of any person or persons.  
(Pursuant to NRS 239b.030)

APN No.: 1320-34-002-001  
R.P.T.T. \$20,475.00

SPACE ABOVE FOR RECORDER'S USE ONLY

### **GRANT, BARGAIN, SALE DEED**

THIS INDENTURE WITNESSETH: That Park Ranch Holdings, LLC, a Nevada limited liability company

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do/does hereby Grant,  
Bargain, Sell and Convey to Ashland Park, LLC , a Nevada limited liability company

all that real property situated in the County of Douglas, State of Nevada, described as follows:  
SEE EXHIBIT "A" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in  
anywise appertaining.

Signature and notary acknowledgement on page two.

Park Ranch Holdings, LLC, a Nevada  
limited liability company

*David Park*

David Park, Manager

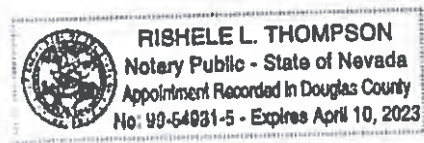
STATE OF NEVADA  
COUNTY OF DOUGLAS

} ss:

This instrument was acknowledged before me on, 7/17/2020  
by David Park

NOTARY PUBLIC

This Notary Acknowledgement is attached to that certain Grant, Bargain, Sale Deed under escrow  
No. 02004077.



**EXHIBIT A  
LEGAL DESCRIPTION**

All that certain real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of the Southwest 1/4 of Section 34, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at the Southwest corner of said Section 34 as shown on the Record of Survey or Rhoda Chichester Revocable Trust, Robert L. Chichester Jr. and Ross J. Chichester, filed in the Douglas County Recorder's office on March 4, 1994 in Book 394, at Page 825, as Document No. 331559 and as shown on the Record of Survey No. 23 for Douglas County, filed in the Douglas County Recorder's Office on January 4, 1991 in Book 191, at Page 275, as Document No. 242238, a 5/8" rebar and aluminum cap stamped Do. Co. in well;

thence North 01°01'12" East, 860.35 feet along the west section line of said Section 34 to the Point of Beginning;

thence continuing along said section line North 01°01'12" East, 1,788.68 feet to the East 1/4 corner, a 5/8" rebar with plastic cap, P.L.S. 6899;

thence South 89°18'41" East, 1323.98 feet along the one-quarter section line of said Section 34 to a point on the West one-sixteenth line of said Section 34;

thence South 00°59'03" West, 647.43 feet along said west one-sixteenth line;

thence South 89°00'57" East, 8.92 feet to the Northwest corner of the parcel shown as James Decker Family Trust on the Record of Survey for John and Andrae (Jody) Laxague, filed in the Douglas County Recorder's Office on October 2, 1986, in Book 1086, at Page 169, as Document No. 142028;

thence South 01°14'03" West, 666.91 feet to a 5/8" rebar and (melted) plastic cap, the Southwest corner of said James Decker Family Trust parcel;

thence South 01°15'57" West 1283.98 feet to a point on the North right-of-way of Toler Lane as shown on said record of Survey No. 23 for Douglas County;

thence North 89°20'34" West, 536.92 feet along said North right-of-way;

thence along the arc of a non-tangent curve to the left, concave to the Northwest, having a radius of 20.00 feet, central angle of 90°00'00", arc length of 31.42 feet and chord bearing North 45°39'26" East;

thence North 00°39'26" East, 771.35 feet;

thence along the arc of a curve to the left having a radius of 20.00 feet, central angle of 90°04'28" and arc length of 31.44 feet;

thence North 89°25'02" West, 783.22 feet to the Point of Beginning.

Reference is made to Record of Survey to Support a Boundary Line Adjustment and filed for record with the Douglas County Recorder on June 21, 1995, in Book 695, at Page 3371, as Document No. 364543, Official Records of Douglas County, Nevada.

Excepting therefrom, that portion conveyed to Douglas County, a political Subdivision of the State of Nevada, by Grant, Bargain and Sale Deed recorded August 15, 2019, as Document No. 2019-933728, Official Records, and Re-Recorded December 20, 2019, as Document No. 2019-940010, Official Records, and Recorded April 22, 2020, as Document No. 2020-945079, Official Records

APN: 1320-34-002-001

Note: Document No. 2017-896525 is provided pursuant to the requirements of Section 6.NRS 111.312.

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

- a. 1320-34-002-001  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

- a. ☒ Vacant Land      b. ☐ Single Fam. Res.  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
i. Other \_\_\_\_\_

**FOR RECORDERS OPTIONAL USE ONLY**

Book \_\_\_\_\_ Page \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property: \$ 5,250,000.00  
b. Deed in Lieu of Foreclosure Only (value of property) \$ \_\_\_\_\_  
c. Transfer Tax Value \$ 5,250,000.00  
d. Real Property Transfer Tax Due: \$ 20,475.00

4. If Exemption Claimed

- a. Transfer Tax Exemption, per NRS 375.090, Section \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity Grantor

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**

**(REQUIRED)**

Print Name: Park Ranch Holdings, LLC, a Nevada limited liability company

Address: 1300 Buckeye

City: Minden

State: NV Zip: 89423

**BUYER (GRANTEE) INFORMATION**

**(REQUIRED)**

Print Name: Ashland Park, LLC, a Nevada limited liability company

Address: 1571 Putter Lane

City: Gardnerville

State: NV Zip: 89460

**COMPANY/PERSON REQUESTING RECORDING (Required if not Seller or Buyer)**

Print Name: Ticor Title of Nevada, Inc

Escrow No.: 02004077-020-RLT

Address: 1483 US Highway 395 N, Suite B

City, State, Zip: Gardnerville, NV 89410

**AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED**

# **EXHIBIT 5**

2019 Amended Development Agreement, DC011512

**EXHIBIT 5**



KAREN ELLISON, RECORDER

APN# Multiple-See pg. 1

Recording Requested by/Mail to:

Name: Tom Dallaire/Sam Booth

Address: Community Development Director

City/State/Zip: Douglas County

Mail Tax Statements to:

Name: NA

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

2019 Development Agreement Park Ranch Holdings & Douglas County

**Title of Document** (required)

----- (Only use if applicable) -----

The undersigned hereby affirms that the document submitted for recording  
DOES contain personal information as required by law: (check applicable)

\_\_\_ Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)

\_\_\_ Judgment – NRS 17.150(4)

\_\_\_ Military Discharge – NRS 419.020(2)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

This document is being (re-)recorded to correct document # 2019-933727, and is correcting

\*Note: Document 2019-933727 was rescinded by BOCC action and subsequently the attached development agreement was approved and adopted  
on December 3, 2019, via Ordinance Number 2019-1556-A

FILED

NO. 2019-217

12-16-19  
DATE

DOUGLAS COUNTY CLERK  
MINDEN, NV

BY [Signature] DEPUTY

2019 AMENDED DEVELOPMENT AGREEMENT

DOUGLAS COUNTY

&

PARK RANCH HOLDINGS, LLC

EXHIBITS A THRU G



APNs: 1320-20-000-018; 1320-29-501-002;  
1320-28-000-023; 1320-21-000-014; 1320-28-  
000-024; 1320-28-000-025; 1320-28-000-028;  
1320-28-000-030; 1320-28-000-031; 1320-33-  
001-011; 1320-33-001-015; 1320-34-002-001;  
1320-34-001-028; 1320-27-002-035; 1320-28-  
000-017; 1320-20-000-017; 1320-21-000-015;  
1320-21-000-016; 1320-29-601-003; 1320-28-  
000-029; 1320-29-000-015; 1320-28-000-022;  
1320-28-000-027; 1320-32-501-021; 1320-32-  
501-020; 1320-33-001-016; 1320-33-001-009;  
1320-33-001-010; 1320-33-001-012; 1320-33-  
001-013; 1320-33-001-014; and 1320-31-000-  
016; 1319-25-000-021; 1319-25-000-020;  
1319-24-000-007; 1319-23-000-013; 1319-26-  
000-004.

**AFTER RECORDATION RETURN TO:**  
Douglas County Community Development  
Office Attn: Tom Dallaire

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned hereby affirms that this document submitted for recording does not contain the social security number of any person or persons. (NRS 239B.030)

## **PARK RANCH HOLDINGS, LLC DEVELOPMENT AGREEMENT**

Douglas County, a political subdivision of the State of Nevada ("County"), and Park Ranch Holdings, LLC, a Nevada limited liability company assigned Business ID No. 20131610733 whose address is 1300 Buckeye Road Suite A, Minden, NV ("Owner"), enter into this development agreement ("Agreement") to ensure the timely construction of Muller Parkway, the development of land in accordance with Douglas County requirements, and to ensure certain vested development rights for the real property proposed for development by Owner pursuant to this Agreement, which real property comprises approximately 1,044 acres as illustrated in **Exhibit A** attached to this Agreement (the "Property").

### **1. RECITALS**

1.1 County is authorized, pursuant to Nevada Revised Statutes 278.0201 to 278.0207, inclusive, and Douglas County Code 20.400.010 to 20.400.060, to enter into a binding development agreement with persons having legal or equitable interests in real property located within the County to establish long range plans for the development of such property.

1.2 Owner holds legal title to the Property. Owner is the successor in interest to Park Cattle Company, LLC. On January 6, 2005, County approved a development agreement between County and Park Cattle Company, LLC, recorded as Document No. 635615 obligating Park Cattle Company to dedicate to County right-of-way 105 feet wide in an alignment across the parcels generally described on a drawing called "Muller Parkway, Final Right-of-Way Exhibit" attached thereto (the "Original Agreement"). The purpose of the dedication was to allow construction by County of a portion of a regional bypass road called Muller Parkway within the public right of

way. On October 11, 2007, County approved the "First Amendment to the Development Agreement for Park Cattle Company for the Muller Parkway Extension" ("First Amendment") to revise the alignment and width of the right-of-way. The revised right-of-way was depicted by an exhibit attached to the First Amendment. Under the terms of these previous agreements, the County was obligated to construct Muller Parkway "within seven (7) years of the recording of such instruments of dedication, or within five (5) years of acquisition of right of way on adjacent property to the South APN 1320-34-002-001" (the "Ashland Park Property"), however no construction has taken place. The Parties therefore desire to enter into a second amendment which will supersede the Original Agreement as amended, acknowledging that all right-of-way previously dedicated pursuant to the terms of the Original Agreement or First Amendment thereto shall revert to Owner as set forth in NRS 244.276.

1.3 Because of changed conditions as well as past changes made to the Douglas County Master Plan and the amendment to the Master Plan contemplated by this Agreement, County and Park now desire to enter into this Agreement to: dedicate a new 205 foot public right of way across the Property for Muller Parkway and drainage improvements; dedicate a new public right-of-way across APN 1320-20-000-017 immediately north of the existing right-of-way to increase the width by approximately 105 feet; grant an easement to County on APN 1320-31-000-016 for the purpose of installing drainage culverts below Highway 88; establish the financial obligations of each party to construct Muller Parkway through the Ashland Park Property; set a deadline for the County to construct at least two lanes of Muller Parkway from Monterra to Stodick Estates; establish a maximum of two thousand five hundred (2,500) residential dwelling units which Owner is entitled to develop within the Property; and to preclude the County from rescinding the Property's Receiving Area Land Use designation for at least thirty years from the Effective Date (as that date is defined in Section 2.9 of this Agreement).

1.4 The Property currently has a Master Plan Land Use designation of Agriculture. Concurrent herewith or immediately preceding consideration of this Agreement, County staff is seeking to update the Douglas County Master Plan Land Use Map to designate the Property as Receiving Area and to eliminate approximately 1,044 acres of Receiving Area designation from Owner's property in the Topaz Ranch Estates vicinity illustrated on Exhibit B. This Agreement is conditioned upon the completion and approval by the Douglas County Board of County Commissioners (the "Board") of such update to the Master Plan Land Use Map.

1.5 Owner and County acknowledge and agree that prior to entering into this Agreement appropriate legal advice and counsel was sought and that both Owner and County made a voluntary informed decision to enter into this Agreement in good faith. Owner and County further acknowledge and agree that substantial benefits will accrue to Owner as a result of entering into this Agreement, including a vested development right to develop the Property in accordance with this Agreement, a certainty in the particular on-site and off-site improvements that may be required by County, and a certainty in the land use fees or obligations which may be imposed by the County.

1.6 County additionally acknowledges that certain public objectives it wishes to attain will be furthered by this Agreement, including right-of-way acquisition for Muller Parkway and additional drainage improvements, an easement for the Highway 88 culverts, financial contributions by Owner towards Muller Parkway construction costs, and implementation of the Master Plan goals and objectives. The benefits of this Agreement will further the comprehensive planning objectives contained in the Master Plan and provide public benefits such as fulfilling long



term transportation goals established by the Master Plan Transportation Element for the County by providing important roadway improvements and removing approximately ninety nine existing homes in the Town of Minden from the FEMA 100 Year Flood Zone.

NOW THEREFORE, County and Owner agree as follows:

## 2. SELECTED DEFINITIONS

2.1 "Existing Development Approvals" means all permits, agreements and other entitlements approved, issued, or otherwise in existence on or before the Effective Date, which include, without limitation, Master Plan and zoning designations, tentative or final subdivision maps, parcel maps, design review, site improvement permits, variances, special use permits, and building permits.

2.2 "Master Plan" means the Douglas County Master Plan adopted April 18, 1996 by Resolution 96R-17, as amended from time to time.

2.3 "Owner" means Park Ranch Holdings, LLC, and other persons or entities or associations which hold any legal or equitable interest in the Property. "Owner" also includes any successors-in-interest to any or all of the foregoing.

2.4 "Property" means the property illustrated in Exhibit A, and includes the development of the Property as contemplated by this Agreement and approved by the County.

2.5 "Public Improvements" means any on-site or off-site improvements or facilities relating to the Property that will be offered for dedication to the County. Improvements include, but are not limited to, all streets, curbs, gutters, medians, parkways, pedestrian and bike paths, sidewalks, street lights, storm drains, and traffic signals or directional devices.

2.6 "Public Utilities" means infrastructure used to deliver water, sewer, natural gas, electricity, telephone, cable television, and telecommunication or fiber optics to the Property, together with all equipment and easements dedicated for these utilities.

2.7 "Reservation of Authority" means the rights and authority exempted from the vested development rights in section 5 of this Agreement and reserved to the County under further County approvals in section 7 of this Agreement.

2.8 "Vested Development Rights" means the irrevocable right to develop the Property in accordance with this Agreement, including the construction of two thousand five hundred (2,500) residential dwelling units as set forth in Sections 3 and 7.1, the Douglas County Code in effect as of the Effective Date to the extent such code provisions do not conflict with this Agreement, and the existing development approvals. The County, however, may unilaterally modify or amend Vested Development Rights to comply with future state or federal laws or regulations that supersede this Agreement.

2.9. "Effective Date" means the date upon which Ordinance 2019-1556 adopting this Agreement becomes effective.

### 3. PROPERTY DESCRIPTION

The Property includes approximately one thousand forty-four (1,044) acres adjacent to the Towns of Minden and Gardnerville, Nevada, east of U.S. Highway 395. The Property contains a significant portion of the future Muller Parkway. The Property is currently zoned Agricultural—19 acre (approximately 965 acres) and Rural Agriculture—5 acre minimum lot size (79 acres). The proposed Master Plan update will convert the Property's land use designation from Agricultural to Receiving Area.

Development of the Property is planned to include a variety of residential uses, however no "big box" commercial development of a commercial building in excess of 30,000 square feet of commercial space shall be allowed on the Property. The Property may be developed to the density and intensity permitted by existing and future development approvals. A more thorough description of future development of the Property will be set out in future maps, in improvement plans submitted for approval to the County Engineer, and applications for specific plans or planned development(s).

The Property shall be subject to a strict development limitation entitling Owner to develop and construct two thousand five hundred (2,500) residential dwelling units, subject to the Douglas County Building Permit Allocation and Growth Management Ordinance codified in Chapter 20.650 of the Douglas County Code, as amended prior to the Effective Date. The 2,500 unit cap shall be subject to corresponding reductions in the number of units Owner is entitled to develop pursuant to Section 7.1 of this Agreement if the Board approves any future zoning map amendment(s) to non-residential zoning other than Public Facilities. The Property shall not be subject to any Land Use designation changes without the consent of Owner or its successor(s)-in-interest for a period of not less than thirty (30) years from the Effective Date. However, the failure by Owner or its successor(s)-in-interest to timely cure a default under the terms of this Agreement may result in the revocation of the Receiving Area Land Use designation from the Property at the sole discretion of the Board. Because Owner has relinquished the Receiving Area Land Use designation for certain other property owned by Owner as a prerequisite for entering into this Agreement, in the event such a revocation occurs, Owner shall be entitled to the restoration of the Receiving Area Land Use designation for such other property as it existed on the Effective Date.

### 4. VESTED DEVELOPMENT RIGHTS

4.1 General Right to Develop. Subject to the terms of this Agreement, Owner has the right to develop the Property in accordance with the Vested Development Rights. The permitted uses of the Property, the density and intensity of use, the provisions for the reservation or dedication of land for public purposes, the phasing of the construction of public facilities, the standards for the design, improvements, and construction of the project, and other terms and conditions of development applicable to the Property are those set forth in this Agreement, in the Existing Development Approvals and the Douglas County Code in effect as of the Effective Date. Any amendment(s) to the current zoning of the Property may be processed according to County Code.

4.2 Master Plan. Owner has a Vested Development Right to the Master Plan Land Use Designation of the Property as Receiving Area and County hereby agrees not to unilaterally



rescind the Property's Receiving Area Land Use designation for a period of not less than thirty (30) years from the Effective Date.

4.3 Zoning. Owner has a Vested Development Right to receive zoning designations for the Property that are consistent with its Land Use designation as Receiving Area and with the development permitted by this Agreement.

## 5. OWNER'S OBLIGATIONS

5.1 Right-of-Way. Concurrent herewith, Owner shall offer to dedicate to the County public right-of-way approximately 205 feet wide, 15,295 feet long, and comprising approximately 75.7 acres by way of the grant, bargain and sale deed attached hereto as Exhibit C in the location described in Exhibit D and as depicted on the drawing identified as Exhibit E for use as Muller Parkway, multi-modal path(s) and additional drainage facilities. Owner shall also dedicate to the County additional public right-of-way approximately 100 feet in width across the entirety of APN 1320-20-000-017 immediately north of the existing 91.5 feet right-of-way in the location described in Exhibit D and illustrated on the drawing attached as Exhibit E by way of the same grant, bargain and sale deed. County shall promptly accept Park's offers of dedication. Any portion of the Muller Parkway right-of-way previously dedicated to County pursuant to the Original Agreement or the First Amendment thereto which is not within the right-of-way dedicated under this Agreement shall revert to Park by the process set forth in NRS 244.276. The Parties acknowledge that County's receipt of federal funding for the construction of Muller Parkway may necessitate the acquisition of additional right-of-way from Owner to, for example, accommodate bus stops, bus turnouts and/or autonomous bus routes. The Parties agree to negotiate in good faith for the acquisition of additional right-of-way necessitated by external requirements without the use of eminent domain proceedings. County shall pay to Owner the fair market value of such additional right-of-way should it become required.

5.2 Easement for Highway 88 Culverts. On or before January 3, 2020, Owner shall grant to County an easement on APN 1320-31-000-016 for the purpose of installing drainage culverts below Highway 88 described and illustrated in Exhibit F. The Parties agree to cooperate in good faith with each other and the County's agent Bender Rosenthal Inc. to execute the easement and any documents related thereto.

### 5.3 Muller Parkway Financial Contribution.

(a) County shall construct two lanes of Muller Parkway within the deeded right-of-way across the Ashland Park Property identified on Exhibit E from the northern Ashland Park Property parcel boundary south to Toler Lane for a total distance of approximately 2,604 linear feet. Owner and County agree to equally share the costs and expenses of constructing such two-lane segment of Muller Parkway across the Ashland Park Property in accordance with or exceeding the specifications contained in the County's Standard Detail for a 2 Lane Urban Arterial. The Parties acknowledge that design modifications to the Standard Detail for 2 Lane Urban Arterial may be required should County elect to construct four lanes of Muller Parkway and/or receive federal funding involving grant requirements which deviate from County's standard design. The Parties agree to cooperate in good faith to finalize the design criteria prior to the commencement of any construction. Notwithstanding County's decision to construct four lanes of Muller Parkway or to construct the road with enhanced design features County desires or which are required as a condition of receiving federal funding, Owner's obligation shall be only to share in the costs of



constructing two lanes of Muller Parkway meeting the County Standard Detail for a 2 Lane Urban Arterial in effect on the Effective Date. County shall complete construction of Muller Parkway through the Ashland Park Property within six (6) years of the Effective Date. The Parties agree that construction of the sidewalk(s) may be deferred until construction commences on adjacent onsite phase(s) of development of the Property, at which time Owner shall be responsible for the cost of construction for a pedestrian sidewalk of standard width as set forth in the County Code as of the Effective Date. County shall either not require or shall bear the cost of any enhancement of the sidewalk to include any multi-modal component. In the event that Owner desires to construct two lanes of Muller Parkway through the Ashland Park Property before County has commenced construction or entered into a contract for the construction of the road, Owner shall have the right to construct the road and County shall pay to Owner half of all material and construction expenses related thereto in the manner set forth in Section 5.3(b).

(b) When construction of the segment of Muller Parkway crossing the Ashland Park Property commences, County shall remit to Owner monthly requests for payment of half of all material and construction expenses related thereto. Requests for payment shall be submitted to Owner no later than thirty (30) days after the end of each month and include a summary of the expenditures reported. Owner shall promptly remit payment(s) to County no later than thirty (30) days after the payment request date(s). Failure by Owner to timely remit payment pursuant to this Paragraph shall constitute a default.

5.4 Water and Sewer. All new development within the Property shall be connected to municipal water and sewer utilities. Owner agrees to cooperate in good faith with the Town of Minden or other water service provider to locate and install infrastructure reasonably necessary to provide water service to the Property, including but not limited to new well(s). No new septic systems shall be approved or installed on the Property.

5.5 Standards and Code. Commencement and completion of the public facilities must conform to the applicable requirements of Nevada Revised Statutes and of the Douglas County Code in effect on the Effective Date. Owner shall pay all fees adopted by the County now and in the future, and the development of the Property shall be subject to the Douglas County Building Permit Allocation and Growth Management Ordinance in effect on the Effective Date. Development of the Property must comply with all applicable County ordinances and Title 20 of the Douglas County Code in effect on the Effective Date.

5.6 Cooperation. Owner agrees that it will cooperate with County in the implementation of this Agreement and to obtain all necessary applications, approvals, permits or to meet other requirements which are or may be necessary to implement this Agreement, including any requirements that may be imposed by receipt of or application for a Better Utilizing Investment to Leverage Development ("BUILD") grant. Owner's cooperation under this section shall not include any financial contributions or payment of costs. Nothing contained in this paragraph, however, shall be construed as an implicit pre-approval by County of any future permits necessary for the development of any property owned by the Owner.

5.7 Right of Entry. During the term of this Agreement and upon advance notice, Owner shall permit the County and its agents, employees and contractors to enter upon the Property and/or APN 1320-31-000-016 for the purpose of conducting survey work, drainage studies, site visits and similar undertakings reasonably related to the funding and construction of Muller



Parkway, or to install and maintain culverts or other drainage facilities upon the Property or APN 1320-31-000-016. Owner further agrees to promptly execute such instrument(s) necessary to the submission of a BUILD grant application acknowledging the County's right of entry and/or any documentation reasonably related to FEMA funding or other grant opportunities.

5.8 Klauber Ranch Easements and Conservation. Prior to the commencement of the development of the Property, Owner agrees to restrict any additional development on Owner's Klauber Ranch properties known as APNs 1319-25-000-021 and 1319-25-000-020 (collectively, "Klauber Ranch") through the use of deed restrictions or a conservation easement pursuant to either Douglas County Code Chapter 20.500, "Transfer Development Rights" or Douglas County Code section 20.714.020, "Clustered Development." Owner shall retain the right to construct six single-family dwellings on the Klauber Ranch Property to replace the six residential structures currently in existence thereon; provided, however, each such residential dwelling is on a parcel no larger than two acres that is not in a Special Flood Hazard Area. County shall approve the application to strip density from Klauber Ranch to apply towards development of the first residential dwelling units constructed on the Property. Concurrent with such deed restrictions or conservation easement placed on Klauber Ranch and County's approval of the application of density to the Property as set forth in this section, County will not deny an application to develop the Property using the density derived from the Klauber Ranch Property for the reason that any portion of Muller Parkway to be constructed as set forth in this Agreement has not been constructed or because the portion of the Property proposed to be developed is in a Special Flood Hazard Area. Owner further agrees to restrict all water rights to Klauber Ranch and dedicate to the County an approximately 7,330 foot-long trail easement immediately south of and parallel to Muller Lane across Klauber Ranch and Owner's properties identified as APNs 1319-24-000-007, 1319-23-000-013 and 1319-26-000-004. Owner and County agree to cooperate in good faith to determine the appropriate width and precise location of said easement. The Parties acknowledge that the water rights appurtenant to the Klauber Ranch parcels comprise approximately 90.95 acre feet per season and are identified in Application No. 87805 on file with the Nevada State Engineer.

5.9 Detention Ponds. The Parties acknowledge that, although County intends to install certain drainage facilities in conjunction with Muller Parkway, additional detention ponds may be required on Owner's parcel(s) in the area zoned "Industrial" immediately east of the Property. Owner and County agree to use their best efforts to determine the size and location of such detention pond(s) and ensure their timely construction, including consultation with and approval from the Douglas County Water Conveyance Advisory Committee. The Parties further acknowledge that, because such detention pond(s) will materially benefit both the Property and the County, the Parties will share equally the cost of constructing such ponds with the Owner.

## 6. COUNTY'S OBLIGATIONS

6.1 Muller Parkway Construction. County must commence and substantially complete the construction of at least two lanes of Muller Parkway in the location identified on Exhibit E beginning at the existing 91.5 feet public road right-of-way on APN 1320-20-000-017, thence southeast to the northern boundary of the Ashland Park Property for a total distance of approximately 12,691 linear feet at County's sole cost and expense, including seven access points as depicted in the attached Exhibit G. County shall also construct two lanes of Muller Parkway within the deeded right-of-way across the Ashland Park Property identified on Exhibit E from the



northern Ashland Park Property parcel boundary, then south to Toler Lane for a total distance of approximately 2,604 linear feet. Owner and County agree to equally share the costs and expenses of constructing such two-lane segment of Muller Parkway across the Ashland Park Property in accordance with the specifications contained in the Standard Detail for a 2 Lane Urban Arterial or such modified design as may be agreed to by the Parties to meet federal funding requirements and/or should County elect to construct four lanes of Muller Parkway. County shall complete the construction of both segments of Muller Parkway as described above within six (6) years of the Effective Date. The Parties agree that construction of the sidewalk(s) may be deferred until construction commences on adjacent onsite phase(s) of development of the Property, at which time Owner shall be responsible for the cost of constructing a pedestrian sidewalk of standard width as set forth in the County Code as of the Effective Date. County shall either not require or shall bear the cost of any enhancement of the sidewalk to include a multi-modal component. In the event that Owner desires to construct two lanes of Muller Parkway as illustrated in **Exhibit E** before County has commenced construction or entered into a contract for the construction of those segments of Muller Parkway, Owner shall have the right to construct the road and County shall pay to Owner 100% of all material and construction expenses, except for the Ashland Park segment, for which the County shall pay to Owner 50% of all material and construction expenses, in each case in the manner set forth in Section 5.3(b). Failure by County to timely construct Muller Parkway as set forth in the Agreement shall constitute a default which, if uncured, shall result in the reversion to Owner of all rights-of-way conveyed to County by Owner pursuant to this Agreement with the exception of the easement(s) on APN 1320-31-000-016. Any such reversion shall be by the process set forth in NRS 244.276.

6.2 If County constructs the segment of Muller Parkway illustrated in **Exhibit E** prior to the development of the portion of the Property lying west of the Muller Parkway right-of-way by Owner, County shall construct that segment of Muller Parkway in such a way as to preserve the conveyance of irrigation water originating east of Muller Parkway to the portion of Owner's land lying west of Muller Parkway.

6.3 Periodic Review. In accordance with the provisions of NRS 278.0205 and 278.02053, County shall review the progress of the Owner at least once every twenty-four (24) months to ensure that Owner has complied with the terms of this Agreement. Upon completion of this review, the County shall give notice to the Owner in writing of the results of the review. Within thirty (30) days of mailing written notice to the Owner, the County must place a copy of the results of its review on the agenda of the Board for consideration and action. If the Board determines that Owner has not complied with the terms of this Agreement, the Board may cancel or amend this Agreement as provided in NRS 278.0205 and Douglas County Code section 20.720.060.

6.4 Cooperation. The County agrees that it will cooperate with Owner in the implementation of this Agreement. Owner agrees that it will cooperate with County in the implementation of this Agreement.

## 7. FURTHER COUNTY APPROVALS

7.1 Zoning Map Amendment(s). The County retains a Reservation of Authority to review, pursuant to Chapter 20.610 of the Douglas County Code, future zoning map amendment(s) for the Property. The Parties acknowledge that Owner's contractual right to develop two thousand



five hundred units within the Property pursuant to this Agreement and the designation of the Property as Receiving Area shall be deemed sufficient to support the findings necessary for approval of zoning map amendment application(s) for single family residential zoning submitted by Owner pertaining to the Property. The Parties further acknowledge that Owner may apply for a zoning map amendment to "Light Industrial" zoning for a portion of the Property lying southwest of the future Muller Parkway which is immediately adjacent to existing "Light Industrial" zoned properties. The Parties agree that if the Board approves a zoning map amendment application(s) changing any portion(s) of the Property to non-residential zoning other than "Public Facilities," that a corresponding reduction to the number of units Owner is entitled to develop on the Property pursuant to Sections 2.8 and 3 of this Agreement shall be made. Such reduction(s) to Owner's unit cap shall be calculated on the basis of an assumed density of 2.4 units per acre. Accordingly, if a zoning map amendment is approved for a 100 acre portion of the Property to "Light Industrial" or other non-residential zoning, the Owner's unit cap shall be reduced by 240 units from 2,500 to 2,260 units.

7.2 Subdivision Map. The County retains a Reservation of Authority to review, in accordance with NRS 278.320, *et seq.*, any tentative and final map(s), and to disapprove any application for a final map if the final map is not prepared in accordance with the tentative map conditions and application requirements for a final map. The County grants to the Owner a period of three (3) years for the presentation of the final map prepared in accordance with the tentative map for the entire area for which a tentative map has been approved. The time requirements set forth in NRS 278.468 apply to this Agreement unless a longer time for filing is permitted by this Agreement.

7.3 The failure of County to approve a Zoning Map Amendment for any application requesting residential zoning as set forth in Section 7.1 or a tentative or final map as set forth in Section 7.2 shall result in a termination of this Agreement and County shall forthwith deed back to Owner all rights-of-way and easements deeded to County, except as to the easement for the culverts under Highway 88 and, as to that easement, County shall pay to Owner the fair market value of such easement as of the Effective Date.

#### 8. CONSISTENT WITH MASTER PLAN

The County agrees that the terms of this Agreement are consistent with the Master Plan, as amended through the Effective Date.

#### 9. TERM

The term of this Agreement will be thirty (30) years from the Effective Date.

#### 10. BINDS ONLY PARTIES AND SUCCESSORS-IN-INTEREST

The terms of this Agreement bind only the parties to this Agreement and their successors, grantees, and assigns. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. This Agreement does not create, and may not be construed as creating, any third-party rights of action in any other person or entity.

#### 11. EVENTS OF DEFAULT

11.1 Default Procedure. In the event of any alleged default of any material terms or conditions of this Agreement, the party alleging a default must give the other party not less than ninety (90) days' notice in writing specifying the nature of the alleged default and the manner in which the default may be satisfactorily cured. After notice and the expiration of the ninety (90) day period, the non-defaulting party to this Agreement, at its option, may determine that the default has been cured or declare that the Agreement has been breached and may institute legal proceedings pursuant to this Agreement. If the County is the non-defaulting party, it may give notice of intent to terminate pursuant to NRS 278.0205; provided, however, if the default is not of the type that could reasonably be cured within ninety (90) days, no action against the defaulting party may be taken during such time that the defaulting party is diligently working to cure the default. If notice of intent to terminate is given by the County, the matter must be scheduled for consideration and review by the Board at a public hearing. Following consideration of the facts and evidence presented in the review before the Board, the County may give written notice of termination of this Agreement to Owner. Owner will have the opportunity to be heard orally and in writing before the Board prior to any termination by County.

11.2 Events of Default. The following constitute events of default under this Agreement:

- (a) County's failure to commence or complete construction in accordance with section 6.1 of this Agreement.
- (b) Owner's failure to remit payment in accordance with section 5.3 of this Agreement.
- (c) An action taken by the County which is not related to its health, safety or welfare powers, and which directly and substantially affects Owner's rights under this Agreement or Owner's ability to fully perform its obligations under this Agreement.
- (d) A material breach by Owner or by the County of any provision of this Agreement.

11.3 Acts of God. Performance by either Party hereto shall not be deemed to be in breach or default where delays or breaches are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, avalanches, inclement weather, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities not parties to this Agreement, the enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, or similar bases for excused performance. If written notice of such delay is given by the delayed Party to the other Party within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, as may be mutually agreed upon. In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. County shall not be held liable to Owner for consequential, exemplary, incidental or punitive damages as a result of its failure to review or approve permits and entitlements in a timely manner.

## 12. REMEDIES

12.1 No Monetary Damages. The County and the Owner agree that neither party would have entered into this Agreement if it were to be liable for damages under or with respect to this Agreement, except for the amounts for which obligations arise under this Agreement.



Accordingly, the County and the Owner may pursue any remedy at law or equity available for breach, except that the County will not be liable to the Owner or to any other person for any monetary damages whatsoever, except for the amounts for which it is obligated in this Agreement and any costs or attorney's fees.

12.2 Specific Performance. The County and the Owner agree that neither party would have entered into this Agreement if they were unable to obtain the approvals cited in this Agreement, the vested rights and public facilities as consideration for this Agreement. Accordingly, each party may sue the other party for specific performance of the approvals. The County may also sue for the installation of those facilities that are necessary to the public's health, safety or welfare if Owner defaults under this Agreement and fails or refuses to perform as required in this Agreement.

### 13. NOTICES

All notices under this Agreement shall be sent, via first class certified return receipt mail, to the following addresses:

Park Ranch Holdings, LLC

Attn: David Park, Manager  
1300 Buckeye Road Suite A  
Minden, Nevada 89423  
Telephone:

with a copy to:

Oshinski & Forsberg, Ltd.  
Attn: Mark Forsberg, Esq.  
504 E. Musser St. Suite 202  
Carson City, NV 89701  
Telephone: (775) 301-4250

and, if the party so to be served is the County, addressed to the County as follows:

Douglas County Community Development  
Attn: Director  
1594 Esmeralda Avenue  
Minden, NV 89423  
Telephone: (775) 782-6201

### 14. MERGER

This Agreement constitutes the entire understanding of the parties and all prior negotiations and understandings are merged into this Agreement. This Agreement does not modify any presently existing conditions of approval for the Property.

### 15. AMENDMENTS

This Agreement may be amended by the parties by a written agreement that is adopted by the County through an ordinance in compliance with NRS 278.020 through 278.0207, inclusive. Within the limits granted by the County Code, the director of Community Development may make and approve minor modifications to this Agreement that are requested by Owner; provided that minor modifications will not affect the term of this Agreement, the permitted uses of the Property, or the dedication of the right-of-way, easements and Public Facilities required by this Agreement.

#### 16. SEVERABILITY

It is declared to be the intention of the parties that the sections, paragraphs, sentences, clauses, and phrases of this Agreement, or of the County ordinance adopting the same, are severable. If any phrase, clause, sentence, paragraph, or section of this Agreement, or of the County ordinance adopting same, is declared unconstitutional or invalid by a valid and final judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement, or of the County ordinance adopting same.

#### 17. AGREEMENT CONDITIONAL

This Agreement is conditioned upon the concurrent approval of the pending update to the Master Plan Land Use Map(s) changing the Land Use Designation of the Property to Receiving Area, and neither Party has any obligation hereunder until that occurrence. In the event that County does not approve said pending update to the Master Plan Land Use Map(s), as presented or as modified, this Agreement shall terminate.

County and Owner recognize that the construction of Muller Parkway requires the performance of County and parties to other development agreements with County and agree that if one or more of such developers fails to fulfill its obligations with respect to the construction of Muller Parkway or the dedication of right-of-way for Muller Parkway, or does not comply with the terms of its respective development agreement either voluntarily or by non-action, so long as Owner has timely performed all of its obligations under this Agreement, County will not impose on Owner any conditions that are made necessary or expedient by the failure of other persons to construct any portion of Muller Parkway.

#### 18. RECITALS AND EXHIBITS

The Recitals and all Exhibits to this Agreement are incorporated herein by this reference.

#### 19. LAW AND FORUM

The laws of Nevada shall govern the interpretation and enforcement of this Agreement. Owner and County agree that the Ninth Judicial District Court, located in Douglas County, Nevada, will be the forum for any litigation arising as a result of this Agreement.

County will not waive, and instead intends to assert, all available defenses under NRS Chapter 41 to limit liability as a political subdivision of the State of Nevada. Owner agrees that the County is under no legal or equitable obligation to enter into this Agreement and that the

County elects to be a party to this Agreement as a discretionary act in furtherance of its governmental policies relating to the development of property in the County.

21. AUTHORITY

Any individual signing this Agreement on behalf of the respective Parties represents that he or she is authorized by such Party and has the power to enter into this Agreement, and by such person's act such Party is bound hereto.

{Signatures on the following page.}

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This agreement is effective on the effective date of Ordinance 2019-1556-A.

**PARK RANCH HOLDINGS LLC,**  
a Nevada limited liability company

By: David Park

David Park, Manager

Date: 12-4-19

**DOUGLAS COUNTY, NEVADA,** a  
political subdivision of the State of  
Nevada

By: William B. Penzel

William B. Penzel, Chairman

Date: 12-05-2019

Attest:

Kathryn Lewis  
Douglas County Clerk

STATE OF NEVADA )

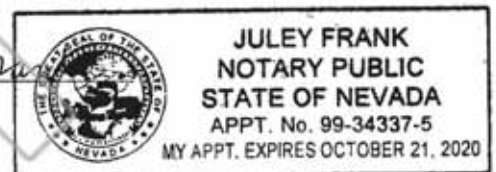
DOUGLAS COUNTY )

) ss.

On this 4<sup>th</sup> day of December, 2019, before me, the undersigned, a Notary Public in and for said state, personally appeared David Park, personally known or proved to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Juley Frank  
NOTARY PUBLIC



STATE OF NEVADA )

DOUGLAS COUNTY )

) ss.

On this 5<sup>th</sup> day of December, 2019, before me, the undersigned, a Notary Public in and for said state, personally appeared William B. Penzel, personally known or proved to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Shanna D. Greathouse  
NOTARY PUBLIC



Exhibits-

- Exhibit A: Map of the Property (1,044 acres exclusive of the 76ac. alignment of Muller)
- Exhibit B: Map of Receiving Area being stripped from Owner's land near Topaz
- Exhibit C: Form of Grant, Bargain and Sale Deed
- Exhibit D: Right-of-Way Legal Description
- Exhibit E: Right-of-Way Map
- Exhibit F: Highway 88 Culvert Easement Legal Description & Illustration
- Exhibit G: Map of future Muller Parkway showing Access Points

COPY

**EXHIBIT A**

COPY

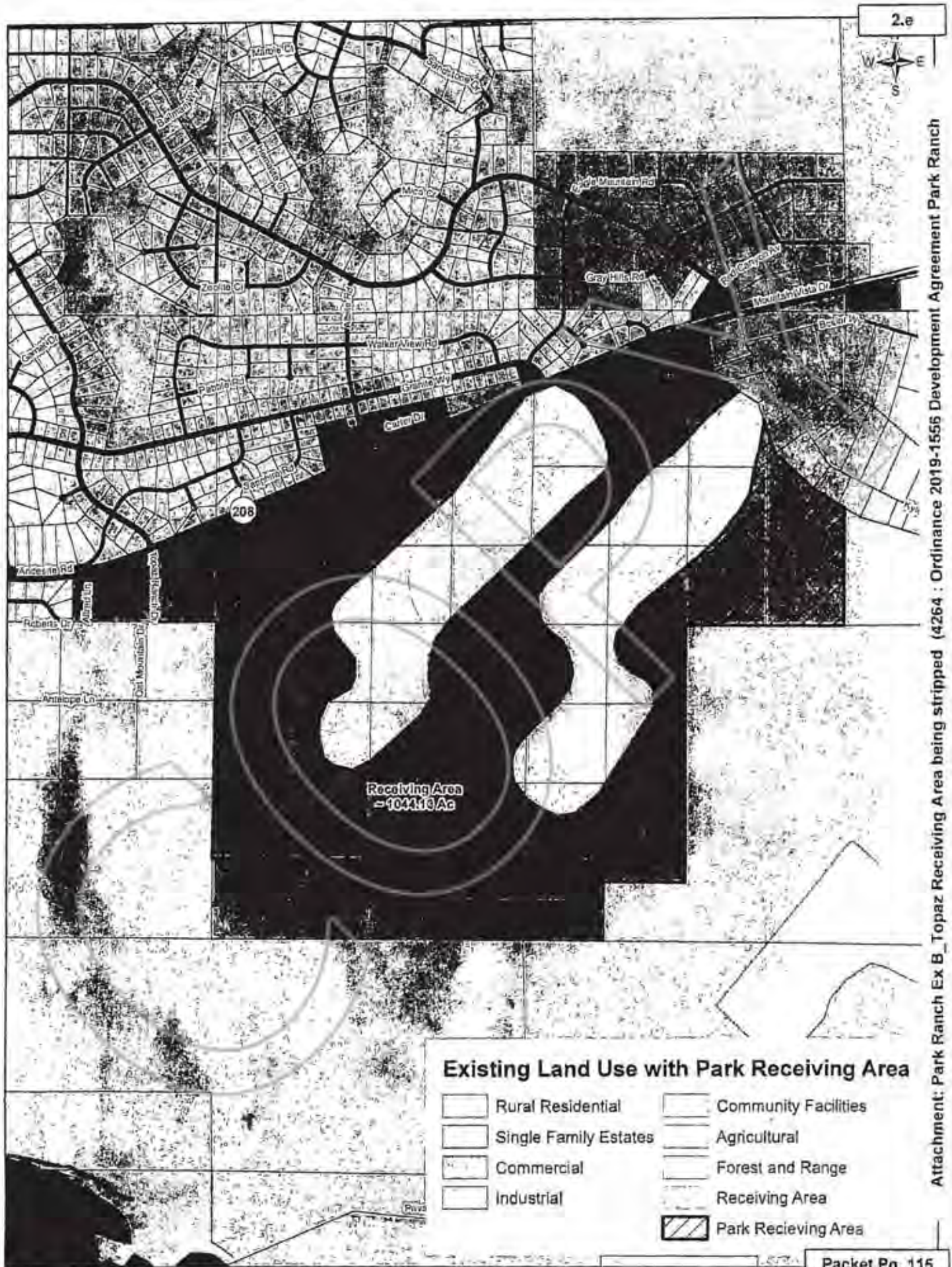




**EXHIBIT B**

COPY





**EXHIBIT C**

COPY



APNs: 1320-20-000-017; 1320-20-000-018; 1320-29-501-002; 1320-28-000-023; 1320-28-000-024; 1320-28-000-025; 1320-28-000-028; 1320-28-000-017; 1320-27-002-035; 1320-34-001-028; 1320-34-002-001; 1320-28-000-030; 1320-28-000-031; 1320-33-001-011; 1320-33-001-015; 1320-34-002-001; 1320-21-000-015; 1320-21-000-016; 1320-29-601-003; 1320-28-000-029; 1320-29-000-015; 1320-28-000-022; 1320-28-000-027; 1320-32-501-021; 1320-32-501-020; 1320-33-001-016; 1320-33-001-009; 1320-33-001-010; 1320-33-001-012; 1320-33-001-013; 1320-33-001-014; and 1320-31-000-002;

1320-31-000-002

RECORDING REQUESTED BY:

Oshinski & Forsberg, Ltd.  
504 E. Musser St., Suite 302  
Carson City, NV 89701

RECORDER'S USE

SPACE ABOVE THIS LINE FOR

The undersigned hereby affirms that this document submitted for recording does not contain the social security number of any person or persons. (NRS 239B.030)

GRANT, BARGAIN & SALE DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Park Ranch Holdings, LLC**, a Nevada limited liability company, hereby grants, bargains, sells and conveys to Douglas County, a political subdivision of the State of Nevada, that certain real property situated in the County of Douglas, State of Nevada, more particularly described on Exhibit A and illustrated on Exhibit B, attached hereto and by reference made a part hereof.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

Excluding all Water Rights.

WITNESS my hand this 4<sup>th</sup> day of Dec, 2019.

PARK RANCH HOLDINGS, LLC

By: David Park

Its: Manager

STATE OF NEVADA

)  
) ss.

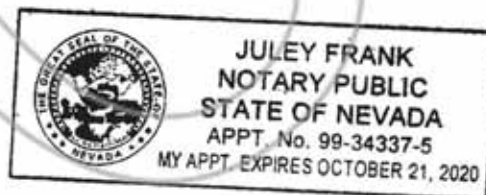
COUNTY OF Douglas

On this 4<sup>th</sup> day of December, 2019, before me, the undersigned, a Notary Public in and for the State of Nevada, personally appeared, personally known or proved to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Juley Frank

NOTARY PUBLIC



**EXHIBIT D**

COPY

**DESCRIPTION  
PROPOSED MULLER PARKWAY**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A strip of land for public purposes located within portions of Sections 28, 33 & 34, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

**BEGINNING** at the southeast corner of Adjusted Parcel 25-080-07 as shown on the Record of Survey to Support a Boundary Line Adjustment for Rhoda Chichester Revocable Trust, Robert L. Chichester Jr., Ross J. Chichester & Lester Leroy and Anita Thran Stodick Family Trust, filed for record June 21, 1995 in the office of Recorder, Douglas County, Nevada as Document No. 364543, said point falling on the northerly right-of-way line of Toler Lane;

thence along said northerly right-of-way line of Toler Lane, North 89°20'18" West, 259.39 feet;

thence along the arc of a curve to the right, having a radius of 130.00 feet, central angle of 57°00'43", arc length of 129.36 feet, and chord bearing and distance of North 14°34'47" East, 124.09 feet;

thence along the arc of a reverse curve to the left, having a radius of 100.00 feet, central angle of 42°06'03", arc length of 73.48 feet, and chord bearing and distance of North 22°02'07" East, 71.84 feet;

thence North 00°59'06" East, 4,432.59 feet;

thence along the arc of a curve to the left, having a radius of 1,447.50 feet, central angle of 44°44'56", arc length of 1,130.52 feet, and chord bearing and distance of North 21°23'22" West, 1,102.01 feet;

thence North 43°45'50" West, 2,243.28 feet;

thence along the arc of a curve to the left, having a radius of 1,297.50 feet, central angle of 16°44'23", arc length of 379.08 feet, and chord bearing and distance of North 52°08'02" West, 377.74 feet;

thence North 60°30'13" West, 169.48 feet;

thence along the arc of a curve to the right, having a radius of 552.50 feet, central angle of 26°24'31", arc length of 252.41 feet, and chord bearing and distance of North 47°17'57" West, 252.41 feet;

thence along the arc of a reverse curve to the left, having a radius of 100.00 feet, central angle of 41°35'35", arc length of 72.59 feet, and chord bearing and distance of North 54°53'29" West, 71.01 feet;

thence along the arc of a reverse curve to the right, having a radius of 130.00 feet, central angle of 58°16'21", arc length of 132.22 feet, and chord bearing and distance of North 46°33'06" West, 126.59 feet to a point on the southerly right-of-way line of Buckeye Road;

thence along said southerly right-of-way line of Buckeye Road, South 89°29'43" East, 440.26 feet;



thence South 43°15'48" East, 1,655.08 feet;  
thence South 43°58'59" East, 1,981.44 feet to a point on the easterly boundary of Adjusted Parcel 52 per the Record of Survey to Support a Boundary Line Adjustment for Park Cattle Company, filed for record October 30, 2008 in said office of Recorder as Document No. 732299;

thence along said easterly boundary of Adjusted Parcel 52, South 00°59'06" West, 2,649.79 feet to a point on the easterly boundary of said Adjusted A.P.N. 25-080-07;

thence along said easterly boundary of Adjusted A.P.N. 25-080-07 the following courses:

South 00°59'56" West, 647.43 feet;  
South 89°01'29" East, 8.92 feet;  
South 01°15'34" West, 1,950.89 feet to the **POINT OF BEGINNING**,  
containing 41.58 acres, more or less.

**TOGETHER WITH:**

A strip of land for public purposes located within portions of Sections 20, 21, 28 & 29, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

**COMMENCING** at the northwest corner of Adjusted Parcel 26 as shown on the Map of Division into Large Parcels for Edgewood Companies, filed for record June 15, 2009 in said office of Recorder, as Document No. 745140, said point falling on the easterly right-of-way line of Heybourne Road;

thence along said easterly right-of-way line of Heybourne Road, South 00°48'13" West, 984.08 feet to the **POINT OF BEGINNING**;

thence South 89°30'10" East, 1,549.21 feet;

thence along the arc of a curve to the right, having a radius of 1,502.50 feet, central angle of 31°06'31", arc length of 815.78 feet, and chord bearing and distance of South 73°56'55" East, 805.79 feet;

thence South 58°23'39" East, 131.56 feet;

thence along the arc of a curve to the left, having a radius of 1,197.50 feet, central angle of 30°59'32", arc length of 647.75 feet, and chord bearing and distance of South 73°53'25" East, 639.88 feet;

thence South 89°23'11" East, 1,226.14 feet;

thence along the arc of a curve to the right, having a radius of 1,502.50 feet, central angle of 65°33'06", arc length of 1,719.00 feet, and chord bearing and distance of South 56°36'38" East, 1,626.77 feet;

thence South 23°50'05" East, 1,769.09 feet;

thence South 43°15'48" East, 248.30 feet to a point on the northerly right-of-way line of Buckeye Road;

thence along said northerly right-of-way line of Buckeye Road, North 89°29'43" West, 363.62 feet;

thence along the arc of a curve to the right, non-tangent to the preceding course,

having a radius of 130.00 feet, central angle of  $06^{\circ}12'29''$ , arc length of 14.09 feet, and chord bearing and distance of North  $21^{\circ}31'44''$  East, 14.08 feet;

thence along the arc of a reverse curve to the left, having a radius of 100.00 feet, central angle of  $48^{\circ}28'03''$ , arc length of 84.59 feet, and chord bearing and distance of North  $00^{\circ}23'57''$  East, 82.09 feet;

thence North  $23^{\circ}50'05''$  West, 1,768.64 feet;

thence along the arc of a curve to the left, having a radius of 1,297.50 feet, central angle of  $65^{\circ}33'06''$ , arc length of 1,484.46 feet, and chord bearing and distance of North  $56^{\circ}36'38''$  West, 1,404.82 feet;

thence North  $89^{\circ}23'11''$  West, 1,226.14 feet;

thence along the arc of a curve to the right, having a radius of 1,402.50 feet, central angle of  $30^{\circ}59'32''$ , arc length of 758.64 feet, and chord bearing and distance of North  $73^{\circ}53'25''$  West, 749.42 feet;

thence North  $58^{\circ}23'39''$  West, 131.56 feet;

thence along the arc of a curve to the left, having a radius of 1,297.50 feet, central angle of  $31^{\circ}06'32''$ , arc length of 704.48 feet, and chord bearing and distance of North  $73^{\circ}56'55''$  West, 695.86 feet to the southeasterly terminus of Muller Parkway;

thence along the easterly right-of-way line of said Muller Parkway, North  $00^{\circ}30'18''$  East, 91.50 feet to the northeasterly terminus of said Muller Parkway;

thence along the easterly right-of-way line of said Muller Parkway, North  $89^{\circ}30'10''$  West, 1,522.17 feet;

thence along the arc of a curve to the right, having a radius of 27.50 feet, central angle of  $90^{\circ}18'23''$ , arc length of 43.34 feet, and chord bearing and distance of North  $44^{\circ}20'58''$  West, 38.99 feet to a point on said easterly right-of-way line of Heybourne Road;

thence along said easterly right-of-way line of Heybourne Road, North  $00^{\circ}48'13''$  East, 85.85 feet to the **POINT OF BEGINNING**, containing 34.10 acres, more or less.

The total combined acreage of this description is 75.68 acres, more or less.

The Basis of Bearing of this description is identical to the Map of Division into Large Parcels for Edgewood Companies, filed for record June 15, 2009 in the office of Recorder, Douglas County, Nevada as Document No. 745140.

Prepared By: R.O. ANDERSON ENGINEERING, INC.  
Matthew P. Bernard, PLS 11172  
P.O. Box 2229  
Minden, Nevada 89423

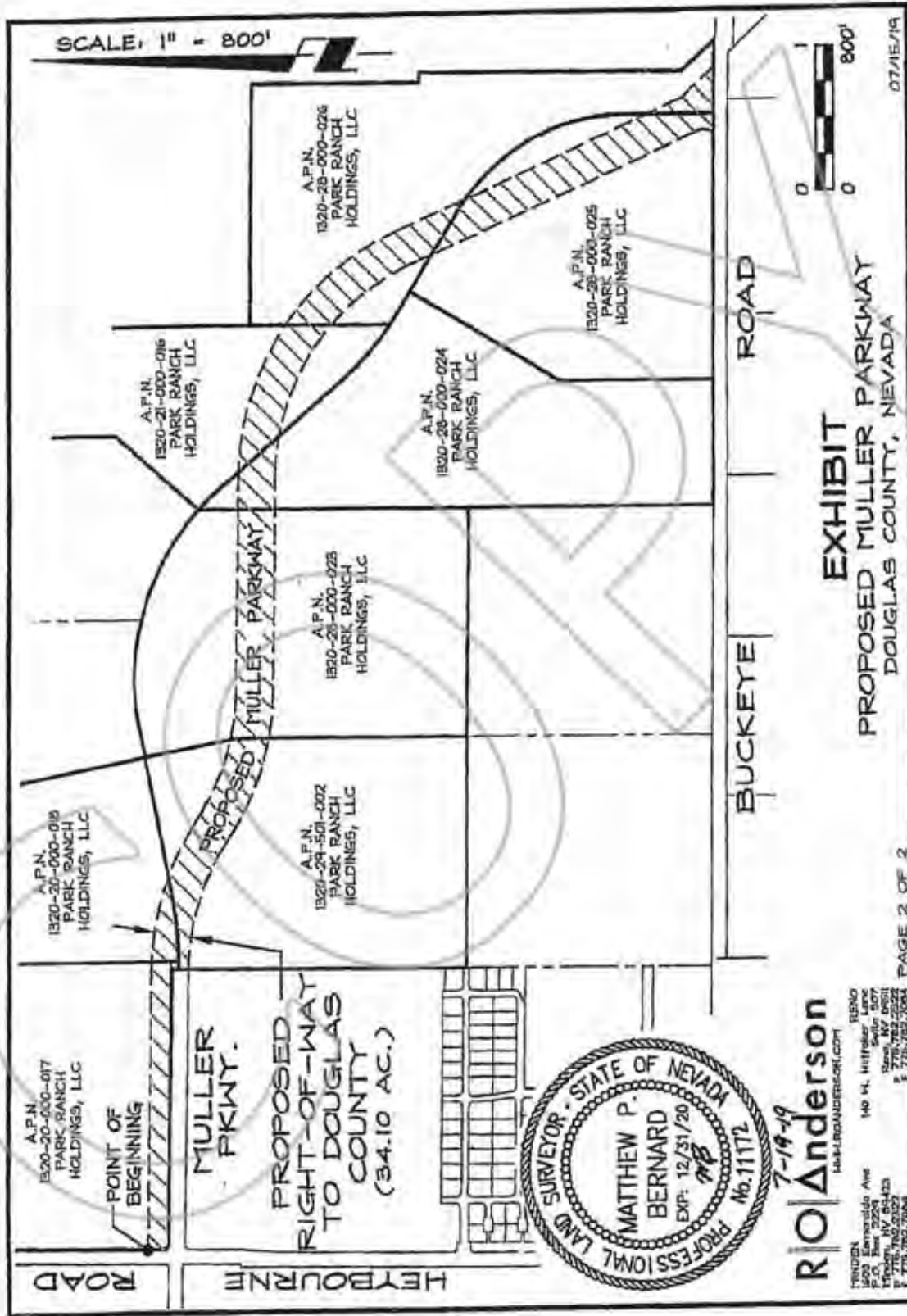


7-19-19

**EXHIBIT E**

COPY





**R/O Anderson**

**7-19-19**

**140 N. Hillaker Lane**

**Las Vegas, NV 89102**

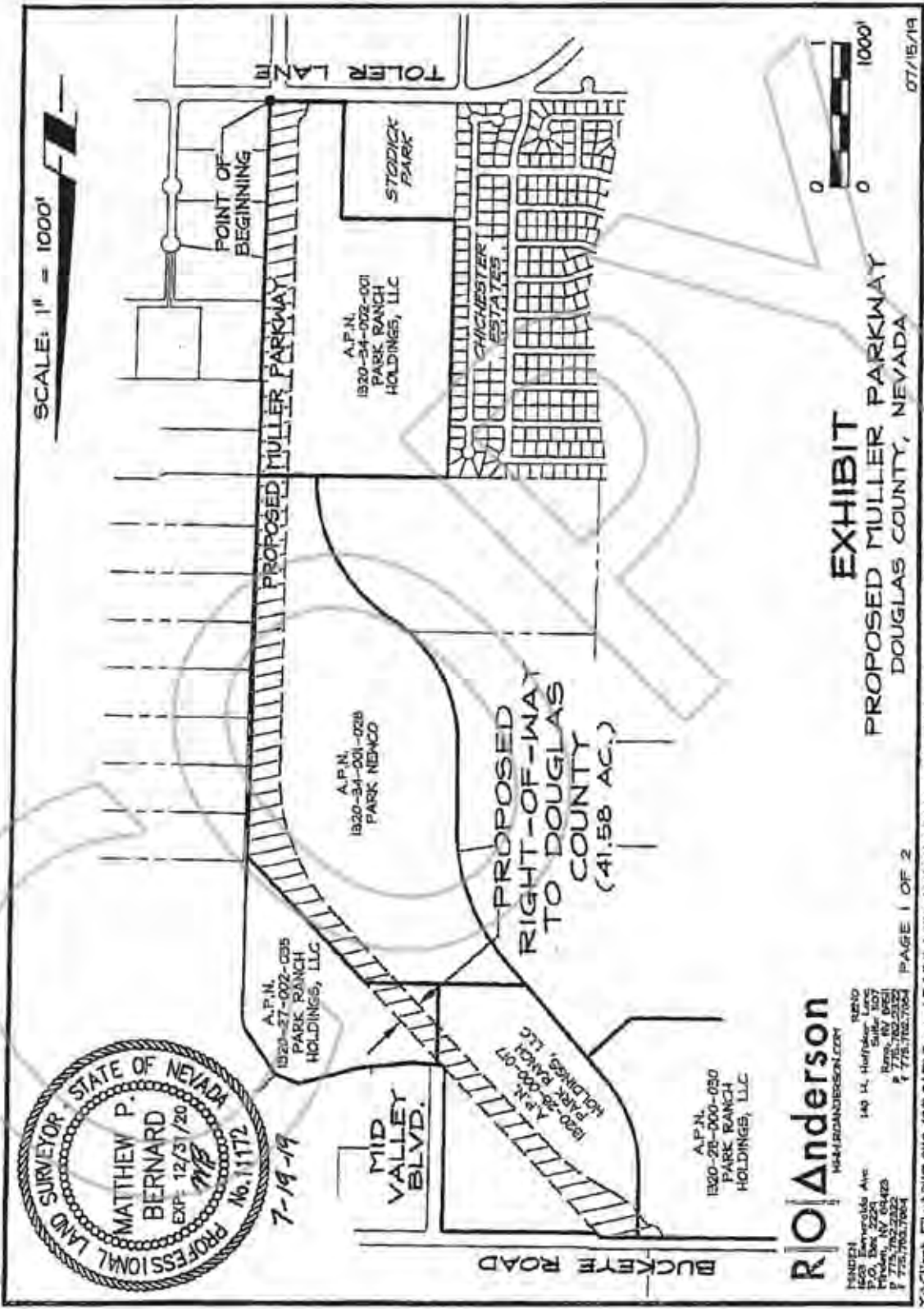
**TEL: 702.782.7004**

**FAX: 702.782.7004**

**www.ROANDERSON.COM**



SCALE: 1" = 1000'



**R/O Anderson**  
144-ROANDERSON.COM

144-ROANDERSON.COM  
144 H. Huffaker Lane  
P.O. Box 2224  
Palm Springs, CA 92262  
P 775-763-7042  
F 775-763-7044

### EXHIBIT

PROPOSED MULLER PARKWAY  
DOUGLAS COUNTY, NEVADA

PAGE 1 OF 2

07/15/19

Client: Files\010-120\CAD\Survey\Exhibits\010-120\EXH-MULLER-SOUTH.dwg 7/19/2019 9:06:04 PM Dina Schmitt Busch

DC011541

**EXHIBIT F**

COPY

**EXHIBIT "A"**  
**PUBLIC DRAINAGE EASEMENT**  
**LEGAL DESCRIPTION**

PARK RANCH HOLDINGS, LLC  
APN 1320-31-000-016

A portion of Lot 1 of Section 31 in Township 13 North, Range 20 East, M.D.B. & M., Douglas County, Nevada, more particularly described as follows:

**BEGINNING** at a point on the westerly right of way line of State Route 88 at approximate Engineer's Station "O1" 35+18.21, from which point the Southwest corner of said Section 31 bears South 30°49'18" West, 4955.87 feet distance;

**THENCE** North 79°19'18" West, 149.18 feet;

**THENCE** North 68°00'22" West, 188.19 feet;

**THENCE** North 86°03'39" West, 309.99 feet;

**THENCE** North 01°34'25" East, 120.03 feet;

**THENCE** South 88°43'50" East, 308.66 feet;

**THENCE** South 74°03'46" East, 84.17 feet;

**THENCE** South 69°16'40" East, 181.49 feet;

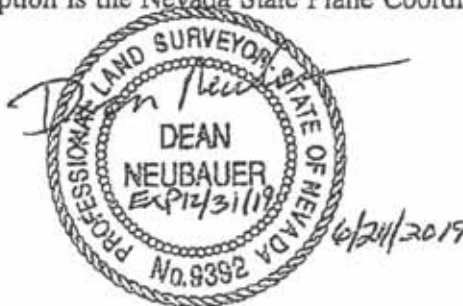
**THENCE** North 89°03'44" East, 71.81 feet to the westerly right of way line of State Route 88;

**THENCE** along the westerly line of State Route 88, South 01°34'25" West, 146.46 feet to the **POINT OF BEGINNING**.

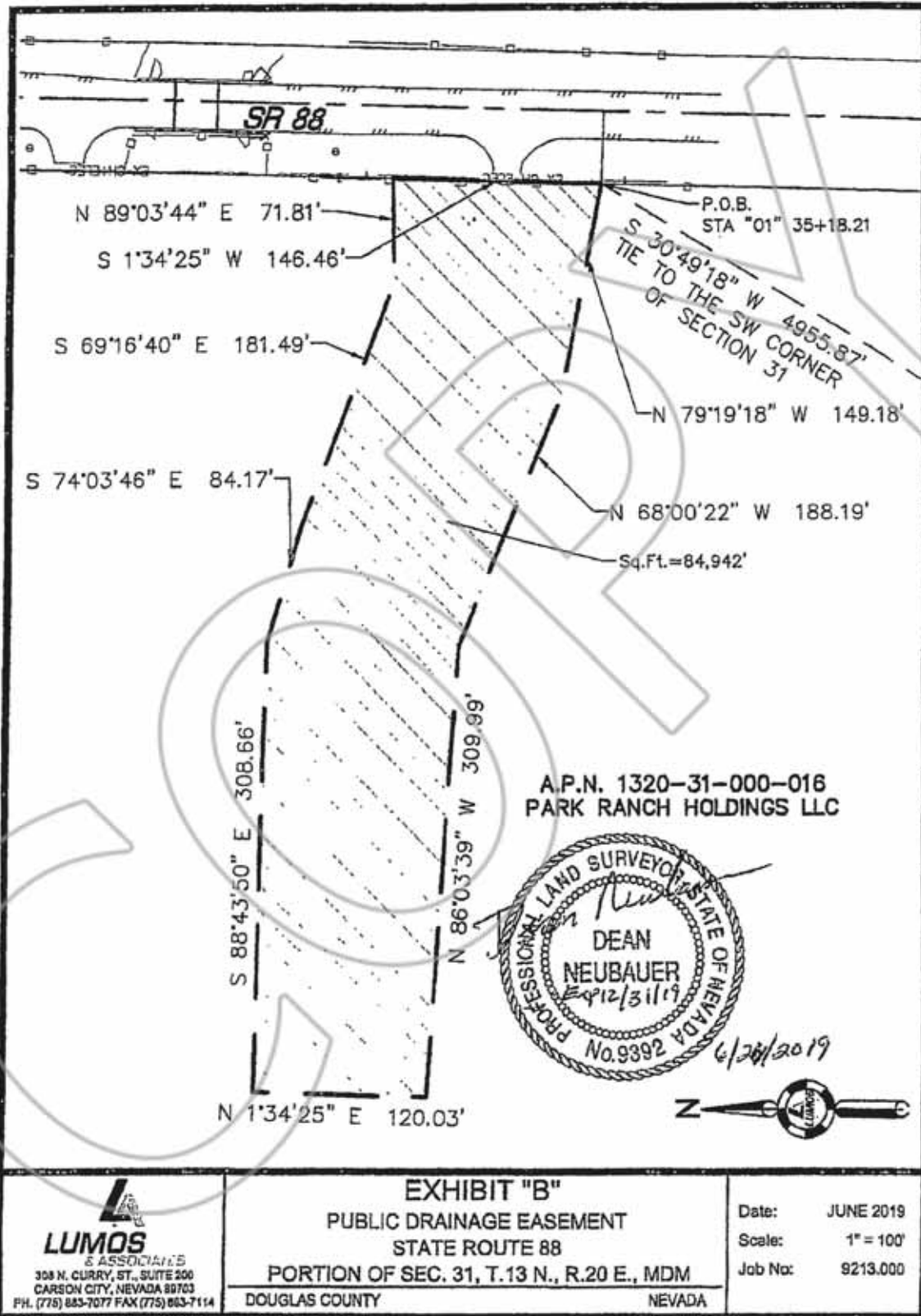
This easement contains 84,942 square feet more or less.

The basis of bearings for this legal description is the Nevada State Plane Coordinate System of 1983, West Zone, NAD 83/94.

Prepared under the supervision of  
Dean Neubauer, P.L.S. 9392  
800 E. College Parkway  
Carson City, NV 89706









**EXHIBIT "A"**  
**TEMPORARY CONSTRUCTION EASEMENT**  
**LEGAL DESCRIPTION**

PARK RANCH HOLDINGS, LLC  
APN 1320-31-000-016

A portion of Lot 1 of Section 31 in Township 13 North, Range 20 East, M.D.B. & M., Douglas County, Nevada, more particularly described as follows:

**BEGINNING** at a point on the westerly right of way line of State Route 88 at approximate Engineer's Station "O1" 35+28.33, from which point the Southwest corner of said Section 31 bears South 30°52'44" West, 4947.03 feet distance;

**THENCE** North 79°19'18" West, 151.77 feet;

**THENCE** North 68°00'22" West, 187.59 feet;

**THENCE** North 86°03'39" West, 318.00 feet;

**THENCE** North 01°34'25" East, 139.57 feet;

**THENCE** South 88°43'50" East, 319.89 feet;

**THENCE** South 74°03'46" East, 85.87 feet;

**THENCE** South 69°16'40" East, 180.00 feet;

**THENCE** North 89°03'44" East, 70.33 feet to the westerly right of way line of State Route 88;

**THENCE** along the westerly line of State Route 88, South 01°34'25" West, 166.60 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM**

A Public Drainage Easement being a portion of Lot 1 of Section 31 in Township 13 North, Range 20 East, M.D.B. & M., Douglas County, Nevada, more particularly described as follows:

**BEGINNING** at a point on the westerly right of way line of State Route 88 at approximate Engineer's Station "O1" 35+18.21, from which point the Southwest corner of said Section 31 bears South 30°49'18" West, 4955.87 feet distance;

**THENCE** North 79°19'18" West, 149.18 feet;

**THENCE** North 68°00'22" West, 188.19 feet;

**THENCE** North 86°03'39" West, 309.99 feet;

**THENCE** North 01°34'25" East, 120.03 feet;

**THENCE** South 88°43'50" East, 308.66 feet;

**THENCE** South 74°03'46" East, 84.17 feet;

**THENCE** South 69°16'40" East, 181.49 feet;

**THENCE** North 89°03'44" East, 71.81 feet to the westerly right of way line of State Route 88;

**THENCE** along the westerly line of State Route 88, South 01°34'25" West, 146.46 feet to the **POINT OF BEGINNING**.

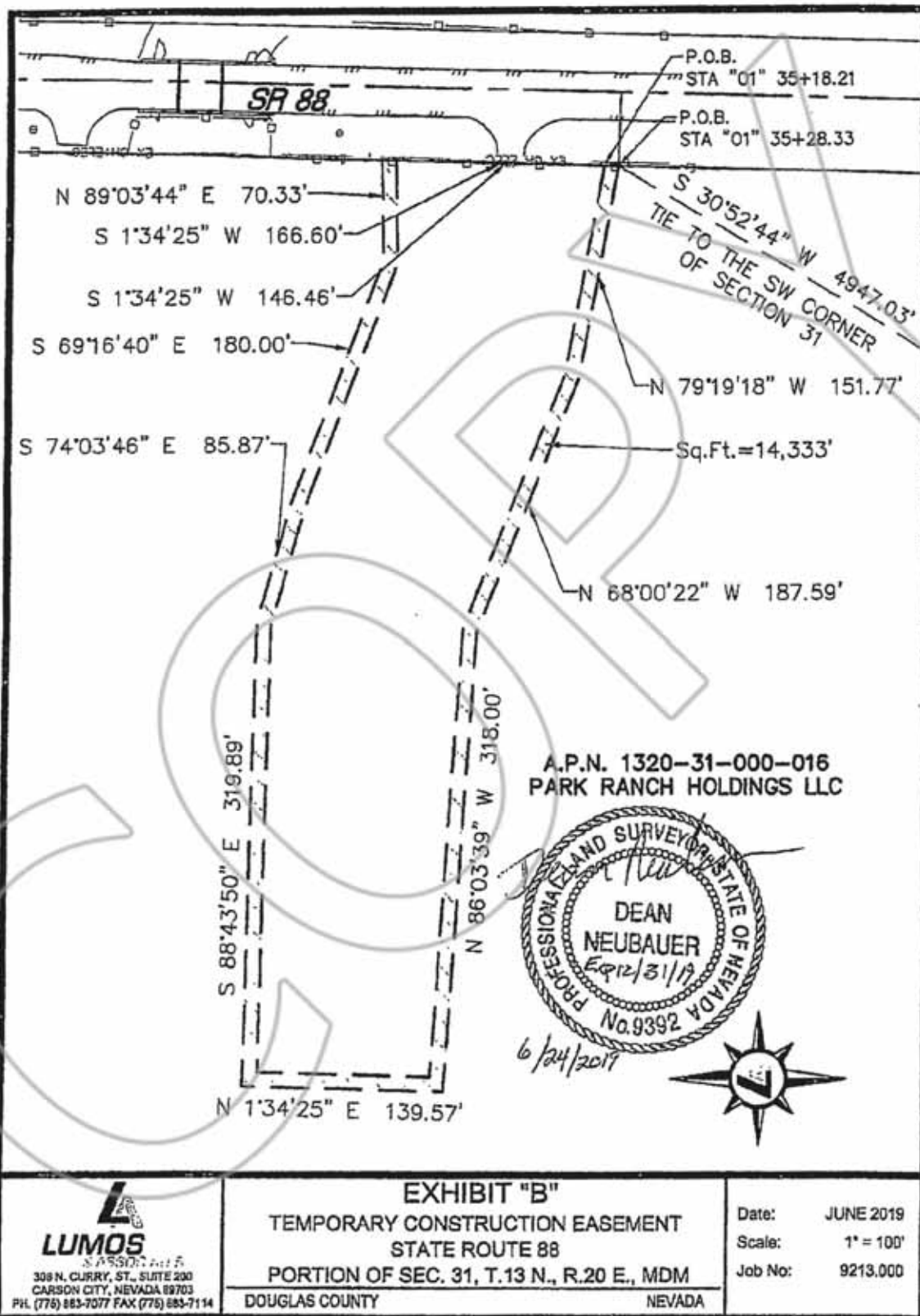
This public drainage easement contains 84,942 square feet more or less.

This temporary construction easement contains 14,333 square feet more or less.

The basis of bearings for these legal descriptions is the Nevada State Plane Coordinate System of 1983, West Zone, NAD 83/94.

Prepared under the supervision of  
Dean Neubauer, P.L.S. 9392  
308 N. Curry Street, Suite 200  
Carson City, NV 89703

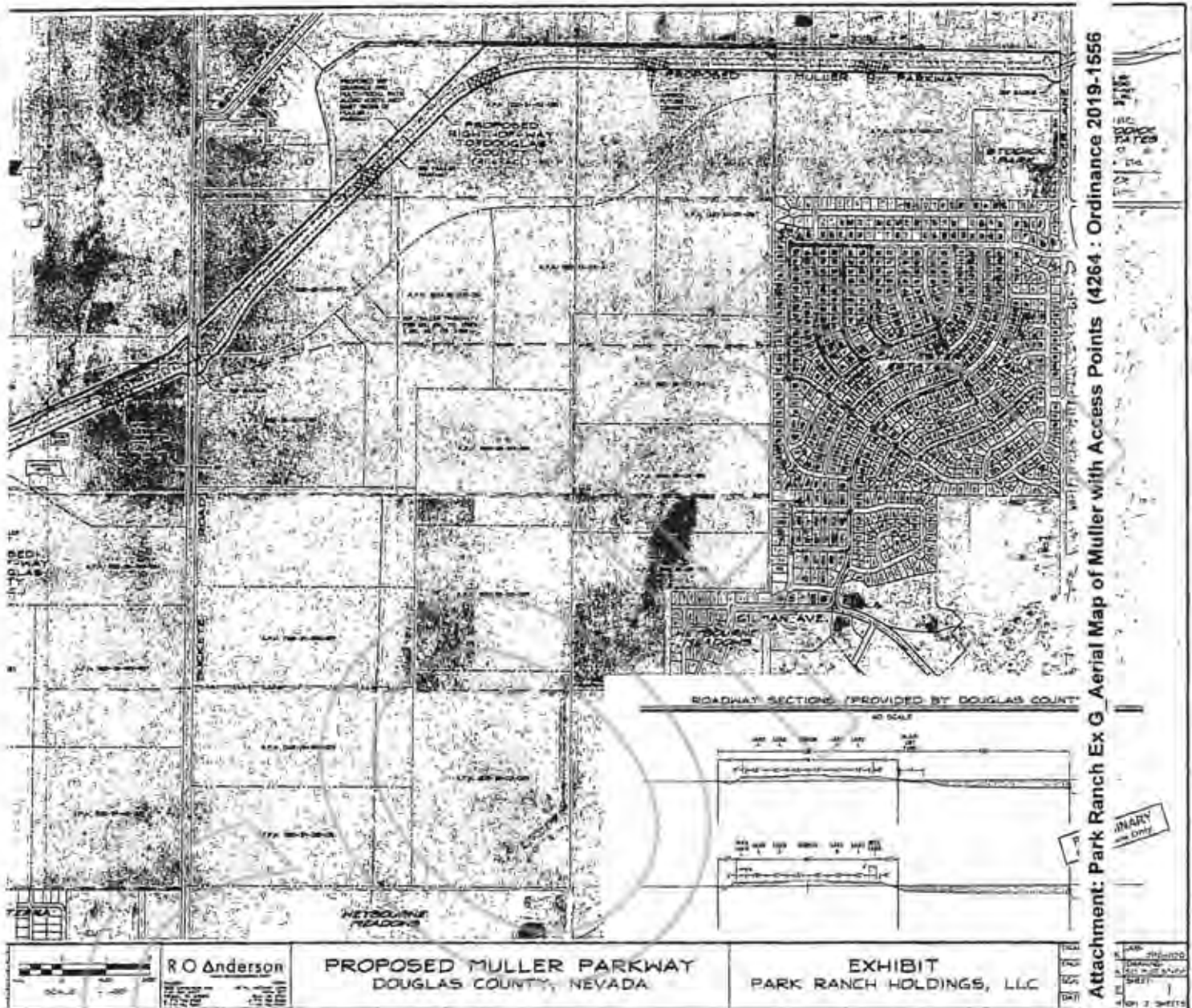




**EXHIBIT G**

COPY





Packet Pg. 128

Douglas County

State of Nevada

## CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

10th day of *April* 20*19*  
By *[Signature]* Deputy

DC011549



# **EXHIBIT 6**

Excerpts of the Agenda Packet for the December 3,  
2019, Board of County Commissioners' Meeting

**EXHIBIT 6**

## Douglas County Board of Commissioners

### Meeting Agenda



Barry Penzel, Chairman, District 5  
Larry Walsh, Vice Chairman, District 3  
Dave Nelson, District 1  
John Engels, District 2  
Wesley Rice, District 4

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**Tuesday, December 3, 2019**

**9:00 AM**

**CVIC Hall  
1604 Esmeralda Ave. Minden, NV**

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#### **MISSION STATEMENT**

*Working together with integrity and accountability, the Douglas County team is dedicated to providing essential and cost-effective public services fostering a safe, healthy, scenic, and vibrant community for the enjoyment of our residents and visitors.*

Copies of the finalized agenda are posted at the following locations prior to the meeting day: Minden Inn, Administration Building (Historic Courthouse), Judicial and Law Enforcement Center, and Community and Senior Center. Questions concerning the agenda should be referred to the County Manager's Office at 775-782-9821.

The Board of County Commissioners sit jointly as the following Boards: Liquor Board, License Board, Tahoe-Douglas Transportation District Board, Water District Board, and the Redevelopment Agency. Agenda items may be taken out of order, may be combined for consideration, or may be removed from the agenda at any time. All items designated "for possible action" shall include discussion and possible action to approve, modify, deny, take "no action," or continue the item.

It is the intent of the Board of County Commissioners to protect the dignity of citizens who wish to comment before the Board. It is also the County Commissioner's wish to provide the citizens of Douglas County with an environment that upholds the highest professional standards. Citizens should have the ability to freely comment on items and/or projects that are brought before the Board for action without interference.

In order to ensure that every citizen desiring to speak before the Board has the opportunity to express his or her opinion, it is requested that the audience refrain from making comments, hand clapping or making any remarks or gestures that may interrupt, interfere or prevent the speaker from commenting on any present or future project. Persons desiring an opportunity to address the Board of County Commissioners and who are unable to attend the meeting are requested to send an email to [clerk@douglasnv.us](mailto:clerk@douglasnv.us) at the Douglas County Clerk's Office at least 24 hours prior to the convening of the Commission meeting.

Copies of supporting material can be requested in person from the Douglas County Clerk/Treasurer's Office, 1616 8th Street, Minden, Nevada or by calling 775-782-9014. Supporting material can also be found at <http://douglascountynv.iqm2.com> and <https://notice.nv.gov>. During the public hearing, supporting materials can be viewed in the Public Information Binder located at the entrance to the meeting room.

**Notice to Persons with Disabilities:** Members of the public who are disabled and require special assistance or accommodations at the meeting are requested to notify the Clerk's Office in writing at Post Office Box 218, Minden, Nevada 89423 or by calling 782-9821 at least 20 hours in advance.



**COMMUNITY DEVELOPMENT**  
1594 Esmeralda Avenue, Minden, Nevada 89423

Tom Dallaire, P.E.  
Community Development Director

775-782-6201  
FAX: 775-782-6297  
website: [www.douglascountynv.gov](http://www.douglascountynv.gov)

Building Division  
Engineering Division  
Planning Division  
Code Enforcement

## MEMORANDUM

Date: November 20, 2019

To: Douglas County Board of Commissioners

From: Tom Dallaire, P.E, Community Development Director  
Sam Booth, AICP, Planning Manager  
Jenifer Davidson, Assistant County Manager

Subject: 2019/2020 Master Plan Update (ref DP 19-0327)

### I. REQUEST

1. For Possible Action. Discussion on adoption of Resolution Number 2019R-039-A by the Planning Commission on the 20-year update to the Douglas County Master Plan, which includes the following proposed amendments to the Future Land Use Map(s) and Master Plan Text as set forth in parts A, B, C & D below:

A) Discussion on Master Plan Text Amendments to Chapter 2-Land Use Element, amending Policy 3.2 to establish a single Future Land Use Map and refer to the multiple maps depicting future land use in specific regions, designated communities or other distinct areas as a diagram(s);

B) Discussion on Master Plan Future Land Use Map Amendment, amending the Community Plan boundaries to conform to current and future land uses as set forth in the Master Plan Chapter 2- Land Use Element, for and between the following Community Plans: Indian Hills/Jacks Valley, Agricultural (North, South & Central), Airport, Johnson Lane, East Valley, Gardnerville Ranchos, Minden/Gardnerville, and establishing separate Community Plans for the unincorporated Towns of Gardnerville and Minden;

B.1) Northern Agricultural and Indian Hills/Jacks Valley, Subject APN(s): 1419-00-001-017 thru 020, 1419-00-001-024 & 025, 1419-00-001-036, 1419-00-002-043, 1419-03-001-001 thru- 004, 1419-03-001-006 & 007, 1419-03-002-001& -002, 1419-03-002-010 thru- 043, 1419-03-002-045, 1419-03-002-050 thru -067, 1419-03-002-070 thru -115, 1419-04-001-001 thru -010, 1419-04-001-001 thru -010, 1419-04-002-001 thru -061, 1419-04-002-063, 1419-04-002-065, 1419-09-000-005, 1419-10-001-001 thru -020, 1419-10-001-024 thru -025, 1419-10-001-027 thru -035, and 1419-10-002-001 & -002;

MAILING ADDRESS: P.O. Box 218, Minden, Nevada 89423

designed neighborhoods.

- **P1.24 NEIGHBORHOOD PLANNING**

Develop a neighborhoods element in the Plan for Prosperity to be included in the Douglas County Master Plan. The element should include the name and location of existing and future neighborhoods, places, connections concepts, and development concepts guidelines.

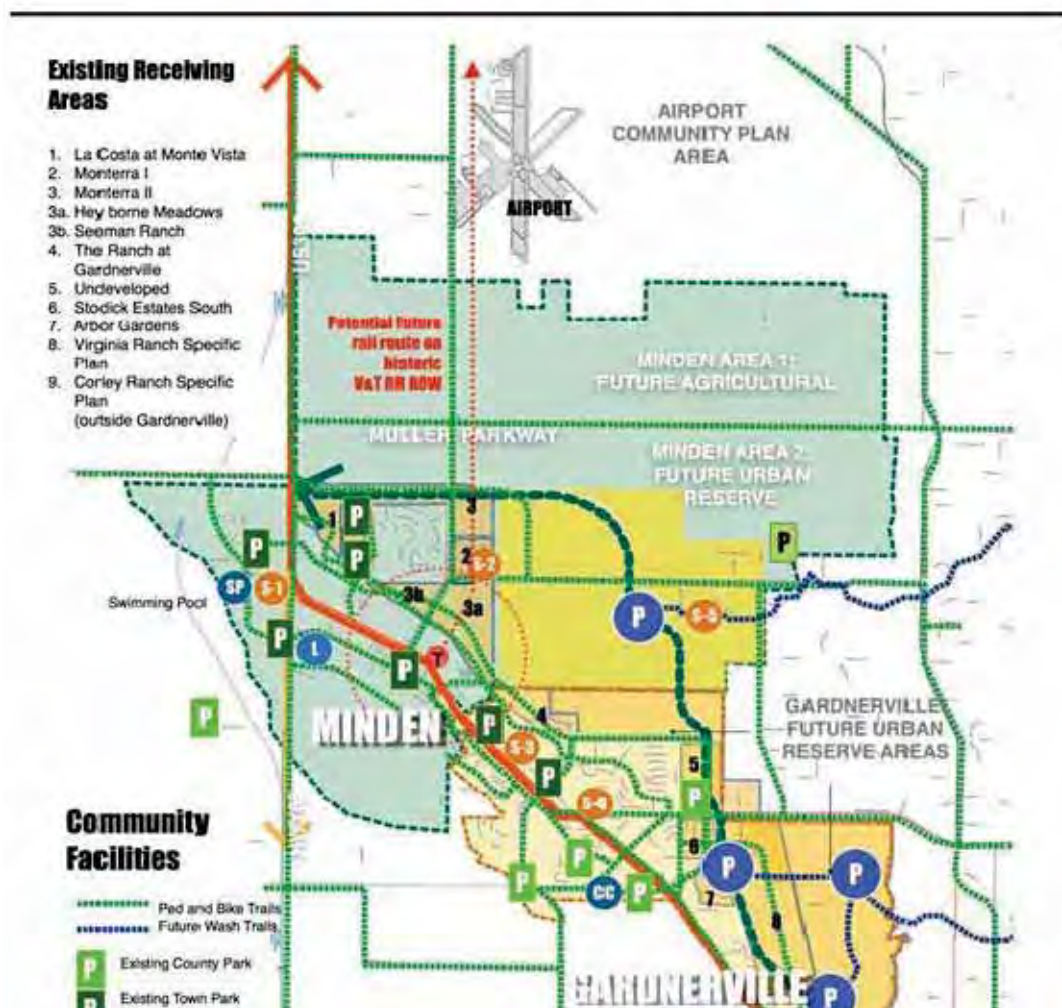
Community Facilities Image and Identity Goal 5- To make Muller Parkway into a multi-modal corridor with connected trails and open spaces.

- **P5.38 MULLER PARKWAY AS AN AMENITY**

Develop Muller Parkway as a neighborhood connector where wetland parks and trails provide focal point for new neighborhoods.

When the Plans for Prosperity were updated and combined into one plan, the Towns advised of the need to expand the future urban service area of the Towns to align with the future Town boundaries referred to as “Future Urban Reserve Areas” in the Minden and Gardnerville Plan for Prosperity. Figure 1.4 “Centered and Connected Neighborhoods” and Figure 1.1 “Long-term Growth Strategy” show the “Future Urban Reserve Areas” from the 2018 Minden Gardnerville Plan for Prosperity.

**Figure 1.4 Centered and Connected Neighborhoods**

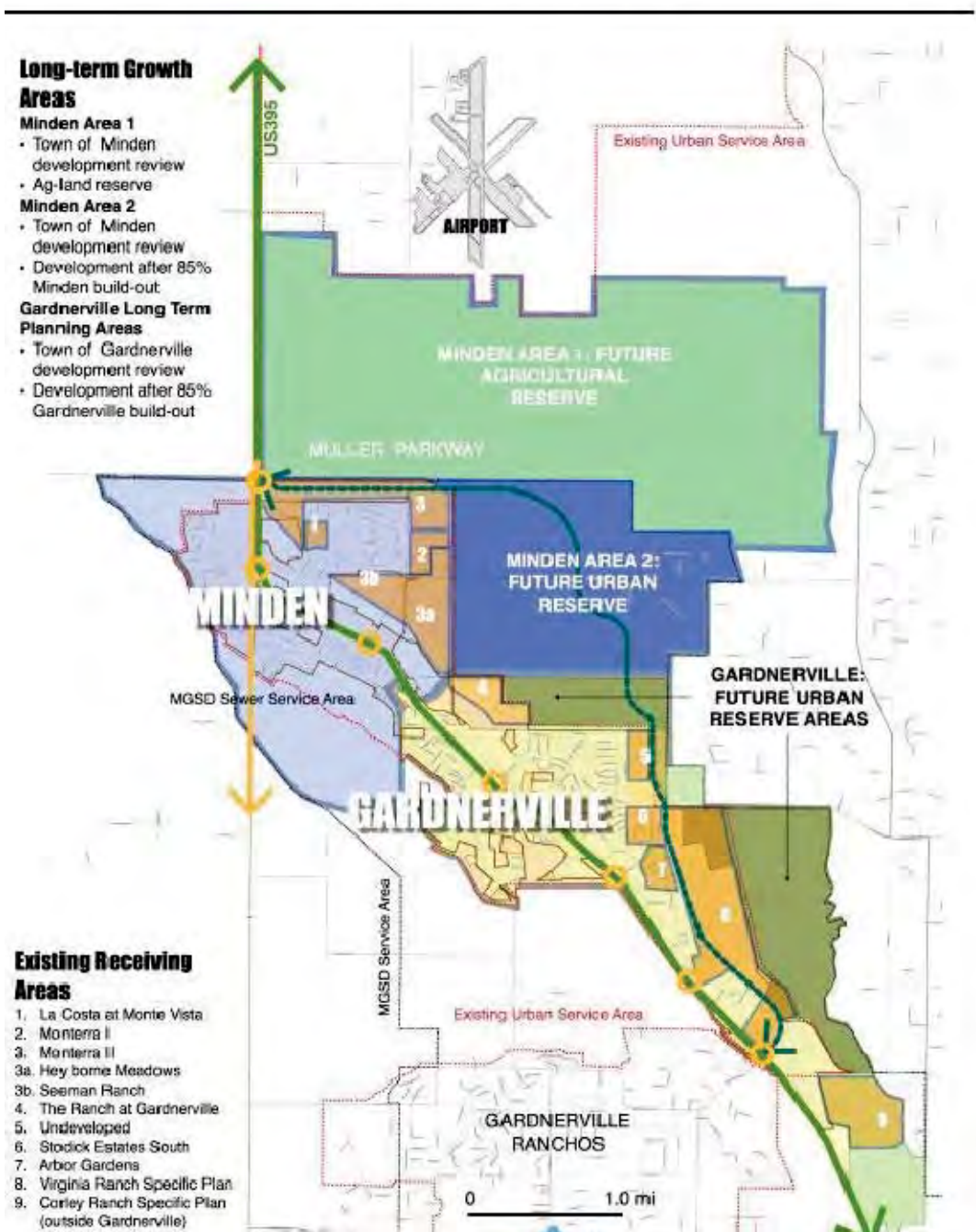




The proposed relocation of Receiving Area aligns with the “Future Urban Reserve Areas” identified by the Towns and will allow the Towns to participate in coordination with Douglas County in properly planning for long-term incremental growth, consistent with Douglas County growth management policies, in a way that benefits the Towns.

Figure 1.1, of the updated Plan for Prosperity notes that development of these areas should occur after 85% build out of the Towns of Minden and Gardnerville.

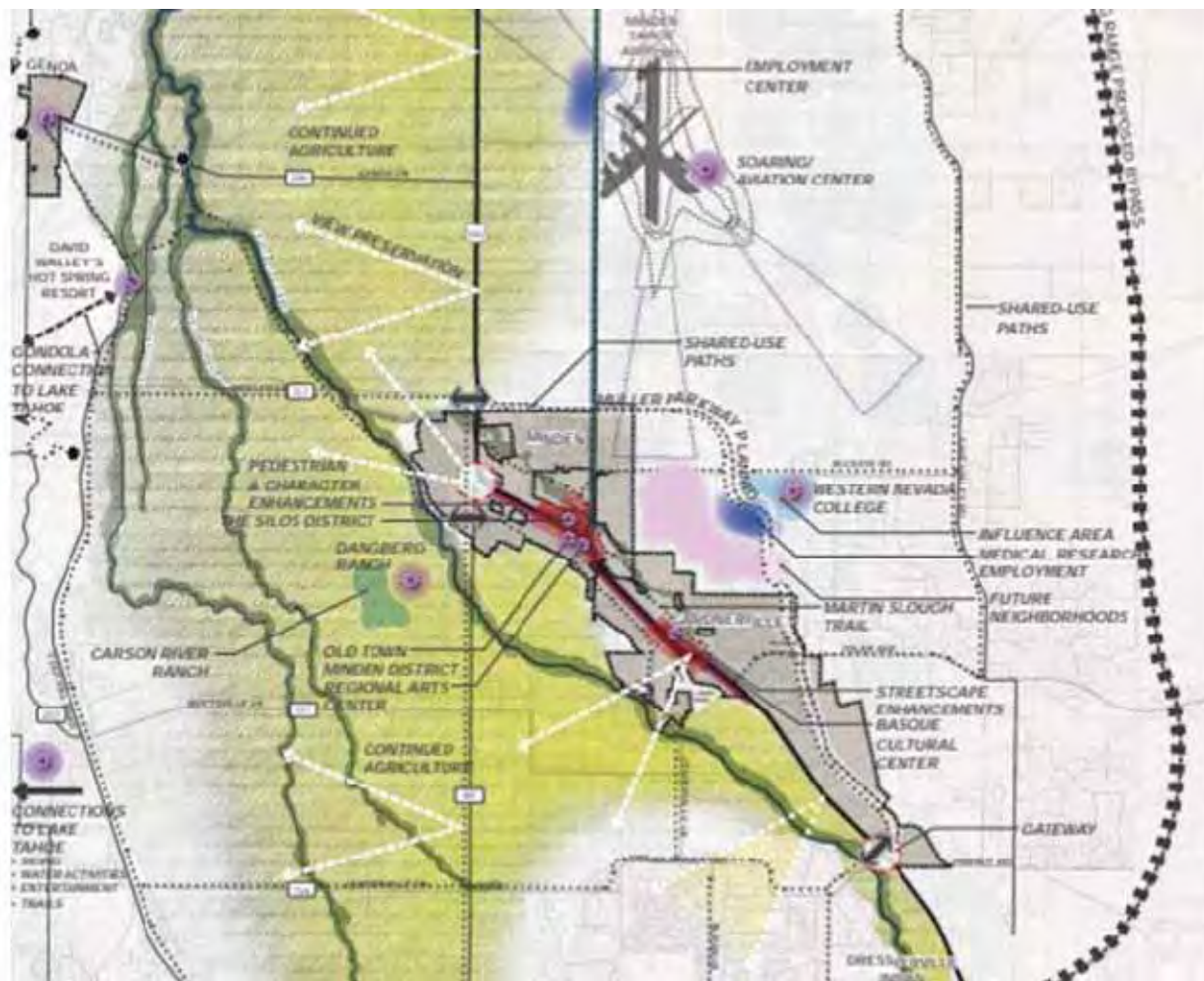
**Figure 1.1 Long-Term Growth Strategy**





Just as the Master Plan is a document intended to guide policy decisions of the Board of County Commissioners, the Plan for Prosperity is a guiding document for the Towns. The 85% build out was included in the Plan for Prosperity on Figure 1.1 as a target objective and does not appear in any other goal, policy or objective of the Plan. In July, the Towns of Minden and Gardnerville recommended approval of the proposed changes to the Master Plan Future Land Use maps, including the creation of this Receiving Area adjacent to the Towns indicating their desire to extend the Town boundary and ability to provide urban services to the area. When the proposed changes to Receiving Area were presented, the Towns were advised of the proposed Development Agreement with Park Ranch Holdings. Neither Town conditioned their recommendation of approval of the proposed Master Plan Map Amendments on 85% build out within the existing Town boundaries.

Additionally, in 2013, the Douglas County Valley Vision Plan was approved after public input and review. On page 24 of this plan is a diagram that depicts a portion of the Park Ranch west of the proposed Muller Parkway as highlighted for “Future Neighborhoods.”



- B. The proposed amendment is based on demonstrated need for additional land to be used for the proposed use, and that demand cannot be reasonably accommodated within the current boundaries of the area.

**Staff Response:** This finding can be made. As described earlier, the designation of Receiving Area on the property in Topaz Ranch Estates is not promoting use of the Transfer of Development Rights program as it was intended due to the low demand to develop the property. Since its creation in 1996 it has sat unused and undeveloped. The newly established Receiving Area adjacent to the Towns of Minden and Gardnerville is in an area adjacent to existing utilities and infrastructure within the Towns and will bring a higher demand for development which will require use of and creation of TDRs. To date, no new Transfer of Development Rights have been certified since 2009 and the TDR program has been largely unused as a tool for preservation of land and open space in the last ten years. Any TDR program should be evaluated over time to review the use and effectiveness of Receiving and Sending Areas and this proposed change would create new Receiving Area which could provide a boost to the program.

*C. The proposed amendment would not materially affect the availability, adequacy, or level of service of any public improvement serving people outside of the applicant's property and will not be inconsistent with the adequate public facilities policies contained in Chapter 20.100 of Title 20.*

**Staff Response:** This finding can be made. The proposed relocation of Receiving Area would not affect the availability, adequacy, or level of service of any public improvement and will not be inconsistent with the adequate public facilities policies in Title 20 as the Town of Minden would provide water service to the development, Minden Gardnerville Sanitation District would provide sewer service, and both providers have indicated that they have excess capacity to serve new development within their service areas.

In connection with the proposed Development Agreement for the property, the new Receiving Area adjacent to Minden and Gardnerville will require the landowner, Park Ranch Holdings, to dedicate approximately 76 acres of right-of-way for Muller Parkway, which is an integral part of the adopted Transportation Plan and connects future planned urban areas within Minden and Gardnerville, as well as construction of regional drainage improvements.

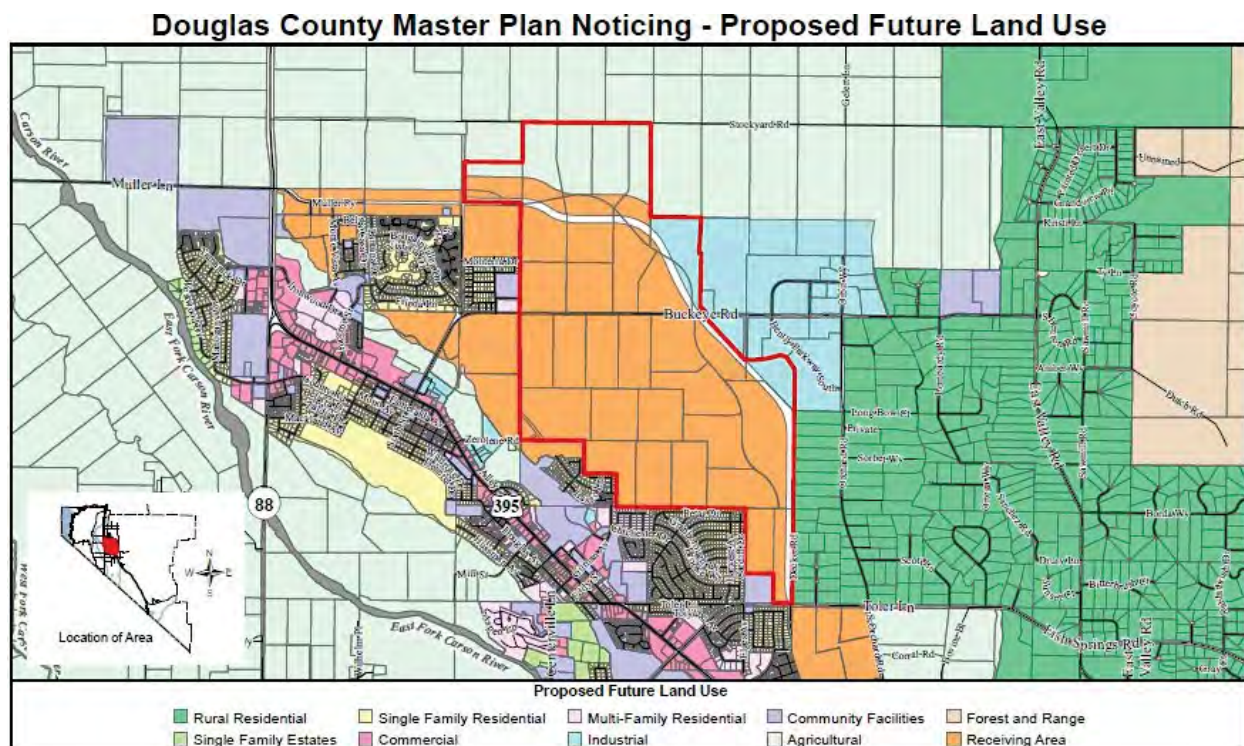
The Transportation Element of the Master Plan includes the following goals and policies that would be furthered by entering obtaining the right-of-way for Muller Parkway:

- TP Goal 1: "Provide and maintain an integrated transportation system for the safe, efficient movement of people and goods throughout Douglas County."
- TP Goal 2: "Provide appropriate transportation facilities to ensure a high quality of life for Douglas County residents."
- TP Policy 2.2: "Coordinate transportation planning and land use development."
- TP Policy 4.12: "Implement long-term road improvements to provide capacity and mobility from 2016 to 2030."
- TP Policy 4.16: "Support possible bypass facilities to keep traffic moving through Minden and Gardnerville."

*D. The proposed amendment is compatible with the actual and Master Planned use of the adjacent properties and reflects a logical change to the boundaries of the area in that it allows infrastructure to be extended in efficient increments and patterns, it creates a perceivable community edge as strong as the one it replaces, and it maintains relatively compact development patterns.*



**Staff Response:** This finding can be made. The newly established Receiving Area would be east of the existing Towns of Minden and Gardnerville and primarily west and south of the proposed right-of-way for Muller Parkway. This Receiving Area will be located adjacent to existing Receiving Area which has been built out in Monterra, partially built out in Heybourne Meadows, and yet undeveloped in Ashland Park. It is compatible with actual and Master Planned use of the adjacent properties on at least three of four sides (including 50% of the east side) composed of the following current Future and Land Uses: Receiving Area to the south and west, Multi-Family Residential to the south and west, Single Family Residential to the south and west, Community Facilities to the south and west, Industrial to the east and Agricultural to the north.



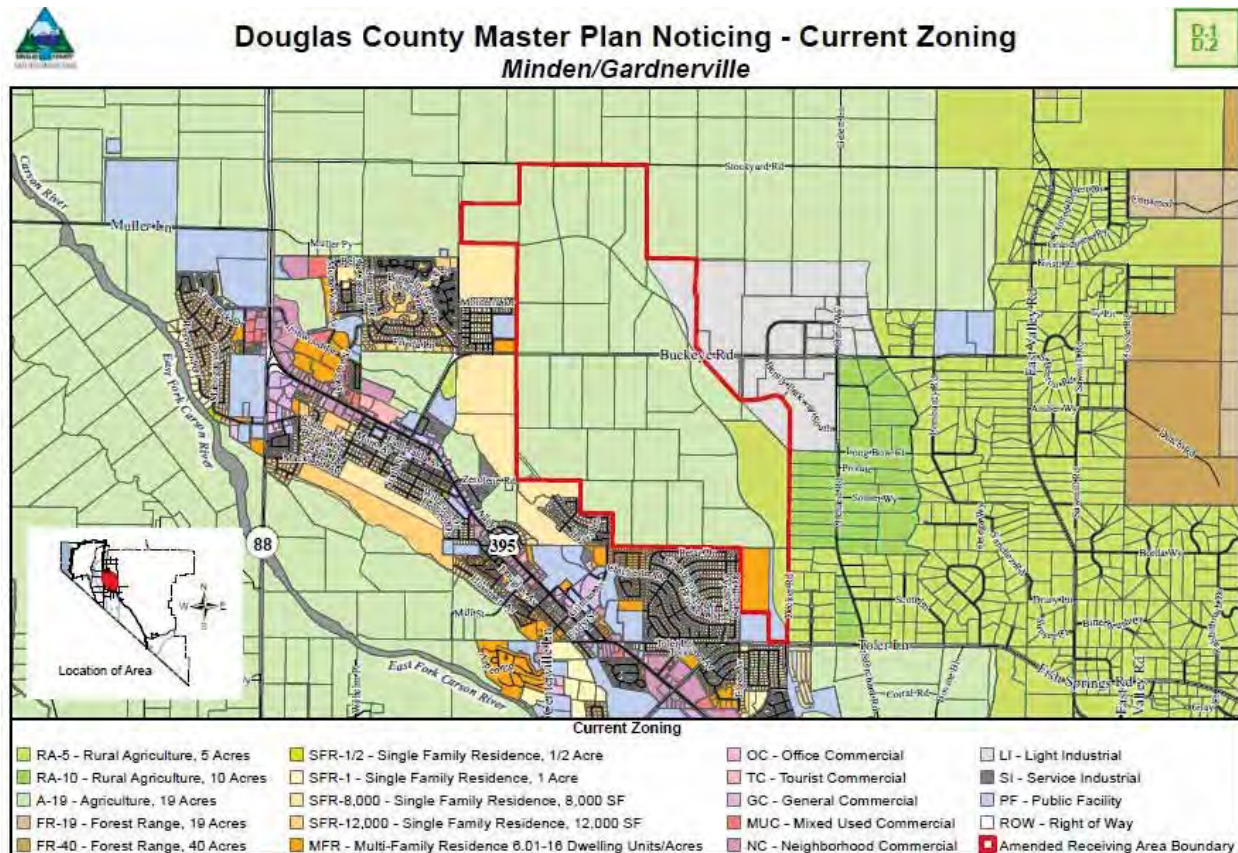
It is also compatible with actual current zoning in the adjacent areas on three of the four sides (including 50% of the east side) which includes: Multi-Family Residential (6.01-16 dwelling units) to the south and west, Single Family Residential 8,000 (Single Family Residence, 8,000 SF) to the south and west, Single Family Residential 12,000 (Single Family Residence, 12,000 SF) to the south and west, Agricultural 19 (Agriculture, 19 acres) to the north, Light Industrial to the east, and Public Facilities to the south and west.

The establishment of this new Receiving Area coupled with the development agreement “creates a perceivable community edge as strong as the one it replaces, and it maintains relatively compact development patterns.”

Owners of property located along Orchard Road, and their representatives, provided public comment and expressed concerns regarding compatibility of proposed land use changes adjacent to their properties currently zoned as Rural Residential, 5 Acre. The proposed new alignment of Muller Parkway would shift the right-of-way further east as a result of the revised development agreement, adjacent to these parcels. These properties currently back to the Virginia Ditch and would receive the benefit of overflow

from the ditch being routed through the 105' drainage facility/flood conveyance channel between Muller and the Virginia ditch. This 105' channel would further serve as a buffer between the existing properties and Muller.

Additionally, the Master Plan states: “as to the location of Receiving Areas,” “The development of the proposed Receiving Area will be compatible with the use of adjacent properties in that it must develop in accordance with Master Plan Land Use Policy 3.5 which describes allowing higher densities in Receiving Areas when “significant densities are being transferred from the Sending Areas and the development character is consistent with the overall residential area where the project is proposed.”



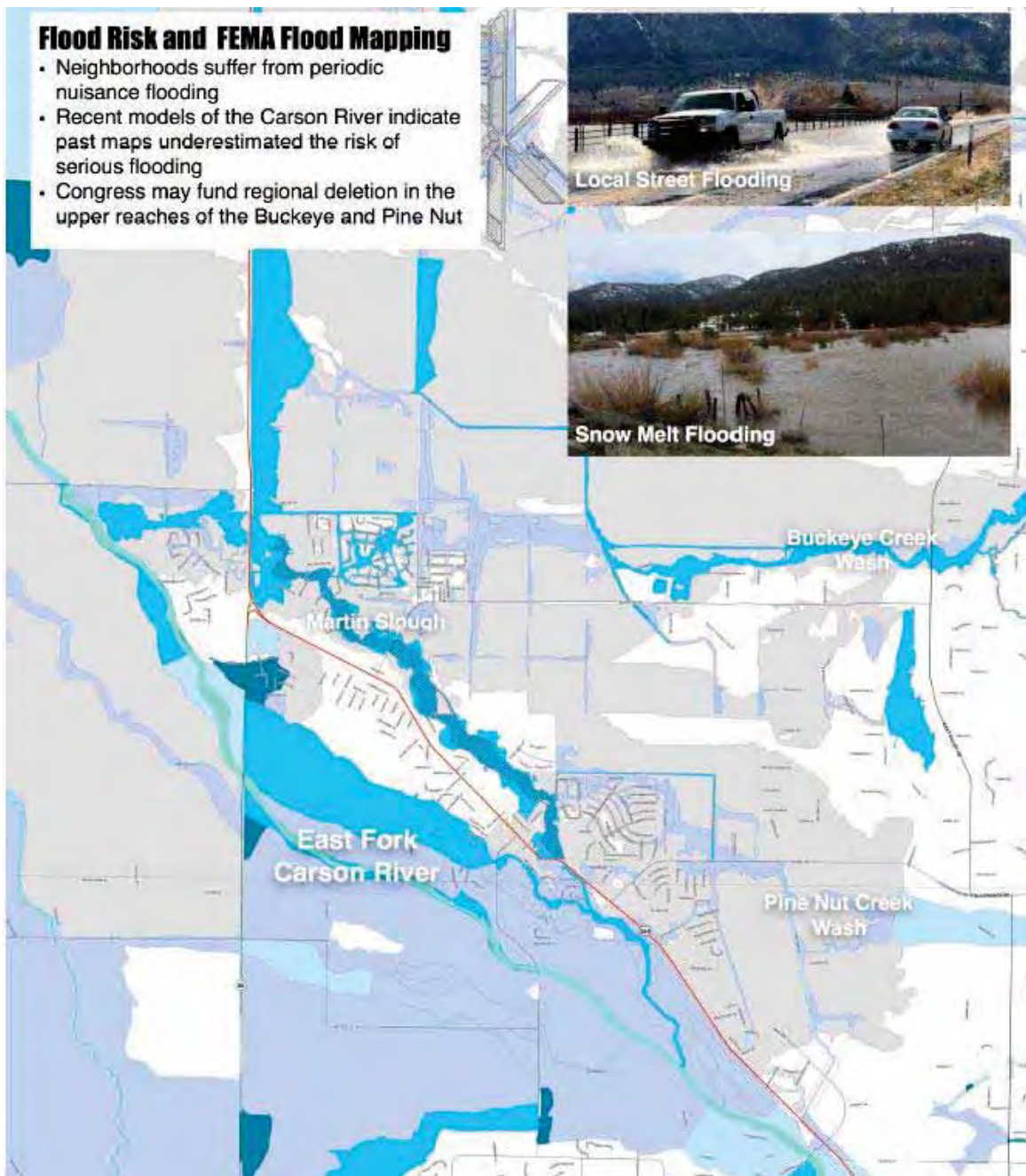
The Minden and Gardnerville Plan for Prosperity states on page 10, “Best practices for community planning requires taking the long view, particularly as it pertains to infrastructure planning, urban services, and fiscal sustainability. Long term planning also requires a strategic approach to managing growth, economic revitalization, and fiscal resilience.”

“Douglas County has a 22-year policy for growing responsibly.” The Plan for Prosperity notes the policy includes a Transfer of Development Rights (TDR) program implemented in the 1996 Master Plan. The TDR program “protects agricultural and environmentally sensitive areas by transferring their development potential to Receiving Areas, which are contiguous to the Towns, where they have access to urban services and can contribute to a cohesive sense of community.”

The proposed Receiving Area to the east is the most cost effective and logical option for the future growth of the Towns and the only mechanism by which the Towns may achieve the stated goals and objectives in the Plan for Prosperity. Possible development to the west of the Towns would be constrained by existing



and planned conservation easements, the Carson River and the floodplain. Floodplain impacts of the east side would be efficiently and cost effectively mitigated by drainage improvements along Muller. For these reasons, Receiving Area to the west of the Towns may not be compatible with existing Land Uses, may not be consistent with the Master Plan and would not meet many of the goals and objectives identified by the Towns in the updated Plan for Prosperity. Page 16, of the Plan states “The Towns are the centers of social, educational, and healthcare activities. Their economic and environmental resilience is key to the quality of life for all of Carson Valley’s population. They are the traditional centers for commercial and institutional services. They provide residential neighborhoods for Carson Valley employees and, more recently, retirees. Located at the confluence of the East Fork of the Carson River and Pine Nut and Buckeye Washes, some areas are subject to periodic flooding (Figure 1.3).”





“New hydrological models indicate the Carson River’s likelihood of severe flooding has been underestimated. A rare event of a spring snowmelt storm that also drifts over the Pine Nut Mountains could introduce historic levels of flooding in the Valley. The Plan proposes developing a series of detention parks and trail systems woven together with the future Muller Parkway” (Plan for Prosperity, Page 16).

Finally, Receiving Area and possible development in this proposed area would allow for a logical extension of infrastructure from the Towns to the east. It reflects “a logical change to the boundaries of the existing areas in that it allows infrastructure to be extended in efficient increments and patterns” along Buckeye Road that runs through the site and goes to the east of the site to the industrial park.

## **VI. Conclusions**

Following presentation from staff on the 20-year update to the Douglas County Master Plan, which includes amendments to the Future Land Use Map(s) and Master Plan Text, public comment will be taken and the board will deliberate. The Board may approve, approve with conditions, or deny the proposed Resolution.

<b>RESULT:</b>	<b>APPROVED AS AMENDED [UNANIMOUS]</b>
<b>MOVER:</b>	Devere Henderson, Kirk Walder
<b>AYES:</b>	Brown, Henderson, Oland, Walder, Casey, Neddenriep, Akola

## PUBLIC HEARINGS

- 1. For Possible Action. Discussion on adoption of Resolution Number PC 2019-03-A by the Planning Commission on the 20-year update to the Douglas County Master Plan, which includes the following proposed amendments to the Future Land Use Map(s) and Master Plan Text as set forth in parts A, B, C & D below and as listed on the agenda. (Note: Public Comment will be taken on each of the parts A, B, C & D.) (Sam Booth & Tom Dallaire)**

Chairwoman Brown reads the agenda item into the record.

Sam Booth, Planning Manager, speaks:

With me this afternoon is our Community Development Director Tom Dallaire. I will get us started this afternoon and I think Tom and I are going to handoff this presentation. There is quite a bit of information to go through here, so we'll begin.

So we wanted to start the discussion this afternoon by discussing what is the Master Plan and just a high-level overview of again to remind ourselves why we're here today and what's the purpose of our actions to update the Master Plan. And so, first, of course, as required by Nevada Revised Statute (NRS) Chapter 278; a Master Plan is required by the NRS and its purpose is to provide long-term guidance on the development of cities, counties and regions in Nevada. Our Master Plan was adopted in 1996 it was last updated in 2011, in the most recent process update the 2011 Master Plan re-began in 2016 as a five year update. As many of you know in the room, that process was never finished and finalize and so the current process to initiate and re-updating that plan was initiated in May of this year. May 23<sup>rd</sup>, I believe, was the joint meeting of the Planning Commission and the Board of County Commissioners. So as a best practice, the Master Plan should include discussion and consideration by the County, of policies, goals and objectives related to long-term development.

So what is being proposed here this afternoon. This is a major 20 year update to the County Master Plan. We have four main items that are agendized today for discussion and as I move through those items in the presentation, we will pause after each of the items, after A, B, C, and D, for a vote of the Commission. Our Deputy District Attorney, Cynthea Gregory, can pause me further when we get to those items if we need anything else. But we are going to take a vote on each of these items as we get to them. And the way this is

agendized in your packet and on the action sheet is that as each item is voted on, it is to be incorporated into the resolution to update the Master Plan, if each item is approved.

So item A establishes one future land use map for the County and this is a text amendment to policy of the current Master Plan. This is the only text amendment being proposed today. Item B is amending future land use maps to change Community Plan boundaries. Item C amends future land use maps to reflect current land uses on the properties and item D amends future land use maps to remove receiving area from 1,044 acres of Park Ranch Holdings land in Topaz Ranch Estates and also then to add 1,120, including 76 acres of right of way of receiving area to land adjacent to Minden and Gardnerville. So those are the four main items we are going to work through this afternoon with you. Also as part of the discussion is the development agreement with Park Ranch Holdings as it applies to the receiving area discussion adjacent to the towns of Minden and Gardnerville, and so Tom is going to talk about some of the highlights of this development agreement as we get to that point, but just very high level. As I'm sure you're aware the development agreement, if approved, would cap development in new receiving area at 2,500 homes. It would require connection to water and sewer facilities, requires a dedication of right-of-way for Muller Parkway. It will conserve agricultural land in the floodplain, provides important drainage and stormwater projects to protect the community, and provides recreational trail easement and easement for the enjoyment of the public.

So why is this being proposed today, why we all here this afternoon, as I alluded to earlier at the May 23, 2019 joint meeting of the Planning Commission and the Board of County Commissioners, direction was given at the joint meeting for staff to revise the future land use map including maps of land-use and community plans. And additionally the Master Plan has not had a major update to receiving and community plan areas in 23 years, since the 1996 plan and in staff's opinion receiving area needs to be updated to reinvigorate the transfer of development rights program, which is an essential tool to conserve sensitive agricultural land in the County. As I just spoke about, the Park Agreement, Park Development Agreement would cap growth in the new receiving area. The new receiving area is being proposed adjacent to the town's where it can be served by existing service providers. As many of you may well know the draft 2016, 2017 Master Plan was approved by the Planning Commission and in that draft plan, it was recommended that removing built out receiving areas and examining the Transfer of Development Rights (TDR) program effectiveness should be considered in the next plan update. As I said that 2016/17 Master Plan was never ultimately approved by the Commissioners, but I think Tom and I as we started this process in updating we saw that recommendation there and understood that we had the time to begin removing these built out receiving areas, updating these land uses, and

Member Walder speaks:  
Aye.

Member Oland speaks:  
Aye.

Member Henderson speaks:  
Deny.

Chairwoman Brown speaks:  
Aye. It's unanimous, it passes.

<b>RESULT:</b>	<b>APPROVED [6 TO 1]</b>
<b>MOVER:</b>	Kirk Walder, Member
<b>SECONDER:</b>	Bryan Oland, Member
<b>AYES:</b>	Brown, Oland, Walder, Casey, Neddenriep, Akola
<b>NAYS:</b>	Henderson

**D) Discussion on Master Plan Future Land Use Map Amendment for Park Ranch Holdings LLC, (hereafter Park) relocating the land use designation of Receiving Area from the Topaz Ranch Estates/Holbrook Community Plan (hereafter Topaz) to the Minden and Gardnerville Community Plan(s) (hereafter "Minden" & "Gardnerville"), specifically amending the land use designation of approx. 1,044 acres of Receiving Area and approx. 510 acres of Agriculture in Topaz to approx. 1,002 acres of Rural Residential, approx. 473 acres of Single Family Estates, approx. 59 acres of Commercial and approx. 20 acres of Multi-Family Residential to conform to the current zoning designations; and amending the land use designation in Minden and Gardnerville, changing approx. 798 acres of Agriculture and approx. 51 acres of Rural Residential to Receiving Area and changing approx. 3 acres of Agricultural to Industrial in Minden and changing approx. 184 acres of Agriculture and approx. 70 acres of Rural Residential to Receiving Area in Gardnerville. Subject APN(s): 1320-20-000-017 thru -018, 1320-21-000-014 thru -016, 1320-27-002-035, 1320-28-000-017, 1320-28-000-022 thru -031, 1320-29-000-015, 1320-29-501-002, 1320-29-601-003, 1320-32-501-020 thru -021, 1320-33-001-009 thru -016, 1320-34-001-028, 1320-34-002-001, 1022-14-001-021 & -022, 1022-14-001-038, 1022-14-002-001 thru -003, 1022-14-002-005 thru -008, 1022-15-002-012 thru -018, 1022-22-000-001 thru -012, 1022-23-000-001 thru -006.**

Chairwoman Brown ready Item D into the record.

Mr. Dallaire speaks:

Thank you, Chairwoman Brown. So we flip these around from the other day's presentation just to cover this part early on. The Park Receiving Area down in Topaz isn't actually in the Topaz Ranch GID. It's outside of GID, but this is the area that we are referring to, it is the 1,044 acres that is owned by Park Ranch Holdings and this area swishing through the middle of that area is agricultural land, Future Land Use designated agricultural, and in these it's propose that we remove these future land uses that are shown on the current map today and replace them with what's actually zoned underneath that overlaying Future Land Use designated area. Currently there is a commercial, multifamily, we've got single-family estates and then rural residential, are the areas that are currently out there. This was established in before 1996 for the zoning areas, it was provided in your packet as the area that was, Allred was the applicant at the time, he was trying to get the Planning Commission and the County Commissioners to not put receiving area on it at that time, but this zoning has been out there since the late 90s. It wasn't updated, not the boundaries updated but the actual designations were updated and also 1996 when the County did an update to the zoning maps as well and changed the land-use designation. So you'll see a different designation on the report that was submitted or the application that was submitted by Mr. Allred at the time and Allred's property is down here at the bottom of the plan on this map right here. These four properties there's I think five properties in there and I think three of them are owned by his family now, but again, there's the noticing map radius boundary that we had established through GIS, the 1,320 foot offset. The grey parcels are the ones that were noticed and then the colored area is actually what's being modified. So when you see the map, the final map, once these are approved, if that's what happens today then this area will be remaining as receiving area. There are these three parcels, the parcel to the left and these parcels down there, so we only remove the 1,044 acres of receiving area that was identified here as basically a net increase in receiving area for Douglas County.

So then the Park receiving area in Minden and Gardnerville, again same thing noticing radius. We do have a little bit of receiving area there today on the Future Land Use Map. We have little bit of receiving area here, it is a part of a single parcel with 64 acre piece of property. I believe 48 of it or so was for Ashland Park and in that was the development that has gone away. It's expired. It was owned by HNS Construction. There was a plan to be built on and it has not. It's not part of this 1,044 acre count. Although Park Ranch Holdings owns it today. And then right here is the Stodick Park and then there's a large strip of land between the Stodick Park and these acreages and parcels along Orchard Road. There are 5 acre parcels right in through here. Up to this point that right here is the top of basically the northern portion of Chichester Estates, and in that area is Future Land Use designation as rural residential today, and this area was rural residential. This was the old



alignment that was proposed that hasn't gone anywhere and that alignment actually stops at the Park ditch. There was a separate agreement that has expired with Ashland Park, Ashland Development that provided the right away then from Park Ranch Holdings property to Tolar. So without that extension, the development agreement that Douglas County has with Mr. Park for the 2007 amendment stops, the right of way would stop right here at the north end of the Park ditch. Basically it's a big ditch that runs down that's what the ditch name is called. It's on the north side of Chichester Estates. And then these industrial areas are currently owned and part of these other parcels that were included in the in this 1,044 acres, so there are some minor adjustments in there. These color parcels are the parcels that are being affected by the Development Agreement.

So here's the alignment of Muller Parkway. The proposed alignment that we have discussed is the grey, is the little gray area in here, in the low-lying. It's difficult to get exact based on a record of survey into GIS it. The parcels aren't survey grade, property index overlaying the images you can see some of those things are offset quite a way, but we wanted to make sure and I think the discrepancy Mr. Slade was referring to is the 1,044 acres versus the 1,020 something acres and that difference is this 75.7 acres of right-of-way that the Park Ranch Holdings is giving up for that. So the summary of the receiving area will basically, or the receiving area needs to incorporate this entire area, the right-of-way will be removed out of that area which nets the 1,044 acres. I don't know if I made that more clear, or less clear, but moving on.

So what basis does staff have to recommend relocation and amendment of the receiving area. We have a couple of plans on the shelf today these of been through the public process. They've been approved by the County Commissioners. This particular one does show the Valley Vision has the Muller Parkway identified here with the residential property being proposed in this area. Additionally, the Minden Gardnerville Plan for Prosperity, and this one's the most recent plan that has come forward and is referenced into the Master Plan document as a plan, but it needs to be incorporated into the Master Plan or it should be incorporated in the Master Plan, doesn't need to be. It was adopted by the towns in November 2018, was also adopted by the Planning Commission in November and then heard and accepted by the County Commissioners on December 6, 2018. The plan identifies this Future Land Use Area, so this was the Godecke area that we are referring to earlier, community plan boundaries. This is why we moved or proposed that community plan boundaries out to here as well as that has the sewer, overlaying of the water and the town boundary should be able to go out to there as well. There are policies and goals in the Master Plan and also the Plans for Prosperity that the Town of Gardnerville or the Town of Minden can review any proposed projects within that area. It might not be within their Town yet, but it can be expanded out there in the future and that's of this document is, it is a future looking document. This one may think we proposed out to 50 years and obviously the

Plan for Prosperity was trying to have the Minden boundary extend up to the airport, discussions with our Public Works Department and internally we kept it at the Stockyard Road due to some servicing differences on sewer and water. What could be served by Minden Gardnerville Sanitation District (MGSD) in the future and what can be served by Douglas County Sewer Utility.

So the development agreement with Park Ranch Holdings was on the agenda for November 7 County Commission meeting. It was introduced. It is moving forward to the following December 3 meeting and so it was a vote of 3 to 2 on that to move it forward and the second reading at December 3 is going to coincide with the Master Plan Update as well. So one of the things that we wanted to make sure that you guys understood is that this is conditioned on the Master Plan Land Use Map Amendment changing receiving area designation on property in Topaz Estates to Minden and Gardnerville. There's 2,500 unit maximum cap, that is the maximum dwelling units that can be built within that receiving area. Whereas, there's no limit currently on the property down in Topaz, just a note in the Master Plan stating it was around 1,000 to 2,000 units. A detention basin for Buckeye did clean this up from the actual presentation the other day at the County Commissioners, but the detention basin for Buckeye will be installed east of Muller on Park owned industrial zoned land at shared expense to the parties. We still are going to need a basin in the Pinenut. That's not part of this agreement, nor is it adjacent to Park land. So there is a portion. We don't know what size that's going to be yet, I didn't want to spend \$100,000 to have a consultant do a flood study on this and identify the actual size and location of those ponds until we had this identifier approved one way or the other or not approved. If we don't approve it, then we are not moving forward with that plan. But if we do approve it, then we will move forward with coming up with a Master Plan, Drainage Master Plan similar to what was done in Johnson Lane. The County is required to construct two lanes of Muller within six years of the signed agreement, the County must construct approximately 12,691 linear feet of Muller and provide up to seven points of access. We don't know what he's proposing yet, the seven points of access is shown on an exhibit later on in this presentation and those are approximate. We don't know what he's going to propose. We don't know how many intersections, but this is up to the maximum amount and if you look at the spacing that's been identified, it will comply with existing County Code today.

The County and Park share construction cost of approximately 2,604 lineal foot this is that section of Ashland Park that we referred to from the Park ditch to Toler, for the construction of, basically Park will construct one of the two lanes for that area. The receiving area cannot be rescinded for 30 years. So this is just the Park obligations where that benefits the County. Park will deed approximate 75.7 acres of 205 foot right-of-way to Douglas County for the construction of Muller Parkway. Park will grant a drainage easement for Highway 88 drainage culverts removing approximately 100 homes from the

floodplain. Any units to be developed must utilize the TDR from Klauber Ranch, that will be the first and foremost, any proposal, the very first proposal that comes in will remove the development units from the Klauber Ranch and preserve that ranch and the water rights associated with it. And then a nonresidential zoning uses. If he proposes additional industrial area or expands the industrial area within that receiving area. There would be a proportional reduction in the single-family development rights of the 2,500 maximum cap, and then requires a connection to sewer and water. So currently they're served and is located within the Minden boundaries. Our Minden service boundaries for water and then because the Town of Minden serves the Minden residents as well as the industrial park and has a tank out on East Valley Road, and their water main goes down Buckeye, as well as the sewer district. So Minden Gardnerville Sanitation and Sewer currently serves the industrial park for their sewage and it goes down Buckeye Road currently connecting the Town of Minden to the industrial area out there on East Valley. Then the commercial buildings it limits the commercial buildings, if any are proposed to 30,000 square-foot, up to two 30,000 square foot.

Let's look at the 2,500 unit maximum cap, and it is subject to the growth ordinance, 2% per year and is really you know the 2% so far that we've had since the growth ordinance is been enacted has been limited due to the market itself. Since enacted in 2007, the growth ordinance has a cap and has never been reached. Free market has limited the development of Douglas County to date for the past, since 2007. 2019 year to date we have less than 100 units approved, less than half of those are allowed under the growth ordinance and less than half of those then are actual developments or projects. Then approximate 10%, this 2,500 unit, is approximate 10% of the current existing housing stock in Douglas County and staff feels like it'll take, or is guessing that it will take 20 to 50 years to develop. This is dependent on a lot of factors. There are a lot of projects that are starting to move again. We are anticipating having to run into this growth ordinance that we've described earlier and hitting that in the next year or two, and were going to have to have project owners actually apply to use those allotted building units. We're anticipating having that issue in the near future.

The growth ordinance, a little bit more on that, it limits the number of homes that can be built to 2% of growth annually. That is, except for the projects in 2007. Building permit allocations are broken down into two categories. There's individual, which is everywhere else in Douglas County except for specific project. Specific projects break that amount down to 30%. Those would be like this development coming forward would be a subdivision or plan development or a specific plan, or within a specific plan. Those are project areas. Currently just over 200 total allocations are available for use each year, unused allocations rollover from year to year. Projects with pre-existing development agreements approved prior to 2007 are vested projects and not subject to the growth ordinance but there is a limit on the growth ordinance stated in there,

and it's tabulated in the Code, that reduces that vested amount of projects down by 47% per year and the vested projects will go away and be part of the project projects at the year 2032. So the building permits are issued on a first-come first-served basis today, and also these in the future will be serving first-come, first-served, and then they will expire if not use within a year of issuance. One single extension is granted for six months and unused permits go back to the access allocation bank and become available for future use. A project applicant may also borrow against future allocations for permits, but this requires the approval of the BOCC per a resolution that was created. The cumulative number of allocations taken by all projects may not exceed 40% of any year's allocation. So they can only borrow up to up to 10%.

Here is the proposed Muller Parkway alignment. This is just a concept, we do have Far West Engineering working on the build grant application and then the next week or so they will be out on the site digging soils, test pits to gather soil test data for the actual design of Muller, so this map is rotated to the north is to your left right here, you see the north arrow, so we've got Heybourne Road, we've got Buckeye right here, Buckeye Road comes down Heybourne Road, Buckeye Road and then Orchard Road is up off the page and then comes down. Here's Toler and Waterloo, Chichester Estates, this is Monterra, and then Winhaven and then the Ranch at Gardnerville is what's being built over here today. So there's the alignment, we've got the Minden yard and facility right out here off of Buckeye Road, right here on the north of Buckeye are the proposed Muller Parkway. So what's happening with this is we get 100 feet of drainage way. In addition to the Muller Parkway that's proposed on Monterra. We've got the right-of-way established along the edge of the Virginia Canal for the most part until right here and then the Virginia canal does go around this industrial land and there is a proposal to relocate the Virginia Canal along the side. None of this stuff is set in stone yet. It's still a concept and then we do have the 205 foot radius starts at the Park property line. So in this area here where the folks that have the 10 acre parcels along Orchard. The Virginia ditch is actually located on their property and in the Park properties is on the west bank of the Virginia ditch and then that's where the 200 foot right-of-way would start. So you have a 200 foot here, here's the Virginia ditch. The way this concept was done and was 100 foot for drainage to convey the 200 to 300 CFS that we need to go around the towns and then the 105 foot for Muller Parkway itself. That gives us enough room in here, 9 feet on either side of the centerline providing enough room for a turn lane in the future if there is a connection that needs to be made or an acceleration lane if needed. So that's the concept and we just did this to verify that everything would fit within that 205 foot radius. Anderson engineering has gone further and showed some points where roundabouts will be located, one here on Toler, another one at Buckeye. And then there is a proposal, we have been thinking about one possibly on Heybourne, but we'll see how that plays out. If we have enough right of way there are not. We did take into account the Buckeye right of way roundabout



right here and then the Toler roundabout which is basically on Park Ranch Holdings property and will tie into Toler itself.

Also with the development agreement, State Route 88 culvert, so here is the swim center is just north on this, north if pointing up on both of these exhibits. Swim center and the Douglas High School is just up from the Cottonwood Slough. We have the Cottonwood Slough existing bridge that's there, 200 feet south of there is proposed culvert and the easements is what we need in order to install those culverts under 88 and with that construction, which is FEMA funded and we do have the funds available and need to be used soon, with the construction of that, we will remove 100 or so homes from within Minden that are in the floodplain and reduce a whole bunch more the impact on the existing floodplain in the Minden area. It also removes Douglas County Library, the East Fork Admin office, which also serves as our emergency command center. The East Fork Fire Station 14 and then, of course at the BOCC meeting, I had the USGS. Those guys were laughing at that. It's a USDA service area, our service center is actually in one of those commercial buildings, but we are removing all the commercial buildings here, right before Maverick. So looks like all of those areas around East Fork and the library were located within the floodplain and in those areas. All those properties will be removed.

We will preserve the Klauber Ranch and then also we would get 7,330 feet of the multimodal trail easement parallel to the Muller Parkway down Muller Lane which is west of Highway 395 at the Muller Parkway, Muller Lane, intersection, and it doesn't cover all of it down to the North Fork Ranch, River Fork Ranch, sorry, but there are three other parcels that we would need to acquire an easement from but this takes care of the large portion of it. So the motion that we have before you today on the Park Receiving Area changes, do you need me to read it into the record? We have that up here and then also the findings. If you want to reference those during your conversations. This is the same findings as the rest of them. But I'll leave this up on the screen so you guys can deliberate. Thank you.

Chairwoman Brown speaks:

Thank you Tom. Are there any questions from the Commissioners?

Member Neddenriep:

Madam Chair, under NRS 281.A.420 requires me to disclose two different conflicts of interest. I own property on County Road that may be removed from the floodplain, should culverts go under Highway 88 and I've also known the Park family for a long period of time to do business with them. I conclude that the independence of judgement of a reasonable person in my situation would not be materially affected by the aforementioned conflicts of interest and because this is not a clear cause of a disqualifying conflict of interest, I will be voting in this matter.



Chairwoman Brown speaks:

Thank you, Commissioner Neddenriep. Commissioner Casey.

Member Casey speaks:

Tom and Sam, when did this ball get rolling. What is the history driving this receiving area change and why is the Muller Parkway all of a sudden coming to light, when we did have an amendment in 2007 that would allow us to have the easement for the right-of-way. The deed was never recorded, according to the staff report. Can you just give a little bit of background as to why all of a sudden were looking at this receiving area swap?

Mr. Dallaire speaks:

Thank you Commissioner Casey. I started on March 11 at the County and I know in December, I think it was December that we had a proposal by Park development that was denied. I think part of the Development Agreement amendment as well. And so when I started in March I was asked by the BOCC chairman to go and discuss this issue with Mr. Park and Park Ranch Holdings and so we pursued that and a lot of his concerns with the Muller Parkway and how we could align it. Part of that conversation happened at that point. I think that stemmed up to December of 2018 that the development agreement itself hasn't been initiated, I think, is the issue and with that right away being recorded or there was some improvements that needed to be done. And there's a discrepancy or difference between a matter of opinion from our DAs office and Park Ranch Holdings counsel and so we move forward to see if we can get a new development agreement implemented. One that would provide a Muller Parkway from the Heybourne Road to Toler. Right now Mr. Park owns that Ashland Park project that was previously owned by a different developer which had a development agreement that has expired so we don't actually have the right away from the Park ditch to Toler. You know, and so in looking at that and trying to incorporate some flood control measures in Gardnerville and Minden, we looked at adding to the right-of-way to Muller Parkway leaving Virginia ditch where it is at and historically runs and is operated from and to keep that there are in use a 100 foot area for an open ditch that basically would run from Toler Lane to Heybourne Road, and keeping those connections as historical as possible to the existing ditches that system that's there. It's quite complicated. This irrigation system on the side of the valley that has been in the ground for a long time. You've got the Allerman Canal, Upper Allerman, Lower Allerman, Virginia ditch all coming together in and around the Park Ranch and Muller Parkway. That was part of it and then in the negotiations happen from the DAs office and the Park attorney, who was here today and we ended up with the development agreement that we had presented previously to you guys and to the County Commissioners and then it was actually rescinded in August, rescinded in August and now it's back. Is that history enough for you?

Member Casey speaks:

All the improvements, the flood control improvements and the right-of-way for Muller Parkway. All of that could be done by the County without the development agreement, is that correct?

Mr. Dallaire speaks:

Without this current development agreement, the improvements of Muller Parkway can be done to Park ditch. The north boundary of the Chichester subdivision. That's where that development agreement starts and it goes to the edge of Monterra's property. The addition of the 100 foot would convey floodwaters or the flow of the 200 to 300 CFS down to Heybourne Road itself and there's a ditch system at that location that goes north into Bentley property or gets diverted and underneath the existing Heybourne right-of-way to Poleline ditch which then comes down on the north side of Arbor Gardens, LaCosta and hits 395 and continues to go under 395 into the Minden Gardnerville Sanitation Districts open space there.

Member Casey speaks:

My point is we do not need the property owner's agreement in order to construct these changes, the County can, because it's for the public good, they can use eminent domain or other means in order to make these improvements correct?

Mr. Dallaire speaks:

I will refer to Cynthea on this. But if we prefer to pursue that it could be lengthy process and we could maybe get it, I suppose. I don't know what the process is on that. I have yet to go through those kinds of proceedings, but yes we could use eminent domain and go after that section of right-of-way. If that was the alignment of Muller that you guys preferred. Also in that agreement, we do have to relocate the Virginia ditch, which I think will have some issues with that running it through the ranch and where it's located, getting the water to the existing infrastructure on the Bentley Ranch where it leaves Park Ranch and goes into Bentley. I think we need to do a little bit more investigation to ensure that the Virginia ditch could be relocated at that existing development agreement location.

Member Casey speaks:

Thank you. It has something else to say and it slipped my mind. It will come back to me. Thank you.

Chairwoman Brown speaks:

Are you finished with your, ok. Are there any more questions from any of the Commissioners. Commissioner Henderson.

Member Henderson speaks:

If you could please clarify, I don't pick up on subtleties very well. But what I thought I heard you say that in March after the Planning Commission voted seven to zero against Klauber Ranch and the Board of County Commissioners voted five to zero against that. Then there was an issue to do something else apparently originating between attorneys. If I got that wrong, let me know. The other thing I'd like to know is on page 144 of our packet where it says at the bottom, should ordinance 2019-1556 Alpha which I understand is the instrument under consideration now, or the associated development agreement be successfully challenged legally or declared void Ordinance 2007 – 1223 in 2004R – 1097 will be in full force and effect and treated as though they were not superseded. Could you explain what that means?

Ms. Gregory speaks:

I will respond to your question. So if you are to, if the Board adopts the Ordinance that is presented and its legally challenged by a member of the public, anyone in fact, and it's determined to be not valid, then what this language says is that were put right back in the same position, both Park as well as the County, under the previous development agreement. So you would still have the development agreement that was approved in 2004, as well as the First Amendment which was approved in 2007. Now development agreements are reviewed every 24 months. Through that development agreement review process in 2017 Park indicated they believed that the County was in default under the agreement, as construction has not had not begun. The County took the position that it was not default under that agreement. Additionally, we have subsequently received a letter from Park's current counsel indicating that they believe we are in default, and I believe that was received early 2019, and the County has responded in writing indicating that we do not believe we are in default. So it would put the parties back in the same position.

Member Henderson speaks:

That's a consternation, I suppose, but the real question I'm asking with all of that evolving, if you want to call evolution. Where do we end up then, if it in fact legally declared void, and 2004, 2007 will be in full force and effect what does that mean to us? What does that translate to?

Ms. Gregory speaks:

That translates to the same position were currently in, that there is a development agreement, and that Park Ranch believes that the County is in default, and the County is denying that it is in default.

Member Henderson speaks:

But before we said, a while back before that, somebody else admitted in default and the positions of been reversed.

Ms. Gregory speaks:  
I'm not following what you are saying.

Member Henderson speaks:  
At one point in time Park said they were in default.

Ms. Gregory speaks:  
No, at one point in time, Park said that the County was in default. And the County has always denied.

Member Henderson speaks:  
Oh, so nothing has changed. And why were we in default? I just am trying to understand what's going on here. Why is the County in default?

Ms. Gregory speaks:  
Well the County is not in default. That's our position. I will tell you what their alleging. They are alleging that the County has not built Muller within seven years of the dedication of the right-of-way for Muller which is the 150 feet. That was through the 2007 first amendment. Now the County has said we are not in default because they have not given the deed for the 150 feet.

Member Henderson speaks:  
Thank you very much, so where we really are here now, is that we're being asked to transfer development rights from Topaz as a condition from the Forsberg letter that says if you don't transfer development rights then we're not going to play ball with Muller Parkway. And so that's where we stand as I understand it now, is that not correct? Or is somebody going to recant on this letter that was in our packet from Forsberg and Company that says Park Ranch Holding (PRH's) willingness to enter into a development agreement with the County is contingent upon the relocation of the receiving area from Topaz to Minden and on top of that if somebody sues and it's changed then we're back to where we are, which is Park alleging that the County is in default. That's what it boils down to. Now that sounds like a really good deal for the County. I'm sorry but I can't buy it.

Chairwoman Brown speaks:  
Commissioner Henderson, have you finished with your comments?

Member Henderson speaks:  
I just have a couple others. If you could bear with me, please.

Chairwoman Brown speaks:  
While you're looking, Commissioner Walder, do you have a comment or a question.

Member Walder speaks:

Yes, ma'am. Thank you Madam Chairman. I want to go back to the issue of eminent domain, because I've done quite a bit of research on this since it's come up several times by people suggesting that eminent domain would be a good solution here. I think property rights are one of the most important rights we have the citizens. In the time, perhaps several years as Tom mentioned, the money, perhaps millions of dollars to go through a court proceeding in order to take this land by eminent part domain would be a major detriment to building Muller Parkway and providing traffic relief to 395. Now I want to point out the landmark case in my view concerning eminent domain was decided by the Supreme Court in 2005 in Kelo versus City of New London. In that case the government wanted to take private land and homes to revitalize the area. Several homeowners fought and one homeowner argued their home was invaluable, as it had been in the family for over 80 years. The Supreme Court in that case, approved the eminent domain taking 5 to 4. The justices who were opposed to that taking; Rehnquist, Scalia, Thomas and O'Connor. The liberal justices approved government taking of the land to private citizen; Stevens, Kennedy, Souter, Ginsburg, and Breyer. So I just think it would be a terrible precedent in Douglas County if the government undertakes eminent domain for this land.

Chairwoman Brown speaks:

Thank you, Commissioner Walder, is there any other comments, questions or concerns?

Member Casey speaks:

I have a comment. With regards to eminent domain and the land we're talking about the Muller Parkway. It would be for the public good, we are not talking about condemnation of people's homes. We are not talking about condemnation of anything other than vacant land that is not heavily producing at this point for agriculture. It has value, yes, it does have value. But whether or not we use eminent domain or they give us the right-of-way. It's all the same thing, it's still going to be Muller Parkway, so while I understand the financial burden to the County if they do it to get the right-of-way. I don't see how it's detrimental to Park because they are going to give us the right-of-way anyway. It's just a different funding mechanism. Minus the development agreement.

Member Walder speaks:

Madam Chairman, may I respond. I think your points are well thought out Maureen, but I would just make a couple of comments. One is, in the Kelo case, it was also for public, it was alleged it was for public use. So I think the lawyers can argue very strongly and in a way that would be more to the detriment of Douglas County here in this instance. And I think the right-of-way is different in this case, in that we have a larger right away and that's what we are agreeing to in the development agreement, which I think is a great benefit to Douglas County. The last point I would make is we get on a very slippery



slope with eminent domain. All of you who are landowners, property owners, if somebody says we need an increased right-of-way on property in Foothill Road. We want to take 20 feet in your land. Well, maybe it's for public good, but maybe you don't like taking 20 feet out of your front yard. So I would just, again, caution that as a simple easy solution, it's not.

Chairwoman Brown speaks:

Thank you Commissioner Walder. Is there any other Commissioners who would like, Commissioner Akola.

Member Akola speaks:

Yes, I have a number of concerns. I think we're putting the cart before the horse in the development agreement. Supposedly we're going to have a preliminary design for Muller Parkway. I don't think you can properly take and set the alignment until you have that preliminary design. There are always things that change in the design of a project that you can't account for. I think that we should wait on this portion of the resolution to proceed. I think we need the design and then we can make a decision and we can properly identify the right-of-way necessary in the agreement. Your way before that point right now. With respect to the changes in TRE area. We were lied to. I went to the meeting at TRE and I believe it was the County Manager said that they were going to put the existing zoning back in the place. Well, there's nowhere in the zoning in TRE area where they had multifamily residential. It is shown in the drawings now. That's completely against that exhibits providing from the Allred case. Don't tell me one thing, then do something else. We were also told that they were going to break up moving the receiving area for Muller Parkway. Now you have them combines. Something else again. Don't lie to me and say you are going to do one thing and then try to push something else through.

With respect to the noticing, I can see the receiving area in TRE from my front porch. I never received the notice, it might be more than 1,320 feet away but everybody in TRE is affected by this. As are of people at the Topaz Lake, Holbrook Highlands and Spring Valley or Double Springs, whichever you want to call it. None of those people are identified. This is supposed to be a change to the community plan. Hey, if you are going to change the community plan. Everybody affected by the community plan should be notified or noticed. Thank you.

Chairwoman Brown speaks:

Before we go any further, I'd like to recognize Mr. Mark Forsberg, from the Park family, he is their attorney. He'd like to make a couple of comments. Thank you.

**Mark Forsberg** speaks:

Thanks very much. I'm not actually from the Park family. But I am representing the Park family. I don't think they'd want me as a relative

necessarily. So, I'd be happy to answer anybody's questions about how the genesis of all this took place from the Park's point of view. I don't think there's really any disagreement about it, but I'd be happy to fill anybody in that has questions. I don't think anything's been presented to anybody throughout this process that's different today than has happened before, any of the town meetings, or at prior Board of County Commission meetings or at Planning Commission meetings. I did want to mention, there were questions and maybe concerns about the development agreement and the Master Plan Map Amendment being coupled, was the term that was used frequently. When this first came before you, they were not coupled and there was I've read the minutes, and watched the meeting on video. I wasn't here but there was concern on the part of the Commission that they weren't getting enough information about the development agreement and because of the way that Master Plan Amendment was agendized, you couldn't talk about it or violate the Open Meeting Law. So, in order to address those and in light of the other concerns that caused this all the come back again, I think the County and Park agreed that you should have the information about the development agreement because it is so intensely related to the Master Plan Amendment and because you asked questions about it, that was one of the reasons that you voted the way you did it at the last meeting.

Is there anything I can I can clarify? Douglas County's been trying to get right-of-way for Muller Parkway since, I don't think anybody can remember when. In 2004, they entered into some development agreements, one with Park and another one with I believe four other property owners along the intended right-of-way, in which those property owners would receive vested rights to develop their properties and they would be required to build Muller to certain standards when they developed. But the problem with those development agreements as a practical matter is that they produced no or very little of Muller Parkway. There's a little bit of it built near Toler, but it's not useful. There's the section at the north end up here that connects with the US 395 that was built by an entity called Nevada Northwest. As a result of the cost and the effort that went into constructing Muller Parkway, it contributed to the demise of Nevada Northwest, so they spent the money, the County got it. Nevada Northwest really got no benefit from building it. The portion of the South that now connects to 395 and comes up behind Walmart was built, the part behind Walmart, as a result of the earlier development agreement that I mentioned to you. The entity that was in that situation was Sierra Nevada Southwest and when Muller was built, that portion of Muller had to be dealt because the development agreement. South of Virginia Ranch Road, there was no development agreement. There was an agreement reached with the property owner whereby his property was taken out of receiving area and best preserved no open space anywhere else and saved that property owner the cost of acquiring development rights in exchange for the construction of Muller Parkway. So that's how you got the portion, the County got the portion down

there was by swapping his receiving area for hard zoning and freeing him from the TDR requirement.

I'd just like to just philosophize or discuss Master Plans in general with you. Master Plans are not straitjackets. The Nevada Supreme Court has indicated as much in a ruling that's followed to this day. They are plans, they're to be flexible, they're to accommodate change. Over the year's community's priorities change, their needs change, property owners needs change, ideas change and Master Plans change with them. The Master Plan itself is written, and all Master Plans are, to allow change, to build that in, to allow change to occur in an orderly fashion for the benefit of property owners and the County in general. So it's not right to expect that a Master Plan will not change over 30 years and that you can rely on it for eternity, because that's not what they're intended to do and that's not what they do.

When Park in 2004 entered into a development agreement with the County, he was to dedicate 105 feet of right-of-way. And that was deeded to the County almost immediately. Deeded. It's not an easement, it's not a dedication. It's a deed. There's a big difference and people confuse it, and when you hear people talk about it, they'll act like it doesn't exist or that it didn't happen and it did. So the County has 105 feet of right-of-way. It was never deeded back to Park. That development agreement said that the County had to build Muller Parkway within seven years of that occurring, and of course as you well know, that did not happen. In 2007, there was an amendment to that agreement because County wanted a wider right-of-way and that agreement amended the first one. Nothing happened under that agreement. There's a legal issue here, about whether the first agreement remains in effect. If not, why does the County still have the right-of-way, but were not here to argue the legalities of that.

This plan that is before you today address many parts of the Master Plan. You'll hear a lot of testimony that says it violates the Master Plan, it is inconsistent with the Master Plan. One of the things about Master Plans is they have goals, many goals, many different ideas about growth, about density, about transportation, about affordable housing. And all these things don't necessarily mesh together well. These are competing interests. There is tension between them. So you have decisions to make all the time about which ideas are going to take precedent at any given time. Currently one of the highest priorities the County has is the Master Plan Transportation element which prioritizes Muller Parkway, and hence the County is eager to obtain the right-of-way for Muller, independent of any development taking place. Because if they wait for development to take place, they may never get it, because they haven't gotten it in other areas now. So does that conflict with the Master Plan? It does not conflict with Master Plan. That is serving the Master Plan. It's a priority in the Master Plan, so it does not conflict with the Master plan in its entirety. The Master Plan encourages growth to be concentrated near other growth rather than in spots here and there. This plan does that, it concentrates

growth closer to the urban areas where it can be served by law enforcement, fire, water, sewer, transportation, and removes it from an area in a remote part of the County, which doesn't have those benefits to it. So in that respect, it supports those goals of the Master Plan. It places this receiving area in areas where it can generate saving open space instead of just being you know theoretical TDR, it will require actual TDRs. Does that conflict with the Master Plan? It does not, that's supported by the Master Plan. So in all these regards, these items support the Master Plan and the findings can be made and staff has done an excellent job of explaining how the findings can be made for the Master Plan Amendment. This plan will require Park to be covered by the growth management ordinance and he's not going to get the whole 2% or not he, but Park Ranch Holdings, won't have access to the full 2%. They will have to scuffle around with anybody else that wants to build something and fit into that 2%. The growth management is part of the Master Plan. Park is willing to do that.

So let's talk about the benefits. Park Ranch is not just swapping right-of-way for 2,500 homes. He's giving up a lot of things that the County otherwise wouldn't get and Park would have no obligation to give. Park has no obligation to give the County an easement over on Highway 88 for these culverts. Park has no obligation to donate a trail. Park has no reason to do many of the things that Park is promising to do here. Park Ranch Holdings is complying with the Master Plan and doing things for the City. So these development agreements went to the Board of County Commissioners last December, the Board voted to approve them, there were two or three of them, and then on second reading, the Board voted against them. So the County's goal of acquiring Muller was scuttled by that and so I think there were some regrets about the outcome there, and negotiations started again. In the meantime, Park Ranch Holdings have tried to get approval of the development on Klauber Ranch, which Park also owns. That was turned on by the Planning Commission, turned down by the Board and that resulted in a petition for judicial review, because the process more than anything. One of the things that will happen if this is approved is that that will go away. The County will not have to acquire by eminent domain any of the right-of-way on Park's Land. It will get more right-of-way than it ever asked for before so that it can qualify for a grant, which it probably won't be able to qualify for if this doesn't go through. This is not hard ball, this is not my way or the highway, this is a negotiated deal that's designed for the benefit of anybody and extracts a pretty steep toll on Park Ranch Holdings as well.

Chairwoman Brown speaks:  
Mr. Forsberg, are you finished?

Mr. Forsberg speaks:  
I am finished, does anybody have any questions?

Chairwoman Brown speaks:  
No. Cynthia, you have something to say.

Ms. Gregory speaks:

Obviously, the DAs office and Mr. Forsberg has some disagreements with regards to the current development agreement. However, I will say he indicated that the County requested the 100 foot right-of-way under the 2007 first amendment to the development agreement and that is not correct it was Park that requested the 150 feet, and that was in anticipation of their proposed Master Plan Amendment that was subsequently denied. Additionally, Mr. Forsberg is correct, the Nevada Supreme Court has said that the Master Plan is not a legislative straitjacket, but what they have also said is that the Master Plan demands deference and presumption of applicability. However, it should not be viewed as a legislative straitjacket and the advice that they've given to the Board of County Commissioners and Planning Commissioners is to take and listen to all the evidence, both pro and con, look at the Master Plan and make the decision that you believe is in the best interest of the County. So I just kind of wanted to present the view of the Nevada Supreme Court with regards to how it views these Master Plans. Thank you.

Chairwoman Brown speaks:  
Thank you, Cynthia. Are there questions?

Member Casey speaks:

I have one quick one. Cynthia, can you go over what a petition for judicial review is and I'm assuming from what was said that was filed after Klauber was denied.

Ms. Gregory speaks:

That is correct, following the denial by the Board of County Commissioners, a petition for judicial review was filed by Park Ranch Holdings, alleging that the Board abused its discretion and that there wasn't substantial evidence supporting their decision for denial. that litigation is still in the Ninth Judicial District Court. However, it has not moved forward with briefing, because of the discussions with regards to the development agreement. If this development agreement is not approved by the Board, then that little gate litigation will restart and there will be briefing. It's all based on the record and the judge will make his decision.

Chairwoman Brown speaks:  
Commissioner Henderson.

Member Henderson speaks:

Thank you very much Mr. Forsberg, particularly on the tutorial of what a Master Plan should be. That clears it up for us substantially I think. One of the points that you made is that the Master Plan should not lock us in to



something for over a period of time. And as I understand the provisions of this agreement are going to lock us into the development of the 1,000 acres over a period of about 30 years. So I see a fundamental dichotomy there. I'd like to go a little bit different direction Madam Chairman, if I may, and take a quote from the Douglas County Open Space and Agricultural Lands Preservation Implementation Plan and I'm reading from page 9. One of the basic underpinnings of the growth management ordinances is that Douglas County has a caring capacity with respect to population, infrastructure and natural resources. For example, there is only so much groundwater available for pumpage. I will go to now page 13 of this same document. If you will allow me please. The agriculture element is what we are referring to now calls for the creation of a position called Agricultural Opportunity Officer (AOO), that sounds high standing, and one of the chief responsibilities of the AOO is proactively managing the transfer of development rights and facilitating the purchase of development rights policies. Obviously that has never been done. Throughout the process of updating the plan, there have been echoes of the goals and policies of the Master Plan. The most significant common factor is the connection between active agriculture and quality of life. Residents like the rural character of Douglas County. This active productive agriculture provides the site, sounds and smells of our rural County. It helps to minimize urban sprawl and preserve open space which helps the County avoid the expense of extending urban services outside their urban areas to protect our heritage and sustain our agricultural economy. We must find ways to add value to agricultural lands and protect agribusiness and the open space, flood protection, groundwater recharge and other benefits that it preferred. We can argue this all both ways. Both sides all night long, but the fact of the matter is, is that in my opinion, this agreement and this whole proposition, even though we do need Muller Parkway and if we need Muller Parkway, the County ought to pay for, which is what we haven't done. And I can understand the consternation of Park Holdings for the County not upholding it's end of the 2004 in the 2007 deals. But that's not going to be rectified by transferring a 1,000 acres of development rights into the agricultural land in the Carson Valley.

Chairwoman Brown speaks:

Thank you. Please no clapping. Thank you, Commissioner Henderson. Now I'll open it up to public comment.

Member Neddenriep speaks:

If I can make one comment before we go to public comment. Thank you. So the relocation of the receiving area from Topaz to the outskirts of Minden and Gardnerville does help promote the orderly growth. Minden and Gardnerville want the growth there; it is in their urban service areas. There are no municipal services out in Topaz. I think the bringing the receiving area into Minden and Gardnerville will allow a lot of the agricultural landowners to possibly sell some of these TDR's. I know that Park will be taking a lot of these

from the Klauber Ranch and he has plenty of other property that he can take TDR's off of. But this should jumpstart the TDR program and I for one, am very much in favor of that. Thank you.

Chairwoman Brown speaks:

Thank you Commissioner Neddenriep. Public comment is now open.

Member Oland speaks:

I just want to make sure that we will be able to make more comments later, right?

Chairwoman Brown speaks:

After public comment, I'll come back to the Commissioners to make comments and ask questions. Alright, will you please state your name. I don't think your mic is on.

**Mark Gardner** speaks:

Ms. Chairman, with all due respect, I believe that this hearing is now subject to an Open Meeting Law violation. The Commissioners themselves and members of the audience in the deep discussion of the Park development agreement which was not properly noticed and not noticed as part of this agenda. And yet, we proceeded to hear about 20 minutes of testimony in that regard, and debating back and forth regarding the Park development agreement and not this particular item on the agenda, so with that being said, I will restrict my comments to the agenda item.

I am displeased to hear Mr. Neddenriep already indicated before public comment, which is why we are allowed to speak, is to allow us to influence you in regards to your vote, but you've already told us how you're going to vote. And that is disappointing to me. I don't believe that you should be doing that until after all public comments have been heard.

Chairwoman Brown speaks:

I'm sorry but that is allowed among the Commissioners, they can make a statement like that. Please continue.

Mr. Gardner speaks:

That's fine, then I will direct those comments to you Ms. Chairman. In addition to that, a member of the public spoke for well over three minutes, not on the clock, and that's disappointing as well. But that was allowed to occur. With that being said, when I came before this Commission earlier when this issue was spoken, I talked about the fact that these receiving areas are two distinct different issues, and should be separated. At the TRE public forum, a member of that audience also said, and several of your Planning Commissioners were there and heard this comment I'm sure, that staff indicated that yes these are two separate issues and did not need to come before you or them as a coupled

item, and yet that's what this is, a coupled item. As Mr. Forsberg indicates, nothing has changed and I would agree with that statement. When Park bought the property in TRE, he knew it was designated as receiving area. When he bought the property in Minden, he knew that was agricultural area, and just because he no longer feels that the property in TRE is suitable for development doesn't mean that he has the right as a property owner to then come before you and tell you he wants to move that receiving area to some other more prized area of his owning.

I ask you once again Planning Commissioners as you did before. You denied this movement previously seven to zero, I see nothing that has changed and I am asking you to reaffirm that feeling today by separating these items and denying the movement of the receiving area to Minden, thank you.

Chairwoman Brown speaks:

Thank you, would you please state your name sir. You did not say who you were when you started speaking, and did you sign in please.

Mr. Gardner speaks:

Madam Chairman, I did state my name is Mark Gardner and I did sign in, yes.

Chairwoman Brown speaks:

Mark Gardner, thank you. Next person.

**Lynne Muzzy** speaks:

There was no proper planning to create the proposed Park project receiving area. A wealthy family said they wanted to build it. And ever since then, some commissioners have a staff of been stepping and fetching the make it so. This project was structured to give Park what they want. The East Valley community, who's mission statement is to preserve its rural nature has been press ganged into this deal with thousands of housing plots already approved in Douglas County. This project is not needed; it fails finding B. According to the County's methodology, 2,500 homes will generate 20,000 car trips per day. Since the County is not forcing Park to pay for the four lane Muller Bypass, the taxpayers will make them a gift of a two lane multi intersection construction conduit as a gift to Park which will not create the long promised bypass that would take traffic off of Highway 395. It fails finding C. Cutting and pasting a receiving area on prime permeability ag land will cover an aquifer recharge area with housing, streets, sidewalks, and driveways. The expense of providing a two lane road to Park at a cost of 12.5 million, the County will have to borrow, means Justice and Law Enforcement Center (JLEC) will continue to force criminals and victims to cuddle together as they wait for their court cases to come up. And our life safety professionals will still stay stuffed claustrophobic cubbies.

And I might add that it was not good form to allow Mr. Forsberg to come up here and just take an unlimited amount of time. He's already been able to sit with staff at the Board of County Commissioners meetings. This is extremely unseemly and when I'm out talking with folks and getting signatures on petitions, the one thing I keep hearing over and over again is the fix is in. Thanks.

Chairwoman Brown speaks:  
Thank you for your comments.

Ms. LaRue speaks:  
I believe that the Master Plan should be approved minus item D. I'm still concerned about the water, and I'm concerned about a catastrophic flood. Let me relate a similar story of unfettered development in a place called Fountain Grove, Santa Rosa, California. A 1,500 plus home development on a heavily forested mountain ridge line. In the 90s I lived there, I saw many people and pioneers of the area protesting this development because of the 1964 history of footprint of fire. They weren't listened to. From an opinion piece by Gail LeBaron who is a noted Santa Rosa historian dated two days after the start of the Tubs fire, October 17, 2017. I would like to quote her, and it was in the New York Post. A persistent core of protesters turned up at late-night hearings arguing against the building and development of Fountain Grove. Certain rules and ordinance were overlooked as city planners and engineers would later admit. The result, total destruction of 1,500 homes, and many lives. Remember this, nature warns us, people still build in harm's way.

Chairwoman Brown speaks:  
Thank you.

Mr. Ernst speaks:  
I have questions regarding Barry Penzel's behavior when he went to Tom Dallaire to talk with Park. Did you report this behavior to anybody, Mr. Dallaire? You don't have to answer this now, but I'm sure this is going to go to court. My question for the Board here, is did Barry Penzel direct the District Attorney and/or Representatives to talk with Park? It looks like there is undue influence going on here. For sure the applicants, the advocates or the County staff in collusion with the Park attorneys. They make no bones about this, they are very open about it, very transparent about it, in several hearings. The hearings during the summer had to do with due process where the do is not processed correctly. This is a redo; we are doing this over. The Commission last week, not the Commission but the Board of Commissioners last week voted to go with the Park Holdings, here we have another case of undue influence. Who is currying favor with the Board now? You guys are aware of that decision. Your decision is tainted by that decision. It goes against their rules to discuss Board matters ahead of their meetings and yet County Counsel, District Attorney's Office, Mark Jackson's people, are going ahead and allowing you

people to violate those rules, and they are advocating it. I think District Attorney's Office is performing in an unethical manner. It should be called a judicial review and these are serious allegations I'm making here. There are conflicts of interest. They act as prosecutors and they are pretty good at that, but their negotiating deals behind closed doors without anybody's knowledge, just going ahead with it, and all of the County people, all employees are aware of it. We have a major problem here in this County, and it's been going on for decades. Now how anybody can go ahead with this proposed project isn't giving this a fair hearing.

Ms. Walker speaks:

My comments this afternoon is in addition to my letter presented to you on the subject. Again, I represent the Malkmus' and Storey's who are property owners on Orchard Road. If the designation of new receiving area is approved and in turn the Park Ranch holdings amended development agreement approved my client's property which is now rural residential 10 acres will directly abut a four-lane parkway and a maximum of 2,500 residential dwelling units. On July 9, you voted seven to zero to deny the designation of receiving area. Nothing has changed. In order for this Board to approve this Master Plan Amendment concerning the designation of new receiving area in Minden and Gardnerville, the Board must make all required findings under DCC 26.080.40. We contend that all four findings cannot be found by this Board. Specifically, the Master Plan calls for measured growth and a preservation of rural character. The designation of a new receiving area does not result in measured growth. It will result in a development plan that is 2,500 residential units with a vested development right which is irrevocable for 30 years.

Finding number B, excuse me, finding B can also not be met as there has not been a demonstrated need for the designation of all 1,044 acres of this receiving area. Receiving area under the Master Plan should be limited to those density areas. Right now the urban densities in Minden and Gardnerville would be extended all the way up to what is now central agriculture land.

Under C, the proposed development will also materially affect the services. It's been stated here today that in order for a four lane Parkway to be built there needs to be a federal grant and federal grant money awarded. The likelihood that all the funds required to build this four-lane Parkway are not going to be given and therefore the level of service that is required with the addition of 2,500 homes cannot be met.

Lastly, findings under D cannot be met. Little consideration has been given to the East Valley residents who directly abut this portion of property. This change and the designation of 1,400 receiving areas in 2,500 homes results in their property being vastly different in character than it is today. Therefore, we requested that Board not approve the designation of 1,044 acres of receiving area in the Minden and Gardnerville town plans. Thank you.



**Robert Garrett** speaks:

In my 15 years of being here now in Douglas County, I finally have reached a situation where I had an incident that I don't believe. What we've been discussing today obviously affects thousands of people, many who live beyond 1,325 feet of the impacted receiving areas and so forth. I now know I wasn't noticed because if you put a calipers to a map, I lived 1,475 feet and how can the public Commissioners when a basic tenet of public planning is we get citizen input for the decisions we made. Which true 16 years ago when I was at Pomona College and it should be true blue 60 years now. That you could do something like this, and completely ignore that thousands of people that are impacted by this decision. I think it's absolutely despicable and actually eminent domain was established in this country in the 1790s for the very purpose of public roads. Roads were privately owned and the reason for the establishment of the doctrine was so the government could build public roads for the public good. You have really confused things to bring the 2005 Supreme Court decision into that. Thank you.

**Bob Russo** speaks:

I oppose a relocation of receiving area from the Topaz Ranch Estates to 1,044 acres in Minden and Gardnerville. I am against it because I cannot support the Park development proposal which is neither beneficial to the residents of Douglas County, or to our obligation to preserve the rural character of the Carson Valley. This proposal of 2,500 homes will add 5,000 to 6,000 more residents and more than 20,000 vehicle trips per day to our area. With over 1,500 homes already approved for this area, this will nullify any benefit of the two lane Muller Parkway as an effective bypass and could double our population. In all likelihood it will require the construction of the new school at a cost of \$15-\$20 million, with \$11-\$16 million of it falling on the back of taxpayers. There will be additional cost for maintaining our already fragile infrastructure, more police, fire personnel and so on, and taxes are likely to increase to pay for all this. It's also my understanding that in 2004, an agreement was reached to create a rural residential buffer zone between rural property owners on Orchard Road and the proposed Muller Parkway. But the Park amendment development agreement does is eliminate that buffer zone and places Muller Parkway right next to rural property owners on Orchard Road. It will certainly be adversely affected by this proposal. It will also degrade the rural character of their living environment and potentially reduce the value of their property with the road and traffic right behind them. Personally, I view this as a bad deal for the residents of Douglas County and a great deal for Park. Sure, we will get the two miles of right-of-way for Muller Parkway, but the construction of a two lane road and the right-of-way will cost taxpayers an estimated \$12.5 million dollars in the construction of a four-lane road is simply beyond the financial means of our County. And a federal grant is unlikely. I just want to mention that over the last few weeks I've gone off and I've gotten

signatures for a petition against this project and I would bet that if this ever became a ballot measurement, it would certainly fail. Thank you.

Chairwoman Brown speaks:

Thank you. Any more public comment?

Mr. Slade speaks:

Member Henderson, before you start the clock I have a point of order. Mr. Forsberg.

Member Walder speaks:

Madam Chair, members of the public cannot make public order, points of order. That's reserved for members of the Planning Commission.

Mr. Slade speaks:

Mr. Forsberg represents Park Ranch Holdings, who are not an applicant today. Why does he get to speak for 12 minutes? I want an answer. And he is allowed to pontificate on Park Ranch development agreement which is not on today's agenda. That's inappropriate. As chairman of the sustainable growth committee representing over 5,000 signatories and 12,000 voters. I demand equal time and I want an answer to that when I'm done here with my three minutes.

This Master Plan Amendment does not meet the required findings as Ms. Walker indicated. I can list dozens of goals and policies that it doesn't meet, but let's just stick to the overarching goals to retain our rural character and let growth pay for itself. This will create sprawl by extending beyond the current town and urban service area boundaries. Despite what Commissioner Neddenriep said. This growth will also not pay for itself. There's no plan to fund a four-lane Muller Parkway unless a problematic bill grant is obtained. There is far too little money allocated for an expensive new school or two, as mandated by the Parks 2,500 homes along with 2,000 others already approved. More for added road maintenance, County staff, Sheriff's deputies, etc. There is also no change in circumstances that warrants this amendment. None. The right-of-way through Ashland Park, now owned by Park is only 0.4 miles and is clearly a public benefit if taken by eminent domain, apparently Commissioner Walder wants to repeal a Supreme Court decision.

Finding B, there is no demonstrated need for a receiving area at this time. There are 2,000 homes approved in the adjoining lands. Much of it in receiving area and all of it within the Town and urban service area boundaries. Preference should be for infill development.

Finding C, this amendment and the proposed 2,500 homes would negatively affect the level of service on 395 through the towns, of our existing schools, of the judicial and law enforcement center, of current staffing and government,

including the sheriff department and the capacities County to maintain our infrastructure including road maintenance.

Finding D, the staff and their biased information practice, does not even bother to provide a map clearly showing the actual or Master Planned use of the adjacent property which is unacceptable since that's a requirement. Is that because more than 80% of the adjacent property is vacant. Staff's admission on page 80 that this receiving area would be adjacent to the existing receiving areas of the partially built Monterra, minimally built Heybourne Meadows, the undeveloped Ashland Park and the nearby undeveloped 1,020 homes of Virginia Ranch, is exactly why this doesn't meet finding B. These four projects of more than 1,500 homes yet to be built, the new receiving area would not maintain a relatively compact development pattern. It would create sprawl. About the only statement Mr. Forsberg obviously biased letter that I can agree with today is where he states "there is no basis for a different decision on this rehearing". Exactly. You voted unanimously months ago to deny this Master Plan Amendment to create a 1,000 acres.

Chairman Brown speaks:

I am sorry Mr. Slade, your time is up and you challenged the chair. I will let the District Attorney answer for me.

Ms. Gregory speaks:

So I don't know if we want to have the representative from, speak first. So with regards to any allegation of violation of the Open Meeting Law do to the discussion of the development agreement, which was raised earlier, is not proper. The development agreement is a pending ordinance and it can be discussed as it impacts the Master Plan agreement. With regards to the time I believe you've spoken now for 12 minutes just for a point of clarification.

Mr. Slade speaks:

Not on this topic.

Ms. Gregory speaks:

Additionally, Mr. Forsberg has been considered. It's not back-and-forth, so if you want to sit down that's fine as well. So Mr. Forsberg has been considered a co-applicant and is the property owner. Therefore, it is within the discretion of the Chair to allow more time.

Chairwoman Brown speaks:

Thank you. Your time is up Mr. Slade. Mr. Slade. Thank you, thank you. Next public comment please.

**JD Frisby** speaks:

Madam Chair, thank you for this opportunity and Commissioners. And thank you for your time today and thank you for your earlier support on item B. The

Town thanks you. I am the Town Manager for the Town of Minden here representing the Town. The Town heard this item on July 3, 2019 and recommended approval at that time. The biggest reason was because the proposed land use map amendments are in line with the Town's plan for prosperity which was supported by this Board and accepted by the BOCC last December. The Town Boards made this recommendation of approval, obviously aware of the suggested 85% build out, which we have been hearing about today and will be monitoring. Staff has done a good job today and with the amended maps to meet the goals as outlined in the approved Plan for Prosperity. Douglas County can no longer afford growth where it doesn't belong. Far too long has this County approved development in surrounding areas that have now become the County's problem and they are left holding the bag. Most importantly, the Plan for Prosperity was strategically created as an avenue by the Town to help protect and armor the County's most valuable resource, water. It is this document, along with our water analysis that the Town uses in discussions with the State Engineer to show why we need to preserve our current water rights. This comes before you at this time, after many years of preparation by the Town, not only on the water right side, but capacity as well. Minden has three wells, as stated earlier, we serve the Bentley Science Park, which is located on the east side of the proposed area. We also have a 30 inch transmission line that extends to the north portion of this line. Minden currently serves the Bentley Science Park area. We currently have the capacity to serve more than 70% of this proposed growth within our existing system as it sits today. And have one additional well site in reserve if ever needed. None of this is by chance. Minden is equipped for growth but is limited based on the current land use maps. The current Town Board wants the water to stay in Douglas County. But we can't protect what we don't have. If we can't show possible future growth, we will lose it. I have experienced this firsthand as a Municipal Engineer in Lincoln County, Nevada a few years back. Your recommendation earlier to amend the Community Plan is a step in the right direction in helping the Town. By denying this item today and its land-use elements as presented, Minden would be landlocked by A-19 parcels which it cannot serve. The majority the growth which is inevitable, would take place in these rural areas adjacent to the Town and in the worst case scenario, A-19 parcels will be developed and approximately 60+ wells and septic tanks will be installed directly above the County's most valuable resource, stripping us of any way to regulate it. The growth is going to come. It's inevitable. The question is over the next 20 years, does this Board feel the growth should take place, where the growth should take place. Is the purpose of this Master Plan, growth should come from inside the boundaries.

Chairwoman Brown speaks:

I'm sorry, your time is up. Next speaker please.

Mr. Stevenson speaks:

It seems to me that the County is wanting to trade some Blue Tick Hound for a Palomino. Now, I love me a Blue Tick Hound, and Central Nevada and the way it opens up in Topaz Ranch, but the development rights for that piece of property are in no way commiserate with the quality of the ground that we have here. The agriculture, the water infiltration. Minden's got great water. They also have a line that goes to Carson City. A line that goes up to Clear Creek. A line that goes all the way around the Valley serving developments the County approved with high amounts of radiation in their water. Nitrate rates climbing because of development with septic tanks on well systems. Ag wells draining, drying up residential wells. Waters important, but this section all the way out to Buckeye has always been a riparian area full of willow, full of evidence of a high water table. You're going to pave all that over, and you're going to have infiltration. Parks are holding over; they won't let you put in a culvert to drain the other side of town if you don't go for this. They not only want to trade you a Blue Tick Hound for your Palomino, they also want to give you a wagon with three wheels. As I understand it, if Muller Parkway is not going to be adequate for truck transportation. What we need to get off Highway 395 is an actual bypass to increase the quality of life for the residents here. An extra 2,500 homes, hell that's more people than were in the whole Valley when I was a kid. That's more people then were in the Valley. We have serious traffic problems here. I don't know if you guys have driven our highways very much, there is an awful lot of folks on the road here. You continue to add and add and add, well we've got to have prosperity. Prosperity for what? For whom? Not for our quality of life. Prosperity for the buddies of the Board, the developers, the casino magnets who stilted contractors on their job when they got done. You know, it is not the right thing to do.

Member Henderson speaks:

Excuse me sir, I was 30 seconds late pushing the button so your time is up. Thank you.

Chairwoman Brown speaks:

Is there any more public comment? Seeing none, public comment is closed. I will bring it back to the Commissioner's. Commissioner Oland, you wanted to ask a question.

Member Oland speaks:

Yeah, so I'm getting back to the receiving area, you know I've heard a lot about Muller Parkway, but as a planner I think we're more concerned with what we are doing with the receiving area compared to what is going on with where the receiving area is currently located. When I am looking at this Muller Parkway and we have the receiving area going up to it. I don't know if we can go back to one of the maps, it was packet 66. So we have the receiving area going up there and then at the Muller Parkway, we still have Minden area reserves and Gardnerville area reserves east of that, is that correct? If I'm reading these



maps correctly. The packet page 102 compared to that, or two slides later, three slides.

Mr. Dallaire speaks:

So that community area for this particular slide is on the east side and goes further towards East Valley Road so your right. This isn't the entire area of the future urban reserves as you would see in the Plan for Prosperity. The community boundaries, though, that were earlier in the presentation did show that boundary follow the Plan for Prosperity lines.

Member Oland speaks:

So the rest of the properties to the east of that Parkway are hard zoned and can't be changed, correct? Unless there is a hard zoning map amendment.

Mr. Dallaire speaks:

That is correct, future land use designation, that is all we are showing here is the future land use designation and those ones are currently as future land use as A-19 right. And then there is some industrial, so the industrial park, we do need, Jim Slade's correct in that we should show a larger Master Plan Map so you can see a little more clearly how this is happening, but these were specific changes to the Master Plan. So it's the same as what's there today.

Member Oland speaks:

So when I go back to previous meetings we had where had hard zoning amendments, do we not say the property directly adjacent to this property is the reasoning that we make a hard zoning amendment.

Mr. Dallaire speaks:

Well, this is the future land use amendment, we're not changing the hard zoning at all on any of these.

Member Oland speaks:

Well I understand, what I'm saying hypothetically in a case where we have a hard zoning amendment come in front of us, do we not look at the properties located in north, south, east, and west. So now we would be creating properties to the west that are single-family residential 12,000 square-foot next to 19 acre parcels. And therefore a hard zoning amendment could be more likely because they can make the argument that that's across the street.

Mr. Booth speaks:

I would just say that this is just future land use, and the receiving area is not changing the fact that under all this property the underlying zoning is going to be A-19 agricultural. It sounds like you're saying that it might help a future zoning change request, sure, in that the areas receiving area. If this were approved it's receiving area, and so in making a request to amend the zoning, part of those findings are that he would have to bring in transfer of

development rights in a receiving area. So it is anticipated that in a receiving area you could ask for zoning amendment, increase the density, but their conditions still applied to that. And then additionally, I think we would, and it was discussed in the staff report some, that there are receiving areas adjacent to this receiving area, so as we said it is not a zoning change, this is a land-use change, but in discussing the adjoining land uses to the south part of that, that Tom pointed out, there is existing receiving area at the very northwest corner. There is existing receiving area, but also along Virginia Ranch to the south, Heybourne Meadows, Stodick Estates and Arbor Gardens. Some of those receiving areas. Now we just made a motion to remove some of those receiving areas, but they had been designated that way. I believe because they were adjacent to the Town's it was an ideal location for future development. Now that development has occurred and so logically, we're saying okay, continue that in this area here. Additionally, most of those receiving areas along the Muller Parkway alignment were established with development agreements for each of those property owners and in the early 2000's. It was that understanding I would guess, by those property owners and the County, and the development agreements being approved for each of those, Virginia Ranch, Monterra, Nevada Northwest, which includes part of those areas. Essentially, that receiving area was being established in those places in order for development to occur in order for the developer to build Muller Parkway or for the County to contribute in some way. Some of those developments haven't built out and we haven't seen those Virginia Ranch being a large one, just south of this development and Toler there. I would guess to say because there has been no connection for Muller Parkway through the center of this area. So they have had no incentive to develop their receiving areas because there's been no agreement or right-of-way at least established for Muller Parkway. We believe that this receiving areas logically placed between some existing receiving areas, between some existing development agreements that were in place to get Muller Parkway and so as this development agreement, we've talked about, would get us the right-of-way for Muller Parkway. Logically the Town spoke to that as well. This receiving area is adjacent to the towns and areas where we perceive growth should happen.

Member Oland speaks:

So I think you have kind of answered it in that one point, what I'm getting at is that if you don't put the receiving area here, and we have A-19, and we get Muller Parkway and because we use eminent domain or whatever, we've got A-19 parcels on one side; somebody comes with a hard zoning map amendment across Muller Parkway to match the current zoning they are matching 19s, not, if this goes receiving area and gets buildout as 12,000, now that guy is arguing, I'm matching 12,000 ft.<sup>2</sup>.

Mr. Booth speaks;  
That is correct.

Member Oland speaks:

I was going beyond receiving area and I guess I got confused. As far as the receiving area in Topaz, there is no current services out there, correct?

Mr. Dallaire speaks:

Well, across the street, they have water.

Member Oland speaks:

Water? So it could possibly be connected to water?

Mr. Dallaire speaks:

It is my understanding that the system for Topaz Ranch Estates, the GID actually goes on to, that there is a well on the on the south side of 208 for their system.

Member Oland speaks:

So it is possible to get connected to water, but I'm not hearing anything regarding a septic.

Mr. Dallaire speaks:

Right, so these parcels that are proposed, existing zoning, what we have on the books today and that's where they are multifamily residential land comes from, is what's on the books today in the GIS system that we have. This matches, so the future land use map matches the existing zoning on this particular property, and that's what we compared or duplicated, was that we transferred the zoning up to the future land use designation.

Member Oland speaks:

So that was never meant to be served by a system?

Mr. Dallaire speaks:

It was planned to be served by a water system and a sewer system with the density, a developer would have to create that or add to the GID. I mean the GID would have approve it if they were going to expanded the water system. Or they can create a new one and new GID out there to run the sewer and the water system for this development.

Member Oland speaks:

So it could be possible that if this ever got developed in the future, a sewer system could exist out in the Topaz area.

Mr. Dallaire speaks:

It depends on the density that is being proposed.

Member Oland speaks:

Well, receiving area allows, so everything is up in the air.

Mr. Dallaire speaks:

The State allows well and septic on all of the 1 acre or larger parcels. But those aren't created today so they also have to bring in water rights associated with that in order to do a parcel map of these. So each of the squares is a parcel that's created there today. Each of those, that the existing number of parcels that are out there.

Member Oland speaks:

I think, just listening to a lot of comments we have here, being a planner is not easy, I know you guys recognize that this is not easy, but I think the one thing people need to remember as we are making decisions for our children, people that are going to be here 20 to 30 years from now, you know I hear a lot of arguments of I, me, and no arguments in this room should be I or me. Is what I think. Thank you.

Chairwoman Brown speaks:

Are there any other comments? Commissioner Henderson.

Member Henderson speaks:

Yes, Ma'am. Tom, can we go back one chart please sir. The one with the receiving area up here. I don't know if this thing is going to work. Yeah, it does. What are those areas right there?

Mr. Dallaire speaks:

So this area here is the Monterra development.

Member Henderson speaks:

It's agricultural right?

Mr. Dallaire speaks:

No, it is receiving area today for Monterra development, yeah. The Muller Parkway is on the northern boundary of this property, and then this is Virginia Ranch, I'm sorry, not Virginia Ranch, Heybourne Meadows, which is south of Buckeye Road, it's under construction. That phase four, I believe, is under construction today and then down here is phases 1, 2, and 9 that have been built out on Heybourne Meadows. It's all receiving area. This is the school, and this is that multifamily that we talked about earlier on the plans.

Member Henderson speaks:

Thank you.

Chairwoman Brown speaks:

Are there any more questions, Commissioner Casey and then I'll take you Commissioner Walder.

Member Casey speaks:

Mr. Stevenson brought up that point and it sparked something. As I recall a Ascuaga has a conservation easement over a lot of property between Jack's Valley and the crest of the Sierra. Do we have or could we add, I have one more thing for you, a designation in the maps or somewhere that identifies visually areas under conservation?

Mr. Booth speaks:

Commissioner Casey if I will, I will respond to that. Bear with me, the map that I showed as part of the C items shows preserved conservation easements that were used as part of the TDR program. We do have an exhibit that was provided as part of the draft Master Plan and that's where this map came as well, but a separate exhibit that talks about other lands that were conserved by Southern Nevada Public Land Management Act (SNPLMA) Funds were just landowner conservation easements that weren't part of the TDR program. But the a Ascuaga Ranch is not part of the TDR program but we do have a map that shows that. It shows SNPLMA funding to preserve Ascuaga, but it wasn't part of the TDR program, they preserved it. It may have been the SNPLMA Funds that preserved that ranch. It escapes me right now but I know we have a map that does show that, we can we can bring that stuff forward and I would intend to as we move forward with the Master Plan.

Chairwoman Brown speaks:

Commissioner Walder, and then I'll take you Commissioner.

Member Walder speaks:

Thank you Madam Chairman. I have one question for the staff. But before I ask that question, I do take offense at two of the characterizations that were made during public comment. First, when Mark was characterized always already having made up his mind. I think he was making a thoughtful point about the receiving area in the TDR program. I don't think he prejudged any vote that he might make for or against anything, so I want to come to his defense and I think that that characterization was unfair. And then, as far as the characterization that was made regarding the fact that the Board of County Commissioners is already voted once on the first reading of the Park Ranch development agreement and that therefore how we might vote now is currying favor with the board. I believe that's unfair. I don't curry favor with anybody. I vote the way I want to vote based on the facts and the information and my opinions on something, so I do take exception to that greatly. Now, the one question I would have for staff is on the issue on Orchard Road and the realignment of Muller Parkway, Sam I don't know if you are better to answer this question, but how many feet did the realignment to Muller Road move in the direction of the properties on Orchard Road. Could somebody either look at up or tell me what that is off the top of their head?



Mr. Dallaire speaks:

Well, on this map here we've got the Orchard Road properties, here is Orchard Road which is basically 1,320 feet off of the backside of the Virginia ditch, right. So the Virginia ditch runs at the back of these properties. Then from the ditch, the west bank of the ditch, we propose the right-of-way, the 205 feet. This is the right-of-way that was established, I think, based on the 2007 agreement. You can see this line. It's only the one line is not the actual width of the right-of-way. I believe the right-of-way based on where this is located at the park, I believe the right-of-way is to its east from there. And it was 150 feet, I want to say, and so we realigned this Muller Parkway at the back of these lots with the Virginia ditch, off of the Park property. So without moving the Virginia ditch out away from their property, we leave it in there in that location. This would be the back lot of the Orchard properties and then we had 100 feet to the right-of-way portion of the road is what's being proposed here.

Member Walder speaks:

So it was moved to 150 feet closer approximately.

Mr. Dallaire speaks:

Yeah I don't know the exact dimension for that, but roughly. Yeah roughly about this, well, it doesn't show the old alignment, we've got the right-of-way here. So from this point forward, it's pretty close. It's from this point to the end where the industrial property is. So I think there are seven or eight parcels there that this would be closer, or right at the back of the lot, rather than away from it which is where this alignment is veering down through the fields.

Member Walder speaks:

So my point is, Muller Parkway is already proposed to run close to those properties on Orchard Road. Now we've moved it closer by 150 feet.

Mr. Dallaire speaks:

Well, these properties along this other streets, there is a cul-de-sac back here. There's smaller lots that were developed, well and septic are served by them. The Decker ditch that runs down and then the Virginia ditch comes in at the end of that. So those parcels, the alignment is closer. The existing alignment was closer to the backs of those properties from the Virginia ditch or from the Park ditch right here you can see the boundary line coming off of there, that's that westerly right-of-way. I believe and that was 105 feet so it looks to me, ball parking it, looks to be about between 100 feet and roughly 400 feet closer at this location where it is separated a little bit more from the property. This is the industrial land. So there is this 10 acre parcel stop right here at this location, Mr. Walder.

Member Walder speaks:

Thank you. I know it's a complicated question and it varies, and Cynthia may have more information but the fundamental point I wanted to make was that

Muller Parkway has always gone along that general route, we are now moving it closer, yes that's correct. I was just trying to ascertain the degree.

Mr. Dallaire speaks:

I can, we can make an exhibit off of this and bring that, or send it to you, put it on the fact sheet, we can put it on the fact sheet of Master Plan.

Chairwoman Brown speaks:

Commission Akola, you have a comment.

Member Akola speaks:

Yes, I read through all the documentation has been provided to us and I'd like to call attention to letter received today from Matt Cool. I'm just not, I am not just a very concerned landowner, but I have a professional opinion as well. I'm a soil scientist for the United States Department of Agriculture. My job is to inventory and monitor not only soil but many other natural sources. I lived in a work in Nevada my entire career. The soils in the Carson Valley are among the most productive and fertile in the State. Once houses are put on them, they are forever degraded and will never support agriculture again. Even if it were possible. You can't peel off houses and asphalt, and return the land to agricultural use. I also monitor snowpack and water supplies. Part of my job. In recent years we have had above average snowpack and abundant water. However, the drought years are normal part of the climate here. It's amazing how we budget water based on abundant years then are surprised when water is being over allocated during drought years. We are doing this now; drought will happen again. When you tie up water for residential use, you have no cushion for when water resources become scarce. I can relate that to my professional background, I've been a registered civil engineer in 13 states throughout the Country, a registered land surveyor in two states, have a Master's Degree in Environmental Engineering and Hydraulics, and I've seen development from one side of this Country to the other. In over 50 years of experience, I've never seen a place where County government took and built a road for a private developer. It's always the developer that pays for the roads. You should, this should not be, this development agreement should not proceed where the County is required to build this road, let the developers build the road if it's necessary, they can afford it. They are going to get all kinds of money for that land. It shouldn't be put on the backs of the County residents. Thank you.

Chairwoman Brown speaks:

Anymore comments from the Commissioners. If not, I will ask that we vote. I know, we need a motion. Would someone make a motion?

Member Walder speaks:

Madam Chairman, I'd be delighted to.

Chairwoman Brown speaks:

And you need to read everything that's on page 64 into the record.

Member Walder speaks:

Yes, ma'am. Madam Chairman, I move that the Planning Commission approve as a part of resolution, PC 2019 – 03 – A; a Master Plan Future Land Use Amendment for Park Ranch Holding, LLC, hereafter Park, relocating the land-use designation of receiving area from the Topaz Ranch Estates/Holbrook Community Plan, hereafter Topaz to the Minden Gardnerville Community Plans, hereafter Minden and Gardnerville, specifically amending the land use designation of approximately 1,044 acres of receiving area and approximately 510 acres of agriculture in Topaz to approximately 1,002 acres of rural residential approximate, 473 acres of single-family estates, approximately 59 acres of commercial, and approximately 20 acres of multifamily residential, to conform to the current zoning designations and amending the land-use designation in Minden Gardnerville, changing approximately 798 acres of agriculture approximately 51 acres of rural residential to receiving area and changing approximately 3 acres of agriculture to industrial in Minden and changing approximately 184 acres of agriculture and approximately 70 acres of rural residential to receiving area in Gardnerville, based on the presentation, testimony, and ability to make the required findings.

Chairwoman Brown speaks:  
Do I have a second please?

Member Neddenriep speaks:  
I will second that.

Chairwoman Brown speaks:  
Commissioner Neddenriep second, Commissioner Walter made the motion, now will do roll call.

Member Walder speaks:  
Madam Chairman, I like to be heard on my motion if I may.

Chairman Brown speaks:  
Yes.

Member Walder speaks:  
Madam Chair and members of the audience, let me thank first the staff for you're very hard work over the past seven months on this aspect of the Master Plan. The County Manager's Office, Community Development staff, DAs office, Clerk staff, the GIS staff, the Sheriff's Department, and many others have worked long hours to bring us where we are here today. And let me also thank the citizens of Douglas County for their participation and their interest. Between the Planning Commission and the Board of County Commissioners

and the individual workshops, I think we've had over 15 meetings to discuss the Master Plan and I've attended or listened to nearly all of them. Some of my friends think I need to get a life. So where are we at today and what have we learned: the goal of the Planning Commission when it comes to updating our Master Plan is to examine the state of the County and establish a plan for the future. And I agree with what Brian said, we should be looking to our children's future. We need to plan for not only the next year, but 5, 10 and 20 years in the future. I spent a great deal of time listening to and reading the many comments made by our citizens and I understand their concerns, but I believe each of us on the Planning Commission have an obligation to do our own research, assess the relevant data and come to our own conclusions. One of my disappointments in the many comments I've heard and read is a frequency of intellectually dishonest arguments. Let me address a few. First, we hear people say we should listen to the will of the people or we should act in the public interest. Are we to believe that the will of people is just those in the room today or who attended Board of County Commissioner meetings. Or only the people who submit written comments. The County mailed 8,000 letters explaining the Master Plan and received about 100 comments in response. Perhaps another 300 attended the public workshops and maybe 100 spoke. Are we to assume the remaining 7,500 people, or even the rest of the entire County hold the same views? It's been my experience that nonresponses often mean satisfaction with the proposal at issue. Madam Chair, could you admonish people not to respond.

Chairwoman Brown speaks:

Is there someone making comment while we're speaking. Please don't do that. Alright Commissioner Walder.

Member Walder speaks:

Second, people continue to assert that the goal of our Master Plan is to keep our rural character. That is an incomplete and misleading quotation of the language in our current Master Plan. I've read this in the record before; land-use goal two says "to retain the beauty and the natural setting and resources and the rural agriculture character of the County while providing opportunities for managed growth and development."

Third, it's alleged that the proposed new houses in the receiving area in Minden and Gardnerville would require construction of a new elementary school at an estimated cost of 15 to 20 million. The facts dispel this argument. School enrollment has fallen from 7,035 and '05 and '06 to 5,795 in the current year. A 17.5% decrease. Excess capacity is almost 2,000 students.

Fourth, some say we don't have enough water to supply new homes in the proposed receiving area. According to the state engineers pumpage report, Carson Valley has a perennial yield of 49,000 acre-feet and in 2016, only about 31,000 acre-feet were used. So the surplus was about 17,000 acre-feet. In

percentage terms we used only about 64% of our water. And given the possibility to State could revoke our water rights, this plan showing future growth and beneficial use of our excess water protects this valuable resources. I think the Town Manager of Minden made it a very important statement. We need to show demonstrated need and that's what this proposal does.

Finally, some opposed the 2,500 homes in the new receiving area is excessive. Let me remind everyone the 2,500 homes is a maximum, a cap. And as Tom mentioned his presentation, this amount could be reduced. I call your attention to page 9 of the development agreement, packet page 154, which says that if the property owner rezones some land as light industrial, for example, then their housing units are reduced by 2.4 units per acre. Also, we have the growth ordinance, and the building permit allocation is added protections against excessive growth. Then we have market forces that provide important checks and balances on growth. Builders can only build homes based on the available skilled workforce, and with the possibility of a recession always on the horizon. I don't think developers will immediately commit to building hundreds of homes. Recent building permit data confirms this, not to mention that every building permit cost \$353 and expires in 18 months. And before development can occur, the property needs to come forward with a specific plan or plan development and zoning map amendment and tentative subdivision map, all of which require approval by the Planning Commission and the Board of County Commissioners.

My final arguments concerning the receiving area exchange are twofold. First, based on public comments from Topaz in the suitability of building in that area is clear we should remove the Topaz receiving area. Second, receiving area in the Minden Gardnerville area is needed to provide opportunities for managed growth and development, a Master Plan goal, and to restart the TDR program. The last time TDR's were used to conserve ag land was in 2009. Our ag and ranching community will benefit as will the entire County by a strong TDR program. Thank you.

Chairwoman Brown speaks:

And now I will call for the vote and it will be a roll call. No, only the maker of the motion was allowed to make a comment because it was based on his motion. Okay.

Member Henderson speaks:

After motion is moved and seconded, it's appropriate for everybody, and have discussion. Obviously my colleague Kirk has given this a lot of thought and his points are well made and he has presented them very cogently. I just would suggest that there is a lot of interpretation to what can be said about all the things that we've investigated here today. It is a difficult issue. What's good for our kids in the future. Most of the people that have moved here and live here have done so because of the rural environment and that's reflected in the open



space and agricultural land preservation. The transportation plan, it talks in there about maintaining a level C service. I have extreme doubts that the Muller Parkway is contemplated with an additional 2,500 homes and however many it's going to be and whatever it is going to be in the Virginia Ranch is going with an undetermined number of roundabouts is going to sustain level C performance. People have to slow down and so it goes. The water situation, Commissioner Penzel, when there was an issue with some Bentley property up in the East Valley sent me a USGS study that was done in 2012 and I read it very carefully and if you don't read it very carefully what you don't understand, and I've submitted a paper to the BOCC and to this group regarding the efficacy of that paper and the validity of the conclusions therein. And the paper is characterized by its veracity and it basically says we've done this, we really don't know what the alluvial fans look like, we have highly nonlinear differential equations, nonlinear differential equations that we really can't solve, and we really don't know what's going on and it charged the County to monitor the water levels and the County hasn't done that. What I can say is I live out in the East Valley and when this was an issue, many people came before the Planning Commission and testified that their well levels have dropped. My well level has dropped. So it's not prudent to take a sanguine approach that we don't have a water problem. And the fact that we haven't used a whole lot of it, Kirk's probably right on target. But I will tell you that if we cover that agricultural land with as much asphalt as Matt Cool made the point on in his paper, the ability to recharge the aquifer is going to be compromised. Minden says we've got wells, but their wells are challenged right now. Who knows what's going to happen with this legislature. You know I take issue and I heard Commissioner Penzel say it to a group of people that if we establish a need for this water they're not going to take it. Well there are a whole bunch of us here that have wells that have an established need for the water and right now they're going to take it. So it is a difficult time end and I .one thing I absolutely agree with my colleague Kirk on is the herculean effort that the staff in particular, these two gentlemen and the County Attorney have gone through to bring this to as close in the picture as is possible. But I just, I hear what you're saying but there are a couple of ways to interpret what is going to be good for our kids and for the people here, the vast majority of whom I believe have moved to the Carson Valley from California or from Colorado, I moved from Virginia 8 years ago. We're here primarily because of this rural lifestyle that we enjoy and we love so much. And I do not see, I think what this agreement proposes is dichotomous, is a dichotomy with maintaining our rural lifestyle and our rural environment and traffic flow that makes sense. So thank you very much. Thank you for your comments Kirk, they're well-placed.

Chairwoman Brown speaks:  
Commissioner Casey.

Member Casey speaks:

Okay, I will make my comments and then I will vote. Can I do that, make my comments and vote? I just have a short comment.

Chairwoman Brown speaks:

Oh, you have comments, okay, yes.

Member Casey speaks:

I think we all have something before we vote. I have no doubt this area north or to the east of Minden will develop. You walk through those subdivisions all the streets are stubbed out with the intent, on another day, another subdivision, they're going to go in. And they're going to attach to Muller Parkway. If and when it's ever built. My issue with the receiving area is it violates title 20 chapter 20.608-020, the procedures for amending a Master Plan Map and because we have it spelled out so succinctly in the title 20. I think the receiving area establishment and the changing of the receiving area in Topaz, it needs to be removed from this process, the Master Plan Map update and come through, the development plan needs to be severed and brought to the process on its own. People talk about the rural character, and how they want to preserve the open space. I agree. I have no problem with that. Government cannot do it all, whether through collected funds or through conservation easements given by the property owners. If we want it to remain rural. We need to tax ourselves through an open space district and pay a fraction of sales tax in order to purchase those development rights. We cannot expect the government to do it all. And that is something we all know, we've all come from areas that have open space districts. And we enjoy what we have. That has to go back on the ballot. It failed 20 years ago. I think it's a different story now and I think if it went back on the ballot it would pass. I think that Topaz should keep the receiving area. Whether or not it's reduced in size, I'm okay with that. I have no problem with that, but I don't think it's the County's responsibility to be removing receiving area just because the owner decides, well I do want to build it out to what its designated. That's not our responsibility. They bought it when it was receiving area, it should remain receiving area, the size can change. With regards to water and ambient temperatures and hardscape. I think it's something we have to consider with the amount of overwatering that's done with the lawns and landscaping around this County. There's a lot of waste, a lot of water going down the gutters into the slough. That has to be better and those are development standards, things that have to be taken into account when we reviewed Douglas County Improvement Standards next year. And I think that we do have to take note, the way that California has mandated through the Democratic legislature that cities are required to build a certain amount of housing for all levels of people. We have a Democratic legislature here in a Democratic governor, if we do not provide a variety of housing throughout Douglas County, they will come to us and they were say, you will build. And I don't think we want to lose that control. Having said all that, my issue is the process with this whole thing. I love the maps; I love all the work

that staff has done. I do not like the way that the development agreement is tied with the map amendments so I can't support this.

Chairwoman Brown speaks:

Are there any other comments from any of the Commissioners before I call for the vote? Commissioner Akola. Your mics not on. Oh, you voted already, okay.

Member Akola speaks:

Nay.

Member Neddenriep speaks:

Aye.

Member Walder speaks:

Aye.

Member Oland speaks:

Aye.

Member Henderson speaks:

Nay.

Chairwoman Brown speaks:

Nay. So what do we. Don't tell me it's a tie again.

Ms. Gregory speaks:

You have three in favor of the motion and four against. Motion fails. Because you need a super majority vote. Just for clarification we can have a motion to deny, that would be helpful for purposes of the record.

Chairwoman Brown speaks:

Just a minute, do we have to do that, do we have to make that motion to deny.

Ms. Gregory speaks:

You don't have to read the whole thing; you can just do a motion to deny part D set forth in the agenda. It makes for a better record. Therefore, you show that you have taken some action.

Chairwoman Brown speaks:

Okay, would one of the C for denial?

Commissioner Henderson speaks:

I make a motion to deny the recommended motion as previously stated.

Chairwoman Brown speaks:

Is there a second?

Member Akola speaks:  
Second.

Chairwoman Brown speaks:  
Commissioner Henderson made the motion to deny, Commissioner Akola second. All those in favor of the motion to deny say aye. Opposed? Okay, Let's do roll call again so I can get the rate. It is going to be the same probably. Okay, Commissioner Casey.

Member Casey speaks:  
On that last motion, aye.

Member Akola speaks:  
Aye.

Member Neddenriep speaks:  
Nay.

Member Walder speaks:  
Nay.

Member Oland speaks:  
Nay.

Member Henderson speaks:  
Aye.

Chairwoman Brown speaks:  
Aye. So four to three. Are we done?

Member Walder speaks:  
Madam Chairman, would counsel care to opine if it's a request of Board of Commissioner has made or in our best interest to ask the people who voted no on the original motion which findings they believe could not be met.

Ms. Gregory speaks:  
I believe through their comments that they have set forth those with regards to the issues that they had, so if they want to, they certainly have that opportunity but I believe that the record indicates their issues with the approval.

Member Walder speaks:  
Thank you.

Douglas County/TRPA Area Plan  
Current Master Plan 2011  
Master Plan Update 2019  
Community Workshops  
Online Survey  
Draft Chapters of 2016 Plan

# FAQs 2019 Master Plan Update and Park Agreement

## FAQs

**\*\*\*Updated October 31, 2019\*\*\***

**Q. I have questions and/or public comment regarding the proposed changes to the Douglas County Master Plan and/or the Park Development Agreement. How do I get my questions answered and/or submit my public comment to the Board for consideration?**

A. Douglas County is hosting a series of public workshop on October 21st-23rd at the locations and times identified on the Master Plan Update webpage. The workshops will include an introduction by the County Manager, a brief staff presentation regarding the proposed Master Plan Amendments and Park Ranch Holdings LLC Development Agreement followed by a question and answer breakout session where citizens can also give feedback regarding the proposed Master Plan Amendments and Development Agreement. Community Development will also host open office hours on October 24, 2019 from 2:00pm until 5:00pm at the Minden Inn located at 1594 Esmeralda Avenue, Minden NV. Additional information regarding these meetings and all public hearings is available on the Master Plan Update webpage. Public comment may also be submitted in writing.

**Q. How can I view the maps and get information about the proposed changes to the Master Plan?**

A. County Staff broke down the proposed changes by location on a series of maps posted on the County's Master Plan Update webpage. An online viewer showing the existing vs. proposed changes can also be found on the webpage.

**Q. What is the Master Plan?**

A. A Master Plan is required by State Law, Nevada Revised Statute Chapter 278.150, for the purpose of providing long-term guidance on the development of cities, counties and regions in Nevada. The current Master Plan was adopted in 1996 and last updated in 2011. A copy of the current 2011 Master Plan is available to view on the Master Plan Update webpage.

The Douglas County Master Plan is a long range planning tool that provides guidance on the future location of



different types of development in order to protect public health, safety, and welfare. The most recent process to update the 2011 Master Plan was started after a joint workshop of the Planning Commission and the Board of County Commissioners in February 2016. Draft changes to the 2016 Master Plan Update were reviewed and approved by the Planning Commission but never fully adopted by the Board of Commissioners.

At a second joint workshop of the Planning Commission and the Board of County Commissioners on May 23, 2019, direction was given to re-vise and finalize the plan for approval by December 2019. The minutes of the workshop are available on the Master Plan Update webpage.

**Q. Why is the County considering the Master Plan Amendment to change 1,044 acres of Agricultural land to Receiving Area with 2,500 homes?**

A. In 2016, the County began the process to update the 2011 Master Plan. The proposed Master Plan Amendments, including the possible change of 1,044 acres of Agricultural land to Receiving Area, is a continuation of the process started in 2016 to update the 2011 Plan.

As required by the State, the Master Plan should include discussion and consideration by the County of policy, goals, and objectives related to long-term development. Growth patterns in thriving communities change over time. A county's Master Plan ensures that the Community properly plans and establishes a framework for development to occur by directing development into the areas of that Community that are best situated to serve and offset those impacts.

"Land Use" is the principal planning element in the Douglas County Master Plan related to long-term development and growth. Land use policies, goals and objectives "protect the public health, safety, and welfare of residents and property owners by providing sufficient land for residential, commercial, mixed-use, industrial, and public uses and by locating these uses in appropriate locations" (2011 Douglas County Master Plan, Land Use Element).

As noted in the Future Land Use section of the Land Use Element of the Master Plan, Receiving area may be established by the Board of County Commissioners through the Master Plan Amendment process as an additional tool to be used by the Board to plan for long-term growth and development in the County.

Whether or not to approve the proposed Master Plan Amendments, including creation of additional Receiving Area, is a policy decision for the Board of County Commissioners. To assist the Board with their decision to amend the Master Plan a number of findings must be made to evaluate the consistency of the proposed changes with the goals and policies of the Master Plan. An analysis regarding these findings prepared by Community Development will be provided to the Planning Commission and the Board of County Commissioners as part of

the meeting packet of materials. The Community Development report will be available to the Planning Commission, Board, and the public to view no less than three business days prior to the public hearings.

### **Q. What is a Receiving Area?**

A. Receiving Areas serve two primary purposes. They are a planning tool to assist policy makers with identifying areas of the County which are best situated to accommodate future growth and development.

Receiving Areas are also an important requirement of the Transfer of Development Rights (TDR) program the county has in place to incentivize the conservation of open space and agricultural lands in the community. Frequently Receiving Areas serve the added purpose of assisting the County with flood control and management by further incentivizing the TDRs from sending areas located within the floodplain.

Through the TDR program, if a landowner wants to develop in a Receiving Area he/she must purchase development rights from a landowner in a Sending Area (areas zoned Agricultural or Forest and Range). When a development right is purchased, land in a Sending Area is permanently conserved from development. By designating the new land as a Receiving Area, the county is saying, “this land is more suitable for development than the land that should be conserved in the Sending Area.”

Whether or not to approve the proposed creation of additional Receiving Area, is a policy decision for the Board of County Commissioners. To ascertain the suitability of land to become Receiving Area, the County must consider a number of findings pursuant to Douglas County Code (DCC 20.608) including the availability of resources (including utility services), impact on infrastructure, neighborhood compatibility and consistency with the overall goals and objectives of the master plan. Additional information regarding Land Use in Douglas County can be found in the Land Use Element of the Master Plan on the County’s Master Plan Update webpage.

### **Q. Will the Park Ranch Holdings Development Agreement approve 2,500 homes to be constructed in this area?**

A. If approved, the Development Agreement would limit the maximum number of homes to 2,500 to be built on the 1,044 acres included in the agreement. The 2,500 maximum residences would be subject to the Douglas County Building Permit Allocation and Growth Management Ordinance. The Development Agreement states: “Development of the Property is planned to include a variety of residential uses, however no “big box” commercial development of a commercial building in excess of 30,000 square feet of commercial space shall be allowed on the Property. The Property may be developed to the density and intensity permitted by existing and future development approvals. A more thorough description of future development of the Property will be set out in future maps, in improvement plans submitted for approval to the County Engineer, and applications for

specific plans or planned development(s).”

**Q. What is the Douglas County Building Permit Allocation and Growth Management Ordinance? How does it work?**

A. The Growth Management Ordinance was adopted in 2007. Projects with pre-existing Development Agreements (approved prior to the effective date of the ordinance) and vested projects are not subject to the Building Permit Allocation and Growth Management Ordinance, DCC Chapter 20.560. Vested projects are defined as residential projects that received tentative subdivision or planned development approval, tentative serial parcel map approval with subdivision standards, or in the case of a multi-family project, final project approval, prior to the effective date of the ordinance.

Building permit allocations are broken down into two categories: individual allocations (70%) and project allocations (30%) by a Resolution (No. 2007R-053) of the Board of County Commissioners. DCC Chapter 20.560 defines a "Project" as “an approved subdivision map, planned development, specific plan or attached or semi-detached multi-family residential project.”

The County’s Growth Management Ordinance, DCC Chapter 20.560, limits the number of new homes that can be built across the County to 2% growth annually (not including projects exempt projects prior to 2007). Currently just over 200 total allocations (30% of which are project allocations) are available for use in the County each year. Any unused allocations “roll over” from year to year into a “bank” of unused allocations called “excess allocations.”

Developers/builders are required to apply for these allocations as needed. Building permits are issued against the allocation on a first come first served basis and expire if not used within one year of issuance (one single extension may be granted for six months). Unused permits go back into the excess allocation “bank” and become available for future use.

It is important to note a Project applicant may also borrow against future allocations for permits. This would require a request by an applicant to utilize additional allocations from future years and approval by the Board of County Commissioners. The cumulative number of allocations taken by all projects requesting to bank and borrow may not exceed 40% of any year’s allocations available to distribute. The procedure for banking or borrowing allocations is established in DCC Chapter 20.560.150; a link to this code is included on the Master Plan Update webpage.

**Q. If the Development Agreement is approved for 2,500 homes, how quickly could they be constructed?**

A. The 2,500 maximum residences would be subject to the Douglas County Building Permit Allocation and

Growth Management Ordinance DCC Chapter 20.560.150; a link to this code included on the Master Plan Update webpage.

Because a developer/builder involved with the Park project would be required to compete for a limited number of building permit allocations with other projects annually, and would only be able to build so many homes in any given year before the permit expired, it is likely it would take 20+ years before the 2,500 homes could be constructed. 125 homes would need to be constructed and issued a certificate of occupancy annually for buildout in 20 years to be achieved.

**Q. On average how much has Douglas County grown in the last five years?**

A. Since 2014 Douglas County has seen a 1.06% growth rate, growing from 48,553 in 2014 to 49,070 in 2018. The Nevada State Demographer considers low growth at 1.0% and the county's Growth Management Ordinance allows up to 2% growth each year (State Demographer 2018 estimate).

A link to the Population Statistics and Reports (including population projections) for Nevada Counties prepared by the State Demographer is posted on the Master Plan Update webpage.

**Q. Have the impacts of 2,500 new homes to traffic on 395 and Muller Parkway been evaluated?**

A. The 2017 Transportation Master Plan indicates that if Muller Parkway is not fully constructed as a 4-lane arterial road by 2025, the level of service on US-395 will drop below County and State standards. Muller Parkway is an integral part of the adopted Transportation Plan and will connect future planned urban areas within Minden and Gardnerville and would be constructed in tandem with regional drainage improvements. When completed, such improvements will directly benefit the County by providing a major transportation route around Minden and Gardnerville as well as critical emergency access for first responders. A copy of the Douglas County 2017 Transportation Plan is available for review on the Master Plan Update webpage.

If the Park Ranch Holdings Development Agreement is approved, the property owner would dedicate the right-of-way (205 feet wide, 15,295 long, approximately 3 miles, 75.7 acres total) needed to construct Muller Parkway and the necessary drainage improvements to the County. The right-of-way will accommodate a four lane road, multi-modal paths and drainage facilities.

**Q. Would development adjacent to the future alignment of Muller Parkway render Muller Parkway obsolete and/or ineffective?**

A. The impact of 2,000+ residential homes developed along Muller was considered in the 2017 Transportation Plan Update. Allowing 2,500 residential units to be developed within the proposed Receiving Area adjacent to

Minden and Gardnerville will not undermine the functionality of the future Muller Parkway. The traffic report used for the 2017 Transportation Plan assumed a growth rate in that traffic analysis zone based on census data through 2040 which exceeds the unit cap contained in the proposed Development Agreement. See Figure 2.5 of the 2017 Douglas County Transportation Plan for additional information on household growth by traffic analysis zone (posted on the webpage). Accordingly, even if all 2,500 homes allowed under the terms of the proposed agreement are constructed, the traffic generated thereby would not exceed the capacity of Muller Parkway nor render the new major arterial road obsolete or ineffective.

**Q. Is there infrastructure in place to support this type of development?**

A. Yes. Through the update to the Plan for Prosperity, the Towns expressed their desire and ability to plan for and provide services to “Future Urban Reserve Areas.” This future urban reserve area was identified on page 19 of the Minden Gardnerville Plan for Prosperity, Figure 1.4 (the Plan for Prosperity is included on the Master Plan Update webpage ).

If the Master Plan Map Amendment and Development Agreement are approved, Receiving Area would be created closer to the towns of Minden and Gardnerville. Any development within the newly-designated Receiving Area adjacent to Minden/Gardnerville would be required to connect to existing water and sewer utilities in accordance with the Park Ranch Holdings Development Agreement.

The Towns of Minden and Gardnerville ~~and the Minden Gardnerville Sanitation District~~ recommended approval of the proposed changes to the Master Plan future land use maps, including the creation of this Receiving Area adjacent to the Towns indicating their desire and ability to provide services to the Receiving Area.

On July 2, 2019 Community Development Director, Tom Dallaire, appeared before the Minden Gardnerville Sanitation District (MGSD) Board to discuss possible amendment of the Urban Service Area Boundary for the District in the context of the Master Plan Map amendments. The MGSD Board discussed the possibility of expanding the service area boundary of the District in the future to extend north and northeast to align with the Town of Minden Water service areas and the proposed Minden Community Plan boundary but declined to take formal action at that time. The Engineering representative for MGSD, Bruce Scott of Resource Concepts Inc., advised that there was sufficient capacity within the existing sewer treatment plant, indicating the ability and capacity of the District to provide services to the Receiving Area in the future if desired.

**Q. Are there potential water issues in this area and can our current water systems support these homes?**

A. In 2012 U.S. Geological Survey published Scientific Investigations Report 2012-5262: Assessing Potential



Effects of Change in Water Use With a Numerical Groundwater- Flow Model of the Carson Valley, Douglas County, Nevada and Alpine County, California. To assess the impact of increased growth and development on the aquifer, USGS used a groundwater model to analyze four water-use scenarios against a base water scenario (total water pumped in 2005) over 55 years. “The four scenarios included: (1) total pumping rates increased by 70 percent, including an additional 1,340 domestic wells, (2A) total pumping rates more than doubled with municipal pumping increased by a factor of four, (2B) maximum pumping rates of 2A with 2,040 fewer domestic wells, and (3) maximum pumping rates of 2A with 3,700 acres removed from irrigation” (USGS Scientific Investigations Report 2012-5262, page 67). A link to this study is included on the Master Plan Update webpage.

The summary section of the report (page 67) advises the water model predicted increasing groundwater pumping to meet the maximum level of demand under the most extreme of the four different scenarios “would result in 40-60ft of water table decline on the west and east sides of the Carson Valley” and “would be offset primarily by decreased flow in the Carson River by a loss of groundwater storage.” Under the most extreme scenario input in the model in the USGS report, the total amount of municipal water pumped would increase by four times what it was in 2005 for all of Carson Valley with 3,700 acres removed from irrigation. The USGS report stated that additional monitoring of water levels was needed to verify the accuracy of the water model.

If the Development Agreement is approved, it is likely the Town of Minden would provide water service to the majority of the development associated with the agreement. The Town of Minden reviewed the USGS Scientific Report to assist the Town with the prudent management and planning related to use of Town’s water resources. Assuming, each residential unit would utilize 656 gallons of water per day (based on average Minden residential use), 2,500 homes would use approximately 1,250 gallons per minute or the equivalent of one new municipal well in the Town. The Town of Minden currently operates eight municipal wells total to serve its existing retail and wholesale water customers.

In addition to the USGS report the Town of Minden contracted with Sunrise Engineering to conduct a Water System Analysis completed in 2017. In 2018, the Town amended its water system analysis to include a future service area identified in the Town’s “Plan for Prosperity.” This future service area included all 1,044 acres of the Park Ranch Holdings and extended further to the south side of the Minden Tahoe Airport. A copy of the 2017 Minden Water System Analysis and the 2018 Water System Analysis Amendment are available for review on the webpage.

**Q. Does the Town of Minden have sufficient water rights to serve new development in the receiving area?**

A. Yes. Over time, the Town of Minden acquired water rights sufficient to serve the Town of Minden with the understanding that the Town would eventually grow and expand to adjacent areas of the County.

In the State of Nevada, water users, including municipalities like the Town of Minden, must demonstrate an actual beneficial use of water. This concept is also known as “use or lose it.” A water right owner cannot speculate in water rights or hold on to water rights they do not actually intend to place to a beneficial use in a timely manner. Because water resources are limited in the state, if a water right owner stops using the water, their water right is subject to revocation and possible reallocation by the State.

Through the update to the Plan for Prosperity, the Towns of Minden and Gardnerville expressed their desire and ability to plan for and provide services to “Future Urban Reserve Areas.” This future urban reserve area was identified on page 19 of the Minden Gardnerville Plan for Prosperity, Figure 1.4 (the Minden Gardnerville Plan for Prosperity is included on the County’s Master Plan Update webpage for reference).

The Plan for Prosperity paired with the Town of Minden Water System Analysis (also available to be viewed on the webpage), demonstrates to the State, Minden’s plan to put a portion of the Town’s remaining water rights to beneficial use over a reasonable period of time. As mentioned above, without a viable plan for use, the water rights may be subject to revocation by the State.

**Q. Have the schools been included in the Master Plan and are they prepared for the increase this housing development might bring? If we add 2,500 homes will that affect school enrolment?**

A. Douglas County schools have excess capacity now and to serve future growth. The draft Public Facilities and Services Element of the Master Plan (dated November 2017) lists student enrollment by school. Total school enrollment has fallen from 7,035 in the 2005-06 school year to 6005 in 2015-16. As of 2015-16 there was excess capacity for 1,733 students. The updated school enrollment number for 2019-20 school year is 5,798 which is a 17.5% decrease in student enrollment since 2005-2006.

**Q. In summary what terms are in the Park Ranch Holdings Development Agreement?**

A. The proposed amended Development Agreement includes, but is not limited to the following terms:

- 1) All obligations and rights under the Development Agreement are conditioned on approval of a Master Plan Land Use Map Amendment changing the receiving area land use designation on approximately 1,044 acres of Park property in the Topaz Ranch Estates Community Plan to the Minden and Gardnerville Community Plans as proposed in the 20-year Master Plan Update;
- 2) The property owner must deed approximately 75.7 acres (a 205 ft. in width strip of real property) to the County for construction of Muller, multi-modal paths, and drainage improvements, including a flood conveyance channel between Muller and the Virginia ditch extending from Toler Lane to Heybourne Road;
- 3) Detention pond(s) must be installed on Park property east of Muller at shared expense to the parties;

- 4) The property owner must grant a public drainage easement, approximately 84,942 sq. ft. across APN 1320-31-000-016 to the County for Highway 88 drainage culverts (once constructed this would remove approximately 100+ Minden homes from the floodplain);
- 5) The County will be required to construct two-lanes of Muller within six years;
- 6) The County, at its sole cost and expense, must construct approximately 12,691 linear feet of Muller and seven access points;
- 7) The County and Park will equally share construction costs for an approximately 2,604 linear feet segment of Muller through Ashland Park;
- 8) Park may develop a maximum of 2,500 residential dwelling units upon the approved receiving area located within the Minden and Gardnerville Community Plans;
- 9) All development within the receiving area will be required to connect to municipal sewer and water utility providers (septic systems and domestic wells will not be permitted);
- 10) Development of commercial buildings in excess of 30,000 sq. ft. is prohibited (no "big box" commercial);
- 11) A process was created for Park to requests other non-residential zoning uses in the receiving area which would result in a proportional reduction in single family residential development rights associated with the Receiving Area;
- 12) The agreement establishes parameters for denial of a zoning map amendment or tentative subdivision map associated with the receiving area;
- 13) Requires the first of the 2,500 residential dwelling units to be developed utilizing the transfer of development rights (TDR) from APN: 1319-25-000-020 & -021 the real property known as "Klauber Ranch", as a sending parcel. Transferring development rights from Klauber Ranch would require the property to become subject to the terms of a deed restriction or conservation easement and require the majority of the property to remain agriculture/open space in the future;
- 14) Restricts all water rights with either a conservation easement or deed restriction for density removed from "Klauber Ranch" pursuant to the County's TDR program by Park (water rights tied to Klauber Ranch will remain always with Klauber Ranch and could not be transferred for development other use);
- 15) The property owner will grant an approximately 7,330' long trail easement to the County across the "Klauber Ranch" and an additional three parcels west of Klauber concurrently with the recording of a conservation easement/deed restriction. This would open approximately 7,330 feet of trail, much of it along the Carson River, for recreation use by the public and assist the County with eventually providing trail access along the Martine Slough Trail and Muller Parkway all the way to the Nature Conservancy;
- 16) Precludes the County from rescinding the Receiving Area land use designation for 30 years; and
- 17) The amendment supercedes Ordinances 2004R-1097 and 2007-1223 (the previous agreements).

A copy of the Development Agreement can be viewed on the Master Plan Update webpage. The previous Development Agreements Ordinances 2004R-1097 and 2007-1223 are also available on the County's webpage.

**Q. I've heard the County will operate a commercial gravel pit in East Valley or another location in the County to fund Muller Parkway, is that true? Will the County permit a commercial gravel pit operation in East Valley for a discounted rate to help pay for Muller?**

A. Douglas County will fund the construction of Muller Parkway through the contributions of developers, municipal bonds and possibly utilizing state and/or federal funding.

Douglas County Code Chapter 20.658 only permits Open and Subsurface Mining operations in General Industrial zoned areas of the County with a Special Use Permit.

If the Park Ranch Holdings Development Agreement is approved, the property owner would dedicate the right-of-way (205 feet wide, 15,295 long, approximately 3 miles, 75.7 acres total) needed to construct Muller Parkway and the necessary drainage improvements to the County. The right-of-way will accommodate a four lane road, multi-modal paths and drainage facilities. With the construction of drainage infrastructure up stream in the Pinenut and Buckeye washes, the eastern areas of the towns of Minden and Gardnerville would be removed from the current flood plain. It is likely the County will utilize fill material from these flood mitigation projects for road base on Muller. This would be the most cost effective method of obtaining the required material because other sources would require the material to be trucked in from long distances at an increased cost of the material to the County.

[Print This Page](#)

# **EXHIBIT 7**

Grant, Bargain, Sale Deed from Park Ranch  
Holdings, LLC to Douglas County,  
recorded on April 22, 2020

**EXHIBIT 7**



APNs: 1320-20-000-017; 1320-20-000-018; 1320-29-501-002;  
1320-28-000-023; 1320-28-000-024; 1320-28-000-025; 1320-28-  
000-028; 1320-28-000-017; 1320-27-002-035; 1320-34-001-028;  
1320-34-002-001; 1320-28-000-030; 1320-28-000-031; 1320-33-  
001-011; 1320-33-001-015; 1320-34-002-001; 1320-21-000-015;  
1320-21-000-016; 1320-29-601-003; 1320-28-000-029; 1320-29-  
000-015; 1320-28-000-022; 1320-28-000-027; 1320-32-501-021;  
1320-32-501-020; 1320-33-001-016; 1320-33-001-009; 1320-33-  
001-010; 1320-33-001-012; 1320-33-001-013; 1320-33-001-014;  
and 1320-31-000-002; 1320-31-000-002

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WHEN RECORDED MAIL TO  
AND MAIL TAX STATEMENTS TO:



00110067202009450790100105

KAREN ELLISON, RECORDER

E02

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned hereby affirms that this document submitted for recording  
does not contain the social security number of any person or persons. (Per NRS 239B.030)

**GRANT, BARGAIN & SALE DEED**

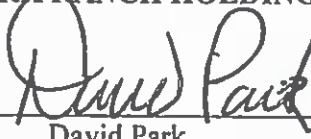
FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
**Park Ranch Holdings, LLC**, a Nevada limited liability company, hereby grants, bargains,  
sells and conveys to **Douglas County, a political subdivision of the State of Nevada**, that  
certain real property situated in the County of Douglas, State of Nevada, more particularly  
described on Exhibit A and illustrated on Exhibit B, attached hereto and by reference  
made a part hereof.

TOGETHER WITH all and singular the tenements, hereditaments and  
appurtenances thereunto belonging or in anywise appertaining, and the reversion and  
reversions, remainder and remainders, rents, issues and profits thereof.

Excluding all Water Rights.

WITNESS my hand this 7<sup>th</sup> day of April, 2020.

PARK RANCH HOLDINGS, LLC

By:   
David Park  
Its Manager

STATE OF NEVADA

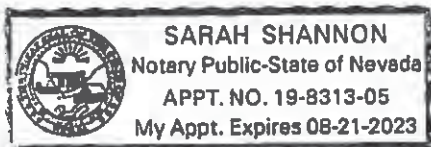
COUNTY OF Douglas

On this 7<sup>th</sup> day of April, ~~2019~~ <sup>2020</sup>, before me, the undersigned, a Notary Public in and for the State of Nevada, personally appeared David Park, personally known or proved to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



NOTARY PUBLIC



**EXHIBIT "A"**

LEGAL DESCRIPTION OF GRANT, BARGAIN & SALE  
DEED FROM PARK RANCH HOLDINGS, LLC

TO

DOUGLAS COUNTY

**DESCRIPTION  
MULLER PARKWAY**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A strip of land for public purposes located within portions of Sections 28, 33 & 34, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

**BEGINNING** at the southeast corner of Adjusted Parcel 25-080-07 as shown on the Record of Survey to Support a Boundary Line Adjustment for Rhoda Chichester Revocable Trust, Robert L. Chichester Jr., Ross J. Chichester & Lester Leroy and Anita Thran Stodick Family Trust, filed for record June 21, 1995 in the office of Recorder, Douglas County, Nevada as Document No. 364543, said point falling on the northerly right-of-way line of Toler Lane;

thence along said northerly right-of-way line of Toler Lane, North 89°20'18" West, 259.39 feet;

thence along the arc of a curve to the right, having a radius of 130.00 feet, central angle of 57°00'43", arc length of 129.36 feet, and chord bearing and distance of North 14°34'47" East, 124.09 feet;

thence along the arc of a reverse curve to the left, having a radius of 100.00 feet, central angle of 42°06'03", arc length of 73.48 feet, and chord bearing and distance of North 22°02'07" East, 71.84 feet;

thence North 00°59'06" East, 4,432.59 feet;

thence along the arc of a curve to the left, having a radius of 1,447.50 feet, central angle of 44°44'56", arc length of 1,130.52 feet, and chord bearing and distance of North 21°23'22" West, 1,102.01 feet;

thence North 43°45'50" West, 2,243.28 feet;

thence along the arc of a curve to the left, having a radius of 1,297.50 feet, central angle of 16°44'23", arc length of 379.08 feet, and chord bearing and distance of North 52°08'02" West, 377.74 feet;

thence North 60°30'13" West, 169.48 feet;

thence along the arc of a curve to the right, having a radius of 552.50 feet, central angle of 26°24'31", arc length of 252.41 feet, and chord bearing and distance of North 47°17'57" West, 252.41 feet;

thence along the arc of a reverse curve to the left, having a radius of 100.00 feet, central angle of 41°35'35", arc length of 72.59 feet, and chord bearing and distance of North 54°53'29" West, 71.01 feet;

thence along the arc of a reverse curve to the right, having a radius of 130.00 feet, central angle of 58°16'21", arc length of 132.22 feet, and chord bearing and distance of North 46°33'06" West, 126.59 feet to a point on the southerly right-of-way line of Buckeye Road;

thence along said southerly right-of-way line of Buckeye Road, South 89°29'43" East, 440.26 feet;

thence South 43°15'48" East, 1,655.08 feet;  
thence South 43°58'59" East, 1,981.44 feet to a point on the easterly boundary of Adjusted Parcel 52 per the Record of Survey to Support a Boundary Line Adjustment for Park Cattle Company, filed for record October 30, 2008 in said office of Recorder as Document No. 732299;

thence along said easterly boundary of Adjusted Parcel 52, South 00°59'06" West, 2,649.79 feet to a point on the easterly boundary of said Adjusted A.P.N. 25-080-07;

thence along said easterly boundary of Adjusted A.P.N. 25-080-07 the following courses:

South 00°59'56" West, 647.43 feet;  
South 89°01'29" East, 8.92 feet;  
South 01°15'34" West, 1,950.89 feet to the **POINT OF BEGINNING**,  
containing 41.58 acres, more or less.

**TOGETHER WITH:**

A strip of land for public purposes located within portions of Sections 20, 21, 28 & 29, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

**COMMENCING** at the northwest corner of Adjusted Parcel 26 as shown on the Map of Division into Large Parcels for Edgewood Companies, filed for record June 15, 2009 in said office of Recorder, as Document No. 745140, said point falling on the easterly right-of-way line of Heybourne Road;

thence along said easterly right-of-way line of Heybourne Road, South 00°48'13" West, 984.08 feet to the **POINT OF BEGINNING**;

thence South 89°30'10" East, 1,549.21 feet;

thence along the arc of a curve to the right, having a radius of 1,502.50 feet, central angle of 31°06'31", arc length of 815.78 feet, and chord bearing and distance of South 73°56'55" East, 805.79 feet;

thence South 58°23'39" East, 131.56 feet;

thence along the arc of a curve to the left, having a radius of 1,197.50 feet, central angle of 30°59'32", arc length of 647.75 feet, and chord bearing and distance of South 73°53'25" East, 639.88 feet;

thence South 89°23'11" East, 1,226.14 feet;

thence along the arc of a curve to the right, having a radius of 1,502.50 feet, central angle of 65°33'06", arc length of 1,719.00 feet, and chord bearing and distance of South 56°36'38" East, 1,626.77 feet;

thence South 23°50'05" East, 1,769.09 feet;

thence South 43°15'48" East, 248.30 feet to a point on the northerly right-of-way line of Buckeye Road;

thence along said northerly right-of-way line of Buckeye Road, North 89°29'43" West, 363.62 feet;

thence along the arc of a curve to the right, non-tangent to the preceding course,



0110-120

04/03/2020

Page 3 of 3

having a radius of 130.00 feet, central angle of 06°12'29", arc length of 14.09 feet, and chord bearing and distance of North 21°31'44" East, 14.08 feet;

thence along the arc of a reverse curve to the left, having a radius of 100.00 feet, central angle of 48°28'03", arc length of 84.59 feet, and chord bearing and distance of North 00°23'57" East, 82.09 feet;

thence North 23°50'05" West, 1,768.64 feet;

thence along the arc of a curve to the left, having a radius of 1,297.50 feet, central angle of 65°33'06", arc length of 1,484.46 feet, and chord bearing and distance of North 56°36'38" West, 1,404.82 feet;

thence North 89°23'11" West, 1,226.14 feet;

thence along the arc of a curve to the right, having a radius of 1,402.50 feet, central angle of 30°59'32", arc length of 758.64 feet, and chord bearing and distance of North 73°53'25" West, 749.42 feet;

thence North 58°23'39" West, 131.56 feet;

thence along the arc of a curve to the left, having a radius of 1,297.50 feet, central angle of 31°06'32", arc length of 704.48 feet, and chord bearing and distance of North 73°56'55" West, 695.86 feet to the southeasterly terminus of Muller Parkway;

thence along the easterly right-of-way line of said Muller Parkway, North 00°30'18" East, 91.50 feet to the northeasterly terminus of said Muller Parkway;

thence along the easterly right-of-way line of said Muller Parkway, North 89°30'10" West, 1,522.17 feet;

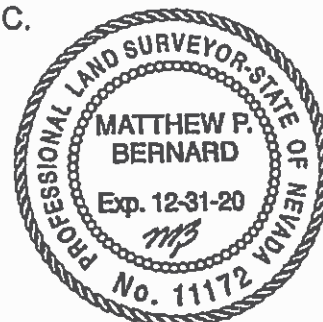
thence along the arc of a curve to the right, having a radius of 27.50 feet, central angle of 90°18'23", arc length of 43.34 feet, and chord bearing and distance of North 44°20'58" West, 38.99 feet to a point on said easterly right-of-way line of Heybourne Road;

thence along said easterly right-of-way line of Heybourne Road, North 00°48'13" East, 85.85 feet to the **POINT OF BEGINNING**, containing 34.10 acres, more or less.

The total combined acreage of this description is 75.68 acres, more or less.

The Basis of Bearing of this description is identical to the Map of Division into Large Parcels for Edgewood Companies, filed for record June 15, 2009 in the office of Recorder, Douglas County, Nevada as Document No. 745140.

Prepared By: R.O. ANDERSON ENGINEERING, INC.  
Matthew P. Bernard, PLS 11172  
P.O. Box 2229  
Minden, Nevada 89423



4-3-2020

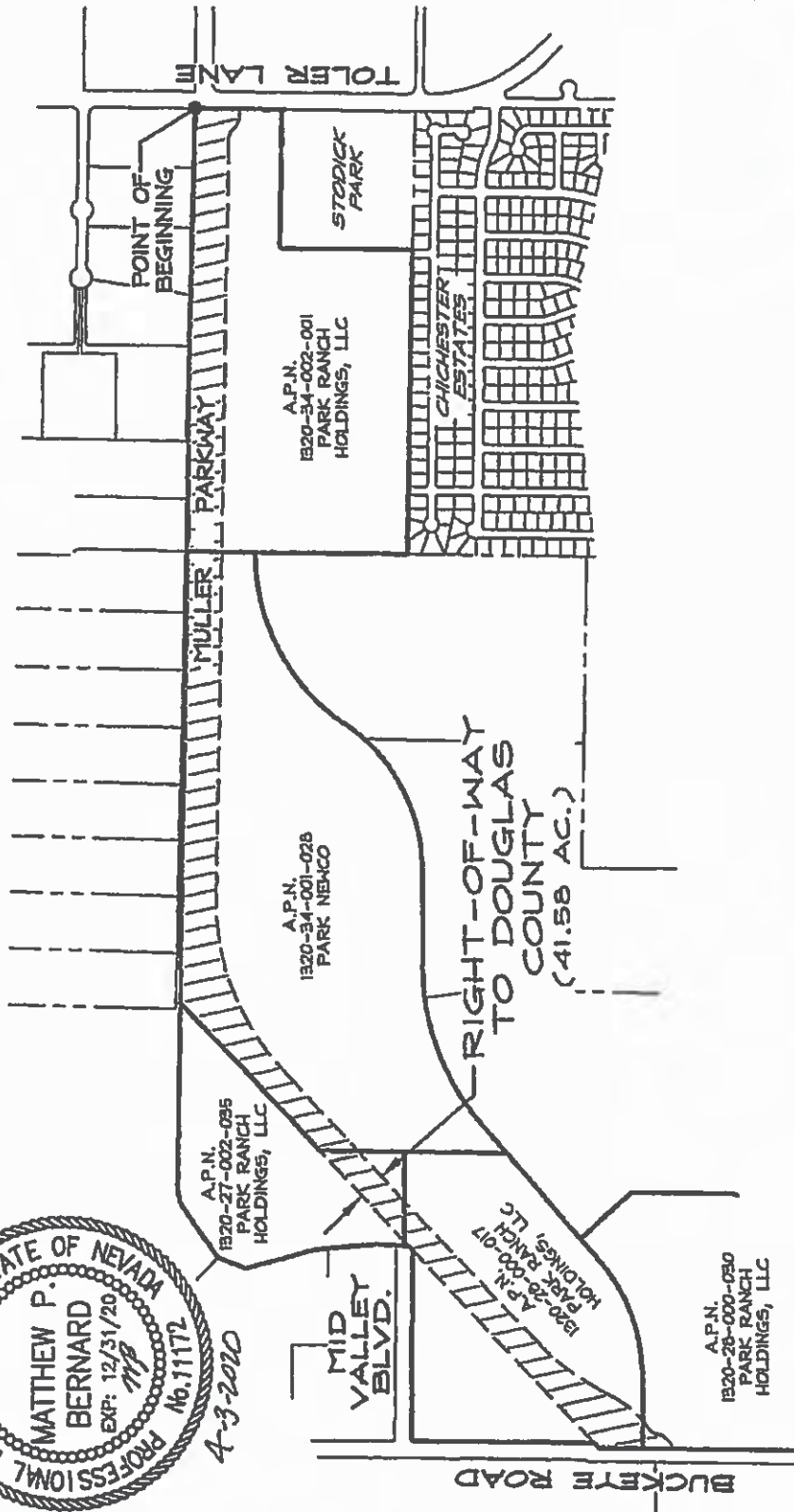
**EXHIBIT “B”**

MAPS DEPICTING LEGAL DESCRIPTION OF GRANT,  
BARGAIN & SALE DEED FOR MULLER PARKWAY  
ALIGNMENT

SCALE: 1" = 1000'



4-3-2020



**R/O Anderson**  
HARRISON, ARIZONA

RENO  
1600 Emerald Ave  
P.O. Box 2224  
FARMINGTON, NM 87401  
P 775.763.0022  
F 775.763.0024

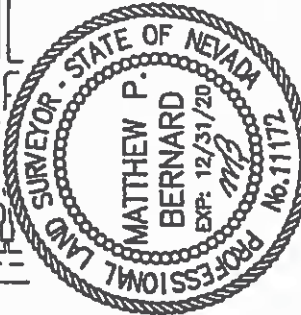
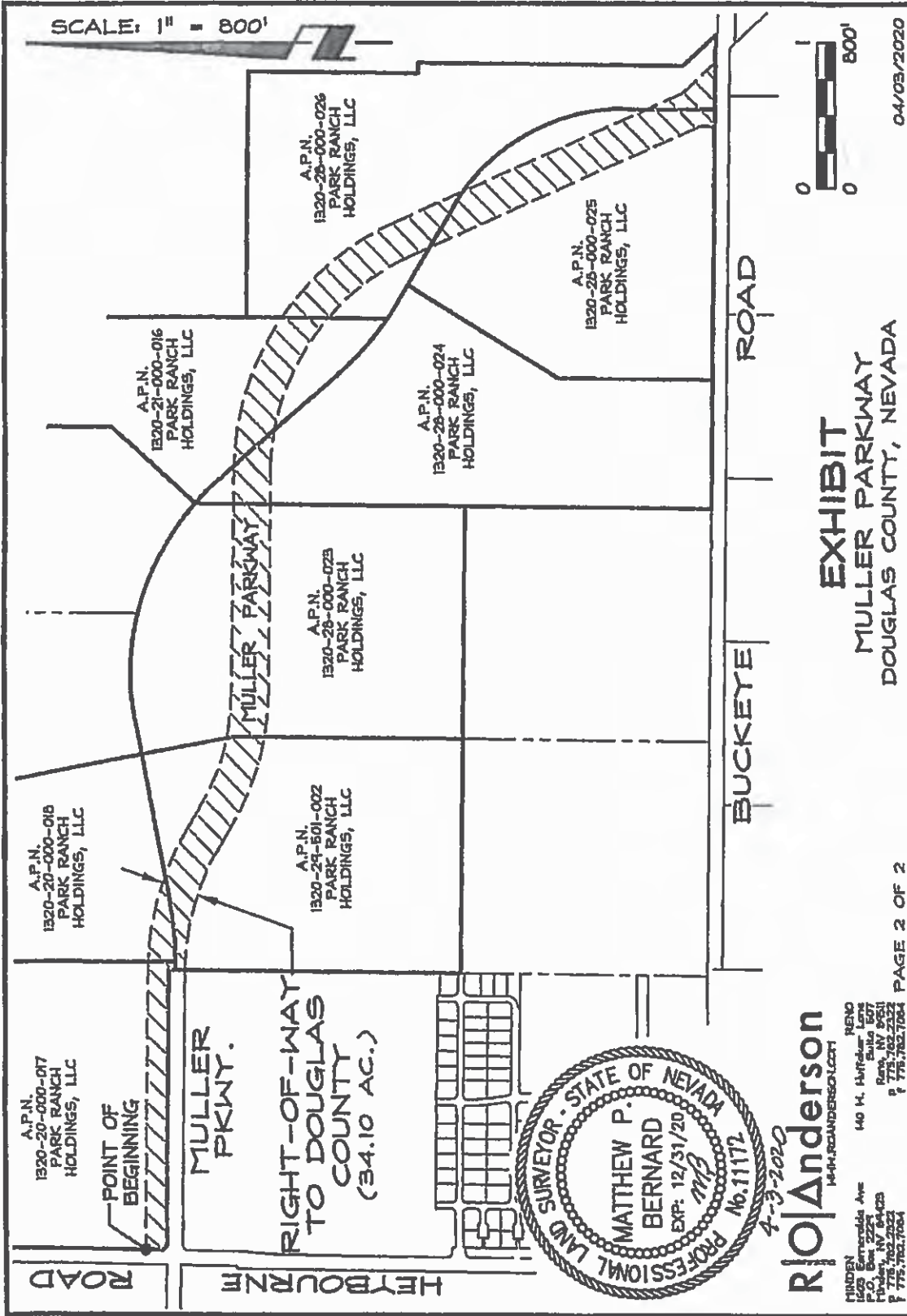
RENO  
140 N. Halfaker Ln  
Suite 207  
Farmington, NM 87401  
P 775.763.0021  
F 775.763.0024

# EXHIBIT MULLER PARKWAY DOUGLAS COUNTY, NEVADA



04/03/2020

PAGE 1 OF 2



**R/O Anderson**

**1444 RANDOLPH LANE**

**RENO**

**140 N. Huffer Lane**

**Suite 507**

**Box 1001**

**Reynolds, NV 89501**

**P 775.782.7024**

**F 775.782.7024**

# STATE OF NEVADA DECLARATION OF VALUE

## FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument#: \_\_\_\_\_

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

### 1. Assessor Parcel Number (s)

(a) (See Attached)

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(d) \_\_\_\_\_

### 2. Type of Property:

- a) ☒ Vacant Land  
b) ☐ Single Fam Res.  
c) ☐ Condo/Twnhse  
d) ☐ 2-4 Plex  
e) ☐ Apt. Bldg.  
f) ☐ Comm'l/Ind'l  
g) ☐ Agricultural  
h) ☐ Mobile Home  
i) ☐ Other

### 3. Total Value/Sales Price of Property:

\$ N/A

Deed in Lieu of Foreclosure Only (value of property)

\$ \_\_\_\_\_

Transfer Tax Value:

\$ \_\_\_\_\_

Real Property Transfer Tax Due:

\$ \_\_\_\_\_

### 4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: 2

b. Explain Reason for Exemption: Transfer back to Douglas County

### 5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1 % per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Douglas V. Ritchie Capacity Grantee's Representative

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

### SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Dark Ranch Holdings

Address: 504 E Mysser St

City: Carson City

State: NV Zip: 89101

### BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Douglas County

Address: P.O. Box 218

City: Minden

State: NV Zip: 89423

### COMPANY/PERSON REQUESTING RECORDING (REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: \_\_\_\_\_ Escrow # \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)



# **EXHIBIT 8**

Transcript Excerpt of the April 17, 2024, Deposition  
of Mark Gardner

**EXHIBIT 8**

IN THE NINTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR DOUGLAS COUNTY

-oOo-

ASHLAND PARK, LLC, a Nevada  
limited liability company,

Plaintiff,

vs.

DOUGLAS COUNTY, a political  
subdivision of the State of  
Nevada,

Defendant,

PARK RANCH HOLDINGS, LLC, a  
Nevada limited liability  
company,

Real Party In Interest.

Case No. 2023-CV-00085  
Dept. No. I

=====

DEPOSITION OF MARK GARDNER

WEDNESDAY, APRIL 17, 2024

MINDEN, NEVADA

REPORTED BY:

SUSAN E. BELINGHERI, CCR #655  
NV Firm Lic. #087F

1 re-election influence your decisions when it comes to  
2 the public opposition to things that come before the  
3 board?

4 A. Do you want state that again, please?

5 Q. Sure.

6 Does your -- is your decision making -- hang on a  
7 second.

8 Is the fact that you're running for re-election  
9 have an influence on your decision making as a  
10 commissioner?

11 A. I would say that I work very hard not to allow  
12 that to occur.

13 Q. Okay. Nonetheless, it's kind of part and parcel  
14 of being an elected official, isn't it?

15 A. I think that's a fair observation.

16 Q. I want to turn back to the Muller Parkway issues  
17 that are more germane to this litigation.

18 Is it your understanding, or do you know whether  
19 Park Ranch Holdings has fulfilled its obligations under  
20 the 2019 development agreement?

21 A. To my understanding they have.

22 Q. All right. Do you have a knowledge from  
23 consideration of various aspects of Muller Parkway, what  
24 the full cost of constructing the County's portion is  
25 going to be between -- and just for the record, that's

1 repayment of that bond for the justice center.

2 Q. And would that form of bonding not be available  
3 for Muller Parkway?

4 A. It's my understanding that we had been allocating  
5 funds over the last several years specifically for the  
6 building of Muller Parkway so that we would not have to  
7 bond for that.

8 Q. Okay. But just to be clear, is it your  
9 understanding that for some reason bonding for Muller  
10 Parkway is different than the kind of bonding you're  
11 acquiring for the justice center?

12 My -- my -- let me -- the question I asked you  
13 that you just answered was: Is the kind of bonding that  
14 was used to finance the justice center not available for  
15 Muller Parkway for some reason? Because it's a road, or  
16 some kind of different use, or something?

17 A. No. I mean, I believe that, recognizing our  
18 legal obligation to build Muller, we have been setting  
19 aside funds out of the general fund to accomplish that  
20 specific task. And it's my understanding that the  
21 amount of funds that we have been setting aside, so that  
22 we would not have to bond for that, have been allocated  
23 sufficiently enough to build Muller Parkway without  
24 bonding.

25 Q. Okay.

1 items that have been identified as projects to be  
2 accomplished have been -- have been analyzed to see how  
3 much they would cost.

4 A. Yes.

5 Q. All right. And so do you know how much, in  
6 totality, achieving the goals of the stormwater master  
7 plan would cost?

8 A. Oh, my gosh. Just in round numbers, probably --  
9 you know, I mean, the Grandview Estates item that was  
10 taken off was 43 million unto itself. So I would  
11 imagine probably close to 100 million, maybe. I  
12 haven't -- I didn't add those numbers up.

13 Q. Okay. And are the things that are on the  
14 stormwater master plan things that the County believes  
15 that it is going to pay for in the future?

16 A. I think ultimately it would be our desire to  
17 resolve some of our stormwater mitigation, you know,  
18 efforts in a number of areas, especially in the east  
19 valley area. We, to my knowledge, haven't identified  
20 funding sources for that, so...

21 Q. Is it your --

22 A. That's -- that's the difficulty in achieving that  
23 plan, is finding funding sources.

24 Q. Is it your understanding that the stormwater  
25 mitigation that's contemplated for -- to be included in



1 the Muller Parkway construction project, is to address a  
2 regional drainage problem?

3 A. Okay. Run that by me again.

4 Q. Okay. Is it your understanding or -- that the  
5 stormwater mitigation that's part of the construction of  
6 Muller Parkway, such as culverts, possibly constructing  
7 the road so that it won't overtop, these kind of things,  
8 are really directed towards regional -- solving regional  
9 drainage problems, as opposed to problems created by the  
10 development by Park Ranch Holdings or Ashland Park?

11 A. I -- I believe that we're looking at a more  
12 far-reaching, rather than isolated, resolution, looking  
13 at a more far-reaching storm mitigation plan.

14 Q. But the thing that the County wants Ashland Park  
15 to pay for, are they -- the culverts in particular --  
16 are they to convey regional stormwater or Ashland Park  
17 stormwater?

18 A. To my understanding, Ashland Park stormwater.

19 Q. And by Ashland Park stormwater, do you mean  
20 stormwater generated by the development of the Ashland  
21 Park parcel?

22 A. Not -- not necessarily generated by, but that's  
23 where the stormwater accumulates.

24 Q. That's where it's already going?

25 A. Yeah.

1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )  
4

5 I, SUSAN E. BELINGHERI, a Certified Court  
6 Reporter for the State of Nevada, do hereby certify;  
7

8 That on Wednesday, the 17th day of April, 2024,  
9 at the hour of 9:08 a.m. of said day, at the offices of  
10 Park Ranch, 1300 Buckeye Road, Minden, Nevada,  
11 personally appeared MARK GARDNER, who was duly sworn by  
12 me, was thereupon deposed in the matter entitled herein,  
13 and that before the proceeding's completion the reading  
14 and signing of the deposition has been requested by the  
15 deponent or party;

16 That the foregoing transcript, consisting of  
17 pages 1 through 106, is a full, true, and correct  
18 transcript of my stenotype notes of said deposition to  
19 the best of my knowledge, skill, and ability.

20 I further certify that I am not an attorney or  
21 counsel for any of the parties, nor a relative or  
22 employee of any attorney or counsel connected with the  
23 action, nor financially interested in the action.

24 DATED: At Reno, Nevada, this 29th day of April,  
25 2024.

  
SUSAN E. BELINGHERI, CCR #655

# **EXHIBIT 9**

Email from Jeremy Hutchings to Tom Dallaire,  
dated August 10, 2024, re: Ashland Muller Parkway  
– Culverts at Toler, DC001392

# **EXHIBIT 9**

[REDACTED]

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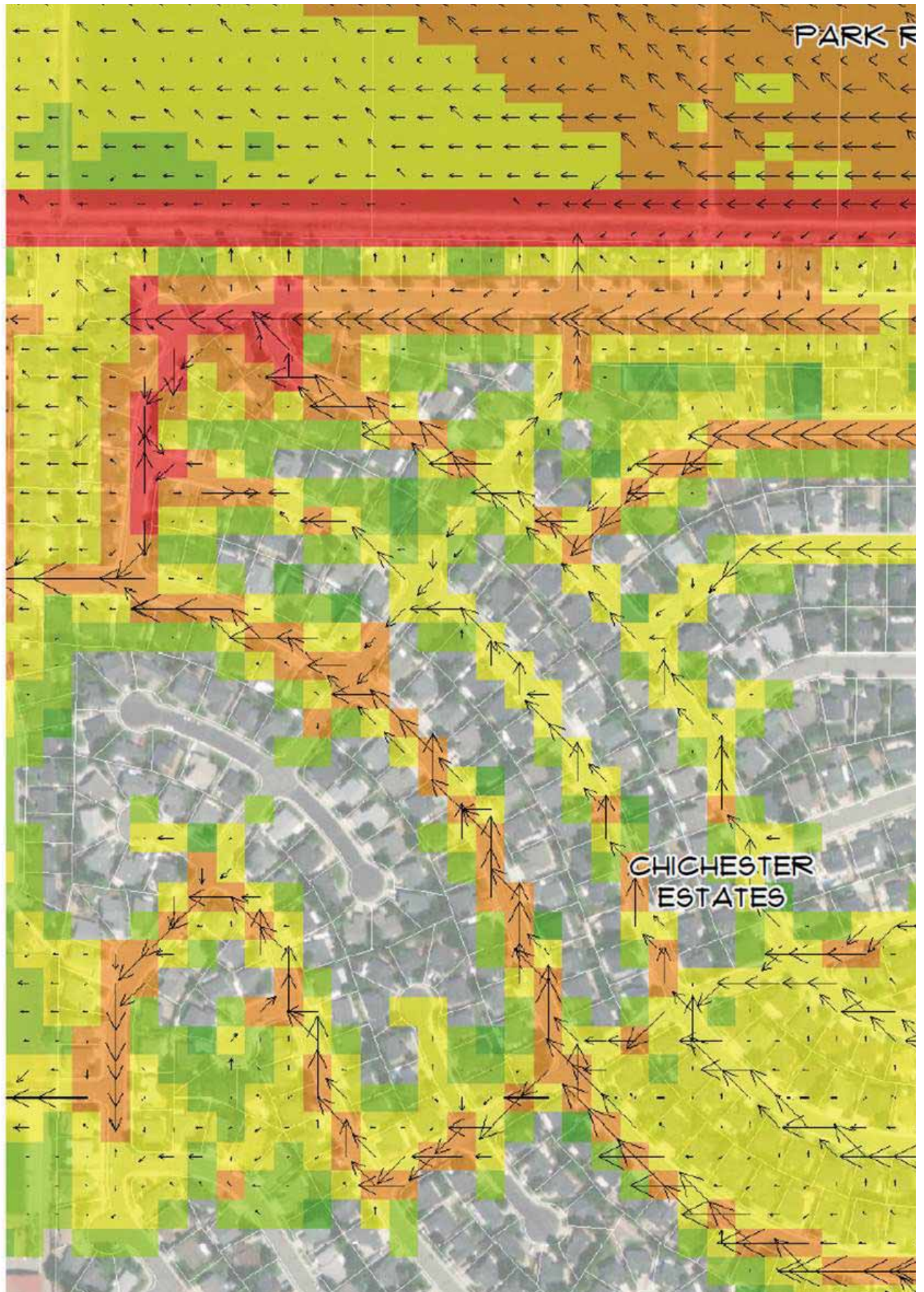
From: Hutchings, Jeremy <jhutchings@douglasnv.us>  
Sent: Tuesday, August 10, 2021 10:47 AM  
To: Dallaire, Tom <tdallaire@douglasnv.us>  
Cc: Resnik, Barbra; Erb, Jon  
Subject: Ashland Muller Parkway - Culverts at Toler

Hi Tom,

A discussion point on this project has been whether or not there should be culverts under Toler Avenue to reduce or eliminate the amount of water overtopping the round-about at Muller and Toler near Stodick Park. I talked this question over with Rob and Shaker at ROA and the reason for not installing culverts under Toler is to keep from unfairly burdening David Park with more flood flows to his property than has historically gone there. You can see the flows labeled in the screen capture below the approximate flows at the various locations in the model. I circled the flow of 1,386 CFS that is proposed to keep overtopping Toler and flow to Stodick Park plus another 1,243 CFS that is proposed to continue flowing to the Virginia Ranch project. Based upon my understanding, if we added cross-culverts at Toler these flows would end up on the Park Ranch project. While this may prevent overtopping of Muller at the round-about, it may be unfairly burdening David Park's piece. I think this would warrant another review of the development agreement to see if it speaks to this issue specifically.



MODEL:LOHR\100TR\LEVEE\GGV\FPH03\LOHR\100TR\LEVEE\GGV\FPH03.MXD -- GIS WORK BY ERIC HERRON





Jeremy J. Hutchings, P.E.  
County Engineer  
**DOUGLAS COUNTY COMMUNITY DEVELOPMENT**  
ENGINEERING DEPARTMENT  
1594 Esmeralda Avenue  
Minden, NV 89423  
775.782.9063  
[jhutchings@douglasnv.us](mailto:jhutchings@douglasnv.us)  
[www.douglascountynv.gov](http://www.douglascountynv.gov)



# **EXHIBIT 10**

Excerpts of the minutes of the June 16, 2022,  
meeting of the Board of County Commissioners

**EXHIBIT 10**

The Regular Meeting of the Board of County Commissioners was held on Thursday, June 16, 2022, beginning at 10:00 AM in the meeting room of the CVIC Hall, 1604 Esmeralda Avenue, Minden, Nevada and via Zoom participation as well as was streamed via Live Stream – Video Link, Douglas County YouTube Channel. **When applicable, the minutes below have been transcribed.**

---

**CALL TO ORDER**

The meeting was called to order at 10:00 AM.

**COMMISSIONERS PRESENT:**

Mark Gardner, Chair  
Wesley Rice, Vice Chair  
John Engels, Commissioner  
Walt Nowosad, Commissioner  
Danny Tarkanian, Commissioner

**STAFF PRESENT:**

Dan Coverley, Sheriff  
Patrick Cates, County Manager  
Doug Ritchie, Chief Civil Deputy District Attorney  
Nicki Leeper, Assistant County Clerk  
Michelle Pablo, Senior Deputy Clerk  
Marcia Johnson, Administrative Assistant to the Board

**INVOCATION**

Led by Leo Kruger, Senior Pastor of the Valley Christian Fellowship.

**PLEDGE OF ALLEGIANCE**

Led by Chief Civil Deputy District Attorney, Doug Ritchie.

**PUBLIC COMMENT (No Action)**

Chairman Gardner speaks:

Public Comment is limited to three minutes per speaker, unless additional time is granted by the Board Chairperson. The Board of Commissioners uses timing lights to ensure that everyone has an opportunity to speak. You will see a green light when you begin and then a yellow light which indicates you have 30 seconds left and you should conclude your comments. We ask, once the light turns red, please sit down. In addition to Opening Public Comment, Public Comment will also be taken on Administrative Agenda items that are identified for possible action and Closing Public Comment. I would ask those here in Chambers or in this hall to please silence your electronic devices so that it doesn't interrupt folks. So, at this time, Public Comment will be taken on those items that are within the jurisdiction and control of the Douglas County Board of Commissioners.

**Brian Fitzgerald** speaks:

Good morning. Thank you, Chairman and Members of the Commission. I am the President of the Carson Valley Arts Council. I wanted to share with you some news; yesterday the Carson Valley Arts Council was awarded a T-Mobile Hometown Grant in the amount of \$35,000.

**DOUGLAS COUNTY BOARD OF COMMISSIONERS  
MEETING OF JUNE 16, 2022**

**MOTION TO:** Approve a \$95,041 budget transfer from Professional Services (101-172 521.100) to the salaries line items within the Finance Department and reestablish the Accountant Senior position effective July 1, 2022, as presented; carried.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Danny Tarkanian, Commissioner
<b>SECONDER:</b>	Walt Nowosad, Commissioner
<b>AYES:</b>	Mark Gardner, Wesley Rice, John Engels, Walt Nowosad, Danny Tarkanian

Chairman Gardner speaks:

It is approaching noon; however, I want to inform the public and those online that I conversed with the other Commissioners and we are not going to be taking a lunch break today. We're just gonna go directly into Item 10 and finish it off with Item 11 and then free up the public and ourselves to grab something to eat afterwards. I just wanted to inform the public of that.

**10. For possible action. Discussion to consider requests for funding from Douglas County's allocation of American Rescue Plan Act (ARPA) funds. (Terri Willoughby and Patrick Cates)**

*Chairman Gardner read the agenda item into the record.*

Terri Willoughby, Chief Financial Officer, speaks:

Thank you. As you know, we received this money almost a year ago. We are expecting the second installment probably tomorrow or today, and we've brought this forward several times to the Board and at this time we are bringing the remainder of the requests back to the Board for consideration. With that, I'll turn it over to our County Manager, Patrick Cates. We've done extensive outreach to receive applications on this program and he'll go through the rest.

Patrick Cates, County Manager, speaks;

Thank you, Mr. Chairman. Let me pull up my spreadsheet and share that.

Ms. Willoughby speaks;

We did receive the Board's direction to claim this as lost revenue, which allows us to use it for more purposes. However, all this funding is still subject to Code of Federal Regulations, so we will be monitoring this very closely in the Finance Department.

Mr. Cates speaks:

We're having some technical issues here. Okay, some of this is a little hard to see but as I get further down, it will get easier. So, this is a spreadsheet that I have modified. There was a supplemental spreadsheet that went out, that had all the ARPA projects to be considered and I had ranked them myself and made some recommendations on funding. This is a little bit of a modification of that for discussion purposes today. First of all, we started out with almost \$9.5 million in ARPA funds. Previously, we've had approvals for about a quarter million dollars in expenditures and then at the April meeting was the first time we really fully considered projects. The Board allocated to about \$2.3 million for projects. Most of that, some went to the Sheriff's Office for equipment, East Fork Fire, as well as to Community Development for some feasibility studies. That leaves a balance of just shy of \$7 million, and I'll briefly touch on these. Again, I've organized them in a priority ranking that I established that I thought was a

**DOUGLAS COUNTY BOARD OF COMMISSIONERS  
MEETING OF JUNE 16, 2022**

reasonable place to start for the Board. Of course, it's the Board's prerogative to change this in any way you see fit. The first item on the list, actually, I want to go up here and point this out. You had approved for Community Development a feasibility study for the Gardnerville Ranchos, Gardnerville Water Company intertie. It has subsequently been brought to my attention that that work has already been done. Gardnerville Ranchos GID has already completed that so I don't think there's a need for that funding at this time. So, the first item that I put on was reversing that prior decision of the Board and putting that money back in the pot. The next item on the list is a request for funding for grant writing professional services. This is something we talked about. I think it's very important to be able to leverage some of the increased funding that's coming through the State through their infrastructure and ARPA funds. Some of those programs aren't even rolled out yet and I want to make sure we have some money set aside to help with grant writing. A lot of smaller grants, staff are perfectly capable of writing grants themselves, but when you get into the more complex grants, they can get pretty extensive. I can tell you for Muller Parkway, when we submitted our BUILD Grant, we spent north of \$200,000 on an outside consultant to prepare that grant application. It was a very big application and very technical. But anyway, I think it's important to allocate money for that.

Next item on the list is the ERP System. This is the County's financial system. The current system is at end of life. The vendor has indicated they are trying to convert all of their members, they won't be making modifications to it in the future. So, we really need to allocate some funding for this. When we discussed this back in April the request was for half a million dollars, but subsequent to that, CFO Willoughby has done some outreach and we don't think that's enough money to do a full conversion of the ERP system. So, we've asked for a budget of a million dollars out of this fund. The next item on the list, this also is new, this is the Johnson Lane flood control litigation. You're familiar with our legal requirement to construct detention basins in the Johnson Lane area, retention basins. I always get that wrong. I'm not even sure which is which. But anyway, we have that obligation. Our cost estimates for that and the amount of money we've had to spend on the environmental assessment which wasn't planned for, the money we have set aside as a result of the settlement isn't sufficient to construct all the basins. This would fund the difference so we can get that done. That's a pretty important project for the County.

The next item on the list, number five is a NEPA Assessment for Muller Parkway. So, Muller Parkway currently is funded to construct two lanes with County funds as required under the Park Ranch Development Agreement. But we are still chasing federal dollars to be able to complete the entire scope of Muller Parkway which would include four lanes, roundabouts, multimodal path, flood control projects. In order for us to receive federal highway funds for that we need to have the environmental assessment done on that right-of-way, and we've not done that yet. So, getting this done will make us much more competitive and eligible to receive those funds that we're currently chasing. The next item on the list, number six, Buckeye culvert crossing grant match. You may recall, one of the feasibility studies that you've already allocated funds to was for a culvert under Buckeye. As you get past the JLEC there's a dip in the road that's prone to flooding. It's an important route for first responders. We actually, this opportunity has come up since our meeting in April where the State has some funding available that they're willing to grant to us for this to actually execute the project to construct this, but we have to have matching funds. So, the request is for those matching funds so we can take advantage of that opportunity to get that work done.

The next item on the list is the public radio system. We've discussed this, you saw the study that was done on our radio system. This was the estimated budget for phase 1, which is site improvements. We think that's definitely a priority need for the County as it affects our Sheriff's Office and the fire districts as well. Next item on the list, item number eight is the Muller Parkway conduit and pull boxes. As we



# **EXHIBIT 11**

October 12, 2022, Letter from Mark Forsberg to  
Tom Dallaire re: Park Ranch Holdings

**EXHIBIT 11**



Oshinski & Forsberg, Ltd.

ATTORNEYS AT LAW

October 12, 2022

Tom Dallaire  
Community Development Director  
Douglas County Community Development  
1594 Esmeralda Ave.  
Minden, NV 89423  
*tdallaire@douglasnv.us*

**Re: Park Ranch Holdings  
Notice of Intent to Construct Muller Parkway**

Dear Mr. Dallaire,

The purpose of this letter is to give Douglas County notice of the intent of Park Ranch Holdings ("Park") to construct that portion of Muller Parkway described in Section 6.1 of the Development Agreement between Douglas County and Park adopted as Ordinance Number 2019-1556-A, which became effective December 20, 2019.

Section 6.1 of the Development Agreement provides that Douglas County must commence and substantially complete the construction of at least two lanes of Muller Parkway beginning at the existing 91.5 foot-wide public road right-of-way on APN 1320-20-000-017 southward to the northern boundary of Ashland Park, a distance of approximately 12,691 linear feet. This section of Muller is to be constructed at the County's sole cost and expense within six years of the effective date of the Development Agreement, December 20, 2019. Section 6.1 of the Development Agreement also provides:

In the event that Owner desires to construct two lanes of Muller Parkway as illustrated in Exhibit E before County has commenced construction or entered into a contract for the construction of those segments of Muller Parkway, Owner shall have the right to construct the road and County shall pay to Owner 100% of all material and construction expenses, except for the Ashland Park segment, for which the County shall pay to Owner 50% of all material and construction expenses, in each case in the manner set forth in Section 5.3(b).





Tom Dallaire  
Community Development Director  
Douglas County Community Development  
October 12, 2022  
Page 2

Section 5.3(b) sets forth the requirement that the party that is not constructing the segments of Muller Parkway subject to the Development Agreement remit progress payments to the party performing the construction no later than 30 days after the payment request dates. Payments are to be requested at the end of each month during construction and include a summary of expenditures reported. Park and the County are bound by the provisions of Section 5.3(b) during any construction of Muller Parkway performed by Park pursuant to Section 6.1 of the Agreement.

Park is informed and believes that Douglas County has not commenced construction or entered into a contract for the construction of Muller Parkway as set forth in Section 6.1. Therefore, Park is entitled to exercise its right to construct Muller Parkway as described in Section 6.1 of the Development Agreement and illustrated in Exhibit E.

It is Park's understanding that Douglas County has completed or is about to complete 100% of the design for the portion of Muller Parkway that it is obligated to build under Section 6.1. Park recognizes its obligation to construct Muller Parkway in accordance with the design set forth in the Development Agreement and in accordance with the design plans the County has nearly completed, and therefore requests that the County provide Park with those plans so that it can commence the work it is permitted to perform under Section 6.1. The County's obligation to do so is encompassed within the obligation of the parties to cooperate with one another in the implementation of the Development Agreement as forth in Section 6.4 and reinforced by the covenant of good faith and fair dealing implied in every contract executed in the state of Nevada.

This notice is being provided in the manner set forth set forth in Section 13 of the Development Agreement.

David Park and his representatives request a meeting with you and other appropriate county representatives to coordinate the transfer of the completed design for the pertinent section of roadway so that Park may begin the process of contracting for the construction. We collectively look forward to collaborating with the County to get this long-awaited project underway. Thank you in advance for your cooperation.

Sincerely,

OSHINSKI & FORSBERG, LTD.

A handwritten signature in black ink, appearing to read 'Mark Forsberg', with a stylized flourish at the end.

MARK FORSBERG, ESQ.

Tom Dallaire  
Community Development Director  
Douglas County Community Development  
October 12, 2022  
Page 3

cc: Sam Taylor  
Deputy District Attorney  
Douglas Co. District Attorney's Office  
*staylor@douglas.nv.gov*

Douglas V. Ritchie  
Chief Civil Deputy District Attorney  
Douglas Co. District Attorney's Office  
*dritchier@douglas.nv.gov*

Client

# **EXHIBIT 12**

October 19, 2022, Letter from Douglas Ritchie to  
Mark Forsberg re: Park Ranch Holdings

**EXHIBIT 12**





OFFICE OF THE DISTRICT ATTORNEY  
DOUGLAS COUNTY

Mark B. Jackson  
District Attorney

October 19, 2022

*Via Email*  
[Mark@OshinskiForsberg.com](mailto:Mark@OshinskiForsberg.com)

Mark Forsberg, Esq.  
Oshinski & Forsberg, Ltd.  
504 E. Musser Street, Suite 202  
Carson City, NV 89701

RE: Park Ranch Holdings  
Muller Parkway Project

Dear Mark:

It was good to meet with you and Mr. Park today. I know the members of the Douglas County team working on the Muller Parkway project (the "Project") appreciated the opportunity to hear from you and Mr. Park and to share where the County is at on this important project.

In confirmation of our discussions today, the parties agreed to coordinate the ditch work Mr. Park is planning and the County will continue with its construction of Muller Parkway consistent with the intent of the Development Agreement you referenced in your letter of October 12, 2022. Per your request, I hope the following timeline helps you.

Douglas County was ready to proceed with the Project last spring but staff were waiting for the possible award of federal grant funding. Because the anticipated grant funding has not yet materialized, the County has set aside funds for the construction of the Project and has proceeded to enter contracts with both Ames and the CA Group related to the construction of the Project. From Mr. Park's discussions today, it appears he has already been working closely on the work that has occurred to date.

As you know, the Project design is 100% complete and the County anticipates receiving responses to GMP 1 (Materials Procurement) in just a few weeks (beginning of November) with an award in December 2022. The County anticipates receiving responses to GMP 2 (construction/installation) the beginning of January 2023 with an award in February 2023 with construction to commence in April or May 2023. The County has estimated a construction period of 8-12 months depending on the weather and other factors. However, it is anticipated that the Project will be completed within the timelines required by the Development Agreement.

P.O. Box 218, Minden, Nevada 89423  
Civil Division: 775-782-9803 Fax 775-783-6490

Mark Forsberg, Esq.  
April 30, 2024  
Page 2

From our meeting, it sounds like Mr. Park has almost finalized the information needed to create a reimbursement agreement between the County and Park Ranch Holdings for the ditch work Mr. Park plans on commencing the beginning of 2023. Either Sam Taylor or I am happy to work with you to draft the proposed reimbursement agreement. Scott McCullough, the Project manager, will work with Mr. Park to coordinate the work the County and Mr. Park will be performing during the upcoming months.

Thank you again for taking the time to meet with County staff and Mr. Park's willingness to coordinate the work he will be performing on his irrigation ditches and the work the County is doing to move this important Project forward. If you have any questions or concerns related to this matter, or if you need any information from the County, then please do not hesitate to contact me at 775-783-6055.

Sincerely,

MARK B. JACKSON  
Douglas County District Attorney

By: *Douglas V. Ritchie*  
Douglas V. Ritchie  
Chief Civil Deputy District Attorney

cc: Patrick Cates  
Tom Dallaire

# **EXHIBIT 13**

Excerpt of the Agenda Packet for the April 10, 2024,  
meeting of the Regional Transportation Commission

**EXHIBIT 13**



# Douglas County

## Regional Transportation Commission

### Public Meeting Notice and Agenda

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Wednesday, April 10, 2024

10:00 AM

Historic Courthouse  
1616 Eighth Street  
Minden, NV 89423

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This is a public meeting. In conformance with Nevada Open Meeting Law, members of the public may request an electronic copy of the agenda or the supporting materials by contacting the Public Works at 775-782-6233 or by email to [NHubbard@douglasnv.us](mailto:NHubbard@douglasnv.us). Physical copies of supporting material may also be obtained from the Public Works office at 1120 Airport Rd, Bldg. F-2 in Minden, NV. A physical copy of the agenda is posted at the Historic Courthouse at 1616 Eighth Street in Minden, Nevada and at the Public Works Office. Electronic copies of the agenda and supporting materials are also available at the following websites:

- **State of Nevada Public Notices website:** <https://notice.nv.gov/>
- **Douglas County Meeting website:** [https://douglascountynv.granicus.com/ViewPublisher.php?view\\_id=1](https://douglascountynv.granicus.com/ViewPublisher.php?view_id=1)

#### **Written public comment:**

To offer public comment before the meeting, members of the public may submit public comments by email to [NHubbard@douglasnv.us](mailto:NHubbard@douglasnv.us). Please make sure to state your name, item number and position on the item.

#### **Public comment during the meeting:**

In person: The meeting is open to the public and interested parties and individuals are invited to attend.

It is the intent of the RTC to protect the dignity of citizens who wish to comment before the Commission. It is also the RTC's desire to provide the citizens of Douglas County with an environment that upholds the highest professional standards. Citizens should have the ability to freely comment on items and/or projects that are brought before the RTC for action without interference.

**Members of the public may call the Public Works at 775-782-6233 to obtain help making public comment prior to the meeting.**

The Regional Transportation Commission reserves the right to take items in a different order; to combine two or more agenda items for consideration; and to remove items from the agenda or delay discussions relating to an item on the agenda at any time.

**Notice to Persons with Disabilities:** Members of the public who are disabled or require special assistance or accommodations are requested to notify the Public Works in writing at P.O. Box 218, Minden, Nevada 89423, via email to [NHubbard@douglasnv.us](mailto:NHubbard@douglasnv.us), or by calling Nicole Hubbard at 782-6233 at least one business day in advance of the meeting.



# **DOUGLAS COUNTY REGIONAL TRANSPORTATION COMMISSION**

## **FINAL AGENDA**

**April 10, 2024**

### **CALL TO ORDER**

### **PLEDGE OF ALLEGIANCE**

### **PUBLIC COMMENT**

Public comment is limited to three minutes per speaker unless additional time is granted by the Chairperson.

**In addition to opening public comment, public comment will also be taken on administrative agenda items that are identified for possible action and closing public comment.**

At this time, public comment will be taken on those items that are within the jurisdiction and control of the Regional Transportation Commission.

### **APPROVAL OF AGENDA**

For possible action. Approval of the proposed agenda. The Regional Transportation Commission reserves the right to take items in a different order to accomplish business in the most efficient manner, to combine two or more agenda items for consideration, and to remove items from the agenda or delay discussion relating to items on the agenda.

### **APPROVAL OF PREVIOUS MINUTES**

For possible action. Discussion to approve the draft minutes of the Regional Transportation Commission.

- 1 For possible action. Approve the previous minutes from the March 6, 2024 meeting. (Jon Erb)

### **ADMINISTRATIVE AGENDA**

The Chairman will read the agenda title into the public record and will have the discretion to determine how the item will be presented. The timing for agenda items is approximate unless otherwise indicated for a specific item. Agenda items may be considered ahead of or after the schedule indicated by this agenda. Public comment will be taken on items that are identified for possible action.

- 1 For possible action. Discussion to award a construction contract, in an amount of \$11,585,445.50, to Qualcon Contractors Inc, for the Muller Parkway Construction Project (No. DCPW R2024-227) and authorize the County Manager to approve change orders up to 10% of the contract amount. (Jon Erb)
- 2 For possible action. Discussion to approve a \$112,341 professional services contract with C.A. Group, Inc. for construction administration for the Muller Parkway Project and drainage channel design services and authorize the County Manager to sign contract and contract change orders up to 10% of the original contract price. (Scott McCullough)
- 3 For possible action. Discussion to approve a professional services contract in an amount of \$193,144 with Construction Materials Engineers, Inc for material testing for the Muller Parkway Project and authorize the County Manager to sign contract and contract change



orders up to 10% of the original contract price. (Scott McCullough)

**CLOSING PUBLIC COMMENT (No Action)**

At this time, public comment will be taken on those items that are within the jurisdiction and control of the Regional Transportation Commission or those agenda items where public comment has not already been taken.

**ADJOURNMENT**

# **EXHIBIT 14**

August 31, 2023, Memorandum from JE Fuller to  
CA Group, DC030561

**EXHIBIT 14**



www.jefuller.com |

# Memorandum

**DATE** August 31, 2023

**TO** Chad Anson, P.E.  
C-A Group

**FROM** Christopher Rod, P.E.  
JE Fuller Hydrology & Geomorphology, Inc.

**RE** Flood Inundation Comparison  
Muller Parkway – Conditional Letter of Map Revision (Douglas County, NV)



JE Fuller has completed the comparison of the flood inundation limits requested by Douglas County. As previously noted, runoff generated by the Buckeye Creek Watershed cannot be contained within Buckeye Creek and floods the properties around the Muller Parkway alignment and the properties downstream. The degree of flood inundation is dependent on the 100-year peak discharge used in modeling the flow regime within the study area. For this project two discharges could be considered. The first stems from the Douglas County Federal Insurance Study (FIS), which lists a 100-year peak discharge for Buckeye Creek of approximately 3,939 cfs. The second was determined as part of the design of the Muller Parkway, which quantified the peak discharge for Buckeye Creek at 7,655 cfs.

The results of the analysis demonstrate (See Figure 1 - Sheet 1 of 2), that regardless of the peak discharge, the properties owned by the Park Ranch Holdings, Bentley Family LTD Partnership and Peapeg LLC will be impacted by runoff breaking out of the main channel of Buckeye Creek and flowing west primarily as sheet flow towards the Carson River. However, as expected, the inundation limits and flow depths will be reduced using the 100-year discharge from the (FIS), leaving significant portions of the developed areas within the parcels and existing fields with little or no inundation. It should be noted that under both scenarios there will be areas that will have ponding/flow depths of two (2) feet.

To demonstrate the impacts of the project on the properties in question, the hydraulic analysis for existing and proposed conditions (incorporating the Muller Parkway Alignment) was rerun. The peak discharge for this analysis was based on the FEMA approved discharge of 3,939 cfs. As shown on Figure 1 - Sheet 2 of 2, the future roadway will have minor impacts to the farm fields north of the road, while reducing the inundation limits on land on the southern side (Peapeg LLC/Parks Ranch Holdings). The developed areas within the Bentley Family LTD east of Heyborne Road are not impacted by the proposed Muller Parkway alignment.

It should be noted, that the intent of this Conditional Letter of Map Revision was to demonstrate that once built, Muller Parkway will not be overtopped by flow stemming from a 100-year storm event. It is not the intent of the CLOMR to seek to place properties into a mapped FEMA Special Flood Hazard Zone. However, based upon the results of the revised analysis, there will be areas that will be assigned as new Special Flood Hazard Zone within the parcels of interest.



Figure 1 - Inundation Comparison Map

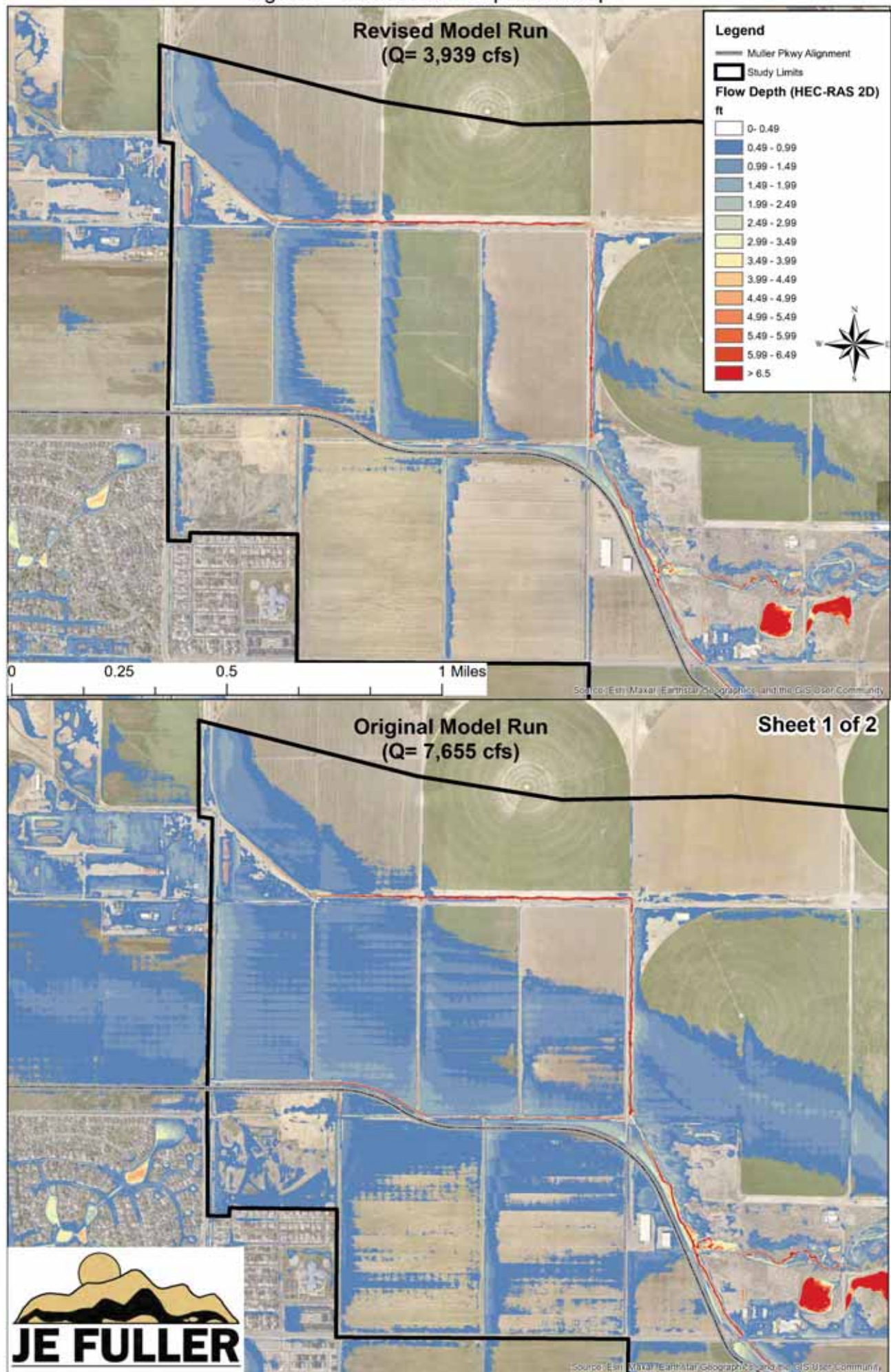
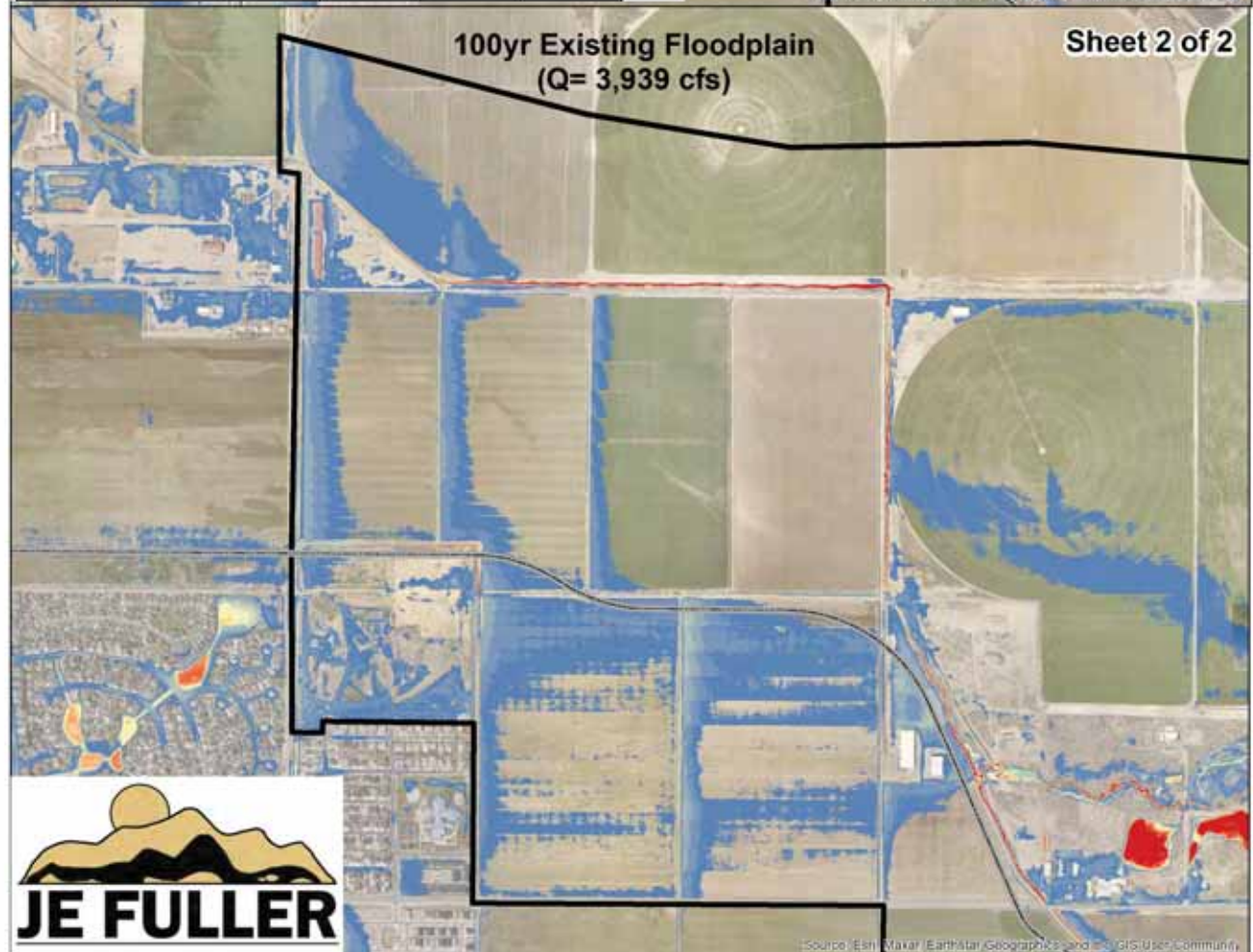
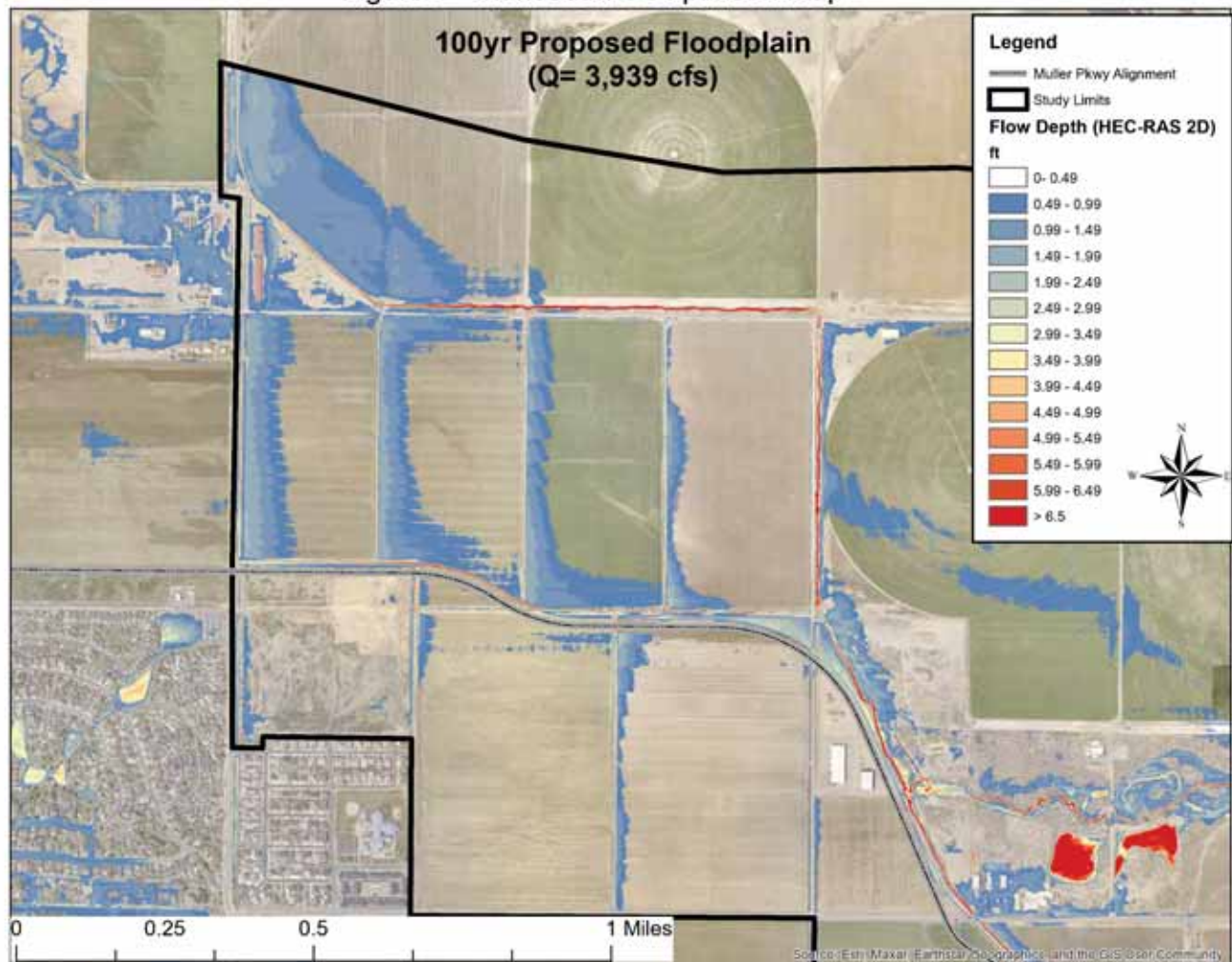




Figure 1 - Inundation Comparison Map





# **EXHIBIT 15**

Proposed Plans for Muller Parkway (cover page  
only), DC015653

**EXHIBIT 15**

DOUGLAS COUNTY  
MULLER PARKWAY  
DOUGLAS COUNTY, NEVADA

## SURVEY INFO

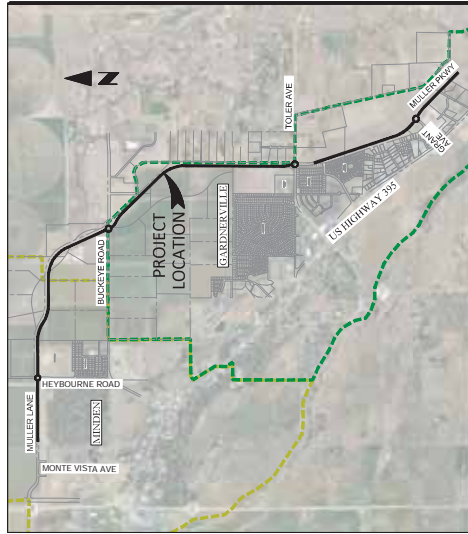
BASIS OF BEARING:  
THE BASIS OF BEARING FOR THIS SURVEY IS IDENTICAL TO  
THE MAP OF DIVISION INTO LARGE PARCELS FOR  
EDGEWOOD COMPANIES FILED FOR RECORD JUNE 15, 2009  
AS DOCUMENT NO. 745140.

BENCHMARK:  
VERTICAL DATUM FOR THIS PROJECT IS NAVD 88 BASED  
UPON AN NGCS CONTROL STATION FAA MEV A (PID AA3458)  
LOCATED AT THE DTIC/IGAS COINITY AIRPORT

**OWNER:**  
**DOUGLAS COUNTY**  
**1594 EMERALDA AVENUE**  
**MINDEN, NV 89423**  
**PHONE: (775) 782-6201**

PHILIP RITGER, P.E.  
DIRECTOR OF ENGINEERING  
DOUGLAS COUNTY PUBLIC WORKS

## ABBREVIATIONS:

[illegible]

SHEET INDEX			SHEET INDEX		
SHEET NO.	DRAWING NO.	SHEET NAME	SHEET NO.	DRAWING NO.	SHEET NAME
1	T1	TITLE SHEET	56	G010	GEOMETRIC PLANS
2	S-1	SHEET INDEX	57	G011	GEOMETRIC PLANS
3	S-2	GENERAL NOTES	58	G012	GEOMETRIC PLANS
4	S-3	GENERAL NOTES	59	G013	GEOMETRIC PLANS
5	PW-01	RIGHT OF-WAY PLANS	60	G014	GEOMETRIC PLANS
6	PW-02	RIGHT OF-WAY PLANS	61	D1	DRAINAGE
7	R1	REMOVAL PLANS	62	D2	DRAINAGE
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9	R3	REMOVAL PLANS	64	D4	DRAINAGE
10	R4	REMOVAL PLANS	65	D5	DRAINAGE
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12	R6	REMOVAL PLANS	67	D7	DRAINAGE
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14	R8	REMOVAL PLANS	69	D9	DRAINAGE
15	R9	REMOVAL PLANS	70	D10	DRAINAGE
16	R10	REMOVAL PLANS	71	D11	DRAINAGE
17	R11	REMOVAL PLANS	72	D12	DRAINAGE
18	R12	REMOVAL PLANS	73	D13	DRAINAGE
19	R13	REMOVAL PLANS	74	D14	DRAINAGE
20	R14	REMOVAL PLANS	75	D15	DRAINAGE
21	P11	CONSTRUCTION PLAN AND PROFILE	76	D16	DRAINAGE
22	P12	CONSTRUCTION PLAN AND PROFILE	77	D17	DRAINAGE
23	P13	CONSTRUCTION PLAN AND PROFILE	78	S1	STRING AND SIGNING PLANS
24	P14	CONSTRUCTION PLAN AND PROFILE	79	S2	STRING AND SIGNING PLANS
25	P15	CONSTRUCTION PLAN AND PROFILE	80	S3	STRING AND SIGNING PLANS
26	P16	CONSTRUCTION PLAN AND PROFILE	81	S4	STRING AND SIGNING PLANS
27	P17	CONSTRUCTION PLAN AND PROFILE	82	S5	STRING AND SIGNING PLANS
28	P18	CONSTRUCTION PLAN AND PROFILE	83	S6	STRING AND SIGNING PLANS
29	P19	CONSTRUCTION PLAN AND PROFILE	84	S7	STRING AND SIGNING PLANS
30	P110	CONSTRUCTION PLAN AND PROFILE	85	S8	STRING AND SIGNING PLANS
31	P111	CONSTRUCTION PLAN AND PROFILE	86	S9	STRING AND SIGNING PLANS
32	P112	CONSTRUCTION PLAN AND PROFILE	87	S10	STRING AND SIGNING PLANS
33	P113	CONSTRUCTION PLAN AND PROFILE	88	S11	STRING AND SIGNING PLANS
34	P114	CONSTRUCTION PLAN AND PROFILE	89	S12	STRING AND SIGNING PLANS
35	P115	CONSTRUCTION PLAN AND PROFILE	90	S13	STRING AND SIGNING PLANS
36	P116	CONSTRUCTION PLAN AND PROFILE	91	S14	STRING AND SIGNING PLANS
37	P117	CONSTRUCTION PLAN AND PROFILE	92	D0	LIGHTING GENERAL NOTES
38	P118	CONSTRUCTION PLAN AND PROFILE	93	E1	LIGHTING PLAN
39	P119	CONSTRUCTION PLAN AND PROFILE	94	E2	LIGHTING PLAN
40	P120	CONSTRUCTION PLAN AND PROFILE	95	D11	TYPICAL SECTIONS
41	P121	CONSTRUCTION PLAN AND PROFILE	96	D12	CIVIL DETAILS
42	P122	CONSTRUCTION PLAN AND PROFILE	97	D13	CIVIL DETAILS
43	P123	CONSTRUCTION PLAN AND PROFILE	98	D14	CIVIL DETAILS
44	P124	CONSTRUCTION PLAN AND PROFILE	99	D15	CIVIL DETAILS
45	P125	CONSTRUCTION PLAN AND PROFILE	100	P1	CATCH BASIN DETAILS
46	P126	CONSTRUCTION PLAN AND PROFILE	101	D17	CATCH BASIN DETAILS
47	G01	GEOMETRIC PLANS	102	D18	CATCH BASIN DETAILS
48	G02	GEOMETRIC PLANS	103	D19	SPASH AND DETAILS
49	G03	GEOMETRIC PLANS	104	D110	CULVERT DETAILS
50	G04	GEOMETRIC PLANS	105	D111	CULVERT DETAILS
51	G05	GEOMETRIC PLANS	106	D112	CULVERT DETAILS
52	G06	GEOMETRIC PLANS	107	D113	CULVERT DETAILS
53	G07	GEOMETRIC PLANS	108	D14	CULVERT DETAILS
54	G08	GEOMETRIC PLANS	109	D15	CULVERT DETAILS
55	G09	GEOMETRIC PLANS	110	D16	CULVERT DETAILS

**TRANSPORTATION ENGINEER**  
**CA GROUP, INC.**  
**8630 TECHNOLOGY WAY, SUITE C**  
**RENO, NEVADA 89521**  
**PHONE: 775.470.5770**  
**FAX: 775.786.7551**

Chad Anson

Digitally signed by Chad Anson  
DN: CN = Chad Anson, email = chad.anson@ca-group.com, C = AU  
Date: 2023.08.19 12:59:02 +0700

DOUGLAS COUNTY

[illegible]

SCALE:
DESIGN: AM
DRAWN: TK
CHECKED: CA
APPROVED: CA
DATE: Sep 14, 2023

**T1**

# **EXHIBIT 16**

July 27, 2023, Letter from the Federal Emergency  
Management Agency to JE Fuller, DC017601

**EXHIBIT 16**



## NATIONAL FLOOD INSURANCE PROGRAM

FEMA PRODUCTION AND TECHNICAL SERVICES CONTRACTOR

July 27, 2023

Chris Rod, P.E.  
Project Engineer  
JE Fuller  
40 East Helen Street  
Tucson, AZ 85705

IN REPLY REFER TO:  
Case No.: 23-09-0865R  
Community: Unincorporated Areas of Douglas  
County, NV  
Community No.: 320008

316-AD

Dear Chris Rod:

This responds to your request dated May 14, 2023, that the Department of Homeland Security's Federal Emergency Management Agency (FEMA) issue a conditional revision to the Flood Insurance Rate Map (FIRM) for Douglas County, Nevada, and Incorporated Areas. Pertinent information about the request is listed below.

Identifier:	Muller Parkway Extension
Flooding Source:	Buckeye Creek, Pine Nut Creek, Pine Nut Road Wash, Unnamed Wash, and Smelter Creek (Split Flow)
FIRM Panel(s) Affected:	32005C0232H, 32005C0234H, 32005C0251H, 32005C0253H, 32005C0254H, 32005C0265G

The data required to complete our review, which must be submitted within 90 days of the date of this letter, are listed on the enclosed summary.

If we do not receive the required data within 90 days, we will suspend our processing of your request. Any data submitted after 90 days will be treated as an original submittal and will be subject to all submittal/payment procedures, including the flat review and processing fee for requests of this type established by the current fee schedule.

FEMA receives a very large volume of requests and cannot maintain inactive requests for an indefinite period of time. Therefore, we are unable to grant extensions for the submission of required data/fee for revision requests. If a requester is informed by letter that additional data are required to complete our review of a request, the data/fee **must** be submitted within 90 days of the date of the letter. Any fees already paid will be forfeited for any request for which the requested data are not received within 90 days.

If you have general questions about your request, FEMA policy, or the National Flood Insurance

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DC017601

Program, please call the FEMA Mapping and Insurance eXchange (FMIX), toll free, at 1-877-FEMA MAP (1-877-336-2627). If you have specific questions concerning your request, please contact your case reviewer, Jaison Renkenberger, by e-mail at [Jaison.Renkenberger@atkinsglobal.com](mailto:Jaison.Renkenberger@atkinsglobal.com) or by telephone at (213) 409-6769 or the Revisions Coordinator for your request, Preetham Thotakuri, P.E., CFM, at [Preetham.Thotakuri@atkinsglobal.com](mailto:Preetham.Thotakuri@atkinsglobal.com) or at (919) 431-5275.

Sincerely,

A handwritten signature in black ink that reads "Daven Patel". The signature is written in a cursive, flowing style.

Daven Patel, P.E., CFM  
PTS Revisions Manager  
STARR II

cc: Thomas A. Dallaire, P.E., CFM  
Floodplain Manager  
Douglas County





## NATIONAL FLOOD INSURANCE PROGRAM

FEMA PRODUCTION AND TECHNICAL SERVICES CONTRACTOR

July 27, 2023

### Summary of Additional Data Required to Support a Conditional Letter of Map Revision (CLOMR)

Case No.: 23-09-0865R

Requestor: Chris Rod, P.E.

Community: Unincorporated Areas of Douglas  
County, NV

Community No.: 320008

The issues listed below must be addressed before we can continue the review of your request.

1. The submitted topographic work map entitled "Muller Parkway Extension- Douglas County, NV CLOMR Workamp", does not provide essential information required to complete our review of this request. Please submit a revised topographic work map, certified by a registered professional engineer, that shows all applicable items listed in Section C of Application/Certification Form 2, entitled "Riverine Hydrology & Hydraulics Form," including the following information:
  - a. Boundary delineations of the proposed conditions base floodplain and 0.2-percent-annual-chance floodplain
    - i. Floodplain should be mapped to 0.0ft. Please describe how your depth raster was converted into the floodplain submitted.
  - b. Boundary delineations of the currently effective base floodplain, 0.2-percent-annual-chance floodplain
  - c. Logical tie-ins between the revised and effective flood hazard boundary delineations;
  - d. Topographic contour information used for the boundary delineations of the base floodplain and 0.2 percent annual chance floodplain;
  - e. Certification by a registered professional engineer; and
  - f. Reference to a datum, such as the North American Vertical Datum of 1988 (NAVD 88).
  - g. Please add Scale Bar to graphically denote map scale.
  - h. Please also provide a digital map package for your study area.
2. The submitted application did not include a duplicate effective hydrologic and hydraulic model for Buckeye Creek, Pine Nut Creek, Pine Nut Road Wash and Smelter Creek (split flow). The effective models used to produce the Flood Insurance Rate Map (FIRM) must be obtained, reproduced on your equipment, and submitted as a duplicate effective model. Please submit a duplicate effective hydrologic and hydraulic model for each flooding source listed above.
  - a. For each flooding source where the effective model was not modified to create an existing or proposed conditions model, please also submit the backup information for each duplicate effective model.
    - i. Please also provide a detailed explanation for why the effective models were not modified for the proposed analysis.
  - b. Please submit a copy of the backup information in support of the Ruhenstroth ADMP and the case/study number where this study was reviewed by FEMA, if applicable.

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DC017603

3. Our review has revealed that a hydrologic analysis was completed which updated effective discharges for Buckeye Creek, Pine Nut Creek, Pine Nut Road Wash, and Unnamed Wash. However, some of the backup information required is missing. Please submit a complete hydrologic analysis and all applicable back-up information to support the discharges used in the submitted hydraulic analyses for each flooding source including:
  - a. Calibration Data - Hydrologic models should be calibrated to gauge data or high-water marks. If there are no data available, peak discharges should be compared and fit to regional regression equations and be adjusted for urbanization if needed.
4. Please provide detailed plans/survey for all the flood control structures modeled, certified by a registered professional engineer/surveyor. Please include a key for easy cross referencing. The key should include the following information for each structure as applicable:
  - a. Name and location of the structure in the model
  - b. Rating curve file name and location
  - c. Digital file and name for the model that developed the rating curve.
  - d. Certified as-built plans or survey detailing dimensions, shape, material, and upstream/downstream invert elevations for the structure.

Please send the required data and/or fee directly to us at the address shown at the bottom of the first page attention to Jaison Renkenberger, STARR II. For identification purposes, please include the case number referenced above on all correspondence.

# **EXHIBIT 17**

May 16, 2024, Letter from the Federal Emergency  
Management Agency to JE Fuller, DC017605

**EXHIBIT 17**





# NATIONAL FLOOD INSURANCE PROGRAM

FEMA PRODUCTION AND TECHNICAL SERVICES CONTRACTOR

May 16, 2024

Chris Rod, P.E.  
Project Engineer  
JE Fuller  
40 East Helen Street  
Tucson, AZ 85705

IN REPLY REFER TO:  
Case No.: 23-09-0865R  
Community: Unincorporated Areas of Douglas  
County, NV  
Community No.: 320008

316-AD

Dear Chris Rod:

This responds to your request dated May 14, 2023, that the Department of Homeland Security's Federal Emergency Management Agency (FEMA) issue a conditional revision to the Flood Insurance Rate Map (FIRM) for Douglas County, Nevada, and Incorporated Areas. Pertinent information about the request is listed below.

Identifier:	Muller Parkway Extension
Flooding Source:	Buckeye Creek, Pine Nut Creek, Pine Nut Road Wash, Unnamed Wash, and Smelter Creek (Split Flow)
FIRM Panel(s) Affected:	32005C0232H, 32005C0234H, 32005C0251H, 32005C0253H, 32005C0254H, 32005C0265G

The data required to complete our review, which must be submitted within 90 days of the date of this letter, are listed on the enclosed summary.

If we do not receive the required data within 90 days, we will suspend our processing of your request. Any data submitted after 90 days will be treated as an original submittal and will be subject to all submittal/payment procedures, including the flat review and processing fee for requests of this type established by the current fee schedule.

FEMA receives a very large volume of requests and cannot maintain inactive requests for an indefinite period of time. Therefore, we are unable to grant extensions for the submission of required data/fee for revision requests. If a requester is informed by letter that additional data are required to complete our review of a request, the data/fee **must** be submitted within 90 days of the date of the letter. Any fees already paid will be forfeited for any request for which the requested data are not received within 90 days.

If you have general questions about your request, FEMA policy, or the National Flood Insurance

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DC017605

Program, please call the FEMA Mapping and Insurance eXchange (FMIX), toll free, at 1-877-FEMA MAP (1-877-336-2627). If you have specific questions concerning your request, please contact your case reviewer, Jaison Renkenberger, by e-mail at [Jaison.Renkenberger@atkinsrealis.com](mailto:Jaison.Renkenberger@atkinsrealis.com) or by telephone at (213) 409-6769 or the Revisions Coordinator for your request, Preetham Thotakuri, P.E., CFM, at [Preetham.Thotakuri@atkinsrealis.com](mailto:Preetham.Thotakuri@atkinsrealis.com) or at (919) 431-5275.

Sincerely,

A handwritten signature in black ink that reads "Daven Patel". The signature is written in a cursive, flowing style.

Daven Patel, P.E., CFM  
PTS Revisions Manager  
STARR II

cc: Thomas A. Dallaire, P.E., CFM  
Floodplain Manager  
Douglas County





# NATIONAL FLOOD INSURANCE PROGRAM

FEMA PRODUCTION AND TECHNICAL SERVICES CONTRACTOR

May 16, 2024

## Summary of Additional Data Required to Support a Conditional Letter of Map Revision (CLOMR)

Case No.: 23-09-0865R

Requestor: Chris Rod, P.E.

Community: Unincorporated Areas of Douglas  
County, NV

Community No.: 320008

The issues listed below must be addressed before we can continue the review of your request.

1. The submitted topographic work map entitled "Muller Parkway Extension- Douglas County, NV CLOMR Workamp", does not provide essential information required to complete our review of this request. Please submit a revised topographic work map, certified by a registered professional engineer, that shows all applicable items listed in Section C of Application/Certification Form 2, entitled "Riverine Hydrology & Hydraulics Form," including the following information:
  - a. Boundary delineations of the proposed conditions base floodplain and 0.2-percent-annual-chance floodplain.
  - b. Boundary delineations of the currently effective base floodplain, 0.2-percent-annual-chance floodplain.
  - c. Logical tie-ins between the revised and effective flood hazard boundary delineations;
    - i. Please clearly label all tie-ins.
  - d. Topographic contour information used for the boundary delineations of the base floodplain and 0.2 percent annual chance floodplain;
  - e. Certification by a registered professional engineer; and
  - f. Reference to a datum, such as the North American Vertical Datum of 1988 (NAVD 88).
  - g. Please add Scale Bar to graphically denote map scale.
  - h. Please also provide a digital map package for your study area.
2. Project narrative does not include any explanation or purpose for the FLO-2D models. Please provide an explanation on how these models are used to support your analysis and the development of input hydrographs for your study area.
3. Our review revealed that a 0.2 percent annual chance floodplain delineation (Zone X - Shaded) was mapped on the effective FIRM panel for Pine Nut Creek and Dangberg Reservoir Number Four. It was noted in previous submittals that 0.2 percent annual chance discharge values are not listed in FIS report for above listed flooding sources. However, the origination of 0.2 percent annual chance delineation should be investigated and use same methodology used in the effective to remap the flooding sources in this CLOMR. Please provide 0.2 percent annual chance floodplain delineations for Pine Nut Creek and Dangberg Reservoir Number Four or provide an explanation for why these delineations should be excluded from future mapping.

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DC017607

4. Our review revealed that there are several small flooding sources within the study area that do not have hydrologic and/or hydraulic modeling. Please include these flooding sources or provide an explanation for why they are not modeled. See DFIRM clips below for flooding source locations.



316-AD



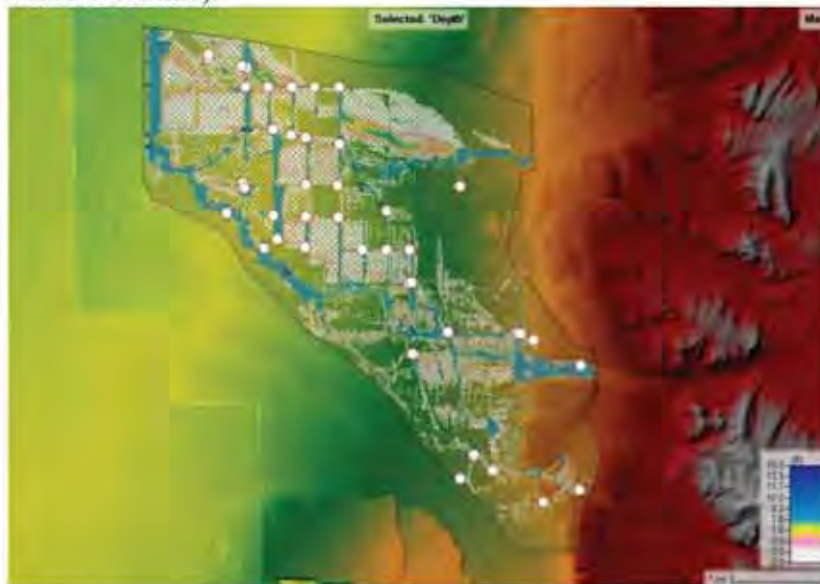
5. Our review has revealed that Section 2.0 of the TSDN report titled "23-09-0865R\_316-AD\_TSDN\_Muller\_Parkway\_CLOMR.pdf" states that the topographic data for modeling uses the Douglas County LiDAR (2012) and a more recent LiDAR data obtained in 2022. However, FEMA forms included in Section 3.2 states that mapping used USGS 2020 3DEP data. Also, there is a consistent difference (albeit minor) between the model terrain and the USGS 2020 3DEP data.
  - a. Please clearly document the topographic data used for the modeling and mapping.
  - b. If the topographic data used is different from the USGS 2020 3DEP data, then please provide supporting documentation like LiDAR report, metadata etc. This data needs to be certified by a Professional Engineer. Also please note that the report titled "DouglasSurveyReport.pdf" included in Appendix C is corrupt.
  - c. There are significant differences between the "Existing Conditions" and "Proposed Conditions" terrains when differences are expected only along the proposed road. Please see the screenshot below which shows the ground elevation differences ("Proposed Conditions" - "Existing Conditions") between the two terrains. Yellow dotted line is the alignment of the proposed road. Please correct the inconsistency or justify.



6. Our review revealed that the 2D Manning's 'n' values are missing for a portion of the study area. Please assign detailed Manning's 'n' values for the area south of Pinenut Road similar to rest of the model. Currently this area uses default Manning's 'n' values. Please see screenshot below. Please correct or justify.



7. Our review revealed that there may be several hydraulically significant structures that have not been included in the model. Additionally, some structures are modeled with an open cut across the road/embankment in the terrain instead of modeling as culvert/bridge structures. Please add any potentially significant hydraulic structures to the model and model all open cuts as a culvert or bridge.
  - a. The study area contains crisscrossing agricultural canals/channels & roads with numerous hydraulic structures. To provide specific directions, the review has identified at least another 43 hydraulic structures (attached "HS\_potential.shp" file – for both existing and proposed condition scenarios) that seem potentially hydraulically significant and should be considered for inclusion in the model. Please see the screenshot below which shows the model mesh and 100yr "Existing Conditions" scenario flood depths with the identified structures (white dots with red outlines).



316-AD



This list should not be taken as an exhaustive list but rather should be viewed as a helpful start in identifying potential hydraulically significant structures. Please sweep the entire study area and include all hydraulically significant structures in the model.

8. Please provide detailed plans/survey for all the flood control structures modeled, certified by a registered professional engineer/surveyor. Please include a key for easy cross referencing. The key should include the following information for each structure as applicable:
  - a. Name and location of the structure in the model.
  - b. Certified as-built plans or survey detailing dimensions, shape, material, and upstream/downstream invert elevations for the structure.
9. Our review revealed that there may be irrigation channels missing from the submitted hydraulics analysis. In figure 3-11 below, which discusses the proposed project, there are several irrigation channels along the road which don't appear to be in the proposed geometry. Please include them in the proposed modeling and or provide an explanation.



Figure 3-11. Proposed Drainage Infrastructure within Modeling Domain

- a.
10. Our review revealed that the Diffusion Wave solution set was used in the simulations. Chapter 6 of HEC-RAS 2D Modeling manual requires testing both Diffusion Wave and Full Momentum (SWE-Original) solution sets and to use the Full Momentum solution set for final simulations if there are significant differences in results. A sensitivity test conducted for solution set revealed significant differences in both flooding depths and floodplain extents. Please use Full Momentum solution set for simulations or justify using the Diffusion Wave solution set.
11. Our review indicates that the proposed project encroaches upon a regulatory floodway and will cause increases in base flood elevations (BFEs), the elevation of the flood having a 1-percent chance of being equaled or exceeded in any given year (base flood). Please provide evidence that the proposed project satisfies the requirements of subparagraph 65.12 of the National Flood Insurance Program (NFIP) regulations as stated below ([eCFR :: 44 CFR 65.12 – Revision of flood insurance rate maps to](#)



reflect base flood elevations caused by proposed encroachments.)

- a. Evaluation of alternatives, which would not result in any increase in flood levels within the community during the occurrence of the base flood discharge, and an explanation why these alternatives are not feasible.
- b. Documentation of individual legal notice to all impacted property owners, explaining the impact of the proposed action on their property, or please provide information to show that the increases in BFEs occur on property belonging to the requester.
- c. Certification that no structures are located in areas which would be impacted by the increased BFE.

Please send the required data and/or fee directly to us at the address shown at the bottom of the first page attention to Jaison Renkenberger, STARR II. For identification purposes, please include the case number referenced above on all correspondence.

# **EXHIBIT 18**

June 25, 2024, Email from Jeremy Hutchings to  
David Park and Mary Anne Martin, re: Muller –  
CLOMR Resubmittal Status, and attachment thereto:  
Technical Support Data Notebook for a Conditional  
Letter of Map Revision

# **EXHIBIT 18**

**From:** Jeremy Hutchings <jhutchings@douglasnv.us>

**Sent:** Tuesday, June 25, 2024 10:15 AM

**To:** David Park <david@parklivestock.com>; Maryanne Martin <mmartin@gavrilovlaw.com>

**Subject:** Muller - CLOMR Resubmittal Status

Attached is what has been resubmitted to FEMA after hours yesterday. The consultant is having technical difficulties uploading Appendix E, F and G due to file size so I will have to send these after this gets worked out. I also mentioned yesterday that the as-built survey of some existing culverts was not yet complete.

Jeremy J. Hutchings, P.E.

County Engineer

**DOUGLAS COUNTY COMMUNITY DEVELOPMENT**

ENGINEERING DEPARTMENT

1594 Esmeralda Avenue

Minden, NV 89423

775.782.9063

[jhutchings@douglasnv.us](mailto:jhutchings@douglasnv.us)

[www.douglascountynv.gov](http://www.douglascountynv.gov)



# TECHNICAL SUPPORT DATA NOTEBOOK FOR A CONDITIONAL LETTER OF MAP REVISION MULLER PARKWAY EXTENSION DOUGLAS COUNTY, NEVADA,



June  
2023

Prepared for: CA Group, Inc.  
on behalf of Douglas County Public Works  
1135 Terminal Way, Suite 106, Reno NV 89502



40 E. Helen Street  
Tucson, AZ 85715  
[www.jefuller.com](http://www.jefuller.com)  
[Chris@jefuller.com](mailto:Chris@jefuller.com)  
520-623-3112

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## Appendix {Click Links to Download}

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- Appendix C - [Mapping and Survey](#)
- Appendix D – [Hydrology](#)
- Appendix E – [Hydraulics](#)
- Appendix F – [Work Map and Annotated FIRM](#)
- Appendix G – [GIS Files](#)

## 1.0 INTRODUCTION

### 1.1. *PURPOSE*

This Technical Support Data Notebook (TSDN), which was based in part on standard formatting previously accepted by the Douglas County, was prepared in support of a Conditional Letter of Map Revision (CLOMR) for the pending construction of Phase 2 of Muller Parkway. (See Section 1.3.2 for a complete project description).

The intent of the CLOMR is in support of the future parkway extension by demonstrating that during the regulatory event, runoff does not overtop the roadway or adversely impact neighboring properties. As shown on Effective FIRM Map 32005C Panels 0232H, 0251H, 0234H, 0253H, 0254H and 0265G, the project lies East of the East Fork of the Carson River drainage corridor with two primary east-west flowing tributaries, Pine Nut Creek and Buckeye Creek, crossing the proposed Muller Parkway project alignment. A summary of the methodologies used in quantifying the runoff along the proposed roadway alignment and the analysis associated with determining the Special Flood Hazard Zones under pre- and post-project conditions is discussed in Section 4 and Section 5. The summary was constructed from the information presented in the approved Final Drainage Report for Phase 1 of Muller Parkway Extension (Reference 9). Copies of the effective FIRM and a FIRMette of the site are provided in Appendix A.5. A work map showing the proposed, existing conditions floodplain is provided in Appendix F.2. The Proposed Existing Conditions Models for hydrology and hydraulics are provided in Appendix D and Appendix E, respectively.

The Post-Project Conditions Hydraulic Model is provided in Appendix E. A work map showing the post-project, proposed conditions floodplain is provided in Appendix F.2. The proposed annotated FIRM is provided in Appendix A.5.

## 1.2. AUTHORITY

Study team contact information is presented below. The contracting for the project is provided in Appendix B.4.

**TABLE 1 – STUDY TEAM CONTACT INFORMATION**

### **Douglas County (Authorizing Agency)**

<b>Project Manager</b>	<b>Thomas Dallaire – Community Development Director</b>
<b>Address:</b>	P.O. Box 218 Minden, NV 89423
<b>Phone:</b>	775-782-6201
<b>Email:</b>	<a href="mailto:tdallaire@douglasnv.us">tdallaire@douglasnv.us</a>

### **CA Group**

<b>Project Manager</b>	<b>Chad Anson– Principal</b>
<b>Address:</b>	1135 Terminal Way, Suite 106 Reno, NV 89502
<b>Phone:</b>	775-283-8394
<b>Email:</b>	<a href="mailto:chad.anson@c-agroup.com">chad.anson@c-agroup.com</a>

### **JE Fuller Hydrology and Geomorphology, Inc.**

<b>Project Manager</b>	<b>Christopher Rod, P.E. – Project Manager</b>
<b>Address:</b>	40 E. Helen Street Tucson, AZ 85705
<b>Phone:</b>	520-623-3122
<b>Email:</b>	<a href="mailto:Chris@jefuller.com">Chris@jefuller.com</a>

### *1.3. PROJECT LOCATION AND DESCRIPTION*

#### *1.3.1. Project Location*

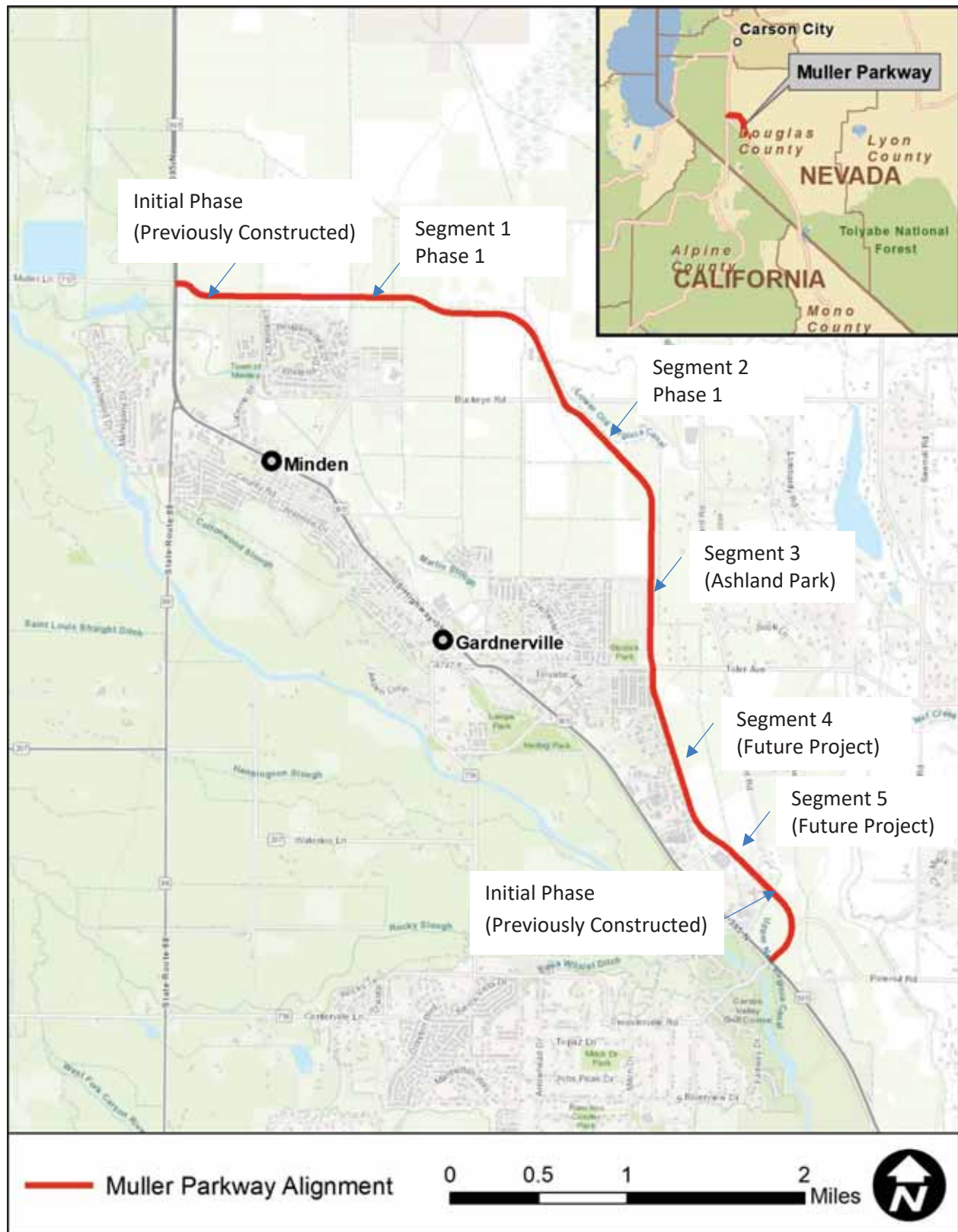
The Muller Parkway (All Phases) alignment is located entirely within Douglas County to the east of the Minden-Gardnerville area. The watersheds that drain to the Muller Parkway alignment are located on the western slopes of the Pine Nut Mountains, approximately 14 miles south of Carson City.

A Vicinity Map (Figure 1) has been provided as a visual representation of the project location. An aerial view (Figure 2) of the project site and effective FEMA Flood Zones is also provided to further assist in the discussion.

#### *1.3.2. Project Description*

Muller Parkway has been and will continue to be constructed in multiple phases and in multiple segments. At US Highway 395 and US 757, the initial 3600 linear feet of Muller Parkway heading east has already been completed. A second section of the roadway extending from US 395 tying into the intersection at Riverview Drive and extending north to the roundabout at Pinenut Drive has also been constructed. For the purpose of this report, these completed sections will be considered to be Muller Initial 1 (See Figure 1).

The roadway construction intended to connect the completed sections of Phase 1 is to be divided into five segments. Of these, Segment 1 and Segment 2 will be constructed initially as part of the work completed by Douglas County. Herein, the construction of Segment 1 and Segment 2 will be considered collectively as Phase 1. The combined center line length for Phase 1 is approximately 3.2 miles. Segment 3 will be constructed by a 3rd party as part of the Ashland Park development (length of approximately 0.6 miles). Segment 4 and Segment 5 will be part of future phases (See Figure 1).



**Figure 1. Vicinity Map**





*Figure 2. Project Aerial Map*

### *1.3.3. Additional Reference Sources*

As part of the study, the following additional sources were consulted. Excerpts from these documents are provided in Appendix B.8-Project Docs.

- **Buckeye Creek Watershed Hydrology and Floodplain Analysis, Manhard Consulting, 2012.**

The Buckeye Creek Watershed Hydrology and Floodplain Analysis was completed by Manhard Consulting in 2012. This study used HEC-HMS with the Green and Ampt infiltration methodology to update the hydrology for Buckeye Creek. This new hydrology formed the basis for a floodplain revision based on the results of FLO-2D modeling. This revised floodplain is the current effective floodplain for Buckeye Creek. Since this study was focused on the floodplain revision, the storms modeled were the 10-year 24-hour, the 50-year 24-hour, 100-year 24-hour, and the 500-year 24-hour events.

- **Letter of Map Revision (LOMR) Request for Pine Nut Creek and Tributaries, NV, HDR Engineering, On-going.**

The LOMR Request for Pine Nut Creek and Tributaries, NV is an ongoing floodplain study on Pine Nut Creek that is being developed by HDR Engineering. As of May 2020, the study is substantially complete but is undergoing review; and, as such, the results could change. This study used HEC-HMS with the Curve Number infiltration methodology to generate the rainfall excess for each of the subbasins. This rainfall excess was then applied as a rain-on-grid component within HEC-RAS 2D (version 5.0.7) to generate inflow hydrographs for a more detailed HEC-RAS 2D model (version 5.0.7). This study simulated the 100-year 24-hour and the 500-year 24-hour storm events.

## *1.4. METHODOLOGY*

### *1.4.1. Hydrology*

The flow rates utilized in the study were taken from the effective FIS. These flow rates for the base flood and the 0.2-percent-annual-chance flood (where available) are presented Section 4.0.

### *1.4.2. Hydraulics and Floodplain Delineation*

The floodplains, under existing and post-construction conditions, were determined using FLO-2D and HEC-RAS 2D (V6.3.1) Software. To represent the footprint and profile of the Muller Parkway Extension alignment, finished grade surface developed by others were added to the proposed conditions model. Proposed culverts used to convey runoff under the proposed roadway were also incorporated into the model. A complete discussion of the hydraulic analysis is presented in Section 5.0.

## *1.5. ACKNOWLEDGMENTS*

This study was made successful thanks to the input and cooperation of Douglas County and our project partners at CA Group.

### *1.6. SUMMARY OF STUDY RESULTS*

The post-project analysis demonstrated that, upon completion, the proposed roadway alignment will be constructed such that the roadway is not impacted by the Special Flood Hazard AE Zone and does not adversely impact surrounding properties upstream or downstream of the project. A work map showing the post-project conditions floodplain is provided in Appendix F.2. An Annotated FIRM illustrating the proposed regulatory Special Flood Hazard Zones (AE) is provided in Appendix F.1.

## 2.0 SURVEY AND MAPPING INFORMATION

### 2.1. FIELD SURVEY AND MAPPING INFORMATION

Off-site and on-site topography was obtained from USGS 2020 3DEP data and more recent LIDAR data obtained by Douglas County for a separate project in 2022. This information was used for both the hydrologic and hydraulic analysis as discussed in Section 4 and Section 5. A surface model was created from the data and served as the topographic information for both the FLO-2D and HEC-RAS 2D Models. The topographic information is provided as part of the data submitted with the models (i.e., elevation grid (FLO-2D), digital terrain (HEC-RAS 2D)). The certification for the topography is provided in Appendix C.

#### Project Coordinate System

- Horizontal Control: NAD83 State Plane Coordinates (Nevada State Plane, West Zone 2703).
- North American Vertical Datum of 1988 (NAVD88) in international feet.

The construction plan used to represent the proposed conditions was provided by CA Group. The elevations presented on the grading plan are on a North American Vertical Datum of 1988 (NAVD88). A copy of the construction plan is provided in Appendix A.1.

## 3.0 STUDY DOCUMENTATION ABSTRACT AND FEMA FORMS

### 3.1. STUDY DOCUMENTATION ABSTRACT

**TABLE 2 – STUDY ABSTRACT**

2.1.1	Date Study Accepted	
	Study Contractor:	JE Fuller/Hydrology & Geomorphology, Inc. Christopher Rod P.E., Project Manager/Engineer 40 E Helen Street Tucson, Arizona 85705 520-623-3112
	Internal Reference Name:	CLOMR for Muller Parkway Extension
	Local Agency Reviewers:	Jonathan Erb – Manager of Transportation Engineering Traffic Engineering, Douglas County Phone: 775-782-6233 Email: JErb@douglasnv.us
	FEMA Technical Review Contractor:	AtkinsRealis, Inc. 801 S. Grande Avenue, Suite 275 Los Angeles, CA 90071
	Reviewer:	Jaison Renkenberger
	Email:	jaison.renkenberger@atkinsrealis.com
	Phone:	213.409.6769

Study Reach Descriptions:	Buckeye Creek, Pine Nut Creek, Pine Nut Wash
Applicable MT-2 Forms	Forms 1, 2 and 3
Aerial Mapping and Ground Survey:	3Dep LIDAR (USGS) – NAVD 88 Area Specific LIDAR (NV5 Geospatial) – NAVD 88
Hydrologic Modeling:	None (Effective FIS Discharges Used)
Hydraulic Modeling:	HEC-RAS 2D
<i>Existing Zone Designation</i>	Ranges from X, X (Shaded), AO (1-3), A, and AE Zones
<i>Proposed Zone Designation</i>	AE, AO (1-3), A, X, X (Shaded)
Proposed Floodways	None
Unique Conditions/Problems:	



### 3.2. *FEMA FORMS*

FEMA MT-2 Forms 1, 2 and 3 are included as attachments to this section. If needed, each form includes a supplemental information sheet that provides information that could not be placed within the form structure. The form's section and item number are referenced on this sheet. Normally, Sections 3 through 7 of the standard TDN provides overflow information that cannot be placed within the FEMA form structure. If the information requested in Sections 3 through 7 is already provided on the supplemental information sheet, it will be referenced accordingly. In addition, information discussed in Sections 3 through 7 may be provided in one of the appendices. If that is the case, the location where the information can be found will be referenced accordingly.

DEPARTMENT OF HOMELAND SECURITY  
Federal Emergency Management Agency  
**OVERVIEW & CONCURRENCE FORM**

OMB Control Number: 1660-0016  
Expiration: 1/31/2024

**PAPERWORK BURDEN DISCLOSURE NOTICE**

Public reporting burden for this form is estimated to average 1 hours per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing, reviewing, and submitting the form. You are not required to respond to this collection of information unless it displays a valid OMB control number. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing this burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472 , Paperwork Reduction Project (1660-0016). Submission of the form is required to obtain or retain benefits under the National Flood Insurance Program. **Please do not send your completed survey to the above address.**

**PRIVACY ACT STATEMENT**

**AUTHORITY:** The National Flood Insurance Act of 1968, Public Law 90-448, as amended by the Flood Disaster Protection Act of 1973, Public Law 93-234.

**PRINCIPAL PURPOSE(S):** This information is being collected for the purpose of determining an applicant's eligibility to request changes to National Flood Insurance Program (NFIP) Flood Insurance Rate Maps (FIRM).

**ROUTINE USE(S):** The information on this form may be disclosed as generally permitted under 5 U.S.C § 552a(b) of the Privacy Act of 1974, as amended. This includes using this information as necessary and authorized by the routine uses published in DHS/FEMA/NFIP/LOMA-1 National Flood Insurance Program (NFIP); Letter of Map Amendment (LOMA) February 15, 2006, 71 FR 7990.

**DISCLOSURE:** The disclosure of information on this form is voluntary; however, failure to provide the information requested may delay or prevent FEMA from processing a determination regarding a requested change to a (NFIP) Flood Insurance Rate Maps (FIRM).

**A. REQUESTED RESPONSE FROM DHS-FEMA**

This request is for a (check one):

☒ CLOMR: A letter from DHS-FEMA commenting on whether a proposed project, if built as proposed, would justify a map revision, or proposed hydrology changes (See 44 CFR Ch. 1, Parts 60, 65 & 72). All CLOMRs require documentation of compliance with the Endangered Species Act. Refer to the Instructions for details.

☐ LOMR: A letter from DHS-FEMA officially revising the current NFIP map to show the changes to floodplains, regulatory floodway or flood elevations. (See 44 CFR Ch. 1, Parts 60, 65 & 72).

**B. OVERVIEW**

1. The NFIP map panel(s) affected for all impacted communities is (are):

Community No.	Community Name	State	Map No.	Panel No.	Effective Date
320008	Douglas County	NV	32005C	0232H; 0251H	6/15/2016; 6/15/2016
320008	Douglas County	NV	32005C	0234H; 0253H	6/15/2016; 6/15/2016
320008	Douglas County	NV	32005C	0254H; 0265G	6/15/2016; 1/20/2010

2. a. Flooding Source:

b. Types of Flooding: ☒ Riverine ☐ Coastal ☒ Shallow Flooding (e.g., Zones AO and AH)  
☐ Alluvial Fan ☐ Lakes ☐ Other (Attach Description)

3. Project Name/Identifier:

4. FEMA zone designations (choices: A, AH, AO, A1-A30, A99, AE, AR, V, V1-V30, VE, B, C, D, X)

a. Effective:

b. Revised:

5. Basis for Request and Type of Revision:

a. The basis for this revision request is (check all that apply)

- |  |   |   |   |
|--|---|---|---|
| <input checked="" type="checkbox"/> Physical Change      | <input checked="" type="checkbox"/> Improved Methodology/Data | <input type="checkbox"/> Regulatory Floodway Revision   | <input type="checkbox"/> Base Map Changes |
| <input type="checkbox"/> Coastal Analysis                | <input checked="" type="checkbox"/> Hydraulic Analysis        | <input checked="" type="checkbox"/> Hydrologic Analysis | <input type="checkbox"/> Corrections      |
| <input type="checkbox"/> Weir-Dam Changes                | <input type="checkbox"/> Levee Certification                  | <input type="checkbox"/> Alluvial Fan Analysis          | <input type="checkbox"/> Natural Changes  |
| <input checked="" type="checkbox"/> New Topographic Data | <input type="checkbox"/> Other (Attach Description)           |   |   |

Note: A photograph and narrative description of the area of concern is not required, but is very helpful during review.

b. The area of revision encompasses the following structures (check all that apply)

Structures: ☐ Channelization ☐ Levee/Floodwall ☒ Bridge/Culvert  
☐ Dam ☒ Fill ☐ Other (Attach Description)

6. ☒ Documentation of ESA compliance is submitted (required to initiate CLOMR review). Please refer to the instructions for more information.

C. REVIEW FEE

Has the review fee for the appropriate request category been included?

- ☒ Yes Fee amount: \$ \_\_\_\_\_  
☐ No, Attach Explanation

- Please see the DHS-FEMA Web site at <http://www.fema.gov/forms-documents-and-software/flood-map-related-fees> for Fee Amounts and Exemptions.

D. SIGNATURES

1. REQUESTOR'S SIGNATURE

All documents submitted in support of this request are correct to the best of my knowledge. I understand that any false statement may be punishable by fine or imprisonment under Title 18 of the United States Code, Section 1001.

Name: Chris Rod	Company: JE Fuller, Hydrology & Geomorphology, Inc.	
Mailing Address: 40 E. Helen Street Tucson, AZ. 85705	Daytime Telephone: 520-623-3112	Fax No.: 520-623-3130
	E-mail Address: Chris@JEFuller.com	
	Date: 4/13/2023	

Signature of Requestor (required):

*Christopher Rod*

2. COMMUNITY CONCURRENCE

As the community official responsible for floodplain management, I hereby acknowledge that we have received and reviewed this Letter of Map Revision (LOMR) or conditional LOMR request. Based upon the community's review, we find the completed or proposed project meets or is designed to meet all of the community floodplain management requirements, including the requirements for when fill is placed in the regulatory floodway, and that all necessary Federal, State, and local permits have been, or in the case of a conditional LOMR, will be obtained. For Conditional LOMR requests, the applicant has documented Endangered Species Act (ESA) compliance to FEMA prior to FEMA's review of the Conditional LOMR application. For LOMR requests, I acknowledge that compliance with Sections 9 and 10 of the ESA has been achieved independently of FEMA's process. For actions authorized, funded, or being carried out by Federal or State agencies, documentation from the agency showing its compliance with Section 7(a)(2) of the ESA will be submitted. In addition, we have determined that the land and any existing or proposed structures to be removed from the SFHA are or will be reasonably safe from flooding as defined in 44CFR 65.2(c), and that we have available upon request by FEMA, all analyses and documentation used to make this determination.

Community Official's Name and Title: Thomas A. Dallaire PE, CFM


Mailing Address: 1594 Esmeralda Ave. Minden, NV. 89423	<b>Thomas A. Dallaire</b> Digitally signed by Thomas A. Dallaire Date: 2023.05.09 12:13:58 -07'00'	Community Name: Douglas County	
		Daytime Telephone: 775-782-6201	Fax No.:
		E-mail Address: tdallaire@douglasnv.us>	

Community Official's Signature (required): *Thomas A. Dallaire*

Date: 05-09-2023

### 3. CERTIFICATION BY REGISTERED PROFESSIONAL ENGINEER AND/OR LAND SURVEYOR

This certification is to be signed and sealed by a licensed land surveyor, registered professional engineer, or architect authorized by law to certify elevation information data, hydrologic and hydraulic analysis, and any other supporting information as per NFIP regulations paragraph 65.2(b) and as described in the MT-2 Forms Instructions. All documents submitted in support of this request are correct to the best of my knowledge. I understand that any false statement may be punishable by fine or imprisonment under Title 18 of the United States Code, Section 1001.

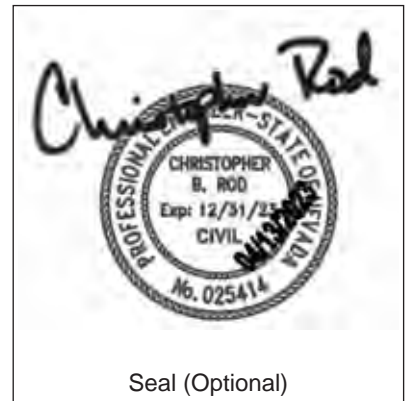
Certifier's Name: Chris Rod, PE		License No.: 025414	Expiration Date: 12/31/2023
Company Name: JE Fuller Hydrology & Geomorphology, Inc.		Mailing Address: 40 E. Helen Street Tucson, AZ. 85705	
Telephone No.: 520-623-3112	Fax No.: 520-623-3130		
E-mail Address: Chris@JEFuller.com			
Signature: 			Date: 4/13/2023

Ensure the forms that are appropriate to your revision request are included in your submittal.

#### Form Name and (Number)

#### Required if ...

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Riverine Hydrology and Hydraulics Form (Form 2) | New or revised discharges or water-surface elevations   |
| <input checked="" type="checkbox"/> Riverine Structures Form (Form 3)               | Channel is modified, addition/revision of bridge/culverts, addition/revision of levee/floodwall, addition/revision of dam |
| <input type="checkbox"/> Coastal Analysis Form (Form 4)                             | New or revised coastal elevations   |
| <input type="checkbox"/> Coastal Structures Form (Form 5)                           | Addition/revision of coastal structure  |
| <input type="checkbox"/> Alluvial Fan Flooding Form (Form 6)                        | Flood control measures on alluvial fans   |



DEPARTMENT OF HOMELAND SECURITY  
Federal Emergency Management Agency  
**RIVERINE HYDROLOGY & HYDRAULICS FORM (FORM 2)**

OMB Control Number: 1660-0016  
Expiration: 1/31/2024

**PAPERWORK BURDEN DISCLOSURE NOTICE**

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**PRIVACY ACT STATEMENT**

**AUTHORITY:** The National Flood Insurance Act of 1968, Public Law 90-448, as amended by the Flood Disaster Protection Act of 1973, Public Law 93-234.

**PRINCIPAL PURPOSE(S):** This information is being collected for the purpose of determining an applicant's eligibility to request changes to National Flood Insurance Program (NFIP) Flood Insurance Rate Maps (FIRM).

**ROUTINE USE(S):** The information on this form may be disclosed as generally permitted under 5 U.S.C § 552a(b) of the Privacy Act of 1974, as amended. This includes using this information as necessary and authorized by the routine uses published in DHS/FEMA/NFIP/LOMA-1 National Flood Insurance Program (NFIP); Letter of Map Amendment (LOMA) February 15, 2006, 71 FR 7990.

**DISCLOSURE:** The disclosure of information on this form is voluntary; however, failure to provide the information requested may delay or prevent FEMA from processing a determination regarding a requested change to a (NFIP) Flood Insurance Rate Maps (FIRM).

Flooding Source: Buckeye Creek

**Note:** Fill out one form for each flooding source studied

**A. HYDROLOGY**

1. Reason for New Hydrologic Analysis (check all that apply):

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Not revised (skip to section B) | <input type="checkbox"/> No existing analysis        | <input checked="" type="checkbox"/> Improved data                |
| <input type="checkbox"/> Alternative methodology                    | <input type="checkbox"/> Proposed Conditions (CLOMR) | <input type="checkbox"/> Changed physical condition of watershed |

2. Comparison of Representative 1%-Annual-Chance Discharges

Location	Drainage Area (Sq. Mi.)	Effective/FIS (cfs)	Revised (cfs)
----------	-------------------------	---------------------	---------------

3. Methodology for New Hydrologic Analysis (check all that apply)

- ☐ Precipitation/Runoff Model → Specify Model: \_\_\_\_\_ Duration: \_\_\_\_\_ Rainfall Amount: \_\_\_\_\_
- ☐ Statistical Analysis of Gage Records
- ☐ Regional Regression Equations ☐ Other (please attach description)

Please enclose all relevant models in digital format, maps, computations (including computation of parameters), and documentation to support the new analysis.

4. Review/Approval of Analysis

If your community requires a regional, state, or federal agency to review the hydrologic analysis, please attach evidence of approval/review.

4. HEC-RAS File Description\*\*:

5. Impacts of Sediment Transport on Hydrology

Is the hydrology for the revised flooding source(s) affected by sediment transport? ☐ Yes ☐ No

If yes, then fill out Section F (Sediment Transport) of Form 3. If No, then attach your explanation.



**B. HYDRAULICS**1. Reach to be Revised

	Description	Cross Section	Water-Surface Elevation (ft.)	
			Effective	Proposed/Revised
Downstream Limit*	Virginia Canal @ Heybo	n/a	4718'	4718.06'
Upstream Limit*	~ 0.62 River Miles DS of	n/a	4825'	4824.8'

\*Proposed/Revised elevations must tie-into the Effective elevations within 0.5 foot at the downstream and upstream limits of revision.

2. Hydraulic Method/Model Used: HEC-RAS2D v 6.3.1

☐ Steady State ☒ Unsteady State ☐ One-Dimensional ☒ Two-Dimensional

3. Pre-Submittal Review of Hydraulic Models\*

DHS-FEMA has developed two review programs, CHECK-2 and CHECK-RAS, to aid in the review of HEC-2 and HEC-RAS hydraulic models, respectively. We recommend that you review your HEC-2 and HEC-RAS models with CHECK-2 and CHECK-RAS.

4. HEC-RAS File Description\*\*:

Models Submitted	Natural Run		Floodway Run		Datum
Duplicate Effective Model*	File Name:	Plan Name:	File Name:	Plan Name:	
	Buckeye Creek	Revised_Exist_Co			
Corrected Effective Model*	File Name:	Plan Name:	File Name:	Plan Name:	
	None	None			
Existing or Pre-Project Conditions Model	File Name:	Plan Name:	File Name:	Plan Name:	
	Muller Parkway_C	100yr_Existing	None	None	NAVD 88
Revised or Post-Project Conditions Model	File Name:	Plan Name:	File Name:	Plan Name:	
	Muller Parkway_C	100yr_Proposed	None	None	NAVD 88
Other - (attach description)	File Name:	Plan Name:	File Name:	Plan Name:	

\* For details, refer to the corresponding section of the instructions.

\*\*See instructions for information about modeling other than HEC-RAS. ☒ Digital Models Submitted? (Required)

**C. MAPPING REQUIREMENTS**

A **certified topographic work map** must be submitted showing the following information (where applicable): the boundaries of the effective, existing, and proposed conditions 1%-annual-chance floodplain (for approximate Zone A revisions) or the boundaries of the 1%- and 0.2%-annual-chance floodplains and regulatory floodway (for detailed Zone AE, AO, and AH revisions); location and alignment of all cross sections with stationing control indicated; stream, road, and other alignments (e.g., dams, levees, etc.); current community easements and boundaries; boundaries of the requester's property; certification of a registered professional engineer registered in the subject State; location and description of reference marks; and the referenced vertical datum (NGVD, NAVD, etc.).

☒ Digital Mapping (GIS/CADD) Data Submitted (preferred)

Topographic Information:

Source: USGS 3DEP LIDAR & Site Specific Survey, (NV5 Geospatial)

Date: Oct 2020 & April 2022

Vertical Datum: North American Vertical Datum of 1988 (NAVD88) iFT

Spatial Projection: NAD83 - Nevada State Plane, West Zone 2703

Accuracy: 0.51' (3DEP) 0.16' (Site Specific)

Note that the boundaries of the existing or proposed conditions floodplains and regulatory floodway to be shown on the revised FIRM and/or FBFM must tie-in with the effective floodplain and regulatory floodway boundaries. Please attach a **copy of the effective FIRM and/or FBFM**, at the same scale as the original, annotated to show the boundaries of the revised 1%-and 0.2%-annual-chance floodplains and regulatory floodway that tie-in with the boundaries of the effective 1%-and 0.2%-annual-chance floodplain and regulatory floodway at the upstream and downstream limits of the area on revision.

☒ Annotated FIRM and/or FBFM (Required)

#### D. COMMON REGULATORY REQUIREMENTS\*

1. For LOMR/CLOMR requests, do Base Flood Elevations (BFEs) or Special Flood Hazard Areas (SFHAs) increase compared to the effective BFEs? ☒ Yes ☐ No
- If Yes, please attach **proof of property owner notification**. Examples of property owner notifications can be found in the MT-2 Form 2 Instructions.
2. For CLOMR requests, if either of the following is true, please submit **evidence of compliance with Section 65.12 of the NFIP regulations**:
- The proposed project encroaches upon a regulatory floodway and would result in increases above 0.00 foot compared to pre-project conditions.
  - The proposed project encroaches upon a SFHA with or without BFEs established and would result in increases above 1.00 foot compared to pre-project conditions.
3. Does the request involve the placement or proposed placement of fill? ☒ Yes ☐ No
- If Yes, the community must be able to certify that the area to be removed from the special flood hazard area, to include any structures or proposed structures, meets all of the standards of the local floodplain ordinances, and is reasonably safe from flooding in accordance with the NFIP regulations set forth at 44 CFR 60.3(A)(3), 65.5(a)(4), and 65.6(a)(14). Please see the MT-2 instructions for more information.
4. Does the request involve the placement or proposed placement of fill? ☐ Yes ☒ No
- If Yes, attach **evidence of regulatory floodway revision notification**. As per Paragraph 65.7(b)(1) of the NFIP Regulations, notification is required for requests involving revisions to the regulatory floodway Elements and examples of regulatory floodway revision notification can be found in the MT-2 Form 2 Instructions.
5. For CLOMR requests, please submit documentation to FEMA and the community to show that you have complied with Sections 9 and 10 of the Endangered Species Act (ESA). For actions authorized, funded, or being carried out by Federal or State agencies, please submit documentation from the agency showing its compliance with Section 7(a)(2) of the ESA. Please see the MT-2 instructions for more detail.

DEPARTMENT OF HOMELAND SECURITY  
Federal Emergency Management Agency  
**RIVERINE HYDROLOGY & HYDRAULICS FORM (FORM 2)**

OMB Control Number: 1660-0016  
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Flooding Source: Pine Nut Creek

**Note:** Fill out one form for each flooding source studied

**A. HYDROLOGY**

1. Reason for New Hydrologic Analysis (check all that apply):

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Not revised (skip to section B) | <input type="checkbox"/> No existing analysis        | <input type="checkbox"/> Improved data                           |
| <input type="checkbox"/> Alternative methodology                    | <input type="checkbox"/> Proposed Conditions (CLOMR) | <input type="checkbox"/> Changed physical condition of watershed |

2. Comparison of Representative 1%-Annual-Chance Discharges

Location	Drainage Area (Sq. Mi.)	Effective/FIS (cfs)	Revised (cfs)
----------	-------------------------	---------------------	---------------

3. Methodology for New Hydrologic Analysis (check all that apply)

- ☐ Precipitation/Runoff Model → Specify Model: \_\_\_\_\_ Duration: \_\_\_\_\_ Rainfall Amount: \_\_\_\_\_
- ☐ Statistical Analysis of Gage Records
- ☐ Regional Regression Equations ☐ Other (please attach description)

Please enclose all relevant models in digital format, maps, computations (including computation of parameters), and documentation to support the new analysis.

4. Review/Approval of Analysis

If your community requires a regional, state, or federal agency to review the hydrologic analysis, please attach evidence of approval/review.

4. HEC-RAS File Description\*\*:

5. Impacts of Sediment Transport on Hydrology

Is the hydrology for the revised flooding source(s) affected by sediment transport? ☐ Yes ☐ No

If yes, then fill out Section F (Sediment Transport) of Form 3. If No, then attach your explanation.

## B. HYDRAULICS

### 1. Reach to be Revised

	Description	Cross Section	Water-Surface Elevation (ft.)	
			Effective	Proposed/Revised
Downstream Limit*	4,000 ft DS Virginia Canal	n/a		
Upstream Limit*	US East Valley Rd	n/a		

\*Proposed/Revised elevations must tie-into the Effective elevations within 0.5 foot at the downstream and upstream limits of revision.

### 2. Hydraulic Method/Model Used: HEC-RAS2D v 6.3.1

☐ Steady State ☒ Unsteady State ☐ One-Dimensional ☒ Two-Dimensional

### 3. Pre-Submittal Review of Hydraulic Models\*

DHS-FEMA has developed two review programs, CHECK-2 and CHECK-RAS, to aid in the review of HEC-2 and HEC-RAS hydraulic models, respectively. We recommend that you review your HEC-2 and HEC-RAS models with CHECK-2 and CHECK-RAS.

### 4. HEC-RAS File Description\*\*:

Models Submitted	Natural Run		Floodway Run		Datum
Duplicate Effective Model*	File Name:	Plan Name:	File Name:	Plan Name:	
Corrected Effective Model*	File Name:	Plan Name:	File Name:	Plan Name:	
Existing or Pre-Project Conditions Model	File Name:	Plan Name:	File Name:	Plan Name:	
	Muller Parkway Existing	100yr_Existing			
Revised or Post-Project Conditions Model	File Name:	Plan Name:	File Name:	Plan Name:	
	Muller Parkway Existing	100yr_Proposed			
Other - (attach description)	File Name:	Plan Name:	File Name:	Plan Name:	

\* For details, refer to the corresponding section of the instructions.

\*\*See instructions for information about modeling other than HEC-RAS. ☒ Digital Models Submitted? (Required)

## C. MAPPING REQUIREMENTS

A **certified topographic work map** must be submitted showing the following information (where applicable): the boundaries of the effective, existing, and proposed conditions 1%-annual-chance floodplain (for approximate Zone A revisions) or the boundaries of the 1%- and 0.2%-annual-chance floodplains and regulatory floodway (for detailed Zone AE, AO, and AH revisions); location and alignment of all cross sections with stationing control indicated; stream, road, and other alignments (e.g., dams, levees, etc.); current community easements and boundaries; boundaries of the requester's property; certification of a registered professional engineer registered in the subject State; location and description of reference marks; and the referenced vertical datum (NGVD, NAVD, etc.).

☒ Digital Mapping (GIS/CADD) Data Submitted (preferred)

Topographic Information:

Source: USGS 3DEP LIDAR, 2022 County LiDAR, & Site Specific Survey, (NV5 Geospatial

Date: Oct 2020 & April 2022

Vertical Datum: North American Vertical Datum of 1988 (NAVD88) iFT

Spatial Projection: NAD83 - Nevada State Plane, West Zone 2703

Accuracy: 0.51' (3DEP) 0.16' (Site Specific)

Note that the boundaries of the existing or proposed conditions floodplains and regulatory floodway to be shown on the revised FIRM and/or FBFM must tie-in with the effective floodplain and regulatory floodway boundaries. Please attach a **copy of the effective FIRM and/or FBFM**, at the same scale as the original, annotated to show the boundaries of the revised 1%-and 0.2%-annual-chance floodplains and regulatory floodway that tie-in with the boundaries of the effective 1%-and 0.2%-annual-chance floodplain and regulatory floodway at the upstream and downstream limits of the area on revision.

☒ Annotated FIRM and/or FBFM (Required)

#### D. COMMON REGULATORY REQUIREMENTS\*

1. For LOMR/CLOMR requests, do Base Flood Elevations (BFEs) or Special Flood Hazard Areas (SFHAs) increase compared to the effective BFEs? ☒ Yes ☐ No
- If Yes, please attach **proof of property owner notification**. Examples of property owner notifications can be found in the MT-2 Form 2 Instructions.
2. For CLOMR requests, if either of the following is true, please submit **evidence of compliance with Section 65.12 of the NFIP regulations**:
- The proposed project encroaches upon a regulatory floodway and would result in increases above 0.00 foot compared to pre-project conditions.
  - The proposed project encroaches upon a SFHA with or without BFEs established and would result in increases above 1.00 foot compared to pre-project conditions.
3. Does the request involve the placement or proposed placement of fill? ☒ Yes ☐ No
- If Yes, the community must be able to certify that the area to be removed from the special flood hazard area, to include any structures or proposed structures, meets all of the standards of the local floodplain ordinances, and is reasonably safe from flooding in accordance with the NFIP regulations set forth at 44 CFR 60.3(A)(3), 65.5(a)(4), and 65.6(a)(14). Please see the MT-2 instructions for more information.
4. Does the request involve the placement or proposed placement of fill? ☐ Yes ☒ No
- If Yes, attach **evidence of regulatory floodway revision notification**. As per Paragraph 65.7(b)(1) of the NFIP Regulations, notification is required for requests involving revisions to the regulatory floodway Elements and examples of regulatory floodway revision notification can be found in the MT-2 Form 2 Instructions.
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Expiration: 1/31/2024

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**PRIVACY ACT STATEMENT**

**AUTHORITY:** The National Flood Insurance Act of 1968, Public Law 90-448, as amended by the Flood Disaster Protection Act of 1973, Public Law 93-234.

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Flooding Source: Pine Nut Rd Wash

**Note:** Fill out one form for each flooding source studied

**A. HYDROLOGY**

1. Reason for New Hydrologic Analysis (check all that apply):

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Not revised (skip to section B) | <input type="checkbox"/> No existing analysis        | <input type="checkbox"/> Improved data                           |
| <input type="checkbox"/> Alternative methodology                    | <input type="checkbox"/> Proposed Conditions (CLOMR) | <input type="checkbox"/> Changed physical condition of watershed |

2. Comparison of Representative 1%-Annual-Chance Discharges

Location	Drainage Area (Sq. Mi.)	Effective/FIS (cfs)	Revised (cfs)
----------	-------------------------	---------------------	---------------

3. Methodology for New Hydrologic Analysis (check all that apply)

- ☐ Precipitation/Runoff Model → Specify Model: \_\_\_\_\_ Duration: \_\_\_\_\_ Rainfall Amount: \_\_\_\_\_
- ☐ Statistical Analysis of Gage Records
- ☐ Regional Regression Equations ☐ Other (please attach description)

Please enclose all relevant models in digital format, maps, computations (including computation of parameters), and documentation to support the new analysis.

4. Review/Approval of Analysis

If your community requires a regional, state, or federal agency to review the hydrologic analysis, please attach evidence of approval/review.

4. HEC-RAS File Description\*\*:


5. Impacts of Sediment Transport on Hydrology

Is the hydrology for the revised flooding source(s) affected by sediment transport? ☐ Yes ☒ No

If yes, then fill out Section F (Sediment Transport) of Form 3. If No, then attach your explanation.

## B. HYDRAULICS

### 1. Reach to be Revised

	Description	Cross Section	Water-Surface Elevation (ft.)	
			Effective	Proposed/Revised
Downstream Limit*	Company Ditch and Pin 	n/a		
Upstream Limit*	Upper Allerman Canal	n/a		

\*Proposed/Revised elevations must tie-into the Effective elevations within 0.5 foot at the downstream and upstream limits of revision.



### 2. Hydraulic Method/Model Used: HEC-RAS2D v 6.3.1

☐ Steady State    ☒ Unsteady State    ☐ One-Dimensional    ☒ Two-Dimensional

### 3. Pre-Submittal Review of Hydraulic Models\*

DHS-FEMA has developed two review programs, CHECK-2 and CHECK-RAS, to aid in the review of HEC-2 and HEC-RAS hydraulic models, respectively. We recommend that you review your HEC-2 and HEC-RAS models with CHECK-2 and CHECK-RAS.

### 4. HEC-RAS File Description\*\*:

Models Submitted	Natural Run		Floodway Run		Datum
Duplicate Effective Model*	File Name:	Plan Name:	File Name:	Plan Name:	
Corrected Effective Model*	File Name:	Plan Name:	File Name:	Plan Name:	
Existing or Pre-Project Conditions Model	File Name:	Plan Name:	File Name:	Plan Name:	
	Muller Parkway Ex 	100yr_Existing			
Revised or Post-Project Conditions Model	File Name:	Plan Name:	File Name:	Plan Name:	
	Muller Parkway Ex 	100yr_Proposed			
Other - (attach description)	File Name:	Plan Name:	File Name:	Plan Name:	

\* For details, refer to the corresponding section of the instructions.

\*\*See instructions for information about modeling other than HEC-RAS. ☒ Digital Models Submitted? (Required)

## C. MAPPING REQUIREMENTS

A **certified topographic work map** must be submitted showing the following information (where applicable): the boundaries of the effective, existing, and proposed conditions 1%-annual-chance floodplain (for approximate Zone A revisions) or the boundaries of the 1%- and 0.2%-annual-chance floodplains and regulatory floodway (for detailed Zone AE, AO, and AH revisions); location and alignment of all cross sections with stationing control indicated; stream, road, and other alignments (e.g., dams, levees, etc.); current community easements and boundaries; boundaries of the requester's property; certification of a registered professional engineer registered in the subject State; location and description of reference marks; and the referenced vertical datum (NGVD, NAVD, etc.).

☒ Digital Mapping (GIS/CADD) Data Submitted (preferred)

Topographic Information:

Source: USGS 2020 3DEP & 2022 County LIDAR

Date: October 2020

Vertical Datum: North American Vertical Datum of 1988 (NAVD88) iFT

Spatial Projection: NAD83 - Nevada State Plane, West Zone 2703

Accuracy: 0.51' (3DEP)

Note that the boundaries of the existing or proposed conditions floodplains and regulatory floodway to be shown on the revised FIRM and/or FBFM must tie-in with the effective floodplain and regulatory floodway boundaries. Please attach a **copy of the effective FIRM and/or FBFM**, at the same scale as the original, annotated to show the boundaries of the revised 1%-and 0.2%-annual-chance floodplains and regulatory floodway that tie-in with the boundaries of the effective 1%-and 0.2%-annual-chance floodplain and regulatory floodway at the upstream and downstream limits of the area on revision.

☒ Annotated FIRM and/or FBFM (Required)

#### D. COMMON REGULATORY REQUIREMENTS\*

1. For LOMR/CLOMR requests, do Base Flood Elevations (BFEs) or Special Flood Hazard Areas (SFHAs) increase compared to the effective BFEs? ☒ Yes ☐ No
- If Yes, please attach **proof of property owner notification**. Examples of property owner notifications can be found in the MT-2 Form 2 Instructions.
2. For CLOMR requests, if either of the following is true, please submit **evidence of compliance with Section 65.12 of the NFIP regulations**:
- The proposed project encroaches upon a regulatory floodway and would result in increases above 0.00 foot compared to pre-project conditions.
  - The proposed project encroaches upon a SFHA with or without BFEs established and would result in increases above 1.00 foot compared to pre-project conditions.
3. Does the request involve the placement or proposed placement of fill? ☒ Yes ☐ No
- If Yes, the community must be able to certify that the area to be removed from the special flood hazard area, to include any structures or proposed structures, meets all of the standards of the local floodplain ordinances, and is reasonably safe from flooding in accordance with the NFIP regulations set forth at 44 CFR 60.3(A)(3), 65.5(a)(4), and 65.6(a)(14). Please see the MT-2 instructions for more information.
4. Does the request involve the placement or proposed placement of fill? ☐ Yes ☒ No
- If Yes, attach **evidence of regulatory floodway revision notification**. As per Paragraph 65.7(b)(1) of the NFIP Regulations, notification is required for requests involving revisions to the regulatory floodway Elements and examples of regulatory floodway revision notification can be found in the MT-2 Form 2 Instructions.
5. For CLOMR requests, please submit documentation to FEMA and the community to show that you have complied with Sections 9 and 10 of the Endangered Species Act (ESA). For actions authorized, funded, or being carried out by Federal or State agencies, please submit documentation from the agency showing its compliance with Section 7(a)(2) of the ESA. Please see the MT-2 instructions for more detail.

DEPARTMENT OF HOMELAND SECURITY  
Federal Emergency Management Agency  
**RIVERINE STRUCTURES FORM (FORM 3)**

OMB Control Number: 1660-0016  
Expiration: 1/31/2024

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Flooding Source: Buckeye Creek

**Note:** Fill out one form for each flooding source studied

**A. GENERAL**

Complete the appropriate section(s) for each Structure listed below:

Channelization:	complete Section B
Bridge/Culvert:	complete Section C
Dam:	complete Section D
Levee/Floodwall:	complete Section E
Sediment Transport:	complete Section F (if required)

**Description Of Modeled Structure**

1. Name of Structure: Culvert 2

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Muller Prky Alignment Sta. 79+27.27

Downstream Limit/Cross Section: N/A

Upstream Limit/Cross Section: N/A

2. Name of Structure: Culvert 4

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Muller Prky Alignment Sta. 97+89.20

Downstream Limit/Cross Section: N/A

Upstream Limit/Cross Section: N/A

3. Name of Structure: Culvert 5

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Muller Prky Alignment Sta. 116+44.39

Downstream Limit/Cross Section: N/A

Upstream Limit/Cross Section: N/A

**NOTE: FOR MORE STRUCTURES, ATTACH ADDITIONAL PAGES AS NEEDED.**

## B. CHANNELIZATION

Flooding Source: \_\_\_\_\_

Name of Structure: \_\_\_\_\_

### 1. Hydraulic Considerations

The channel was designated to carry \_\_\_\_\_ (cfs) and/or the \_\_\_\_\_ - year flood

The design elevation in the channel is based on (check one):

☐ Subcritical flow ☐ Critical flow ☐ Supercritical flow ☐ Energy grade line

If there is the potential for a hydraulic jump at the following locations, check all that apply and attach an explanation of how the hydraulic jump is controlled without affecting the stability of the channel.

☐ Inlet to channel ☐ Outlet to channel ☐ At Drop Structures ☐ At Transitions

☐ Other locations (specify): \_\_\_\_\_

### 2. Channel Design Plans

Attach the plans of the channelization certified by a registered professional engineer, as described in the instructions.

### 3. Accessory Structures

The channelization includes (check one):

☐ Levees [Attach Section E (Levee/Floodwall)] ☐ Drop structures ☐ Superelevated sections ☐ Energy dissipater

☐ Transitions in cross sectional geometry ☐ Debris basin/detention basin [Attach Section E (Dam/Basin)] ☐ Weir

☐ Other (Describe): \_\_\_\_\_

### 4. Sediment Transport Considerations

Are the hydraulics of the channel affected by sediment transport? ☐ Yes ☐ No

If yes, then fill out Section F (Sediment Transport) of Form 3. If No, then attach your explanation for why sediment transport was not considered.

## C. BRIDGE/CULVERT

Flooding Source: Buckeye Creek

Name of Structure: Culvert2, Culvert4, Culvert5, Culvert6, Culvert7

### 1. This revision reflects (check one):

- ☒ Bridge/Culvert not modeled in the FIS  
☐ Modified Bridge/Culvert previously modeled in the FIS  
☐ Revised analysis of Bridge/Culvert previously modeled in the FIS

### 2. Hydraulic model used to analyze the structure (e.g., HEC-2 with special bridge routine, WSPRO, HY8): RAS2D

If different than hydraulic analysis for the flooding source, justify why the hydraulic analysis used for the flooding source could not analyze the structures. Attach justification.

### 3. Attach plans of the structures certified by a registered professional engineer. The plan detail and information should include the following (check the information that has been provided):

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Dimensions (height, width, span, radius, length) | <input type="checkbox"/> Distance between Cross Sections                                  |
| <input checked="" type="checkbox"/> Shape (culverts only)                            | <input type="checkbox"/> Erosion Protection   |
| <input checked="" type="checkbox"/> Material   | <input type="checkbox"/> Low Chord Elevations - Upstream and Downstream                   |
| <input type="checkbox"/> Beveling and Rounding                                       | <input checked="" type="checkbox"/> Top of Road Elevations - Upstream and Downstream      |
| <input type="checkbox"/> Wink Wall Angle   | <input checked="" type="checkbox"/> Structure Invert Elevations - Upstream and Downstream |
| <input checked="" type="checkbox"/> Skew Angle                                       | <input type="checkbox"/> Stream Invert Elevations - Upstream and Downstream               |
|  | <input type="checkbox"/> Cross-Section Locations  |

### 4. Sediment Transport Considerations

Are the hydraulics of the channel affected by sediment transport? ☐ Yes ☒ No

If yes, then fill out Section F (Sediment Transport) of Form 3. If No, then attach your explanation for why sediment transport was not considered.



#### D. DAM/BASIN

Flooding Source: \_\_\_\_\_

Name of Structure: \_\_\_\_\_

1. This request is for (check one): ☐ Existing Dam/Basin ☐ New Dam/Basin ☐ Modification of existing Dam/Basin

2. The Dam/Basin was designed by (check one): ☐ Federal Agency ☐ State Agency ☐ Private Organization

☐ Local Government Agency Name of the Agency or Organization: \_\_\_\_\_

3. The Dam was permitted as (check one): ☐ Federal Dam ☐ State Dam

Provide the permit or identification number (ID) for the dam and the appropriate permitting agency or organization

Permit or ID number \_\_\_\_\_ Permitting Agency or Organization \_\_\_\_\_

a. ☐ Local Government Dam ☐ Private Dam

Provided related drawings, specification and supporting design information.

4. Does the project involve revised hydrology? ☐ Yes ☐ No

If Yes, complete the Riverine Hydrology & Hydraulics Form (Form 2).

Was the dam/basin designed using critical duration storm? (must account for the maximum volume of runoff)

☐ Yes, provide supporting documentation with your completed Form 2.

☐ No, provide a written explanation and justification for not using the critical duration storm.

5. Does the submittal include debris/sediment yield analysis? ☐ Yes ☐ No

If Yes, then fill out Section F (Sediment Transport). If No, then attach your explanation for why debris/sediment analysis was not considered?

6. Does the Base Flood Elevation behind the dam/basin or downstream of the dam/basin change? ☐ Yes ☐ No

If Yes, complete the Riverine Hydrology & Hydraulics Form (Form 2), and complete the table below.

##### Stillwater Elevation Behind the Dam/Basin

FREQUENCY (% annual chance)	FIS	REVISED
10-year (10%)		
50-year (2%)		
100-year (1%)		
500-year (0.2%)		
Normal Pool Elevation		

7. Please attach a copy of the formal Operation and Maintenance Plan

#### E. LEVEE/FLOODWALL

1. System Elements

a. This Levee/Floodwall analysis is based on (check one):

☐ Upgrading of an existing levee/floodwall system

☐ A newly constructed levee/floodwall system

☐ Reanalysis of an existing levee/floodwall system

b. Levee elements and locations are (check one):

☐ Earthen embankment, dike, berm, etc

Stationed \_\_\_\_\_ to \_\_\_\_\_

☐ Structured floodwall

Stationed \_\_\_\_\_ to \_\_\_\_\_

☐ Other (describe): \_\_\_\_\_

Stationed \_\_\_\_\_ to \_\_\_\_\_

### E. LEVEE/FLOODWALL (CONTINUED)

- c. Structural Type (check one): ☐ Monolithic cast-in place reinforced concrete ☐ Reinforced concrete masonry block  
☐ Sheet piling ☐ Other (describe): \_\_\_\_\_

d. Has this levee/floodwall system been certified by a Federal agency to provide protection from the base flood?  
☐ Yes ☐ No

If Yes, by which agency? \_\_\_\_\_

e. Attach certified drawings containing the following information (indicate drawing sheet numbers):

1. Plan of the levee embankment and floodwall structures. Sheet Numbers: \_\_\_\_\_
2. A profile of the levee/floodwall system showing the Base Flood Elevation (BFE), levee and/or wall crest and foundation, and closure locations for the total levee system. Sheet Numbers: \_\_\_\_\_
3. A profile of the levee/floodwall system showing the Base Flood Elevation (BFE), levee and/or wall crest and foundation, and closure locations for the total levee system. Sheet Numbers: \_\_\_\_\_
4. A layout detail for the embankment protection measures. Sheet Numbers: \_\_\_\_\_
5. Location, layout, and size and shape of the levee embankment features, foundation treatment, Floodwall structure, closure structures, and pump stations. Sheet Numbers: \_\_\_\_\_

#### 2. Freeboard

a. The minimum freeboard provided above the BFE is:

\_\_\_\_\_

##### Riverine

- 3.0 feet or more at the downstream end and throughout ☐ Yes ☐ No  
3.5 feet or more at the upstream end ☐ Yes ☐ No  
4.0 feet within 100 feet upstream of all structures and/or constructions ☐ Yes ☐ No

##### Coastal

- 1.0 foot above the height of the one percent wave associated with the 1%-annual-chance stillwater surge elevation or maximum wave runup (whichever is greater). ☐ Yes ☐ No  
2.0 feet above the 1%-annual-chance stillwater surge elevation ☐ Yes ☐ No

Please note, occasionally exceptions are made to the minimum freeboard requirement. If an exception is requested, attach documentation addressing Paragraph 65.10(b)(1)(ii) of the NFIP Regulations.

If No is answered to any of the above, please attach an explanation.

b. Is there an indication from historical records that ice-jamming can affect the BFE? ☐ Yes ☐ No

#### 3. Closures

a. Openings through the levee system (check one): ☐ Exists ☐ Does not exist

If opening exists, list all closures:

Channel Station	Left or Right Bank	Opening Type	Highest Elevation for Opening Invert	Type of Closure Device

(Extendable on an added sheet as needed and reference)

Note: Geotechnical and geologic data

In addition to the required detailed analysis reports, data obtained during field and laboratory investigations and used in the design analysis for the following system features should be submitted in a tabulated summary form. (Reference U.S. Army Corps of Engineers [USACE] EM-1110-2-1906 Form 2086.)

### E. LEVEE/FLOODWALL (CONTINUED)

4. Embankment Protection

- a. The maximum levee slope land side is: \_\_\_\_\_
- b. The maximum levee slope flood side is: \_\_\_\_\_
- c. The range of velocities along the levee during the base flood is: \_\_\_\_\_ (min) to \_\_\_\_\_ (max)
- d. Embankment material is protected by (describe what kind): \_\_\_\_\_
- e. Riprap Design Parameters (check one): ☐ Velocity ☐ Tractive Stress
- Attach references

Reach	Side slope	Flow Depth	Velocity	Curve or Straight	Stone Riprap			Depth of Toedown
					D <sub>100</sub>	D <sub>50</sub>	Thickness	
Sta _____ to _____								
Sta _____ to _____								
Sta _____ to _____								
Sta _____ to _____								
Sta _____ to _____								
Sta _____ to _____								

(Extend table on an added sheet as needed and reference each entry)

- f. Is a bedding/filter analysis and design attached? ☐ Yes ☐ No
- g. Describe the analysis used for other kinds of protection used (include copies of the design analysis):

Attach engineering analysis to support construction plans.

5. Embankment and Foundation Stability

- a. Identify locations and describe the basis for selection of critical location for analysis:
- ☐ Overall height: STA: \_\_\_\_\_, height \_\_\_\_\_ ft.
- ☐ Limiting foundation soil strength:
- Soil strength  $\phi$  = \_\_\_\_\_ degrees,  $c$  = \_\_\_\_\_ psf
- Slope: SS = \_\_\_\_\_ (h) to \_\_\_\_\_ (v)
- (Repeat as needed on an added sheet for additional locations)
- b. Specify the embankment stability analysis methodology used (e.g., circular arc, sliding block, infinite slope, etc.):
- c. Summary of stability analysis results: \_\_\_\_\_

### E. LEVEE/FLOODWALL (CONTINUED)

#### 5. Embankment and Foundation Stability (continued)

Case	Loading Conditions	Critical Safety Factor	Criteria (Min.)
I	End of construction		1.3
II	Sudden drawdown		1.0
III	Critical flood stage		1.4
IV	Steady seepage at flood stage		1.4
VI	Earthquake (Case I)		1.0

(Reference: USACE EM-1110-2-1913 Table 6-1)

- d. Was a seepage analysis for the embankment performed? ☐ Yes ☐ No  
If Yes, describe methodology used:

- e. Was a seepage analysis for the embankment performed? ☐ Yes ☐ No

- f. Were uplift pressures at the embankment landside toe checked? ☐ Yes ☐ No

- g. Were seepage exit gradients checked for piping potential? ☐ Yes ☐ No

- h. The duration of the base flood hydrograph against the embankment is \_\_\_\_\_ hours.

Attach engineering analysis to support construction plans.

#### 6. Floodwall and Foundation Stability

- a. Describe analysis submittal based on Code (check one): ☐ UBC (1988) ☐ Other (specify): \_\_\_\_\_

- b. Stability analysis submitted provides for: ☐ Overturning ☐ Sliding ☐ If not, explain: \_\_\_\_\_

- c. Loading included in the analyses were: ☐ Lateral earth @  $P_A =$  \_\_\_\_\_ psf;  $P_p =$  \_\_\_\_\_ psf

☐ Surcharge-Slope @ \_\_\_\_\_ ☐ surface \_\_\_\_\_ psf

☐ Wind @  $P_w =$  \_\_\_\_\_ psf

☐ Seepage (Uplift); \_\_\_\_\_ ☐ Earthquake @  $P_{eq} =$  \_\_\_\_\_ %g

☐ 1%-annual-chance significant wave height: \_\_\_\_\_ ft.

☐ 1%-annual-chance significant wave period: \_\_\_\_\_ sec.

- d. Summary of Stability Analysis Results: Factors of Safety.  
Itemize for each change in site layout dimension and loading condition limitation for each respective reach.

Loading Condition	Criteria (Min)		Sta	To	Sta	To
	Overturn	Sliding	Overturn	Sliding	Overturn	Sliding
Dead & Wind	1.5	1.5				
Dead & Soil	1.5	1.5				
Dead, Soil, Flood, & Impact	1.5	1.5				
Dead, Soil, & Seismic	1.3	1.3				

(Ref: FEMA 114 Sept 1986; USACE EM 1110-2-2502)

Note: (Extend table on an added sheet as needed and reference)

### E. LEVEE/FLOODWALL (CONTINUED)

e. Foundation bearing strength for each soil type:

Bearing Pressure	Sustained Load (psf)	Short Term Load (psf)
Computed design maximum		
Maximum allowable		

f. Foundation scour protection ☐ is, ☐ is not provided. If provided, attach explanation and supporting documentation:  
Attach engineering analysis to support construction plans.

#### 7. Settlement

- a. Has anticipated potential settlement been determined and incorporated into the specified construction elevations to maintain the established freeboard margin?
- b. The computed settlement range is \_\_\_\_\_ ft. to \_\_\_\_\_ ft.
- c. Settlement of the levee crest is determined to be primarily from : ☐ Foundation consolidation  
☐ Embankment compression ☐ Other (Describe): \_\_\_\_\_
- d. Differential settlement of floodwalls ☐ has ☐ has not been accommodated in the structural design and construction  
Attach engineering analysis to support construction plans.

#### 8. Interior Drainage

- a. Specify size of each interior watershed:  
Drainage to pressure conduit: \_\_\_\_\_ acres  
Drainage to ponding area: \_\_\_\_\_ acres
- b. Relationship Established:
- |                                    |                              |                             |
|------------------------------------|------------------------------|-----------------------------|
| Ponding elevation vs. storage      | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Ponding elevation vs. gravity flow | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Differential head vs. gravity flow | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
- c. The river flow duration curve is enclosed: ☐ Yes ☐ No
- d. Specify the discharge capacity of the head pressure conduit: \_\_\_\_\_ cfs
- e. Which flooding conditions were analyzed?
- |                                   |                              |                             |
|-----------------------------------|------------------------------|-----------------------------|
| Gravity flow (Interior Watershed) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Common storm (River Watershed)    | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Historical ponding probability    | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Coastal wave overtopping          | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
- If No for any of the above, attach explanation.
- f. Interior drainage has been analyzed based on joint probability of interior and exterior flooding and the capacities of pumping and outlet facilities to provide the established level of flood protection.  
☐ Yes ☐ No If No, attach explanation.
- g. The rate of seepage through the levee system for the base flood is : \_\_\_\_\_ cfs
- h. The length of levee system used to drive this seepage rate in item g: \_\_\_\_\_ ft.



**E. LEVEE/FLOODWALL (CONTINUED)****8. Interior Drainage (continued)**

i. Will pumping plants be used for interior drainage? ☐ Yes ☐ No

If Yes, include the number of pumping plants: \_\_\_\_\_ For each pumping plant, list:

	Plant #1	Plant #2
The number of pumps		
The ponding storage capacity		
The maximum pumping rate		
The maximum pumping head		
The pumping starting elevation		
The pumping stopping elevation		
Is the discharge facility protected?		
Is there a flood warning plan?		
How much time is available between warning and flooding?		

Will the operation be automatic? ☐ Yes ☐ No

If the pumps are electric; are there backup power sources? ☐ Yes ☐ No

(Reference: USACE EM-1110-2-3101, 3102, 3103, 3104, and 3105)

Include a copy of supporting documentation of data and analysis. Provide a map showing the flooded area and maximum ponding elevations for all interior watersheds that result in flooding.

**9. Other Design Criteria**

a. The following items have been addressed as stated:

Liquefaction ☐ is ☐ is not a problem

Hydrocompaction ☐ is ☐ is not a problem

Heave differential movement due to soils of high shrink/swell ☐ is ☐ is not a problem

b. For each of these problems, state the basic facts and corrective action taken:

Attach supporting documentation

c. If the levee/floodwall is new or enlarged, will the structure adversely impact flood levels and/or flow velocities floodside of the structure? ☐ Yes ☐ No

d. Sediment Transport Considerations:

Was sediment transport considered? ☐ Yes ☐ No

If Yes, then fill out Section F (Sediment Transport). If No, then attach your explanation for why sediment transport was not considered.

**10. Operational Plan and Criteria**

a. Are the planned/installed works in full compliance with Part 65.10 of the NFIP Regulations? ☐ Yes ☐ No

b. Does the operation plan incorporate all the provisions for closure devices as required in Paragraph 65.10(c)(1) of the NFIP regulations? ☐ Yes ☐ No

c. Does the operation plan incorporate all the provisions for interior drainage as required in Paragraph 65.10(c)(2) of the NFIP regulations? ☐ Yes ☐ No

If the answer is No to any of the above, please attach supporting documentation.

### E. LEVEE/FLOODWALL (CONTINUED)

11. Maintenance Plan

Please attach a copy of the formal maintenance plan for the levee/floodwall.

12. Operational and Maintenance Plan

Please attach a copy of the formal Operations and Maintenance Plan for the levee/floodwall.

#### CERTIFICATION OF THE LEVEE DOCUMENTATION

This certification is to be signed and sealed by a licensed registered professional engineer authorized by law to certify elevation information data, hydrologic and hydraulic analysis, and any other supporting information as per NFIP regulations paragraph 55.10(e) and as described in the MT-2 Forms Instructions. All documents submitted in support of this request are correct to the best of my knowledge. I understand that any false statement may be punishable by fine or imprisonment under Title 18 of the United States Code, Section 1001.

Certifier's Name: \_\_\_\_\_ License No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Company Name: \_\_\_\_\_ Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

#### CERTIFICATION OF THE LEVEE DOCUMENTATION

Flooding Source: \_\_\_\_\_

Name of Structure: \_\_\_\_\_

If there is any indication from historical records that sediment transport (including scour and deposition) can affect the Base Flood Elevation (BFE); and/or based on the stream morphology, vegetative cover, development of the watershed and bank conditions, there is a potential for debris and sediment transport (including scour and deposition) to affect the BFEs, then provide the following information along with the supporting documentation:

Sediment load associated with the base flood discharge: Volume \_\_\_\_\_ acres-feet

Debris load associated with the base flood discharge: Volume \_\_\_\_\_ acres-feet

Sediment transport rate \_\_\_\_\_ (percent concentration by volume)

Method used to estimate sediment transport: \_\_\_\_\_

Most sediment transport formulas are intended for a range of hydraulic conditions and sediment sizes; attach a detailed explanation for using the selected method.

Method used to estimate scour and/or deposition: \_\_\_\_\_

Method used to revise hydraulic or hydrologic analysis (model) to account for sediment transport: \_\_\_\_\_

Please note that bulked flows are used to evaluate the performance of a structure during the base flood; however, FEMA does not map BFEs based on bulked flows.

If a sediment analysis has not been performed, an explanation as to why sediment transport (including scour and deposition) will not affect the BFEs or structures must be provided.

DEPARTMENT OF HOMELAND SECURITY  
Federal Emergency Management Agency  
**RIVERINE STRUCTURES FORM (FORM 3)**

OMB Control Number: 1660-0016  
Expiration: 1/31/2024

**PAPERWORK BURDEN DISCLOSURE NOTICE**

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**PRIVACY ACT STATEMENT**

**AUTHORITY:** The National Flood Insurance Act of 1968, Public Law 90-448, as amended by the Flood Disaster Protection Act of 1973, Public Law 93-234.

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Flooding Source: Buckeye Creek

**Note:** Fill out one form for each flooding source studied

**A. GENERAL**

Complete the appropriate section(s) for each Structure listed below:

Channelization:	complete Section B
Bridge/Culvert:	complete Section C
Dam:	complete Section D
Levee/Floodwall:	complete Section E
Sediment Transport:	complete Section F (if required)

**Description Of Modeled Structure**

1. Name of Structure: Culvert 6

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Muller Prky Alignment Sta. 129+01

Downstream Limit/Cross Section: N/A

Upstream Limit/Cross Section: N/A

2. Name of Structure: Culvert 7

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Muller Prky Alignment Sta. 143.30

Downstream Limit/Cross Section: N/A

Upstream Limit/Cross Section: N/A

3. Name of Structure: AG-Culvert 1

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: West of Virginia Canal AG Culvert 1

Downstream Limit/Cross Section: NA

Upstream Limit/Cross Section: NA

**NOTE: FOR MORE STRUCTURES, ATTACH ADDITIONAL PAGES AS NEEDED.**

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Flooding Source: Buckeye Creek

**Note:** Fill out one form for each flooding source studied

**A. GENERAL**

Complete the appropriate section(s) for each Structure listed below:

Channelization:	complete Section B
Bridge/Culvert:	complete Section C
Dam:	complete Section D
Levee/Floodwall:	complete Section E
Sediment Transport:	complete Section F (if required)

**Description Of Modeled Structure**

- Name of Structure: AG-Culvert 1  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: Virgina Canal (East of AG-Culvert 2)  
Downstream Limit/Cross Section: N/A  
Upstream Limit/Cross Section: N/A
- Name of Structure: AG-Culvert 3  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: North of AG-Culvert 1  
Downstream Limit/Cross Section: N/A  
Upstream Limit/Cross Section: N/A
- Name of Structure: AG-Culvert 4  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: 1300' West of AG-Culvert 3  
Downstream Limit/Cross Section: NA  
Upstream Limit/Cross Section: NA

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Flooding Source: Buckeye Creek

**Note:** Fill out one form for each flooding source studied

**A. GENERAL**

Complete the appropriate section(s) for each Structure listed below:

Channelization:	complete Section B
Bridge/Culvert:	complete Section C
Dam:	complete Section D
Levee/Floodwall:	complete Section E
Sediment Transport:	complete Section F (if required)

**Description Of Modeled Structure**

- Name of Structure: AG-Culvert 5  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: East of Buckeye Muller Intersection  
Downstream Limit/Cross Section: N/A  
Upstream Limit/Cross Section: N/A
- Name of Structure: DS Culvert 1a  
Type (check one): ☐ Channelization ☐ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: South of Culvert (East-West Alignment)  
Downstream Limit/Cross Section: NA  
Upstream Limit/Cross Section: NA
- Name of Structure: DS Culvert 1b  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: South of Culvert (North-South Alignment)  
Downstream Limit/Cross Section: NA  
Upstream Limit/Cross Section: NA

**NOTE: FOR MORE STRUCTURES, ATTACH ADDITIONAL PAGES AS NEEDED.**



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Flooding Source: Buckeye Creek

**Note:** Fill out one form for each flooding source studied

**A. GENERAL**

Complete the appropriate section(s) for each Structure listed below:

Channelization:	complete Section B
Bridge/Culvert:	complete Section C
Dam:	complete Section D
Levee/Floodwall:	complete Section E
Sediment Transport:	complete Section F (if required)

**Description Of Modeled Structure**

- Name of Structure: DS Culvert 1c  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: Buckeye Road (4700' East of Muller)  
Downstream Limit/Cross Section: N/A  
Upstream Limit/Cross Section: N/A
- Name of Structure: DS Culvert 1d  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: Intersection of Heybourne and Monterra  
Downstream Limit/Cross Section: N/A  
Upstream Limit/Cross Section: N/A
- Name of Structure: DS Culvert 1e  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: East side of Heybourne (320' South of Muller)  
Downstream Limit/Cross Section: NA  
Upstream Limit/Cross Section: NA

**NOTE: FOR MORE STRUCTURES, ATTACH ADDITIONAL PAGES AS NEEDED.**

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Flooding Source: Buckeye Creek

**Note:** Fill out one form for each flooding source studied

**A. GENERAL**

Complete the appropriate section(s) for each Structure listed below:

Channelization:	complete Section B
Bridge/Culvert:	complete Section C
Dam:	complete Section D
Levee/Floodwall:	complete Section E
Sediment Transport:	complete Section F (if required)

**Description Of Modeled Structure**

- Name of Structure: DS Culvert 1f  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: West side of Heybourne (320' South of Muller)  
Downstream Limit/Cross Section: N/A  
Upstream Limit/Cross Section: N/A
- Name of Structure: \_\_\_\_\_  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: \_\_\_\_\_  
Downstream Limit/Cross Section: \_\_\_\_\_  
Upstream Limit/Cross Section: \_\_\_\_\_
- Name of Structure: \_\_\_\_\_  
Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam  
Location of Structure: \_\_\_\_\_  
Downstream Limit/Cross Section: \_\_\_\_\_  
Upstream Limit/Cross Section: \_\_\_\_\_

**NOTE: FOR MORE STRUCTURES, ATTACH ADDITIONAL PAGES AS NEEDED.**

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Flooding Source: Pine Nut Creek

**Note:** Fill out one form for each flooding source studied

**A. GENERAL**

Complete the appropriate section(s) for each Structure listed below:

Channelization:	complete Section B
Bridge/Culvert:	complete Section C
Dam:	complete Section D
Levee/Floodwall:	complete Section E
Sediment Transport:	complete Section F (if required)

**Description Of Modeled Structure**

1. Name of Structure: Culvert 9

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Muller Prky Alignment Sta. 187+82.07

Downstream Limit/Cross Section: N/A

Upstream Limit/Cross Section: N/A

2. Name of Structure: Culvert 10 (Ashland Park Culvert)

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Muller Prky Alignment Sta. 205+80.23

Downstream Limit/Cross Section: N/A

Upstream Limit/Cross Section: N/A

3. Name of Structure: Culvert11

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Muller Prky Alignment Sta. 245+15.63

Downstream Limit/Cross Section: N/A

Upstream Limit/Cross Section: N/A

**NOTE: FOR MORE STRUCTURES, ATTACH ADDITIONAL PAGES AS NEEDED.**

## B. CHANNELIZATION

Flooding Source: \_\_\_\_\_

Name of Structure: \_\_\_\_\_

### 1. Hydraulic Considerations

The channel was designated to carry \_\_\_\_\_ (cfs) and/or the \_\_\_\_\_ - year flood

The design elevation in the channel is based on (check one):

☐ Subcritical flow ☐ Critical flow ☐ Supercritical flow ☐ Energy grade line

If there is the potential for a hydraulic jump at the following locations, check all that apply and attach an explanation of how the hydraulic jump is controlled without affecting the stability of the channel.

☐ Inlet to channel ☐ Outlet to channel ☐ At Drop Structures ☐ At Transitions

☐ Other locations (specify): \_\_\_\_\_

### 2. Channel Design Plans

Attach the plans of the channelization certified by a registered professional engineer, as described in the instructions.

### 3. Accessory Structures

The channelization includes (check one):

☐ Levees [Attach Section E (Levee/Floodwall)] ☐ Drop structures ☐ Superelevated sections ☐ Energy dissipater

☐ Transitions in cross sectional geometry ☐ Debris basin/detention basin [Attach Section E (Dam/Basin)] ☐ Weir

☐ Other (Describe): \_\_\_\_\_

### 4. Sediment Transport Considerations

Are the hydraulics of the channel affected by sediment transport? ☐ Yes ☐ No

If yes, then fill out Section F (Sediment Transport) of Form 3. If No, then attach your explanation for why sediment transport was not considered.

## C. BRIDGE/CULVERT

Flooding Source: Pine Nut Creek

Name of Structure: Culvert9-Culvert13

### 1. This revision reflects (check one):

- ☒ Bridge/Culvert not modeled in the FIS  
☐ Modified Bridge/Culvert previously modeled in the FIS  
☐ Revised analysis of Bridge/Culvert previously modeled in the FIS

### 2. Hydraulic model used to analyze the structure (e.g., HEC-2 with special bridge routine, WSPRO, HY8): RAS2D

If different than hydraulic analysis for the flooding source, justify why the hydraulic analysis used for the flooding source could not analyze the structures. Attach justification.

### 3. Attach plans of the structures certified by a registered professional engineer. The plan detail and information should include the following (check the information that has been provided):

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Dimensions (height, width, span, radius, length) | <input type="checkbox"/> Distance between Cross Sections                                  |
| <input checked="" type="checkbox"/> Shape (culverts only)                            | <input type="checkbox"/> Erosion Protection   |
| <input checked="" type="checkbox"/> Material   | <input type="checkbox"/> Low Chord Elevations - Upstream and Downstream                   |
| <input type="checkbox"/> Beveling and Rounding                                       | <input checked="" type="checkbox"/> Top of Road Elevations - Upstream and Downstream      |
| <input type="checkbox"/> Wink Wall Angle   | <input checked="" type="checkbox"/> Structure Invert Elevations - Upstream and Downstream |
| <input checked="" type="checkbox"/> Skew Angle                                       | <input type="checkbox"/> Stream Invert Elevations - Upstream and Downstream               |
|  | <input type="checkbox"/> Cross-Section Locations  |

### 4. Sediment Transport Considerations

Are the hydraulics of the channel affected by sediment transport? ☐ Yes ☒ No

If yes, then fill out Section F (Sediment Transport) of Form 3. If No, then attach your explanation for why sediment transport was not considered.

#### D. DAM/BASIN

Flooding Source: \_\_\_\_\_

Name of Structure: \_\_\_\_\_

1. This request is for (check one): ☐ Existing Dam/Basin ☐ New Dam/Basin ☐ Modification of existing Dam/Basin

2. The Dam/Basin was designed by (check one): ☐ Federal Agency ☐ State Agency ☐ Private Organization

☐ Local Government Agency Name of the Agency or Organization: \_\_\_\_\_

3. The Dam was permitted as (check one): ☐ Federal Dam ☐ State Dam

Provide the permit or identification number (ID) for the dam and the appropriate permitting agency or organization

Permit or ID number \_\_\_\_\_ Permitting Agency or Organization \_\_\_\_\_

a. ☐ Local Government Dam ☐ Private Dam

Provided related drawings, specification and supporting design information.

4. Does the project involve revised hydrology? ☐ Yes ☐ No

If Yes, complete the Riverine Hydrology & Hydraulics Form (Form 2).

Was the dam/basin designed using critical duration storm? (must account for the maximum volume of runoff)

☐ Yes, provide supporting documentation with your completed Form 2.

☐ No, provide a written explanation and justification for not using the critical duration storm.

5. Does the submittal include debris/sediment yield analysis? ☐ Yes ☐ No

If Yes, then fill out Section F (Sediment Transport). If No, then attach your explanation for why debris/sediment analysis was not considered?

6. Does the Base Flood Elevation behind the dam/basin or downstream of the dam/basin change? ☐ Yes ☐ No

If Yes, complete the Riverine Hydrology & Hydraulics Form (Form 2) and complete the table below.

##### Stillwater Elevation Behind the Dam/Basin

FREQUENCY (% annual chance)	FIS	REVISED
10-year (10%)		
50-year (2%)		
100-year (1%)		
500-year (0.2%)		
Normal Pool Elevation		

7. Please attach a copy of the formal Operation and Maintenance Plan

#### E. LEVEE/FLOODWALL

1. System Elements

a. This Levee/Floodwall analysis is based on (check one):

☐ Upgrading of an existing levee/floodwall system

☐ A newly constructed levee/floodwall system

☐ Reanalysis of an existing levee/floodwall system

b. Levee elements and locations are (check one):

☐ Earthen embankment, dike, berm, etc

Stationed \_\_\_\_\_ to \_\_\_\_\_

☐ Structured floodwall

Stationed \_\_\_\_\_ to \_\_\_\_\_

☐ Other (describe): \_\_\_\_\_

Stationed \_\_\_\_\_ to \_\_\_\_\_



### E. LEVEE/FLOODWALL (CONTINUED)

- c. Structural Type (check one): ☐ Monolithic cast-in place reinforced concrete ☐ Reinforced concrete masonry block  
☐ Sheet piling ☐ Other (describe): \_\_\_\_\_

d. Has this levee/floodwall system been certified by a Federal agency to provide protection from the base flood?  
☐ Yes ☐ No

If Yes, by which agency? \_\_\_\_\_

e. Attach certified drawings containing the following information (indicate drawing sheet numbers):

1. Plan of the levee embankment and floodwall structures. Sheet Numbers: \_\_\_\_\_
2. A profile of the levee/floodwall system showing the Base Flood Elevation (BFE), levee and/or wall crest and foundation, and closure locations for the total levee system. Sheet Numbers: \_\_\_\_\_
3. A profile of the levee/floodwall system showing the Base Flood Elevation (BFE), levee and/or wall crest and foundation, and closure locations for the total levee system. Sheet Numbers: \_\_\_\_\_
4. A layout detail for the embankment protection measures. Sheet Numbers: \_\_\_\_\_
5. Location, layout, and size and shape of the levee embankment features, foundation treatment, Floodwall structure, closure structures, and pump stations. Sheet Numbers: \_\_\_\_\_

#### 2. Freeboard

a. The minimum freeboard provided above the BFE is:

\_\_\_\_\_

##### Riverine

- 3.0 feet or more at the downstream end and throughout ☐ Yes ☐ No  
3.5 feet or more at the upstream end ☐ Yes ☐ No  
4.0 feet within 100 feet upstream of all structures and/or constructions ☐ Yes ☐ No

##### Coastal

- 1.0 foot above the height of the one percent wave associated with the 1%-annual-chance stillwater surge elevation or maximum wave runup (whichever is greater). ☐ Yes ☐ No  
2.0 feet above the 1%-annual-chance stillwater surge elevation ☐ Yes ☐ No

Please note, occasionally exceptions are made to the minimum freeboard requirement. If an exception is requested, attach documentation addressing Paragraph 65.10(b)(1)(ii) of the NFIP Regulations.

If No is answered to any of the above, please attach an explanation.

b. Is there an indication from historical records that ice-jamming can affect the BFE? ☐ Yes ☐ No

#### 3. Closures

a. Openings through the levee system (check one): ☐ Exists ☐ Does not exist

If opening exists, list all closures:

Channel Station	Left or Right Bank	Opening Type	Highest Elevation for Opening Invert	Type of Closure Device

(Extendable on an added sheet as needed and reference)

Note: Geotechnical and geologic data

In addition to the required detailed analysis reports, data obtained during field and laboratory investigations and used in the design analysis for the following system features should be submitted in a tabulated summary form. (Reference U.S. Army Corps of Engineers [USACE] EM-1110-2-1906 Form 2086.)

### E. LEVEE/FLOODWALL (CONTINUED)

4. Embankment Protection

- a. The maximum levee slope land side is: \_\_\_\_\_
- b. The maximum levee slope flood side is: \_\_\_\_\_
- c. The range of velocities along the levee during the base flood is: \_\_\_\_\_ (min) to \_\_\_\_\_ (max)
- d. Embankment material is protected by (describe what kind): \_\_\_\_\_
- e. Riprap Design Parameters (check one): ☐ Velocity ☐ Tractive Stress
- Attach references

Reach	Side slope	Flow Depth	Velocity	Curve or Straight	Stone Riprap			Depth of Toedown
					D <sub>100</sub>	D <sub>50</sub>	Thickness	
Sta _____ to _____								
Sta _____ to _____								
Sta _____ to _____								
Sta _____ to _____								
Sta _____ to _____								
Sta _____ to _____								

(Extend table on an added sheet as needed and reference each entry)

- f. Is a bedding/filter analysis and design attached? ☐ Yes ☐ No
- g. Describe the analysis used for other kinds of protection used (include copies of the design analysis):

Attach engineering analysis to support construction plans.

5. Embankment and Foundation Stability

- a. Identify locations and describe the basis for selection of critical location for analysis:
- ☐ Overall height: STA: \_\_\_\_\_, height \_\_\_\_\_ ft.
- ☐ Limiting foundation soil strength:
- Soil strength  $\phi$  = \_\_\_\_\_ degrees,  $c$  = \_\_\_\_\_ psf
- Slope: SS = \_\_\_\_\_ (h) to \_\_\_\_\_ (v)
- (Repeat as needed on an added sheet for additional locations)
- b. Specify the embankment stability analysis methodology used (e.g., circular arc, sliding block, infinite slope, etc.):
- c. Summary of stability analysis results: \_\_\_\_\_

### E. LEVEE/FLOODWALL (CONTINUED)

#### 5. Embankment and Foundation Stability (continued)

Case	Loading Conditions	Critical Safety Factor	Criteria (Min.)
I	End of construction		1.3
II	Sudden drawdown		1.0
III	Critical flood stage		1.4
IV	Steady seepage at flood stage		1.4
VI	Earthquake (Case I)		1.0

(Reference: USACE EM-1110-2-1913 Table 6-1)

- d. Was a seepage analysis for the embankment performed? ☐ Yes ☐ No  
If Yes, describe methodology used:

- e. Was a seepage analysis for the embankment performed? ☐ Yes ☐ No

- f. Were uplift pressures at the embankment landside toe checked? ☐ Yes ☐ No

- g. Were seepage exit gradients checked for piping potential? ☐ Yes ☐ No

- h. The duration of the base flood hydrograph against the embankment is \_\_\_\_\_ hours.

Attach engineering analysis to support construction plans.

#### 6. Floodwall and Foundation Stability

- a. Describe analysis submittal based on Code (check one): ☐ UBC (1988) ☐ Other (specify): \_\_\_\_\_

- b. Stability analysis submitted provides for: ☐ Overturning ☐ Sliding ☐ If not, explain: \_\_\_\_\_

- c. Loading included in the analyses were: ☐ Lateral earth @  $P_A =$  \_\_\_\_\_ psf;  $P_p =$  \_\_\_\_\_ psf

☐ Surcharge-Slope @ \_\_\_\_\_ ☐ surface \_\_\_\_\_ psf

☐ Wind @  $P_w =$  \_\_\_\_\_ psf

☐ Seepage (Uplift); \_\_\_\_\_ ☐ Earthquake @  $P_{eq} =$  \_\_\_\_\_ %g

☐ 1%-annual-chance significant wave height: \_\_\_\_\_ ft.

☐ 1%-annual-chance significant wave period: \_\_\_\_\_ sec.

- d. Summary of Stability Analysis Results: Factors of Safety.  
Itemize for each change in site layout dimension and loading condition limitation for each respective reach.

Loading Condition	Criteria (Min)		Sta	To	Sta	To
	Overturn	Sliding	Overturn	Sliding	Overturn	Sliding
Dead & Wind	1.5	1.5				
Dead & Soil	1.5	1.5				
Dead, Soil, Flood, & Impact	1.5	1.5				
Dead, Soil, & Seismic	1.3	1.3				

(Ref: FEMA 114 Sept 1986; USACE EM 1110-2-2502)

Note: (Extend table on an added sheet as needed and reference)

### E. LEVEE/FLOODWALL (CONTINUED)

e. Foundation bearing strength for each soil type:

Bearing Pressure	Sustained Load (psf)	Short Term Load (psf)
Computed design maximum		
Maximum allowable		

f. Foundation scour protection ☐ is, ☐ is not provided. If provided, attach explanation and supporting documentation:  
Attach engineering analysis to support construction plans.

#### 7. Settlement

- a. Has anticipated potential settlement been determined and incorporated into the specified construction elevations to maintain the established freeboard margin?
- b. The computed settlement range is \_\_\_\_\_ ft. to \_\_\_\_\_ ft.
- c. Settlement of the levee crest is determined to be primarily from : ☐ Foundation consolidation  
☐ Embankment compression ☐ Other (Describe): \_\_\_\_\_
- d. Differential settlement of floodwalls ☐ has ☐ has not been accommodated in the structural design and construction  
Attach engineering analysis to support construction plans.

#### 8. Interior Drainage

- a. Specify size of each interior watershed:  
Drainage to pressure conduit: \_\_\_\_\_ acres  
Drainage to ponding area: \_\_\_\_\_ acres
- b. Relationship Established:
- |                                    |                              |                             |
|------------------------------------|------------------------------|-----------------------------|
| Ponding elevation vs. storage      | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Ponding elevation vs. gravity flow | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Differential head vs. gravity flow | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
- c. The river flow duration curve is enclosed: ☐ Yes ☐ No
- d. Specify the discharge capacity of the head pressure conduit: \_\_\_\_\_ cfs
- e. Which flooding conditions were analyzed?
- |                                   |                              |                             |
|-----------------------------------|------------------------------|-----------------------------|
| Gravity flow (Interior Watershed) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Common storm (River Watershed)    | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Historical ponding probability    | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Coastal wave overtopping          | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
- If No for any of the above, attach explanation.
- f. Interior drainage has been analyzed based on joint probability of interior and exterior flooding and the capacities of pumping and outlet facilities to provide the established level of flood protection.  
☐ Yes ☐ No If No, attach explanation.
- g. The rate of seepage through the levee system for the base flood is : \_\_\_\_\_ cfs
- h. The length of levee system used to drive this seepage rate in item g: \_\_\_\_\_ ft.

**E. LEVEE/FLOODWALL (CONTINUED)****8. Interior Drainage (continued)**

i. Will pumping plants be used for interior drainage? ☐ Yes ☐ No

If Yes, include the number of pumping plants: \_\_\_\_\_ For each pumping plant, list:

	Plant #1	Plant #2
The number of pumps		
The ponding storage capacity		
The maximum pumping rate		
The maximum pumping head		
The pumping starting elevation		
The pumping stopping elevation		
Is the discharge facility protected?		
Is there a flood warning plan?		
How much time is available between warning and flooding?		

Will the operation be automatic? ☐ Yes ☐ No

If the pumps are electric; are there backup power sources? ☐ Yes ☐ No

(Reference: USACE EM-1110-2-3101, 3102, 3103, 3104, and 3105)

Include a copy of supporting documentation of data and analysis. Provide a map showing the flooded area and maximum ponding elevations for all interior watersheds that result in flooding.

**9. Other Design Criteria**

a. The following items have been addressed as stated:

Liquefaction ☐ is ☐ is not a problem

Hydrocompaction ☐ is ☐ is not a problem

Heave differential movement due to soils of high shrink/swell ☐ is ☐ is not a problem

b. For each of these problems, state the basic facts and corrective action taken:

Attach supporting documentation

c. If the levee/floodwall is new or enlarged, will the structure adversely impact flood levels and/or flow velocities floodside of the structure? ☐ Yes ☐ No

d. Sediment Transport Considerations:

Was sediment transport considered? ☐ Yes ☐ No

If Yes, then fill out Section F (Sediment Transport). If No, then attach your explanation for why sediment transport was not considered.

**10. Operational Plan and Criteria**

a. Are the planned/installed works in full compliance with Part 65.10 of the NFIP Regulations? ☐ Yes ☐ No

b. Does the operation plan incorporate all the provisions for closure devices as required in Paragraph 65.10(c)(1) of the NFIP regulations? ☐ Yes ☐ No

c. Does the operation plan incorporate all the provisions for interior drainage as required in Paragraph 65.10(c)(2) of the NFIP regulations? ☐ Yes ☐ No

If the answer is No to any of the above, please attach supporting documentation.



### E. LEVEE/FLOODWALL (CONTINUED)

11. Maintenance Plan

Please attach a copy of the formal maintenance plan for the levee/floodwall

12. Operational and Maintenance Plan

Please attach a copy of the formal Operations and Maintenance Plan for the levee/floodwall.

#### CERTIFICATION OF THE LEVEE DOCUMENTATION

This certification is to be signed and sealed by a licensed registered professional engineer authorized by law to certify elevation information data, hydrologic and hydraulic analysis, and any other supporting information as per NFIP regulations paragraph 55.10(e) and as described in the MT-2 Forms Instructions. All documents submitted in support of this request are correct to the best of my knowledge. I understand that any false statement may be punishable by fine or imprisonment under Title 18 of the United States Code, Section 1001.

Certifier's Name: \_\_\_\_\_ License No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Company Name: \_\_\_\_\_ Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

#### CERTIFICATION OF THE LEVEE DOCUMENTATION

Flooding Source: \_\_\_\_\_

Name of Structure: \_\_\_\_\_

If there is any indication from historical records that sediment transport (including scour and deposition) can affect the Base Flood Elevation (BFE); and/or based on the stream morphology, vegetative cover, development of the watershed and bank conditions, there is a potential for debris and sediment transport (including scour and deposition) to affect the BFEs, then provide the following information along with the supporting documentation:

Sediment load associated with the base flood discharge: Volume \_\_\_\_\_ acres-feet

Debris load associated with the base flood discharge: Volume \_\_\_\_\_ acres-feet

Sediment transport rate \_\_\_\_\_ (percent concentration by volume)

Method used to estimate sediment transport: \_\_\_\_\_

Most sediment transport formulas are intended for a range of hydraulic conditions and sediment sizes; attach a detailed explanation for using the selected method.

Method used to estimate scour and/or deposition: \_\_\_\_\_

Method used to revise hydraulic or hydrologic analysis (model) to account for sediment transport: \_\_\_\_\_

Please note that bulked flows are used to evaluate the performance of a structure during the base flood; however, FEMA does not map BFEs based on bulked flows.

If a sediment analysis has not been performed, an explanation as to why sediment transport (including scour and deposition) will not affect the BFEs or structures must be provided.

DEPARTMENT OF HOMELAND SECURITY  
Federal Emergency Management Agency  
**RIVERINE STRUCTURES FORM (FORM 3)**

OMB Control Number: 1660-0016  
Expiration: 1/31/2024

**PAPERWORK BURDEN DISCLOSURE NOTICE**

Public reporting burden for this form is estimated to average 3.5 hours per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing, reviewing, and submitting the form. You are not required to respond to this collection of information unless it displays a valid OMB control number. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing this burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (1660-0016). Submission of the form is required to obtain or retain benefits under the National Flood Insurance Program. **Please do not send your completed survey to the above address.**

**PRIVACY ACT STATEMENT**

**AUTHORITY:** The National Flood Insurance Act of 1968, Public Law 90-448, as amended by the Flood Disaster Protection Act of 1973, Public Law 93-234.

**PRINCIPAL PURPOSE(S):** This information is being collected for the purpose of determining an applicant's eligibility to request changes to National Flood Insurance Program (NFIP) Flood Insurance Rate Maps (FIRM).

**ROUTINE USE(S):** The information on this form may be disclosed as generally permitted under 5 U.S.C § 552a(b) of the Privacy Act of 1974, as amended. This includes using this information as necessary and authorized by the routine uses published in DHS/FEMA/NFIP/LOMA-1 National Flood Insurance Program (NFIP); Letter of Map Amendment (LOMA) February 15, 2006, 71 FR 7990.

**DISCLOSURE:** The disclosure of information on this form is voluntary; however, failure to provide the information requested may delay or prevent FEMA from processing a determination regarding a requested change to a (NFIP) Flood Insurance Rate Maps (FIRM).

Flooding Source: Pine Nut Creek

**Note:** Fill out one form for each flooding source studied

**A. GENERAL**

Complete the appropriate section(s) for each Structure listed below:

Channelization:	complete Section B
Bridge/Culvert:	complete Section C
Dam:	complete Section D
Levee/Floodwall:	complete Section E
Sediment Transport:	complete Section F (if required)

**Description Of Modeled Structure**

1. Name of Structure: Culvert12

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Muller Prky Alignment Sta. 288+88.69

Downstream Limit/Cross Section: N/A

Upstream Limit/Cross Section: N/A

2. Name of Structure: Culvert13

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Muller Prky Alignment Sta. 157+00.17

Downstream Limit/Cross Section: N/A

Upstream Limit/Cross Section: N/A

3. Name of Structure: AG Culvert 6

Type (check one): ☐ Channelization ☒ Bridge/Culvert ☐ Levee/Floodwall ☐ Dam

Location of Structure: Intersection of Decker Rd and Toler Ave

Downstream Limit/Cross Section: NA

Upstream Limit/Cross Section: NA

**NOTE: FOR MORE STRUCTURES, ATTACH ADDITIONAL PAGES AS NEEDED.**

## 4.0 HYDROLOGY

### 4.1. METHOD DESCRIPTION

The peak discharges for the base flood and the 0.2-percent-annual-chance storm associated with the drainages evaluated in this CLOMR were obtained from the Effective FIS. These discharges are presented in Table 4. The inflow hydrograph for Buckeye Creek was taken directly from the effective FLO-2D analysis. Inflow hydrographs for Pine Nut Creek and Pine Nut Road Wash were developed by applying the peak discharge reported in the FIS to the hydrograph shape for each flooding source extracted from the FLO-2D analysis prepared by JE Fuller as part of a preliminary hydrologic analysis for the project.

**TABLE 3 – EFFECTIVE FIS DISCHARGES**

Location	Approx. Area (sq. miles)	Base Flood (cfs)	0.2-percent-annual chance (cfs)
Buckeye Creek @ East Valley Road	73.85	3,939	8,641
Pine Nut Creek @ Allerman Canal	54	5,510	*
Pine Nut Road Wash Upstream of Pine Nut Dr.	4.37	510	*

## 5.0 HYDRAULICS

### 5.1. METHOD DESCRIPTION

#### 5.1.1. Post-Construction Conditions (HEC-RAS 2D)

To model the flow impacting the Muller Parkway Alignment under post-development conditions, a two-dimensional model was created using the Army Corps of Engineer's software, HEC-RAS 2D, Version 6.3.1. The model used 2020 USGS 3DEP data and 2022 LIDAR data provided by Douglas County as the basis for defining the raster grid. A spatially varied land use data set was developed based on the 2016 national land cover database and was used to define the roughness values within the model domain. The roughness values assigned to the various land use types varied from 0.02 for developed areas to 0.06 for cultivated crops. An initial run based upon existing topography was performed in order to verify the HEC-RAS 2D model under existing conditions.

In order to evaluate the impact of the planned roadway extension on the existing floodplain, the finished grade surface of the ultimate build-out was incorporated into the model terrain using the geoprocessing tools available with ArcGIS. The planned culvert crossings were modeled in the post development analysis using SA/2D area connections within the model domain. The structure geometry was incorporated based upon the proposed grading and drainage plan. This information was incorporated in order to evaluate and confirm the peak discharges and culvert capacities associated with the crossings which convey offsite flows across the alignment. The results of the analysis were used to determine the post-project floodplain, flood depths, and to set the elevations along the roadway alignment. A map depicting the proposed special flood hazard areas is provided on the Workmap and the Annotated Firm, which are located in Appendix F.

#### 5.1.2. Floodway Modeling

Floodways are not being proposed as part of this CLOMR.

## 6.0 EROSION AND SEDIMENT TRANSPORT

Sediment transport modeling was not conducted as part of this study.



## 7.0 DRAFT FIS REPORT DATA

### *7.1. SUMMARY OF DISCHARGES*

None

### *7.2. FLOODPLAIN DESIGNATIONS*

The proposed floodplains will be designated as Special Flood Hazard Zone X, A. AE, AO (1-3).

### *7.3. FLOODWAY DATA*

None

## 8.0 ESA COMPLIANCE

As part of the CLOMR process, documented Endangered Species Act (ESA) compliance is required. This documentation is provided in Appendix A.4. The conclusions as excerpted from the letter are as follows.

“Documentation in compliance with the ESA is being submitted in the form of a written and signed statement from a qualified biologist. No ESA listed species were observed during field surveys. No saltgrass communities are present within the project area that could offer potential habitat for Carson wandering skipper. Potential habitat for monarch butterfly was observed near the survey and could potentially occur in the project area in the form of showy milkweed populations; however, this species is a federal Candidate and not offered protection under the ESA. **It has been determined that there are no endangered or threatened species present in the project area and that the type of action from the project does not have any potential to cause adverse impacts that would result in a take.**”

## 9.0 REPORT REFERENCES

1. Douglas County, 2017, Design Criteria and Improvement Standards.
2. Douglas County, 2020, Douglas County Muller Parkway Extension 2020 Grant Application Submittal.
3. Federal Emergency Management Agency, 2016, Flood Insurance Study Douglas County, Nevada, and Incorporated Areas.
4. HDR Engineering, 2020 Letter of Map Revision (LOMR) Request for Pine Nut Creek and Tributaries, NV, Prepared for the Carson Water Subconservancy District.
5. JE Fuller, Inc., 2018, Johnson Lane Area Drainage Master Plan, Douglas County, Nevada.
6. Manhard Consulting LTD (Manhard), 2012, Buckeye Creek Watershed Hydrology and Floodplain Analysis Technical Report, Prepared for Douglas County, NV.
7. RO Anderson, 2021, Letter of Map Revision for Ashland Park.
8. Truckee Meadows, 2009, Truckee Meadows Regional Drainage Manual, April 30, 2009.

## **APPENDIX A – REFERENCE DOCUMENTS**

*Submitted Electronically {Download Link Provided in Table of Contents}*

## **APPENDIX B – CORRESPONDENCE & PROJECT DOCUMENTATION**

*Submitted Electronically {Download Link Provided in Table of Contents}*

## **APPENDIX C – MAPPING AND SURVEY**

*Submitted Electronically {Download Link Provided in Table of Contents}*

## **APPENDIX D – HYDROLOGY**

*Submitted Electronically {Download Link Provided in Table of Contents}*

## **APPENDIX E – HYDRAULIC ANALYSIS**

*Submitted Electronically {Download Link Provided in Table of Contents}*

## **APPENDIX F – WORK MAP AND ANNOTATED FIRM**

*Submitted Electronically {Download Link Provided in Table of Contents}*

## **APPENDIX G – GIS FILES**

*Submitted Electronically {Download Link Provided in Table of Contents}*

# **EXHIBIT 19**

April 24, 2024, Notice of Default Letter to  
Douglas County

**EXHIBIT 19**





Oshinski & Forsberg, Ltd.

ATTORNEYS AT LAW

April 24, 2024

A.J. Hames  
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Douglas Co. District Attorney's Office  
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Tom Dallaire, PE, CFM  
Community Development Director &  
Floodplain Administrator  
1594 Esmeralda Ave.  
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**Re: NOTICE OF DEFAULT - 2019 DEVELOPMENT AGREEMENT  
Muller Parkway**

Dear Mr. Hames, Ms. Davidson, and Mr. Dallaire,

This letter is a notice of default, given in accordance with Sections 11 and 13 of the 2019 Development Agreement ("Agreement") between Douglas County and Park Ranch Holdings ("PRH"). Section 5.3(a) of the Agreement provides, in relevant part, that "The Parties agree to cooperate in good faith to finalize the design criteria prior to the commencement of any construction."

As you know, I previously notified the County in writing that it is in breach of the Agreement on at least three occasions during April and July of 2023, and February of 2024. RO Anderson Engineering further advised the County in writing on behalf of PRH in December of 2023 and April of 2024 that the Muller Parkway design plans and associated conditional letter of map revision ("CLOMR") application submitted to FEMA by the County are flawed. However, you have made no serious attempt to cure these material breaches. Douglas County is now in default.

At the urging of the court in *Ashland Park v. Douglas County*, and despite its grave misgivings that the County would not participate in good faith, PRH recently agreed to participate

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in mediation which had the potential to resolve all of the issues between PRH and the County. PRH's faint hope that the settlement conference would be successful was not realized. PRH's expectation that the County would not participate in a meaningful way materialized and even became evident to the mediator. Commissioners Mark Gardner and Sharla Hales were selected to represent the County at mediation despite neither of them being members of the Regional Transportation Commission ("RTC"). Mr. Gardner subsequently demonstrated his ignorance regarding almost all of the disputed issues during his sworn testimony when I deposed him on April 17 of this year. Douglas County's adherence to Mr. Gardner's input at mediation was akin to "the blind leading the blind." The County will consequently remain embroiled in litigation at taxpayer expense.

In the interim, Douglas County's obligations under the Agreement have not changed. Nor are they held in abeyance by any of the County's piecemeal efforts to meet what is likely now an unobtainable deadline to complete construction of the relevant segment of Muller Parkway through PRH property. It has come to our attention that during its April 10, 2024 meeting, the RTC purported to award a contract to Qualcon Construction, Inc. for a portion of Muller Parkway through PRH property during its April 10, 2024 meeting. The RTC further awarded a professional services contract to C.A. Group, Inc. on April 10 for the construction administration and drainage channel design for the same Muller Parkway project. No notice was provided to PRH of the RTC's April 10 meeting, nor were the design plans approved by PRH prior to being put out to bid.

Please cite the legal authority relied upon by the County to attempt to delegate or assign its responsibilities under the Agreement to the RTC. There is no privity of estate between the County and the RTC since the County remains the legal owner of the Muller Parkway right-of-way deeded by PRH. Nor is there privity of contract between the County and the RTC since the Board of County Commissioners has never publicly considered an item for possible action whereby the County executed a written assignment and assumption agreement with the RTC for the Development Agreement. The County is hereby advised that pursuant to Section 6.1 of the Agreement, any attempt by the RTC to award a contract for construction of Muller Parkway or otherwise commence construction, does not preclude PRH from exercising its option to complete the design and construction of Muller Parkway and receive full reimbursement for such costs from the County.

After the County falsely promised to produce 100% design plans in the fall of 2022, PRH only recently received a new set of 100% design plans, which are, in fact, the plans that were used to solicit and obtain bids from qualified contractors for less than one-half of the project's length and upon which the April 10, 2024 award of a bid by the RTC were based. These plans, like all those that preceded them, remain profoundly flawed. The County is obligated by the Agreement to cooperate with PRH in good faith to rectify the many deficiencies identified by PRH with the County's proposed design.



First, they cannot possibly be 100% design plans because the County has failed to timely obtain a CLOMR from FEMA. The irrefutable evidence of the incompleteness of the plans is the fact that the RTC, at the recommendation of the County's own Transportation Engineer, was forced to limit construction to areas where Muller Parkway did not traverse a special flood hazard area, a stretch that is only approximately 30% of the road distance that the County is obligated to construct under the Agreement.

Second, even if the plans were complete, they are simply incorrect. By way of example, a cursory review of the plans plainly demonstrates that there are numerous areas of varying width labelled as "Permission to Construct" through PRH lands where work is to be constructed partially outside the right-of-way deeded to the County by PRH. This condition is depicted on Sheets R4 – R11, and other corresponding sheets of the 100% complete design plans. To be clear, PRH was never approached by the County nor its design professionals to obtain PRH's approval or permission to construct permanent improvements beyond the limits of the existing 205-foot-wide right-of-way. Furthermore, PRH never granted "permission" to the County to construct a portion of these road improvements outside the limits of the deeded right-of-way. Under these circumstances it is disingenuous at best (and bad faith at worst) for the County to falsely represent to the public, while soliciting construction bids from interested bidders and licensed contractors that the County has permission to work outside of the right-of-way, which it does not. The area which the County's plans seek to illegally and permanently encroach upon represents approximately five acres of PRH land for which no consideration has ever been paid. The RTC's award of the construction contract for Muller Parkway therefore tortiously instructed the contractor to trespass onto PRH property under the fraudulent guise of consent. What is more, after the lapse of more than three years, it is difficult to comprehend the intent of designing a two lane road that cannot fit within the existing 205-foot-wide right-of-way, or that the five acres of proposed encroachment could have been a mere oversight by the County and/or RTC. Staff in the County Engineering Division who are charged with reviewing improvement plans prior to issuing site improvement permits for construction utterly failed to insist on confirmation and formal documentation establishing their supposed right to construct outside the right-of-way over and across lands owned by PRH. Whatever the reason, placing even an inch of the roadway or its appurtenances outside the right-of-way and on PRH property is a violation of the Agreement and constitutes a trespass and a taking under the Fifth Amendment to the United States Constitution. PRH will seek an injunction to stop the construction of Muller Parkway to address this issue. To accomplish this, PRH may be forced to file a new action for specific performance of the Agreement under Section 12.2 thereof. The action will also allege that the County's plan to build the road without an approved CLOMR and outside of the deeded right-of-way, together with the inherently flawed contract awarded by the RTC, constitute defaults as defined by Section 11.2 of the Agreement.

The County's pending CLOMR application, in tandem with its so-called 100% design plans, contemplate the construction of Muller Parkway in a manner that will materially and adversely impact PRH property and other properties that are downstream of Muller Parkway which



have been developed or are planned for development. An examination of the preliminary hydraulic analysis undertaken by RO Anderson Engineering at the direction of PRH was presented via email to the County's Floodplain Administrator and County Engineer on December 23, 2023. That analysis revealed the stormwater drainage infrastructure designed and included in the County's plans for the southerly portion of the Muller Parkway, but north of Toler Lane, as shown in what was then represented to be the "final" plans, resulted in adverse impacts to PRH property and a number of other property owners, and also violated Douglas County's own design standards. It is important to understand that these adverse impacts are the result of planned construction that the County is contractually obligated to perform and would occur irrespective of any development by PRH, Ashland Park, LLC or other affected property owners. They are purely the probable result of the construction of the road based on the "100% Plans". For example, the proposed culvert in the general location of the boundary between Ashland Park and PRH lands is exponentially too small to convey off-site flood water from Pine Nut Creek beneath Muller Parkway without adverse impacts to adjoining properties based on Douglas County's own adopted design criteria. In these latest so-called "100% design plans", the County has seemingly attempted to address these identified defects in its hydraulic design by terminating the construction of this portion of Muller Parkway approximately 100 feet north of the south boundary of PRH's property, but extending a "24' wide access road" southerly to Toler Lane. The 100% design plans for this 24' wide access road are not developed to the level of detail provided for the remainder of the design drawings (e.g., no profile is provided, no grading is shown, and no structural section is specified). Furthermore, this "24' wide access road" extends through a special flood hazard area without the benefit of a FEMA-approved CLOMR. With these important design data being omitted, a clear encroachment through a special flood hazard area, and the hydraulic design concerns raised and presented to the County being left unaddressed, these plans cannot be characterized by the County as "100% Plans".

Moreover, the segment of the road located north of Buckeye Road, was not included in the recent bid solicitation because the documented impacts from off-site drainage and flood flows from Buckeye Creek remain unaddressed despite the County having over three years to develop and design an effective mitigation plan for what is a well-documented floodplain. More important, the same 100% design plans for Muller Parkway contemplates that substantial quantities of flood water are purposefully (to avoid constructing regional flood control improvements) being re-directed onto properties owned by PRH and Bently that are to the north and west of where Muller Parkway connects to the sections that have already been constructed or are to be constructed by others. Astonishingly, and unjustifiably, Douglas County has not seriously sought to obtain the necessary flood control easements from those property owners to use their lands as a dumping ground for flood waters diverted by the construction of Muller Parkway, nor has the County Engineer or Floodplain Manager for Douglas County evidently contemplated how the diverted flood waters will be conveyed from those private lands across and beneath U.S. Highway 395 and westward towards the Carson River. It is inexcusable that Douglas County, its drainage consultant, the RTC and County engineers would consider or carry out such a short-sighted and flawed scheme that will result in a trespass, a constitutional taking, a breach of the Agreement, complete



frustration of the Agreement's purpose, and a breach of the covenant of good faith and fair dealing that is implied in every contract.

Further, the County's most recent CLOMR submission for Muller Parkway contemplates the road overtopping with water during a 100-year flood event, which would effectively preclude Muller Parkway from being used as an emergency access route by first responders and/or evacuees during severe storms. As demonstrated by the congestion on U.S. 395 caused by the ongoing construction that restricts use of one travel lane during normal traffic flow, Douglas County residents would have very limited options to evacuate the area during a mass exodus if critical arterial and collector roads such as Muller Parkway are not designed to the County's own standards for use as an emergency route.

By this letter, PRH, for the third time, formally notifies Douglas County that it intends to construct Muller Parkway, including rectifying the flawed plans currently being used by the County and taking responsibility for obtaining a CLOMR that does not adversely impact PRH lands or the lands of other property owners. As you are fully aware, Park asserted this right by giving formal notice to Douglas County of its intent to construct the road by letter dated October 12, 2022, and reasserted that right a second time by letter dated July 17, 2023. Copies of the October 12, 2022 and July 17, 2023 letters are attached. In each instance, the County did not raise any contractual objection to PRH's decision or reject the exercise by PRH of its contractual rights under Section 6.1 of the Agreement, which provides that:

In the event that Owner desires to construct two lanes of Muller Parkway as illustrated in Exhibit E before County has commenced construction or entered into a contract for the construction of those segments of Muller Parkway, Owner shall have the right to construct the road and County shall pay to Owner 100 percent of all material and construction expenses...

In fact, the County negotiated to completion an agreement with PRH setting forth the mechanics of making a down payment and progress payments to PRH for the construction. Unfortunately, after allowing PRH to proceed in this manner (and in fact itself proceeding as if PRH would be constructing the road) the County, for no legitimate reason, withdrew permission it had no power to grant or deny under the Agreement, and advised PRH, by letter dated March 1, 2024 that the County, to the exclusion of PRH, would construct Muller. In keeping with this plan and in a futile attempt to thwart future efforts by PRH to exercise its rights under Section 6.1 of the Agreement, the RTC prematurely and without notice to PRH, went out to bid for about 30% of the length of the roadway it is obligated to build under the Agreement. As specifically demonstrated above, the County obviously lacks complete and accurate design plans, an approvable hydraulic design that complies with Douglas County Code that does not adversely impact adjoining property owners, flood control easements from parties adversely impacted by the proposed design, or the required consent of PRH to proceed with construction of the design plans. The RTC's solicitation of construction bid proposals with a road builder were done in such haste



that the RTC had to revise its RFP to account for its inability to allow a contractor to build within the floodplain, then proceeded to issue a new RFP asking for proposals for the piecemeal construction of these flawed and incomplete plans that still encroach within a special flood hazard area, and then awarded an \$11 million contract to an innocent bidder that tortiously instructed them to trespass onto PRH property!

Notwithstanding that bids were received, and a bid was awarded by the RTC, the County remains in breach of Sections 5.3(a) and 6.1 of the Agreement in that it continues to deny the right of PRH to construct the road and proceeded in bad faith to commence construction without PRH's consent to the final design criteria. This is not only a direct breach of the contract, it is a breach of the covenant of good faith and fair dealing that is implied in every contract. In effect, the County is intentionally denying PRH its reasonable expectation this important road would be properly designed and timely completed, and that it could assume the responsibility for the construction of Muller and be repaid by the County. All of these matters were clearly contemplated by the Agreement and recognized by Douglas County when it, in apparently bad faith, negotiated a reimbursement agreement with PRH in 2023 and thereafter impermissibly delegated its duties under the Agreement to design and construct Muller Parkway to the RTC without PRH's consent or knowledge in 2024. Moreover, the County's pending CLOMR application as submitted to FEMA for Muller Parkway seeks to frustrate the very purpose of the Development Agreement by proposing to inundate a portion of PRH property within Buckeye Farms, an area that the Agreement approved for residential development of 2,500 units, with flood water which would render much of the approved development untenable or cost prohibitive. These adverse effects would impermissibly increase the base flood elevation on property that PRH is legally entitled to develop, which constitutes yet another uncompensated government taking that is barred by the Fifth Amendment.

It must again be noted that PRH has fulfilled *all* its obligations under the Agreement and that the County has, more than 19 years after it first agreed with Park to construct the road, failed to complete virtually any of its obligations under either the 2005 Development Agreement or the 2019 Development Agreement. Under these circumstances, Park hereby again demands that it be permitted to construct Muller Parkway in all of its aspects, including obtaining the CLOMR and constructing all necessary drainage infrastructure that would be contemplated by properly prepared plans. To mitigate any damages for which the RTC may be responsible for related to its construction contract with the apparent low bidder, it should immediately notify the successful bidder(s) that the project will either not be completed by that bidder or will be subject to significant delay due to potential litigation and drainage issues which may last for an extended period of time. The County must notify the successful bidder(s) in writing that it does not have permission to enter PRH property outside the right-of-way, including those portions incorrectly identified as "Permission to Construct" on the Muller Parkway design plan, including but not limited to Sheets R4-R11. Failure to withdraw the RTC's tortious instructions to trespass onto PRH property may result in monetary damages for the RTC, the County, and/or its employees and contractors.

April 24, 2024

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The County must further notify me and PRH immediately in writing of its plans to transfer to PRH all documents, data, and contact information necessary for PRH to timely complete the design and construction of Muller Parkway and obtain the associated CLOMR from FEMA pursuant to Section 6.1 of the Agreement.

Sincerely,

OSHINSKI & FORSBERG, LTD.

A handwritten signature in black ink, appearing to read 'Mark Forsberg', with a stylized flourish at the end.

MARK FORSBERG, ESQ.

cc: Douglas County Board of County Commissioners

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April 24, 2024

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Client

# **EXHIBIT 20**

May 14, 2024, Response Letter from  
Douglas County

**EXHIBIT 20**



OFFICE OF THE DISTRICT ATTORNEY  
DOUGLAS COUNTY

Mark B. Jackson  
District Attorney

May 14, 2024

Darren Lemieux, Esq.  
Lewis Roca Rothgerber Christie LLP  
One East Liberty Street, Suite 300  
Reno, Nevada 89501

VIA EMAIL  
[DLemieux@lewisroca.com](mailto:DLemieux@lewisroca.com)

**RE: RESPONSE TO NOTICE OF DEFAULT – 2019 DEVELOPMENT AGREEMENT  
(MULLER PARKWAY)**

Dear Mr. Lemieux:

Douglas County is in receipt of a Notice of Default sent by your client, Park Ranch Holdings (“PRH”), on April 24, 2024, via their former counsel, Mark Forsberg. In that letter, PRH accuses the County of failing to cooperate in good faith to finalize the design criteria for Muller Parkway and contends this alleged failure to cooperate in good faith constitutes a default of the parties’ 2019 Development Agreement, recorded in Douglas County as document number 2019-939704 (the “Agreement”). For the reasons that follow, the County asserts that it has not defaulted on the terms of the Agreement and demands that PRH rescind the Notice of Default.

**1. PRH has not clearly articulated how the County has breached any material terms of the Agreement**

In its Notice of Default, PRH first alleges that the County is in default because it has failed to cooperate in good faith to finalize the Muller Parkway design criteria. PRH cites specifically to Section 5.3(a) of the agreement, which reads in relevant part as follows:

County shall construct two lanes of Muller Parkway within the deeded right-of-way across the Ashland Park Property identified on **Exhibit E** from the northern Ashland Park Property parcel boundary south to Toler Lane for a total distance of approximately 2,604 linear feet. Owner and County agree to equally share the costs and expenses of constructing such two-lane segment of Muller Parkway across the Ashland Park Property in accordance with or exceeding the specifications contained in the County's Standard Detail for a 2 Lane Urban Arterial. The Parties acknowledge that design modifications to the Standard Detail for 2 Lane Urban Arterial may be required should County elect to construct four lanes of Muller Parkway and/or receive federal funding

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involving grant requirements which deviate from County's standard design. The Parties agree to cooperate in good faith to finalize the design criteria prior to the commencement of any construction.

As PRH and its new counsel are undoubtedly aware, the Agreement contemplates the construction of Muller Parkway in two sections. *See* Agreement at 6.1. The first or “northern” section is 12,691 linear feet in length. It begins near the northwestern corner of the Buckeye Farm Specific Plan area and continues in a southeastern direction to the northern boundary of the Ashland Park Property. The second or “southern” section is 2,604 linear feet in length. It begins at the northern boundary of the Ashland Park Property and continues to Toler Lane. The parties will share equally the costs of constructing the southern section, while the County will be responsible for the costs of constructing the northern section.

Section 5.3(a) of the Agreement, cited by PRH in its Notice of Default, specifically deals with the *southern* section of Muller Parkway. However, the Notice of Default almost exclusively raises concerns about the design of the *northern* section of Muller Parkway. It is not clear to the County how designs related to the *northern* section could constitute a material breach of the County’s obligations related to the *southern* section.

PRH also alleges that the County is in default because it has denied PRH its right to construct Muller Parkway, a right PRH can pursue in accordance with Section 6.1 of the Agreement. However, PRH neglects to note that on February 14, 2024, PRH expressly informed the County that PRH was unable to complete construction of Muller Parkway in a timely manner (while simultaneously demanding that the County complete construction in a timely manner). This act constituted a waiver of PRH’s right to construct Muller Parkway. It also obligated the County to proceed with construction through alternative means, and to do so quickly. The County has therefore relied upon PRH’s own demands to take action and PRH is estopped from hindering the County’s efforts to comply with both the terms of the Agreement and PRH’s prior demands. It is unclear how the County can deny PRH a right that PRH has already waived.

PRH does not allege any additional violations of any other material term of the Agreement. Accordingly, PRH has failed to specify the nature of the alleged default and the manner in which the default may be satisfactorily cured, as required by Section 11.1 of the Agreement. This failure also prevents the County from taking any corrective action, should such action be needed, as contemplated in Section 11.1 of the Agreement. Accordingly, the County asks that PRH rescind the Notice of Default.

**2. The County has continuously cooperated with PRH in good faith to finalize the designs for Muller Parkway**

The County also disputes the notion that it has failed to cooperate with PRH in good faith. Throughout the Muller Parkway design process, the County has continually maintained contact

with PRH and its representatives, including through in-person meetings, emails, and phone calls. PRH has always had access to the most up-to-date plans for Muller Parkway. In fact, PRH utilized those plans when it initially applied for a Site Improvement Permit (“SIP”) to construct Muller Parkway in October 2023. The 100% design plans the County recently provided to PRH are not materially different from the site plans PRH submitted with the SIP application. When the County has received feedback from PRH and its representatives, the County has attempted to incorporate changes to the County’s design plans.

PRH also accuses the County of mediating in bad faith. There is no truth to that assertion whatsoever. In the days leading up to the mediation, PRH and Ashland Park, LLC specifically requested the County bring at least two County Commissioners to the mediation. The County did this, bringing its former Chair (Mark Gardner) and Current Vice Chair (Sharla Hales). The County also brought its County Manager (Jenifer Davidson), its current Director of Community Development and former acting County Engineer (Tom Dallaire), and a Deputy District Attorney (A.J. Hames). It is unclear how any additional participants would have aided with the mediation process or changed the outcome.

Unlike the pessimistic expectations apparently held by PRH, the County was hopeful a deal could be reached at mediation. To that end, the County commenced its session by conveying an offer to Ashland Park. However, the County *never received a response* to that offer. Instead, after extending the offer to Ashland Park’s representatives, the County’s representatives sat sequestered for hours while the mediator worked exclusively with PRH and Ashland Park. Finally, at approximately 4:30 p.m., the mediator returned to the County with no input or feedback from PRH or Ashland Park on the County’s offer whatsoever. Instead, the mediator presented the County with a proposal from PRH that included, among other things, a requirement that the County purchase a drainage easement for water that PRH had already promised to accept from Ashland Park.<sup>1</sup> It thus appeared to the County that PRH was attempting, in bad faith, to have the County buy something that Ashland had already paid for.

Moreover, the PRH proposal required the County to pay for the construction of specific drainage infrastructure which is not contemplated by the Agreement. There is nothing in the Agreement that obligates the County to mitigate existing flooding conditions along the alignment of Muller Parkway. While such improvements would surely benefit PRH, they are not necessary for the construction of Muller Parkway itself. PRH estimated that the cost of such improvements would have *increased* the cost to construct Muller Parkway by approximately \$8.5 million, raising the total cost from approximately \$11 million to roughly \$20 million. The County has no incentive to accept such a proposal and PRH’s demand that the County incur expenses unrelated to the

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<sup>1</sup> Pursuant to Addendum #1 to the Offer and Acceptance between PRH and Ashland Park, LLC, “[PRH] shall allow [Ashland Park] to divert water from subject property onto adjacent Park Ranch Holdings, LLC properties in an amount necessary to satisfy tentative map requirements and receive approved final map.”

construction of Muller Parkway can only be interpreted as PRH's effort to hinder the County's ability to perform its obligations under the Agreement.

Despite the unsuccessful mediation, the County will continue to cooperate with PRH in good faith to complete the construction of Muller Parkway. However, it is particularly distressing to the County that PRH has published information related to the parties' confidential mediation efforts to members of the public, including *The Record-Courier*. Both the County and PRH have an interest in Muller Parkway being constructed quickly and completely. Muller Parkway is a piece of infrastructure that will benefit the County by alleviating traffic along U.S. Highway 395, and it will benefit PRH by allowing PRH to develop and/or sell parcels throughout the Buckeye Farm Specific Plan area. The County has every incentive to cooperate with PRH and complete this project. However, the County will not agree to fund, at taxpayer expense, drainage improvements that are unrelated to Muller Parkway.

**3. The County's use of the Regional Transportation Commission to award a contract to construct a portion of Muller Parkway was proper**

In its Notice of Default, PRH questions the County's use of its Regional Transportation Commission ("RTC") to award a contract for the construction of Muller Parkway. It is unclear how, exactly, the County's use of the RTC to award a contract would constitute a material breach of the Agreement. There is no provision of the Agreement which dictates how the County should award construction contracts.

The RTC was created by ordinance in compliance with NRS 277A.170. *See* DCC 2.32 – Regional Transportation Commission. Its powers and duties are enumerated in NRS sections 277A.200 through 277A.380 and in DCC sections 2.32.020 through 2.32.060. Its meetings are open to the public and are publicly noticed.

The RTC's involvement with Muller Parkway is neither new nor novel. The RTC has always been responsible for distributing the funds the County allocated for the design and construction of Muller Parkway. In fact, PRH has been the direct beneficiary of the RTC's involvement in the past. For example, in April of 2023, the RTC awarded PRH a \$729,260 contract to relocate irrigation infrastructure as a part of the County's initial construction activities related to the Muller Parkway project. It is therefore surprising that PRH now objects to either the County's use of its Regional Transportation Commission to construct a major regional transportation project or RTC's method of awarding contracts.

The Notice of Default also demonstrates some apparent confusion about what the RTC has done. The RTC has awarded a *contract*, which is not tantamount to approving a *design*. It is common practice to seek bids for a project and award contracts without a complete set of design plans. This is especially true when time is of the essence, which is the case with Muller Parkway. Once plans are fully completed and permits are issued, those plans are provided to the contractor, who

commences construction. But even after permits are issued and construction commences, designs may continue to change and evolve to account for unforeseen issues. So, while the RTC has awarded a contract, the RTC has not approved any specific set of design plans.

**4. The County's application for a CLOMR does not constitute a default of the Agreement**

The Notice of Default appears to allege that because the Federal Emergency Management Agency (FEMA) has failed to issue a CLOMR to the County, the County is somehow in breach of the Agreement. The County has been working on the design of Muller Parkway for many years and has incorporated the feedback from multiple parties, including PRH. The CLOMR application process is only one part of that process and there is no legal basis for PRH to declare the County in breach of the Agreement for FEMA's failure to issue a CLOMR. Also, as a reminder, the County has until December 2025 to construct Muller Parkway.

The County disputes any assertion that the CLOMR application was somehow "flawed," as alleged in the Notice of Default. In December 2023, R.O. Anderson Engineering, Inc. ("ROA"), on behalf of PRH, expressed certain concerns with the design of Muller Parkway and its impact on the floodplain of neighboring properties. However, the County promptly addressed those concerns and corrected any issues through numerous in-person meetings and emails with ROA. The County ultimately determined that ROA was using an outdated flood model. Moreover, the County's model failed to take into account certain box culverts proposed by Ashland Park for the section of Muller Parkway directly north of its parcel. Those issues were corrected and addressed with FEMA, and FEMA confirmed that such corrections would not impact the timing of their review.<sup>2</sup> Accordingly, there were no issues with the County's CLOMR application that could constitute a breach or default. If FEMA's analysis ultimately reveals issues with the County's current plans, then the County will make any required changes, just as it has in the past. It will also continue to communicate with PRH as the County updates its plans and proceeds with construction.

The County also notes that receipt of an approved CLOMR is not a prerequisite to having a "complete" set of site plans. A CLOMR is FEMA's method of indicating whether a project, if built as planned, will meet minimum National Flood Insurance Program standards. Plans must be

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<sup>2</sup> To the extent there are issues with the portion of Muller Parkway adjacent to Ashland Park, those issues would have arisen out of the design that Ashland Park and ROA created. If Ashland Park abandons those plans, the County is still prepared to proceed with constructing Muller Parkway as contemplated by the Agreement. Such plans may involve the construction of portions of Muller Parkway at or below grade so that the floodplain is not affected and neighboring parcels will not be adversely impacted. Simply stated, the County will adapt to changes, including changes caused by third parties.

complete in order to even apply for a CLOMR, because absent such plans, FEMA would have no way of assessing a project.

Finally, PRH should note that, per Section 11.3 of the Agreement, when a party's performance is delayed due to the acts of "other governmental entities," the delayed party "shall not be deemed to be in breach or default." FEMA's review process, timelines, and failure to issue a decision on the County's CLOMR application, which was submitted in May of 2023, cannot constitute a breach or default by the County.

**5. Planned encroachment onto PRH land outside the Muller Parkway right-of-way does not constitute a default of the Agreement**

PRH notes that the County's plans include encroachment onto PRH land. This is true, and has been true since at least October 2023 when PRH utilized those plans to apply for the SIP to construct Muller Parkway. PRH was aware of the encroachments then and did not object to them, so it is surprising that PRH objects to them now.

Temporary encroachments for access and construction are contemplated in the Agreement. Section 5.7 gives the County a right of entry onto PRH property to conduct work "reasonably related to the funding and construction of Muller Parkway."

Permanent encroachments are also contemplated in the Agreement. Section 5.1 states that the "Parties agree to negotiate in good faith for the acquisition of additional right-of-way necessitated by external requirements without the use of eminent domain proceedings. County shall pay to Owner the fair market value of such additional right-of-way should it become required."<sup>3</sup> Accordingly, to the extent Muller Parkway will permanently encroach onto PRH property, the County will pay PRH the fair market value of the land encroached upon, consistent with the terms of the parties' Agreement. Alternatively, the County may modify the design plans to prevent the encroachment.

In summary, whether PRH decides to cooperate with the County or attempts to obstruct the County's efforts to construct Muller Parkway, the County will acquire the easements or rights-of-way necessary to construct Muller Parkway. As importantly, the County will continue to communicate with PRH's representatives as construction continues and any required changes to the design occur.

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<sup>3</sup> PRH's assertion that "[P]lacing even an inch of the roadway or its appurtenances outside the right-of-way and on PRH property is a violation of the Agreement," directly contradicts Section 5.1 and PRH's prior representations to the County.



## **6. The County's Design Plans Can Accommodate Floodwaters from Pine Nut Creek**

The Notice of Default raises concerns with regard to floodwater from Pine Nut Creek. Floodwater from Pine Nut Creek presently crosses the proposed Ashland Park portion of Muller Parkway (i.e., the southern portion) and then discharges first throughout the Ashland Park parcel and then further into portions of the Chichester residential development. Depending on how Muller Parkway is constructed in that area, the flow of such floodwaters could be altered. There are essentially three options to handle the Pine Nut Creek floodwaters, all of which are still available to the County.

First, the floodwater could be redirected directly north of the Ashland Park parcel, onto PRH property. This solution was proposed by Ashland Park in conjunction with their tentative map application. At that time, both Ashland Park and their engineer, ROA, made representations to the County that Ashland Park had already obtained permission from PRH to move the floodwaters onto PRH property. These representations are consistent with Addendum #1 to the Offer and Acceptance between PRH and Ashland Park. Ashland Park and ROA (who also serves as the engineer for PRH) then submitted a CLOMR application that contemplated relocating flood waters onto PRH property.

While this solution would be acceptable to the County, the County understands that PRH has now taken the position that it never agreed to take floodwater from Ashland Park, and that it will not take such floodwater without Ashland Park (or the County) purchasing a drainage easement. So long as PRH is unwilling to provide a drainage easement for the Pine Nut Creek floodwater, this solution does not seem viable. However, it is possible the County has misunderstood PRH's position.

Second, floodwater could be controlled upstream so that it never reaches the Ashland Park parcel. While an upstream floodwater project is neither required nor contemplated in the Agreement, the County has nevertheless spent a significant amount of time, money, and effort toward implementing this solution. To date, the County has, among other things, completed feasibility studies, purchased upstream parcels for future detention ponds, and retained consultants to finalize the design of such ponds and obtain all requisite permits. The County is not aware of any efforts on the part of Ashland Park or PRH to contribute toward this solution. While this solution would solve the Pine Nut Creek floodwater issues, it is time consuming, expensive, and it requires the County to go above and beyond its obligation to construct Muller Parkway.

Third, the Ashland Park portion of Muller Parkway (i.e., the southern portion) could be designed to allow for floodwaters to pass over the roadway. As noted above, there is nothing in the Agreement that obligates the County to mitigate existing flooding conditions along the alignment of Muller Parkway. Accordingly, if drainage easements are not obtainable, and if upstream solutions are not immediately feasible, then Muller Parkway could be constructed such that the

existing flood conditions are maintained. This would be acceptable to the County, though not preferable, as it leaves certain residential areas within a floodplain (at least until upstream storage facilities can be constructed). However, because this is a viable and immediate solution, and in response to PRH's demands upon the County, Douglas County staff are currently developing design plans that would allow Muller Parkway to overtop with floodwater in this section.

As noted, each of these solutions is still available to and acceptable to the County. The County is willing to work with PRH and Ashland Park to create a solution that best serves all parties. However, as PRH has repeatedly and pointedly stated, the County is the party that is ultimately charged with constructing Muller Parkway in a timely fashion, and the County is committed to doing whatever is needed to ensure that obligation is met.

## **7. The County's Design Plans Can Accommodate Flooding from Buckeye Creek**

The Notice of Default also raises concerns with regard to floodwater from Buckeye Creek. Floodwater from Buckeye Creek presently crosses the proposed northern portion of Muller Parkway and then discharges onto the Buckeye Farm Specific Plan area. As with Pine Nut Creek, the construction of Muller Parkway could alter the flow of such floodwater. Again, there are essentially three ways to handle the Buckeye Creek floodwater.

First, as with the Pine Nut Creek floodwater, the Buckeye Creek floodwater could be directed north onto PRH properties and properties owned by Bentley Family Ltd. Partnership ("Bentley"). This solution would reduce flood risk to the Buckeye Farms Specific Plan area, but would require the County to work with PRH and Bentley to obtain drainage easements and/or develop infrastructure to handle the added floodwater. The County is willing to work cooperatively with both PRH and Bentley to pursue this option. The County has already approached both parties to discuss options, including obtaining drainage easements for the increased floodwater.

Second, if floodwater cannot be redirected north, floodwater could be detained upstream. The County's feasibility studies (noted above) also examined upstream drainage solutions for Buckeye Creek. There are fewer feasible locations for upstream storage for Buckeye Creek than there are for Pine Nut Creek, and public opinion has historically been against the construction of any type of storage basin along Buckeye Creek. However, the County is still considering this option. Timing is also an issue. Construction of upstream detention basins could be time consuming and might not solve floodwater problems prior to the County's deadline to construct Muller Parkway.

Finally, the northern portion of Muller Parkway could be designed to allow floodwaters to pass over it. Again, the County is not obligated to mitigate existing flooding conditions along the alignment of Muller Parkway. Muller Parkway could therefore be constructed such that the existing flood conditions are maintained. This solution would accelerate Muller Parkway's

construction, as it would remove the requirement for the County to obtain a CLOMR. It would also reduce the encroachment of Muller Parkway onto PRH property because the roadway would not have to be raised. The County understands this may not be PRH's preferred solution. Again, PRH's constructive participation and cooperation with the County will be necessary if the County selects an option other than allowing Muller Parkway to overtop and the existing flooding conditions to continue.

As with the Pine Nut Creek solutions, each of these Buckeye Creek solutions is still available to and acceptable to the County.

**8. The County is not Obligated to Designate Muller Parkway as an Emergency Access Route**

PRH and Ashland Park have frequently referred to Muller Parkway as a designated emergency access route, or a future emergency access route. This is factually and provably false. There is nothing in the Agreement that requires Muller Parkway to serve as an emergency access route, and no such designation has ever been made. For example, Muller Parkway is omitted from the list of emergency access routes included in the 2017 Douglas County Transportation Plan, which was adopted in April 2019.

Ultimately, the decision of whether Muller Parkway should, in the future, be designated as an emergency access route will be made by the Douglas County Board of Commissioners. The eventual construction of upstream floodwater detention basins will allow for Muller Parkway to be designated as an emergency access route, regardless of how it is designed in the present.

**9. The County is not in default of the Agreement**

Based on the foregoing, the County asserts that it has neither breached nor defaulted on any term of the Agreement. In fact, the County has to this point dutifully performed all its obligations in a timely fashion. The County has, among other things, revised its master plan and designated the entire Buckeye Farm Specific Plan area (1,044 acres) as receiving area, which allows for PRH to develop property that was historically zoned A-19 (Agriculture – 19 acre minimum parcel size) and RA-5 (Rural agriculture – five acre minimum net parcel size) and used for agricultural purposes. The County approved the Buckeye Farm Specific Plan. The County approved the Tentative Subdivision Map for Ashland Park as well as the Tentative Subdivision Map and Planned Development application for Buckeye Farm Neighborhood 1. The County also rezoned the areas within Buckeye Farm Neighborhood 1.

While the County has not yet completed the construction of Muller Parkway, the County has expended a great deal of effort and money on this project and has made significant progress towards its completion, and, barring further interference by PRH or others, the County will

Darren Lemieux  
May 14, 2024  
Page 10

successfully complete construction as contemplated by the terms of the Agreement. Accordingly, as the County is not in default, the County PRH should rescind its Notice of Default.

**10. The County intends to construct Muller Parkway as planned in order to comply with its obligations under the Agreement**

Although PRH purports to exercise its right to construct Muller Parkway in the Notice of Default, PRH previously waived that right when it informed the County that it was both unable to complete the construction of Muller Parkway in a timely fashion, and unwilling to extend any deadlines for Muller Parkway's construction. Upon being so informed, the County was obligated to take steps to ensure timely performance. The County therefore solicited bids and awarded a contract to Qualcon Construction. PRH is therefore estopped from now demanding it has the right to construct Muller Parkway.

The County will, however, continue to cooperate and coordinate with both PRH and Ashland Park during the construction of Muller Parkway, and the County will attempt to address any concerns the parties have. However, please note the County does not intend to construct drainage infrastructure that is unrelated to the design and construction of Muller Parkway. As Judge Young noted in his April 16, 2024, order denying Ashland Park and PRH's motions for summary judgment (the "Order"), there is nothing in the Agreement that obligates the County to pay for drainage infrastructure that is "specific to plaintiff's proposed project" or that "unnecessarily raises the cost of infrastructure that the county, within the context of the development agreement, previously agreed to build at its own expense." Order at 2.

Sincerely,

MARK B. JACKSON  
Douglas County District Attorney

By: /s/ A.J. Hames  
A.J. Hames  
Deputy District Attorney

cc: Jim Cavilia, Esq.  
[Jcavilia@allisonmackenzie.com](mailto:Jcavilia@allisonmackenzie.com)





# **EXHIBIT 21**

June 20, 2024, Response Letter from  
Park Ranch Holdings, LLC

**EXHIBIT 21**

O. 775.823.2900  
One East Liberty Street  
Suite 300  
Reno, NV 89501-2128  
lrrc.com

Darren J. Lemieux  
Partner  
Admitted in California, Colorado and Nevada  
303.628.9579 direct  
DLemieux@lewisroca.com



June 20, 2024

**SENT VIA EMAIL**

A.J. Hames  
Douglas County District Attorney's Office  
P.O. Box 218  
Minden, Nevada 89423  
ahames@douglas.nv.gov

Tom Dallaire, PE, CFM  
Community Development Director & Floodplain Administrator  
tdallaire@douglasnv.us

Re: **Notice of Default – 2019 Development Agreement (Muller Parkway)**

Mr. Hames and Mr. Dallaire:

To date, the County has failed to cure the defaults raised in Park Ranch Holdings, LLC's ("PRH") Notice of Default served on April 24, 2024. The County's response on May 14, 2024, has done nothing to quell PRH's concerns. To the contrary, the County's representations that it is willing to irreparably damage PRH's property—in violation of the Development Agreement ("DA") and the County's own code and standards—gravely alarms PRH and provides grounds for immediate injunctive relief. If the County continues to ignore the plain language of the DA and attempts to start construction without PRH's approval of the design criteria, PRH will be forced to seek all available legal remedies. We respond to each of the County's misstatements in turn.

**A. The County is Obligated to Cooperate in Good Faith with PRH to Correct the Errors in the County's Plans to Account for Proper Drainage Infrastructure**

Attempting to evade its obligation to cooperate with PRH in good faith, the County takes the absurd position that Section 5.3's good faith provision applies only to the southern portion of Muller Parkway contemplated in Exhibit E (*i.e.*, the portion running through the Ashland Park Property). The County ignores the plain language of Section 5.3 and takes an inequitable position certain to be rejected by the court.

The County forgets that the northern portion depicted in Exhibit E runs through PRH's property and that PRH generously granted the County a right-of-way to construct Muller Parkway through PRH's property. Given that Muller Parkway will run across PRH's property, PRH reserved the right to work with the County to "finalize the design criteria prior to the commencement of *any* construction." "Any" is a clear and unambiguous word that establishes the County's obligation to

cooperate in good faith applies *both* the northern and southern portions of Muller Parkway depicted in Exhibit E. The County's contrary position runs afoul of basic principles of contract interpretation and is absurd—it will never survive scrutiny by the Court. *See, e.g., Sherman v. Smead*, 527 P.3d 973, 2023 WL 2960921, at \*4 (Nev. App. 2023) (explaining that courts will “enforce the contract as written” and “will not construe a contract so as to lead to an absurd result” (citations and quotations omitted)).

The County has failed to fulfill its obligations under Section 5.3. As PRH has continually informed the County, its current plans not only encroach upon PRH's property but will result in PRH's property being irreparably harmed by floodwater. Instead of considering and addressing these serious concerns, the County has repeatedly threatened to commence construction without design approval from PRH, without a floodplain development permit, and without a CLOMR from FEMA.

In its most recent correspondence, the County proposes three alternatives for mitigating flooding from Pine Nut Creek and Buckeye Creek, none of which are acceptable to PRH. With respect to both Pine Nut Creek and Buckeye Creek, the County proposes (1) redirecting floodwater onto PRH property and, for Buckeye Creek, Bently property too, (2) mitigating floodwater upstream with detention ponds, and/or (3) allowing Muller Parkway to overtop.

First, neither the County nor Ashland have obtained permission from PRH to redirect floodwater onto PRH property. The County concedes as much, recognizing that this option is not viable without a drainage easement from PRH, which PRH has never granted. The County cannot force PRH to grant a drainage easement or unconstitutionally take PRH's property, including because PRH was not properly noticed prior to approval of the Ashland Park justification letter or approval letter (despite that the tentative map conditions seek to burden PRH property). Similarly, Ashland cannot force PRH to enter into a drainage easement (especially if Addendum No. 1 was obtained in bad faith). To the extent the County and Ashland attempt to change the conditions of Ashland's tentative map to circumvent the County and/or Ashland's obligations under the DA or broaden the reach of Addendum No. 1, the County's actions will have been taken in bad faith and would further violate Section 5.3. PRH demands that County and Ashland provide PRH with advance written notice of any attempt to amend or otherwise alter the Ashland Park tentative map conditions.

Second, the County has not secured property for a detention facility for Buckeye Creek, only for Pine Nut Creek. While the County asserts that it has taken steps for this option, the County has never intended to build drainage facilities given the facilities are unpopular (according to the County). Moreover, if the County truly intended to pursue this option, the County should have secured property and began constructing the detention facilities years ago, not at the eleventh-hour. Given the time constraints to construct Muller Parkway, it is doubtful this option is feasible, especially as it pertains to Buckeye Creek.

Third, allowing Muller Parkway to overtop would be dangerous and cause irreparable damage to PRH property. The County knows that it cannot allow any portion of Muller Parkway to overtop and even represented to FEMA that the County would not allow it. *See* DC010805 at 10808 (“The

intent of the CLOMR is in support of the future parkway extension by demonstrating that during the regulatory event, *runoff does not overtop the roadway or adversely impact neighboring properties*” (emphasis added)). The County’s Design Criteria and Improvement Standards (“DCIS”) also explain that stormwater runoff “interferes with the primary function of the street for transportation purposes.” *See* DCIS § 6.5.3. The County itself forbids construction of a street that will overtop: “No curb overtopping. In no case shall the flow of water extend more than half-way onto the land adjacent to the curb.” *See* DCIS § 6.5.3 & Table 6.2. Moreover, use of drainage must be “reasonable,” which means it cannot “adversely impact downstream properties.” DCIS § 6.1.3. The County’s own standards further provide that “[d]ownstream properties shall not be unreasonably burdened with increased flow rates, negative impacts, or unreasonable changes in manner of flow from upstream properties. *Drainage problems shall not be diverted from one location to another.*” *Id.* (emphasis added). If the County attempts to proceed with plans that would allow Muller Parkway to overtop and unreasonably burden PRH’s property, PRH will seek a preliminary injunction to protect its property from irreparable harm. Indeed, should the County attempt to proceed with *any* construction without PRH’s approval—and in violation of Section 5.3—PRH will seek a preliminary injunction.

Although the County’s options are not feasible, PRH is willing to entertain either (1) partnering with the County and/or DCSID for the approval and construction of a gravel pit that can also serve as a detention facility and/or (2) discussions for the County to purchase 277 acres of PRH agricultural property north of Muller Parkway and east of US 395 with a corresponding drainage easement to convey the floodwater across PRH property west of US 395 to the river.

To the extent the County maintains its position that it is not required to mitigate floodwater, the County is wrong as set forth in the DA, the Development Code, and DCIS. *See* DA § 5.3 (providing the County is responsible to construct the portion of Muller Parkway across PRH’s property at the County’s “sole cost and expense”); *id.* § 5.9 (recognizing the “County intends to install certain drainage facilities in conjunction with Muller Parkway”); *see also supra* DCC 20.050.020 et. seq.; DCIS §§ 6.1.3, 6.5.3, Table 6.2.

**B. The County’s Insufficient CLOMR Application and Failure to Timely Construct Muller Parkway**

At the same time the County concedes it has not solved the drainage issues that plague its ability to construct Muller Parkway, the County asserts its 100% design plans and CLOMR application are complete and flawless. FEMA disagrees and has repeatedly requested additional information from the County due to the profound errors in the County’s CLOMR application. PRH’s concerns with the CLOMR application are being addressed separately and in more detail through Mr. House’s review. Unfortunately, Mr. House’s evaluation has been delayed by the County’s refusal to promptly provide Mr. House with the requisite information and the County’s inability to timely respond to PRH’s discovery requests.

The County cannot rely upon Section 11.3, “Acts of God,” for its failure to timely obtain a CLOMR. Under Section 11.3, a delay is not a default where the delay is caused by “governmental

restrictions imposed or mandated by other governmental entities not parties to this Agreement.” FEMA did not force the County to submit its CLOMR application nearly four years after the DA became effective—the delay was the fault of the County and its failure to secure funding. And FEMA has not imposed any unforeseen “restrictions” that delayed FEMA’s review of the CLOMR application. Rather, FEMA’s requests for information are due to the County’s incapability to submit a complete application with accurate information. Even if Section 11.3 were applicable, Section 11.3 requires the County to provide 30 days’ notice *and* obtain written approval from PRH for an extension. This Section also reserves PRH’s right to “institute legal action . . . to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation.” PRH will enforce those rights if the County fails to cooperate with PRH in good faith or further delays the construction of Muller Parkway by refusing to correct its insufficient plans.

### **C. The County’s Unlawful Encroachments**

Aside from the County’s failure to mitigate flooding (and attempts to violate its own Development Code and DCIS), the County’s current plans will encroach upon PRH’s property. Misinterpreting the plain language of the DA again, the County argues that it may encroach upon PRH’s property so long as the County pays fair market value for the land encroached upon. Although Section 5.1 does provide that the parties will negotiate “in good faith” for the acquisition of additional right-of-way easements, those easements must be “necessitated by external requirements.” The County cannot encroach upon PRH’s property *unless* the encroachment is necessitated by external requirements *and* the County negotiates in good faith with PRH to obtain another right-of-way easement from PRH. The County has never identified (and cannot identify) any external requirements necessitating an encroachment upon PRH’s property. And the County has failed to negotiate with PRH in good faith only initiating discussions one week ago despite having known of its encroachment plans for more than a year.

### **D. The County Cannot Prevent PRH From Invoking Section 6.1**

Without citing any law, the County asserts that PRH has waived its right to construct Muller Parkway.<sup>1</sup> Under well-established Nevada law, a party to a contract only waives its rights by expressly doing so or “accepting performance which does not meet contract requirements.” *Udevco, Inc. v. Wagner*, 100 Nev. 185, 189, 678 P.2d 679, 682 (1984). Waiver always requires consent. *See, e.g., Verdi Lumber Co. v. Bartlett*, 40 Nev. 317, 161 P. 933, 935 (1916). It is inconceivable that the County could construe PRH’s concerns regarding the *County’s* delays as a waiver of PRH’s ability to construct Muller Parkway. PRH has not, expressly or impliedly, waived its right to construct Muller Parkway and reasserts its intent to do so under Section 6.1.

\* \* \* \*

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<sup>1</sup> The Regional Transportation Commission’s attempt to award a construction bid to Qualcon Contractors, Inc., was made in bad faith and is not an impediment to PRH’s ability to invoke Section 6.1.



If the County does not cure its defaults (or confirm PRH can proceed to construct Muller Parkway and assume control of the County's currently pending CLOMR application to FEMA) by the close of the 90-day cure period on July 23, 2024, PRH will seek all available legal remedies, including declaratory relief, specific performance, preliminary injunctive relief, and attorneys' fees and costs. Should the County attempt to proceed with construction before July 23, 2024, and without curing these defaults, PRH will seek immediate injunctive relief to protect its property from irreparable harm.

Sincerely,



Darren J. Lemieux, Esq.  
Lewis Roca Rothgerber Christie LLP

cc:

Douglas County Board of County Commissioners  
WRice@douglasnv.us  
WNowasad@douglasnv.us  
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Counsel for Ashland Park, LLC  
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# **EXHIBIT 22**

Excerpt of the Agenda Packet for the  
August 2, 2024, meeting of the  
Regional Transportation Commission

**EXHIBIT 22**



# Douglas County

## Regional Transportation Commission

### Public Meeting Notice and Agenda

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Friday, August 2, 2024

10:00 AM

Historic Courthouse  
1616 Eighth Street  
Minden, NV 89423

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This is a public meeting. In conformance with Nevada Open Meeting Law, members of the public may request an electronic copy of the agenda or the supporting materials by contacting the Public Works at 775-782-6233 or by email to [NHubbard@douglasnv.us](mailto:NHubbard@douglasnv.us). Physical copies of supporting material may also be obtained from the Public Works office at 1120 Airport Rd, Bldg. F-2 in Minden, NV. A physical copy of the agenda is posted at the Historic Courthouse at 1616 Eighth Street in Minden, Nevada and at the Public Works Office. Electronic copies of the agenda and supporting materials are also available at the following websites:

- **State of Nevada Public Notices website:** <https://notice.nv.gov/>
- **Douglas County Meeting website:** [https://douglascountynv.granicus.com/ViewPublisher.php?view\\_id=1](https://douglascountynv.granicus.com/ViewPublisher.php?view_id=1)

#### **Written public comment:**

To offer public comment before the meeting, members of the public may submit public comments by email to [NHubbard@douglasnv.us](mailto:NHubbard@douglasnv.us). Please make sure to state your name, item number and position on the item.

#### **Public comment during the meeting:**

In person: The meeting is open to the public and interested parties and individuals are invited to attend.

It is the intent of the RTC to protect the dignity of citizens who wish to comment before the Commission. It is also the RTC's desire to provide the citizens of Douglas County with an environment that upholds the highest professional standards. Citizens should have the ability to freely comment on items and/or projects that are brought before the RTC for action without interference.

**Members of the public may call the Public Works at 775-782-6233 to obtain help making public comment prior to the meeting.**

The Regional Transportation Commission reserves the right to take items in a different order; to combine two or more agenda items for consideration; and to remove items from the agenda or delay discussions relating to an item on the agenda at any time.

***Notice to Persons with Disabilities:*** Members of the public who are disabled or require special assistance or accommodations are requested to notify the Public Works in writing at P.O. Box 218, Minden, Nevada 89423, via email to [NHubbard@douglasnv.us](mailto:NHubbard@douglasnv.us), or by calling Nicole Hubbard at 782-6233 at least one business day in advance of the meeting.

# **DOUGLAS COUNTY REGIONAL TRANSPORTATION COMMISSION**

## **FINAL AGENDA**

**August 2, 2024**

### **CALL TO ORDER**

### **PLEDGE OF ALLEGIANCE**

### **PUBLIC COMMENT**

Public comment is limited to three minutes per speaker unless additional time is granted by the Chairperson.

**In addition to opening public comment, public comment will also be taken on administrative agenda items that are identified for possible action and closing public comment.**

At this time, public comment will be taken on those items that are within the jurisdiction and control of the Regional Transportation Commission.

### **APPROVAL OF AGENDA**

For possible action. Approval of the proposed agenda. The Regional Transportation Commission reserves the right to take items in a different order to accomplish business in the most efficient manner, to combine two or more agenda items for consideration, and to remove items from the agenda or delay discussion relating to items on the agenda.

### **APPROVAL OF PREVIOUS MINUTES**

For possible action. Discussion to approve the draft minutes of the Regional Transportation Commission.

1. For Possible Corrective Action. Approve the previous minutes from the April 10, 2024 meeting. (Jon Erb)

### **ADMINISTRATIVE AGENDA**

The Chairman will read the agenda title into the public record and will have the discretion to determine how the item will be presented. The timing for agenda items is approximate unless otherwise indicated for a specific item. Agenda items may be considered ahead of or after the schedule indicated by this agenda. Public comment will be taken on items that are identified for possible action.

1. For Possible Corrective Action. Discussion to authorize and ratify Chairman Ken Miller's July 25, 2024 signature on a construction contract in the amount of \$611,007 with Sierra Nevada Construction, Inc. for the 2024 Douglas County Road Seal Project, which was previously budgeted in Fiscal Year 2024-2025 and authorize the County Manager or Public Works Director to approve change orders up to 10% of the contract amount. (Josh Nordloh)
2. For Possible Corrective Action. Discussion to approve the transfer of \$1,200,000 of RTC 430 reserved funds from the US50 Revitalization Reserves as follows:
  - (1) \$800,000 into Muller Parkway, Project No. 20R06; and
  - (2) \$400,000 into Justice Center, Project No. 23B01, for turn lane enhancements. (Jon Erb)
3. For Possible Corrective Action. Discussion to authorize and ratify the Public Works Director's signature on Amendment No. 3 to the Muller Parkway Professional Design

Services Contract with CA-Group. The Amendment incorporates additional scope of work, to revise roadway design elements, and increases the total contract price by an amount of \$52,424, for a new total contract amount of \$1,484,000.

4. For Possible Corrective Action. Discussion to approve an amendment to the Muller Parkway construction contract with Qualcon Contractors Inc., to include the Alternate Bid (phase 2), in the amount \$4,979,472, for a project total of \$11,585,445.50; and authorize the County Manager to sign any required documents and to approve change orders up to 10% of the total contract amount. (Jon Erb)

#### **CLOSING PUBLIC COMMENT (No Action)**

At this time, public comment will be taken on those items that are within the jurisdiction and control of the Regional Transportation Commission or those agenda items where public comment has not already been taken.

#### **ADJOURNMENT**



**REGIONAL TRANSPORTATION COMMISSION AGENDA ITEM  
COVER PAGE**

**MEETING DATE:** August 2, 2024

**TIME REQUIRED:**

**AGENDA:** ADMINISTRATIVE AGENDA

**TITLE:**

For Possible Corrective Action. Discussion to approve an amendment to the Muller Parkway construction contract with Qualcon Contractors Inc., to include the Alternate Bid (phase 2), in the amount \$4,979,472, for a project total of \$11,585,445.50; and authorize the County Manager to sign any required documents and to approve change orders up to 10% of the total contract amount. (Jon Erb)

**RECOMMENDED MOTION:**

Approve an amendment to the Muller Parkway construction contract with Qualcon Contractors Inc., to include the Alternate Bid (phase 2), as presented; and authorize the County Manager to sign any required documents and to approve change orders up to 10% of the total contract amount.

**FINANCIAL IMPACT:**

Capital Projects - RTC Fund 430-421.562.000 Project number 20R06.

**BACKGROUND:**

This first phase (Phase 1A) of construction will take place between Buckeye Road and the Ashland Park housing development border north of Toler Lane. The Phase 1A section was approved by the RTC Board on April 10, 2024, in the amount of \$6,605,973.50.

The Alternate Bid/Phase 2 of the contract consist of the section from the Buckeye Road roundabout to the northwestern property line of the Park Ranch Holdings property. The cost for the Alternate Bid is \$4,979,472.00.

The County advertised for competitive bids for the construction on March 6, 2024. The bids closed at 2:00 p.m. local time on Monday April 1, 2024, with the bid opening immediately after close of bids. Qualcon was the lowest responsive bidder for both Phase 1 and Phase 2. The following is a listing of the total bids.

Qualcon Construction: \$11,585,445.50

Q&D Construction: \$13,424,710.00

Sierra Nevada Construction: \$13,936,007.00

Granite Construction: \$16,207,206.00

Engineers Estimate: \$10,566,520.25

**ATTACHMENTS:**

[\\_Qualcon\\_Contract\\_Amendment\\_-\\_EJCDC.docx](#)

[Bid Opening Bid Tabulation Sheet.pdf](#)

[00 73 46.01 - Northern Nevada Rural Region 2024.pdf](#)

AMENDMENT TO  
**AGREEMENT**  
BETWEEN OWNER AND CONTRACTOR FOR  
CONSTRUCTION CONTRACT (STIPULATED PRICE)

AMENDMENT TO  
AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Amendment ("Amendment 1") pertains to a Contract between the Douglas County Regional Transportation Commission ("Owner") and Qualcon Contractors, Inc. ("Contractor"), which is recorded with the Douglas County Recorder as Document Number 2024-1007365 ("Contract" or "Agreement").

Owner and Contractor hereby agree to the amendments of Agreement set forth below. Except as specifically set forth herein, all terms of the Agreement remain in full force and effect.

**ARTICLE 1 – WORK**

Paragraph 1.01 of the Contract *shall be deleted and replaced with* the following paragraph:

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Muller Parkway Improvements, Phase 1 and Phase 2.

**ARTICLE 2 – THE PROJECT**

Paragraph 2.01 of the Contract *shall be deleted and replaced with* the following paragraph

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Muller Parkway Improvements, Phase 1 and Phase 2.

**ARTICLE 3 – ENGINEER – NO CHANGE**

**ARTICLE 4 – CONTRACT TIMES**

Paragraph 4.02 of the Contract *shall be deleted and replaced with* the following paragraph

4.02 *Contract Times: Dates & Days*

- A. If the Owner awards both the Base bid (also referred to as "Phase 1") and bid alternate (also referred to as "Phase 2"), then the following timing will apply.
1. The Work required to complete the Base Bid (Phase 1) will be substantially completed on or before Sunday, August 31, 2025.
  2. The Work required to complete the Alternate Bid (Phase 2) shall NOT commence until January 1, 2025, unless Owner issues an earlier notice to proceed pertaining to Phase 2. The work required to complete the Alternate Bid (Phase 2) will be substantially completed on or before August 31, 2025.
  3. All Work will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before September 30, 2025. In the event owner deletes the work pertaining to Phase 2 from the scope of the project, then the work pertaining to Phase 1 will be completed and ready for final payment on the later of either (1) January 31, 2025 or (2) 30 days after Owner's issuance of the order deleting Phase 2.
- B. If the Owner awards only the Base Bid, then the work required to complete the project will be substantially completed on or before Sunday, August 31, 2025, and completed and ready

for final payment in accordance with Paragraph 15.06 of the General Conditions on or before Tuesday, September 30, 2025

## **ARTICLE 5 – CONTRACT PRICE**

Paragraph 5.01 of the Contract *shall be deleted and replaced with* the following paragraph

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Work, a total sum not to exceed Eleven Million, Five Hundred and Eighty-Five Thousand, Four Hundred and Forty-Five Dollars and Fifty Cents (\$11,585,445.50), at the prices stated in the Contractor's Bid.

1. All work for the base bid (Phase 1) will be performed for a total sum not to exceed \$6,605,973.50.
2. All work for the alternate bid (Phase 2) will be performed for a total sum not to exceed \$4,979,472.00.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

- B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of unit price work times the actual quantity of that item.
- C. The bid prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.
- D. Work shall include the following items:
1. Base Bid (Phase 1)
  2. Alternate Bid (Phase 2)

## **ARTICLE 6 – PAYMENT PROCEDURES – NO CHANGES**

## **ARTICLE 7 – INTEREST – NO CHANGES**

## **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS – NO CHANGES**

## **ARTICLE 9 – CONTRACT DOCUMENTS**

Paragraph 9.01, subparagraph A, subsection 1 shall be changed to state "The Agreement as amended by Amendment 1"

## **ARTICLE 10 – MISCELLANEOUS – NO CHANGES**



## **Douglas County Opposition to Preliminary Injunction**

1 CASE NO. 2023-CV-00085

2 DEPT. NO. I

**RECEIVED**

**AUG 23 2024**

**Douglas County  
District Court Clerk**

FILED

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REBECCA EDWARDS  
CLERK

BY *A. Wudm* DEPUTY

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS  
8

9 ASHLAND PARK, LLC, a Nevada limited  
10 liability company,

11 Plaintiff,

12 vs.

13 DOUGLAS COUNTY, a political subdivision  
14 of the State of Nevada

15 Defendant,

16 PARK RANCH HOLDINGS, LLC, a Nevada  
17 limited liability company,

18 Real Party in Interest.  
19  
20

**DOUGLAS COUNTY'S OPPOSITION TO  
PARK RANCH HOLDINGS, LLC's  
MOTION FOR A PRELIMINARY  
INJUNCTION AGAINST DOUGLAS  
COUNTY**

21 Defendant Douglas County ("Douglas County" or the "County"), through its  
22 undersigned counsel of record, opposes Park Ranch Holdings, LLC's ("Park Ranch")  
23 Motion for a Preliminary Injunction Against Douglas County (the "Motion").

24 This Opposition is made pursuant to Rule 65 of the Nevada Rules of Civil  
25 Procedure ("NRCP") and is based upon the attached Memorandum of Points and  
26 Authorities, the Declaration of Jeremy J. Hutchings ("Hutchings Decl.") (attached hereto  
27 as **Exhibit 1**), the Declaration of Jon Erb ("Erb Decl.") (attached hereto as **Exhibit 2**), the  
28 additional exhibits attached hereto, and the papers and pleadings on file with this Court.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Park Ranch is attempting to use a preliminary injunction to obtain rights that it does not have and that it did not bargain for in the Development Agreement. The County argues that the Development Agreement requires good faith cooperation. But when the County, in good faith, re-designs the plans in response to Park Ranch's objections, Park Ranch sues the County. Thus, Park Ranch has sued the County for *proposing* various options to Park intended to resolve issues that have arisen during the planning process for the construction of Muller Parkway. The irony of Park Ranch's Motion is self-evident.

Indeed, Park Ranch accuses the County of not acting in good faith. But Park Ranch's entire Motion rests on its attempt to impose new terms in the Development Agreement that simply do not exist and cannot fairly be interposed therein. Worse, Park Ranch has sued the County because the County has *proposed* different solutions for addressing the floodwater on a portion of Muller Parkway in a response to the concerns Park Ranch had raised and in a good faith effort to work with Park Ranch to address those concerns. Likewise, Park Ranch has sued the County for proposing plans that show encroachment on Park Ranch's property even though those plans are not finalized and even though the County has offered to pay Park Ranch fair market value for those portions. Disingenuous is an understatement.

Park Ranch asks this Court to enjoin another branch of government from proceeding with an important transportation infrastructure project because of *potential future* drainage issues. Specifically, Park Ranch asks this Honorable Court to prevent the County from proceeding with the construction contracts it has already awarded because the County has *proposed plans* that do not mitigate *the already existing floodwater* on the property on which Park Ranch intends to build a multi-million-dollar subdivision. But the Development Agreement, as amended, does not require the County to construct drainage infrastructure to mitigate the already existing floodwater problems

1 on Park Ranch's property. Likewise, the Development Agreement does not give Park  
2 Ranch veto power or final right of approval of the County's construction plans.

3 Not only does the Development Agreement not impose any obligation on the  
4 County to construct the drainage infrastructure that Park Ranch wants or approves of, but  
5 when the County prepared proposed plans that would have diverted the existing  
6 floodwater to the north (thereby protecting the Park Ranch subdivision property from  
7 flooding), Park Ranch rejected the plans because they resulted in an increase in  
8 floodwater on minimal areas of Park Ranch's agricultural property. The only way that  
9 Park Ranch would accept this proposal is if the County agreed to purchase all of Park  
10 Ranch's agricultural land—and for only \$15,000,000 at that. It is Park Ranch that has not  
11 acted in good faith and that has impeded the County's efforts to perform.

12 Because Park Ranch has objected to the County's plans and proposal to pay Park  
13 Ranch fair market value for the minimal portions of Park Ranch's agricultural land that  
14 would be "adversely impacted" by the diversion of water, Douglas County has proposed  
15 a new solution to simply construct Muller Parkway at grade (which plans are not even  
16 finalized), so that there is no "adverse impact" as defined by the Code. The County is  
17 entitled to construct Muller Parkway so that existing flood conditions remain the same.

18 Douglas County has also been in the process of revising its plans so that the  
19 roadway would encroach as little as possible on Park Ranch's property. Douglas County  
20 has tried to work with Park Ranch in good faith on the acquisition of additional, minimal  
21 portions of Park Ranch's property. The County has always informed Park Ranch that it  
22 would pay for any property encroached thereon. Nevertheless, Park Ranch has sued the  
23 County, claiming that the County's *proposed plans* show improper encroachment without  
24 payment.

25 Park Ranch's claims in this case rely on its self-serving interpretation of the  
26 Development Agreement, which is inconsistent with the plain language therein. As a  
27 result, Park Ranch cannot establish a likelihood of success on the merits or irreparable  
28 harm. Accordingly, the Motion must be denied.

## II. RELEVANT FACTUAL BACKGROUND

The following timeline demonstrates the significant efforts the County has undertaken to comply with the Development Agreement, to cooperate in good faith with Park Ranch, and to move forward with construction of Muller Parkway. This background also illustrates Park Ranch's changing positions regarding its agreement with the County's design plans, its agreement to allow floodwater to enter its property, and its decision to construct Muller Parkway. Ultimately, the factual background shows that the County has acted in good faith while Park Ranch has done the opposite.

### A. The Development Agreement.

On December 3, 2019, the County and Park Ranch entered the Development Agreement, which is attached hereto as **Exhibit 3**.<sup>1</sup> The Development Agreement allows Park Ranch to develop certain portions of its property as a 2,500 dwelling unit residential subdivision. *Id.* at p. 2. The Development Agreement sets forth certain obligations of the parties. Park Ranch's background facts, arguments, and analysis in the Motion are based on its unreasonable and self-serving interpretation of the plain language of the Development Agreement. However, the plain language of the contract is clear, and this Court should reject Park Ranch's attempt to rewrite the Development Agreement to fit its narrative in the Motion.

### B. The County's Efforts to Proceed with Construction of Muller Parkway.

After entering the Development Agreement, the County obtained numerous analyses and studies. Erb Decl., ¶5. In early 2020, the County engaged in efforts to obtain federal grants for Muller Parkway construction. *Id.* at ¶6. The County engaged an engineering firm (FARR West Engineering) to prepare the preliminary Muller Parkway plans in the spring of 2020 to use in conjunction with federal grant applications. *Id.* FARR West Engineering was hired by the County to submit for a federal Raise Grant. *Id.*

Throughout 2020-2021, County staff coordinated efforts to obtain the resources,

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<sup>1</sup> All Exhibits referenced herein are authenticated by the Declaration of A.J. Hames, which is attached hereto as **Exhibit 9**.



1 studies, and preliminary engineering plans. *Id.* at ¶7. The Regional Transportation  
2 Commission (“RTC”) chairperson executed a contract with an engineering and  
3 construction management firm, CA Group, Inc. (“CA Group”) on December 30, 2020. *Id.*

4 In March 2021, CA Group began holding regular coordination meetings to work on  
5 the plans for Muller Parkway. *Id.* at ¶8. These meetings included, among others, Park  
6 Ranch and the County. *Id.* at ¶9.

7 In April 2021, the County submitted a 15% complete Muller Plan to the County’s  
8 engineering department. *Id.* at ¶10. Thereafter, County Staff began coordinating with JE  
9 Fuller on drainage requirements for Muller Parkway. *Id.*

10 In May 2021, the County’s plans were 30% completed and were submitted to the  
11 County’s engineering department. *Id.* at ¶11. JE Fuller also developed a 30% completed  
12 drainage report. *Id.* In July 2021, the RTC approved a pre-construction portion of a  
13 Construction Manager at Risk (“CMAR”) contract with a third-party, Ames Construction.

14 In the fall of 2021, the CA Group began coordinating with Minden Gardnerville  
15 Sanitation District for sewer sleeve locations. *Id.* at ¶12. By February 2022, the County’s  
16 plans were 60% completed and submitted to the County’s engineering department. *Id.*  
17 at ¶12. By May 2022, the County’s plans were 90% completed and submitted to the  
18 County’s engineering department. *Id.*

19 In May 2023, the Conditional Letter of Map Revision (CLOMR) for the Federal  
20 Emergency Management Agency (FEMA) (MT-1) was signed by the Community  
21 Development Director. *Id.* at ¶14. In July 2023, FEMA confirmed receipt of JE Fuller’s  
22 CLOMR submission (case #23-09-0865). *Id.*

23 The County made this initial CLOMR application to FEMA in May 2023, though the  
24 improvement plans were not 100% complete, because FEMA can take anywhere from 6-  
25 18 months to give final approval for plans. Hutchings Decl., ¶4. As expected, in July  
26 2023, FEMA requested additional information from the County, which the County  
27 provided in October 2023. *Id.* Park argues that the plans submitted to FEMA were  
28 “flawed” and “deficient”. The County’s staff and engineering department disagree.

1 It is expected that FEMA will continuously seek more information, make comments,  
2 and request revisions to plans either formally or informally. *Id.* at ¶6. FEMA is an agency  
3 qualified to review plans to identify any issues. The County continues to work with FEMA  
4 on approval of its latest set of plans. *Id.*

5 **C. The County's Proposal to Divert Water onto Park Ranch's Agricultural**  
6 **Lands was Accepted and Approved by Park Ranch.**

7 Park Ranch conveyed one of its parcels (APN 1320-34-002-001) to Plaintiff  
8 Ashland Park on July 17, 2020. Motion, 4. As part of that conveyance, Park Ranch as  
9 seller and Ashland Park as buyer agreed as follows: "If necessary, Seller [Park Ranch]  
10 shall allow the buyer [Ashland Park] to divert water from subject property onto adjacent  
11 Park Ranch Holdings, LLC properties in an amount necessary to satisfy tentative map  
12 requirements and receive approved final map." **Exhibit 4** (Addendum #1 to Offer and  
13 Acceptance between Ashland Park and Park Ranch).

14 When Ashland Park submitted its tentative map application, Ashland Park and its  
15 engineer represented to the County that Ashland Park had obtained permission from Park  
16 Ranch to move floodwaters on to the Park Ranch's land near the Ashland Park property.  
17 Hutchings Decl., ¶7. Those representations were consistent with "Addendum #1" to the  
18 "Offer & Acceptance" between Park Ranch and Ashland Park. See **Exhibit 4**.

19 The County relied on that agreement and permitted the plans that would elevate  
20 the southern or "Ashland Segment" of Muller Parkway above grade so that the road would  
21 act as a levy and divert the *existing* floodwater that currently flows to Ashland Park's  
22 subdivision property to Park Ranch's lands not intended for residential development.  
23 Hutchings Decl., ¶7. This would have removed Ashland Park from the primary floodplain  
24 and allowed the division of land to occur as contemplated by the tentative subdivision  
25 map. *Id.*

26 In October 2022, Park Ranch confirmed its understanding that the County was  
27 close to completing 100% of the design for Muller Parkway and stated that it "is entitled  
28 to exercise its rights to construct Muller Parkway as described in Section 6.1 of the  
Development Agreement and illustrated in Exhibit E." Ex. 11 to Motion. The County met

1 with Park Ranch to discuss the plans, intentions for construction, and to coordinate efforts  
2 going forward. See Ex. 12 to Motion. While Park Ranch refers to the County's  
3 representations as "false", the reality is that this is a major project. All of the County's  
4 actions, including the exhibits attached to the Motion, show that the County has  
5 continually made efforts to obtain funding for the project, to work with Park Ranch, to  
6 incorporate Park Ranch's changes into the construction plans, and to appropriately  
7 address flooding issues.

8 In July 2023, Park Ranch sent a letter to the County stating again that, pursuant to  
9 Section 6.1 of the Development Agreement, Park Ranch intended to construct Muller  
10 Parkway. See **Exhibit 5** (July 17, 2023, letter from Park Ranch's counsel to Douglas  
11 County). Therein, Park Ranch stated that it would "construct the section of Muller  
12 Parkway that is the County's obligation – excluding the Ashland Park segment – in  
13 accordance with County design plans and as required by the Development Agreement."  
14 *Id.* at 3. In August 2023, the County met with Park Ranch and confirmed that Park Ranch  
15 would build Muller Parkway. At this time, Park Ranch was aware that the County's  
16 proposed plans included the diversion of certain floodwater to Park Ranch's agricultural  
17 land and other land not intended for residential development. Moreover, Park Ranch was  
18 aware that the proposed plans showed some encroachment on Park Ranch's property.

19 To be sure, the County prepared a near final version of the Muller Plans in October  
20 2023 and provided them to Park Ranch, which had not taken any steps toward preparing  
21 its own plans for Muller Parkway. Park Ranch then utilized those plans when it applied  
22 for a Site Improvement Plan ("SIP") for the construction of Muller Parkway. See **Exhibit**  
23 **6** (SIP Application). By relying on those plans for the SIP, Park Ranch adopted and  
24 approved of them.

25 **D. Park Ranch Reneges on Its Agreement to Allow Diversion of Floodwater**  
26 **onto Its Agricultural Land and Withdraws Its Application for the SIP,**  
27 **which Adopted and Relied on the Plans Allowing Such Diversion.**

28 On February 14, 2024, Park Ranch informed the County that it could not complete  
construction of Muller Parkway in a timely manner, then simultaneously demanded that

1 the County do so. Ex. 19 to Motion. Park Ranch then objected to the County's proposed  
2 plans to complete the construction, complaining that the plans diverted floodwater onto  
3 Park Ranch's agricultural land and that portions of the fill needed to elevate the road  
4 would encroach on Park Ranch property. Hutchings Decl., ¶8. Park Ranch asserted that  
5 it was unwilling to allow the County to encroach on even "an inch" of land and demanded  
6 that the road be re-designed. Park Ranch also asserted that it would allow the diversion  
7 of floodwater onto Park Ranch's agricultural land only if the County purchased *all* of Park  
8 Ranch's agricultural land *for approximately \$15,000,000. Id.*

9 The County obviously could not concede to such a ridiculous demand, but the  
10 County did begin the process of revising its plans and submitting those revisions to FEMA.  
11 *Id.* at ¶10. Under the new proposed set of plans, which are still being developed, the  
12 Ashland Segment of Muller Parkway will be built at grade level, which will allow certain  
13 floodwater from Pine Nut Creek to overtop the road and proceed in its natural course, as  
14 it has done historically. *Id.* The County has not yet received those final plans from its  
15 engineer. *Id.*

16 Contrary to Park Ranch's representations to this Court, allowing these sections to  
17 overtop is allowed by the Development Agreement and the Code.

18 First, building this segment of Muller Parkway along Ashland Park at grade level  
19 will not increase the flooding hazard that currently flows onto the Park Ranch property.  
20 Hutchings Decl., ¶11. Rather, the water will continue to flow as it does today. *Id.*  
21 Because there is no increase in the flow of water, because the depth of water will not  
22 increase by a foot, and because the location of the flow is not being changed, there is no  
23 "adverse impact" under DCCDC § 20.50.080. *Id.* And further, there is no need for a  
24 CLOMR application through FEMA. *Id.*

25 Second, prior to the Development Agreement being entered, Muller Parkway's  
26 designation as an emergency access route was changed in Douglas County's  
27 Transportation Plan. Hutchings Decl., ¶10. Park Ranch's arguments that Muller Parkway  
28 cannot overtop because that would prevent it from being designated an emergency

1 access route are irrelevant. It has already been decided that Muller Parkway is not a  
2 designated emergency access route. Therefore, it can overtop. And indeed, Muller  
3 Parkway as it exists today to the south of Toler Lane overtops with flooding. Hutchings  
4 *Id.*

5 Third, the Development Agreement does not require the County to build the  
6 drainage infrastructure that Park Ranch wants. While the Development Agreement  
7 references the County's intent to construct drainage infrastructure, there is no obligation  
8 for the County to construct the exact drainage that Park Ranch selects. Further, the cost  
9 of the drainage infrastructure that Park Ranch is demanding would increase the cost of  
10 construction of Muller Parkway from approximately \$11,000,000 to approximately  
11 \$20,000,000. Ex. 20 to Motion, p. 3. There is nothing in the Development Agreement  
12 that imposes such an expensive obligation on the County.

13 The drainage infrastructure that Park Ranch demands is also inconsistent with the  
14 County's current efforts to mitigate flooding *before* it reaches the proposed Muller  
15 Parkway. Hutchings Decl., ¶12. The County has taken steps to acquire three parcels of  
16 land to provide upstream storage to mitigate flood flows from the Pinenut Creek. *Id.* The  
17 County has purchased a 19-acre parcel for future flood control basins at Redhawk Lane  
18 (the "Redhawk Parcel"). *Id.* The County also currently owns two other parcels referred  
19 to as the "Mel and Myers' property" upon which the County is currently under contract for  
20 a final design of flood control basins. *Id.* The County has also obtained a letter of intent  
21 from the owner of the neighboring Den-Mar parcel to sell that parcel to the County for  
22 flood control, and the County is working on negotiating the acquisition of the neighboring  
23 Syphus Trust parcel for additional flood control. *Id.* The County has recently adopted a  
24 Stormwater Master Plan, which details the County's mitigation efforts. *See id.*

25 For the section of Muller Parkway that begins at the northern end of the Ashland  
26 Section and runs north to Buckeye Road (the "Middle Section"), the County has spent  
27 considerable time and money redesigning the road so that it will not encroach upon Park  
28 Ranch Property. *Id.* at ¶13. Since that section is not within a primary floodplain, the



1 County is not obligated to obtain any additional permits from FEMA. *Id.*

2 The section north of Buckeye Road (the “Northern Section”) is within the floodplain  
3 and will, upon construction, push certain floodwaters onto agricultural fields owned by  
4 Park Ranch under the current design. *Id.* at ¶14. Recognizing this potential impact to  
5 Park Ranch’s property, Douglas County has also offered to purchase drainage  
6 easements for those pieces of property that will be adversely impacted by the increase in  
7 floodwater and small areas of land along the Muller Parkway right of way needed for  
8 drainage purposes. Douglas County does not agree (and cannot agree) to purchase  
9 large tracts of Park Ranch property for the sum of \$15,000,000. *Id.*

10 Park Ranch’s expert, Mr. Cochran, reviewed outdated plans from September 2023.  
11 The County has changed those plans based on Park Ranch’s demands. Hutchings Decl.,  
12 ¶15. At Park Ranch’s insistence, the County is already revising those plans and continues  
13 to work with FEMA and other necessary agencies and its consultants to finalize the plans  
14 and receive all necessary approvals. *Id.* Meanwhile, the County intends to proceed with  
15 construction of those redesigned pieces that will not need FEMA approval. *Id.*  
16 Specifically, the Ashland Section, which will be constructed at grade and will not impact  
17 existing flood conditions, and the Middle Section, which is not being constructed in a  
18 floodplain. *Id.* The County has also prepared feasibility studies to document the effect of  
19 constructing a flood control basin on the Buckeye Creek that would mitigate flooding as  
20 well. *Id.*

21 Notwithstanding, Park Ranch has now sued the County for preparing proposed  
22 plans that Park Ranch does not like (even though those plans are already being revised  
23 at the insistence of Park Ranch). Park Ranch’s claims will fail. Therefore, Park Ranch  
24 cannot establish a likelihood of success on the merits, and the Motion must be denied.

### 25 **III. STANDARD OF REVIEW**

26 This Court has broad discretion to deny a request for a preliminary injunction.  
27 *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. 347, 350-51, 351 P.3d 720, 722 (2015).  
28 To obtain a preliminary injunction, Park Ranch must establish that “it has a reasonable

1 likelihood of success on the merits and that, absent a preliminary injunction, it will suffer  
2 irreparable harm for which compensatory damages would not suffice.” *Id.*

3 Likelihood of success on the merits is “the most important” factor, according to the  
4 Ninth Circuit, in determining whether to issue injunctive relief because “if a claimant fails  
5 to meet this ‘threshold inquiry,’ the court need not consider the other factors.” *Disney*  
6 *Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

7 Here, Park Ranch cannot demonstrate either element. Therefore, the Motion  
8 should be denied.

9 **IV. ARGUMENT**

10 **A. Park Ranch Does Not Have a Reasonable Likelihood of Success on the**  
11 **Merits.**

12 **i. Park Ranch Will Not Obtain the Declaratory Relief It Seeks.**

13 Park Ranch seeks a declaratory judgment that the County (1) “cannot begin  
14 construction of Muller Parkway without Park Ranch’s approval of the design criteria”; (2)  
15 “cannot encroach upon the Park Ranch Property without obtaining an additional right-of-  
16 way necessitated by external forces and paying full market value to Park Ranch for the  
17 affected parcels”, and (3) “must construct, install, and pay for drainage infrastructure for  
18 Muller Parkway that does not adversely impact the Park Ranch Property or deprive Park  
19 Ranch of its vested development rights”. Motion, 17.

20 Not one of these requests is found in the Development Agreement. Pursuant to  
21 NRS 30.040(1), a party to a written contract “may have determined any question of  
22 construction or validity arising under the . . . contract . . . and obtain a declaration of  
23 rights, status or other legal relations thereunder.” Thus, the plain language of the  
24 Development Agreement controls. Park Ranch’s requests for declaratory relief are  
25 patently improper as they are inconsistent with the Development Agreement. Therefore,  
26 the Motion must be denied.

27 ///

28 ///

1                   a. **Park Ranch Will Not Obtain a Declaratory Judgment that the**  
2                   **County Cannot Begin Construction of Muller Parkway Without Park**  
3                   **Ranch’s Approval of the Design Criteria.**

4                   Park Ranch seeks a declaratory judgment from this Court that the County “cannot  
5                   begin construction of Muller Parkway without Park Ranch’s approval of the design  
6                   criteria”. But Park Ranch does not have this approval right under the Development  
7                   Agreement. Therefore, Park Ranch’s request for declaratory relief on this issue must be  
8                   denied.

9                   “A contract is ambiguous if its terms may reasonably be interpreted in more than  
10                  one way, but ambiguity does not arise simply because the parties disagree on how to  
11                  interpret their contract.” *Nevada State Educ. Ass’n v. Clark Cnty. Educ. Ass’n*, 137 Nev.  
12                  76, 83-84, 482 P.3d 665, 673 (2021) (citing *Galardi v. Naples Polaris, LLC*, 129 Nev. 306,  
13                  309, 301 P.3d 364, 366 (2013)) (internal quotation marks omitted). “In particular, an  
14                  interpretation is not reasonable if it makes any contract provisions meaningless, or if it  
15                  leads to an absurd result.” *Id.* (citing *Washoe Cty. Sch. Dist. v. White*, 133 Nev. 301, 305,  
16                  396 P.3d 834, 839 (2017)).

17                  The Development Agreement provides that “[t]he Parties agree to cooperate in  
18                  good faith to finalize the design criteria prior to the commencement of any construction.”  
19                  **Exhibit 2** (Development Agreement), p. 5, § 5.3(a) (referred to herein as the “Cooperation  
20                  Clause for the Ashland Segment”). This sentence cannot be read in isolation. *Nevada*  
21                  *State Educ. Ass’n v. Clark Cnty. Educ. Ass’n*, 137 Nev. 76, 84, 482 P.3d 665, 673 (2021)  
22                  (rejecting an interpretation of a provision in a contract that may make sense when “[r]ead  
23                  in total isolation” but not when read in the context of the entire agreement).

24                  Rather, the Development Agreement has to “be read as a whole in order to give  
25                  reasonable and harmonious meaning to the entire [contract].” *Zurich Am. Ins. Co. v.*  
26                  *Ironshore Specialty Ins. Co.*, 137 Nev. 651, 654, 497 P.3d 625, 628 (2021).<sup>2</sup>

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27                  <sup>2</sup> While *Zurich* involved the interpretation of an insurance policy, the Court explained that  
28                  “insurance policies [are] treated like other contracts, and thus, legal principles applicable  
                to contracts generally are applicable to insurance policies.” *Zurich Am. Ins. Co. v.*

1 The Development Agreement identifies distinct segments of Muller Parkway: (1)  
2 the northern section, which is north of Buckeye, inside the floodplain (the “Northern  
3 Segment”) (§ 6.1); (2) the “middle” section, which is south of Buckeye but north of  
4 Ashland, outside the floodplain; and (3) the southern or Ashland section (the “Ashland  
5 Segment”), which runs along the Ashland Park development and which spans 2,604  
6 linear feet. See § 5.3(a)).

7 Section 5.3(a) applies to the third section—the Ashland Segment. While Park  
8 Ranch focuses on the sentence requiring cooperation, it ignores the beginning of Section  
9 5.3(a), which illustrates that this provision only applies to the Ashland Segment. To be  
10 sure, the beginning of Section 5.3(a) states, in relevant part:

11 County shall construct two lanes of Muller Parkway within the deeded  
12 right-of-way across the Ashland Park Property identified on **Exhibit E** from  
13 the northern Ashland Park Property parcel boundary south to Toler Lane  
14 **for a total distance of approximately 2,604 linear feet.** Owner and  
15 County agree to equally share the costs and expenses of constructing **such**  
16 **two-lane segment of Muller Parkway across the Ashland Park Property**  
in accordance with or exceeding the specifications contained in the  
County’s Standard Detail for a 2 Lane Urban Arterial.

16 (Emphasis added). The entirety of Section 5.3(a) refers only to this 2,604 linear  
17 foot segment, which crosses Ashland Park’s property. There is no reference to the  
18 entirety of Muller Parkway, which refutes Park Ranch’s argument. See *generally id.*

19 Rather, each segment of Muller Parkway is addressed in a specific section of the  
20 Development Agreement. As noted above, Section 5.3(a) applies to the southern or  
21 Ashland segment. Section 6.1 applies to the northern section of Muller Parkway, which  
22 is a section spanning 12,691 linear feet. Section 6.1 does not require any cooperation to  
23 finalize the “design criteria”. Douglas County has continuously cooperated with Park  
24 Ranch on the design of Muller Parkway, and it will continue to do so in the future as an  
25 act of good faith, but Park Ranch has no contractual right to approve the final design of  
26

27  
28 

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*Ironshore Specialty Ins. Co.*, 137 Nev. 651, 654, 497 P.3d 625, 628 (2021) (alteration in  
original).

1 Douglas County's Road or dictate the type of drainage infrastructure Douglas County  
2 should put into place.

3 Park Ranch's argument is further flawed because it requires reading the term  
4 "design criteria" synonymously with "construction plans". But "design criteria" is a term of  
5 art with specific meaning in the context of the Development Agreement. Courts should  
6 refer to "[t]rade practice and custom" in interpreting contracts because they "illuminate  
7 the context for the parties' contract". *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 311,  
8 301 P.3d 364, 367 (2013) (citing *Metric Constructors, Inc. v. Nat'l Aeronautics & Space*  
9 *Admin.*, 169 F.3d 747, 752 (Fed.Cir.1999)).

10 Here, "design criteria" refers to a modification of the County's codified Design  
11 Criteria and Improvement Standards, a copy of which is attached hereto as **Exhibit 7**. As  
12 set forth in Section 5.3(a), Park Ranch agreed to split the cost of constructing the Ashland  
13 Segment "*in accordance with or exceeding the specifications contained in the County's*  
14 *Standard Detail for a 2 Lane Urban Arterial*". See *id.*

15 However, the parties acknowledged that the County may deviate from the County's  
16 Design Criteria and Improvement Standards if, among other things, the "County elect[s]  
17 to construct four lanes of Muller Parkway and/or receive federal funding involving grant  
18 requirements which deviate from County's standard design." See Section 5.3(a). The  
19 Cooperation Clause for the Ashland Segment is the immediately following sentence,  
20 providing that "[t]he Parties agree to cooperate in good faith to finalize the design criteria  
21 prior to the commencement of any construction." When reading these two sentences  
22 together, it is clear that the obligation to "cooperate in good faith to finalize the design  
23 criteria" only applies to the Ashland Segment for modifications to the County's standard  
24 design. See *Bldg. Energetix Corp. v. EHE, LP*, 129 Nev. 78, 85, 294 P.3d 1228, 1234  
25 (2013) (explaining that "[t]he doctrine of *noscitur a sociis* teaches that words are known  
26 by—acquire meaning from—the company they keep.") (internal quotation marks omitted).

27 Indeed, this entire provision is focused on (1) modifications to the County's Design  
28 Criteria and Improvement Standards, and (2) limiting Park Ranch's obligation to share in



1 the cost of any modifications to the County's Design Criteria and Improvement Standards.  
2 See *id.* Because Park Ranch only agreed to share in the cost of the construction of the  
3 Ashland Segment, the only logical interpretation of Section 5.3(a) is that the Cooperation  
4 Clause only applies to the Ashland Segment. The purpose of the Cooperation Clause is  
5 to allow Park Ranch to assess the modifications and impact on costs given that it did not  
6 agree to pay for modifications to the County's Design Criteria and Improvement  
7 Standards.

8 Further, when Park Ranch sold its land to Ashland Park, Ashland Park assumed  
9 the obligation to share in this cost. Therefore, even if there were an obligation to confer  
10 on the construction plans, that obligation would concern Ashland Park—not Park Ranch.

11 The cost issue is clearly the overriding concern in Section 5.3(a), and Park Ranch's  
12 attempt to expand this limited language to mean that the County cannot move forward  
13 with *any* construction of its road without Park Ranch's approval of *all construction plans*  
14 *for all of Muller Parkway* is ridiculous and absurd.

15 Indeed, in the next sentence, the parties agreed that

16 [n]otwithstanding *County's decision* to construct four lanes of Muller  
17 Parkway or to construct the road with enhanced design features County  
18 desires or which are required as a condition of receiving federal funding,  
19 *Owner's obligation shall be only to share in the costs of constructing two*  
20 *lanes of Muller Parkway meeting the County Standard Detail for a 2 Lane*  
21 *Urban Arterial in effect on the Effective Date.*

22 Section 5.3(a) (emphasis added).

23 Thus, the term “design criteria” in Section 5.3(a) refers to modifications to the  
24 County's Design Criteria and Improvement Standards regarding the Ashland Segment—  
25 not, as Park Ranch argues, all “construction plans” related to the construction of the  
26 entirety of Muller Parkway.

27 Park Ranch's interpretation that “design criteria” means the “construction plans”  
28 for all of Muller Parkway is absurd as it (1) is inconsistent with the plain language of the  
Development Agreement, (2) ignores the term “design criteria”, which has specialized  
meaning, and (3) ignores the surrounding sentences in Section 5.3(a), which are all

1 focused on Park Ranch's share in the cost of construction in accordance with the County's  
2 Design Criteria and Improvement Standards. Park Ranch's interpretation runs afoul of  
3 standard rules of contract interpretation and must be rejected. See, e.g., *Elk Point*  
4 *Country Club Homeowners' Ass'n, Inc. v. K.J. Brown, LLC*, 138 Nev. Adv. Op. 60, 515  
5 P.3d 837, 840 (2022) ("When interpreting a contract, we look[ ] to the language of the  
6 agreement and the surrounding circumstances") (internal quotation marks omitted)  
7 (alteration in original).

8 In this case, the County has elected to construct two paved lanes of Muller  
9 Parkway, leaving enough room so that in the future, the road cross section can be  
10 expanded to four lanes. Ashland Park approved of this plan when it submitted its  
11 application for an amended tentative map. That is all that is required. Moreover, even if  
12 Park Ranch's approval was necessary, Park Ranch agreed to this plan when it used those  
13 plans in its application for a Site Improvement Plan. See **Exhibit 6.**

14 Finally, even if there were a requirement that Park Ranch give final approval of the  
15 County's construction plans for the Ashland Segment, the County has unquestionably  
16 cooperated in good faith with both Ashland Park and Park Ranch.

17 "Good Faith" is defined in Black's Law Dictionary as: "A state of mind consisting in  
18 (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance  
19 of reasonable commercial standards of fair dealing in a given trade or business, or (4)  
20 absence of intent to defraud or to seek unconscionable advantage." (11th ed. 2019).  
21 Conversely, "Bad Faith" is defined as "[d]ishonesty of belief, purpose, or motive". *Id.*  
22 "Cooperate" is defined by *Merriam-Webster's Dictionary* as "to act or work with another  
23 or others".

24 At the time the Development Agreement was entered, the specific plans for Muller  
25 Parkway had not been completed. Therefore, at the time the Development Agreement  
26 was entered, it was impossible for the County and for Park Ranch to know exactly what  
27 the final design plans would entail because the necessary surveys and studies had not  
28 yet been conducted. Assuming, *arguendo*, that Section 5.3(a) requires good faith

1 cooperation in the preparation of plans, that would only require the County and Park  
2 Ranch to work together to identify issues and try to resolve them. This is the standard for  
3 all development projects because it is almost never known at the time of the development  
4 agreement what issues will eventually arise with traffic, drainage, and other  
5 improvements. For example, it is common that after a traffic study is performed, it is  
6 realized that an additional turn lane will be required. The party preparing the plans would  
7 necessarily consult with other impacted parties to accommodate that issue in the plans.

8 The County has unequivocally cooperated in good faith with Park Ranch to finalize  
9 the design criteria prior to the commencement of any construction. As is common with  
10 design plans, after certain studies were performed, issues arose that the County tried to  
11 work out with Park Ranch.

12 The County has simply prepared proposed plans with different solutions for issues  
13 that have arisen. Park Ranch first accepted and approved of them. **Exhibit 6** (SIP  
14 Application). Thereafter, Park Ranch rejected them, demanding the County to either buy  
15 its property for exorbitant amounts or expend millions of dollars to benefit Park Ranch's  
16 property. Each time Park Ranch has objected to the County's plans, the County has, in  
17 good faith, attempted to re-design the plans to appease Park. In fact, the County has not  
18 received the latest set of plans, which it had to have re-designed to limit as much as  
19 possible any encroachment onto Park Ranch's property because of his continued threats,  
20 demands, and litigious conduct. Park Ranch now has the audacity to assert that the  
21 County's attempts to work with Park Ranch and meet its ludicrous demands are somehow  
22 evidence of bad faith. Certainly, that is not true.

23 Particularly notable, Park Ranch has copied private citizens and Kurt Hildebrand  
24 of *The Record Courier* on its improper demand letters to the County to pressure the  
25 County to accede to its demands. See Ex. 19 to Motion, p. 7. Park Ranch's own  
26 breaches and its own failure to cooperate in good faith with the County demonstrates that  
27 it will not succeed on the merits of its claims.

28 Accordingly, even if Section 5.3(a) applied in the manner Park Ranch suggests,

1 the County has acted in good faith, and Park Ranch will not prevail on its declaratory relief  
2 claim.

3 **b. Park Ranch Will Not Obtain a Declaration Requiring the County to**  
4 **Construct and Install the Specific Drainage Structure Park Ranch**  
5 **Wants.**

6 Park Ranch argues that it “will successfully obtain a declaration that the County  
7 must construct and install drainage infrastructure that does not adversely impact the Park  
8 Ranch Property or deprive Park Ranch of its vested development rights.” Motion, 21.

9 The Park Ranch Property is in a floodplain. Therefore, it can flood. There is no  
10 obligation in the Development Agreement or the Douglas County Code for Douglas  
11 County to remove Park Ranch’s subdivision property from the floodplain. *See generally*  
12 *Development Agreement*. Park Ranch’s contention that it only dedicated land to the  
13 County in exchange for the County agreeing to construct the drainage facilities is not  
14 supported by the Development Agreement or dedication. In consideration of the  
15 dedication, Park Ranch received approval of a 2,500-unit residential subdivision. Park  
16 Ranch’s attempt to make it appear as though it has somehow not received what it  
17 bargained for should be rejected.

18 Park Ranch’s reliance on Section 11.2 of the Development Agreement is  
19 unavailing. Section 11.2 provides that it is an event of default if the County takes an  
20 action “which is not related to its health, safety or welfare powers, and which directly and  
21 substantially affects Owner’s rights under this Agreement or Owner’s ability to fully  
22 perform its obligations under this Agreement.” Park Ranch interprets this Section as  
23 imposing an affirmative obligation on the County to “construct and install drainage  
24 infrastructure that does not adversely impact the Park Ranch Property”. This is ridiculous.  
25 There is no requirement in the Development Agreement (or anywhere else) that requires  
26 the County to construct drainage infrastructure specifically for the benefit of Park Ranch.

27 Park Ranch’s position becomes even more disingenuous when viewed in the  
28 context of the County’s efforts to work with Park Ranch to divert existing floodwater from  
Park Ranch’s subdivision property. Because the Northern and Ashland Segments of

1 Muller Parkway are in a floodplain, the County has explored various options for  
2 construction in those areas. While Park Ranch may not like the options proposed by the  
3 County, that does not mean that they are inappropriate, that they are a breach of the  
4 Development Agreement, or that they are evidence of any bad faith action.

5 First, the County had proposed building the Northern Segment of Muller Parkway  
6 so that it would be elevated above existing grade because it had already approved  
7 Ashland Park's tentative map application, which showed the Ashland Segment being  
8 elevated above existing grade. This would have caused those Segments of Muller  
9 Parkway to act as a levy so that the floodwater would be redirected directly away from  
10 future Park Ranch subdivisions onto Park Ranch's agricultural land. Redirecting this  
11 water north would *protect* Park Ranch's interests by pulling the future subdivisions out of  
12 the floodplain and away from the *existing floodwater conditions* that would prevent or  
13 inhibit development of those property.

14 This idea of diverting floodwater away from residential development and onto  
15 agricultural land was not something the County came up with on its own. It was first  
16 proposed by Ashland Park when it submitted its tentative map application. Ashland Park  
17 and its engineer, ROA, represented to the County that Ashland Park had obtained  
18 permission from Park Ranch to move floodwaters on to the Park Ranch agricultural land.  
19 Those representations were consistent with "Addendum #1" to the "Offer & Acceptance"  
20 between Park Ranch and Ashland Park.

21 In Addendum #1, Park Ranch as seller and Ashland Park as buyer agreed as  
22 follows: "If necessary, Seller [Park Ranch] shall allow the buyer [Ashland Park] to divert  
23 water from subject property onto adjacent Park Ranch Holdings, LLC properties in an  
24 amount necessary to satisfy tentative map requirements and receive approved final map."

25 **Exhibit 4.** Thus, when Ashland Park represented to the County that the floodwater could  
26 be diverted onto Park Ranch's agricultural land as set forth in Addendum #1, the County  
27 relied on that agreement and approved Ashland's Park proposal to use the Ashland  
28 Segment of Muller Parkway to divert Pine Nut Creek floodwater to Park Ranch's



1 agricultural and non-development lands. This arrangement appeared to be a “win-win”  
2 situation for both Ashland Park and Park Ranch. Douglas County thus proposed that the  
3 Northern Section of Muller Parkway be constructed in a similar fashion – diverting flood  
4 water away from development land and toward agricultural land.

5 In fact, in October 2023, Park Ranch stated that it was going to construct Muller  
6 Parkway in accordance with those plans and Section 6.1 of the Development Agreement.  
7 When Park Ranch submitted its application for the SIP, the plans included in Park Ranch’s  
8 application showed this diversion of floodwater onto Park Ranch’s agricultural land.

9 **Exhibit 6.**

10 After accepting and approving of this plan, Park Ranch changed position and  
11 reneged on its agreement to allow Ashland Park to use the Ashland Segment of Muller to  
12 divert water from its property onto the Park Ranch agricultural land—*unless* the County  
13 agreed to buy the very drainage easement Park Ranch had already sold to Ashland Park  
14 when it sold the Ashland parcel. Park Ranch further demanded that the County purchase  
15 *all* of Park Ranch’s agricultural land north of the Northern Segment of Muller Parkway (not  
16 just an easement) to accommodate the increased flows from construction of the Northern  
17 Segment. According to Park Ranch, moving water off developable land and onto  
18 agricultural land will somehow result in an “adverse impact” as defined by DCCDC §  
19 20.50.080.

20 However, and as Park Ranch apparently concedes in the Motion, this option would  
21 only create an “adverse impact” on “some areas” of Park Ranch’s agricultural land  
22 because “[i]n some areas, this flooding will have a depth of two feet.” Motion 10, 20-21.  
23 Some areas of the Park Ranch agricultural land already flood up to one foot. Under this  
24 plan, a very minimal area would flood up to two feet, which is an adverse impact under  
25 DCCDC § 20.50.080. In good faith and in an effort to design the Northern Segment of  
26 Muller Parkway to protect Park Ranch’s future subdivision property, the County offered  
27 to pay fair market value for the adverse impact on those minimal areas (shown in red on  
28 the map at the end of the Technical Memorandum attached hereto as **Exhibit 8**) from

1 Park Ranch.

2 Park Ranch's response that the County has to buy all of Park Ranch's agricultural  
3 land (even though the vast majority would not be adversely impacted) for \$15,000,000  
4 made option 1 infeasible and impractical. It was also evidence that Park Ranch is the  
5 party acting in bad faith – using the Development Agreement as a means of coercing the  
6 County into purchasing Park Ranch land, even though such purchase was never  
7 contemplated in the Development Agreement.

8 Because Park Ranch was disinclined to accept any diversion of floodwater, the  
9 County proposed a second option. Under this second option, the County proposed  
10 constructing the Northern Segment of Muller Parkway at grade level, which would allow  
11 floodwater to overtop the road. This would not change the flow, depth, or area of existing  
12 floodwater. Thus, there would be no "adverse impact" from building the Northern  
13 Segment of Muller Parkway at grade level. Rather, the floodwater would continue to flow  
14 as it does now, which is not prohibited by the Development Agreement or County Code.

15 Moreover, building the Northern Segment of Muller Parkway at grade level would  
16 not trigger Section 11.2 of the Development Agreement because doing so would not  
17 "directly and substantially affect[ Park Ranch's] rights under th[e Development]  
18 Agreement." To the contrary, Park Ranch's rights would remain exactly the same as they  
19 are now. Park Ranch's reliance on Section 11.2 demonstrates the extraordinary efforts  
20 Park Ranch has undertaken to stretch the language in the Development Agreement  
21 beyond reason to impose obligations upon the County that were never bargained for  
22 therein. Park Ranch's interpretation of Section 11.2 is inconsistent with its plain language.  
23 Therefore, it is unreasonable and if accepted, would lead to the absurd result that the  
24 County has undefined and limitless affirmative obligations to protect Park Ranch's  
25 property *from existing conditions*—and at taxpayer expense. The Motion must be denied.

26 **c. Park Ranch Will Not Obtain a Declaration that the County Cannot**  
27 **Exercise its Eminent Domain Power.**

28 Park Ranch seeks a declaration from this Court that "the County cannot encroach  
upon Park Ranch Property without obtaining consent and paying full market value for an

1 additional right-of-way necessitated by external forces.” Motion, 22. Park Ranch’s  
2 interpretation of Section 5.1 is (again) unreasonable and would lead to absurd results.

3 The plain language of Section 5.1 states that the County will “negotiate in good  
4 faith for the acquisition of additional right-of-way necessitated by external requirements  
5 without the use of eminent domain proceedings”. However, the County did not waive the  
6 right to use its eminent domain powers to acquire additional land as the County deems  
7 necessary. See *id.* The County has and will continue to negotiate in good faith with Park  
8 Ranch.

9 But it is axiomatic that “[t]he right of eminent domain, that is, the right to take private  
10 property for public uses, appertains to every independent government.” *Schrader v. Third*  
11 *Jud. Dist. Ct.*, 58 Nev. 188, 73 P.2d 493, 495 (1937). As such, “[i]t requires no  
12 constitutional recognition; it is an attribute of sovereignty. The clause found in the  
13 Constitutions of the several States providing for just compensation for property taken is a  
14 mere limitation upon the exercise of the right.” *Id.* The County agreed to negotiate in  
15 good faith to acquire additional land as necessitated by the County receiving federal grant  
16 monies. The County did not otherwise limit its right to take property for public uses.

17 Therefore, Park Ranch will not obtain a declaration that “the County cannot  
18 encroach upon Park Ranch Property without obtaining consent and paying full market  
19 value for an additional right-of-way necessitated by external forces.” The Motion must be  
20 denied as Park Ranch cannot establish a likelihood of success on the declaratory relief  
21 claim.

22 **ii. Park Ranch Will Not Prevail on its Breach of Contract Claim.**

23 Park Ranch contends that it will prevail on its breach of contract claim because  
24 “[t]here is also no meaningful dispute that Park Ranch has fully performed under the  
25 Agreement” by completing the dedication and providing the easement for drainage  
26 culverts beneath Highway 88 in Minden, dedicating a trail easement, and deed-restricting  
27 the Klauber Ranch Property. Motion, 22. As shown above, Park Ranch has not  
28 cooperated with the County to implement the Agreement, which is a violation of Section

1 6.4 of the Development Agreement. Park Ranch has made unreasonable demands and  
2 continues to attempt to impose unreasonable obligations on the County that were never  
3 agreed to in the Development Agreement. By so doing, Park Ranch has not performed  
4 under the Development Agreement.

5 Further, Park Ranch seeks the same relief under its breach of contract claim as it  
6 does under its declaratory relief claim. Namely, Park Ranch argues that the County  
7 breached the Development Agreement by (1) “failing to cooperate in good faith to finalize  
8 the design plans and criteria prior to the commencement of construction,” (2) “attempting  
9 to adversely impact Park Ranch Property with floodwater,” and (3) “seeking to forcefully  
10 encroach on Park Ranch Property outside the right-of-way without any external need to  
11 justify such encroachments and without paying full market value for the impacted land.”  
12 Motion, 22.

13 As set forth above, these arguments are based on unreasonable, self-serving  
14 interpretations of the Development Agreement that are inconsistent with the contract’s  
15 plain language. The County has not breached the Development Agreement. Therefore,  
16 Park Ranch will not succeed on the breach of contract claim.

17 Even if Park Ranch could prove breach (it cannot), the Development Agreement  
18 does not allow for monetary damages. See Section 12.2. To try and manufacture  
19 damages under Section 12.2, Park Ranch argues that “[t]he County is obligated to avoid  
20 adversely impacting Park Ranch Property and must pay the fair market value for any  
21 encroachments.” Not only is this contention inconsistent with the plain language of the  
22 Development Agreement, but the County has simply prepared plans and attempted to  
23 work with Park Ranch in finalizing them. The County even hired an appraiser to perform  
24 an appraisal on the minimal portions of land that would have an adverse impact so that it  
25 could pay Park Ranch the fair market value of those minimal areas. When the County  
26 tries to negotiate in good faith and propose different options, Park Ranch sues the County.  
27 Because Park Ranch has refused to work with the County in good faith, the County is still  
28 in the process of redesigning the plans to avoid any encroachment on Park Ranch’s

1 property.

2 Because the design plans are not final, there can be no breach. Further, Park  
3 Ranch's arguments that the encroachment shown on the plans, alone, is sufficient to  
4 require just compensation for such land, that argument has been rejected by the Nevada  
5 Supreme Court. *See Sproul Homes of Nevada v. State ex rel. Dep't of Highways*, 96  
6 Nev. 441, 443, 611 P.2d 620, 621 (1980) ("It is well-established that the mere planning of  
7 a project is insufficient to constitute a taking for which an inverse condemnation action  
8 will lie."). Thus, Park Ranch's breach of contract claim—even if based on actual breaches  
9 of the terms of the contract—is not ripe because the plans are not finalized.<sup>3</sup> Accordingly,  
10 the Motion must be denied as Park Ranch will not prevail on its breach of contract claim.

11 **iii. Park Ranch Will Not Prevail on its Breach of the Implied Covenant**  
12 **of Good Faith and Fair Dealing Claim.**

13 Recognizing that Park Ranch's declaratory relief claim and breach of contract  
14 claim are not supported by the plain language of the Development Agreement, Park  
15 Ranch contends that "[e]ven if the County did not directly breach the express terms of the  
16 Development Agreement, the County nevertheless breached the implied covenant of  
17 good faith and fair dealing by acting contrary to the purpose of the Development  
18 Agreement." Motion, 24. According to Park Ranch, the County's actions "deprives [sic]  
19 Park Ranch . . . the ability to develop the Park Ranch Property for residential use." *Id.*  
20 This is blatantly false. The County has done nothing to prevent Park Ranch from  
21 developing its multi-million-dollar subdivision as contemplated by the Development  
22 Agreement.

23 In fact, the opposite is true. The County has attempted to implement a solution  
24 that would protect Park Ranch's subdivision from floodwater. But that solution would  
25 adversely impact a minimal portion of Park Ranch's *agricultural land*. In a further good

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26 <sup>3</sup>A case is ripe when "the degree to which the harm alleged by the party seeking review  
27 is sufficiently concrete, rather than remote or hypothetical, [and] yield[s] a justiciable  
28 controversy." *Herbst Gaming, Inc. v. Sec'y of State*, 122 Nev. 877, 887-88, 141 P.3d 1224,  
1230-31 (2006). Here, Park Ranch's purported damages are all hypothetical, and  
therefore not ripe, because no plans have been finalized.



1 faith cooperative effort, the County offered to pay fair market value for that minimal  
2 amount of land that would be adversely impacted. Park Ranch refused and asserted that  
3 the County had to purchase the entirety of Park Ranch's agricultural land for nearly  
4 \$15,000,000. As a result, the County could revise its plans to avoid any adverse impact  
5 to Park Ranch's property by bringing the road down to grade level, but doing so would  
6 leave the Park Ranch subdivisions within a flood plain. Park Ranch is unsatisfied with  
7 that option because it would have to implement its own flooding mitigation efforts to  
8 address the flooding *that already exists on its property*.

9 The County's good faith cannot be questioned. It is Park Ranch's that is glaringly  
10 absent. Therefore, Park Ranch will not prevail on its breach of the implied covenant of  
11 good faith and fair dealing claim.

12 **B. Park Ranch Has Not Established Irreparable Harm.**

13 Park Ranch contends that it will be irreparably harmed because "[t]he County's  
14 Proposed Plans fail to mitigate floodwater caused by the County's construction and the  
15 CLOMR application is based on false premises". Motion, 25. Park Ranch is in a flood  
16 plain. The County's plans do not increase the flow of water to Park Ranch's property, it  
17 moved it from one section of Park Ranch Property – which Park Ranch intends to develop  
18 – to an agricultural section of Park Ranch Property. This plan is consistent with the original  
19 agreement struck between Park Ranch and Ashland Park. Park Ranch now objects to  
20 this plan, so the County is in the process of redesigning the road and building up-stream  
21 improvements. Meanwhile, the County is proceeding with plans to build those sections  
22 that are outside the floodplain (i.e., the Middle Segment) or that will be built at grade (the  
23 Ashland Segment). The County will continue to cooperate with Park Ranch, but the  
24 County has not yet taken any action and does not plan to take any action that will cause  
25 floodwater to amass on Park Ranch lands without compensation. However, the County  
26 has no obligation to implement the specific drainage infrastructure that Park Ranch wants  
27 implemented for its future subdivision.

28 Furthermore, the County's plans (which, again, are not even finalized), are not

1 flawed or deficient. Hutchings Decl., ¶16. The Conditional Letter of Map Revision  
2 (CLOMR) process with the Federal Emergency Management Agency (FEMA) is iterative  
3 by nature. *Id.* An applicant makes a submission that is reviewed by FEMA and  
4 commented upon and then the applicant is obligated to revise and resubmit the  
5 application. Because FEMA review can take anywhere from 6-18 months, it is common  
6 practice that plans are submitted prior to being 100% finalized. *Id.*

7 For Park Ranch to state the application is fatally flawed is disingenuous at best.  
8 FEMA is certainly qualified to make that determination, and it has not done so. *Id.* at ¶17.  
9 Rather, FEMA requested more information, which the County has provided. *Id.* FEMA  
10 has requested that additional culverts be added to the drainage model. *Id.* The County  
11 has worked with FEMA to accomplish this goal. *Id.* FEMA agreed that JE Fuller can  
12 determine which culverts may be hydraulically significant and which are not. *Id.* Once  
13 that is determined, the hydraulically significant culverts will be added to the model and  
14 resubmitted to FEMA. *Id.* Again, this is the customary and normal process for FEMA  
15 submissions. *Id.* It would be quite extraordinary to have FEMA approve—without any  
16 comments—the first set of plans submitted. *Id.*

17 Notably, a CLOMR from FEMA is only required for the Northern Segment.<sup>4</sup> But  
18 the Middle Segment and the Ashland Segment are not being built in a floodplain, or are  
19 being built without any impact on the floodplain, respectively, which means there will not  
20 be a CLOMR for those segments. To the extent the Court believes there could be  
21 irreparable harm from the submission to FEMA, any injunction should be limited to the  
22 Northern Segment.

23 Finally, to the extent that Park Ranch claims irreparable harm from any  
24 encroachment shown on the County's proposed plans, such harm is obviously  
25 compensable with money damages (which the County has already offered to pay). See  
26 *Gilmore*, 131 Nev. at 353, 351 P.3d at 723 (2015) ("Irreparable harm is an injury for which

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27  
28 <sup>4</sup> Because the plans for the Southern Segment are being redesigned such that the road  
level is at grade, the impact to the floodplain is expected to be below the threshold that  
requires a FEMA permit.

compensatory damage is an inadequate remedy.”) (internal quotation marks omitted)). Therefore, Park Ranch has completely failed to carry its burden to establish that it will suffer irreparable harm absent injunctive relief. The Motion must be denied.

**C. The Balance of Hardships Requires Denying Injunctive Relief.**

In considering preliminary injunctions, courts also weigh the potential hardships to the parties and the public interest. *Univ. & Cmty. Col. Sys. of Nevada v. Nevadans for Sound Government*, 120 Nev. 712, 712, 100 P.3d 179 (2004). The “courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848 (9th Cir. 2017).

Park Ranch argues that the County will not suffer hardship if the injunction is granted because having to comply with the Development Agreement is not hardship. Motion, 27. But Park Ranch’s Motion seeks to force the County to comply with Park Ranch’s additional obligations that are *not* required by the Development Agreement. It cannot be denied that this would impose an unreasonable hardship on the County.

Notably, even if the Development Agreement actually required the things that Park Ranch seeks to impose upon the County by way of the Motion, the County has established that it has acted in good faith with Park Ranch in all aspects of the design process. Park Ranch completely ignores the fact that it accepted and approved of the County’s design plans when Park Ranch signed the Site Improvement Plan. It was Park Ranch who later rescinded that approval. Even still, the County attempted to work with Park Ranch by redesigning the plans to appease Park Ranch. But Park Ranch will not be satisfied unless the County implements the multi-million-dollar drainage project that Park Ranch wants constructed. This is not good faith.

The County has to construct Muller Parkway by December 2025. Enjoining the County from proceeding with construction at this juncture will halt any progress toward this construction and potentially lead to the County’s breach of the Development Agreement. This would not only cause great hardship to the County, but it would also be

1 inequitable as it would reward Park Ranch's continued efforts to impede the County's  
2 progress toward construction of Muller Parkway. The County also faces damages from  
3 its contractor who has been delayed in starting construction by Park Ranch rescinding  
4 the permit application.

5 The truth is that Park Ranch will not suffer any hardship because absent an  
6 injunction, the County will continue to follow the Development Agreement. Park Ranch's  
7 manufactured, self-serving interpretations of the Development Agreement do not create  
8 hardship. The Motion should be denied.

9 **D. The Public Interest Requires Denying the Injunction.**

10 Park Ranch's public interest analysis rests on hyperbole and intentionally  
11 misleading arguments. As explained above, Muller Parkway is not designated as an  
12 emergency access route. Therefore, it can be overtopped. Indeed, Muller Parkway as it  
13 currently exists today south of Toler Lane currently is flooded by the Pinenut Creek during  
14 the 1% storm event.

15 As set forth above, the County's new plans, which are still being finalized, do not  
16 change or increase the floodwater that currently exists. The County's plans do not render  
17 Muller Parkway incapable of being used as an emergency access route—the  
18 Transportation Plan already decided that.

19 The public interest favors imposing only those obligations bargained for and  
20 agreed upon by parties to a contract. Park Ranch's attempt to secure benefits and  
21 entitlements to which the County never agreed is directly contrary to the public interest.  
22 Therefore, the Motion should be denied.

23 **V. IF THIS COURT IS INCLINED TO GRANT THE MOTION, THE BOND SHOULD**  
24 **BE \$11,585,445.50.**

25 Pursuant to NRCP 65(c), "the court may issue a preliminary injunction or a  
26 temporary restraining order only if the movant gives security in an amount that the court  
27 considers proper to pay the costs and damages sustained by any party found to have  
28 been wrongfully enjoined or restrained." Therefore, if this Court determines that injunctive  
relief is warranted, it should require a bond in the amount of \$11,585,445.50.

1 This amount is justified because of the damages the County faces from being  
2 improperly enjoined. Enjoining the County exposes the County to potential liability under  
3 the construction contract. Therefore, the amount of the bond should, at a minimum, be  
4 \$11,585,445.50.

5 **VI. CONCLUSION**

6 Park Ranch has failed to carry its burden in seeking injunctive relief. Park Ranch's  
7 Motion does not seek to enforce the Development Agreement but instead asks this Court  
8 to impose obligations on the County that have never been agreed to by the parties.  
9 Accordingly, the County respectfully requests that this Court deny the Motion.

10 **AFFIRMATION:** The undersigned does hereby affirm that the preceding  
11 document and/or attachments do not contain the social security number of any person.

12 DATED this 23<sup>rd</sup> day of August, 2024.

13 ROBISON, SHARP, SULLIVAN, & BRUST

14 

15 \_\_\_\_\_  
16 Kent R. Robison, Esq. (#1167)

17 Hannah E. Winston, Esq. (#14520)

18 Russ J. Carr, Esq. (#15191)

19 Robison, Sharp, Sullivan & Brust

20 71 Washington Street

21 Reno, Nevada 89503



## **CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robison, Sharp, Sullivan and Brust, and that on this day, I served a true correct copy of the foregoing document, including exhibits thereto, by email to the parties at the email addresses below:

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Lucy C. Crow, Esq.  
Cassin T. Brown, Esq.  
Brittini A. Tanenbaum, Esq.  
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*Attorneys for Defendant Douglas County*

DATED this 23<sup>rd</sup> day of August, 2024.

/s/ Sydney Banks  
Employee of Robison, Sharp, Sullivan and Brust

### **EXHIBIT LIST**

Exhibit #	Description	Pages
Exhibit "1"	Declaration of Jeremy Hutchings	3
Exhibit "2"	Declaration of John Erb	4
Exhibit "3"	Development Agreement	48
Exhibit "4"	Addendum to Offer and Acceptance dated 6/11/2020	1
Exhibit "5"	Park Ranch Notice of Intent to Construct Muller Parkway	3
Exhibit "6"	Douglas County General Improvement Application	50
Exhibit "7"	Douglas County Design Criteria and Improvement Standards	315
Exhibit "8"	Muller Parkway Flow Increase Determination	4

**EXHIBIT “1”**

**EXHIBIT “1”**

1 CASE NO. 2023-CV-00085

2 DEPT. NO. I

3  
4  
5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS  
8

9 ASHLAND PARK, LLC, a Nevada limited  
10 liability company,

11 Plaintiff,

12 vs.

13 DOUGLAS COUNTY, a political subdivision  
14 of the State of Nevada

15 Defendant,

16 PARK RANCH HOLDINGS, LLC, a Nevada  
17 limited liability company,

18 Real Party in Interest.  
19  
20

DECLARATION OF JEREMY HUTCHINGS IN SUPPORT OF DOUGLAS COUNTY'S OPPOSITION TO PARK RANCH HOLDINGS, LLC's MOTION FOR A PRELIMINARY INJUNCTION AGAINST DOUGLAS COUNTY

21 I, Jeremy Hutchings, under penalty of perjury, hereby declare as follows:

22 1. I make this Declaration in support of Douglas County's Opposition to Park  
23 Ranch Holdings, LLC's Motion for a Preliminary Injunction Against Douglas County.

24 2. I have personal knowledge of the information stated herein, and if called  
25 upon, I am competent to testify to the matters herein.

26 3. I am currently a county engineer for the Douglas County Community  
27 Development Engineering Department. I have been involved in the County's efforts to  
28

1 prepare plans and submissions for the construction of Muller Parkway in accordance with  
2 the Development Agreement and applicable County Code.

3 4. The County made its initial CLOMR application, though the improvement  
4 plans were not 100% complete, to FEMA in May 2023 because FEMA can take anywhere  
5 from 6-18 months to give final approval for plans. As expected, in July 2023, FEMA  
6 requested additional information from the County, which the County provided in October  
7 2023. Park argues that the plans submitted to FEMA were "flawed" and "deficient". I  
8 disagree with that assertion.

9 5. FEMA provided a second review around April 2024, and the County  
10 provided a submittal responding to FEMA's comments in June 2024. Since that time, the  
11 County has communicated with FEMA regarding the plans.

12 6. It is expected that FEMA will continue to seek more information, make  
13 comments, and request revisions to plans either formally or informally. The County  
14 continues to work with FEMA on approval of its latest set of plans and to obtain final  
15 approval.

16 7. When Ashland Park submitted its tentative map application, Ashland Park  
17 and its engineer represented to the County that Ashland Park had obtained permission  
18 from Park Ranch to move floodwaters on to the Park Ranch's land near the Ashland Park  
19 property. The County relied on that agreement and permitted the plans that would elevate  
20 the southern or "Ashland Segment" of Muller Parkway above grade so that the road would  
21 act as a levy and divert the *existing* floodwater that currently flows to Ashland Park's  
22 subdivision property to Park Ranch's lands not intended for residential development. This  
23 would have removed Ashland Park from the primary floodplain and allowed the division  
24 of land to occur as contemplated by the tentative subdivision map.

25 8. I began holding weekly meetings with the principal of Park Ranch, David  
26 Park ("Mr. Park"), and his wife, starting in approximately May 2024. During one of those  
27 weekly meetings, Mr. Park objected to the County's proposed plans, complaining that the  
28 plans diverted floodwater onto Park Ranch's agricultural land and that portions of the fill



1 needed to elevate the road would encroach on Park Ranch property. Mr. Park asserted  
2 that if the County diverted water onto Park Ranch agricultural land, then the County would  
3 have to buy all of the agricultural land for an estimated \$15,000,000. Park Ranch asserted  
4 that it was unwilling to allow the County to encroach on even "an inch" of land and  
5 demanded that the road be re-designed.

6 9. In response, the County did begin the process of revising its plans and  
7 submitting those revisions to FEMA. Under the new proposed set of plans, which are still  
8 being developed, the Ashland Segment of Muller Parkway would be built at grade level,  
9 which would allow certain floodwater from Pine Nut Creek to overtop the road and  
10 proceed in its natural course, as it has done historically. The County has not yet received  
11 those final plans from its engineer.

12 10. Prior to the Development Agreement being entered, Muller Parkway's  
13 designation as an emergency access route was changed in Douglas County's  
14 Transportation Plan. Therefore, Muller Parkway can overtop. Muller Parkway as it exists  
15 today to the south of Toler Lane overtops with flooding.

16 11. Building these segments of Muller Parkway along Ashland Park at grade  
17 level will not increase the flooding hazard that currently flows onto the Park Ranch  
18 property. Rather, the water will continue to flow as it does today. Because there is no  
19 increase in the flow of water, because the depth of water will not increase by a foot, and  
20 because the location of the flow is not being changed, there is no "adverse impact" under  
21 DCCDC § 20.50.080. Further, there is no need for CLOMR application through FEMA.

22 12. The drainage infrastructure that Park Ranch demands is also inconsistent  
23 with the County's current efforts to mitigate flooding *before* it reaches the proposed Muller  
24 Parkway. The County has taken steps to acquire three parcels of land to provide  
25 upstream storage to mitigate flood flows from the Pinenut Creek. The County has  
26 purchased a 19-acre parcel for future flood control basins at Redhawk Lane (the  
27 "Redhawk Parcel") and currently owns two other parcels referred to as the Mel and Myers  
28 property upon which the County is currently under contract for a final design of flood

1 control basins. The County has also obtained a letter of intent from the owner of the  
2 neighboring Den-Mar parcel to sell that parcel to the County for flood control, and the  
3 County is working on negotiating the acquisition of the neighboring Syphus Trust parcel  
4 for additional flood control. The County has recently adopted a Stormwater Master Plan,  
5 which details the County's mitigation efforts.

6 13. For the section of Muller Parkway that begins at the northern end of the  
7 Ashland Section and runs north to Buckeye Road (the "Middle Section"), the County has  
8 spent considerable time and money redesigning the road so that it will not encroach upon  
9 Park Ranch Property. Since that section is not within a primary floodplain, the County is  
10 not obligated to obtain any additional permits from FEMA.

11 14. The section north of Buckeye Road (the "Northern Section") is within the  
12 floodplain and will, upon construction, push certain floodwaters onto agricultural fields  
13 owned by Park Ranch under the current design. Recognizing this potential impact to Park  
14 Ranch's property, Douglas County has also offered to purchase drainage easements for  
15 those pieces of property that will be adversely impacted by the increase in floodwater and  
16 small areas of land along the Muller Parkway right of way needed for drainage purposes.  
17 Douglas County does not agree (and cannot agree) to purchase large tracts of Park  
18 Ranch property for the sum of \$15,000,000.

19 15. Park Ranch's expert, Mr. Cochran, reviewed outdated plans from  
20 September 2023. The County has changed those plans based on Park Ranch's  
21 demands. At Park Ranch's insistence, the County is already revising those plans and  
22 continues to work with FEMA and other necessary agencies and its consultants to finalize  
23 the plans and receive all necessary approvals. Meanwhile, the County intends to proceed  
24 with construction of those redesigned pieces that will not need FEMA approval.  
25 Specifically, the Ashland Section, which will be constructed at grade and will not impact  
26 existing flood conditions, and the Middle Section, which is not being constructed in a  
27 floodplain. The County has also prepared feasibility studies to document the effect of  
28 constructing a flood control basin on the Buckeye Creek that would mitigate flooding as

1 well.

2 16. The County's plans (which, again, are not even finalized), are not flawed or  
3 deficient. The Conditional Letter of Map Revision (CLOMR) process with the Federal  
4 Emergency Management Agency (FEMA) is iterative by nature. An applicant makes a  
5 submission that is reviewed by FEMA and commented upon and then the applicant is  
6 obligated to revise and resubmit the application. Because FEMA review can take  
7 anywhere from 6-18 months, it is common practice that a CLOMR application is submitted  
8 prior to being 100% finalized.

9 17. FEMA is certainly qualified to assess the plans, and it has not concluded  
10 that they are "fatally flawed". Rather, FEMA requested more information, which the  
11 County has provided. FEMA has requested that additional culverts be added to the  
12 drainage model. The County has worked with FEMA to accomplish this goal. FEMA  
13 agreed that JE Fuller can determine which culverts may be hydraulically significant and  
14 which are not. Once that is determined, the hydraulically significant culverts will be added  
15 to the model and resubmitted to FEMA. Again, this is the customary and normal process  
16 for FEMA submissions. It would be quite extraordinary to have FEMA approve—without  
17 any comments—the first set of plans submitted.

18 AFFIRMATION: The undersigned does hereby affirm that this document does not  
19 contain the social security number of any person.

20 DATED: This 23rd day of August, 2024.

21  
22   
23 JEREMY HUTCHINGS  
24  
25  
26  
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28

**EXHIBIT “2”**

**EXHIBIT “2”**

1 CASE NO. 2023-CV-00085

2 DEPT. NO. I

3  
4  
5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS  
8

9 ASHLAND PARK, LLC, a Nevada limited  
10 liability company,

11 Plaintiff,

12 vs.

13 DOUGLAS COUNTY, a political subdivision  
14 of the State of Nevada

15 Defendant,

16 PARK RANCH HOLDINGS, LLC, a Nevada  
17 limited liability company,

18 Real Party in Interest.  
19  
20

**DECLARATION OF JON ERB IN  
SUPPORT OF DOUGLAS COUNTY'S  
OPPOSITION TO PARK RANCH  
HOLDINGS, LLC's MOTION FOR A  
PRELIMINARY INJUNCTION AGAINST  
DOUGLAS COUNTY**

21 I, Jon Erb, under penalty of perjury, hereby declare as follows:

22 1. I make this Declaration in support of Douglas County's Opposition to Park  
23 Ranch Holdings, LLC's Motion for a Preliminary Injunction Against Douglas County.

24 2. I have personal knowledge of the information stated herein, and if called  
25 upon, I am competent to testify to the matters herein.

26 3. I am currently the Transportation Engineering Manager for Douglas County.

27 4. I was involved in the County's early efforts to proceed with construction of  
28 Muller parkway under the Development Agreement.



1           5.     After entering the Development Agreement, the County obtained numerous  
2 analyses and studies.

3           6.     In early 2020, the County engaged in efforts to obtain federal grants for  
4 Muller Parkway construction. The County engaged an engineering firm (FAR West  
5 Engineering) to prepare the preliminary Muller Parkway plans in the spring of 2020 to use  
6 in conjunction with federal grant applications. FAR West Engineering was hired by the  
7 County to submit for a federal Raise Grant.

8           7.     Throughout 2020-2021, County staff coordinated efforts to obtain the  
9 resources, studies, and preliminary engineering plans. The Regional Transportation  
10 Commission ("RTC") chairperson executed a contract with an engineering and  
11 construction management firm, CA Group, Inc. ("CA Group") on December 30, 2020.

12          8.     In March 2021, CA Group began holding regular coordination meetings to  
13 work on the plans for Muller Parkway.

14          9.     These meetings included, among others, Park Ranch and the County.

15          10.    In April 2021, the County submitted a 15% complete Muller Plan to the  
16 County's engineering department. Thereafter, County Staff began coordinating with JE  
17 Fuller on drainage requirements for Muller Parkway.

18          11.    In May 2021, the County's plans were 30% completed and were submitted  
19 to the County's engineering department. JE Fuller also developed a 30% completed  
20 drainage report. In July 2021, the Regional Transportation Commission ("RTC")  
21 approved a pre-construction portion of a Construction Manager at Risk ("CMAR") contract  
22 with a third-party, Ames Construction.

23          12.    In the fall of 2021, the CA Group began coordinating with Minden  
24 Gardnerville Sanitation District for sewer sleeve locations.

25          13.    By February 2022, the County's plans were 60% completed and submitted  
26 to the County's engineering department. By May 2022, the County's plans were 90%  
27 completed and submitted to the County's engineering department.

28          14.    In May 2023, the Conditional Letter of Map Revision (CLOMR) for the

1 Federal Emergency Management Agency (FEMA) (MT-1) was signed by the Community  
2 Development Director. In July 2023, FEMA confirmed receipt of JE Fuller's CLOMR  
3 submission (case #23-09-0865).

4 AFFIRMATION: The undersigned does hereby affirm that this document does not  
5 contain the social security number of any person.

6 DATED: This 23<sup>rd</sup> day of August, 2024.

7  
8 JON ERB   
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**EXHIBIT “3”**

**EXHIBIT “3”**



00103577201909397040390393

KAREN ELLISON, RECORDER

APN# Multiple-See pg. 1

Recording Requested by/Mail to:

Name: Tom Dallaire/Sam BoothAddress: Community Development DirectorCity/State/Zip: Douglas County

Mail Tax Statements to:

Name: NA

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

2019 Development Agreement Park Ranch Holdings &amp; Douglas County

**Title of Document (required)**

----- (Only use if applicable) -----

The undersigned hereby affirms that the document submitted for recording  
DOES contain personal information as required by law: (check applicable)

☐ Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)☐ Judgment – NRS 17.150(4)☐ Military Discharge – NRS 419.020(2)\_\_\_\_\_  
Signature\_\_\_\_\_  
Printed Name

This document is being (re-)recorded to correct document # 2019-933727, and is correcting  
\*Note: Document 2019-933727 was rescinded by BOCC action and subsequently the attached development agreement was approved and adopted  
on December 3, 2019, via Ordinance Number 2019-1556-A

DECEMBER 3, 2019 ITEM #2  
BOCC (ORD 2019-1556-A)

FILED

NO. 2019-217

12-16-19  
DATE

DOUGLAS COUNTY CLERK  
MINDEN, ND

BY [Signature] DEPUTY

2019 AMENDED DEVELOPMENT AGREEMENT

DOUGLAS COUNTY

&

PARK RANCH HOLDINGS, LLC

EXHIBITS A THRU G

COPY



APNs: 1320-20-000-018; 1320-29-501-002;  
1320-28-000-023; 1320-21-000-014; 1320-28-  
000-024; 1320-28-000-025; 1320-28-000-028;  
1320-28-000-030; 1320-28-000-031; 1320-33-  
001-011; 1320-33-001-015; 1320-34-002-001;  
1320-34-001-028; 1320-27-002-035; 1320-28-  
000-017; 1320-20-000-017; 1320-21-000-015;  
1320-21-000-016; 1320-29-601-003; 1320-28-  
000-029; 1320-29-000-015; 1320-28-000-022;  
1320-28-000-027; 1320-32-501-021; 1320-32-  
501-020; 1320-33-001-016; 1320-33-001-009;  
1320-33-001-010; 1320-33-001-012; 1320-33-  
001-013; 1320-33-001-014; and 1320-31-000-  
016; 1319-25-000-021; 1319-25-000-020;  
1319-24-000-007; 1319-23-000-013; 1319-26-  
000-004.

**AFTER RECORDATION RETURN TO:**  
Douglas County Community Development  
Office Attn: Tom Dallaire

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned hereby affirms that this document submitted for recording does not contain the social security number of any person or persons. (NRS 239B.030)

## **PARK RANCH HOLDINGS, LLC DEVELOPMENT AGREEMENT**

Douglas County, a political subdivision of the State of Nevada ("County"), and Park Ranch Holdings, LLC, a Nevada limited liability company assigned Business ID No. 20131610733 whose address is 1300 Buckeye Road Suite A, Minden, NV ("Owner"), enter into this development agreement ("Agreement") to ensure the timely construction of Muller Parkway, the development of land in accordance with Douglas County requirements, and to ensure certain vested development rights for the real property proposed for development by Owner pursuant to this Agreement, which real property comprises approximately 1,044 acres as illustrated in Exhibit A attached to this Agreement (the "Property").

### **1. RECITALS**

1.1 County is authorized, pursuant to Nevada Revised Statutes 278.0201 to 278.0207, inclusive, and Douglas County Code 20.400.010 to 20.400.060, to enter into a binding development agreement with persons having legal or equitable interests in real property located within the County to establish long range plans for the development of such property.

1.2 Owner holds legal title to the Property. Owner is the successor in interest to Park Cattle Company, LLC. On January 6, 2005, County approved a development agreement between County and Park Cattle Company, LLC, recorded as Document No. 635615 obligating Park Cattle Company to dedicate to County right-of-way 105 feet wide in an alignment across the parcels generally described on a drawing called "Muller Parkway, Final Right-of-Way Exhibit" attached thereto (the "Original Agreement"). The purpose of the dedication was to allow construction by County of a portion of a regional bypass road called Muller Parkway within the public right of



way. On October 11, 2007, County approved the "First Amendment to the Development Agreement for Park Cattle Company for the Muller Parkway Extension" ("First Amendment") to revise the alignment and width of the right-of-way. The revised right-of-way was depicted by an exhibit attached to the First Amendment. Under the terms of these previous agreements, the County was obligated to construct Muller Parkway "within seven (7) years of the recording of such instruments of dedication, or within five (5) years of acquisition of right of way on adjacent property to the South APN 1320-34-002-001" (the "Ashland Park Property"), however no construction has taken place. The Parties therefore desire to enter into a second amendment which will supersede the Original Agreement as amended, acknowledging that all right-of-way previously dedicated pursuant to the terms of the Original Agreement or First Amendment thereto shall revert to Owner as set forth in NRS 244.276.

1.3 Because of changed conditions as well as past changes made to the Douglas County Master Plan and the amendment to the Master Plan contemplated by this Agreement, County and Park now desire to enter into this Agreement to: dedicate a new 205 foot public right of way across the Property for Muller Parkway and drainage improvements; dedicate a new public right-of-way across APN 1320-20-000-017 immediately north of the existing right-of-way to increase the width by approximately 105 feet; grant an easement to County on APN 1320-31-000-016 for the purpose of installing drainage culverts below Highway 88; establish the financial obligations of each party to construct Muller Parkway through the Ashland Park Property; set a deadline for the County to construct at least two lanes of Muller Parkway from Monterra to Stodick Estates; establish a maximum of two thousand five hundred (2,500) residential dwelling units which Owner is entitled to develop within the Property; and to preclude the County from rescinding the Property's Receiving Area Land Use designation for at least thirty years from the Effective Date (as that date is defined in Section 2.9 of this Agreement).

1.4 The Property currently has a Master Plan Land Use designation of Agriculture. Concurrent herewith or immediately preceding consideration of this Agreement, County staff is seeking to update the Douglas County Master Plan Land Use Map to designate the Property as Receiving Area and to eliminate approximately 1,044 acres of Receiving Area designation from Owner's property in the Topaz Ranch Estates vicinity illustrated on Exhibit B. This Agreement is conditioned upon the completion and approval by the Douglas County Board of County Commissioners (the "Board") of such update to the Master Plan Land Use Map.

1.5 Owner and County acknowledge and agree that prior to entering into this Agreement appropriate legal advice and counsel was sought and that both Owner and County made a voluntary informed decision to enter into this Agreement in good faith. Owner and County further acknowledge and agree that substantial benefits will accrue to Owner as a result of entering into this Agreement, including a vested development right to develop the Property in accordance with this Agreement, a certainty in the particular on-site and off-site improvements that may be required by County, and a certainty in the land use fees or obligations which may be imposed by the County.

1.6 County additionally acknowledges that certain public objectives it wishes to attain will be furthered by this Agreement, including right-of-way acquisition for Muller Parkway and additional drainage improvements, an easement for the Highway 88 culverts, financial contributions by Owner towards Muller Parkway construction costs, and implementation of the Master Plan goals and objectives. The benefits of this Agreement will further the comprehensive planning objectives contained in the Master Plan and provide public benefits such as fulfilling long



term transportation goals established by the Master Plan Transportation Element for the County by providing important roadway improvements and removing approximately ninety nine existing homes in the Town of Minden from the FEMA 100 Year Flood Zone.

NOW THEREFORE, County and Owner agree as follows:

## 2. SELECTED DEFINITIONS

2.1 "Existing Development Approvals" means all permits, agreements and other entitlements approved, issued, or otherwise in existence on or before the Effective Date, which include, without limitation, Master Plan and zoning designations, tentative or final subdivision maps, parcel maps, design review, site improvement permits, variances, special use permits, and building permits.

2.2 "Master Plan" means the Douglas County Master Plan adopted April 18, 1996 by Resolution 96R-17, as amended from time to time.

2.3 "Owner" means Park Ranch Holdings, LLC, and other persons or entities or associations which hold any legal or equitable interest in the Property. "Owner" also includes any successors-in-interest to any or all of the foregoing.

2.4 "Property" means the property illustrated in Exhibit A, and includes the development of the Property as contemplated by this Agreement and approved by the County.

2.5 "Public Improvements" means any on-site or off-site improvements or facilities relating to the Property that will be offered for dedication to the County. Improvements include, but are not limited to, all streets, curbs, gutters, medians, parkways, pedestrian and bike paths, sidewalks, street lights, storm drains, and traffic signals or directional devices.

2.6 "Public Utilities" means infrastructure used to deliver water, sewer, natural gas, electricity, telephone, cable television, and telecommunication or fiber optics to the Property, together with all equipment and easements dedicated for these utilities.

2.7 "Reservation of Authority" means the rights and authority exempted from the vested development rights in section 5 of this Agreement and reserved to the County under further County approvals in section 7 of this Agreement.

2.8 "Vested Development Rights" means the irrevocable right to develop the Property in accordance with this Agreement, including the construction of two thousand five hundred (2,500) residential dwelling units as set forth in Sections 3 and 7.1, the Douglas County Code in effect as of the Effective Date to the extent such code provisions do not conflict with this Agreement, and the existing development approvals. The County, however, may unilaterally modify or amend Vested Development Rights to comply with future state or federal laws or regulations that supersede this Agreement.

2.9. "Effective Date" means the date upon which Ordinance 2019-1556 adopting this Agreement becomes effective.



### 3. PROPERTY DESCRIPTION

The Property includes approximately one thousand forty-four (1,044) acres adjacent to the Towns of Minden and Gardnerville, Nevada, east of U.S. Highway 395. The Property contains a significant portion of the future Muller Parkway. The Property is currently zoned Agricultural—19 acre (approximately 965 acres) and Rural Agriculture—5 acre minimum lot size (79 acres). The proposed Master Plan update will convert the Property's land use designation from Agricultural to Receiving Area.

Development of the Property is planned to include a variety of residential uses, however no "big box" commercial development of a commercial building in excess of 30,000 square feet of commercial space shall be allowed on the Property. The Property may be developed to the density and intensity permitted by existing and future development approvals. A more thorough description of future development of the Property will be set out in future maps, in improvement plans submitted for approval to the County Engineer, and applications for specific plans or planned development(s).

The Property shall be subject to a strict development limitation entitling Owner to develop and construct two thousand five hundred (2,500) residential dwelling units, subject to the Douglas County Building Permit Allocation and Growth Management Ordinance codified in Chapter 20.650 of the Douglas County Code, as amended prior to the Effective Date. The 2,500 unit cap shall be subject to corresponding reductions in the number of units Owner is entitled to develop pursuant to Section 7.1 of this Agreement if the Board approves any future zoning map amendment(s) to non-residential zoning other than Public Facilities. The Property shall not be subject to any Land Use designation changes without the consent of Owner or its successor(s)-in-interest for a period of not less than thirty (30) years from the Effective Date. However, the failure by Owner or its successor(s)-in-interest to timely cure a default under the terms of this Agreement may result in the revocation of the Receiving Area Land Use designation from the Property at the sole discretion of the Board. Because Owner has relinquished the Receiving Area Land Use designation for certain other property owned by Owner as a prerequisite for entering into this Agreement, in the event such a revocation occurs, Owner shall be entitled to the restoration of the Receiving Area Land Use designation for such other property as it existed on the Effective Date.

### 4. VESTED DEVELOPMENT RIGHTS

4.1 General Right to Develop. Subject to the terms of this Agreement, Owner has the right to develop the Property in accordance with the Vested Development Rights. The permitted uses of the Property, the density and intensity of use, the provisions for the reservation or dedication of land for public purposes, the phasing of the construction of public facilities, the standards for the design, improvements, and construction of the project, and other terms and conditions of development applicable to the Property are those set forth in this Agreement, in the Existing Development Approvals and the Douglas County Code in effect as of the Effective Date. Any amendment(s) to the current zoning of the Property may be processed according to County Code.

4.2 Master Plan. Owner has a Vested Development Right to the Master Plan Land Use Designation of the Property as Receiving Area and County hereby agrees not to unilaterally



rescind the Property's Receiving Area Land Use designation for a period of not less than thirty (30) years from the Effective Date.

4.3 Zoning. Owner has a Vested Development Right to receive zoning designations for the Property that are consistent with its Land Use designation as Receiving Area and with the development permitted by this Agreement.

## 5. OWNER'S OBLIGATIONS

5.1 Right-of-Way. Concurrent herewith, Owner shall offer to dedicate to the County public right-of-way approximately 205 feet wide, 15,295 feet long, and comprising approximately 75.7 acres by way of the grant, bargain and sale deed attached hereto as Exhibit C in the location described in Exhibit D and as depicted on the drawing identified as Exhibit E for use as Muller Parkway, multi-modal path(s) and additional drainage facilities. Owner shall also dedicate to the County additional public right-of-way approximately 100 feet in width across the entirety of APN 1320-20-000-017 immediately north of the existing 91.5 feet right-of-way in the location described in Exhibit D and illustrated on the drawing attached as Exhibit E by way of the same grant, bargain and sale deed. County shall promptly accept Park's offers of dedication. Any portion of the Muller Parkway right-of-way previously dedicated to County pursuant to the Original Agreement or the First Amendment thereto which is not within the right-of-way dedicated under this Agreement shall revert to Park by the process set forth in NRS 244.276. The Parties acknowledge that County's receipt of federal funding for the construction of Muller Parkway may necessitate the acquisition of additional right-of-way from Owner to, for example, accommodate bus stops, bus turnouts and/or autonomous bus routes. The Parties agree to negotiate in good faith for the acquisition of additional right-of-way necessitated by external requirements without the use of eminent domain proceedings. County shall pay to Owner the fair market value of such additional right-of-way should it become required.

5.2 Easement for Highway 88 Culverts. On or before January 3, 2020, Owner shall grant to County an easement on APN 1320-31-000-016 for the purpose of installing drainage culverts below Highway 88 described and illustrated in Exhibit F. The Parties agree to cooperate in good faith with each other and the County's agent Bender Rosenthal Inc. to execute the easement and any documents related thereto.

### 5.3 Muller Parkway Financial Contribution.

(a) County shall construct two lanes of Muller Parkway within the deeded right-of-way across the Ashland Park Property identified on Exhibit E from the northern Ashland Park Property parcel boundary south to Toler Lane for a total distance of approximately 2,604 linear feet. Owner and County agree to equally share the costs and expenses of constructing such two-lane segment of Muller Parkway across the Ashland Park Property in accordance with or exceeding the specifications contained in the County's Standard Detail for a 2 Lane Urban Arterial. The Parties acknowledge that design modifications to the Standard Detail for 2 Lane Urban Arterial may be required should County elect to construct four lanes of Muller Parkway and/or receive federal funding involving grant requirements which deviate from County's standard design. The Parties agree to cooperate in good faith to finalize the design criteria prior to the commencement of any construction. Notwithstanding County's decision to construct four lanes of Muller Parkway or to construct the road with enhanced design features County desires or which are required as a condition of receiving federal funding, Owner's obligation shall be only to share in the costs of



constructing two lanes of Muller Parkway meeting the County Standard Detail for a 2 Lane Urban Arterial in effect on the Effective Date. County shall complete construction of Muller Parkway through the Ashland Park Property within six (6) years of the Effective Date. The Parties agree that construction of the sidewalk(s) may be deferred until construction commences on adjacent onsite phase(s) of development of the Property, at which time Owner shall be responsible for the cost of construction for a pedestrian sidewalk of standard width as set forth in the County Code as of the Effective Date. County shall either not require or shall bear the cost of any enhancement of the sidewalk to include any multi-modal component. In the event that Owner desires to construct two lanes of Muller Parkway through the Ashland Park Property before County has commenced construction or entered into a contract for the construction of the road, Owner shall have the right to construct the road and County shall pay to Owner half of all material and construction expenses related thereto in the manner set forth in Section 5.3(b).

(b) When construction of the segment of Muller Parkway crossing the Ashland Park Property commences, County shall remit to Owner monthly requests for payment of half of all material and construction expenses related thereto. Requests for payment shall be submitted to Owner no later than thirty (30) days after the end of each month and include a summary of the expenditures reported. Owner shall promptly remit payment(s) to County no later than thirty (30) days after the payment request date(s). Failure by Owner to timely remit payment pursuant to this Paragraph shall constitute a default.

5.4 Water and Sewer. All new development within the Property shall be connected to municipal water and sewer utilities. Owner agrees to cooperate in good faith with the Town of Minden or other water service provider to locate and install infrastructure reasonably necessary to provide water service to the Property, including but not limited to new well(s). No new septic systems shall be approved or installed on the Property.

5.5 Standards and Code. Commencement and completion of the public facilities must conform to the applicable requirements of Nevada Revised Statutes and of the Douglas County Code in effect on the Effective Date. Owner shall pay all fees adopted by the County now and in the future, and the development of the Property shall be subject to the Douglas County Building Permit Allocation and Growth Management Ordinance in effect on the Effective Date. Development of the Property must comply with all applicable County ordinances and Title 20 of the Douglas County Code in effect on the Effective Date.

5.6 Cooperation. Owner agrees that it will cooperate with County in the implementation of this Agreement and to obtain all necessary applications, approvals, permits or to meet other requirements which are or may be necessary to implement this Agreement, including any requirements that may be imposed by receipt of or application for a Better Utilizing Investment to Leverage Development ("BUILD") grant. Owner's cooperation under this section shall not include any financial contributions or payment of costs. Nothing contained in this paragraph, however, shall be construed as an implicit pre-approval by County of any future permits necessary for the development of any property owned by the Owner.

5.7 Right of Entry. During the term of this Agreement and upon advance notice, Owner shall permit the County and its agents, employees and contractors to enter upon the Property and/or APN 1320-31-000-016 for the purpose of conducting survey work, drainage studies, site visits and similar undertakings reasonably related to the funding and construction of Muller



Parkway, or to install and maintain culverts or other drainage facilities upon the Property or APN 1320-31-000-016. Owner further agrees to promptly execute such instrument(s) necessary to the submission of a BUILD grant application acknowledging the County's right of entry and/or any documentation reasonably related to FEMA funding or other grant opportunities.

5.8 Klauber Ranch Easements and Conservation. Prior to the commencement of the development of the Property, Owner agrees to restrict any additional development on Owner's Klauber Ranch properties known as APNs 1319-25-000-021 and 1319-25-000-020 (collectively, "Klauber Ranch") through the use of deed restrictions or a conservation easement pursuant to either Douglas County Code Chapter 20.500, "Transfer Development Rights" or Douglas County Code section 20.714.020, "Clustered Development." Owner shall retain the right to construct six single-family dwellings on the Klauber Ranch Property to replace the six residential structures currently in existence thereon; provided, however, each such residential dwelling is on a parcel no larger than two acres that is not in a Special Flood Hazard Area. County shall approve the application to strip density from Klauber Ranch to apply towards development of the first residential dwelling units constructed on the Property. Concurrent with such deed restrictions or conservation easement placed on Klauber Ranch and County's approval of the application of density to the Property as set forth in this section, County will not deny an application to develop the Property using the density derived from the Klauber Ranch Property for the reason that any portion of Muller Parkway to be constructed as set forth in this Agreement has not been constructed or because the portion of the Property proposed to be developed is in a Special Flood Hazard Area. Owner further agrees to restrict all water rights to Klauber Ranch and dedicate to the County an approximately 7,330 foot-long trail easement immediately south of and parallel to Muller Lane across Klauber Ranch and Owner's properties identified as APNs 1319-24-000-007, 1319-23-000-013 and 1319-26-000-004. Owner and County agree to cooperate in good faith to determine the appropriate width and precise location of said easement. The Parties acknowledge that the water rights appurtenant to the Klauber Ranch parcels comprise approximately 90.95 acre feet per season and are identified in Application No. 87805 on file with the Nevada State Engineer.

5.9 Detention Ponds. The Parties acknowledge that, although County intends to install certain drainage facilities in conjunction with Muller Parkway, additional detention ponds may be required on Owner's parcel(s) in the area zoned "Industrial" immediately east of the Property. Owner and County agree to use their best efforts to determine the size and location of such detention pond(s) and ensure their timely construction, including consultation with and approval from the Douglas County Water Conveyance Advisory Committee. The Parties further acknowledge that, because such detention pond(s) will materially benefit both the Property and the County, the Parties will share equally the cost of constructing such ponds with the Owner.

## 6. COUNTY'S OBLIGATIONS

6.1 Muller Parkway Construction. County must commence and substantially complete the construction of at least two lanes of Muller Parkway in the location identified on Exhibit E beginning at the existing 91.5 feet public road right-of-way on APN 1320-20-000-017, thence southeast to the northern boundary of the Ashland Park Property for a total distance of approximately 12,691 linear feet at County's sole cost and expense, including seven access points as depicted in the attached Exhibit G. County shall also construct two lanes of Muller Parkway within the deeded right-of-way across the Ashland Park Property identified on Exhibit E from the



northern Ashland Park Property parcel boundary, then south to Toler Lane for a total distance of approximately 2,604 linear feet. Owner and County agree to equally share the costs and expenses of constructing such two-lane segment of Muller Parkway across the Ashland Park Property in accordance with the specifications contained in the Standard Detail for a 2 Lane Urban Arterial or such modified design as may be agreed to by the Parties to meet federal funding requirements and/or should County elect to construct four lanes of Muller Parkway. County shall complete the construction of both segments of Muller Parkway as described above within six (6) years of the Effective Date. The Parties agree that construction of the sidewalk(s) may be deferred until construction commences on adjacent onsite phase(s) of development of the Property, at which time Owner shall be responsible for the cost of constructing a pedestrian sidewalk of standard width as set forth in the County Code as of the Effective Date. County shall either not require or shall bear the cost of any enhancement of the sidewalk to include a multi-modal component. In the event that Owner desires to construct two lanes of Muller Parkway as illustrated in **Exhibit E** before County has commenced construction or entered into a contract for the construction of those segments of Muller Parkway, Owner shall have the right to construct the road and County shall pay to Owner 100% of all material and construction expenses, except for the Ashland Park segment, for which the County shall pay to Owner 50% of all material and construction expenses, in each case in the manner set forth in Section 5.3(b). Failure by County to timely construct Muller Parkway as set forth in the Agreement shall constitute a default which, if uncured, shall result in the reversion to Owner of all rights-of-way conveyed to County by Owner pursuant to this Agreement with the exception of the easement(s) on APN 1320-31-000-016. Any such reversion shall be by the process set forth in NRS 244.276.

6.2 If County constructs the segment of Muller Parkway illustrated in **Exhibit E** prior to the development of the portion of the Property lying west of the Muller Parkway right-of-way by Owner, County shall construct that segment of Muller Parkway in such a way as to preserve the conveyance of irrigation water originating east of Muller Parkway to the portion of Owner's land lying west of Muller Parkway.

6.3 Periodic Review. In accordance with the provisions of NRS 278.0205 and 278.02053, County shall review the progress of the Owner at least once every twenty-four (24) months to ensure that Owner has complied with the terms of this Agreement. Upon completion of this review, the County shall give notice to the Owner in writing of the results of the review. Within thirty (30) days of mailing written notice to the Owner, the County must place a copy of the results of its review on the agenda of the Board for consideration and action. If the Board determines that Owner has not complied with the terms of this Agreement, the Board may cancel or amend this Agreement as provided in NRS 278.0205 and Douglas County Code section 20.720.060.

6.4 Cooperation. The County agrees that it will cooperate with Owner in the implementation of this Agreement. Owner agrees that it will cooperate with County in the implementation of this Agreement.

## 7. FURTHER COUNTY APPROVALS

7.1 Zoning Map Amendment(s). The County retains a Reservation of Authority to review, pursuant to Chapter 20.610 of the Douglas County Code, future zoning map amendment(s) for the Property. The Parties acknowledge that Owner's contractual right to develop two thousand



five hundred units within the Property pursuant to this Agreement and the designation of the Property as Receiving Area shall be deemed sufficient to support the findings necessary for approval of zoning map amendment application(s) for single family residential zoning submitted by Owner pertaining to the Property. The Parties further acknowledge that Owner may apply for a zoning map amendment to "Light Industrial" zoning for a portion of the Property lying southwest of the future Muller Parkway which is immediately adjacent to existing "Light Industrial" zoned properties. The Parties agree that if the Board approves a zoning map amendment application(s) changing any portion(s) of the Property to non-residential zoning other than "Public Facilities," that a corresponding reduction to the number of units Owner is entitled to develop on the Property pursuant to Sections 2.8 and 3 of this Agreement shall be made. Such reduction(s) to Owner's unit cap shall be calculated on the basis of an assumed density of 2.4 units per acre. Accordingly, if a zoning map amendment is approved for a 100 acre portion of the Property to "Light Industrial" or other non-residential zoning, the Owner's unit cap shall be reduced by 240 units from 2,500 to 2,260 units.

7.2 Subdivision Map. The County retains a Reservation of Authority to review, in accordance with NRS 278.320, *et seq.*, any tentative and final map(s), and to disapprove any application for a final map if the final map is not prepared in accordance with the tentative map conditions and application requirements for a final map. The County grants to the Owner a period of three (3) years for the presentation of the final map prepared in accordance with the tentative map for the entire area for which a tentative map has been approved. The time requirements set forth in NRS 278.468 apply to this Agreement unless a longer time for filing is permitted by this Agreement.

7.3 The failure of County to approve a Zoning Map Amendment for any application requesting residential zoning as set forth in Section 7.1 or a tentative or final map as set forth in Section 7.2 shall result in a termination of this Agreement and County shall forthwith deed back to Owner all rights-of-way and easements deeded to County, except as to the easement for the culverts under Highway 88 and, as to that easement, County shall pay to Owner the fair market value of such easement as of the Effective Date.

#### 8. CONSISTENT WITH MASTER PLAN

The County agrees that the terms of this Agreement are consistent with the Master Plan, as amended through the Effective Date.

#### 9. TERM

The term of this Agreement will be thirty (30) years from the Effective Date.

#### 10. BINDS ONLY PARTIES AND SUCCESSORS-IN-INTEREST

The terms of this Agreement bind only the parties to this Agreement and their successors, grantees, and assigns. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. This Agreement does not create, and may not be construed as creating, any third-party rights of action in any other person or entity.

#### 11. EVENTS OF DEFAULT



11.1 Default Procedure. In the event of any alleged default of any material terms or conditions of this Agreement, the party alleging a default must give the other party not less than ninety (90) days' notice in writing specifying the nature of the alleged default and the manner in which the default may be satisfactorily cured. After notice and the expiration of the ninety (90) day period, the non-defaulting party to this Agreement, at its option, may determine that the default has been cured or declare that the Agreement has been breached and may institute legal proceedings pursuant to this Agreement. If the County is the non-defaulting party, it may give notice of intent to terminate pursuant to NRS 278.0205; provided, however, if the default is not of the type that could reasonably be cured within ninety (90) days, no action against the defaulting party may be taken during such time that the defaulting party is diligently working to cure the default. If notice of intent to terminate is given by the County, the matter must be scheduled for consideration and review by the Board at a public hearing. Following consideration of the facts and evidence presented in the review before the Board, the County may give written notice of termination of this Agreement to Owner. Owner will have the opportunity to be heard orally and in writing before the Board prior to any termination by County.

11.2 Events of Default. The following constitute events of default under this Agreement:

- (a) County's failure to commence or complete construction in accordance with section 6.1 of this Agreement.
- (b) Owner's failure to remit payment in accordance with section 5.3 of this Agreement.
- (c) An action taken by the County which is not related to its health, safety or welfare powers, and which directly and substantially affects Owner's rights under this Agreement or Owner's ability to fully perform its obligations under this Agreement.
- (d) A material breach by Owner or by the County of any provision of this Agreement.

11.3 Acts of God. Performance by either Party hereto shall not be deemed to be in breach or default where delays or breaches are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, avalanches, inclement weather, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities not parties to this Agreement, the enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, or similar bases for excused performance. If written notice of such delay is given by the delayed Party to the other Party within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, as may be mutually agreed upon. In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. County shall not be held liable to Owner for consequential, exemplary, incidental or punitive damages as a result of its failure to review or approve permits and entitlements in a timely manner.

## 12. REMEDIES

12.1 No Monetary Damages. The County and the Owner agree that neither party would have entered into this Agreement if it were to be liable for damages under or with respect to this Agreement, except for the amounts for which obligations arise under this Agreement.



Accordingly, the County and the Owner may pursue any remedy at law or equity available for breach, except that the County will not be liable to the Owner or to any other person for any monetary damages whatsoever, except for the amounts for which it is obligated in this Agreement and any costs or attorney's fees.

12.2 Specific Performance. The County and the Owner agree that neither party would have entered into this Agreement if they were unable to obtain the approvals cited in this Agreement, the vested rights and public facilities as consideration for this Agreement. Accordingly, each party may sue the other party for specific performance of the approvals. The County may also sue for the installation of those facilities that are necessary to the public's health, safety or welfare if Owner defaults under this Agreement and fails or refuses to perform as required in this Agreement.

### 13. NOTICES

All notices under this Agreement shall be sent, via first class certified return receipt mail, to the following addresses:

Park Ranch Holdings, LLC

Attn: David Park, Manager  
1300 Buckeye Road Suite A  
Minden, Nevada 89423  
Telephone:

with a copy to:

Oshinski & Forsberg, Ltd.  
Attn: Mark Forsberg, Esq.  
504 E. Musser St. Suite 202  
Carson City, NV 89701  
Telephone: (775) 301-4250

and, if the party so to be served is the County, addressed to the County as follows:

Douglas County Community Development  
Attn: Director  
1594 Esmeralda Avenue  
Minden, NV 89423  
Telephone: (775) 782-6201

### 14. MERGER

This Agreement constitutes the entire understanding of the parties and all prior negotiations and understandings are merged into this Agreement. This Agreement does not modify any presently existing conditions of approval for the Property.

### 15. AMENDMENTS



This Agreement may be amended by the parties by a written agreement that is adopted by the County through an ordinance in compliance with NRS 278.020 through 278.0207, inclusive. Within the limits granted by the County Code, the director of Community Development may make and approve minor modifications to this Agreement that are requested by Owner; provided that minor modifications will not affect the term of this Agreement, the permitted uses of the Property, or the dedication of the right-of-way, easements and Public Facilities required by this Agreement.

#### 16. SEVERABILITY

It is declared to be the intention of the parties that the sections, paragraphs, sentences, clauses, and phrases of this Agreement, or of the County ordinance adopting the same, are severable. If any phrase, clause, sentence, paragraph, or section of this Agreement, or of the County ordinance adopting same, is declared unconstitutional or invalid by a valid and final judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement, or of the County ordinance adopting same.

#### 17. AGREEMENT CONDITIONAL

This Agreement is conditioned upon the concurrent approval of the pending update to the Master Plan Land Use Map(s) changing the Land Use Designation of the Property to Receiving Area, and neither Party has any obligation hereunder until that occurrence. In the event that County does not approve said pending update to the Master Plan Land Use Map(s), as presented or as modified, this Agreement shall terminate.

County and Owner recognize that the construction of Muller Parkway requires the performance of County and parties to other development agreements with County and agree that if one or more of such developers fails to fulfill its obligations with respect to the construction of Muller Parkway or the dedication of right-of-way for Muller Parkway, or does not comply with the terms of its respective development agreement either voluntarily or by non-action, so long as Owner has timely performed all of its obligations under this Agreement, County will not impose on Owner any conditions that are made necessary or expedient by the failure of other persons to construct any portion of Muller Parkway.

#### 18. RECITALS AND EXHIBITS

The Recitals and all Exhibits to this Agreement are incorporated herein by this reference.

#### 19. LAW AND FORUM

The laws of Nevada shall govern the interpretation and enforcement of this Agreement. Owner and County agree that the Ninth Judicial District Court, located in Douglas County, Nevada, will be the forum for any litigation arising as a result of this Agreement.

County will not waive, and instead intends to assert, all available defenses under NRS Chapter 41 to limit liability as a political subdivision of the State of Nevada. Owner agrees that the County is under no legal or equitable obligation to enter into this Agreement and that the

County elects to be a party to this Agreement as a discretionary act in furtherance of its governmental policies relating to the development of property in the County.

21. AUTHORITY

Any individual signing this Agreement on behalf of the respective Parties represents that he or she is authorized by such Party and has the power to enter into this Agreement, and by such person's act such Party is bound hereto.

{Signatures on the following page.}

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This agreement is effective on the effective date of Ordinance 2019-1556-A.

**PARK RANCH HOLDINGS LLC,**  
a Nevada limited liability company

By: David Park  
David Park, Manager

Date: 12-4-19

**DOUGLAS COUNTY, NEVADA, a**  
political subdivision of the State of Nevada

By: William B. Penzel  
William B. Penzel, Chairman

Date: 12-05-2019

Attest:

Kathryn Lewis  
Douglas County Clerk

STATE OF NEVADA )

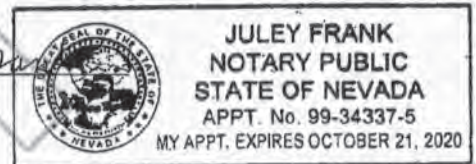
DOUGLAS COUNTY )

) ss.

On this 4<sup>th</sup> day of December, 2019, before me, the undersigned, a Notary Public in and for said state, personally appeared David Park, personally known or proved to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Juley Frank  
NOTARY PUBLIC



STATE OF NEVADA )

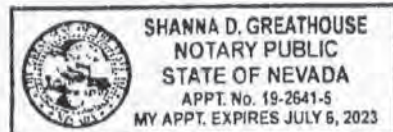
DOUGLAS COUNTY )

) ss.

On this 5<sup>th</sup> day of December, 2019, before me, the undersigned, a Notary Public in and for said state, personally appeared WILLIAM B. PENZEL, personally known or proved to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Shanna D. Greathouse  
NOTARY PUBLIC



Exhibits-

- Exhibit A: Map of the Property (1,044 acres exclusive of the 76ac. alignment of Muller)
- Exhibit B: Map of Receiving Area being stripped from Owner's land near Topaz
- Exhibit C: Form of Grant, Bargain and Sale Deed
- Exhibit D: Right-of-Way Legal Description
- Exhibit E: Right-of-Way Map
- Exhibit F: Highway 88 Culvert Easement Legal Description & Illustration
- Exhibit G: Map of future Muller Parkway showing Access Points

COPY