

No. 25-

IN THE
Supreme Court of the United States

JUDITH L. HARVEY, AS TRUSTEE OF THE
DAVID T. & JUDITH L. HARVEY TRUST, AND
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF DAVID T. HARVEY, DECEASED,

Petitioner,

v.

CITY OF RENO, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEVADA

PETITION FOR A WRIT OF CERTIORARI

LUKE A. BUSBY
Counsel of Record
LUKE ANDREW BUSBY, LIMITED
316 California Avenue
Reno, NV 89509
(775) 453-0112
lukebusby@pm.me

Counsel for Petitioner

121034



COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

Whether the Fifth Amendment's Takings Clause requires just compensation when a state agency sells the only feasible access to private property, rendering it landlocked and valueless.

**PARTIES TO THE PROCEEDING AND
RELATED PROCEEDINGS**

The parties to the proceeding in the Supreme Court of the State of Nevada, No. 88962, are as follows. Judith L. Harvey, as Trustee of the David T. & Judith L. Harvey Trust, and as Personal Representative of the Estate of David T. Harvey, Deceased, is the Appellant/Petitioner.

The Respondents are: the City of Reno; the County of Washoe; the State of Nevada, on Relation of its Department of Transportation (“NDOT”); and Green Acres Storage Partners LLC, a Nevada Limited Liability Company.

The directly related proceedings are as follows. The trial court proceeding was before the Second Judicial District Court, Washoe County, Nevada, before the Honorable Connie J. Steinheimer, District Judge, Docket No. CV23-00282, which entered an order dismissing the second amended complaint on June 12, 2024.

The appellate proceeding was before the Supreme Court of the State of Nevada, No. 88962, which entered its Order of Affirmance on September 8, 2025, and its Order Denying Rehearing on February 6, 2026.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Nevada Supreme Court in this case dated on the same date as the issuance of the opinion, September 8, 2025, in Appendix A 1a-13a.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of the State of Nevada is contained in the Order of Affirmance, Supreme Court of the State of Nevada, No. 88962, filed September 8, 2025, which is reproduced in the Appendix at A. *Harvey v. City of Reno*, No. 88962, 2025 LX 350831 (Unpublished. Sep. 8, 2025).

The order denying rehearing of the Supreme Court of the State of Nevada is contained in the Order Denying Rehearing, Supreme Court of the State of Nevada, No. 88962, filed February 6, 2026, which is reproduced in the Appendix at C.

The order of the Second Judicial District Court, Washoe County, Nevada, dismissing the second amended complaint is reproduced in the Appendix at B.

JURISDICTION

The Supreme Court of the State of Nevada entered its Order of Affirmance on September 8, 2025, and denied rehearing by Order Denying Rehearing on February 6, 2026. Appendix at C. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The following constitutional provisions, statutes, and regulations are involved in this case and will be set out verbatim with appropriate citation, or, if lengthy, their full text are set out in Appendix D.

The Fifth Amendment to the United States Constitution, providing in relevant part that private property shall not be taken for public use without just compensation.

NRS 408.533, which governs NDOT's disposal of excess highway property. The statute authorizes withholding easements where direct sales of state property where a disposition would cause undue hardship by denying a property owner access to a public highway.

STATEMENT OF THE CASE

NDOT's disposition of state property triggers the Fifth Amendment's just compensation requirement when its sale directly and permanently landlocked the Harvey Trust's property, eliminating all access and rendering it entirely without value.

The Harvey Trust owns a parcel of land located near the intersection of what is now Interstate 580 and Huffaker Place in Reno, Washoe County, Nevada. The property has been in the Harvey family since the mid-1800s—predating Nevada's statehood. In 1987, as part of the construction of Interstate 580 through Reno, the State of Nevada condemned a portion of this longstanding family property for use as a highway.

The construction of Interstate 580 destroyed the Trust's existing means of access to the northwest corner of its property. Specifically, a bridge spanning Dry Creek, which the Harvey Trust had used to reach the northwest corner was removed during construction. Because Dry Creek is a perennial stream that physically separates the northwest corner from the remainder of the property, the removal of that bridge left the northwest corner without any means of access other than NDOT's access road over APN 043-282-03 (the "Green Acres Parcel" or "access road")—a consequence that flowed directly from the State's construction of the interstate.

The Harvey Trust's use of the access road was not merely informal or undocumented—it was expressly acknowledged and approved by NDOT itself. In 2003, NDOT issued Sign Permit No. 4812 and a corresponding Sign Permit Inspection Report authorizing the construction of a billboard on the Harvey Trust's parcel visible from Interstate 580. The permit application identified the access road on the Green Acres Parcel as the means of access to the billboard site for both installation and ongoing maintenance, and a map submitted with the application explicitly depicted that dirt access road as such. NDOT reviewed and approved the permit with full knowledge that construction and maintenance access to the Harvey Trust's property ran directly across the Green Acres Parcel—property that NDOT owned at the time. NDOT's approval of Sign Permit No. 4812 thus constitutes acknowledgment that the Harvey Trust's use of the access road was known to, and sanctioned by, the very agency that would later sell that road out from under the Trust without notice. The map submitted by the Harvey's to NDOT showing the "dirt access road" to the sign and seeking approval to construct the sign is at 173a.

NDOT sold the Green Acres Parcel to Green Acres Storage Partners LLC in 2020 without providing actual notice to the Harvey Trust and without reserving any access easement for the Trust's benefit. NRS 408.533 expressly authorizes NDOT to reserve access easements for abutting landowners in any such conveyance, and allows NDOT to consider whether a disposition would cause undue hardship by denying a property owner access to a public highway. NDOT did neither.

Former Nevada Governor Steve Sisolak himself recognized the wrongfulness of landlocking the Harvey Trust's property when, during the December 14, 2020 NDOT Board of Directors meeting addressing the disposition of APN 043-282-03, he expressed concern that a property should never be rendered landlocked because doing so would leave it unusable for its owner—an acknowledgment from the State's chief executive that the very consequence NDOT proceeded to inflict upon the Harvey Trust was one responsible governmental practice would never permit.

The consequences were immediate and severe. Following the sale, Green Acres Storage Partners LLC cut off the Harvey Trust's use of the road entirely, leaving the northwest corner of the Harvey Trust's property completely landlocked. A portion of land that the Harvey family had owned since before Nevada was a state was rendered without access, without use, and without value—the direct result of a state agency's sale of property it had long acknowledged as the sole means of access to that land, conducted without actual notice to the very party whose property interest depended upon it.

The Harvey Trust filed a complaint in the Second Judicial District Court, Washoe County, Nevada, before the Honorable Connie J. Steinheimer, District Judge, making various claims seeking injunctive and declaratory relief and naming as defendants the City of Reno, the County of Washoe, NDOT, and Green Acres Storage Partners LLC. Appendix E.

The Second Amended Complaint alleged a claim for inverse condemnation and expressly cited NRS 408.533 in connection with inverse condemnation and regulatory taking claims based on the right to just compensation under the 5th Amendment and the Nevada Constitution. Each defendant moved to dismiss and/or joined in the co-defendants' motions to dismiss.

The district court concluded that the Harvey Trust failed to allege facts sufficient to state a claim for relief and dismissed the second amended complaint pursuant to NRCPC 12(b)(5). Appendix B.

The Harvey Trust appealed to the Supreme Court of the State of Nevada, No. 88962. By Order of Affirmance filed September 8, 2025, the Nevada Supreme Court affirmed the district court's dismissal of all claims. Appendix A.

The Nevada Supreme Court's Order of Affirmance filed September 8, 2025, reached a conclusion that is constitutionally problematic: that the Harvey Trust—a family that has owned its land since before Nevada was a state, and whose access to a portion of that land was destroyed by the state's construction of I-580—had no cognizable property interest in access its property, citing

a state law case, *Sloat v. Turner*, 93 Nev. 263, 563 P.2d 86 (1977).

“If there was no existing right in the appellants of access to their property either by covenant or by prescription, the state’s condemnation of the property over which the easement allegedly crossed was not a deprivation of access compensable under Article I, Section 8, of the Nevada Constitution.” *Sloat*, 93 Nev. at 267, 563 P.2d at 88.” In light of our conclusion that the Harvey Trust never owned the access road and has not established an easement over it, we conclude that the Harvey Trust has not pleaded facts sufficient to establish that it possessed an interest to be taken in the first place.”

Appendix A at 10a.

The Nevada Supreme Court held that because the Harvey Trust had never owned the access road and had not established a formal easement over it, it had no compensable interest to speak of, and therefore nothing had been taken from it.

The Harvey Trust timely petitioned for rehearing pursuant to NRAP 40, arguing at its core that the Nevada Supreme Court had misapprehended a fundamental point of property law: that the right of access to one’s own land is itself a protected property interest, and that the complete denial of that access by government action is a taking.

The Nevada Supreme Court denied rehearing without explanation by Order Denying Rehearing filed February 6, 2026.

REASONS FOR GRANTING THE WRIT

In 1987, NDOT took Harvey Trust's land to build a highway. In doing so, it destroyed access to part of its property. Harvey Trust was never compensated for this loss of access. For decades, NDOT let Harvey Trust use a replacement Road over land owned by NDOT. Then NDOT sold the land with replacement road to a private party without telling Harvey Trust, without reserving access, and without paying Harvey Trust a cent. Now a portion of Harvey Trust's property is landlocked and worthless.

NDOT's sale of the access road without actual notice or an access reservation effectively landlocked a portion of the Harvey Trust's property without just compensation, in violation of the Fifth Amendment's Takings Clause as incorporated against the states by the Fourteenth Amendment.

NRS 408.533 allowed NDOT to consider undue hardship from denial of access and to reserve access easements before disposing of excess property, the statute creates a legitimate claim of entitlement under state law and thus a protected property interest under *Board of Regents v. Roth*, 408 U.S. 564 (1972), which the Nevada Supreme Court has recognized in *Malfitano v. County of Storey*, 133 Nev. 276 (2017).

NDOT's failure to comply with these statutory protections—without actual notice, without a hearing, and without reserving any access easement—stripped the Harvey Trust of a property interest Nevada's own law recognized and protected.

The complete denial of access to property constitutes a physical *per se* taking for which just compensation is required. The principle is not novel—it flows directly from the core guarantee of the Fifth Amendment and has been recognized and applied by federal courts for decades. As the Court of Federal Claims held in *Sacramento Grazing Ass’n v. United States*, 96 Fed. Cl. 175, 194 (2010), “[a] physical taking occurs if the Government denies an owner all access to a property interest,” citing *Foster v. United States*, 607 F.2d 943, 949-50, 221 Ct. Cl. 412 (Ct. Cl. 1979), which recognized that even where the Government is in rightful possession of land, it effects a taking when it is “totally denying” plaintiffs access to land. .

The rule extends beyond total denial of access as well—as the Court of Federal Claims more recently confirmed in *Midas Res., Inc. v. United States*, 168 Fed. Cl. 385, 401 (2023), “government action that cuts off or denies ‘all feasible routes’ of access to a plaintiff’s property may constitute a compensable taking,” quoting *Laney v. United States*, 661 F.2d 145, 149, 228 Ct. Cl. 519 (Ct. Cl. 1981).

That is what occurred here—NDOT’s sale of the Green Acres Parcel to Green Acres Storage Partners LLC eliminated every feasible means of access to the northwest corner of the Harvey Trust’s property, leaving it landlocked, unusable, and without value.

NDOT avoided a taking of the northwest corner of the Harvey Trust’s property in 1987 by providing access across the Green Acres Parcel, and no ripe takings claim accrued under the Fifth Amendment until NDOT’s 2020 sale of that parcel to Green Acres Storage Partners LLC—without actual notice or reservation of an access

easement under NRS 408.533—eliminated every feasible means of access. Suing in 1987 was impossible while NDOT still furnished access across the Green Acres Parcel, and suing when access was cut off was futile once the Nevada Supreme Court invoked *Sloat v. Turner*, 93 Nev. 263, 563 P.2d 86 (1977), to deny any property interest in that very access—leaving the Harvey Trust with a constitutional right and no moment in time to vindicate it.

The Nevada Supreme Court’s reliance on *Sloat v. Turner*, 93 Nev. 263, 563 P.2d 86 (1977) to support the conclusion that Harvey Trust had no compensable property interest cannot be reconciled with these authorities, nor can it be rescued by resort to state law property right doctrine alone. As this Court made clear in *Tyler v. Hennepin County*, 598 U.S. 631, 143 S. Ct. 1369, 1372 (2023), “[t]hough state law is an important source of property rights, it cannot be the only one because otherwise a State could ‘sidestep the Takings Clause by disavowing traditional property interests’ in assets it wishes to appropriate,” quoting *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 165-168, 118 S. Ct. 1925, 141 L. Ed. 2d 174. The Nevada Supreme Court’s holding allows the State to extinguish a landowner’s access to its own property from public records without compensation, simply by characterizing that access as something less than a formally recognized property interest under state law.

State courts widely recognize that an owner of property abutting a public road possesses a protected property interest in access to that road, and that government action eliminating such access constitutes a compensable taking. The California Supreme Court held

in *Bacich v. Board of Control*, 23 Cal. 2d 343, 350 (1943), that an owner of property abutting upon a public street has a property right in the nature of an easement in the street which is appurtenant to the abutting property, distinct from the owner's right as a member of the public. The Connecticut Supreme Court applied that principle in *Wellswood Columbia, LLC v. Town of Hebron*, 992 A.2d 1120, 1126 (Conn. 2010), holding that a road closure depriving owners of the sole means of access to their property amounted to a taking under state and federal constitutions. And the Colorado Court of Appeals held in *Heath v. Parker*, 30 P.3d 746, 750 (Colo. App. 2001), that a municipality must compensate a landowner abutting a public road where formal abandonment deprives the landowner of all access. The Nevada Supreme Court's contrary holding below places Nevada in direct conflict with these jurisdictions and exemplifies the sidestepping of the Takings Clause through state-law property characterization that this Court warned against in *Tyler v. Hennepin County*, 598 U.S. 631, 143 S. Ct. 1369 (2023).

To the undersigned counsel's knowledge, this Court has not unequivocally held that a state agency's sale of property it has long acknowledged as the sole means of access to an adjoining landowner's land constitutes a physical taking requiring just compensation under the Fifth Amendment. The closest authority is *United States v. Welch*, 217 U.S. 333, 339, 30 S. Ct. 527 (1910)), where this Court held that a private right of way, being an easement, is considered land and, therefore, subject to compensation when taken by the government.

This Court's recent decisions in *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 153, 141 S. Ct. 2063, 2074 (2021),

recognizing a taking where a California statute mandated union organizer access to privately owned agricultural land, and *Knick v. Twp. of Scott*, 588 U.S. 180, 205, 139 S. Ct. 2162, 2179 (2019), holding that a property owner may bring a federal takings claim in federal court without first exhausting state remedies where a Pennsylvania ordinance required a private property owner to allow public access to gravesites on their land, support the common sense approach to the Takings Clause that the Harvey Trust seeks here—namely, that where a state agency’s sale of property eliminates every feasible means of access to a landowner’s property, rendering it entirely landlocked and without value, the Fifth Amendment’s guarantee of just compensation must be given effect regardless of how state courts characterize the nature of the property interest lost.

This is not a case of mere diminution in value, circuity of travel, or diversion of traffic. It is a case of permanent elimination of access, which the Court should recognize as the functional equivalent of a physical occupation and *per se* taking of the affected parcel.

Under the Nevada Supreme Court’s reasoning, a state agency could condemn the only road leading to a landowner’s property, then sell that road to a private party without actual notice or an access reservation, and escape the just compensation requirement of the Fifth Amendment entirely—because the landowner, having only used (rather than formally owned or held a recorded easement over) that road, would possess no “property interest” to be taken, even as the landowner’s own parcel is rendered landlocked, unusable, and without value.

A clear ruling from this Court that a state agency's sale of the sole means of access to an adjoining landowner's property constitutes a compensable physical taking under the Fifth Amendment would vindicate the Harvey Trust's right to just compensation for the complete landlocking of land the Harvey family has owned since before Nevada's statehood, provide essential guidance to lower courts and state agencies confronting the disposal of excess property, and ensure that the Takings Clause cannot be circumvented simply by characterizing a landowner's loss of access from a public road as something other than a recognized property interest under state law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LUKE A. BUSBY
Counsel of Record
LUKE ANDREW BUSBY, LIMITED
316 California Avenue
Reno, NV 89509
(775) 453-0112
lukebusby@pm.me

Counsel for Petitioner

APPENDIX

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**APPENDIX A — ORDER OF AFFIRMANCE OF THE
SUPREME COURT OF THE STATE OF NEVADA,
FILED SEPTEMBER 8, 2025**

IN THE SUPREME COURT
OF THE STATE OF NEVADA

No. 88962

JUDITH L. HARVEY, AS TRUSTEE OF THE
DAVID T. & JUDITH L. HARVEY TRUST, AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE
OF DAVID T. HARVEY, DECEASED,

Appellant,

vs.

CITY OF RENO; COUNTY OF WASHOE; THE
STATE OF NEVADA, ON RELATION OF ITS
DEPARTMENT OF TRANSPORTATION, AND
GREEN ACRES STORAGE PARTNERS, LLC, A
NEVADA LIMITED LIABILITY COMPANY,

Respondents.

Filed September 8, 2025

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint in a real property action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

*Appendix A***Facts and procedural history**

David and Judith Harvey, as trustees of the David T. and Judith L. Harvey Trust, own a parcel of land located near what is now I-580 and Huffaker Place. A portion of this land was condemned to the State of Nevada in 1987 as part of its plan to construct I-580. A bridge spanning a dry creek, which the Harvey Trust used to access the northwest corner of the property, was removed during construction. As a result, the Harvey Trust began to use the Nevada Department of Transportation (NDOT) access road APN 043-282-03 (hereinafter referred to as the access road) to access this corner of the property. The access road was sold to Green Acres Storage Partners, LLC, in 2020, however, and the Harvey Trust alleges that their use of the road was subsequently restricted. The Harvey Trust further alleges that its property line was altered during construction of I-580 and more property was taken than what was outlined in the condemnation proceeding, resulting in lost property for which the Harvey Trust was not compensated.

The Harvey Trust sought injunctive and declaratory relief and named three different defendants in its complaint, including Washoe County, the City of Reno, NDOT, and Green Acres Storage Partners, LLC. Each defendant moved to dismiss and/or joined in the codefendants' motions to dismiss. The district court concluded that the Harvey Trust failed to allege facts sufficient to state a claim for relief. The Harvey Trust appeals the dismissal.

*Appendix A***The district court did not abuse its discretion by taking judicial notice of the documents attached to respondents' motions to dismiss**

As a preliminary matter, the Harvey Trust argues that the district court abused its discretion by taking judicial notice of the documents attached to respondents' motions to dismiss.

Courts may take judicial notice of facts that are “[g]enerally known within the territorial jurisdiction of the trial court,” as well as those that are “[c]apable of accurate and ready determination ... [and] not subject to reasonable dispute.” NRS 47.130(2). Furthermore, courts may appropriately take judicial notice of the public record of state district court proceedings. *See Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981) (noting that the district court may take judicial notice of closely related proceedings); *Mack v. Estate of Mack*, 125 Nev. 80, 92, 206 P.3d 98, 106 (2009) (holding that our appellate courts can take judicial notice of other court proceedings when a valid reason presents itself). We review a district court’s decision to take judicial notice for an abuse of discretion. *See FGA, Inc. v. Giglio*, 128 Nev. 271, 283, 278 P.3d 490, 497 (2012) (“We review a district court’s evidentiary rulings for an abuse of discretion.”).

The documents attached to respondents' motions to dismiss included subdivision maps, plat maps, parcel maps, surveys, and deeds, as well as judicial orders, highway maps, and highway plans. Because these documents are all public records, most of which were filed with the

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Washoe County Recorder's Office, they are capable of accurate and ready determination and are not subject to reasonable dispute. Thus, we conclude that the district court did not abuse its discretion in taking judicial notice of these documents.

The district court did not err in failing to convert the motions to dismiss into motions for summary judgment

Because the Harvey Trust argues that the documents attached to the respondents' motions to dismiss were improperly noticed, it asserts that the district court erred in relying upon them to decide the motions. If the district court wanted to consider these documents, the Harvey Trust argues that the motions to dismiss should have been treated as motions for summary judgment and reviewed accordingly.

When ruling on a motion to dismiss, a court generally "may not consider matters outside the pleading being attacked." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). If matters outside the pleadings are evaluated by the court as it considers a motion to dismiss under NRCP 12(b)(5), then "the motion must be treated as one for summary judgment under [NRCP] 56." NRCP 12(d). A court, however, may consider "matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss." *Breliant*, 109 Nev. at 847, 858 P.2d at 1261; *see also United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) ("A court may, however, consider certain materials-documents

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attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice-without converting the motion to dismiss into a motion for summary judgment.”).

In light of our conclusion that the disputed documents were properly noticed by the district court and are matters of public record, we conclude that the district court did not err in failing to treat the motions to dismiss as motions for summary judgment.

The district court did not err in dismissing the Harvey Trust’s complaint

The Harvey Trust argues that the district court erred in dismissing its complaint. This court reviews a dismissal under NRCP 12(b)(5) de novo. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Dismissal is appropriate “only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Id.* When evaluating such a dismissal, “this court will recognize all factual allegations in [the plaintiffs] complaint as true and draw all inferences in [the plaintiffs] favor,” *id.*, “but the allegations must be legally sufficient to constitute the elements of the claim[s] asserted,” *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009).

The Harvey Trust’s second amended complaint alleges quiet title and inverse condemnation claims, as well as a due process claim. In the alternative, the Harvey Trust also seeks an easement. We address the claims in turn.

*Appendix A***Quiet title**

The Harvey Trust asserts that it is the rightful owner of both Huffaker Place and the access road. Thus, the Harvey Trust argues that the district court erred in applying the statute of limitations from NRS 11.080 to dismiss its two quiet title claims. Specifically, the Harvey Trust argues that more property was taken from it than agreed to in a 1987 Order of Condemnation and asserts quiet title to both Huffaker Place and the access road.

NRS 11.080 states that

No action for the recovery of real property, or for the recovery of the possession thereof other than mining claims, shall be maintained, unless it appears that the plaintiff or the plaintiffs ancestor, predecessor or grantor was seized or possessed of the premises in question, within 5 years before the commencement thereof.

This court has previously addressed when a quiet title claim accrues for purposes of NRS 11.080: “the limitations period in NRS 11.080 does not run against a plaintiff seeking to quiet title while still seized or possessed of the property,” but “the limitations period is triggered when the plaintiff is ejected from the property or has had the validity or legality of his or her ownership or possession of the property called into question.” *Berberich v. Banh of Am., N.A.*, 136 Nev. 93, 96-97, 460 P.3d 440, 442-43 (2020).

After careful review of the record, we conclude that the district court did not err in dismissing the quiet title

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claims as time-barred. With respect to Huffaker Place, we conclude that the Harvey Trust was ejected from the relevant portion of Huffaker Place prior to five years before bringing this action. With respect to the access road, we conclude that the 1987 Order of Condemnation encompassed the access road and that the State of Nevada therefore became the rightful owner of the access road in 1987. Even assuming that more property was indeed taken from the Harvey Trust than permitted, the Harvey Trust was on notice that its possession and ownership rights had been disturbed when the property was physically altered and converted into a highway over 35 years ago. Thus, we conclude that the Harvey Trust's quiet title claims are barred by NRS 11.080 and the district court did not err in dismissing them.

Special right of easement

The Harvey Trust argues that the district court erred in dismissing its special right of easement claim to the access road pursuant to *State ex rel. Department of Highways v. Linnecke*, 86 Nev. 257, 468 P.2d 8 (1970).

Linnecke held that “[a]n abutting owner of a public highway has a special right of easement in a public road for access purposes” that cannot be taken away without compensation. *Id.* at 260, 468 P.2d at 9. The court clarified *Linnecke* in *Brooks v. Bonnet*, 124 Nev. 372, 185 P.3d 346 (2008). *Brooks* recognized an abutter's right to an easement only “insofar as there is an easement by necessity that exists.” *Id.* at 378, 185 P.3d at 350. “An easement by necessity will generally be found to exist if

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two requirements are met: (1) prior common ownership, and (2) necessity at the time of severance.” *Jackson v. Nash*, 109 Nev. 1202, 1209, 866 P.2d 262, 268 (1993). Prior common ownership requires both the benefited parcel and the burdened parcel to have once been owned by the same person. *Id.* “Without such prior common ownership, no easement by necessity will be implied, no matter how strict the necessity.” *Id.* at 1210, 866 P.2d at 268. “[T]o demonstrate reasonable necessity[,] the party claiming the easement must show both necessity at the time of severance and *present necessity*.” *Brooks*, 124 Nev. at 377, 185 P.3d at 349.

A special right of easement can only exist insofar as an easement by necessity exists, and we conclude that the Harvey Trust failed to show an easement by necessity. The Harvey Trust never owned the entirety of the access road so as to establish prior common ownership. Thus, we conclude that the district court did not err in dismissing this claim.

Easement by prescription or implication

Alternatively, the Harvey Trust argues that the district court erred in finding that the second amended complaint failed to allege an easement by implication or prescription over the access road.

“It is a well-settled principle that absent a statute allowing adverse user against the state, no rights as to state property can be acquired by prescription.” *Sloat*

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v. Turner, 93 Nev. 263, 266, 563 P.2d 86, 87-88 (1977). Separately, an easement by implication requires showing “(1) unity of title and subsequent separation by grant of the dominant tenement; (2) apparent and continuous use; and (3) the easement must be necessary to the proper or reasonable enjoyment of the dominant tenement.” *Jackson*, 109 Nev. at 1213, 866 P.2d at 270.

Because the access road was condemned to the State of Nevada in 1987 and an easement cannot be acquired to state property, we conclude that the Harvey Trust could not have legally acquired an easement by prescription. We further conclude that the Harvey Trust failed to plead facts to establish unity of title and subsequent separation by the dominant tenement so as to establish an easement by implication. Thus, the district court did not err in dismissing the Harvey Trust’s remaining easement claims.

Inverse condemnation

The Harvey Trust argues that the district court erred in dismissing its inverse condemnation claims. First, the Harvey Trust asserts that NDOT took more of the Harvey Trust’s property than outlined in the Order of Condemnation when constructing I-580. Second, it asserts that the loss of access to the access road has caused direct economic harm.

“When a governmental entity takes property without just compensation, ... an aggrieved party may file a complaint for inverse condemnation.” *Fritz v. Washoe County*, 132 Nev. 580, 583-84, 376 P.3d 794, 796 (2016).

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“Inverse condemnation is an action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.” *State, Dep’t of Transp. v. Cowan*, 120 Nev. 851, 854, 103 P.3d 1, 3 (2004) (internal quotation marks omitted). “If there was no existing right in the appellants of access to their property either by covenant or by prescription, the state’s condemnation of the property over which the easement allegedly crossed was not a deprivation of access compensable under Article I, Section 8, of the Nevada Constitution.” *Sloat*, 93 Nev. at 267, 563 P.2d at 88.

In light of our conclusion that the Harvey Trust never owned the access road and has not established an easement over it, we conclude that the Harvey Trust has not pleaded facts sufficient to establish that it possessed an interest to be taken in the first place. Furthermore, with respect to the Harvey Trust’s claim that more property was taken in 1987 than permitted, we conclude that the Harvey Trust did not plead facts sufficient to establish this claim, and even if it had, this claim is time-barred for the reasons outlined above. We therefore conclude that the district court properly dismissed these claims.

Due process

Lastly, the Harvey Trust argues that the district court erred in dismissing its due process claim.¹ Specifically, the

1. The Harvey Trust also argues that the district court erred by not addressing the implications of NRS 408.533 on the Harvey

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Harvey Trust asserts that its property lines were altered and portions of the property were taken in 1987 without proper proceedings or compensation.

The Due Process Clauses of the United States and Nevada Constitutions prohibit the State from depriving any person of life, liberty, or property, without due process of law. There are two steps to analyzing a procedural due process claim: first, it must be determined whether there exists a liberty or property interest which has been interfered with by the State, ... [and second] whether the procedures attendant upon that deprivation were constitutionally sufficient.

Malfitano v. County of Storey, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (alteration in original) (citations and internal quotation marks omitted).

As outlined above, the Harvey Trust did not have an interest in the access road that was taken away. Furthermore, the Harvey Trust did not plead sufficient facts to establish that it had land taken by NDOT in the 1980s during the construction of I-580. Thus, we conclude that the district court properly dismissed the Harvey Trust's due process claim.

The Harvey Trust failed to demonstrate that it was entitled to relief under the facts and circumstances

Trust. Because the Harvey Trust did not raise this argument below, it is waived. *See Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) ("It is well established that arguments raised for the first time on appeal need not be considered by this court.").

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presented, and therefore the district court did not err in dismissing the second amended complaint pursuant to NRCP 12(b)(5).

Accordingly, we

ORDER the judgment of the district court
AFFIRMED.

/s/ Herndon C.J.
Herndon

/s/ Pickering J.
Pickering

/s/ Parraguirre J.
Parraguirre

/s/ Bell J.
Bell

/s/ Stiglich J.
Stiglich

/s/ Cadish J.
Cadish

/s/ Lee J.
Lee

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cc: Hon. Connie J. Steinheimer, District Judge
Jonathan L. Andrews, Settlement Judge
Luke A. Busby
May Brock Law Group
Attorney General/Carson City
Washoe County District Attorney
Attorney General/Transportation Division/Las Vegas

Reno City Attorney
Washoe County District Attorney/Civil Division
Alling & Jillson, Ltd.
Attorney General/Transportation Division/Carson City
Washoe District Court Clerk

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**APPENDIX B — ORDER GRANTING MOTIONS
TO DISMISS IN THE SECOND JUDICIAL
DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE,
DATED JUNE 12, 2024**

IN THE SECOND JUDICIAL DISTRICT COURT
FOR THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

Case No. CV23-00282
Department No.: 4

DAVID T & JUDITH L HARVEY, TRUSTEES OF
THE DAVID T & JUDITH L HARVEY TRUST,

Plaintiffs,

vs.

CITY OF RENO; WASHOE COUNTY; THE
STATE OF NEVADA, ON RELATION OF
ITS DEPARTMENT OF TRANSPORTATION;
GREEN ACRES STORAGE PARTNERS LLC,
A NEVADA LIMITED LIABILITY COMPANY;
DOE INDIVIDUALS I THROUGH X; AND ROE
ENTITIES XI THROUGH XX;

Defendants.

*Appendix B***ORDER GRANTING MOTIONS TO DISMISS AND
SUPPLEMENTAL MOTIONS TO DISMISS**

On February 14, 2023, Plaintiff DAVID T & JUDITH L HARVEY, TRUSTEES OF THE DAVID T & JUDITH L HARVEY TRUST (“HARVEY TRUST”), by and through their attorneys Tony M. May, Esq. and Michael J. Brock, Esq. of May Brock Law Group, filed *Plaintiffs’ Ex-Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time*. On April 7, 2023, the HARVEY TRUST filed *Plaintiffs’ First Amended Complaint*.

On May 30, 2023, Defendant GREEN ACRES STORAGE PARTNERS LLC (“GREEN ACRES”), by and through its attorney, Richard J. McGuffin, Esq. of Alling & Jillson, Ltd., filed *Defendant Green Acres Storage Partners, LLC’s Motion to Dismiss* (hereinafter “GA MTD”). On June 8, 2023, the CITY OF RENO, by and through its attorney, Jasmine Mehta, Esq., Deputy City Attorney, filed *Defendant City of Reno’s Motion to Dismiss* (hereinafter “COR MTD”). On June 9, 2023, WASHOE COUNTY, by and through its attorney Michael Large, Esq., Deputy District Attorney, filed *Defendant Washoe County’s Motion to Dismiss and Joinder to Defendant City of Reno and Green Acre Storage Partner’s Motion to Dismiss*.

On June 21, 2023, the HARVEY TRUST filed *Plaintiffs’ Opposition to Defendant Green Acres Storage Partners LLC’s Motion to Dismiss* (hereinafter “Opp. to GA MTD”). On June 28, 2023, *Defendant Green Acres*

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Storage Partners, LLC's Request for Judicial Notice was filed. Also, on June 28, 2023, *Defendant Green Acres Storage Partners, LLC's Reply to Plaintiffs' Opposition to Motion to Dismiss* (hereinafter "*Reply to GA MTD*"). On July 6, 2023, *Plaintiffs' Opposition to Defendant City of Reno's Motion to Dismiss and Washoe County's Joinder* (hereinafter "*Opp. to COR MTD*") was filed. On July 21, 2023, *Defendant City of Reno's Reply in Support of Motion* was filed (hereinafter "*Reply to COR MTD*").

On October 10, 2023, the STATE OF NEVADA, on relation of its Department of Transportation ("NDOT"), by and through its attorney, Special Counsel Joe Vadala, Esq. and Senior Deputy Attorney General Shane Chesney, Esq., filed *State of Nevada, on Relation of its Department of Transportation's Motion to Dismiss* (hereinafter "*NDOT MTD*"). On October 30, 2023, *Plaintiffs' Opposition to Defendant State of Nevada ex rel. its Department of Transportation's Motion to Dismiss* was filed (hereinafter "*Opp. to NDOT MTD*"). On November 6, 2023, *State of Nevada, on Relation of its Department of Transportation's Reply to Plaintiffs' Opposition to Motion to Dismiss* was filed (hereinafter "*Reply to NDOT MTD*").

On October 29, 2023, the Court heard Oral Arguments regarding the Motions to Dismiss.

On January 8, 2024, HARVEY TRUST filed *Plaintiffs' Motion for Leave to Amend Complaint*. On January 29, 2024, the CITY OF RENO filed *Defendant City of Reno's Opposition to Plaintiffs' Motion for*

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Leave to Amend Complaint. Also, on January 29, 2024, GREEN ACRES filed *Defendant Green Acres Storage Partners, LLC's Joinder in Defendant in Defendant City of Reno's Opposition to Plaintiffs' Motion for Leave to Amend Complaint.* Moreover, on January 29, 2024, NDOT filed *State of Nevada, Ex Rel. Its Department of Transportation's Opposition to Plaintiffs' Motion for Leave to Amend Complaint.* On February 6, 2024, HARVEY TRUST filed *Plaintiffs' Reply in Response to NDOT's Opposition to the Motion for Leave to Amend Complaint.* Also, on February 6, 2024, HARVEY TRUST filed *Plaintiff's Reply in Response to Defendant City of Reno's Opposition to the Motion for Leave to Amend the Complaint and Defendant Green Acres Storage Partners LLC Joinder.*

On February 15, 2024, the Court entered its *Order Regarding Defendants' Motions to Dismiss and Plaintiffs' Motion for Leave to Amend Complaint* wherein the Court granted HARVEY TRUST leave to amend its *FAC* and provided the parties with additional timing to brief arguments regarding whether the four (4) newly added claims should be dismissed.

On February 28, 2024, HARVEY TRUST filed the *Second Amended Complaint* (hereinafter "SAC").¹ On March 20, 2024, the CITY OF RENO filed *Defendant City of Reno's Supplemental Motion to Dismiss* (hereinafter

1. In the instant matter, *Plaintiff's Complaint* was originally filed on February 14, 2023. Subsequently, on April 7, 2023, HARVEY TRUST filed *Plaintiff's First Amended Complaint* (hereinafter "*FAC*").

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“Supp. to COR MTD”). Also, on March 20, 2024, NDOT filed *State of Nevada, on Relation of its Department of Transportation’s Supplemental Points and Authorities to its Motion to Dismiss Pursuant to the Court’s February 15, 2024 Order* (hereinafter *“Supp. to NDOT MTD”*). On March 26, 2024, WASHOE COUNTY filed *Defendant Washoe County’s Renewed Motion to Dismiss and Joinder to Defendants’ Motion to Dismiss and Supplemental Motions*. Also, on March 26, 2024, GREEN ACRES filed *Defendant Green Acres Storage Partners, LLC’s Joinder in Defendant City of Reno’s Supplement to Motion to Dismiss and Defendant State of Nevada, on Relation of its Department of Transportation’s Supplemental Points and Authorities to its Motion to Dismiss*.

On April 3, 2024, HARVEY TRUST filed *Plaintiffs’ Opposition to Defendant State of Nevada, on Relation of its Department of Transportation’s Supplemental Points and Authorities to its Motion to Dismiss* (hereinafter *“Opp. to Supp. to NDOT MTD”*). Also, on April 3, 2024, HARVEY TRUST filed *Plaintiffs’ Opposition to Defendant City of Reno’s Supplemental Points and Authorities to its Motion to Dismiss*. (hereinafter *“Opp. to Supp. to COR MTD”*). On April 10, 2024, HARVEY TRUST filed *Plaintiffs’ Opposition to Defendant Washoe County’s Renewed Motion to Dismiss and Joinder to Defendants’ Motions to Dismiss and Supplemental Motions*. Also, on April 10, 2024, HARVEY TRUST filed *Plaintiffs’ Opposition to Defendant Green Acres Storage Partners, LLC’s Joinder in Defendant City of Reno’s Supplement to Motion to Dismiss and Defendant State of Nevada, on Relation of its Department of*

*Appendix B**Transportation's Supplemental Points and Authorities to its Motion to Dismiss.*

On April 10, 2024, NDOT filed *State of Nevada on Relation of its Department of Transportation's Reply in Support of Supplemental Points and Authorities to its Motion to Dismiss Pursuant to the Court's February 15, 2024 Order* (hereinafter "*Reply to Supp. to NDOT MTD*"). Also on April 10, 2024, the CITY OF RENO filed *Defendant City of Reno's Reply in Support of its Supplement to Motion to Dismiss* (hereinafter "*Reply to Supp. to COR MTD*").

Thereafter, the motions to dismiss and the accommodating supplements were submitted to this Court for its consideration.

HARVEY TRUST's SAC² alleges the following cause of action: (1) Quiet Title – All Defendants (hereinafter "Claim 1"); (2) Quiet Title – City of Reno and Washoe County (hereinafter "Claim 2"); (3) Declaratory Relief re: ownership rights – All Defendants (hereinafter "Claim 3"); (4) Declaratory Relief – re: Easement by

2. The Court notes that at the time of the filing of the of the respective parties motions to dismiss, the parties were arguing that the claims in the *FAC* should be dismissed. However, the Court granted HARVEY TRUST leave to amend their *FAC* and add four new claims for relief. Upon review of the *FAC* and *SAC*, the first six claims for relief are identical. Therefore, for purposes of parity, when the Court summarizes the arguments of the parties regarding the first six claims for relief, the Court will state any references made in the arguments to the *FAC* as if they are being made towards the *SAC*.

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Implication and/or Necessity and/or Special Easement against Defendant Green Acres Storage Partners LLC (hereinafter “Claim 4”); (5) Inverse Condemnation/ Taking – Defendants NDOT (hereinafter “Claim 5”); (6) Injunction – All Defendants (hereinafter “Claim 6”); (7) Inverse Condemnation/ Regulatory Taking – Defendants NDOT (hereinafter “Claim 7”); (8) Inverse Condemnation/ Nonregulatory Taking – Defendant NDOT (hereinafter “Claim 8”); (9) Inverse Condemnation/ Temporary Taking – Defendant NDOT (hereinafter “Claim 9”); (10) Violation of Plaintiffs’ Due Process Rights – Defendants NDOT and City of Reno (“Claim 10”).

The Court will summarize the facts alleged in HARVEY TRUST’s *SAC* below.

In or around 1987, NDOT initiated and pursued the acquisition of a certain stretch of real property for the construction of what is currently known as Interstate 580 that runs through and/or adjacent to the municipality of Reno. *SAC* at 3. NDOT acquired the aforementioned real property via a condemnation proceeding. *Id.*

Prior to NDOT acquiring a portion of HARVEY TRUST and/or their predecessors’ property for the construction of Interstate 580, HARVEY TRUST and/or their predecessors’ real property, from at least 1948, ran up to and abutted Huffaker Lane for several miles, which included the bridge that was built to span the Dry Creek Wash adjacent to HARVEY TRUST’s property boundaries. *Id.*

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Upon information and belief, during the course of construction of Interstate 580 on the property NDOT had condemned from HARVEY TRUST's predecessors in interest and the other landowners, NDOT caused to be removed, portions of Huffaker Lane, as well as the bridge that connected HARVEY TRUST's main properties to the northwest corner of HARVEY TRUST's property, which had been used by HARVEY TRUST's predecessors through their access from crossing over the bridge. *Id.*

During the course of construction of Interstate 580 and the changes NDOT made to HARVEY TRUST's property, HARVEY TRUST's predecessor was in her 90's and was not able to freely move around her property without assistance from others and was not able to monitor the actual construction work performed by NDOT's contractors. *Id.* at 4.

After losing their property to NDOT, HARVEY TRUST and their predecessors continued to use the northwest corner of their property for the purpose of routinely storing large equipment, truck trailers and livestock for which HARVEY TRUST and their predecessors received compensation from third parties who rented space from HARVEY TRUST for both short-term and long-term storage on the northwest corner of their property and HARVEY TRUST installed a fence at their property line to secure the stored items. *Id.*

In order to access the northwest corner of HARVEY TRUST's property, HARVEY TRUST and their tenants, since around 1987, had been able to drive down what is

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currently called Green Acres Drive to the end of the cul-de-sac, wherein HARVEY TRUST and their tenants crossed over APN 043-282-03 in order to gain access to their storage area due to the fact that NDOT removed the bridge during construction of Interstate 580. *Id.*

In addition, on or about November 2002, HARVEY TRUST agreed to and did lease a portion of the northwest corner of their property, which was directly adjacent to Interstate 580, to be used for the installation and maintenance of a sign, which was constructed and is currently maintained by their tenant. As a result of the installation of the sign, HARVEY TRUST's tenant regularly traveled to the northwest corner of their property via APN 043-282-03 and had done so regularly since the sign was constructed. *Id.*

HARVEY TRUST has recently discovered that, upon information and belief, their property line was altered at the time of the construction of Interstate 580, which resulted in HARVEY TRUST's loss of certain real property for which HARVEY TRUST predecessors were not properly compensated for. *Id.* at 6.

Thereafter, after many years of floods traveling down Dry Creek, HARVEY TRUST, upon information and belief, has recently become aware that a portion of the bridge's foundation was not removed at the time of construction of the Interstate 580 and after reviewing this recently unearthed structure, it appears that the alignment of Huffaker Place was altered from its original alignment for the betterment of Washoe County and to the

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detriment of HARVEY TRUST, which resulted in some of HARVEY TRUST's predecessors' property being taken by NDOT and/or the County of Washoe. *Id.*

Upon learning of the alleged discrepancy, HARVEY TRUST has spent several months attempting to research what happened when a portion of their property was taken by NDOT and NDOT severed Huffaker Lane, renamed it Huffaker Place, and demolished the bridge. *Id.*

As a result of HARVEY TRUST's research on Huffaker Place, HARVEY TRUST has discovered that Huffaker Place has never been declared, dedicated or recorded and as a result of same, HARVEY TRUST alleges that they are the rightful owner in fee simple of all of Huffaker Place. *Id.* at 7.

When HARVEY TRUST filed a criminal trespass against GREEN ACRES, HARVEY TRUST was informed that Huffaker Place does not show up on the officers' official address system for the CITY OF RENO. *Id.*

On December 14 2020, in the midst of the Covid pandemic, NDOT scheduled a virtual meeting of its board to decide how to dispose of APN 043-282-03. *Id.* Upon information and belief, GREEN ACRES had been attempting to persuade NDOT to sell APN 043-282-03 to it for several years. *Id.* During the meeting, Governor Steve Sisolak expressed the following regarding the sale of APN 043-282-03: "Governor Sisolak expressed his concern over the landlocked property, indicating that at the county, a piece of property could never be landlocked as this would make it unusable for the owner." *Id.*

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HARVEY TRUST's property was not only adjacent to APN 043-282-03, but the northwest corner of HARVEY TRUST property (i.e., APN 043-011-40) would become landlocked if NDOT was to sell APN 043-282-03 without reserving an easement by implication for HARVEY TRUST and their tenants who regularly use the northwest corner of their property. *Id.* at 8.

Pursuant to NRCP 12(b)(5), “[a] complaint will not be dismissed for failure to state a claim ‘unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief.’” *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 858 (1993) (citations omitted). All factual allegations of the complaint must be accepted as true. *Capital Mortgage Holding v. Hahn*, 101 Nev. 314, 315 (1985). In deciding a Motion to Dismiss pursuant to NRCP 12(b)(5), the Court “must construe the pleading liberally and draw every fair intendment in favor of the [non-moving party].” *Vacation Village, Inc. v. Hitachi America, Ltd.*, 110 Nev. 481, 484 (1994). However, a court does not need to assume the truth of legal conclusions merely because they are cast in the form of factual allegations. *Beebe v. Litton Loan Servicing LP*, 2011 WL 4344031 *1 (D. Nev. 2011). The test to determine whether the allegations in the complaint are sufficient to assert a claim is “whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested.” *Ravera v. City of Reno*, 100 Nev. 68, 70 (1984).

When ruling on a motion to dismiss, if a district court considers evidence outside of the pleadings, it must

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normally convert the 12(b) motion into a Rule 56 motion for summary judgment and give the nonmoving party a chance to respond. NRCP 12(b). However, the Court may consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment. *US v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *see also Breliant*, 109 Nev. at 847.

As a precursor, the Court notes that GREEN ACRES³, the CITY OF RENO⁴, and NDOT⁵ all attach multiple exhibits to their Motions to Dismiss.

3. Final Order of Condemnation, issued by the Second Judicial District Court on January 30, 1987 (Exhibit 1); Right of Way Plan Sheets prepared by State of Nevada in connection with the Interstate 580 project that identify Parcel No. 020.196 (Exhibit 2); State of Nevada Contract Plan Sheet dated July 2, 1986 (Exhibit 3); County Estates Subdivision Map, Unit 2 (Exhibit 4); Washoe County Assessor's Map, Map No. 043-28 (Exhibit 5); Quitclaim Deed, recorded on August 10, 2021 (Exhibit 6).

4. Parcel map number 991 (Exhibit 1); Record of Survey No. 2710, recorded as Document No. 1794307 (Exhibit 2); Joint Tenant Deed, recorded as Document No. 1650665 (Exhibit 3); Record of Survey No. 2856, recorded as Document No. 1881692 (Exhibit 4); 1940 General Highway Map, Washoe County, NV (Exhibit 5); 1950 General Highway Map, Washoe County, NV (Exhibit 6); Quitclaim Deed, recorded as Document No. 1530234 (Exhibit 7); Graphical depiction (Exhibit 8).

5. Order for Publication (Exhibit 1); Judgment of Condemnation (Exhibit 2); Easement of Deed (Exhibit 3); Easement of Deed (Exhibit 4).

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In all its oppositions, HARVEY TRUST objects to the inclusion of the attached exhibits for purposes of the Court considering a NRCP 12(b)(5) motion to dismiss. HARVEY TRUST avers that GREEN ACRES, the CITY OF RENO, and NDOT all attempt to provide “expert opinions” when interpreting said exhibits – which none of the parties are suited to do.⁶

The Court notes that it may “consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment.” *Ritchie*, 342 F.3d at 908.⁷ The Court may take judicial notice of a fact if it is either “(a) Generally known within the territorial jurisdiction of the trial court; or (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” NRS 47.130(2).

Upon review of all the exhibits attached to each of the respective motions to dismiss, the Court notes they are all official records of Washoe County and/or the State of Nevada. All these documents are public records – the veracity of which cannot be reasonably questioned.

6. *See e.g. Opp. to GA MTD* at 3.

7. “Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.” *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53 (2002) (internal quotations omitted).

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Documents of this nature are consistently relied on by private and public parties alike. The Court finds that it maintains the power to take judicial notice of all of these documents, and the Court elects to do so for purposes of the respective motions to dismiss. As such, the Court will consider the attached exhibits to the respective motions to dismiss in making its determinations.

As a second precursor, the Court notes that it will first address Claims 1, 2, 4, 5, 7, 8 and 9. The Court will then address Claims 3, 6, and 10. The Court will do so because the ability of Claims 3, 6, and 10 to survive a NRCP 12(b)(5) Motion to Dismiss necessarily relies on the ability of the remainder of the claims to survive a NRCP 12(b)(5) Motion to Dismiss.

As a third precursor, the Court notes that multiple claims for relief are levied against multiple parties. Throughout the various motions to dismiss, the parties often make similar arguments regarding why the claims for relief should be dismissed. In the interest of judicial economy, the party will not summarize such similar arguments from the parties. Rather, this Court will only summarize such similar arguments from one of the parties.

First, the Court will assess if Claim 1 can survive a NRCP 12(b)(5) Motion to Dismiss.

GREEN ACRES argues that Claim 1 lacks factual support and is not warranted by existing law. *GA MTD* at 5.

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GREEN ACRES submits that neither HARVEY TRUST nor their predecessors ever possessed an interest in any portion of APN 043-282-03 (hereinafter "Subject Parcel") and the Subject Parcel was specifically identified and described in the 1987 Order of Condemnation and related documents. *Id.* at 6. GREEN ACRES avers that prior to the 1987 Order of Condemnation, the Dale Poe Development Corporation was the owner of the Subject Parcel. GREEN ACRES further submits that HARVEY TRUST did not have any ownership interest in the Subject Parcel.⁸ *Id.* GREEN ACRES contends that there exists no record of any of HARVEY TRUST's predecessors having any interest in the Subject Parcel. *Id.*

Further, GREEN ACRES submits that even if HARVEY TRUST once maintained an interest in the Subject Parcel, they could not overcome the effects of NRS 408.533(3).⁹ *Id.* GREEN ACRES argues that it is conclusively and irrefutably presumed that the State of Nevada lawfully acquired and disposed of the Subject Parcel, and GREEN ACRES, as a purchaser for value

8. Citing *GA MTD*, Exhibit 1 and Exhibit 4.

9. NRS 408.533 states, in pertinent part, the following:
[i]t is conclusively presumed in favor of the Department and any purchaser for value that the Department acted within its lawful authority in acquiring and disposing of the property, and that the Director acted within his or her lawful authority in executing any conveyance vesting title in the purchaser. All such conveyances must be quitclaim in nature and the Department shall not warrant title, furnish title insurance or pay the tax on transfer of real property.

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from the State of Nevada, lawfully acquired title to the Subject Parcel. *Id.* at 7.

Moreover, GREEN ACRES argues that if HARVEY TRUST ever possessed an interest in the Subject Parcel, Claim 1 would be barred by the relevant statute of limitations. *Id.* GREEN ACRES states that the 1987 Order of Condemnation has been a matter of public record for roughly 36 years – as it relates to the Subject Parcel. *Id.* at 8. GREEN ACRES states that of those 36 years, the State of Nevada asserted ownership of the Subject Parcel for approximately 34 years. *Id.* GREEN ACRES further argues that HARVEY TRUST is about three decades late according to NRS 11.080 and the pertinent case law.

In opposition, HARVEY TRUST submits that GREEN ACRES' allegations that neither HARVEY TRUST nor its predecessors have ever possessed an interest in the Subject Parcel are misplaced. *Opp. to GA MTD* at 8.

HARVEY TRUST asserts that GREEN ACRES' reliance on NRS 408.533 is misplaced. *Id.* at 9. HARVEY TRUST states that GREEN ACRES' argument seems to be that even if NDOT erroneously or recklessly disposed of a property they never acquired – as alleged in the SAC – NRS 408.533 sanctions and protects such actions. *Id.* HARVEY TRUST contends that to interpret NRS 408.533 as argued by GREEN ACRES would mean that NDOT could sell any parcel of real property to a “purchases of value” without having to demonstrate to the former owner how or whether it acquired the said real property, and the

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former owner loses all rights to said property as soon as the deal with NDOT concludes. *Id.* at 9 – 10.

Further, HARVEY TRUST contends that whether the statute of limitations has run is a question of fact not to be determined on a motion to dismiss. *Id.* at 10.

NRS 11.080 states, in pertinent part, the following:

[n]o action for the recovery of real property, or for the recovery of the possession thereof other than mining claims, shall be maintained, unless it appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor was seized or possessed of the premises in question, within 5 years before the commencement thereof.

“Consistent with this understanding of NRS 11.080, the limitations period is triggered when the plaintiff is ejected from the property or has had the validity or legality of his or her ownership or possession of the property called into question.” *Berberich v. Bank of Am., N.A.*, 136 Nev. 93, 97 (2020).

The Court notes that in HARVEY TRUST's oppositions, HARVEY TRUST focuses on the fact that they enjoyed usage of subject portion of APN 043-282-03 until it was sold to GREEN ACRES by the State of Nevada. However, it is clear that that subject portion of APN 043-282-03 is encompassed in the 1987 Order of Condemnation

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– as a matter of public record.¹⁰ The pertinent statute of limitations begins to run when “the validity or legality of his or her **ownership** or possession of the property called into question.” *Id.* (**emphasis added**). Assuming *arguendo*, that HARVEY TRUST’s predecessors-in-interest had a portion of their land wrongly included in the 1987 Order of Condemnation effectively means that the HARVEY TRUST’s predecessors-in-interest had the validity of their ownership of the property called into question.

Further, the Court notes that “the [NRS 11.080] limitations period does begin to run against a property owner once the owner has **notice of disturbed possession.**” *Id.* (**emphasis added**). The aforementioned case law specifically uses the wide-ranging word “notice” – as opposed to using a specific term such as “actual notice” or “constructive notice”. Given this, the word “notice” clearly encompasses all specific forms of notice – such as “actual notice” or “constructive notice”.

Next, the Court acknowledges that in the *SAC*, HARVEY TRUST avers that they maintained possession of the subject portion of APN 043-282-03. The Court notes that Black’s Law Dictionary defines “possession”,

10. As discussed *supra*, HARVEY TRUST avers that the parties all attempt to provide “expert opinion” when interpreting these documents – something none of the parties are suited to do. However, the Court notes that it is axiomatic that the 1987 Order of Condemnation included APN 043-282-03 – and such a determination does not constitute “expert opinion”. A search of APN 043-282-03 on the Washoe County Assessor’s Office website, finds a direct link to the 1987 Order of Condemnation.

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in pertinent part, as the following: “[t]he fact of having or holding property in one’s power; the exercise of dominion over property.” Further, the Court in *Berberich* noted the following:

for example, a notice of default issued on a deed of trust has been found insufficient to dispute an owner’s possession because it does “not call into question the validity of [the owner’s] control of the property” or “indirectly question [the owner’s] control of the property by asserting [someone else] was entitled to possess the [property]”. *Berberich* 136 Nev. at 97 (quoting *Salazar v. Thomas*, 186 Cal. Rptr. 3d 689, 698 (2015)).

Here, the example cited above is inapposite to the instant matter. A notice of default presupposes that a party is the rightful owner of property. However, here the 1987 Order of Condemnation did not presuppose that the State of Nevada became the rightful owners of the subject property. Rather, according to the 1987 Order of Condemnation, the State of Nevada simply became the rightful owner of the property. The Court acknowledges that it is feasible that the State of Nevada erred and included the subject property in the 1987 Order of Condemnation. However, it is at this point that the validity or legality of HARVEY TRUST’ predecessors-in-interest’s ownership of the subject property came into question. Also, it matters not that HARVEY TRUST predecessors-in-interest may have used and treated the subject property as their own. According to the 1987 Order

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of Condemnation, HARVEY TRUST predecessors-in-interest no longer maintained the exercise of dominion over the property. Even though HARVEY TRUST's predecessors in interest may have believed they exercised dominion over the property; there is still a question if they maintained the legal ability to do so.

Here, as a matter of law, it is clear that HARVEY TRUST's predecessors-in-interest were on constructive notice, if not actual notice, of the fact that the subject portion of APN 043-282-03 was included in the 1987 Order of Condemnation. Therefore, the NRS 11.080 limitations period began to run with the legal effectuation of the 1987 Order of Condemnation.

Further, the Court acknowledges it must "construe the [SAC] liberally and draw every fair intendment in favor of [HARVEY TRUST]." *Vacation Village, Inc.*, 110 Nev. at 484. However, as a matter of law, the Court notes that HARVEY TRUST is unable to assert Claim 1 – as it is precluded by the pertinent statute of limitations. There are no set of facts that may come to light through discovery that would negate the fact that HARVEY TRUST's predecessor's-in-interest were on, at least, constructive notice of the fact the validity of their ownership of the property was called into question.

As such, the Court finds that Claim 1 is precluded by the NRS 11.080 limitations period.¹¹

11. The Court will not address the remainder of the arguments made in the pertinent motions to dismiss, as this Court has already found that Claim 1 cannot survive a NRCP 12(b)(5)

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Next, the Court will assess if Claim 2 can survive a NRCPC 12(b)(5) Motion to Dismiss.

The CITY OF RENO argues that Claim 2 fails because HARVEY TRUST never had a legal interest in Huffaker Place. First, the CITY OF RENO submits that Exhibits 5 and 6 – attached to their motion to dismiss – demonstrate that Huffaker Place was formerly Huffaker Lane, which was a Federal Aid Secondary Numbered Highway, and later, SR 671. *COR MTD* at 7. The CITY OF RENO further submits that it was a right of way far before HARVEY TRUST owned APNs 043-011-040 and -08. *Id.* Further, the CITY OF RENO avers the deed to HARVEY TRUST which granted it APN 043-011-08 only went northward to the “South line of Huffaker Lane”. *Id.* The CITY OF RENO also avers that the fact that the former Huffaker Lane was a right-of-way and not part of the HARVEY TRUST’s property is also demonstrated by the surveys done on behalf of HARVEY TRUST in 1994 and 1995, both of which demonstrate that their property did not include Huffaker Place (formerly Huffaker Lane).¹² *Id.*

Moreover, the CITY OF RENO states that the only way for a road or easement to become private property is by abandonment. *Id.* The CITY OF RENO avers that HARVEY TRUST has submitted no evidence, nor made any allegation that Huffaker Lane was abandoned. *Id.* The

Motion to Dismiss and considering the remainder of the arguments will be contradictory to the goal of judicial economy.

12. *COR MTD*, Exhibits 2 & 4.

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CITY OF RENO further avers that after the construction of the freeway, NDOT deeded remnants of right-of-way to the CITY OF RENO to maintain it.¹³ *Id.*

Furthermore, the CITY OF RENO argues that even if HARVEY TRUST had possessed an interest in the former Huffaker Lane, they cannot overcome the conclusive statutory presumption that NDOT lawfully disposed of the right-of-way by quitclaiming it to the CITY OF RENO in 1991 – pursuant to NRS 408.533(3). *Id.* at 8. Also, the CITY OF RENO argues that Claim 2 is also barred by the statute of limitations under NRS 11.080 because the right-of-way was quitclaimed to the CITY OF RENO in 1991.

In opposition, HARVEY TRUST argues that the CITY OF RENO's argument that Claim 2 should be dismissed is misplaced and should be denied so as to give HARVEY TRUST a reasonable opportunity to present all materials that are pertinent to this claim for relief. *Opp. to COR MTD* at 14.

HARVEY TRUST avers that it has provided more than sufficient evidence of inconsistencies and differences between the various property lines making up its properties and Huffaker Lane/Place. *Id.* at 15.

Next, HARVEY TRUST argues that the CITY OF RENO's allegation that HARVEY TRUST nor its predecessor ever possessed an interest in APN 043-282-03 or what is now known as Huffaker Place is not

13. *Id.*, Exhibit 7.

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supported by the facts alleged within the SAC and is not disproven by the CITY OF RENO's interpretation of its non-pleading exhibits. *Id.* at 16. HARVEY TRUST argues that if it is determined after discovery that the angle of Huffaker Lane has changed sufficiently from its original position to reach all of or a portion of Section A or to include a portion of what is now Huffaker Place, including the round-about section, as shown within Exhibit 1 of the SAC, then HARVEY TRUST's allegations in the SAC will be supported by facts and HARVEY TRUST will be able to present evidence of ownership of part of or all of these two sections. *Id.* HARVEY TRUST argues that the CITY OF RENO's interpretations of the non-pleading exhibits, do not disprove HARVEY TRUST's allegations in the SAC sufficient to overcome the standard of proof for a motion to dismiss. *Id.*

Further, HARVEY TRUST argues that the CITY OF RENO's argument that the HARVEY TRUST's allegations must be ignored because Huffaker Lane was a highway does not, in and of itself, disprove HARVEY TRUST's allegations in the SAC regarding the misalignment, whether intentionally or otherwise, of Huffaker Lane while NDOT created Huffaker Place. *Id.* HARVEY TRUST further argues there is still an issue of ownership related to the round-about section of Huffaker Place as the documents produced by GREEN ACRES conflicts with the documents produced by the CITY OF RENO in relation to the ownership of that portion of the round-about south of the west end of Huffaker Place. *Id.* at 16 – 17.

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Lastly, HARVEY TRUST argues whether the statute of limitations has run is a question of fact not to be determined on a motion to dismiss. *Id.* at 21.

The Court notes that in its SAC, HARVEY TRUST asserts the following:

after many years of floods traveling down Dry Creek, Plaintiffs have recently become aware that a portion of the bridge's foundation was not removed at the time of construction of the Interstate 580 and after reviewing this recently unearthed structure, it appears that the alignment of Huffaker Place was altered from its original alignment for the betterment of Washoe County and to the detriment of Plaintiffs, which resulted in some of Plaintiffs' predecessors' property being taken by NDOT and/or the County of Washoe. SAC at 6.

Further, the Court notes that HARVEY TRUST avers that it only "recently discovered, due to the recent years' flood activity, that the alignment of Huffaker Place was improperly altered and that the round-about portion of Huffaker Place may not be owned by Defendant Reno, due to the fact that the records regarding same are not readily available to Plaintiff." *Opp. to COR MTD* at 22.

The Court reiterates that "[c]onsistent with this understanding of NRS 11.080, the limitations period is triggered when **the plaintiff is ejected from the property** or has had the validity or legality of his or her ownership

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or possession of the property called into question.” *Berberich*, 136 Nev. at 97. (**emphasis added**). Also, in *Berberich*, the Court relied on the following quote from a California Court: “whether a statute of limitations bars an action to quiet title may turn on whether the plaintiff is in undisturbed possession of the land.”¹⁴ *Id.* (quoting *Salazar*, 186 Cal. Rptr. 3d at 695 (2015)). The Court also reiterates that “the [NRS 11.080] limitations period does begin to run against a property owner once the owner has notice of disturbed possession.” *Id.* Lastly, the Court reiterates that in Black’s Law Dictionary “possession” is defined, in pertinent part, as the following: “[t]he fact of having or holding property in one’s power; the exercise of dominion over property.”

When an individual is no longer in possession of property, they are ejected from said property – pursuant to NRS 11.080. In other words, when an individual is no longer exercising dominion over property, they have been ejected from their land. For example, if a public road is wrongly built on someone’s property, at that point they are ejected from the portion of their property where the public road was built. They do not control who accesses the public road and do not treat it as their own. It matters not if they later discover that the public road was actually built on property that was theirs – for purposes of determining when the individual was ejected from their property where the public road was built. They are on notice that they are no longer in undisturbed possession of their property

14. The Court in *Berberich* clarified that the California Court was “discussing the general rule in California, which has a statute almost identical to NRS 11.080”. *Berberich*, 136 Nev. at 97.

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where the public road was built when the public road is installed, as they lose the exercise of dominion of that portion of their property.

Here, HARVEY TRUST conducted a survey of their property in 1994 and 1995.¹⁵ Both surveys demonstrate the existence of Huffaker Place, as shown by the semicircles on both surveys.¹⁶ Also, nothing in the SAC indicates that HARVEY TRUST maintained undisturbed possession of Huffaker Place in the five years prior to them bringing this action. Even when the Court construes the SAC liberally and draws every fair intendment in favor of HARVEY TRUST, it is indisputable, as a matter of law, that HARVEY TRUST was ejected from the subject portion, or the entirety, of the area of property known as Huffaker Place prior to five years before bringing this action. HARVEY TRUST's argument regarding why they are not barred by the NRS 11.080 focuses on the fact they only recently discovered that Huffaker Place may have been improperly realigned to its detriment. However, *assuming arguendo* that Huffaker Lane was improperly realigned to HARVEY TRUST's detriment, it is at that point when HARVEY TRUST was ejected from their property. Clearly, at that time, HARVEY TRUST was on notice that it was not in undisturbed possession of said property. There are no sets of facts that could be unveiled in discovery that would prove that HARVEY TRUST was ejected from their property in the prior five

15. See *COR MTD*, Exhibits 2 & 4.

16. *Id.*

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years to it bringing this action. On these grounds, Claim 2 is barred by the statute of limitations.¹⁷

As such, the Court finds that Claim 2 is precluded by the NRS 11.080 limitations period.

Next, the Court will assess if Claim 4 can survive a NRCPC 12(b)(5) Motion to Dismiss.

First, GREEN ACRES submits that the parcel of land owned by HARVEY TRUST is not landlocked. *GA MTD* at 9.

Next, GREEN ACRES argues that HARVEY TRUST has no valid claims for easement by implication and/or necessity and special easement against GREEN ACRES or the State of Nevada. *Id.* at 10. GREEN ACRES asserts that absent a statute against the state, no rights as to state property can be acquired by prescription. *Id.* GREEN ACRES states that Between 1987 and 2021, the State of Nevada was the sole and exclusive owner of APN 043-282-03. *Id.* Therefore, GREEN ACRES submits that HARVEY TRUST could not legally acquire any rights in APN 043-282-03 because it was owned by the State of Nevada. *Id.*

17. The Court also takes judicial notice, pursuant to NRS 47.130, of the fact that it is generally known within Washoe County that Huffaker Place is a public road accessible by members of the public at-large for far longer than the five years prior to HARVEY TRUST bringing this action.

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In opposition, HARVEY TRUST argues that it has sufficiently plead Claim 4. *Opp. to GA MTD* at 12.

HARVEY TRUST argues GREEN ACRES' reliance on the fact that it claims HARVEY TRUST is not landlocked is misguided as the case law surrounding this issue relates to "access" and not whether all or a portion of its property is landlocked. *Id.* HARVEY TRUST avers that if its egress and ingress are substantially interfered with by an act of NDOT and GREEN ACRES, HARVEY TRUST has cause to complain *Id.*

Further, HARVEY TRUST avers that GREEN ACRES' argument that HARVEY TRUST has no valid claim for an easement is misplaced as GREEN ACRES' allegations do not comport with Nevada law. HARVEY TRUST argues that according to *State ex rel. Dept. of Highways v. Linnecke*:

[a]n abutting owner of a public highway has a special right of easement in a public road for access purposes. This is a property right of easement which cannot be damaged or taken from the owner without due compensation.¹⁸
Id. at 14.

HARVEY TRUST avers that it and/or its predecessors acquired a property right of a special easement to access Huffaker Lane. *Id.* at 14. HARVEY TRUST then argues

18. *State ex rel. Dep't of Highways v. Linnecke*, 86 Nev. 257, 260 (1970).

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that when NDOT removed the Huffaker Lane bridge, NDOT provided HARVEY TRUST with a frontage/service road by acquiring the additional property along the east side of I-580 and giving HARVEY TRUST a round-about access to the highway via APN 043-282-03, Green Acres Drive and to S. Virginia Ave. *Id.* at 14 – 15. HARVEY TRUST submits that this frontage/service road special easement remained accessible to HARVEY TRUST for more than 30-years. *Id.* at 15.

Moreover, HARVEY TRUST argues that due to GREEN ACRE's actions of putting up a fence and prohibiting HARVEY TRUST from having access to its frontage/service road for HARVEY TRUST's business purposes, GREEN ACRES is attempting to deny HARVEY TRUST its "property right of easement" that HARVEY TRUST acquired and continued to maintain as a result of NDOT's actions over 30-years ago and HARVEY TRUST's continued use of this special easement. *Id.*

The Court notes that HARVEY TRUST relies heavily on *State ex rel. Dep't of Highways v. Linnecke* in arguing that they maintain an easement through APN 043-282-03. Due to this, the Court will provide a detailed summary of *Linnecke* below.

In *Linnecke*, "[t]he state was taking .726 of an acre of property abutting Highway 40 owned by Harry and Lillian Linnecke, husband and wife. Highway 40 was to be made into a controlled access highway which would become Interstate 80, part of the federal highway system." *State ex rel. Dep't of Highways v. Linnecke*, 86 Nev. 257,

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258–59 (1970). “Before the taking, the Linneckes had direct access from their land onto Highway 40”. *Id.* at 259. However, “after the taking their access from the land was by a frontage road which required them to travel one and one half miles farther in order to reach their land from the highway or to get to the highway from their land.” *Id.*

The Court noted the following: “[a]n abutting owner of a public highway has a special right of easement in a public road for access purposes. This is a property right of easement which cannot be damaged or taken from the owner without due compensation.” *Id.* at 260. However, the Court further noted the following:

[b]ut an owner is not entitled to access to his land at all points in the boundary to it and the highway, although entire access to his property cannot be cut off. If he has free and convenient access to his property and his means of egress and ingress are not substantially interfered with, he has no cause for complaint. *Id.*

The Court also noted the following: “[t]he determination of whether such substantial impairment has been established must be reached as a matter of law. The extent of such impairment must be fixed as a matter of fact.” *Id.*

The Court acknowledges that *Linnecke* expressly states the following: “[a]n abutting owner of a public highway has a special right of easement in a public road for access purposes. This is a property right of easement which cannot be damaged or taken from the owner without

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due compensation.” *Id.* However, in *Brooks v. Bonnett*, the Court provided clarification as to the aforementioned language. Citing the aforementioned language, the Court stated the following: “[i]n other words, abutter’s rights to an easement only exist in Nevada insofar as there is an easement by necessity that exists.” *Brooks v. Bonnet*, 124 Nev. 372, 378 (2008).

Therefore, the only way Claim 4 can survive a NRCPC 12(b)(5) motion to dismiss, via *Linnecke*, is if HARVEY TRUST’s SAC contains allegations sufficient to support a finding that an easement by necessity was created.

“An easement by necessity will generally be found to exist if two requirements are met: (1) prior common ownership, and (2) necessity at the time of severance. The burden of proof is upon the one who seeks to impose the way of necessity.” *Jackson v. Nash*, 109 Nev. 1202, 1209 (1993). “Without such prior common ownership, no easement by necessity will be implied, no matter how strict the necessity.” *Id.* at 1210.

In the SAC, HARVEY TRUST alleges that they owned a portion of APN 043-282-03.¹⁹ Assuming *arguendo* that HARVEY TRUST’s allegations are true, HARVEY TRUST only owned a portion of APN 043-282-03. However, HARVEY TRUST further alleges that it

19. “Plaintiffs are and were at all times relevant hereto the successors in interest and/or owners and/or persons claiming an ownership in and/or possessory interest in a **portion** of that certain real property located within Washoe County, Nevada and formally known as APN 043-282-03. . . .”. SAC at 2. (**emphasis added**).

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maintains an easement throughout the entirety of APN 043-282-03.²⁰ The Court notes that “[i]n order for an easement by necessity to exist, both the benefited parcel and the burdened parcel must have been once owned by the same person.” *Id.* at 1202. Black’s Law Dictionary defines “Parcel”, in relevant part, as follows: “[a] tract of land; esp., a continuous tract or plot of land in one possession, no part of which is separated from the rest by intervening land in another’s possession.”

Here, the burdened parcel is the entirety of APN 043-282-03, as HARVEY TRUST asserts it maintains an easement to reach APN 043-110-40 by traveling through the entirety of APN 043-282-03– not just the portion of it. However, HARVEY TRUST’s SAC does not contain allegations sufficient to support a finding that they ever owned the burdened parcel – as they make no claim that they ever owned the entirety of APN 043-282-03. Effectively, for this Court to make a finding that HARVEY TRUST possesses an easement by necessity to reach APN 043-110-40, the Court would have to make a finding that they maintain an easement through land that they never owned. However, as highlighted *supra*, Nevada law requires that in an order for an easement by necessity to exist, the party enjoying the easement must have once owned the burdened parcel. Here, according to the SAC, HARVEY TRUST never owned the burdened parcel.

20. “. . . [I]t is Plaintiffs’ contention that it has acquired an easement by implication and/or by necessity and/or a special easement with regard to Plaintiffs’ continual and open use of APN 043-282-03 from approximately 1987 until the present time.” *Id.* at 11.

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Therefore, the Court finds that HARVEY TRUST has not acquired an easement by necessity through their entirety of APN 043-282-03, as it is alleging in the SAC.²¹

Now, the Court will assess if HARVEY TRUST's SAC contains allegations sufficient to support a finding that an easement in another form was created.

“In Nevada, an easement may be created by express agreement, prescription, or implication.”²² *Brooks*, 124 Nev. at 375.

21. Courts around the United States have reached this same conclusion. *See e.g., Abraham & Assocs. Tr. v. Park*, 2012 UT App 173, ¶ 15 (2012) (“An easement by necessity requires that **all** the property is once owned by a single person who then divides it into two tracts and conveys away one tract.”) (internal quotations omitted)(**emphasis added**); *Riffle v. Worthen*, 327 Ark. 470 (1997) (finding no easement by necessity because relatives jointly owned one tract and single relative owned other tract); *Montana Wilderness Ass'n v. U. S. Forest Serv.*, 496 F. Supp. 880, 885 (D. Mont. 1980), *aff'd in part and remanded sub nom. Montana Wilderness Ass'n, Nine Quarter Circle Ranch v. U. S. Forest Serv.*, 655 F.2d 951 (9th Cir. 1981) (highlighting that “[p]rior to the Northern Pacific Railroad land grant in 1864 the United States held title to **all** of the land.”) (**emphasis added**); *Griffeth v. Eid*, 1998 ND 38, ¶ 12 (1998) (“An easement by necessity may not be obtained over the land of a third party. . . .”); *Graham v. Mack*, 216 Mont. 165, 175 (1984) (an easement by necessity can never be granted over the land of a third party or stranger to the title.).

22. The Court notes that HARVEY TRUST specifically pleads Claim 4 as follows: “Declaratory Relief – re: Easement by Implication and/or Necessity and/or Special Easement against Defendant Green Acres Storage Partners LLC”. HARVEY TRUST does not allege that an express easement exists. Therefore, the Court will not assess if an express easement exists in the instant matter.

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As to prescriptive easements, “[i]t is a well-settled principle that absent a statute allowing adverse use [sic] against the state, no rights as to state property can be acquired by prescription.” *Sloat v. Turner*, 93 Nev. 263, 266 (1977). “No such statute exists in Nevada. The sole statutory authority on the subject of easements over state lands, NRS 322.050, provides only for easements by lease.”²³ *Id.*

Here, the State of Nevada owned APN 043-282-03 from 1987 to 2020. Therefore, HARVEY TRUST could not have acquired an easement by prescription through APN 043-282-03.

As to easements by implication, “[t]he two general grounds for the creation of an easement by implication are: (1) the extreme necessity that such a right be recognized, or (2) the intent of the parties as shown by the circumstances.”²⁴ *Jackson*, 109 Nev. at 1208 (1993).

“[T]he three essential characteristics of an easement by implication as: (1) unity of title and subsequent separation by grant of the dominant tenement; (2) apparent and continuous use; and (3) the easement must

23. The Court notes that the cited case is from 1977. However, HARVEY does not point to any such statute that would allow them to obtain a prescriptive easement from the State of Nevada, nor is the Court aware of any such statute.

24. As discussed *supra*, the Court has already found that HARVEY TRUST’s SAC fails to raise allegations sufficient to support a finding that an easement by necessity exists. Therefore, the Court will not further analyze this issue.

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be necessary to the proper or reasonable enjoyment of the dominant tenement.” *Id.* at 1213.

For the reasons listed *supra*, HARVEY TRUST’s SAC fails to plead allegations sufficient to support a finding of an existence of an easement by implication – as the SAC could not support a finding that there was a “unity of title and subsequent separation by grant of the dominant tenement.” *Id.*

In light of the foregoing considerations, HARVEY TRUST fails to plead allegations sufficient to support a finding that it maintains an easement, in any form, in APN 043-282-03.

As such, the Court finds that Claim 4 fails to state a claim upon which relief can be granted.

Next, the Court will assess if Claim 5 can survive a NRCP 12(b)(5) Motion to Dismiss.

NDOT argues it is entitled to dismissal of Claim 5 because the property in the northwest corner of HARVEY TRUST’s property is not landlocked and any “Damage/Taking” claim is statutorily barred. *NDOT MTD* at 5.

NDOT avers that the entire area designated in blue by HARVEY TRUST on Exhibit 1 to the SAC is covered by two easements, created by deeds executed by HARVEY TRUST’ predecessor-in-interest, Peter and Bernice Guisti and the Guisti Family Trust, conveying to NDOT “a perpetual easement and right-of-way for the location,

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construction and maintenance of a slope and drainage easements upon, over and across certain real property . . .”²⁵ *Id.* NDOT asserts the conveyance of the easements was the result of a purchase by NDOT for use in the I-580 project which included the demolition of the Dry Creek Bridge and creation of the Huffaker cul de sac. *Id.* NDOT further asserts those highway improvements were completed somewhere around 1990. *Id.*

NDOT submits that although the landowner was aware of the project and in fact sold a portion of his property to NDOT for use in the project, had he wanted to claim any damage or inverse condemnation as a result of a change in access to a portion of his property, he had two years to file a claim with the Department of Transportation pursuant to NRS 408.497.²⁶ *Id.*

25. *See NDOT MTD*, Exhibit C – D.

26. NRS 408.497 states the following:

1. Any person asserting any claim for compensation or damage for injury to land or interests therein arising from the construction, alteration or improvement of any highway constructed, altered or improved under the provisions of this chapter shall first, as a condition precedent to the action authorized by subsection 2 and not later than 2 years after final acceptance of the contract by the Department as defined in NRS 408.387, file such claim with the Department, verified under oath and containing all particulars regarding such claim. Such claim must be promptly investigated by the Director, who shall recommend its disposition to the Board, and if such claim or any portion thereof is approved by the Board it must be paid upon obtaining a written release of the entire claim, out of the State

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NDOT further submits that NRS 408.497 lays out the process to bring an inverse condemnation claim against the NDOT based upon claims for compensation or damage or injury to land resulting from construction of a project (i.e., the I-580 project). *Id.* NDOT avers that HARVEY TRUST's predecessor-in-interest did not file a claim with NDOT, pursuant to NRS 408.497; therefore, HARVEY TRUST is now statutorily barred from bringing such a claim. *Id.*

In opposition, HARVEY TRUST argues that NDOT's is not entitled to dismissal of Claim 5. *Opp. to NDOT MTD* at 16.

HARVEY TRUST submits that not only does HARVEY TRUST assert that its claims are not part of the condemnation proceedings and that changes in their property lines occurred more than two years after the contracts were approved by NDOT, but it is also clear that these facts would not fall within or be subject to NRS

Highway Fund. The claimant must be given written notice by registered mail of the Board's decision.

2. Any claimant aggrieved by the Board's decision on such claim may commence, in the district court for the county in which the land is situated, within 6 months after receipt of notice of the decision on such claim, a proceeding in inverse condemnation against the Department seeking just compensation for an alleged taking or damaging of private property for highway purposes, and if such proceeding is not so commenced within such time it is forever barred.

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408.497. *Id.* at 16 – 17. In addition, HARVEY TRUST submits that it alleges in the SAC the following:

[a]fter acquiring a large portion of Plaintiffs' predecessors' property in order to make way for the construction of Interstate 580, Defendant NDOT tore down the bridge, which had given Plaintiffs access to the Northwest corner of their property (i.e., APN 043-011-40) to become landlocked due to the large and deep wash that separated the main portion of Plaintiffs' property to said Northwest portion thereof.²⁷ *Id.* at 17.

Also, HARVEY TRUST submits that it alleges the following in the SAC: “[a]fter blocking access to the Northwest portion of their property, Plaintiffs were forced to use a certain real property, also owned by Defendant NDOT (i.e., APN 043-282-03), which remained owned by Defendant NDOT, as the [Dirt Access Road] to obtain access to the landlocked Northwest corner of Plaintiffs' property.”²⁸ *Id.*

HARVEY TRUST argues that, according to Nevada law, when NDOT tore down the Dry Creek Bridge it was required to provide HARVEY TRUST with highway access to the northwest portion of HARVEY TRUST's property, which NDOT did for approximately 30-plus years after the removal of the bridge, through HARVEY

27. SAC at 12.

28. *Id.*

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TRUST's "Dirt Access Road" included within APN 043-282-03. *Id.* HARVEY TRUST further argues that the sale of that parcel without recognizing the formerly approved "Dirt Access Road" or the required by law special easement, resulted in not only a loss of access, but also damages in the form of lost revenues from equipment storage on HARVEY TRUST's property, the ability to service the billboard sign located thereon, and the ability to maintain the side slopes of the Deer Creek wash, which was never an issue prior to the improper sale of the property (APN 043-282-03). *Id.* at 17 – 18.

Further, HARVEY TRUST argues that the Court in *State ex re. Dep't of Highways v. Linnecke* determined that substantially impairing direct access to land constituted a taking. *Id.* at 19. HARVEY TRUST asserts that as alleged in the SAC, HARVEY TRUST has been damaged as a result of NDOT's sale of parcel (APN 043-282-03) to GREEN ACRES without adequate notice to HARVEY TRUST because, as also alleged in the SAC, since the construction of I-580, HARVEY TRUST has utilized that parcel as its legal substitute access road to and from the northwest corner of their property due to the county/state highway system lost as a result of the demolition of the Huffaker Lane bridge. *Id.* HARVEY TRUST further argues that this access, which was provided by NDOT at the time of the demolition of the Dry Creek Bridge allowed HARVEY TRUST to (1) maintain the channel lining, (2) secure the northwest portion of APN 043-011-040, (3) give access to customers to the leased space for short and long periods of time. *Id.* Additionally, in 2002, this "Dirt Access Road" through APN 043-282-08 was made

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the official access for the construction and maintenance of the billboard sign through a Court order requiring the CITY OF RENO to allow the construction of the Sign and this access was the only access available at the time.²⁹ *Id.*

In reply, NDOT argues that the instant matter has similarities to *Sloat v. Turner*.³⁰ *NDOT Reply* at 7.

“Inverse condemnation is an action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.” *State, Dep’t of Transp. v. Cowan*, 120 Nev. 851, 854 (2004) (internal quotations omitted).

“A taking can arise when the government regulates or physically appropriates an individual’s private property.” *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 647 (2007). “Physical appropriation exists when the government seizes or occupies private property or ousts owners from their private property.” *Id.* “An individual must have a property interest in order to support a takings claim.” *McCarran Int’l Airport v. Sisolak*, 122 Nev. 645, 658 (2006).

29. See *Eller Media Company v. City of Reno*, Case No. CV0 1-03131.

30. *Sloat v. Turner*, 93 Nev. 263 (1977).

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In *Sloat v. Turner*:

[a]ppellants Billy Sloat and Hazel Hedges purchased adjacent tracts in Clark County of (*in*) June 13 and November 4 of 1963 respectively. At that time the properties were completely landlocked. Their land was, and still is, completely bounded on all sides by private property with a Union Pacific Railroad right-of-way passing through the northwest corner of each tract. The nearest developed road, Lamb Boulevard, is located in excess of one-half mile due east.

No rights of access were acquired with the purchases nor were any obtained from the surrounding landowners. To travel to their land the appellants traveled directly across private property from Lamb Boulevard. It is the use of this route of access eight to ten times a year by appellants which the trial court found gave rise to an easement by prescription. . . . In acquiring land for the construction of Interstate 15 the State of Nevada in 1965 condemned the property upon which the appellants had relied for their prescriptive access. 93 Nev. at 265.

The Court found: “[i]f there was no existing right in the appellants of access to their property either by covenant or by prescription, the state’s condemnation of the property over which the easement allegedly crossed

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was not a deprivation of access compensable under Article I, Section 8, of the Nevada Constitution.” *Id.* at 267.

Here, much as in *Sloat v. Turner*, HARVEY TRUST is claiming a taking due to them being unable to access their landlocked land – although they had access to it via an easement prior to the state government depriving them of that easement. However, as explained *supra*, HARVEY TRUST cannot, as a matter of law, establish an easement through APN 043-282-03. The Court notes that “[n]either constitution nor statute contemplates compensation for that which does not exist.” *Probasco v. City of Reno*, 85 Nev. 563, 566 (1969). In the instant matter, there are no set of facts that could support a finding of inverse condemnation, as there can be no condemnation of something “which does not exist”. *Id.* Therefore, NDOT selling GREEN ACRES APN 043-282-03, as asserted in the SAC, “was not a deprivation of access compensable under Article I, Section 8, of the Nevada Constitution.” *Sloat*, 93 Nev. at 267.

As such, the Court finds that Claim 5 fails to state a claim upon which relief can be granted.

Next, the Court notes that Claim 7, Claim 8, and Claim 9 are all various claims asserting inverse condemnation based upon NDOT taking the northwest corner of HARVEY TRUST’s property.³¹ As a matter of law, these

31. Claim 7 – “NDOT’s actions exclude Plaintiff from using the Northwest Corner of their Property and has shown an unconditional and permanent taking of said property.” SAC at 16; Claim 8 – “NDOT has taken action to intentionally prevent Plaintiffs from

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claims stand on the same legal ground as Claim 5. Claims 7, 8, and 9 all fail to state a claim upon which relief can be granted – following the same reasoning as Claim 5.

Next, the Court will assess if Claim 3 can survive a NRCP 12(b)(5) Motion to Dismiss.³²

“Declaratory relief is available only if: (1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for judicial determination.” *Cnty. of Clark, ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 752 (1998)

In the instant matter, due to the reasoning provided *supra*, a justiciable controversy does not exist. Therefore, HARVEY TRUST is unable to seek declaratory relief.

accessing the Northwest corner of their property” *Id.*; Claim 9 – “If there is subsequent action by Defendant NDOT or a finding by the Nevada Supreme Court, or otherwise, that Plaintiffs may access the Northwest corner of their property as before, then there has been a temporary taking of Plaintiffs’ property for which just compensation must be paid.” *Id.* at 17.

32. Due to the nature of Claims 3, 6, and 10, the parties’ arguments necessarily rely upon success on the other claims. Given that this Court has already found that none of the other claims can survive a NRCP 12(b)(5) Motion to Dismiss, the Court will not summarize the arguments for Claims 3, 6, and 10 contained within the respective motions, oppositions, and replies – as doing so does not present the reader with any novel propositions not previously iterated by the parties.

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As such, the Court finds that Claim 3 fails to state a claim upon which relief can be granted.

Next the Court will assess if Claim 6 can survive a NRCP 12(b)(5) Motion to Dismiss.

“Permanent injunctive relief may only be granted if there is no adequate remedy at law, a balancing of equities favors the moving party, and success on the merits is demonstrated.” *Chateau Vegas Wine, Inc. v. S. Wine & Spirits of Am., Inc.*, 127 Nev. 818, 824–25 (2011), as corrected on denial of reh’g (Apr. 17, 2012)

In the instant matter, due to the reasoning provided *supra*, HARVEY TRUST is, as a matter of law, unable to demonstrate success on the merits. Therefore, HARVEY TRUST is unable to seek injunctive relief.³³

As such, the Court finds that Claim 6 fails to state a claim upon which relief can be granted.

Next the Court will assess if Claim 10 can survive a NRCP 12(b)(5) Motion to Dismiss.

33. The Court notes that *Plaintiffs’ Ex-Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time* is currently still under submission for this Court’s decision. On the same grounds set forth above, *Plaintiffs’ Ex-Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time* is denied.

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“A substantive due process claim is premised on the Fourteenth Amendment’s due process clause.”³⁴ *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 696 (2008). “Substantive due process refers to certain actions that the government may not engage in, no matter how many procedural safeguards it employs.” *Blaylock v. Schwinden*, 862 F.2d 1352, 1354 (9th Cir. 1988). “To establish a substantive due process claim, a plaintiff must, as a threshold matter, show a government deprivation of life, liberty, or property.” *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998).

In the instant matter, due to the reasoning provided *supra*, HARVEY TRUST does not allege facts sufficient to show “a government deprivation of life, liberty, or property”. *Id.* Therefore, HARVEY TRUST is unable to seek a substantive due process claim.

As such, the Court finds that Claim 10 fails to state a claim upon which relief can be granted.

Lastly, the Court notes that multiple joinders were filed by the various parties in connection with the other parties’ motions. HARVEY TRUST objected to these joinders. However, given the Court’s determinations that HARVEY TRUST failed to state any claims upon which

34. In the *Supp. to COR MTD*, the CITY OF RENO avers that it unclear whether Claim 10 is a substantive due process claim or a procedural due process claim. *Supp. to COR MTD* at 3. In the *Opp. to Supp. to COR MTD*, HARVEY TRUST clarifies that they are pursuing a substantive due process claim. *Opp. to Supp to COR MTD* at 3.

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relief can be granted, the issue of potentially improper joinders is immaterial. Therefore, the Court will not address the issue of potentially improper joinders.

Based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that *Defendant Green Acres Storage Partners, LLC's Motion to Dismiss* is GRANTED.

IT IS HEREBY FURTHER ORDERED that *Defendant City of Reno's Motion to Dismiss* and the accommodating supplemental motion to dismiss are GRANTED.

IT IS HEREBY FURTHER ORDERED that *State of Nevada, on Relation of its Department of Transportation's Motion to Dismiss* and the accommodating supplemental motion to dismiss are GRANTED.

IT IS HEREBY FURTHER ORDERED that *Defendant Washoe County's Motion to Dismiss and Joinder to Defendant City of Reno and Green Acre Storage Partner's Motion to Dismiss* are GRANTED.

IT IS HEREBY FURTHER ORDERED that DAVID T & JUDITH L HARVEY, TRUSTEES OF THE DAVID T & JUDITH L HARVEY TRUST's claims against all the Defendants are dismissed.

IT IS HEREBY FURTHER ORDERED that *Plaintiffs' Ex-Parte Application for Temporary*

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Restraining Order and Motion for Preliminary Injunction on Order Shortening Time is hereby DENIED.

DATED this 12 day of June, 2024.

/s/ Connie J. Steinheimer
DISTRICT JUDGE

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**APPENDIX C — ORDER DENYING REHEARING OF
THE SUPREME COURT OF THE STATE OF NEVADA,
FILED FEBRUARY 6, 2026**

IN THE SUPREME COURT
OF THE STATE OF NEVADA

No. 88962

JUDITH L HARVEY, AS TRUSTEE OF THE
DAVID T. & JUDITH L HARVEY TRUST, AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE
OF DAVID T. HARVEY, DECEASED,

Appellant,

vs.

CITY OF RENO; COUNTY OF WASHOE; THE
STATE OF NEVADA, ON RELATION OF ITS
DEPARTMENT OF TRANSPORTATION AND
GREEN ACRES STORAGE PARTNERS LLC, A
NEVADA LIMITED LIABILITY COMPANY,

Respondents.

Filed February 6, 2026

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(a),(h).

**APPENDIX D — CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

USCS Const. Amend. 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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Nev. Rev. Stat. Ann. § 408.533

1. Except as otherwise provided in NRS 37.270, all real property, interests therein or improvements thereon and personal property acquired before, on or after April 1, 1957, in accordance with the provisions of NRS 408.487 and 408.489 must, after approval by the Board and if no longer needed for highway purposes, be disposed of by the Director in accordance with the provisions of subsection 2, except that:

(a) When the property was originally donated to the State, no charge may be made if it is returned to the original owner or to the holder of the reversionary right.

(b) When the property has been wholly or partially paid for by towns, cities or counties, disposal of the property and of money received therefor must be agreed upon by the governing bodies of the towns, cities and counties and the Department.

(c) When the title to the real property has been acquired in fee pursuant to NRS 408.487 and 408.489 and, in the opinion of the Board, a sale by means of a public auction or sealed bids is uneconomical or impractical because:

(1) There is no access to the property;

(2) The property has value or an increased value only to a single adjoining property owner;
or

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(3) Such a sale would work an undue hardship upon a property owner as a result of a severance of the property of that owner or a denial of access to a public highway,

the Board may enter into a direct sale of the property with such an owner or any other person for its fair market value.

(d) When the property has been acquired and the property or any portion of the property is no longer needed for highway purposes, the Department shall give notice of its intention to dispose of the property by publication in a newspaper of general circulation in the county where the property is situated. The notice must include the Department's appraisal of the fair market value of the property. Any person from whom the property was purchased or the person's heir or grantee may purchase the property at its fair market value by direct sale from the Department within 60 days after the notice is published. If more than one person qualified to purchase the property by direct sale pursuant to this paragraph so requests, the person with the superior claim, as determined by the Department in its sole discretion, is entitled to purchase the property by direct sale. If a person who is entitled to purchase the property by direct sale pursuant to this paragraph reasonably believes that the Department's appraisal of the property is greater than the fair market value of the property, the person may file an objection to the appraisal with

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the Department. The Department shall set forth the procedure for filing an objection and the process under which a final determination will be made of the fair market value of the property for which an objection is filed. The Department shall sell the property in the manner provided in subsection 2 if:

(1) No person requests to purchase the property by direct sale within 60 days after the notice is published pursuant to this paragraph; or

(2) A person who files an objection pursuant to this paragraph fails, within 10 business days after receipt of a written notice of the final determination of the fair market value of the property, to notify the Department in writing that he or she wishes to purchase the property at the fair market value set forth in the notice.

(e) When the property is sought by another public agency for a reasonable public use, the Department may first offer the property to the public agency at its fair market value.

2. All property, interests or improvements not included within the provisions of subsection 1 must first be offered for sale by the Department singly or in combination at public auction or by sealed bids. If the highest bid received is 90 percent or more of the Department's appraisal of the fair market value of the property, the property may

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be sold to the highest bidder. The notice and the terms of the sale must be published in a newspaper of general circulation in the county where the property is situated. The auctions and openings of bids must be conducted by the Department. If the property cannot be sold for 90 percent or more of its fair market value, the Department may enter into a written listing agreement with a person licensed pursuant to chapter 645 of NRS to sell or lease the property for 90 percent or more of its fair market value.

3. It is conclusively presumed in favor of the Department and any purchaser for value that the Department acted within its lawful authority in acquiring and disposing of the property, and that the Director acted within his or her lawful authority in executing any conveyance vesting title in the purchaser. All such conveyances must be quitclaim in nature and the Department shall not warrant title, furnish title insurance or pay the tax on transfer of real property.

4. No person has a right of action against the Department or its employees for a violation of this section. This subsection does not prevent an action by the Attorney General on behalf of the State of Nevada or any aggrieved person.

5. All sums of money received by the Department for the sale of real and personal property must be deposited with the State Treasurer to be credited to the State Highway Fund, unless the Federal Highway Administration participated in acquisition of the property, in which case a pro rata share of the money obtained by disposal

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of the property must be paid to the Federal Highway Administration.

6. The Department may reserve and except easements, rights or interests from the conveyance of any real property disposed of in accordance with this section or exchanged pursuant to subsection 5 of NRS 408.489. The easements, rights or interests include, but are not limited to:

- (a) Abutter's rights of light, view or air.
- (b) Easements of access to and from abutting land.
- (c) Covenants prohibiting the use of signs, structures or devices advertising activities not conducted, services not rendered or goods not produced or available on the real property.

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**APPENDIX E — SECOND AMENDED
COMPLAINT OF THE SECOND JUDICIAL
DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE,
FILED FEBRUARY 28, 2024**

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CASE NO.: CV23-00282

DEPT. NO.: 8

DAVID T & JUDITH L HARVEY, TRUSTEES OF
THE DAVID T & JUDITH L HARVEY TRUST,

Plaintiffs,

vs.

CITY OF RENO; WASHOE COUNTY; THE
STATE OF NEVADA, ON RELATION OF
ITS DEPARTMENT OF TRANSPORTATION;
GREEN ACRES STORAGE PARTNERS LLC,
A NEVADA LIMITED LIABILITY COMPANY;
DOE INDIVIDUALS I THROUGH X; AND ROE
ENTITIES XI THROUGH XX;

Defendants.

SECOND AMENDED COMPLAINT

EXEMPT FROM ARBITRATION:

- (1) Action for Declaratory Relief;**
- (2) Action Concerning Title to Real Estate; and**

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(3) Action Seeking Equitable or xtraordinary Relief.

PLAINTIFF’S SECOND AMENDED COMPLAINT

COMES NOW, Plaintiff DAVID T & JUDITH L HARVEY, TRUSTEES OF THE DAVID T & JUDITH L HARVEY TRUST (hereinafter “Plaintiffs” or the “Harvey Trust”) by and through their counsel of record, the MAY BROCK LAW GROUP, and for their claims against Defendants City of Reno, Washoe County, the State of Nevada, on relation of its Department of Transportation, and Green Acres Storage Partners LLC (hereinafter collectively “Defendants”) hereby complain and allege as follows:

PARTIES, VENUE AND JURISDICTION

1. Plaintiffs are and were at all times relevant hereto residents of the State of Nevada and the successors in interest and/or owners and/or persons claiming an ownership and/or possessory interest in those certain real properties located within Washoe County, Nevada formally known as APN 043-011-40, APN 043-011-08, APN 043-011-10, and APN 043-011-11, all of which abut to Huffaker Place, formerly known as Huffaker Lane, and/or South Virginia Street, Reno, Nevada.

2. Plaintiffs also believe that they were at all times relevant hereto were the successors in interest and/or owners and/or persons claiming an ownership in and/or possessory interest in that certain real property and/or

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portions thereof located within Washoe County, Nevada formally known as Huffaker Place, formerly known as Huffaker Lane, from South Virginia Street to the NDOT Right of Way, within Reno, Nevada and adjacent to APN 043-011-10, APN 043-011-08 and APN 043-011-40, which real property is shown as **Section “A”** within the attached Washoe County Regional Map (i.e., **EXHIBIT 1**).

3. Plaintiffs are and were at all times relevant hereto the successors in interest and/or owners and/or persons claiming an ownership in and/or possessory interest in a portion of that certain real property located within Washoe County, Nevada and formally known as APN 043-282-03, which portion of said real property is shown as **Section “A”** within the attached Washoe County Regional Map that Plaintiffs contend was erroneously included within APN 043-282-03 (i.e., **EXHIBIT 1**).

4. Upon information and belief, Defendant Green Acres Storage Partners, LLC, a Nevada limited liability company, claims to have an ownership interest in said real property depicted within the cross-hatched area labeled as **Section “B”** on the Washoe County Regional Map, attached hereto as **EXHIBIT 1.**, which Plaintiff claims to be the rightful owner thereof.

5. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOE DEFENDANTS I through X; and ROE BUSINESS ENTITIES XI through XX, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges

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that each of the Defendants designated as Doe and Roe Defendants are responsible in some manner for the events and occurrences referred to in this SECOND AMENDED COMPLAINT, and/or owes money to Plaintiff and/or may be affiliated with one of the other Defendants. Plaintiff will ask leave of the Court to amend this SECOND AMENDED COMPLAINT and insert the true names and capacities of DOE DEFENDANTS I through X; and ROE BUSINESS ENTITIES XI through XX when the same have been ascertained and to join said Defendants to this action.

GENERAL ALLEGATIONS

6. In or around 1987, Defendant NDOT initiated and pursued the acquisition of a certain stretch of real property for the construction of what is currently known as Interstate 580 that runs through and/or adjacent to the Defendant City of Reno.

7. In the process of acquiring property for Interstate 580, Defendant NDOT either worked out agreements with the then current landowners and/or if the landowners refused to sell their real property, said land was taken from the then owners via a condemnation proceeding.

8. Prior to NDOT acquiring a portion of Plaintiffs and/or their predecessors' property for the construction of Interstate 580, Plaintiffs and/or their predecessors' real property, from at least 1948, ran up to and abutted Huffaker Lane for several miles, as depicted within **EXHIBIT 2** attached hereto, which included the bridge

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that was built to span the Dry Creek Wash adjacent to Plaintiffs' property boundaries. *See* **EXHIBIT 2** and compare with **EXHIBIT 1**.

9. Upon information and belief, during the course of construction of Interstate 580 on the property NDOT had just taken from Plaintiffs' predecessors in interest and the other landowners, NDOT caused to be removed, portions of Huffaker Lane, as well as the bridge that connected Plaintiff's main properties to the Northwest Corner of Plaintiffs' property, which had been used by Plaintiffs' predecessors through their access from crossing over the bridge.

10. During the course of construction of Interstate 580 and the changes NDOT made to Plaintiffs' property, Plaintiff's predecessor was in her 90's and was not able to freely move around her property without assistance from others and was not able to monitor the actual construction work performed by NDOT's contractors.

11. After losing their property to NDOT, Plaintiffs and their predecessors continued to use the North-West Corner of their property for the purpose of routinely storing large equipment, truck trailers and livestock for which Plaintiffs and their predecessors received compensation from third parties who rented space from Plaintiffs for both short-term and long-term storage on the North-west corner of the Property and Plaintiffs even installed a fence at their property line to secure the stored items.

12. In order to access the North-west corner of

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Plaintiff's property, Plaintiffs and their tenants, since around 1987, have been and continue to drive down what is currently called Green Acres Drive to the end of the cul-de-sac, wherein Plaintiffs and their tenants cross over APN 043-282-03 in order to gain access to their storage area due to the fact that NDOT removed the bridge during construction of Interstate 580.

13. In addition, on or about November 2002, Plaintiffs agreed to and did lease a portion of the North-West Corner of their property, which was directly adjacent to Interstate 580, to be used for the installation and maintenance of a sign, which was constructed and is currently maintained by their tenant. As a result of the installation of the sign, Plaintiffs' tenant regularly travels to the North-west Corner of their property via APN 043-282-03 and has done so regularly since the sign was constructed.

14. In fact, pursuant to the order entered by the Court on November 19, 2002, in *Eller Media Company v. City of Reno*, Case No. CV01-03131, the placement and use of the sign on the Northwest corner of Plaintiffs' property was duly recognized as legally established, and confirms that the sign is located on Plaintiffs' property.

15. At all times relevant herein, Plaintiffs have materially relied upon Defendant NDOT freely allowing Plaintiffs to access the Northwest corner of their property via APN 043-282-03.16. Plaintiffs vested property rights in the Northwest corner of their property are recognized under the United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

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17. More specifically, Article 1, Section 22 of the Nevada Constitution provides that “[n]otwithstanding any other provision of this Constitution to the contrary:

- a. Public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party. In all eminent domain actions, the government shall have the burden to prove public use.
- b. In all eminent domain actions, prior to the government’s occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner’s election, to a separate and distinct determination by a district court jury, as to whether the taking is actually for a public use.
- c. If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.

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- d. In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.
- e. In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market. Property taken in eminent domain shall automatically revert back to the original property owner upon repayment of the original purchase price, if the property is not used within five years for the original purpose stated by the government. The five years shall begin running from the date of the entry of the final order of condemnation.
- g. A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.
- h. For all provisions contained in this section, government shall be defined as the State of Nevada, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that

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has the power of eminent domain.

- i. Any provision contained in this section shall be deemed a separate and freestanding right and shall remain in full force and effect should any other provision contained in this section be stricken for any reason.

18. As shown below, Plaintiffs have recently discovered that, upon information and belief, their property line was altered at the time of the construction of Interstate 580, which resulted in Plaintiffs' loss of certain real property for which Plaintiffs predecessors were not properly compensated for.

19. Thereafter, after many years of floods traveling down Dry Creek, Plaintiffs have recently become aware that a portion of the bridge's foundation was not removed at the time of construction of the Interstate 580 and after reviewing this recently unearthed structure, it appears that the alignment of Huffaker Place was altered from its original alignment for the betterment of Washoe County and to the detriment of Plaintiffs, which resulted in some of Plaintiffs' predecessors' property being taken by NDOT and/or the County of Washoe.

20. Upon learning of the discrepancy, Plaintiffs have spent several months attempting to research what happened when a portion of their property was taken by NDOT and NDOT severed Huffaker Lane, renamed it Huffaker Place, and demolished the bridge.

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21. As a result of Plaintiffs' research on Huffaker Place, Plaintiffs have discovered that Huffaker Place has never been declared, dedicated or recorded and as a result of same, Plaintiffs alleged that they are the rightful owner in fee simple of all of Huffaker Place.

22. In fact, when Plaintiffs filed a criminal trespass against Defendant Green Acres Storage Partners, Plaintiffs were informed that Huffaker Place does not even show up on the officers' official address system for the City of Reno.

**DURING THE COVID EMERGENCY
LOCKDOWNS**

23. In or around March of 2020, Governor Sisolak recognized the Covid Virus Emergency and mandated that all non-essential business close down and that everyone should stay in their homes.

24. During the middle of the Covid Emergency lockdowns when Plaintiffs were directed to stay indoors and to not go to any government meetings, Defendant NDOT scheduled a meeting of its board wherein the board members met via Bluejeans to decide how to dispose of APN 043-282-03.

25. Upon information and belief, Defendant Green Acres Storage Partners, LLC had been trying to persuade Defendant NDOT to sell a certain real Property, known as APN 043-282-03, for several years and had been furnishing Defendant NDOT with information regarding

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said real Property (APN 043-282-03) and the surrounding parcels in its attempts at persuading DNOT to sell the Property to it.

26. As conclusively stated within the December 14, 2020, Meeting Minutes (i.e., page 1 of 17), there was no public comments for any item on the agenda for that meeting.

27. During the December 14, 2020, meeting of the Board of Directors in reference to Item No. 10 (i.e., on pages 9 – 11), the board discussed how it was going to dispose of APN 043-282-03.

28. Also, during the December 14, 2020, meeting, Governor Sisolak expressed the following regarding the sale of APN 043-282-03: “Governor Sisolak expressed his concern over the landlocked property, indicating that at the county, a piece of property could never be landlocked as this would make it unusable for the owner.”

29. Notwithstanding this statement and the fact that Plaintiffs’ property was not only adjacent to APN 043-282-03, but the North-west corner of Plaintiffs property (i.e., APN 043-011-40) would become landlocked if Defendant NDOT was to sell APN 043-282-03 without reserving an easement by implication for Plaintiffs and their tenants who regularly use the North-west corner of their property.

30. This action by Defendant NDOT is final government action that amounts to a taking of Plaintiff’s property without payment of just compensation, and, upon

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information and belief, Defendants NDOT, City of Reno, and Washoe County have engaged in other government action amounting to a taking.

**FIRST CLAIM FOR RELIEF
(Quiet Title – All Defendants)**

31. Plaintiffs repeat, reallege and incorporate by reference all preceding and ensuing paragraphs of this SECOND AMENDED COMPLAINT as though fully set forth herein.

32. Plaintiffs claim a superior interest in that portion of APN 043-282-03, which is identified as **Section “A” on EXHIBIT 1**, based on the fact that this real property was south of Huffaker Lane and prior to the NDOT constructing Interstate 580 and since it was not sold by Plaintiffs’ predecessors or made part of a condemnation, Plaintiff retains all ownership interest in said section of APN 043-282-03.

33. It is the understanding of Plaintiffs that Defendant Green Acres Storage Partners, LLC also claims an interest in the same portion of APN 043-282-03, since Defendant Green Acres has already come onto Plaintiffs’ property, cut the lock on the gate and entered upon the North-west Corner of Plaintiff’s Property.

34. As a result, if the Court does not issue an order quieting title to the disputed portion of APN 043-282-03 in Plaintiffs’ favor, Plaintiffs will suffer prejudice and pecuniary loss due to their inability to provide clear title

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to the Property and to obtain the assistance of the police to enforce their rights of sole possession of said real property.

35. As such, Plaintiffs requests an Order quieting title to the real property identified within **Section “A” of EXHIBIT 1** in the name of the Trustees, for the benefit of the Trust and that Defendant Green Acres Storage Partners, LLC be ordered to remove their fences from the property and to remain off of said property

36. Further, Plaintiffs request that the Court’s Order also state and affirm that none of the Defendants hold any estate, title, or interest in the Property and forever enjoin said Defendants from asserting any right, title, or interest in the Property.

37. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action and Plaintiffs are entitled to an award of reasonable attorney fees and costs.

**SECOND CLAIM FOR RELIEF
(Quiet Title – City of Reno and Washoe County)**

38. Plaintiffs repeat, reallege and incorporate by reference all preceding and ensuing paragraphs of this SECOND AMENDED COMPLAINT as though fully set forth herein.

39. Plaintiffs claim a superior interest in that portion of real property identified as Huffaker Place, which is identified as **Section “B” on EXHIBIT 1**, based on the fact

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that the City of Reno has no record that Huffaker Place has ever been declared, dedicated or recorded within the Washoe County records showing that the City of Reno or Washoe County ever became the owner of said parcel of property.

40. It is the understanding of Plaintiffs that since Huffaker Place has never been declared to be owned by the City of Reno or Washoe County, that it has never been dedicated to the City of Reno or Washoe County and there is no record indicating that Plaintiffs gave up their interest in said real property, that Plaintiffs have a priority ownership interest in said real property over the City of Reno and Washoe County.

41. Upon information and belief, Plaintiffs contend that either Defendant City of Reno or Defendant Washoe County claims an ownership interest in Huffaker Place, as indicated within **Section “B”** of **EXHIBIT 1**, despite not having any recordings of this right.

42. As a result, if the Court does not issue an order quieting title to the disputed real property identified as **Section “B”** of **EXHIBIT 1** (i.e., Huffaker Place from South Virginia Street to the property line of Interstate 580) in Plaintiffs’ favor, Plaintiffs will suffer prejudice and pecuniary loss due to their inability to provide clear title to the Property and to obtain the assistance of the police to enforce their rights of sole possession of said real property.

43. As such, Plaintiffs requests an Order quieting

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title to the real property identified within **Section “B” of EXHIBIT 1** in the name of the Trustees, for the benefit of the Trust.

44. Further, Plaintiffs request that the Court’s Order also state and affirm that Defendants City of Reno and Washoe County do not hold any estate, title, or interest in said Property and forever enjoin said Defendants from asserting any right, title, or interest in the Property.

45. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action and Plaintiffs are entitled to an award of reasonable attorney fees and costs.

**THIRD CLAIM FOR RELIEF
(Declaratory Relief re: ownership rights –
All Defendants)**

46. Plaintiff repeats, realleges and incorporates by reference all preceding and ensuing paragraphs of this SECOND AMENDED COMPLAINT as though fully set forth herein.

47. An actual and existing controversy has arisen and now exists between Plaintiffs and Defendants regarding their respective rights, duties, and obligations in and to the real Property that constitute the subject of this SECOND AMENDED COMPLAINT and that there are conflicting claims of ownership and interests in relation to the subject properties. This controversy is ripe for determination.

48. A judicial declaration is necessary and

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appropriate at this time in order to establish the parties' rights in and to the Property. In the absence of a judicial declaration, Plaintiff's interest will be impacted and subject to a competing claim.

49. Plaintiff seeks an Order from the Court, via declaratory relief, that the Defendants have no interest in or claim to the Disputed Property identified within the First and Second Claims for Relief.

50. It has been necessary for Plaintiff to retain the services of an attorney to prosecute this action and Plaintiff is entitled to an award of reasonable attorney fees and costs.

**FOURTH CLAIM FOR RELIEF
(Declaratory Relief – re: Easement by
Implication and/or Necessity and/or
Special Easement against Defendant
Green Acres Storage Partners LLC)**

51. Plaintiff repeats, realleges and incorporates by reference all preceding and ensuing paragraphs of this SECOND AMENDED COMPLAINT as though fully set forth herein.

52. An actual and existing controversy has arisen and now exists between Plaintiffs and Defendants Green Acres Storage Partners LLC and Defendant NDOT in relation to Plaintiffs' acquired, by law, easement obtained on the real property Defendant NDOT just sold to Defendant Green Acres (i.e., APN 043-282-03), which easement was acquired due to the actions taken

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by Defendant NDOT wherein it, among other things, tore down the bridge that was Plaintiffs only access to the North-west corner of Plaintiffs' Property (i.e., APN 043-011-40) after Plaintiffs transferred ownership of a portion of their real property to Defendant NDOT via condemnation or by agreement, which required Plaintiffs to then be forced to use APN 043-282-03 for access to the Northwest Corner of Plaintiffs' property from approximately 1987 until the present time.

53. As a result of Defendant NDOT's actions, it is Plaintiffs' contention that it has acquired an easement by implication and/or by necessity and/or a special easement with regard to Plaintiffs' continual and open use of APN 043-282-03 from approximately 1987 until the present time, due to the fact that there was common ownership and that Governor Sisolak clearly stated in the December 2020 meeting that none of the remaining parcels should be allowed to be landlocked as a result of a condemnation proceedings, which would include the Northwest corner of Plaintiffs' property identified as APN 043-011-40.

54. This controversy is ripe for determination.

55. A judicial declaration is necessary and appropriate at this time in order to establish the parties' ingress and egress rights in and to APN 043-282-03 as both Plaintiffs and their tenants, who store items on this portion of the property and Plaintiffs' sign company need continued access to the Northwest Corner of APN 043-011-40.

56. Plaintiff seeks an Order from the Court, via

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declaratory relief, that the Defendants shall be prohibited from taking any further actions to restrict Plaintiffs and/or their tenants from continuing to have ingress and egress rights in order to continue to do business on the Northwest Corner of Plaintiffs property.

57. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action and Plaintiff is entitled to an award of reasonable attorney fees and costs.

**FIFTH CLAIM FOR RELIEF
(Inverse Condemnation/Taking – Defendant NDOT)**

58. Plaintiff repeats, realleges and incorporates by reference all preceding and ensuing paragraphs of this SECOND AMENDED COMPLAINT as though fully set forth herein.

59. In or around 1987, Defendant NDOT acquired certain properties from Plaintiffs' predecessors as well as the predecessors' neighbors in order to construct Interstate 580.

60. After acquiring a large portion of Plaintiffs' predecessors' property in order to make way for the construction of Interstate 580, Defendant NDOT and its agents and representatives tore down the bridge, which gave Plaintiffs access to the Northwest corner of their Property (i.e., APN 043-011-40) to become landlocked due to the large and deep wash that separated the main portion of Plaintiffs' property to said Northwest portion thereof.

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61. After blocking access to the Northwest portion of their property, Plaintiffs were forced to use a certain real property, also owned by Defendant NDOT (i.e., APN 043-282-03), which remained owned by Defendant NDOT, as the road to obtain access to the landlocked, Northwest corner of Plaintiffs' property.

62. Plaintiffs' continually used APN 043-282-03 as the means of obtaining access to the landlocked portion of their property until recently, when Defendant Green Acres Storage Partners LLC came onto Plaintiff's property, cut the lock from the gate and then put up a fence on Plaintiff's property, which constitutes the disputed portion of **EXHIBIT 1**, identified as Section "A".

63. At this point, Plaintiffs were put on notice that they had a dispute with Defendant Green Acres with regards to the ownership of a section of the property Defendant Green Acres was now asserting ownership over and Plaintiffs' easement by implication and/or by necessity and/or special easement that resulted from Plaintiffs prior use and need, which was caused by Defendant NDOT and Defendant Green Acres.

64. Clearly Plaintiffs' predecessors lost a portion of their property due to Defendant NDOT's taking of same, which includes those properties taken in or around 1987 as well as the more recent loss of use of Plaintiffs' Northwest corner of APN 043-011-40, which is no longer accessible due to Defendant NDOT's sale of said property during the heart of the Covid-19 pandemic when Plaintiffs were required to remain inside their homes and when Plaintiffs'

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were informed they should be staying indoors, which would have prohibited Plaintiffs' from having access to Defendant NDOT's "notices" regarding any sale or auction of APN 043-282-03.

65. As a result of same, Plaintiffs have already lost a customer who wanted to place certain items on the Northwest corner of Plaintiffs' property for storage until said company discovered the problems associated with access to Plaintiffs' property.

66. Likewise, Plaintiffs main source of income for APN 043-011-40 is directly related to the proceeds Defendants obtain from the large sign that was constructed on the Northwest Portion of Plaintiffs' Property, several years ago, and for which Plaintiffs receive rent and/or royalty payments.

67. Although Plaintiffs predecessors were paid for that portion of property Defendant NDOT took from them at that time to effectuate the construction of Interstate 580, Neither Plaintiffs nor their predecessors were paid for the complete loss of use of the Northwest corner of APN 043-011-40, since it was not physically taken by Defendant NDOT other than possibly that portion of real property Plaintiffs' assert ownership interest in and which is identified as **Section "A" in EXHIBIT 1.**

68. Likewise, upon information and belief, neither the Plaintiffs nor their predecessors obtained any compensation for any property Plaintiffs and/or its predecessors lost access to, or which was taken as a result

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of the realignment and/or misalignment of Huffaker Place, which appears to have been moved from its original alignment during the construction of Interstate 580 and the demolition of the Bridge.

69. Notwithstanding, the recent discoveries related to this matter were hidden as Plaintiffs' predecessor was in her 90s at the time the taking and construction on the intestate occurred, as well as the removal of the Bridge over Dry Creek, it appears that Defendant NDOT failed to follow NRS 408.533 and Governor Sisolak's directive during the December 2020 hidden Covid Meeting wherein the Board determined to sell the Property and not address the fact that Plaintiffs' property could then result in becoming landlocked.

70. Further, Plaintiffs have been deprived of their rights to real property, via making the Northwest corner of APN 043-011-40 landlocked and for any real property lost by the realignment of Huffaker Place without Defendant NDOT being required to open up a formal condemnation proceeding.

71. As a result of Defendant NDOT's actions and/or failures to act, including Defendant NDOT's failure to follow the guidelines and directives of NRS 408.533 and Governor Sisolak, Plaintiffs are being deprived of both the use of and access to the Northwest portion of APN 043-011-40 and for any property lost during the construction of the Interstate and the realignment of Huffaker Place, without just compensation.

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72. The actions of Defendant NDOT have resulted in a direct appropriation of Plaintiff's property by prohibiting Plaintiff's access to the Northwest Corner of the property and all value in that property has been entirely eliminated.

73. Defendant NDOT's actions have completely deprived Plaintiffs of all economically beneficial use of the Northwest corner of the property, and has resulted in a direct and substantial impact on Plaintiffs and on the Northwest corner of the property.

74. Defendant NDOT's actions result in a categorical taking of Plaintiff's property for which Defendant NDOT has not paid Plaintiffs just compensation for this taking of their property.

75. Defendant NDOT's failure to pay just compensation to Plaintiffs for the taking of their property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

76. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action and Plaintiff is entitled to an award of reasonable attorney fees and costs.

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**SIXTH CLAIM FOR RELIEF
(Injunction – all Defendants)**

77. Plaintiff repeats, realleges and incorporates by reference all preceding and ensuing paragraphs of this SECOND AMENDED COMPLAINT as though fully set forth herein.

78. Upon information and belief, Green Acres acquired APN 043-282-03 with the intention of developing and improving the real property.

79. Upon information and belief, Green Acres' plans to develop and improve APN 043-282-03 will result in the following:

80. Denial of Plaintiffs' and Plaintiffs' tenants' access to the North-west corner of Plaintiffs' property; and

81. The placement of improvements on the real property identified within **Section "A"** of **EXHIBIT 1**; real property in which Plaintiffs claim an interest.

82. Given Defendants' actions, Plaintiffs are likely to succeed on one or more of their claims against Defendants.

83. Plaintiffs therefore require the Court to permanently enjoin Defendants from undertaking those actions that would cause irreparable harm to Plaintiffs' right, title and interest in the Property, including, without limitation, the construction of improvements on the real

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property identified within **Section “A” of EXHIBIT 1**, as well as the ability of Plaintiffs and Plaintiffs’ tenants to access the North-west corner of Plaintiffs’ property.

84. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action and Plaintiff is entitled to an award of reasonable attorney fees and costs.

**SEVENTH CLAIM FOR RELIEF
(Inverse Condemnation/Regulatory Taking –
Defendants NDOT)**

83. Plaintiff repeats, realleges and incorporates by reference all preceding and ensuing paragraphs of this SECOND AMENDED COMPLAINT as though fully set forth herein.

84. The actions of Defendant NDOT stated herein fail to follow the procedures for taking property, as set forth in Chapters 37 and 342 of the Nevada Revised Statutes, Nevada’s statutory provisions on eminent domain, and the United States and Nevada Constitutions.

85. Defendant NDOT’s actions exclude Plaintiff from using the Northwest Corner of their Property and has shown an unconditional and permanent taking of said property.

86. Defendant NDOT has not paid just compensation to Plaintiffs for this taking of Plaintiffs’ property, which failure is a violation of the United States Constitution,

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the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

87. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action and Plaintiff is entitled to an award of reasonable attorney fees and costs.

**EIGHTH CLAIM FOR RELIEF
(Inverse Condemnation/Nonregulatory Taking –
Defendant NDOT)**

88. Plaintiff repeats, realleges and incorporates by reference all preceding and ensuing paragraphs of this SECOND AMENDED COMPLAINT as though fully set forth herein.

89. Defendant NDOT's actions directly and substantially interfere with Plaintiffs' vested property rights, rendering the Northwest corner of Plaintiffs' property unusable and/or valueless.

90. Defendant NDOT has taken action to intentionally prevent Plaintiffs from accessing the Northwest corner of their property and, ultimately, have engaged in a bad faith effort to preclude any use of the Northwest corner of Plaintiffs' property.

91. Defendant NDOT's actions are oppressive and unreasonable and have resulted in a nonregulatory taking of Plaintiffs' property.

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92. Defendant NDOT has not paid just compensation to Plaintiffs for this taking of Plaintiffs' property, which failure is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

93. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action and Plaintiff is entitled to an award of reasonable attorney fees and costs.

**NINTH CLAIM FOR RELIEF
(Inverse Condemnation/Temporary Taking –
Defendant NDOT)**

94. Plaintiff repeats, realleges and incorporates by reference all preceding and ensuing paragraphs of this SECOND AMENDED COMPLAINT as though fully set forth herein.

95. If there is subsequent action by Defendant NDOT or a finding by the Nevada Supreme Court, or otherwise, that Plaintiffs may access the Northwest corner of their property as before, then there has been a temporary taking of Plaintiffs' property for which just compensation must be paid.

96. Defendant NDOT has not offered to pay just compensation to Plaintiffs for this temporary taking.

97. Defendant NDOT's failure to pay just compensation to Plaintiffs for this taking of Plaintiffs'

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property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

98. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action and Plaintiff is entitled to an award of reasonable attorney fees and costs.

**TENTH CLAIM FOR RELIEF
(Violation of Plaintiff's Due Process Rights –
Defendant NDOT and City of Reno)**

99. Plaintiff repeats, realleges and incorporates by reference all preceding and ensuing paragraphs of this SECOND AMENDED COMPLAINT as though fully set forth herein.

100. The actions of Defendant NDOT and City of Reno in this case retroactively and without due process transformed Plaintiffs' vested property right to a property without any value.

101. The actions of Defendant NDOT and City of Reno in this case was taken without property notice to Plaintiffs.

102. The actions of Defendant NDOT and City of Reno to eliminate or substantially change Plaintiffs' vested and established property rights, had the effect of depriving Plaintiffs of their legitimate constitutionally protected property rights.

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103. The actions of Defendant NDOT and City of Reno were arbitrary and/or irrational and unrelated to any legitimate governmental objective and in violation of Plaintiffs' substantive and procedural due process rights under the United States and Nevada State Constitutions.

104. The actions of Defendant NDOT and City of Reno should be invalidated to return Plaintiffs' property rights to Plaintiffs, thereby allowing full access to and use of the property.

105. It has been necessary for Plaintiffs to retain the services of an attorney to prosecute this action and Plaintiff is entitled to an award of reasonable attorney fees and costs.

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For judgment quieting title in the name of Plaintiffs for the Real Properties identified as **Section "A"** and **Section "B"** of **EXHIBIT 1**;
2. For judgment declaring that Defendants have no interest in or claim to either section of real property;
3. For judgment that the Washoe County Recorder's Office shall record any order and/or judgment of this Court granting relief consistent with the foregoing in the Official Records of Washoe County, Nevada.

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4. For a declaration that Plaintiffs have obtained an easement by implication and/or necessity and/or a special easement as to APN 043-282-03 and that Defendant Green Acres Storage Partners, LLC be ordered not to make any changes to the Property that would affect Plaintiffs' ingress and egress easement.
5. For an order issuing an injunction against Defendant Green Acres Storage Partners, LLC and in prohibiting this Defendant from doing anything to APN 043-282-03 that would restrict, in any way, Plaintiffs or its tenants/customers' from obtaining access to the Northwest portion of Plaintiff's Property.
6. For judgment invalidating the actions of Defendants, returning the vested property rights to Plaintiffs, thereby allowing access to and use of the Property.
7. For an award of just compensation for the taking (permanent or temporary) and/or damaging of Plaintiffs' Property by inverse condemnation.
8. For an award of Plaintiffs' reasonable attorney's fees and costs; and
9. Such other and further relief as the Court may deem just and proper.

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AFFIRMATION

The undersigned does hereby affirm that the preceding document, the **SECOND AMENDED COMPLAINT**, does not contain the Social Security Number of any person.

DATED this 28th day of February, 2024. 13

MAY BROCK LAW GROUP

/s/ Micheal J. Brock

Nevada Bar No. 8563

MICHEAL J. BROCK, ESQ.

Nevada Bar No. 9353

MAY BROCK LAW GROUP

1850 E. Sahara Ave., Suite 206

Las Vegas, Nevada 89104

Telephone: (702) 388-0404

Facsimile: (702) 830-5699

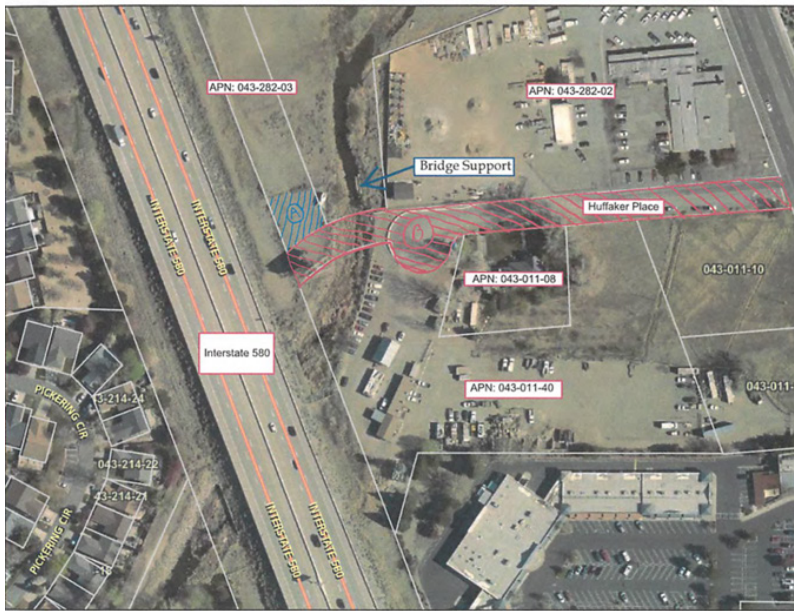
Email: tmay@maybrocklaw.com

Email: mbrock@maybrocklaw.com

*Attorneys for the DAVID T & JUDITH L
HARVEY, TRUSTEES OF THE DAVID
T & JUDITH L HARVEY TRUST*

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EXHIBIT 1
Washoe County Regional Map



February 12, 2023

0 10 30

Washoe County GIS
Source: Esri, Maxar, Earthstar[illegible]

This information is for illustrative [illegible]
Location and not intended to be [illegible]
Services - Regional Services Division, 1001 E. 9th St,
Building C-200, Reno, NV [illegible]

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DEC 5 '7

APPROVED BY THE COMMISSIONER OF THE LAND OFFICE

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**APPENDIX F — APPELLANT’S OPENING BRIEF
IN THE SUPREME COURT OF THE STATE OF
NEVADA, FILED NOVEMBER 29, 2024**

IN THE SUPREME COURT
OF THE STATE OF NEVADA

Case No. 88962

DAVID T. HARVEY AND JUDITH L HARVEY,
TRUSTEES OF THE DAVID T &
JUDITH L HARVEY TRUST,

Appellants,

v.

THE CITY OF RENO, *et. al.*,

Respondents.

Filed November 29, 2024

APPELLANT’S OPENING BRIEF

COMES NOW the Appellants DAVID T. HARVEY AND JUDITH L HARVEY, TRUSTEES OF THE DAVID T & JUDITH L HARVEY TRUST, (hereinafter “Harvey Trust”) by and through the undersigned counsel, and hereby files the following Appellant’s Opening Brief pursuant to Nevada Rule of Appellate Procedure (“NRAP”) 28, seeking that the Court reverse the District Court’s June 16, 2024 Order Granting Motions to Dismiss and Supplemental Motions to Dismiss.

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

DAVID T. HARVEY AND JUDITH L HARVEY,
TRUSTEES OF THE DAVID T & JUDITH L HARVEY
TRUST, an Nevada Trust;

THE STATE OF NEVADA, on relation of its
Department of Transportation,

THE CITY OF RENO, a political Subdivision of the
State of Nevada;

WASHOE COUNTY, a political Subdivision of the
State of Nevada,

and

GREEN ACRES STORAGE PARTNERS, LLS, a
Nevada Limited Liability Company

Attorney of record for the Appellant

Respectfully submitted this: Friday, November 29,
2024

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By: /s/ Luke Busby, Esq.
LUKE A. BUSBY, ESQ.
Nevada State Bar No. 10319
316 California Ave.
Reno, NV 89509
775-453-0112
luke@lukeandrewbusbyltd.com

[TABLES INTENTIONALLY OMITTED]

I. JURISDICTIONAL STATEMENT

The Supreme Court of the State of Nevada has jurisdiction over this matter pursuant to Article 6, Section 4 of the Nevada Constitution and Nevada Revised Statutes (“NRS”) 2.090. This Court also has jurisdiction over this appeal pursuant to NRAP 3A(b)(1), as it is an appeal from a final judgment that fully resolves all claims in the action, i.e. the order on appeal granted the defendants’ motions to dismiss all ten claims brought by the Harvey Trust. The Order Granting all Motions to Dismiss and Denying Harvey Ex Parte Motion (the “District Court’s Order”) was entered on June 12, 2024 [JA Vol. 4 at 929 JA – 958]. Green Acres filed a Notice of Entry of the District Court’s Order on June 14, 2024 [JA Vol. 5 at 1025-JA – 1058]. Harvey Trust filed a timely Notice of Appeal on July 8, 2024 [JA Vol. 5 at 1059-1061].

II. ROUTING STATEMENT

This case warrants retention by the Supreme Court under NRAP 17(d)(2) as it raises multiple significant

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issues, including: (1) questions of first impression regarding the constitutional implications of government property sales subject to easements; (2) novel questions of constitutional interpretation involving property rights, takings jurisprudence, and due process under both the United States and Nevada Constitutions; and (3) matters of statewide public importance that will impact future government property transactions and citizens' property rights throughout Nevada.

III. ISSUES PRESENTED FOR REVIEW

The issues on appeal are:

(1) Whether the District Court erred in not considering the “special right of easement for public road access” issue presented by the Harvey Trust and failed to apply the balancing test to determine substantial interference with access rights;

(2) Whether the District Court erred by allowing defendants to use unverified and disputed documents to support motions to dismiss;

(3) Whether the District Court erred in not converting the motions to dismiss into motions for summary judgment under NRCP 12(d) when considering documents outside the pleadings;

(4) Whether the District Court erred in applying the statute of limitations to bar the quiet title and inverse condemnation claims;

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(5) Whether the District Court correctly interpreted Nevada law regarding easements by necessity or implication;

(6) Whether the District Court properly dismissed the Harvey Trust's inverse condemnation claims without allowing for further factual development;

(7) Whether the Harvey Trust's due process claim was prematurely dismissed; and

(8) Whether the District Court correctly interpreted the scope and application of NRS 408.533 regarding NDOT's property dispositions and its effect of Harvey Trusts right to access its property.

IV. STATEMENT OF THE CASE

A. Nature of the Case

This case involves the Harvey Trust claims against The Nevada Department of Transportation ("NDOT"), The City of Reno, Washoe County, and a private company Green Acres Storage Partners, LLC, ("Green Acres") over property rights, easements, and takings.

The Harvey Trust's Second Amended Complaint [JA Vol. 4 at 837-857] asserts ten claims against the defendants arising from property disputes and access rights related to the sale of a NDOT owned property to Green Acres and the construction of Interstate I-580. The first quiet title claim seeks to establish ownership of

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Section “A” of the property by Harvey Trust against all defendants, while the second quiet title claim concerns Section “B” (Huffaker Place) against the City of Reno and Washoe County. JA Vol. 2 at 442 is a map illustrating the disputed areas including some of Huffaker Place. The first declaratory relief claim seeks to establish the parties’ respective rights and duties regarding the disputed properties, while the second declaratory relief claim specifically addresses easement rights by implication, necessity, or special easement against Green Acres. The four inverse condemnation/taking claims against NDOT include: a categorical taking claim for depriving access to the northwest corner of the property without compensation, a regulatory taking claim for failing to follow proper eminent domain procedures, a taking claim based on NDOT’s bad faith interference with property rights, and a temporary taking claim as an alternative theory if access is later restored. The injunction claim sought to prevent all defendants from interfering with Harvey Trust’s property rights and access, particularly regarding Green Acres’ development plans. Finally, the Due Process claim against NDOT and the City of Reno alleges these entities took Harvey Trusts property without affording Harvey Trust the process required by law before the taking occurred.

The District Court dismissed all Harvey Trust’s claims. The District Court found that the claims failed as a matter of law for various reasons, including being barred by statutes of limitations and failing to state valid claims. In dismissing the case, the District Court considered numerous materials outside of the pleadings by taking

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judicial notice of such matters, without converting the motion to a motion for summary judgment and giving the non-moving party, the Harvey Trust a chance to conduct discovery. *See* District Court's Order – JA Vol. 4 at 935-936.

B. Course of Proceedings

On February 14, 2023, Harvey Trust filed a Complaint against the Appellees. [JA Vol. 1 at 1-19]. On April 7, 2023, the Trust filed a Verified 1st Amended Complaint [JA Vol. 1 at 73-91].

On May 30, 2023, Green Acres filed its Motion to Dismiss [JA Vol. 1 at 125-163]. On June 8, 2023, the City of Reno followed with its Motion to Dismiss [JA Vol. 1 at 165-205]. On June 9, 2023, Washoe County filed its Motion to Dismiss and Joinder to Reno and Green Acres' motions [JA Vol. 1 at 206-208]. On October 10, 2023, the Nevada Department of Transportation (NDOT) filed its Motion to Dismiss [JA Vol. 2 at 383-411].

On June 21, 2023, the Harvey Trust filed its opposition to Green Acres' motion [JA Vol. 1 at 209-234]. On July 5, 2023, the Harvey Trust filed its opposition to Reno's motion [JA Vol. 2 at 293-348]. On October 30, 2023, Harvey Trust filed the opposition to NDOT's motion [JA Vol. 2 at 412-629].

On November 29, 2023, a hearing on the Motion to Dismiss was held, as evidenced by the transcript [JA Vol. 3 and 4 at 676-768]. On January 8, 2024, the Harvey Trust

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filed a Motion for Leave to Amend [JA Vol. 4 at 769-798], which was granted by the Court [JA Vol. 4 at 830], which led to the filing of Harvey Trust's Second Amended Complaint [JA Vol. 4 at 837].

On June 12, 2024, the proceedings before the District Court culminated in the Order Granting all Motions to Dismiss and Denying the Harvey Trust's Ex Parte Motion [JA Vol. 4 at 929-958]. On July 8, 2024, the Harvey Trust filed a Notice of Appeal [JA Vol. 5 at 1059-1061].

V. FACTS

As described in the Harvey Trust's Second Amended Complaint, the issues in this case relate back to at least 1948 [JA Vol. 4 at 839]. According to the Ferretto Survey (in Exhibit 2 to the Harvey Trusts' Second Amended Complaint), the Trust's predecessors owned a large legacy ranch that abutted Huffaker Lane in Reno for several miles, including a bridge spanning the Dry Creek Wash¹ [JA Vol. 4 at 839-861]. The Ferretto family, whose decedents are in the Harvey family, have owned the property since the mid 1800s [JA Vol. 4 at 900], before Nevada was a state. A 1948 survey of the Ferretto property is included in the record at JA Vol. 3 at 798 and shows the expanse of the original property. The remains of this expansive property, now formally known as Washoe County APNs 043-011-40, 043-011-08, 043-011-10, and 043-011-11, had

1. Dry Creek is a creek in an approximately 10-foot-deep ravine. See JA Vol. 3 at 626.

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direct access to Huffaker Lane and South Virginia Street [JA Vol at 798 and Vol. 4 at 838].

In 1983, NDOT declared Huffaker Lane to be State Route 671 [JA Vol. 2 at 439]. Despite the requirement under Federal Rules that the State of Nevada to keep an inventory of all bridges over Dry Creek, Harvey Trust has to date been unable to obtain bridge inventory records showing the precise location of the bridge, and hence the course of Huffaker Lane across the bridge, prior to 1987 [JA Vol. 2 at 424]. For reasons that will become apparent in the following, these missing records are critical to the Harvey Trusts' claims. At the hearing on the motions to dismiss before the District Court, Harvey Trust specifically requested to do discovery to obtain records related to this bridge:

Also, in my opposition to NDOT's motion, there's some Code of Federal Regulations, 23 CFR § 650, that requires NDOT to keep detailed records of bridges, and it's my understanding that there's zero records of this. We want to do discovery to find out. They should have some information on where the bridge actually was.

JA Vol. 3 at 709.

In 1987, the landscape surrounding Harvey Trust's property began to change dramatically when NDOT initiated the acquisition of property to construct Interstate 580 [JA Vol. 3 at 839]. This project significantly impacted the Harvey Trust's predecessors' land [JA Vol. 3 at 839].

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NDOT acquired portions of Harvey Trusts property through agreements or condemnation proceedings [JA Vol. 3 at 839]. During the construction, NDOT removed sections of Huffaker Lane and demolished the bridge that had provided crucial access to the Northwest Corner of the Harvey Trust's property. [JA Vol. 3 at 839-840]. After NDOT demolished the bridge and built I-580, the Harvey Trust's property was split into sections by Dry Creek, and the Northwest Corner became an island. *Id.* The only way to reach the Northwest Corner of their property with a vehicle was to use the access road that crossed over land NDOT had acquired, or to cross Dry Creek on foot. See JA Vol. 3 at 626, which shows a photo of Dry Creek, the billboard, and the Northwest Corner of Harvey Trust's property.

During the time of the events surrounding the construction of I-580, the Harvey Trusts' predecessor, then frail and in her 90s, was unable to freely move around the property without assistance and could not effectively monitor the construction work to be sure that the land being taken and used by NDOT matched what was agreed to by the parties [JA Vol. 3 at 840]. This limitation appears to have led to unnoticed alterations in property lines and road alignments of the Harvey Trusts' property at issue in this case [JA Vol. 3 842]. The underlying dispute with Green Acres led to the recent discovery by Harvey Trust of mistakes by NDOT and others in the mapping of Harvey Trust's land, inadvertent or not, that resulted in the taking of more of Harvey Trust's property than was agreed. See Second Amended Complaint [JA Vol. 4 at 839].

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Following I-580's construction and destruction of the bridge across Dry Creek Wash and the resulting NDOT passageway along the NDOT Right of way, the Harvey Trust and their tenants adapted by accessing the Northwest corner of their property via the new route, i.e. the access road across APN 043-282-03 [JA Vol. 4 at 840]. In other words, since around 1987, the Harvey Trust and their tenants have been driving down what is now called Green Acres Drive to its end, then crossing over APN 043-282-03 [JA Vol. 4 at 840] to reach the Northwest Corner of their property. The billboard on the Northwest Corner was constructed in or around 2002 [JA Vol. 2 at 415]. This access road access allowed Harvey Trust to continue using the Northwest corner, which is an island sandwiched between I-580 and the Dry Creek Wash, for storage of large equipment, truck trailers, and livestock, for which Harvey Trust received compensation from third parties [JA Vol. 4 at 840]. A map showing this portion of the Harvey Trust's property can be found at JA Vol. 4 at 859.

In November 2002, Harvey Trust leased a portion of the northwest portion of their property for billboard installation and maintenance, as the Northwest Corner of Harvey Trust's property is ideal for the placement of a large billboard because of its proximity to I-580 [JA Vol. 4 at 840]. As alleged by Harvey Trust, this use was recognized and confirmed by a court order in the case of *Eller Media Company v. City of Reno*, Case No. CV01-03131 [JA Vol. 4 at 840], which involved a dispute over the location of the billboard.

Upon applying for a permit to construct the billboard, all plans – including ingress and egress to construct

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and maintain the billboard were provided to each of the government Defendants, including NDOT, which plans would have demonstrated the continued use of APN 043-282-03 [JA Vol. 3 at 840] as the Harvey's right-of-way access to construct and maintain the billboard. Harvey Trust no longer has these plans and needs to conduct discovery to obtain them from the Defendants or other third parties.

After destruction of the bridge, the Harvey Trust materially relied upon NDOT freely allowing access the Northwest corner of their property via the access road through APN 043-282-03 [JA Vol. 4 at 840].² On December 14, 2020, during the COVID-19 pandemic and associated lockdowns, NDOT held a virtual meeting to discuss the disposal of APN 043-282-03 [JA Vol. 4 at 843]. Despite Harvey Trust's longstanding use of an easement to access NDOT property via the access road and NDOT's approval of the easement to construct and maintain the billboard, the Harvey Trust was not provided actual notice and was unaware of this meeting or the pending sale of the property due to stay-at-home directives, and lack of

2. After Green Acres acquired the property in 2021 and denied Harvey Trust Access, the Harvey Trust discovered discrepancies in property lines and the alignment of Huffaker Place [JA Vol. 4 at 842]. During the Interstate 580 construction, Huffaker Place was realigned, resulting in an uncompensated taking of their predecessors' property by NDOT and/or Washoe County [JA Vol. 4 at 842]. The Trust has spent several months researching what happened when their property was taken by NDOT. Huffaker Lane was severed and renamed Huffaker Place, and the bridge was demolished [JA Vol. 4 at 842].

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personal notice to Harvey Trust [JA Vol. 4 at 843]. During this meeting, Governor Sisolak expressed concern about landlocked property, stating that “at the county, a piece of property could never be landlocked as this would make it unusable for the owner” [JA Vol. 4 at 843]. Further, all the information regarding the sale was provided by Green Acres, who did not refer to the Harvey Trusts use of the property as an easement, or NDOT’s approval of the Harvey’s use of the property to access the billboard. *Id.* Despite these Issues, unbeknownst to the Harvey Trust, NDOT sold APN 043-282-03 to Green Acres in August of 2021 without reserving an easement for the Harvey Trust [JA Vol. 4 at 843-844].

After purchasing the property from NDOT, Green Acres restricted the Harvey Trust’s access to the Northwest Corner of their property by erecting a fence, cutting the lock on the Harvey Trust’s gate, and entering the Harvey Trust’s land without consent [JA Vol. 4 at 848]. Harvey Trust had to file a criminal trespass complaint against Green Acres to keep Green Acres from ejecting Harvey Trust from the Northwest Corner of their property. *Id.* Harvey Trust was informed at that time by the responding officers that Huffaker Place does not even show up on the officers’ address system for the City of Reno [JA Vol. 4 at 843]. Harvey Trust alleged in the Second Amended Complaint that Huffaker Place has never been declared, dedicated or recorded, and that they are the rightful owner of all of Huffaker Place [JA Vol. 4 at 843].

NDOT’s sale to Green Acres without a reservation of easement for Harvey Trust has landlocked the Northwest

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Corner of Harvey Trust's property (APN 043-011-40), causing loss of use and income from storage rentals and billboard lease payments [JA Vol. 4 at 848-849]. At the hearing on the motions to dismiss, Harvey Trust argued that the issues in this case arose when "Green Acres came in and tried to kick them off the property that they had been in possession of for 30-plus years" [JA Vol. 3 at 700], which prompted Harvey Trust's investigation into records regarding the bridge and roadway alignment, where Harvey Trust discovered in 2021 the issues surrounding the misalignment of the current Huffaker Place with the location of the historic bridge over which Huffaker Lane crossed. *Id.*

In the Second Amended Complaint, the Harvey Trust asserts ownership in portions of Huffaker Place and APN 043-282-03, as shown in Section "A" of Exhibit 1 to the Second Amended Complaint [JA Vol. 4 at 838, JA Vol 4. at 859]. The Defendants failed to demonstrate, even with the external documents produced and referenced in the District Court's Order at JA Vol. 4 at 969 at Fn. 3, that Huffaker Place and most of the cul-de-sac have ever been officially declared, dedicated, or recorded as owned by NDOT and then transferred to the City of Reno or Washoe County. Harvey Trust is the rightful owners of this property [JA Vol. 4 at 845]. Despite these well plead allegations, no discovery was allowed for these disputed issues of fact.

At the November 29, 2023 hearing on the motions to dismiss before the District Court, several factual disputes emerged between the parties regarding document

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authenticity: Counsel for Harvey Trust disputed the authenticity of documents submitted with the motions, particularly challenging assessor's maps: "we have a problem with all these exhibits that are being pulled from the assessor's site" [JA Vol. 3 at 699]. Harvey Trust's counsel cited official disclaimers stating the assessor's records relied on in Green Acres' Motion that a party "can't rely on this for property lines or anything like that because it's not exact" [JA Vol. 3 at 699]. The issue here is that the Court simply accepted that the assessors maps accurately reflect disputed property boundaries at issue in this case, where assessors records do no such thing.

In Harvey Trust's Opposition to NDOT's Motion to Dismiss, Harvey Trust further highlighted that significant disputes exist regarding the true property boundaries. These boundary disputes arise from discrepancies between various surveys of the property [JA Vol. 2 at 412]. The situation is further complicated because NDOT removed all of the original survey monuments that were previously used to definitively establish the location of Huffaker Lane adjacent to the Harvey Properties [JA Vol. 2 at 424]. This removal occurred when NDOT demolished the Huffaker Lane Bridge and constructed I-580, subsequently creating what is now known as Huffaker Place [JA Vol. 3 at 664]. Without these original survey monuments, the precise historical boundaries remain a disputed issue of fact.

Harvey Trust argued at the motion to dismiss hearing that evidence will demonstrate that Huffaker Place's current location differs significantly from the historical location of Huffaker Lane at the time of NDOT's taking.

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This conclusion is supported by physical evidence in the form of existing concrete abutments. Specifically, Harvey Trust presented a 1947 construction map that documented an “18’4-by-244 timber culvert removed” while noting “Present concrete abutments to remain in place” [JA Vol. 3 at 701]. These concrete abutments are situated north of where Huffaker Place currently runs. This physical evidence is significant because if Huffaker Place had been constructed as a direct replacement for Huffaker Lane following NDOT’s taking for I-580 construction, it should be positioned several feet north of its present location, aligned with these historical abutments. The disparity between the abutments’ location and the current roadway’s position demonstrates a material change in the road’s alignment, which affects the property boundaries central to this dispute.

At the motion to dismiss hearing, Harvey Trust argued it was apparent that the road’s alignment had shifted without proper compensation, noting Harvey Trust had been unable to obtain historical records regarding the bridge and its location: “...he started looking around, started asking. He would go to Washoe County, and he would ask about the bridge, and he was told there’s no bridge. He contacted NDOT and said, ‘Hey, what information do you have on the bridge over Dry Creek?’ ‘Sorry. Can’t help you.’” [JA Vol. 3 at 700]. Harvey Trust argued that realignment occurred when “the then owner was a 90-plus-year-old lady that couldn’t go out of the house unless she went with someone. So if there’s adjustments or modifications or whatever, she never would have known” [JA Vol. 3 at 705]. Counsel for NDOT disputed

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the Trust's interpretation of road realignment, arguing it was "belied by aerial photos I provided to Plaintiffs' counsel that show not only the bridge but the concrete in the same photo" [JA Vol. 3 at 739-740]. NDOT maintained that any claims regarding road realignment were barred by statute of limitations. *Id.*

The Harvey Trust also raised issues with survey accuracy, pointing out discrepancies in the township and range lines: "if you look at Exhibit 5...what you see is there's a triangle right at the intersection of the yellow lines... The yellow lines are supposed to be inside the red lines, but here there's a 40 or 50 feet gap" [JA Vol. 3 at 703-704]. The Trust plainly argued these discrepancies warranted discovery. *Id.*

At the motion to dismiss hearing, disputes of fact also extended to possession and access rights as well, with counsel for Harvey Trust arguing continuous possession "since the bridge was removed" and arguing Harvey Trust "have had access, total, unfettered access to that whole area" since that time [JA Vol. 3 at 716]. The Defendants contested this characterization, with counsel for Green Acres arguing that "between 1987 and 2021, the State of Nevada owned the Green Acres parcel, and it wasn't an access road, as Plaintiff is calling it. It was a parcel." [JA Vol. 3 at 730-731].

VI. SUMMARY OF THE ARGUMENT

This case presents a troubling example of a District Court prematurely dismissing complex property claims at

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the pleading stage while relying heavily on the Defendants' selective presentation and interpretation of historical documents. The District Court should have converted the motions to dismiss into summary judgment motions if it considered contested matters outside the pleadings. Instead, it denied the Harvey Trust any opportunity to conduct discovery into critical disputed facts spanning over three decades.

These disputes include the historical location of the bridge and roadway which would determine whether NDOT took more land than was allowed, the circumstances surrounding property line alterations during Interstate 580's construction, and the nature of access rights granted by NDOT after destroying the original access route. Rather than allowing discovery to illuminate these complex historical issues, the district court accepted at face value the Defendants' cherry-picked documents and interpretations, while simultaneously preventing the Harvey Trust from obtaining and presenting contrary evidence from the very same government agencies.

The District Court erred in dismissing all claims at the pleading stage without allowing for discovery. The Harvey Trust's allegations, if taken as true, state valid claims for relief that should have survived a motion to dismiss. Also, the statute of limitations should not bar its claims because it only recently discovered discrepancies in property lines and road alignment from the I-580 construction as indicated by the location of the bridge footings. This recent discovery tolls the limitations period.

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Regarding easements, Nevada law supports finding an easement by necessity or implication based on its decades-long use of the access route over APN 043-282-03. Even if these concepts do not apply to NDOT property, under *State ex rel. Dep't of Highways v. Linnecke*, 86 Nev. 257, 260 (1970), the government cannot sever access to property without providing a special right of easement. Dismissal was premature without allowing discovery into the history of property use and access, and whether NDOT granted Harvey Trust a special right of easement in the access road that transected the Green Acres parcel when it took property from Harvey Trust to construct I-580.

On the inverse condemnation claims, Harvey Trust was deprived of an easement that provided access to a portion of its property, and stated valid takings claims that should not have been dismissed without factual development. Selling the access parcel without reserving an easement took Harvey Trust's property rights without compensation as NDOT had officially sanctioned the access by approving the billboard plans in 2002 that required access and provided and acquiesced to the Harvey Trusts use of the dirt road since 1987.

The Trust's due process claim was also prematurely dismissed, as it had valid property interests at stake, i.e its right to traverse Green Acres property to reach the Northwest Corner, and was not given proper notice or opportunity to be heard before those interests were affected when NDOT sold the parcel at issue to Green Acres without informing Harvey Trust, despite having knowledge that Harvey Trust would lost access to the northwest corner of its property.

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Regarding NRS 408.533, the District Court interpreted the statute too broadly in finding it shielded NDOT's actions from challenge. The statute should not apply to unauthorized takings or dispositions of property, because if it did, it would undermine the fundamental right to just compensation in the event of the taking of property guaranteed by the 5th Amendment.

The District Court improperly took judicial notice of documents outside the pleadings without converting the motion to a summary judgment, and allowing Harvey Trust to conduct discovery to respond to issues of fact raised in the Motions to Dismiss. This is especially true when the Defendants, being government agencies, were producing their own documents, while effectively denying the Plaintiff the ability to review through discovery all of the available and relevant records from those same agencies related to the claim.

Finally, the District Court failed to properly apply the standard for a 12(b)(5) motion by not construing all factual allegations in the Trust's favor. If Harvey Trust's allegations in the Second Amended Complaint were taken as true, its claims should have survived dismissal and Harvey Trust would have been allowed to proceed to discovery.

VII. STANDARD OF REVIEW

“In considering an appeal from an order granting a motion to dismiss for failure to state a claim, this court applies a rigorous, *de novo* standard of review.” *Pack v.*

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LaTourette, 128 Nev. 264, 267, 277 P.3d 1246, 1248 (2012). The standard of proof for dismissal of a complaint under NRCP 12(b)(5) is that a moving party must prove “beyond a doubt” that the plaintiff could not prove any set of facts which, if accepted by the trier-of-fact, would entitle that party to relief. *Buzz Stew, Ltd. Liab. Co. v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). The standard of review for a dismissal under NRCP 12(b)(5) is rigorous, and the court is required to recognize all factual allegations in the complaint as true and draw all inferences in its favor. *Id.*

Nevada is a notice pleading jurisdiction, and as such, District Courts are required to liberally construe pleadings to place into issue matters that are fairly noticed. *Langevin v. York*, 111 Nev. 1481, 1484 (Nev. 1995).

Federal law applies a higher “plausibility” standard to motions to dismiss under FRCP 12(b)(6) based on *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)), a standard that the Nevada Supreme Court has not adopted. See *Garcia v. Prudential Ins. Co.*, 129 Nev. 15, 18 n.2, 293 P.3d 869, 871 n.2 (2013) (noting that the Nevada Supreme Court had not adopted the *Twombly* standard).³

3. Green Acres relied on the higher *Twombly* standard in their motions: See Green Acres motions to dismiss at JA Vol. 1 at 129 and JA Vol. 1 at 237.

*Appendix F***VIII ARGUMENT****a. The District Court Erred by Failing to Consider Harvey Trust’s Special Right of Access Easement Under *State ex rel. Dept. of Highways v. Linnecke* When NDOT Provided Alternative Access After Removing the Bridge**

The District Court did not directly address the special right of easement for public road access. Instead, it focused on easements by necessity, ruling that Harvey Trust did not acquire such an easement through APN 043-282-03 [JA Vol. 4 at 948]. The court’s analysis centered on the lack of prior common ownership of the entire parcel, citing *Jackson v. Nash*, 109 Nev. 1202, 1209-1210 (1993), which establishes prior common ownership as a prerequisite for an easement by necessity. Using the Black’s Law Dictionary definition of “Parcel,” the court concluded that Harvey Trust’s Second Amended Complaint did not allege ownership of the entire burdened parcel (APN 043-282-03), which is required under Nevada law for an easement by necessity to exist.

The Second Amended Complaint’s Fourth Claim for Relief (JA Vol. 4 at 847) alleges that plaintiffs acquired “an easement by implication and/or by necessity and/or a special easement” over APN 043-282-03. This claim arose from NDOT’s actions in 1987, when it tore down a bridge that provided the only access to the northwest corner of plaintiffs’ property (APN 043-011-40), forcing plaintiffs to use APN 043-282-03 for access from 1987 to the point where access was denied in 2021 by Green Acres. The

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Second Amended Complaint seeks declaratory relief for these easement rights.

District Court's decision was erroneous because it ignored Harvey Trust's argument regarding a special easement for public road access. Harvey Trust relied on *State ex rel. Dept. of Highways v. Linnecke*, 86 Nev. 257, 468 P.2d 8 (1970) [JA Vol. 1 at 220]. According to *Linnecke*, "An abutting owner of a public highway has a special right of easement in a public road for access purposes. This is a property right of easement which cannot be damaged or taken from the owner without due compensation" *Id.* At 260 [JA Vol. 1 at 222].

The District Court ignored the fact that when NDOT removed the Huffaker Lane bridge, it provided Harvey Trust with a access/service road by acquiring the additional property (APN 043-282-03) along the east side of I-580, giving Harvey Trust access to the highway via this parcel for over 30 years [JA Vol. 1 at 222-223]. This created a special right of easement that cannot be taken without compensation [JA Vol. 1 at 223]. By focusing solely on easements by necessity and ignoring Harvey Trust's argument under *Linnecke*, the District Court erred by failing to assume that Harvey Trust's facts were true and to review the facts in a light most favorable to Harvey Trust.

The district court erred by disregarding Harvey Trust's factual allegations regarding its special right of easement under *Linnecke*. Rather than accepting as true Harvey Trust's allegations that NDOT provided

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alternative access via APN 043-282-03 after removing the Huffaker Lane bridge – access that Harvey Trust used for over 30 years – the court improperly confined its analysis to easements by necessity. This narrow focus ignored the distinct legal theory under *Linnecke* that an abutting owner has a special right of easement in a public road that cannot be taken without compensation. The failure to draw all inferences in Harvey Trust’s favor regarding this alternative access right, and its exclusive focus on common ownership requirements for easements by necessity, falls far short of proving “beyond a doubt” that Harvey Trust could not establish any set of facts entitling it to relief under *Linnecke*.

b. The District Court Erred by Taking Judicial Notice of Disputed Documents Without Applying the *Baxter* Standard

The District Court determined it could take judicial notice of cherry-picked attached documents that were official records of Washoe County and/or the State of Nevada, considering them public records whose veracity could not be reasonably questioned. *Id.*

The District Court took judicial notice of several key documents in reaching its decision. These included the 1987 Final Order of Condemnation, two easement deeds, the minutes from the December 14, 2020, Nevada Department of Transportation (NDOT) Board meeting, the NDOT Sign Permit Application, and certain Right-of-Way Plans [JA Vol. 4 at 938]. The District Court determined these documents were official records of Washoe County and/

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or the State of Nevada, finding them to be public records whose veracity could not be reasonably questioned, and thus appropriate for judicial notice without converting the motion to dismiss into a motion for summary judgment [JA Vol. 4 at 937].

The court cited NRS 47.130(2) for judicial notice criteria and relied on *US v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) and *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847 (1993) to support considering these materials without converting the motion to dismiss into a summary judgment motion. This ruling wrongfully shoehorned the attached exhibits in making its determinations on the motions to dismiss.

Harvey Trust repeatedly emphasized that the appropriate standard for reviewing a motion to dismiss a complaint under NRCP 12(b)(5) should be rigorously reviewed, with all alleged facts presumed true and all inferences drawn in their favor [JA Vol. 4 at 889]. The Defendants' interpretations of non-pleading exhibits did not sufficiently disprove Harvey Trust's allegations to overcome the standard for a motion to dismiss [JA Vol. 4 at 903]. Furthermore, Harvey Trust argued that if matters outside the pleadings were considered, the motion must be treated as one for summary judgment under NRCP 56, per NRCP 12(d) [JA Vol. 4 at 890], which would require further discovery under NRCP 56(d) [JA Vol. 4 at 890].

In Plaintiffs' Opposition to NDOT's Motion to Dismiss and in Plaintiffs' Opposition to City of Reno's Supplemental Points and Authorities to its Motion to

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Dismiss, Harvey Trust argued against the consideration of external documents in deciding the motions, arguing that all non-pleading documents presented by the defendants should be stricken, as they did not meet the requirements set forth in *Baxter v. Dignity Health*, 131 Nev. 759, 357 P.3d 927 (2015) [JA Vol. 4 at 890]. This *Baxter* standard only allows a court to consider unattached evidence in a Motion to Dismiss without converting it to a Motion for Summary Judgment if three conditions are met: (1) the complaint refers to the document, (2) the document is central to the plaintiff's claim, and (3) no party questions the authenticity of the document [JA Vol. 1 at 215]. This standard provides a limited exception to the general rule that courts should primarily focus on, and accept as true, the allegations in the complaint when evaluating a motion to dismiss. Under *Baxter*, a motion to dismiss should only be converted to a summary judgment motion only when the court considers documents that are referenced in the complaint, particularly when the complaint heavily relies on those documents. *Baxter v. Dignity Health*, 131 Nev. at 764 (2015). Unlike *Baxter*, the Defendants at hand were permitted by the Court to introduce cherry-picked documents that the complaint neither references nor relies upon. In fact, the Defendants' prior representations to Harvey Trust that these documents didn't exist when Harvey Trust was investigating demonstrates that these materials couldn't have been referenced in the complaint's drafting [JA Vol. 3 at 700-701]. Harvey Trust couldn't have "relied heavily" on documents it was told didn't exist.

Harvey Trust expressly argued that the Defendants documents contained discrepancies when compared

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with other Washoe County records, indicating the Trust's disagreement with the documents' accuracy and reliability. *Id.* This challenge should have been sufficient to trigger the third prong of the *Baxter* standard, which requires that "no party questions the authenticity of the document." Since Harvey Trust explicitly questioned the authentication and accuracy of the documents, including the accuracy of the property lines between parcels, and the ownership history of portions of Huffaker Place [JA Vol. 4 at 902], the District Court abused its discretion by not excluding them from its consideration under the *Baxter* standard.

The District Court improperly took judicial notice of disputed documents without satisfying the *Baxter* requirements. Instead of accepting Harvey Trust's factual allegations as true and drawing all inferences in its favor, the District Court relied on external documents whose authenticity Harvey Trust expressly challenged and which were neither referenced in nor integral to the complaint. Consideration of these disputed materials, particularly documents that Harvey Trust was previously told did not exist, without allowing discovery, falls far short of proving "beyond a doubt" that Harvey Trust could not establish any set of facts entitling it to relief.

c. The District Court Erred by Not Converting the Motions to Dismiss to Summary Judgment Despite Complex Historical Property Disputes Requiring Discovery

The District Court acknowledged the general rule that considering evidence outside the pleadings typically

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requires converting a motion to dismiss into a motion for summary judgment [JA Vol. 4 at 936]. However, it cited an exception allowing consideration of certain materials without such conversion, including documents attached to the complaint, incorporated by reference, or subject to judicial notice. The court relied on *US v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) and *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847 (1993) to support this exception. It also referenced NRC 12(b) regarding conversion to summary judgment and NRS 47.130(2) for judicial notice criteria. Applying this exception, the District Court determined it could consider the documents in question without converting the motions to dismiss into motions for summary judgment, thus precluding the trust the opportunity to present contrary evidence.

Breliant, which permits Courts to consider undisputed matters of public record in ruling on a motion to dismiss, should not be read to permit a government to cherry-pick selectively disclose and use public documents in a motion to dismiss a lawsuit where the complaining party has no opportunity to discover the whole body of public documents related to the claim at issue.

Harvey Trust disputed the authenticity of the documents in question and the accuracy of the information contained in the documents themselves. Specifically, in their Opposition to Green Acres' Motion to Dismiss, Harvey Trust stated:

Defendants have attached several external documents to their Motion to Dismiss; however,

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said documents have not been properly authenticated nor has there been an affidavit attached to the Motion to Dismiss wherein the affiant states that they are familiar with the documents and what they represent.” [JA Vol. 1 at 229]

The District Court erred in failing to convert the motions to dismiss into motions for summary judgment when considering matters outside the pleadings because introduction of the documents only serve to highlight the factual disputes between the parties.

The disputed documents involve complex property records requiring expert interpretation to understand the historical alignment of Huffaker Lane/Place before and after Interstate 580’s construction. One of the primary bases for the Harvey Trust’s claim is that the boundaries, as they are currently shown, are simply incorrect. Just because information is contained in a public document, that does not mean that the information contained therein is necessarily accurate, thus the need for expert testimony. Questions of fact in eminent domain proceedings are for a jury to determine at trial. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 229, 181 P.3d 670, 673 (2008). Further, credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (U.S. 1986).

The Harvey Trust has specifically alleged that recent discoveries, including an unearthed bridge foundation,

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suggest improper property line alterations during the 1987 construction [JA Vol. 4 at 842], causing the taking of more property than allowed. These alterations occurred when the Trust's predecessor was frail in her 90s and unable to monitor the construction work [JA Vol. 4 at 840], a fact that underscores the need for thorough discovery to establish the historical record. The fact that the Defendants were able to produce cherry-picked public records did nothing to buttress their arguments because Harvey Trust's issue is that the information in the public records isn't correct, based on physical evidence. This fact is critical in this case because it shows that during the condemnation and construction of I-580, NDOT apparently took more of Harvey Trust's property than the condemnation process allowed, and this fact was only recently discovered, i.e. when the dispute with Green Acres arose in 2021.

The complexity of these issues was demonstrated by the Harvey Trust's recent discovery of discrepancies in property lines and road alignments [JA Vol. 4 842]. Harvey Trust spent months researching the circumstances surrounding NDOT's taking of their property, the severance and renaming of Huffaker Lane, and the demolition of the bridge [JA Vol. 4 at 842]. Moreover, fundamental questions exist about the ownership status of Huffaker Land and/or Huffaker Place itself, which the Trust alleges was never declared, dedicated, or recorded as NDOT property that could be transferred to City or County property [JA Vol. 4 at 845]. NDOT could not have given to the City of Reno or Washoe County land that it never owned in the first

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place. These disputed facts cannot be properly resolved without the benefit of discovery.

The timing and circumstances of NDOT's sale of APN 043-282-03 raises additional factual issues requiring discovery. The sale was conducted through a virtual meeting during COVID-19 lockdowns [JA Vol. 4 at 843], when the Trustees of the Harvey Trust were directed to stay home and could not meaningfully participate in government proceedings. This sale affected property the Trust had continuously used for access since 1987 [JA Vol. 4 at 840], including access necessary for a billboard installation legally established by a 2002 court order [JA Vol. 4 at 840] and requiring approval by NDOT prior to construction [JA Vol. 2 at 428]. The impact of this sale on Harvey Trust's property rights, particularly in light of Governor Sisolak's expressed concerns about landlocking property [JA Vol. 4 at 843], raises factual issues that cannot be properly evaluated on a motion to dismiss without the benefit of discovery.

Converting the motions to summary judgment would have provided the Harvey Trust the opportunity to develop evidence regarding these complex factual issues. This would include examination of historical property records, expert analysis of property line alterations, and investigation into the circumstances surrounding both the 1987 construction and the 2020 sale. Without such discovery, the District Court's consideration of matters outside the pleadings improperly deprived the Harvey Trust of the opportunity to present evidence supporting its claims and challenging the external documents relied upon by the defendants.

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Given the complex nature of the property rights at issue, the historical context spanning over three decades, and the recent discoveries that prompted this litigation, the District Court's failure to convert the motions to summary judgment constitutes reversible error. The factual disputes at the heart of this case – involving property boundaries, historical use, and the interpretation of legal documents – require the more thorough examination of evidence that NRPC 56 provides, and NRCP 12 does not.

The District Court erred by refusing to convert the motions to dismiss into motions for summary judgment despite considering matters outside the pleadings, and weighing issues of fact such as the accuracy of records presented. Rather than accepting as true Harvey Trust's allegations about discovered discrepancies in property lines, improper alterations during 1987 construction, and questions about road ownership, the court improperly relied on disputed documents to resolve factual issues. Dismissal without allowing discovery into these complex historical property matters – including recently unearthed physical evidence contradicting cherry-picked public records – falls far short of proving “beyond a doubt” that Harvey Trust could not establish any set of facts entitling it to relief.

d. The District Court Erred by Applying the Statute of Limitations Despite Harvey Trust's Continuous Property Use and Recent Ejection

The District Court applied the NRS 11.080 limitations period to Claims 1 and 2, finding both time-barred [JA Vol.

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4 at 941-944]. For Claim 1, the court determined Harvey Trust’s predecessors-in-interest had at least constructive notice of the 1987 Order of Condemnation, which started the limitations period. For Claim 2, it found Harvey Trust was “ejected” from Huffaker Place over five years before filing suit. The District Court relied on *Berberich v. Bank of Am., N.A.*, 136 Nev. 93, 97, 460 P.3d 440, 443 (2020) to interpret NRS 11.080, noting the period begins when ownership is questioned or possession is disturbed. It also cited Black’s Law Dictionary’s definition of “possession” and took judicial notice under NRS 47.130 that Huffaker Place has been a public road for over five years. The court concluded no set of facts could overcome the statute of limitations for either claim. *Id.*

Harvey Trust argued that the 1987 Order of Condemnation failed to provide the Trust with actual or constructive notice of the taking because it did not clearly identify the specific property being condemned nor conclusively demonstrate the actual boundaries of APN 043-282-08 [JA Vol. 2 at 425]. Harvey Trust’s predecessor, who was frail and in her 90s at the time and unable to freely move around or monitor the construction work [JA Vol. 4 at 840], could not have reasonably understood the extent of the property being taken. This lack of clarity was compounded by the inconsistent use of “Huffaker Lane” versus “Huffaker Place” in various documents, creating ambiguity about the precise boundaries and ownership of the disputed property [JA Vol. 3 at 317].

After construction of I-580, the Trust continued to use the Northwest corner of their property for storing

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large equipment, truck trailers, and livestock, receiving compensation from third parties who rented space [JA Vol. 4 at 840]. The Trust even installed a fence at their property line to secure the stored items [JA Vol. 4 at 840]. This ongoing, uninterrupted use was further established in 2002 when the Trust leased a portion of the Northwest corner for a billboard installation, which was recognized by court order [JA Vol. 4 at 840], which required approved ingress and egress to construct and maintain the Billboard.

Harvey Trust only recently discovered in 2021, through years of flooding that exposed the old Huffaker Lane bridge foundation, that the alignment of Huffaker Place had been altered from Huffaker Lane's original position during the I-580 construction [JA Vol. 4 at 842]. This alteration, which the Trust alleged resulted in an uncompensated taking of their property, was not discoverable until these recent events because the bridge footing was not exposed, but was buried under the stream bank [JA Vol. 4 at 842], as alleged in the Second Amended Complaint:

...after many years of floods traveling down Dry Creek, Plaintiffs have recently become aware that a portion of the bridge's foundation was not removed at the time of construction of the Interstate 580 and after reviewing this recently unearthed structure, it appears that the alignment of Huffaker Place was altered from its original alignment....

Id.

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“Under the discovery rule, the statutory period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action.” *G & H Associates v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 272 n. 5, 934 P.2d 229, 232 n. 5 (1997). A “cause of action does not ‘accrue’ until the aggrieved party knew or should have known, of the facts giving rise to the damage or injury.” *Id.* At 272 citing *Nevada State Bank v. Jamison Partnership*, 106 Nev. 792, 800, 801 P.2d 1377, 1382 (1990). Harvey Trust specifically raised the discovery rule as an objection to dismissal in its briefing below: See JA Vol. 2 at 419.

Harvey Trust clearly alleged its actual ejection from the property did not occur until 2021, when Green Acres restricted access to the Northwest Corner by erecting a fence, cutting the lock on the Trust’s gate, and entering upon the Trust’s property [JA Vol. 4 at 848]. Dismissal on statute of limitations grounds is only appropriate undisputed evidence demonstrates the plaintiff discovered or should have discovered facts underlying a cause of action. *Nevada Power Co. v. Monsanto Co.*, 955 F.2d 1304, 1307 (9th Cir. 1992) The recent interference with Harvey Trust’s property rights in 2021 should mark the beginning of any limitations period, not the 1987 Order of Condemnation or the various historical maps and surveys relied upon by the City of Reno and the Court in its Order dismissing Harvey Trust’s claims [JA Vol. 4 at 940-941].

The District Court’s application of the statute of limitations fails to account for the unique circumstances surrounding this case and the complex history of the

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property. *Id.* While the District Court acknowledges the issues surrounding the Huffaker Ln. bridge [JA Vol. 4 at 952], it failed to account for the allegations surrounding the recent discovery of the bridge foundations and the misalignment of Huffaker Lane in its analysis [See generally at JA Vol. 4 953-956].

The Trust's continuous use of the property since 1987, the recent discovery of substantial alterations to property boundaries, and the lack of clear documentation regarding the ownership of Huffaker Place create factual issues that preclude the application of the statute of limitations at this stage of the proceedings. The Trust's claims deserve full consideration on their merits rather than dismissal based on a statute of limitations that began running only when Green Acres actually interfered with the Trust's property rights in 2021.

While a court may dismiss a complaint under Rule 12(b)(5) if the action is barred by the statute of limitations, dismissal on statute of limitation grounds is only appropriate "when uncontroverted evidence irrefutably demonstrates plaintiff discovered or should have discovered the facts giving rise to the cause of action." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998) (internal citations omitted). The District Court disregarded Harvey Trust's factual allegations regarding when their claims accrued. Instead of accepting as true Harvey Trust's allegations that they only recently discovered property boundary alterations through exposed bridge foundations and were not actually ejected until after Green Acres' 2021 actions, the court improperly

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determined the claims accrued in 1987. Dismissal on statute of limitations grounds was improper considering Nevada's discovery rule, which tolls the limitations period until a party discovers or reasonably should have discovered facts supporting their cause of action.

e. The District Court Erred by Misapplying Nevada Easement Law When Harvey Trust Demonstrated Both Necessity and Historical Use

The District Court analyzed Nevada law on easements by necessity and implication, finding Harvey Trust's allegations insufficient to support either type [JA Vol. 4 at 950]. For easements by necessity, the District Court cited *Jackson v. Nash*, 109 Nev. 1202, 1209-1210 (1993), emphasizing the requirement of prior common ownership of the entire burdened parcel. For easements by implication, the District Court also relied on *Jackson v. Nash*, 109 Nev. at 1213 (1993), which outlines the essential elements required for these types of easements, including unity of title and subsequent separation. The District Court found Harvey Trust's Second Amended Complaint lacked allegations to support these requirements for both types of easements. Additionally, the District Court referenced *Sloat v. Turner*, 93 Nev. 263, 266 (1977) to rule out prescriptive easements over state property. Ultimately, the District Court concluded Harvey Trust failed to plead allegations sufficient to support any form of easement in APN 043-282-03.

The District Court erred in finding that the Harvey Trust failed to plead sufficient allegations to establish

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easement rights over APN 043-282-03. The Second Amended Complaint contains detailed factual allegations demonstrating both an easement by necessity and an easement by implication. Prior to 1987, the Trust's predecessors owned property that abutted Huffaker Lane for several miles, including the bridge spanning Dry Creek Wash [JA Vol. 4 at 839]. This historical ownership was disrupted when NDOT acquired portions of the property through condemnation proceedings to construct Interstate 580 [JA Vol. 4 at 839], creating the conditions that would necessitate an easement via the access road along I-580 to the Northwest Corner of Harvey Trust's property.

The severance of the Trust's property occurred when NDOT removed portions of Huffaker Lane and demolished the bridge that had provided crucial access to the Northwest Corner of the property [JA Vol. 4 at 839-840]. This action effectively landlocked a portion of the Trust's property, creating an island and the necessity for an alternative access route, which was provided by NDOT at this same time. Since 1987, the Trust and its tenants have continuously accessed the Northwest Corner by crossing over APN 043-282-03 when owned by NDOT [JA Vol. 4 at 840], demonstrating both the necessity of the access and NDOT's implicit recognition of this need by NDOT's approval of the construction of the billboard, which required a showing of continuous access to maintain the billboard after construction. Harvey Trust's use of this access route has been substantial and ongoing, allowing for storage of large equipment, truck trailers, and livestock, activities that generated rental income [JA Vol. 4 at 840].

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The necessity of this access was further established and recognized in 2002 when the Trust leased a portion of the Northwest Corner for the billboard installation. This use was confirmed by court order in the case of *Eller Media Company v. City of Reno* Case No. CV01-03131 before the Second Judicial District Court [JA Vol. 4 840]. The District Court, in granting dismissal of this case, was required to accept as true all of Harvey Trust's allegations regarding NDOT's approval of its use of the Green Acres parcel.

The necessity of Harvey Trust's access became evident during NDOT's December 2020 virtual meeting regarding the disposal of APN 043-282-03. Governor Sisolak expressed concern that "at the county, a piece of property could never be landlocked as this would make it unusable for the owner" [JA Vol. 4 at 843]. Despite this acknowledgment of the fundamental problem with landlocking property, and NDOT's historical promises that Harvey Trust would be permitted to use the property to access its property after condemnation in 1978, NDOT proceeded to sell APN 043-282-03 to Green Acres without directly notifying, offering to sell, or reserving an easement for the Harley Trust [JA Vol. 4 at 843-844].

The consequences of NDOT's failing to recognize or consider Harvey Trust's easement rights have been severe and immediate. Green Acres has restricted access to the Northwest Corner by erecting a fence, cutting the lock on the Trust's gate, and entering upon the Trust's property [JA Vol. 4 at 848]. This interference has effectively landlocked the Northwest Corner (APN 043-

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011-40), causing direct economic harm through lost rental income from storage and billboard lease payments [JA Vol. 4 at 848-849]. The Northwest Corner is bounded by Dry Creek, the Green Acres Parcel, and I-580. Further, the Harvey Trust no longer has access for its tenant to maintain the billboard or the embankment on Dry Creek Wash adjacent to the sign to prevent erosion that could damage the foundation for the sign. *Id.*

These allegations, when taken as true for purposes of a motion to dismiss, establish both unity of title through the Trust's historical ownership and the necessity created by NDOT's actions. The Trust has demonstrated continuous use of the easement for over three decades, the legal recognition of this use through court order, and the severe impact of losing this access. The District Court's dismissal of these claims ignores the substantial factual allegations supporting both types of easements and the practical necessity of maintaining access to the Northwest Corner of the Trust's property.

f. The District Court Erred by Dismissing Inverse Condemnation Claims Without Considering NDOT's Two-Stage Taking Through Construction and Sale

The District Court dismissed Harvey Trust's inverse condemnation claims, reasoning that since Harvey Trust could not establish an easement through APN 043-282-03, there could be no taking of a property right that didn't exist [JA Vol. 4 at 953-954]. The court relied on *Sloat v. Turner*, 93 Nev. 263 (1977) and *Probasco v. City of Reno*,

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85 Nev. 563, 566 (1969), which states that compensation is not required for non-existent property rights. The District Court applied this reasoning to all four inverse condemnation claims (Claims 5, 7, 8, and 9), citing *State, Dep't of Transp. v. Cowan*, 120 Nev. 851, 854 (2004) and *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 647 (2007) to define inverse condemnation. The District Court concluded that as a matter of law, there were no set of facts that could support a finding of inverse condemnation since Harvey Trust could not establish an easement through APN 043-282-03.

The District Court erred in dismissing the Harvey Trust's inverse condemnation claims. The Second Amended Complaint contains detailed factual allegations demonstrating how NDOT's actions, both in 1987 and 2020, constituted a taking of the Trust's property rights without just compensation.

Following the 1987 construction of I-580, the Trust adapted to these changes by accessing their Northwest Corner through APN 043-282-03, which NDOT owned [JA Vol. 4 at 840]. Over the years, the Harvey Trust developed this portion of their property for valuable commercial uses, including storage of large equipment, truck trailers, and livestock, receiving compensation from third parties [JA Vol. 4 at 840]. The Trust's property rights were confirmed by NDOT in 2002 when they leased a portion of the Northwest Corner for a billboard installation, which was recognized by court order [JA Vol. 4 at 840] and approved by NDOT. These facts demonstrate Harvey Trust's vested property rights and the economic value of the Northwest

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Corner, which are protected from uncompensated takings under the United States and Nevada Constitutions [JA Vol. 4 at 841].

NDOT's 2020 sale of APN 043-282-03 to Green Acres without reserving access rights also constituted taking of the Trust's property rights [JA Vol. 4 at 843-844]. This sale occurred during COVID-19 restrictions when the Trust was directed to stay home and could not participate in government proceedings [JA Vol. 4 at 843]. Again, during the virtual meeting regarding this sale, Governor Sisolak expressed concern that property should never be landlocked as it would become unusable [JA Vol. 4 at 843]. Despite this recognition of the fundamental problem with landlocking property, NDOT proceeded with the sale without protecting the Trust's access rights.

Green Acres has now restricted access to the Northwest Corner by erecting a fence, cutting the lock on the Trust's gate, and entering Harvey Trust's property [JA Vol. 4 at 848]. This interference has effectively landlocked the Northwest Corner, causing direct economic harm through lost rental income from storage and billboard lease payments [JA Vol. 4 at 848-849]. The Trust has already lost a customer who wanted to place items on the Northwest Corner for storage but declined to do so after discovering the access problems [JA Vol. 4 at 849].

The District Court's reliance on *Sloat v. Turner* and *Probasco v. City of Reno* fails to address the unique circumstances of this case. Unlike those cases, the Trust's property was directly impacted by a government project

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that physically altered access to their land. NDOT's subsequent sale of the only remaining access route during pandemic restrictions, without reserving necessary access rights, completed the taking by rendering the Northwest Corner effectively unusable. These actions constitute a taking under Nevada law because they have deprived the Trust of all reasonable uses of its property [JA Vol. 4 at 850].

The Trust's allegations, when taken as true for purposes of a motion to dismiss, establish valid inverse condemnation claims based on both the physical appropriation of property rights and the regulatory impact of NDOT's actions. The District Court's dismissal of these claims ignores the substantial factual allegations demonstrating how NDOT's actions have deprived the Trust of fundamental property rights protected by both the United States and Nevada Constitutions.

The District Court erred when it dismissed Harvey Trust's inverse condemnation claims without accepting as true their allegations regarding NDOT's two-stage taking. Instead of drawing all inferences in favor of Harvey Trust's detailed allegations about their established commercial use of the property through NDOT-approved access and the subsequent loss of these rights through NDOT's 2020 sale during COVID-19 restrictions, the court incorrectly concluded no set of facts could support an inverse condemnation claim. The court's dismissal, based solely on the premise that Harvey Trust could not establish an easement falls far short of proving "beyond a doubt" that Harvey Trust could not establish any set of facts entitling them to relief for an unconstitutional taking.

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g. The District Court Erred by Dismissing Due Process Claims Despite Evidence of Property Rights Deprivation Through Both Construction and COVID-Era Sale

The District Court dismissed Claim 10 (the due process claim), finding that Harvey Trust failed to allege facts sufficient to show a government deprivation of life, liberty, or property [JA Vol. 4 at 956]. This ruling was based on the District Court's earlier determinations that Harvey Trust did not have a valid property interest in the claimed easement. The District Court relied on *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 696 (2008) to define substantive due process claims and *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998) to establish the threshold requirement of showing a government deprivation of life, liberty, or property. Without such a deprivation, the District Court concluded that Harvey Trust could not sustain a substantive due process claim. *Id.*

Article 1 Section 8(5) of the Nevada Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. Due process forbids action which is fundamentally unfair and shocking to the universal sense of justice. *Summers v. Warden of Nev. State Prison*, 84 Nev. 326, 329, 440 P.2d 388, 390 (1968).

The District Court erred in dismissing the Harvey Trust's due process claim by incorrectly concluding that the Trust failed to allege sufficient facts showing a government deprivation of property rights. The Second

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Amended Complaint contains detailed allegations demonstrating multiple instances where government actions deprived the Trust of its property rights without due process. Beginning in 1987, NDOT's actions fundamentally altered the Trust's property rights through the condemnation and construction of Interstate 580, removing portions of Huffaker Lane and demolishing the bridge that provided crucial access to the Northwest Corner of the property [JA Vol. 4 at 839].

The severity of this deprivation is underscored by the circumstances surrounding the initial taking. The Trust's predecessor, then frail and in her 90s, was unable to freely move around the property or monitor the construction work [JA Vol. 4 at 840]. This vulnerability prevented her from fully understanding or challenging the extent of the property being taken. Harvey Trust has recently discovered in 2021 that during the period surrounding the taking of their property in 1987 to build I-580, Harvey Trust's property lines were altered and portions of their property were taken without proper proceedings or compensation [JA Vol. 4 at 842]. These allegations, if taken as true, demonstrate a clear deprivation of property rights without adequate notice or opportunity to be heard.

NDOT's 2020 sale of APN 043-282-03 to Green Acres without actual notice to Harvey Trust and without reserving an access easement for Harvey Trust represents a significant deprivation of property rights without due process. This sale occurred during COVID-19 restrictions when the Trustees were directed to stay home and could not meaningfully participate in government proceedings

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[JA Vol. 4 at 843]. Despite Governor Sisolak’s expressed concern that property should never be landlocked [JA Vol. 4 at 843], NDOT proceeded with the sale without providing personal notice or opportunity for the Trust to protect its interests. This action transformed the Trust’s valuable commercial property into landlocked, unusable land [JA Vol. 4 at 848].

Under *State ex rel. Dept. of Highways v. Linnecke*, 86 Nev. 257, 468 P.2d 8 (1970), Harvey Trust had a “special right of easement in a public road for access purposes” which is “a property right of easement which cannot be damaged or taken from the owner without due compensation” [JA Vol. 1 at 222]. This property right arose when NDOT provided Harvey Trust with an access/service road over APN 043-282-03 as compensation for removing the Huffaker Lane bridge access to the Northwest Corner of their land in 1987 [JA Vol. 1 at 222-223]. By selling APN 043-282-03 to Green Acres during COVID lockdowns without recognizing Harvey Trust’s property right of easement and without providing notice, NDOT deprived Harvey Trust of its property right without due process of law.

The District Court’s dismissal of the due process claim ignores the cumulative effect of NDOT’s actions. From the initial taking during their predecessor’s vulnerability, through the recent discovery of improperly taken property, to the sale of Harvey Trust’s only access route during pandemic restrictions, the Trust has alleged a pattern of property rights deprivations without adequate process. These allegations, when taken as true for purposes of a

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motion to dismiss, establish valid due process claims based on multiple government actions that have fundamentally impaired the Trust's property rights without providing constitutionally required procedural protections of notice, a hearing, and an opportunity to be meaningfully heard. Nevada's due process requirements are largely coextensive with that of the 14th Amendment, requiring notice, a hearing, and an opportunity to be heard before a person may be deprived of a property interest. *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007).

In *Fritz v. Board of Trustees of Town of Clermont*, 253 Ind. 202, 252 N.E.2d 567 (1969), the court held that "where notice of sewer assessment proceedings consisted of posted and published notice informing public generally of passage of resolution for construction of system within town, affected property owners who did not receive actual notice, although town board of Trustees knew owners' names and addresses or could have easily ascertained them, were deprived of due process of law by failure of Trustees to give adequate notice consisting at least of letter addressed personally to owners," See also *Wisconsin Electric Power Company v. City of Milwaukee*, 275 Wis. 121, 81 N.W.2d 298 (1957).

Instead of accepting as true Harvey Trust's allegations that NDOT provided them a special right of easement in 1987 as compensation for removing bridge access – a property right that "cannot be damaged or taken without due compensation" under *Linnecke* – the court incorrectly concluded the Trust had no valid property interest. Dismissal, despite allegations that NDOT later

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sold Harvey Trusts compensatory access during COVID restrictions without actual notice, effectively condoning the uncompensated taking of an established property right, falls far short of proving “beyond a doubt” that Harvey Trust could not establish any set of facts entitling them to relief for due process violations.

h. The District Court Erred by Not Analyzing How NRS 408.533’s Access Protection Provisions Support Harvey Trust’s Claims

The District Court acknowledged Green Acres’ argument regarding NRS 408.533, which Green Acres claimed creates a conclusive presumption of lawful acquisition and disposal by the State of Nevada [JA Vol. 4 at 938]. However, the District Court did not make a specific ruling on the interpretation of this statute. Instead of explicitly relying on NRS 408.533 in its rulings, the District Court focused on other grounds for dismissal, such as the statute of limitations under NRS 11.080 and the lack of a valid easement claim. The court summarized Green Acres’ argument that even if Harvey Trust once maintained an interest in the Subject Parcel, they could not overcome the effects of NRS 408.533(3), but the court did not base its decisions on this statute, opting to dismiss the claims on other grounds. *Id.*

The District Court erred in not addressing the implications of NRS 408.533 on the Harvey Trust’s claims. While Green Acres argued that NRS 408.533(3) created a conclusive presumption of lawful acquisition and disposal by NDOT [JA Vol. 4 at 938], the District

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Court's failure to analyze this statute ignored critical provisions that support the Harvey Trust's position. Most significantly, NRS 408.533(6) explicitly authorizes NDOT to "reserve and except easements, rights or interests from the conveyance of any real property disposed of in accordance with this section." These reserved rights specifically include "Easements of access to and from abutting land." NRS 408.533(6)(b). This provision directly supports the Harvey Trust's contention that NDOT had both the authority and obligation to protect access rights when selling APN 043-282-03 to Green Acres. Since 1987, the Trust had continuously used this parcel to access the Northwest Corner of their property [JA Vol. 4 at 840], a use that was essential for their commercial activities and was recognized by a 2002 court order [JA Vol. 4 at 840].

Furthermore, NRS 408.533(1)(c)(3) specifically addresses situations where a public sale would "work an undue hardship upon a property owner as a result of a severance of the property of that owner or a denial of access to a public highway." In such cases, the statute requires consideration of these hardships. The Harvey Trust's situation falls squarely within this provision, as NDOT's sale of APN 043-282-03 without reserving access rights has effectively landlocked their Northwest Corner [JA Vol. 4 at 848], causing direct economic harm through lost rental income and billboard lease payments [JA Vol. 4 at 848-849].

The statute also provides important procedural protections that appear to have been overlooked in the 2020 sale. NRS 408.533(1)(d) requires NDOT to give

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notice of its intention to dispose of property by publication in a newspaper of general circulation in the county. The Harvey Trust alleges in their Second Amended Complaint that the sale occurred during COVID-19 restrictions when they were directed to stay home and could not meaningfully participate in government proceedings [JA Vol. 4 at 843]. And, again, even Governor Sisolak expressed concern during the virtual meeting about landlocking Harvey Trust's property [JA Vol. 4 at 843], yet these concerns were not adequately addressed through the statutory procedures.

While NRS 408.533(3) does create certain presumptions regarding NDOT's authority, these presumptions must be read in conjunction with the statute's substantive protections for property owners. The District Court's failure to consider these provisions, particularly in light of the Harvey Trust's allegations of continuous use since 1987 and the severe impact of losing access to their property, constitutes reversible error. The statute's explicit recognition of access rights and protections against undue hardship from property severance directly supports the Trust's claims regarding their right to continued access over APN 043-282-03.

A statute should always be interpreted a way that avoids absurd results. *General Motors v. Jackson*, 111 Nev. 1026, 1029, 900 P 2d 345, 349 (1995). Defendants' interpretation of NRS 408.533 would lead to the absurd result that NDOT could ignore the statute's explicit access protection provisions and procedural safeguards – including its mandate to consider undue hardship from

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denial of highway access under NRS 408.533(1)(c)(3) and its authorization to reserve access easements under NRS 408.533(6) – effectively rendering these carefully crafted legislative protections meaningless while allowing NDOT to landlock and destroy the value of private property without consequence.

The District Court’s dismissal of the Trust’s claims without considering these statutory provisions ignores the legislature’s clear intent to protect property owners’ access rights in exactly this type of situation. When properly analyzed, NRS 408.533 supports rather than defeats the Harvey Trust’s claims, particularly given the statute’s explicit provisions regarding the reservation of access easements and the protection against undue hardship from denial of access.

The provisions of NRS 408.533 support Harvey Trust’s claims. The District Court erred by accepting Green Acres’ selective interpretation of the statute. Instead of drawing all inferences in favor of Harvey Trust’s position under NRS 408.533(6), which explicitly authorizes NDOT to reserve “easements of access to and from abutting land,” and NRS 408.533(1)(c)(3), which requires consideration of “undue hardship” from “denial of access to a public highway,” the District Court dismissed the claims without analyzing these protective provisions. The failure to consider how these statutory protections supported Harvey Trust’s allegations of continuous use since 1987 and the severe impact of losing access falls short of proving “beyond a doubt” that Harvey Trust could not establish any set of facts entitling them to relief under the statute’s access protection provisions.

*Appendix F***CONCLUSION**

The District Court's dismissal order represents a fundamental misapplication of the motion to dismiss standard by resolving multiple disputed factual issues without allowing any discovery. The record reveals numerous contested matters that demanded further factual development: the original location of the Huffaker Lane bridge, discovered only recently through exposed foundations; the circumstances surrounding road realignment during I-580's construction when the Trust's elderly predecessor could not monitor the work; discrepancies in survey monuments and property lines; NDOT's apparent approval of access rights for billboard construction and maintenance; and the precise nature of property rights affected by NDOT's sale during COVID-19 restrictions.

Instead of permitting the Harvey Trust to investigate these issues through discovery – including obtaining records from the very government agencies defending the suit – the district court simply accepted the Defendants' selective presentation and interpretation of historical documents. The premature termination of the case, before the Harvey Trust could develop evidence supporting its claims, constitutes reversible error and a misapplication of NRCF 12(b)(5).

The complexity of the property rights at issue, spanning over three decades of use and involving multiple government entities, demanded the thorough examination of evidence that discovery would have provided. This

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Court should reverse the District Court's dismissal and allow the Harvey Trust to pursue discovery into these disputed factual matters that lie at the heart of their claims.

For the foregoing reasons, Harvey Trust appeals to this Court to reverse the District Court's order dismissing the Harvey Trust's claims.

Respectfully submitted this: November 29, 2024:

By: /s/ Luke Busby, Esq.
LUKE A. BUSBY, ESQ.
Nevada State Bar No. 10319
316 California Ave.
Reno, Nevada 89509
775-453-0112
luke@lukeandrewbusbyltd.com

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**APPENDIX G — APPELLANT’S PETITION FOR
REHEARING IN THE SUPREME COURT OF THE
STATE OF NEVADA, FILED SEPTEMBER 22, 2025**

IN THE SUPREME COURT
OF THE STATE OF NEVADA

Case No. 88962

JUDITH L. HARVEY, AS TRUSTEE OF THE
DAVID T. & JUDITH L. HARVEY TRUST, AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE
OF DAVID T. HARVEY, DECEASED,

Appellants,

v.

THE CITY OF RENO, *et. al.*,

Respondents.

Filed September 22, 2025

APPELLANT’S PETITION FOR REHEARING

Pursuant to NRAP 40, Appellant Judith L. Harvey, as Trustee of the David T. & Judith L. Harvey Trust, and as Personal Representative of the Estate of David T. Harvey, Deceased (hereinafter “Harvey Trust”), respectfully petitions this Court for rehearing of its September 8, 2025, Order of Affirmance (hereinafter “Order”).

*Appendix G***I. Introduction**

Despite NDOT granting a permit to Harvey Trust to build the billboard on the land subject to the dispute in this case in 2003 with acknowledgement that a billboard on Harvey Trusts' land was only accessible from the Green Acres Parcel, the Nevada Department of Transportation's (NDOT) later sold the Green Acres Parcel without any actual notice to the Harvey Trust. *See* Second Amended Complaint JA Vol. 4 at 848.

The Harvey Trust's loss of access to the northwest corner of their property via the Green Acres Parcel, despite their reliance on NDOT's written in the approval in the Sign Permit Application and Sign Permit Inspection Report (JA Vol. 2 at 435-437), and undisputed longstanding use of the access road, deprived Harvey Trust of any use of the property. *See* Second Amended Complaint at JA Vol. 4 at 852: "Defendant NDOT's actions directly and substantially interfere with Plaintiffs' vested property rights, rendering the Northwest corner of Plaintiffs' property unusable and/or valueless."

Rehearing is warranted in this case under NRAP 40(a)(1) and (2) because the Court has overlooked or misapprehended material facts and points of law in its decision. Specifically, it is warranted here because:

- (1) The Court overlooked the records presented by Harvey Trust below that raise genuine issues of fact related to the parties' competing factual claims;

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(2) The Court overlooked Harvey Trust's arguments raised below under NRS 408.533, and that statute's impact on the Harvey Trust's takings claims; and

(3) The Court overlooked the implications of the *Eller Media Company v. City of Reno* case, which involved a land use dispute over the location of the billboard.

The Order of Affirmance carries profound negative implications for NDOT's neighbors across Nevada, as it effectively deprives private landowners of any meaningful remedy when the Department sells excess property and landlocks adjacent parcels, leaving property owners without recourse against arbitrary governmental actions, without notice, that severs essential access. Although the instant case concerns only a billboard and a modest piece of land, the rule it establishes—if left unchallenged—sets a precedent that could devastate homes, farms, and businesses reliant on NDOT- owned routes for ingress and egress, potentially stripping families of their livelihoods, farmers of their ability to tend crops, and entrepreneurs of their means to operate, all without compensation or due process, resulting in manifest injustice that undermines the foundational principles of property rights and equitable governance in our state—"The drafters of our Constitution imposed a requirement that just compensation be secured prior to a taking, and our State enjoys a rich history of protecting private property owners against government takings." *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 670, 137 P.3d 1110, 1127 (2006).

*Appendix G***II. The Court Overlooked Documents in The Record that Create Triable Issues of Fact, Properly Considered under NRCP 56 instead of NRCP 12(b)(5)**

While the District Court's order granting dismissal evaluated the motions to dismiss solely on the allegations in the Second Amended Complaint and the documents submitted by the defendants, it did not address the documents submitted by the Harvey Trust which undermine the defendants' factual claims regarding the existence of an easement or property interest in the access road. *See* Order Granting Motions to Dismiss at JA Vol. 4-5 962-990.

On page 4 of this Court's Order, this Court held that a District Court may consider certain types documents, matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint, in deciding a motion to dismiss under NRCP 12(b)(5), without converting the analysis under a motion for summary judgment standard under NRCP 56, citing *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) and *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). However, this Court overlooked what should occur where, the party opposing a NRCP 12(b)(5) Motion to Dismiss presents evidence that undermines the factual claims of the movant based on those documents.

In concluding that the that the District Court did not err in treating the motions to dismiss as motions for summary judgment (Order at page 4), this Court overlooked material facts in the record presented by Harvey Trust that create genuine issues of fact—specifically, documents in the Joint Appendix that evidence NDOT's express acknowledgment

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and approval of the Harvey Trust's use of the access road across the Green Acres Parcel.

The evidence overlooked record includes the following exhibits attached to Harvey Trust's Opposition to NDOT's Motion to Dismiss (JA Vol. 2 at 412-433), attached hereto:

- Exhibit 1 (JA Vol. 2 at 442), a survey from Lumos Engineering dated August 2, 2002, prepared for the placement of a billboard on the Harvey Trust's property as part of the *Eller Media Company v. City of Reno* litigation, which depicts the existing corral fencing at its historical location along the northern boundary of the Harvey Trust's land, directly abutting the Green Acres Parcel;
- Exhibit 2 (JA Vol. 2 at 435-437), the Sign Permit Application and Sign Permit Inspection Report issued by NDOT on March 10, 2003, approving the billboard on the Harvey Trust's parcel (APN 043-011-40) that required the access road to install and service;
- Exhibit 3 (JA Vol. 2 at 439), a map submitted with the sign permit application to NDOT, showing the dirt access road on the Green Acres Parcel as the access to the billboard site, and expressly stating the area that would be used for the sign structure.

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Exhibit 2 (JA Vol. 2 at 436) includes the condition that the “Sign shall not be erected or maintained from or over any Nevada Department of Transportation right-of-way,” yet NDOT approved the permit knowing that the described access for construction and maintenance traversed the Green Acres Parcel, which was NDOT-owned property at the time.

In the Opening Brief (at pages 10-12, 28-30), the Harvey Trust cited these exhibits to argue that NDOT, the City of Reno, and Washoe County had all approved and been aware of the Harvey Trust’s use of the Green Acres Parcel as a dirt access road for billboard maintenance since at least 2002. In the Reply Brief (at pages 10-12), the Harvey Trust reiterated these points.

Even if the District Court, as this Court ruled, was within its discretion to consider the defendants’ evidence attached to their motions in evaluating the motions to dismiss, it overlooked the material facts and exhibits presented by the Harvey Trust—that undermine the defendants’ factual claims. At the end of the day, such a reading of the application of NRCP 12(b)(5) essentially permits one party to make its case through motion to dismiss by presenting only documents that support its claims while preventing the opposing party from doing so.

*Appendix G***III. Harvey Trust Raised and Preserved its Arguments Related to NRS 408.533**

In footnote 1 of the Order (at page 9), this Court held:

The Harvey Trust also argues that the district court erred by not addressing the implications of NRS 408.533 on the Harvey Trust. Because the Harvey Trust did not raise this argument below, it is waived. See *Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997). (“It is well established that arguments raised for the first time on appeal need not be considered by this court.”).

Under NRS 408.533, NDOT may reserve easements when disposing of property no longer needed for highway purposes, ensuring continued access rights for its neighbors who rely on such access. The purpose of this statute is clear, to avoid harm, and potential inverse condemnation liability where a property owner may be completely landlocked or otherwise harmed by the sale. This point is especially acute here where the Court found that no prescriptive rights to access are available under *Sloat v. Turner*, 93 Nev. 263, 266, 563 P.2d 86, 87-88 (1977) nor special right of easement per *State ex rel. Department of Highways v. Linnecke*, 86 Nev. 257, 468 P.2d 8 (1970). This concern was expressed by Governor Sisolak, stating at the meeting at which the sale from NDOT to Green Acres was approved, that “at the county, a piece of property could never be landlocked as this would make it unusable for the owner.” JA Vol. 4 at 843.

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Harvey Trust expressly raised NRS 408.533 in the Second Amended Complaint. Specifically, in paragraph 69 of the Second Amended Complaint, the Harvey Trust alleged the following:

Notwithstanding, the recent discoveries related to this matter were hidden as Plaintiffs' predecessor was in her 90s at the time the taking and construction on the intestate occurred, as well as the removal of the Bridge over Dry Creek, it appears that Defendant NDOT failed to follow NRS 408.533 and Governor Sisolak's directive during the December 2020 hidden Covid Meeting wherein the Board determined to sell the Property and not address the fact that Plaintiffs' property could then result in becoming landlocked.

[JA Vol. 4 at 788]

In paragraph 71 of the Second Amended Complaint, the Harvey Trust further alleged:

As a result of Defendant NDOT's actions and/or failures to act, including Defendant NDOT's failure to follow the guidelines and directives of NRS 408.533 and Governor Sisolak, Plaintiffs are being deprived of both the use of and access to the Northwest portion of APN 043-011-40 and for any property lost during the construction of the Interstate and the realignment of Huffaker Place, without just compensation.

[JA Vol. 4 at 788].

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These allegations are integrated into the Fifth Claim for Relief (Inverse Condemnation) of the Second Amended Complaint starting at paragraph 58, which asserted that NDOT's sale of the access road constituted a taking of property in violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use. JA Vol. 4 at 786. Harvey Trust also made a regulatory taking claim under the United States and Nevada Constitutions as its Seventh Claim for Relief, which realleged and incorporated by reference the prior claims. JA Vol. 4 at 851. Harvey Trust also raised the issues related to NRS 408.533 in the briefing below surrounding the motions to dismiss before the District Court: See JA Vol. 1 at 217 and JA Vol. 2 at 312.

The Harvey Trust's appellate briefs elaborated on this issue without raising it for the first time: In the Opening Brief (at pages 44-48), the Harvey Trust argued that the district court erred by not analyzing NRS 408.533's access protection provisions, citing the statute's requirements for notice, hearings, and easements to prevent undue hardship on abutting owners. In the Reply Brief (at pages 19-23), the Harvey Trust rebutted Respondents' interpretations of NRS 408.533, emphasizing that the statute's protections were violated and that the presumption in subsection (3) does not shield NDOT from liability for failures to provide notice or reserve access.

Rehearing is warranted because this oversight is material and affects a dispositive issue. NRS 408.533 controls NDOT's authority to dispose of excess property like

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the access road (APN 043-282-03) providing protections to avoid undue hardship on access rights (see NRS 408.533(6)), and to prevent land locking properties such that the denial of access constitutes a taking. The Harvey Trust's inverse condemnation and due process claims largely hinge on whether NDOT's 2020 sale resulted in a deprivation of a property interest without due process and uncompensated taking by restricting access to the northwest corner of the property such that the property is now useless and worthless.

By deeming the issue waived, the Court overlooked NRS 408.533, which should tip the analysis under NRCP 12(b)(5) of whether viable inverse condemnation and due process claims were stated in Harvey Trust's favor. See *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228-29, 181 P.3d 670, 672-73 (2008) (reversing dismissal in eminent domain context for failure to consider statutory framework governing precondemnation damages, emphasizing that complaints should not be dismissed if any set of facts could support relief); and *City of Las Vegas v. Cliff Shadows Prof'l Plaza, LLC*, 129 Nev. 1, 11, 293 P.3d 860, 866 (2013) (reversing summary judgment in condemnation case involving misapplication of statutes governing public use and compensation).

NRS 408.533 recognizes protectable property rights, such as the right of access, subject to inverse condemnation claims, should the government landlock a neighboring property through a sale. NRS 408.533's terms—such as requiring consideration of “undue hardship” from “a denial of access to a public highway” under subsection 1(c)

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(3) and authorizing easement reservations for “access to and from abutting land” under subsection 6(b)—, creating a legitimate claim of entitlement under state law, which is a property interest, as defined in *Malfitano v. County of Storey*, 133 Nev. 276, 280, 396 P.3d 815, 818 (2017) (holding that property interests include rights that arise from rules stemming from state law that secure certain benefits).

Completely depriving the Trust of access to its property without notice, a hearing, and an opportunity to be heard before the taking occurs constitutes a deprivation of the interest under the broad definition in *Malfitano*, especially where the statute provides NDOT with the means to provide protections against such a deprivation. Federal law similarly requires as much. See *Board of Regents v. Roth*, 408 U.S. 564, 92 S. Ct. 2701 (1972), mandating notice and a prior hearing as a requirement of procedural due process encompassed by the Fourteenth Amendment.

IV. The Eller Media case

The Court also overlooked the significance of the *Eller Media Company v. City of Reno* case (Case No. CV0 1-03131, Second Judicial District Court (JA Vol. 4 at 840), which was alleged in the Second Amended Complaint (JA Vol. 4 at 837) to be evidence of a recognized right to access by Harvey Trust across the Green Acres Parcel. The *Eller Media* case further demonstrates that the records presented by the Defendants did not provide a complete picture of the facts, and that the Harvey Trust may be able to prove its claims if they are given the opportunity to conduct discovery.

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The *Eller Media* case involved a dispute over the billboard's placement on the Harvey Trust's property where the City of Reno objected to the sign's placement. Without discovery, the Plaintiffs are deprived of the opportunity to discover the underlying facts related to the *Eller Media* case and how the right of access to their property was addressed in records that the City of Reno would possess, such as the land use approval records when the sign on the Harvey Trust property was originally placed.

The Second Amended Complaint explicitly references the *Eller Media* case as supporting the claim of an easement for access through the Green Acres Parcel (JA Vol. 4 at 837). By not addressing the *Eller Media* case, the Court overlooked a material fact in the record that could alter the conclusion that no property interest exists, especially given the one sided record considered by the District Court on which it based its conclusion that Harvey Trust could prove no set of facts to support its claims.

V. Conclusion

For the foregoing reasons, the Harvey Trust respectfully prays that this Court grant rehearing, reconsider the implications of NRS 408.533, and the overlooked record documents, and the *Eller Media* case, and make such further disposition as deemed appropriate under NRAP 40(i).

Respectfully submitted this September 22, 2025.

By: /s/ Luke Busby, Esq. _____

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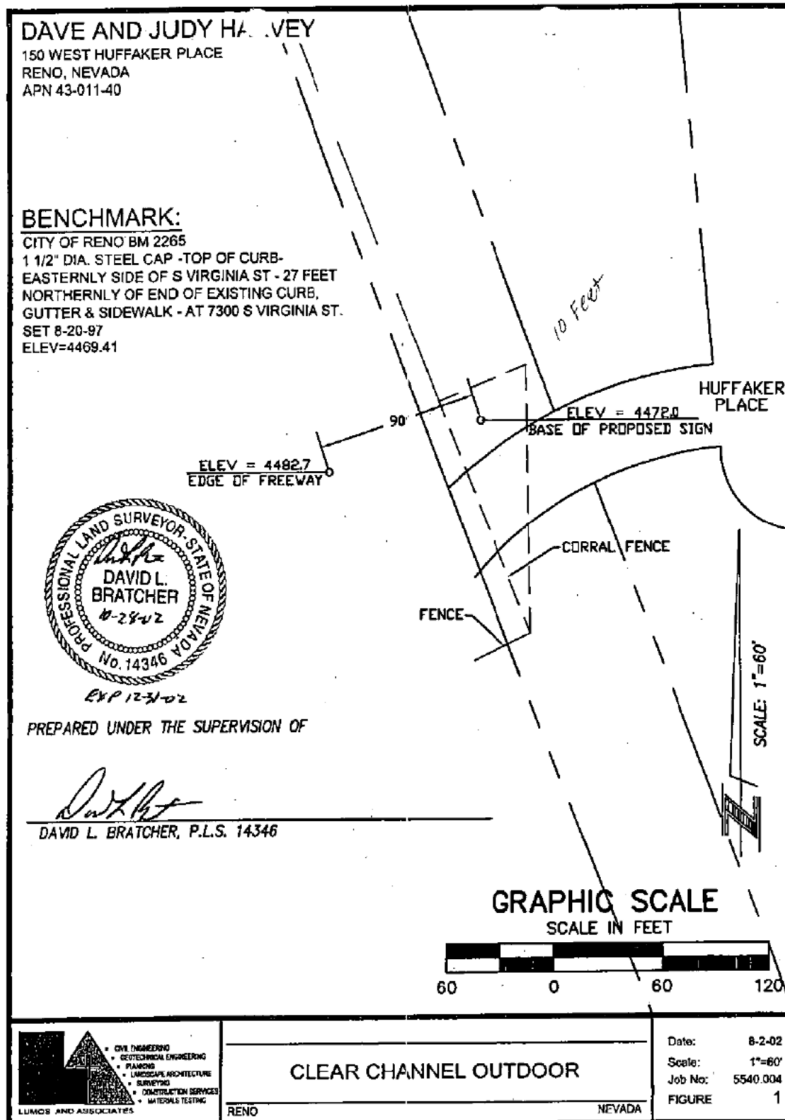
Exhibit List

1. JA Vol. 2 at 442—Site plan, 150 W Huffaker Pl Reno (APN 043-011-40), Lumos for Clear Channel,
2. JA 435-437—Sign Permit Application and Sign Permit Inspection Report
3. JA 439—Map Showing “Dirt Access Road” from Sign Application

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EXHIBIT 1



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EXHIBIT 2

**Sign Permit Application [IR-580-WA-20.14 N]
State of Nevada, Department of Transportation
Any False information will void permit**

Sign Owner <u>Clear Channel Outdoor</u> (This is the address the permit and annual fee billings will be sent to) Address <u>4945 Joule St.</u> City <u>Reno</u> State <u>NV</u> Zip <u>89502</u>	Property Owner <u>Dave Harvey</u> (Attach property owners signed consent such as a letter of copy of a lease) Address <u>150 West Huffaker</u> City <u>Reno</u> State <u>NV</u> Zip <u>89511</u>
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SIGN LOCATION

City or County Reno
Highway Route Hwy 395 (Name or Number)
Side of Highway E (N, S, E, W)
Tax Parcel Number 043-011-40 Section 6
Township 18N Range 20 E
Approximate Location Hwy 395 E/S .05 mi. N of Huffaker
(From Identifiable Landmark, Intersection, Milepost, or Existing Sign)

SIGN DESCRIPTION (Sign dimensions, do not include supports)

Height 14; (14 2nd side) Width 48, (48 2nd side)
Distance of panel bottom to ground 31 Feet
Number of posts 1
Post Material: Wood Metal Other (Describe) Monopole
Illuminated Yes No

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Will this sign have a changeable message? No Yes
Attach plans showing how message will be displayed and changed.

Date to be erected 3/01/03

Amount accompanying application \$ 200.00 Check # 584914

I certify all information on this application is true and that the sign will not be built or maintained from NDOT right-of-way.

Signature of Sign Owner or Agent /s/ _____

Title General Manager

Printed Name James Smith

Telephone 856-0220 Tax Id No. 86-0801051

ZONING AFFIDAVIT (To be executed by the applicable City or County zoning authority. If the sign site is in a county that does not have zoning, attach a sketch map showing the qualifying business as outlined in NAC 410.320)

This will certify that the sign described above is located within the jurisdiction of Reno (City or County) and the zoning is for Commercial or Industrial uses. Zoning Designation AC/SF15. Is this a Resolution of Intent? Yes No

If yes give effective date _____
and expiration date _____

Does this sign comply with all local requirements including all variances and use permits? Yes No Has the zoning been changed within 3 years? No Yes

If yes give date of change _____
and Zone Change Number _____

Reason for change _____

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Signature /s/
Title SENIOR PLANNER
Printed Name Gloria S. Donders-Pedro
Telephone 321-8309 Fax 334-2043

TRANSPORTATION DEPARTMENT USE ONLY

Application Received by [Illegible] on 2/20/03 at 3:00 am pm
Permit # 4812

Sign Permit Inspection Report

Field Inspection by M. FIUK Title DI UTILITY COORD.
Date 3/5/03 Nearest existing or proposed off premise sign
is owned by CLEAR CHANNEL. The requested sign is
1078' feet S (N, S, E, W) from the nearest sign. Permit
number of nearest sign, if existing 3659. Approved for
issuance by /s/[Illegible] Milepost I580-WA-20.14N
Permit number 4812 Issued by Bill Bowman Date 3/10/03

Standard Conditions

1. Any false or erroneous information will void the permit.
2. Sign shall not be erected or maintained from or over any Nevada Department of Transportation right-of-way.
3. Permit tag must be affixed to the sign and visible to controlled roadway prior to advertising being placed on sign.

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4. It is the responsibility of the sign company to locate all property lines, including NDOT right-of-way lines.
5. Sign must be built within 180 days of the issuance of this permit or permit will be canceled with forfeiture of all fees.
6. Sign must be built in the EXACT location approved on the permit.
7. No flashing or intermittent lights, and illumination lights must be shielded from traffic.

Additional Conditions

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**REAL PROPERTY OWNER(S)' AFFIDAVIT
TO CONSENT TO RELOCATE A "BANKED"
EXISTING, PERMANENT, LEGALLY
ESTABLISHED, OFF-PREMISES
ADVERTISING DISPLAY ("BILLBOARD") TO
REAL PROPERTY**

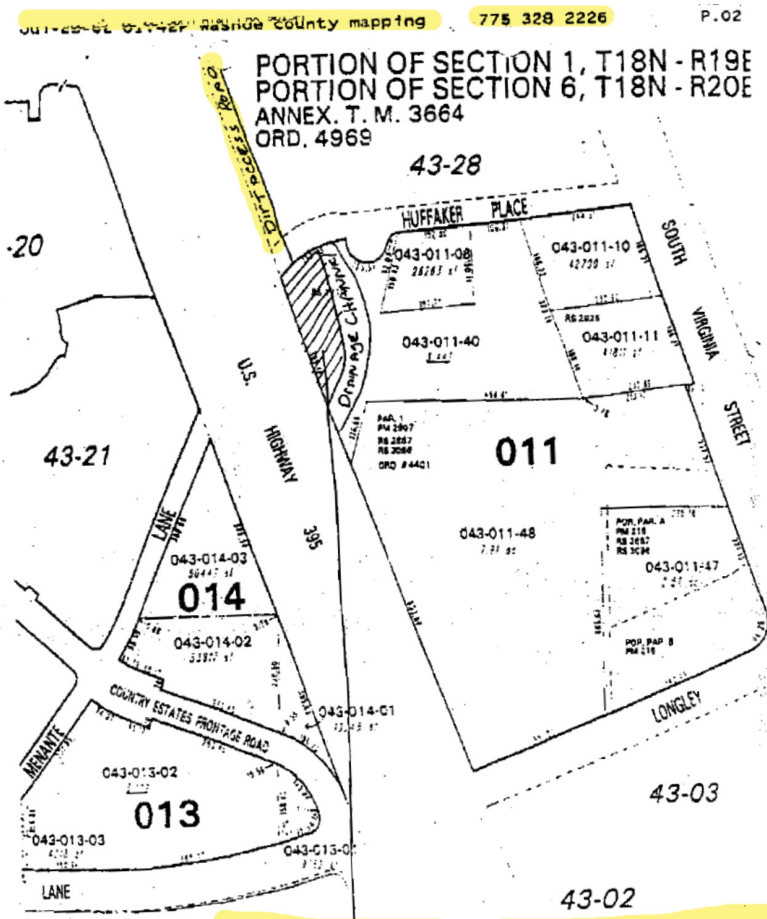
I, David T. Harvey, am the owner of real property located at 150 W. HUFFAKER ROAD, assessor's parcel number 043-011-40. I hereby give my consent to _____ to relocate a billboard, identification number, at the location described above and at the site described on the attached map. This consent is void if for any reason a building permit is not issued within sixty (60) days of the execution of this consent, excluding any appeal period.

/s/ David T. Harvey
David T. Harvey

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EXHIBIT 3



43-31 This cross-hatched area of APN 043-011-40 is the area leased to Tenant and where the sign and structure will be placed. It is to the west of the drainage channel and to the east of NDOT's right of way. This area previously shown on

Exhibit A