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1 Case No. 2023-CV-00085 & 2025-CV-00085

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5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

7
8 ASHLAND PARK, LLC, a Nevada limited
9 liability company,

*Special Assignment to the Honorable
Senior Justice Hardesty*

10 Plaintiff,

11 v.

12
13 DOUGLAS COUNTY, a political
14 subdivision of the State of Nevada,

**ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER
AND DENYING, IN PART, MOTION
FOR PRELIMINARY INJUNCTION**

15 Defendants.

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

18 Real Party in Interest.

19
20 and,

21 CONSOLIDATED ACTION.
22 _____ /

23 This is a consolidated action. In the initial action captioned *Ashland Park, LLC v. Douglas*
24 *County* (Case No. 2023-cv-00085) (the "Development Agreement", or "DA" Action), Park Ranch
25 intervened and brought claims against the County for declaratory relief, breach of contract, breach
26 of the implied covenant of good faith and fair dealing, and specific performance concerning an
27 Amended Development Agreement dated December 19, 2019. In a subsequent action, captioned
28

1 *Douglas County v. Park Ranch Holdings, LLC* (Case No. 2025-cv-00085) (the "Condemnation
2 Action"), the County brought claims against the Park Entities for eminent domain, and Park Ranch
3 counterclaimed for pre-condemnation damages, inverse condemnation, and under 42 U.S.C. § 1983.

4 **I. BACKGROUND**

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6 On August 20, 2025, Park Ranch Holdings, LLC's ("Park Ranch") filed its Motion for a
7 Temporary Restraining Order and Motion for an Order to Show Cause why a Preliminary Injunction
8 Should Not Issue ("Motion") against Douglas County ("County"). The County filed its opposition
9 to the Motion on August 26, 2025 ("Opposition"). The Court held a hearing on August 27, 2025,
10 and denied Park Ranch's request for a Temporary Restraining Order pursuant to NRC 65(b) for
11 failure by Park Ranch to show an "immediate" injury, loss or harm. However, the Court provided
12 an opportunity for Park Ranch to submit a reply in support of its preliminary injunction request.

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14 Park Ranch filed its reply in support of its Motion on September 10, 2025 ("Reply"). The
15 Court held a hearing on the Motion for Preliminary Injunction on September 29, 2025, during which
16 it took additional testimony from Mr. Hutchings concerning Declarations by Mr. Cochran, Mr.
17 Anderson and Ms. Moss filed with Park Ranch's Reply. Given the short notice for Mr. Hutchings'
18 additional testimony, the Court requested, and the County timely provided, a supplemental
19 Declaration from Mr. Hutchings addressing issues raised in the Cochran, Anderson and Moss
20 Declarations. During the September 29, 2025, hearing the Court also sought argument from counsel
21 concerning the parties competing Proposed Orders provided at the request of the Court to assist in
22 deciding the pending Motion. While the Court requested draft maps from each party describing the
23 areas subject to Eminent Domain by County or Inverse Condemnation by Park Ranch, neither has
24 been filed. The Court has now determined that those maps are not necessary to decide the Motion.
25 The Motion was, therefore, submitted for decision on October 8, 2025.
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1 **A. The Development Agreement**

2 The County and Park Ranch entered into a development agreement in 2005 wherein Park
3 Ranch agreed to grant the County a 105-foot right-of-way for the construction of Muller Parkway.
4 *See* 2019 Amended Development Agreement (Dec. 16, 2019) ("Development Agreement" or "DA")
5 §1.2. The terms of that initial agreement were not satisfied, and the parties sought to enter into a
6 new development agreement that superseded the Original Agreement. *See id.*
7

8 Recital 1.3 of the Development Agreement declared the County and Park Ranch's desire,
9 among other matters, to "dedicate a new 205 foot public right of way across the (Park Ranch's)
10 Property for Muller Parkway *and drainage improvements*" (emphasis added); "establish the financial
11 obligations of each party to construct Muller Parkway through Ashland Park Property; set a deadline
12 for the County to construct at least two lanes of Muller Parkway from Monterra to Stodick Estates;
13 establish a maximum of two thousand five hundred (2,500) residential dwelling units which Owner
14 is entitled to develop with the Property; and to preclude the County from rescinding the Property's
15 Receiving Area Land Use Designation for at least thirty years from the Effective Date . . ." of the
16 DA.
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19 Pursuant to Douglas County Code 20.400.030, the County approved the Development
20 Agreement by Ordinance No. 2019-1556-A on December 3, 2019. In approving the Ordinance, the
21 County Board of Commissioners found that (A) "the proposed agreement is consistent with the maps
22 and policies of the Master Plan and any specific plan"; (B) "the proposed agreement complies with
23 the provisions of NRS"; (C) "the proposed development agreement is consistent with the
24 consolidated development code and all other applicable codes and ordinances"; (D) the agreement
25 will not "cause adverse effects to adjacent property owners" and ". . . provisions have been included
26 to address the completion or phasing of improvements . . ."; and (E) the agreement provides "clear
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1 and substantial benefit to the residents of the county".

2 The Court considers the Board's justification for these findings pertinent to the Court's
3 analysis of the pending Motion. In support of the requirement that the proposed agreement is
4 consistent with the maps and policies of the Master Plan, the Ordinance recites on page 3 "The
5 proposed development agreement provides a dedicated right-of-way for the future construction of
6 Muller Parkway, which is an integral part of the adopted Transportation Plan and connects future
7 planned urban areas within Minden and Gardnerville, *as well as construction of regional drainage*
8 *improvements*" (emphasis added). Continuing at page 5 of the Ordinance, ". . . if the Park Ranch
9 Holding Development Agreement is approved, the property owner would dedicate the right-of way
10 needed to construct necessary drainage improvements to the County in addition to Muller Parkway.
11 The right-of-way will accommodate a four-lane road, multi-modal paths and *drainage facilities*.
12 This infrastructure coupled with the construction of *additional drainage infrastructure* up stream
13 in the Pinenut and Buckeye washes, *would likely* remove the eastern areas of the towns of Minden
14 and Gardnerville from the current floodplain" (emphasis added). After declaring that the
15 Development Agreement is "consistent with the Douglas County Code (DCC) and Douglas County
16 Design Criteria and Improvement Standards Manual (DCIS) in terms of right-of-way and
17 placement", the Ordinance discussed "phasing of improvements", saying the proposed agreement has
18 been drafted to require Park Ranch Holdings to contribute the cost of constructing one lane of Muller
19 Parkway through Ashland Park Property . . .". "The agreement also requires that two lanes of Muller
20 be constructed by the County within six years of approval." Finally, while discussing the benefits
21 to the residents of the county, the Ordinance recites that "Muller Parkway is an integral part of the
22 adopted Transportation Plan and will connect future planned urban areas within Minden and
23 Gardnerville and *would be constructed in tandem with regional drainage improvements*. When
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1 completed, such improvements will directly benefit adjacent property owners, residents and the
2 general public by providing a major transportation route around Minden and Gardnerville as well
3 as *critical emergency access for first responders*" (emphasis added). Finally, Park Ranch Holdings
4 and the County would each contribute the cost of constructing one lane of Muller Parkway through
5 Ashland Park Property and *share equally the cost of installing detention pond(s) east of the future*
6 *Muller Parkway*" (emphasis added).

8 It is noteworthy that DCC 20.400.050 requires the Board to review the development
9 agreement "... at least once every 24 months to determine whether the applicant, or successor in in
10 interest, is demonstrating good faith compliance with the terms of the agreement." Presumably, such
11 a review would include an evaluation of the County's obligations under the agreement as well.
12 However, the parties have not provided the Court with any information about the required reviews,
13 if any.

15 On passage of the Ordinance, the Development Agreement at paragraphs 2.8 and 4 provided
16 Park Ranch with "Vested Development Rights" for a residential community adjacent to Muller
17 Parkway, allowing Park Ranch to construct 2,500 residential dwelling units, in accordance with the
18 Development Agreement, the Douglas County Code in effect as of the effective date "to the extent
19 such code provisions do not conflict with this Agreement and the existing development
20 agreements."¹ *Id.* Paragraph 4 also assures Park Ranch of the right to maintain a "Receiving Area"
21 land-use designation for at least 30 years and "... receive zoning designations for the property that
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25 ¹ Under those Vested Development Rights, Park Ranch obtained an approved plan for its
26 residential development, Buckeye Farms, in November 2023. Mot., Ex. 30. The proposed layout
27 and location of Neighborhoods 1, 2, 3, 4, and 5 are found in the Specific Plan. *Id.* at 22.
28 Therein, the County and Park Ranch recognized that Park Ranch deeded the County the right-of-
way to build Muller Parkway and drainage facilities. *Id.* at 72; *see also* Mot., Ex. 24 at 40:11-
42:21 (the Court observing the same). Important to the pending Motion, the Specific Plan
designated areas not for development, but for native pasture and floodplain north and east of
Muller Parkway and south of Neighborhood 5 adjacent to Ashland Parkway.

1 are consistent" with the Receiving Area land use designation.

2 Paragraph 5.1 of the DA provides that Park Ranch agreed "to dedicate to the County [a]
3 public right-of-way approximately 205 feet wide, 15,295 feet long, and comprising approximately
4 75.7 acres" for "Muller Parkway, multi-modal path(s) and *additional drainage facilities*." *Id.* §5.1.
5 The parties recognized that "County's receipt of federal funding for the construction of Muller
6 Parkway may necessitate the acquisition of additional right-of-way," and the parties "agree[d] to
7 negotiate in good faith for the acquisition of additional right-of-way necessitated by [those federal
8 funding] external requirements." *Id.*

10 Muller Parkway consists of three segments being built by the County. The "Northern
11 Segment" or "Park Ranch Segment" runs north of Buckeye Farm near the location where Park Ranch
12 has the right to develop its residential subdivision, Buckeye Farm. This segment is located within
13 the regulatory floodplain. The "Southern" or "Ashland Segment" runs adjacent to Ashland's
14 property, but it is not located in the regulatory flood plain. Like the Ashland Segment, the "Middle
15 Segment", lying between the Park Ranch and Ashland Segments, is not located in a regulatory flood
16 plain.
17 plain.

19 Concerning the Ashland Segment, Paragraph 5.3 (a) provides "County *shall* construct two
20 lanes of Muller Parkway within the deeded right-of-way parcel boundary south to Toler Lane . . ."
21 (emphasis added). Further, "Owner and County agree to equally share the costs and expenses of
22 constructing *such two-lane segment* of Muller Parkway across the Ashland Park Property in
23 *accordance with or exceeding* the specifications contained in the County's Standard Detail for a 2
24 Lane Urban Arterial" (emphasis added). "Notwithstanding County's decision to construct four lanes
25 of Muller Parkway . . . , Owner's obligation shall be only to share in the costs of constructing two
26 lanes of Muller Parkway *meeting* the County Standard Detail for a 2 Lane Urban Arterial in effect
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1 on the Effective Date" (emphasis added).

2 Paragraph 5.6 obligates Park Ranch to "cooperate with County in the implementation of" the
3 Development Agreement. And Paragraph 5.7, provides that "Owner shall permit the County . . . to
4 enter upon the Property (defined in paragraph 2.4) for the purpose of . . . construction of Muller
5 Parkway, or to install and maintain culverts or other drainage facilities upon the Property . . .".

6
7 Under the heading of County's Obligations, Paragraph 6.1 provides that the County "must
8 commence and substantially complete the construction of at least two lanes of Muller Parkway in
9 the location identified in Exhibit E (the Park Ranch and Middle Segments) . . . , including a drainage
10 channel and seven access points as depicted on Exhibit G. In addition, the County shall also
11 construct two lanes of Muller Parkway within the deeded right-of-way across the Ashland Park
12 Property identified in Exhibit E." County shall complete the construction of both segments of Muller
13 Parkway within six (6) years of the Effective Date. *Id.* §6.1. "Failure by County to timely construct
14 Muller Parkway as set forth in the Agreement **shall** constitute a default which, if uncured, **shall**
15 result in the reversion to Owner of all rights-of-way conveyed to County by Owner pursuant to this
16 Agreement . . ." except easements on APN 1320-31-000-016 (emphasis added).
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19 Paragraph 6.2 states "If the County constructs the segment of Muller Parkway illustrated in
20 Exhibit E prior to the development of the portion of the Property lying west of the Muller Parkway
21 right-of way by Owner, County *shall* construct that segment of Muller Parkway in such a way as to
22 *preserve the conveyance of irrigation water originating east of Muller Parkway to the portion of*
23 *Owner's land lying west of Muller Parkway"* (emphasis added).
24

25 Importantly, the County, like Park Ranch, is required to cooperate in the implementation of
26 the Development Agreement. *Id.* §6.4. It is an event of default for the County to take an action
27 "which is not related to its health, safety or welfare powers, and which directly and substantially
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1 affects Owner's rights under this Agreement." *Id.* §11.2. While the Development Agreement limits
2 the County's liability for monetary damages,² the Development Agreement provides that the parties
3 "may pursue any remedy at law or equity" and "may sue the other party for specific performance."
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5 *Id.* §§12.1-12.2.

6 A dispute has arisen between the County and Park Ranch regarding the scope of the County's
7 obligation to install drainage infrastructure and facilities and within the existing right-of-way. *See*
8 *infra* § I(B)(5). Park Ranch contends the County has designed a road without drainage infrastructure
9 in violation of the Development Agreement and, if the County proceeds as planned, it will
10 irreparably harm Park Ranch and deprive it of its benefit of the bargain under the Development
11 Agreement.

12
13 The County disagrees arguing, among other matters, that the Development Agreement does
14 not require the County to construct the entirety of Muller Parkway pursuant to the Douglas County
15 Code; the Development Agreement does not require the County to construct the Northern Segment
16 of Muller Parkway pursuant to any specific criteria; the County and Ashland Park can deviate from
17 the design criteria for the Ashland Park Segment requiring a Two Lane Urban Arterial either because
18 (a) other roads in the area have been constructed as rural roads; (b) an independent agreement
19 between Ashland Park, as Park Ranch's successor, and Douglas County permits the deviation, or (c)
20 Park Ranch no longer has the right to enforce that requirement in Paragraph 6.1 of the Development
21 Agreement. Further, the County argues that the Development Agreement does not require the
22 County to build any specific drainage infrastructure by any certain time or remove Park Ranch's
23 future subdivision from the floodplain.
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28 ² Mot., Ex. 1 § 12.1 (providing that "the County will not be liable to the Owner or to any other person for any monetary damages whatsoever, except for the amounts for which it is obligated in this Agreement and any costs or attorney's fees").

1 **B. The Development Agreement Action**

2 In the Development Agreement Action, Park Ranch brought claims for: (1) declaratory relief
3 to affirm the County's obligations to "pay for the cost of installing all drainage infrastructure for
4 Muller Parkway so that there is no adverse impact to or diversion of regional water onto Park Ranch
5 Property" and "pay all costs for installing drainage infrastructure for Muller Parkway that does
6 deprive Park Ranch of its vested development rights," and to confirm the County "cannot encroach
7 upon Park Ranch Property without paying adequate compensation for an additional right-of-way
8 necessitated by external forces"; (2) breach of the Development Agreement; (3) breach of the implied
9 covenant of good faith and fair dealing; and (4) specific performance. *See* Park Ranch's Suppl. &
10 Second Am. Compl. in Intervention ("SAC") ¶¶ 94-96, 100-102, 104-106; *id.* at 17 "Prayer for
11 Relief." The County answered the SAC asserting 24 affirmative defenses and Counterclaimed.
12 ("ACC") In its Counterclaim, the County brings claims for (1) breach of the Development
13 Agreement by Park Ranch; (2) breach of the implied covenant of good faith and fair dealing; (3)
14 promissory estoppel; and (4) declaratory relief to affirm, among other issues, that "Section 5.3(a) of
15 the 2019 Amended Development Agreement only applies to the Ashland segment of Muller
16 Parkway"; "the County is not obligated by the 2019 Amended Development Agreement to construct
17 regional drainage infrastructure"; and "the 2019 Amended Development Agreement does not require
18 the County to remove Park Ranch property from the floodplain". ACC, ¶¶ 53(a, c-d).

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22 **1. Park Ranch's Initial Motion for a Preliminary Injunction and the
23 County's Motion for Partial Summary Judgment**

24 Park Ranch moved for a preliminary injunction to halt the County's construction of Muller
25 Parkway on August 8, 2024 ("August Motion for Preliminary Injunction"). *See* Aug. Mot. Prelim.
26 Inj. (Aug. 8, 2024) & exhibits thereto; Reply in Supp. of Aug. Mot. Prelim. Inj. (Sept. 3, 2024). Park
27 Ranch supported its Motion with multiple affidavits from Todd Cochran, an engineer specializing
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1 in hydrology, attesting that Park Ranch's property will be irreparably harmed by the County's planned
2 construction of Muller Parkway because Park Ranch's property will be inundated with floodwater.
3 Aug. Mot. Prelim. Inj. at Ex. 2; Reply in Supp. Aug. Mot. Prelim Inj. at Ex. 2; *Ex Parte* Mot. for
4 Order Shortening Time for Mot. for Leave to File Suppl. in Supp. of Aug. Mot. for Prelim. Inj. at
5 Ex. A. In its opposition, the County argued that the plain language of the Development Agreement
6 does not support Park Ranch's positions, the County was revising its plans rendering Park Ranch's
7 claims of harm premature, and the County's proffered affidavit from County Engineer Jeremy
8 Hutchings rebutted Mr. Cochran's declaration. *See* Opp'n to Aug. Mot. Prelim. Injunct. (Aug. 23,
9 2024) & exhibits thereto.
10

11
12 While the August Motion for Preliminary Injunction was pending, on October 21, 2024, the
13 County filed a Motion for Partial Summary Judgment, requesting a ruling that "the Amended
14 Development Agreement does not require Douglas County to 'pay for the cost of installing all
15 drainage infrastructure for Muller Parkway so that there is no adverse impact to or diversion of
16 regional water onto Park Ranch Property.'" *See* Douglas County's Mot. for Partial Summ. J. 2 (Oct.
17 21, 2024). The County argued that the Development Agreement was "unambiguous," the plain
18 language controlled, and extrinsic evidence could not be considered. *Id.* at 3-9. Park Ranch
19 opposed, asserting, "The real dispute [between Park Ranch and the County] is the scope of the
20 County's obligation to pay for drainage infrastructure-and that dispute presents multiple unresolved
21 issues of fact." *See* Opp'n Mot. Partial Summ. J. 3 (Nov. 12, 2024).
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24 Department No. I, which previously presided over the DA Action, denied both the August
25 Motion for Preliminary Injunction and the Motion for Partial Summary Judgment. *See* Order, 6-7
26 (Dec. 3, 2024) ("December 3 Order"). With respect to the August Motion for Preliminary Injunction,
27 Department No. I held that the County is not required to obtain Park Ranch's "approval" of the
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1 design for Muller Parkway and, therefore, it declined to enter an injunction to stop the County from
2 flooding Park Ranch's property. *Id.* at 5-6 ¶ 2. Department No. I also held that the County had
3 authority to encroach upon Park Ranch's property under the Development Agreement. *Id.* at 6 ¶ 3.
4 Department No. I did not enter any findings related to the County's obligations under Section 11.2
5 of the Development Agreement, irreparable harm, or the respective hardships faced by the parties
6 if a preliminary injunction issued. *See generally id.* With respect to the Motion for Partial Summary
7 Judgment, Department No. I held "that numerous genuine issues of fact remain in dispute,"
8 precluding summary judgment. *See id.* at 6-7.

9
10 On December 31, 2024, Park Ranch moved for relief from the December 3 Order. *See Mot.*
11 for Relief from, to Amend/Suppl., and/or to Recons. Findings of Fact, Conclusions of Law, & Order
12 Den. Prelim. Inj. (Dec. 31, 2024). The County opposed. *See Opp'n Mot. for Relief from, to*
13 Amend/Suppl., and/or to Recons. Findings of Fact, Conclusions of Law, & Order Den. Prelim. Inj.
14 (Jan. 21, 2025). Department No. I denied that motion as well, finding its prior order was based upon
15 substantial evidence. *See Order (Mar. 25, 2025) ("March 25 Order").*

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18 **2. Park Ranch's Notice of Appeal and Motion for Injunction Pending Appeal**

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20 On April 28, 2025, Park Ranch filed its Notice of Appeal and Case Appeal Statement,
21 appealing the December 31 Order and the March 25 Order. *See Notice of Appeal (Apr. 28, 2025);*
22 Case Appeal Statement (Apr. 28, 2025). Park Ranch filed its Motion for Injunction Pending Appeal
23 on April 30, 2025 ("NRAP 8 Motion"). Therein, Park Ranch explained, "Park Ranch is appealing
24 the Orders to protect its property from irreversible damage," caused by flooding and Park Ranch
25 seeks "an injunction pending appeal to preserve Park Ranch's rights and property while" the appeal
26 is pending. *See NRAP 8 Mot. 2, 4.* Park Ranch presented additional evidence of irreparable harm,
27 including: an expert report and testimony from Mr. Cochran detailing his professional opinions that
28

1 the County's plans will create a flooding hazard and negatively impact floodwater flows and existing
2 structures; another expert report from a road engineering expert providing his professional opinions
3 that the County's plans do not meet road design standards and will allow Muller Parkway to be
4 inundated with floodwater; and testimony from Robert Anderson, a non-party engineer, asserting that
5 the County's plans will flood Park Ranch's property where the residential community will be
6 developed, and by failing to design and construct drainage infrastructure, the County is violating its
7 own standards and regulations. *See id.* at 4 & Exs. 2, 4, and 5 thereto.

9 The County opposed the NRAP 8 Motion on the basis that Park Ranch has no right to require
10 the County to obtain its written approval before proceeding and presented an expert report rebutting
11 several of Park Ranch's expert opinions. *See* Opp'n NRAP 8 Mot. 1-2, 4 (May 14, 2025). The
12 County also contended the "object" of the appeal is to interpret the Development Agreement and it
13 will not be defeated absent an injunction. *See id.* at 9-10. In the event an injunction was issued, the
14 County requested a bond of \$15 million to compensate the County for the risk it would breach its
15 contractor contracts if construction did not proceed. *Id.* at 13. The County did not attach any
16 contracts with contractors to its opposition or cite any supporting provisions therein. *See id.* In
17 reply, Park Ranch responded that the County's focus on "written approval" was too narrow, and,
18 under Section 11.2 of the Development Agreement, the County is prohibited from directly and
19 substantially impacting Park Ranch's vested development rights, which the County will do if it
20 proceeds with construction. *See* Reply in Supp. of NRAP 8 Mot. (May 22, 2025), at 6-11. Park
21 Ranch also argued that the County never supported its request for a multimillion-dollar bond. *See*
22 *id.* at 15-16.

26 On July 24, 2025, the Court heard oral argument on the NRAP 8 Motion but held its decision
27 in abeyance pending evidentiary hearings after finding "that critical facts have changed since Judge
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1 Young considered the initial Motion for a Preliminary Injunction." Among other facts, the design
2 of Muller Parkway by Douglas County changed January, 2025, there was a delay in the processing
3 of the County's application by the Federal Emergency Management Agency (FEMA) for a
4 Conditional Letter of Map Revision (CLOMR), opinions offered by the County experts appeared to
5 raise new questions as to the floodplain impact and the CLOMR was issued by FEMA raising new
6 questions regarding the flooding impact to the Park Ranch property and Buckeye Farm subdivision
7 project. In addition, the parties were pursuing competing condemnation claims against each other.
8 As a result, the Court entered the Order Regarding Evidentiary Hr'g, 3 (July 29, 2025); *see also* Mot.
9 Exs. 7, 23. The evidentiary hearings proceeded on August 8, 13, and 14, 2025.
10

11 **3. The Evidentiary Hearings**

12 During the evidentiary hearings, the Court heard testimony from eight different witnesses
13 (three from Park Ranch, five from the County) related to the County's construction plans and their
14 impact on Park Ranch's property. Mot., Exs. 7, 23. All experts agreed that the County's construction
15 plans will change the historical flow of water from both Buckeye Creek and Pine Nut Creek. Mot.,
16 Ex. 7 at 69:21-70:2, 50:18-22; Mot., Ex. 23 at 384:15-386:2, 428:9-22, 478:15-18. While some of
17 Park Ranch's property is already in the floodplain, all experts testified that the water surface
18 elevation will be changed (albeit by differing depths and velocities) by the construction of Muller
19 Parkway. *E.g.*, Mot., Ex. 7 at 32:16-33:17, 69:21-70:2; *see id.* at 58:14-59:2; *see also id.* at
20 50:18-22.
21

22 Under the County's construction plans, the County divided Muller Parkway through Park
23 Ranch and Ashland into three phases - (1) the Northern Segment through Park Ranch's property,
24 north of the middle segment, and subject to the CLOMR; (2) the middle segment through Park
25 Ranch's property north of Ashland Park and (3) the Ashland Park Segment which is also subject to
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1 the CLOMR unless constructed at or near grade. *See* Mot., Ex. 7 at 82:15-20, Ex. 23 at
2 468:4-469:23, 545:21-546:3, 547:20-548:2

3 For the Northern segment (CLOMR section), construction of Muller Parkway under the
4 County's design includes an embankment that will divert regional floodwater onto Park Ranch's
5 agricultural property to the north. Mot., Ex. 7 at 45:11-17. The County has not planned any channel
6 or other drainage infrastructure adjacent to Muller Parkway at this segment. Mot., Ex. 23 at
7 346:17-347:1; *id.* at 520:14-521:13; *see also* Mot., Ex. 7 at 56:24-57:4. Consequently, Park Ranch's
8 property will have increased flooding north of Muller Parkway (where Park Ranch grows alfalfa,
9 hay, garlic, and onions). *See, e.g. id.* at Ex. 7 at 44:9-22, 50:18-22, 239:4-8.
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12 For the Ashland Park Segment, under the County's plans, Muller Parkway has not been
13 designed in accordance with the Douglas County Code or its Design Criteria and will overtop in this
14 Segment during a 25-year storm event. Mot., Ex. 7 at 58:8-13; *id.* at Ex.23 at 348:2-4; *id.* at
15 364:12-19. Under the County's plans, there are no upstream detention ponds or other drainage
16 infrastructure to capture these increased stormwater flows. Mot., Ex. 23 at 346:17-347:1; *id.* at
17 520:14-521:13. With the overtopping in this Segment and the lack of drainage infrastructure,
18 increased flooding (at different depths and velocities) onto Park Ranch's property will occur, with
19 the flows specifically draining into the proposed adjacent Native areas adjacent to Neighborhood 5.
20 *E.g.,* Mot. Ex. 7 at 58:14-59:2.
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23 The Court heard testimony regarding the impact of flooding, including that increased
24 stormwater without adequate drainage infrastructure will cause erosion and damage to crops. *Id.* at
25 51:22-54:6, 116:16-20; 246:17-24. Flooding will also impact Park Ranch's ability to develop the
26 property because Park Ranch will have to address new shallow flows by capturing and conveying
27 them to appropriate places; thus, Park Ranch will have to abandon portions of its property within its
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1 planned development to construct drainage infrastructure, detention basins, or retention basins,
2 affecting Park Ranch's ability to construct its planned 2,500 homes. Mot., Ex. 7 at 170:11-172:1.

3 The Court further heard testimony related to the County's encroachments outside of the
4 right-of-way. *E.g.*, Mot., Ex. 7 at 255:20-256:4. The County has not yet identified the additional
5 Park Ranch property the County intends to take by eminent domain. *See generally infra* § I(C).

7 The Court also heard testimony related to Douglas County's Consolidated Development Code
8 ("Development Code") and its Design Criteria Improvement Standards ("DCIS") - specifically
9 testimony from Mr. Anderson describing that the County has not complied with the Development
10 Code or DCIS. Mot., Ex. 7 at 159:12-15, 165:8-12; Mot., Ex. 24 at 47: 6-12. Mr. Anderson further
11 testified that a private developer would never be allowed to move forward with the County's designs
12 for Muller Parkway given these violations. Mot., Ex. 7 at 172:16-20.

14 The County presented testimony from their hydrology experts, including Mary Evans, a
15 professional engineer in civil engineering, hydrology and floodplain management for 17 years in four
16 states. She opined that the runoff from the two-lane, uncurbed Muller Parkway segment was
17 unlikely to cause immediate and irreparable harm to agricultural land and certain crops during the
18 transition from agricultural land to urban development. She also points out that the water surface
19 elevations reported in the proposed (CLOMR) conditions result from a 100-year event. Mr. Park has
20 conceded that his family's century-long presence in Douglas County has not involved a 100-year
21 event. Ms. Evans acknowledges, however, that Park Ranch's agricultural property north of Muller
22 Parkway will receive increased flows because of the construction of the road. She also opines that
23 increases in velocity along the Muller Parkway alignment can mitigate contamination and erosion
24 of the Park Ranch agricultural land with proper maintenance of the roadway embankment. She also
25 opines that the area of Buckeye Farms will see reduced depths making it more feasible to develop
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1 Neighborhood 1 of the proposed Buckeye Farms property. However, she notes that increases in the
2 depth of flooding in neighborhoods 4 and 5 will need to be addressed during development just as
3 they would have to be in the current condition.

4 After closing arguments, the Court recapped some of the testimony from Mr. Anderson,
5 whom the Court found to "be a credible, impactful witness around which the court would pay close
6 attention to his opinions and observations," but noted that the Court needed more information
7 regarding the County's code and the County's potential violations of the same. Mot., Ex. 24 at
8 69:21-70:4. The Court further indicated that the County's expert witness Ms. Evans' "models found
9 in Exhibit 11.25 and 26 . . . [were] informative to the Court in determining whether or not there is
10 any irreparable harm" and should be taken "into consideration with respect to pursuing a new motion
11 for injunctive relief." *Id.* at 70:5-17.

14 At the conclusion of the evidentiary hearings, the Court stated it would not consider the new
15 record before it when ruling on the NRAP 8 Motion, because, in the Court's view, it should confine
16 its determination of that motion to the record made before Judge Young. If it chose to do so,
17 however, Park Ranch could file a new motion for injunctive relief incorporating the testimony from
18 the evidentiary hearings. Mot., Ex. 24 at 68:22-69:13, 70:18-24.

20 4. Park Ranch's Instant Motion

21 After the evidentiary hearings, Park Ranch dismissed its appeal and filed the instant Motion
22 to stop the County's construction, which Park Ranch argues will irreparably harm its property. Park
23 Ranch contends that the County's plans will change the flow of floodwater, increasing the velocity
24 and depth of the water on Park Ranch's property causing erosion and leading to contamination. Mot.,
25 Ex. 7 at 51:23-52:6, 116:16-20, 241:9-22. Park Ranch maintains that the County's plans will affect
26 Park Ranch's ability to exercise its Vested Development Rights to build Buckeye Farms. *Id.* at
27
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1 170:14-172:6, 275:5-10. Park Ranch further argues that the County's actions violate its own
2 Development Code and DCIS and will render it exceedingly difficult (if not impossible) for Park
3 Ranch to permit and build Buckeye Farms. *Id.* at 159:12-15, 160:10-164:5, 165:8-12, 170:14-172:6;
4 *see also* Mot., Ex. 24 at 47:6-12.

5
6 In short, Park Ranch argues that it has exceeded its burden for an injunction - that it will
7 obtain declarations that the County cannot deprive Park Ranch of its Vested Development Rights,
8 adversely impact or flood Park Ranch's property, or encroach upon Park Ranch's property without
9 legal authority. *See* Mot., Ex. 1. § 5.1; Cf. Order Regarding Evidentiary Hr'g 2 (July 29, 2025). Park
10 Ranch supports its position with numerous witnesses who testified that Park Ranch will suffer
11 irreparable harm absent an injunction, and that the County's failure to follow its own Development
12 Code and DCIS (and the expense of rebuilding the road properly and safely) is not in the public's
13 best interest. Mot. 36-37; *see* Mot., Ex. 7 at 144:14-145:23; *see also* Mot., Ex. 25 at 26 (providing
14 DCC §20.100.060); *id.* at 6 (providing DCC §20.50.080). Finally, Park Ranch argues the County's
15 contracts with its contractors³ do not expose the County to liability for a court-ordered delay. Mot.
16 37-39; *id.* at Ex. 23 at 544:19-545:5. According to Park Ranch, the County has already admitted it
17 will not meet the end-of-year deadline to build Muller Parkway, and the County has already granted
18 itself a 15-month extension (apparently caused by FEMA's delay in processing the County's CLOMR
19 application); therefore, waiting to proceed with construction until a trial on the merits is not
20 burdensome. Mot. 11.

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24 In opposition, the County argues the Development Agreement does not require the County
25 to guarantee Park Ranch can develop Buckeye Farms or remove all of Park Ranch's property from
26

27 ³The County awarded contracts for the construction of Muller Parkway. On April 10,
28 2024, the County entered into a contract with Qualcon Phase 1 and later amended that contract to
include Phase 2 on August 2, 2024. Mot., Ex. 19. And on June 3, 2025, the County entered into
a contract with Aspen for Phase 3. Mot., Ex. 20.

1 the floodplain. Opp'n 19-22. Instead, the County argues that Section 11.2 only means Park Ranch
2 will be able to obtain certain zoning approvals later. *Id.* at 20-23. The County also argues that its
3 Development Code and DCIS do not apply to its construction plans for Muller Parkway because they
4 are not explicitly required by the Development Agreement, would only apply to a private developer,
5 and do not apply to "hybrid," "interim" designs, two-lane roads, or "unique criteria" where the
6 County Engineer can approve the deviations. Opp'n 27-34. The County also asserts that it should
7 be allowed to encroach because, as a government body, it can potentially initiate an eminent domain
8 action and take property. Opp'n 35-36. The County also offered a declaration from Ms. Evans dated
9 August 26, 2025, in which she contradicts some of the opinions of Mr. Cochran and ultimately
10 opines ". . . it is my assessment that Mr. Park's property will not be immediately or irreparably
11 harmed by the construction of Muller Parkway. The construction will also not prevent Mr. Park
12 from developing his property, referred to as Buckeye Farms."
13
14

15 The County raises four additional merit-based arguments in opposition. The County argues
16 that: (1) Park Ranch is precluded from arguing about Development Code and DCIS violations under
17 the December 3, 2024, Order, (2) Park Ranch failed to exhaust administrative remedies, (3) Park
18 Ranch assumed the risk the County could not perform, and (4) Park Ranch's claims are not ripe.
19 Opp'n 36-44. Finally, the County contends that the harm to Park Ranch is not irreparable where a
20 litigant (such as Park Ranch) has filed a claim for inverse condemnation. Opp'n 46-48. According
21 to the County, Park Ranch has not demonstrated a loss of Vested Development Rights, the County's
22 Development Code and DCIS violations do not demonstrate irreparable harm, and any supposed
23 harm can be remedied with payment. *Id.* at 48-51.
24
25

26 In its Opposition, the County also provided an update to the construction progress in support
27 of its argument that there are safety issues if construction is stopped. Opp'n 54-55; *see also id.* at Ex.
28

1 16 ¶¶ 10-12. As of August 25, 2025, the County states that Phase 1 is largely complete, as the
2 roadway has been paved and striped, but final grading, seeding, signing, striping, and lighting must
3 be completed. Opp'n to Mot. for Prelim. Inj., Ex. 16 ¶¶ 10-11. Phase 2 has commenced with initial
4 clearing of existing vegetation and topsoil and excavation for the installation of the 10' x 4' culvert
5 has begun. *Id.* For Phase 3, the roadway structural section has been placed atop the aggregate base
6 in preparation for roadway paving and the irrigation culvert is not complete. *Id.*

8 In response, Park Ranch argues that Section 11.2 of the Development Agreement prohibits
9 the County from affecting Park Ranch's Vested Development Rights, which are undisputably being
10 affected by the diversion of flows and increases of flows and flooding onto Park Ranch's planned
11 Neighborhoods 2, 3, 4, and 5 - making it more difficult and burdensome to develop the property as
12 over 260 acres will have an increase in water surface elevation. Mot., Ex. 36 ¶¶ 6-7; Mot., Ex. 7 at
13 170:11-171:10; 251:20-252:11, 275:5-10. Regarding the County's ability to exempt itself from its
14 Development Code and DCIS requirements, Park Ranch argues that the County is not free to ignore
15 its own laws and adversely impact and flood Park Ranch's property. Reply 10-15. And as to the
16 encroachment issue, Park Ranch reiterates that although a government body can potentially condemn
17 property, it cannot violate a property owner's due process rights and encroach without an active
18 eminent domain action, as the County is doing here. *Id.* at 14-15.

21 Regarding the County's four new arguments, Park Ranch argues that (1) critical facts have
22 changed since the order from Department No. 1 and thus Park Ranch's instant arguments are not
23 precluded, (2) no administrative remedies were required to be exhausted because Park Ranch was
24 forced to intervene in Ashland Park's lawsuit as a result the County's plans to encroach and flood
25 Park Ranch's property, (3) the County's assumption of risk argument fails as the public and Park
26 Ranch are entitled to rely on the County acting lawfully, and (4) the County's requirements and own
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1 conduct in seeking to obtain drainage easements invalidates the County's ripeness arguments. Reply
2 15-20.

3 As to irreparable harm, Park Ranch reiterates that real property is unique and the loss of real
4 property rights constitutes irreparable harm as a matter of law. *Id.* at 22. Park Ranch further cites
5 to caselaw where courts have held that flooding causes irreparable harm to property. *Id.* at 20-21.
6 Finally, Park Ranch challenges the merits of the County's concerns for safety if construction is
7 stopped due to the County's violations of its own safety regulations and that such concerns do not
8 outweigh the harm Park Ranch will suffer absent an injunction. Reply 23-24.
9

10 **C. The Eminent Domain Action**
11

12 While the above litigation was ongoing, on March 20, 2025, the County sent Park Ranch an
13 offer to acquire additional land to enlarge the right-of-way and seeking drainage easements and
14 temporary construction easements. Verified Compl. in Eminent Domain ("Compl.") (Apr. 23, 2025)
15 ¶ 20. Park Ranch rejected the County's offer. *See id.*
16

17 On April 17, 2025, the County held a Board meeting to vote on whether to pursue eminent
18 domain to condemn Park Ranch's property. *Id.* ¶ 21. Representatives of both the County and Park
19 Ranch spoke at the meeting. *Id.* ¶ 22. Ultimately, the Board voted 3-2 in favor of adopting
20 Resolution 2025R-043 and directed staff to commence an eminent domain action. *Id.* In the
21 Resolution, the Board defined the "Park Property" that it sought to condemn as the land described
22 in Exhibit A and depicted in Exhibit B to the Resolution. *Id.* ¶ 35, Ex. 2.
23

24 On April 23, 2025, the County filed its Complaint for eminent domain against Park Ranch
25 and other related entities (together, the "Park Entities"). *See generally* Compl. In the exhibits to the
26 Complaint, the County identified three categories of proposed acquisitions: seven encroachments
27 to expand the existing right-of-way, several drainage easements, and a temporary construction
28

1 easement. *See id.* at Exs. 1-4. Exhibits 1 and 3 to the Complaint are supposed to depict the County's
2 proposed drainage easements. *See id.* at Exs. 1, 3. Exhibits 1 and 3 conflict with one another, and
3 they also conflict with Exhibits A and B to the Resolution.

4 On May 19, 2025, Park Ranch answered the Complaint and brought Counterclaims (1) for
5 pre-condemnation damages, alleging the County acted improperly; (2) for inverse condemnation for
6 the portions of Park Ranch's property that will be harmed by the County's construction, but that the
7 County has excluded from its Complaint; and (3) under 42 U.S.C. § 1983 against the County and Mr.
8 Hutchings for depriving Park Ranch of its constitutional rights and seeking damages for their bad
9 faith. *See Ans. & Countercl.*, at 19-21 ¶¶ 67-79.
10

11 The County filed a Motion for Immediate Occupancy on June 6, 2025. *See Mot.* for
12 Immediate Occupancy (June 6, 2025). The County asked the Court to grant it immediate occupancy
13 of Park Ranch property because the "County cannot commence construction of the planned two-lane
14 portion of Muller Parkway, along with its associated drainage infrastructure and traffic and safety
15 enhancements, without occupying the Muller Parkway Acquisitions [on Park Ranch property]." *See*
16 *id.* at 6 (emphasis added). The County further asked the Court to defer to the Board's findings that
17 the encroachments to expand the existing right-of-way, drainage easements, and temporary
18 construction easement are necessary for the public use. *Id.* at 2-5.
19

20 In Opposition, the Park Entities asserted that the eminent domain proceedings must be
21 evaluated in the context of the Development Agreement and DA Action. *See Opp'n to Mot.* for
22 Immediate Occupancy (June 27, 2025), at 2-3. The Park Entities argued that the County's request
23 for occupancy was procedurally deficient, *ultra vires*, and bad faith, by attempting to avoid Park
24 Ranch's claims in the DA Action, which seek to enforce the Development Agreement, and the
25 County's hardship is self-imposed. *See Opp'n to Mot.* for Immediate Occupancy (June 27, 2025),
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1 at 19-28. In its reply, the County conceded that the Resolution adopted by the Board does not align
2 with the Exhibits to the Complaint and that it failed to identify the property that the County seeks
3 to take from Park Ranch. *See Reply in Supp. of Mot. Immediate Occupancy, 3 (June 29, 2025); see*
4 *also Order Regarding Evidentiary Hr'g, 2 (July 29, 2025).* The County withdrew its request for
5 immediate occupancy of the drainage easements, but stated it nevertheless still seeks occupancy for
6 the encroachments and construction easements, which are based upon the same plans that
7 necessitated the drainage easements. *See Reply in Supp. of Mot. Immediate Occupancy 3 (June 29,*
8 *2025).* Given these deficiencies, the County withdrew its Motion for Immediate Occupancy and,
9 correspondingly, the Court granted the County leave to amend its Complaint by November 30, 2025.
10 *See Order Regarding Evidentiary Hr'g (July 29, 2025); see also Mot., Ex. 24 at 71:7-9.* During the
11 hearing on September 29, 2025, the County notified the Court that legal descriptions for both the
12 right-of-way and adverse impact areas were currently in preparation. When that work is completed,
13 the County will give Park Ranch notice of a Board meeting to consider a new Resolution to condemn
14 the properties in the legal descriptions.
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18 **II. MOTION FOR PRELIMINARY INJUNCTION**

19 **A. Legal Standard**

20 Pursuant to NRS 33.010, a preliminary injunction may issue when it appears "the commission
21 or continuance of some act, during the litigation, would produce great or irreparable injury to the
22 [movant]," or the adverse party "is doing or threatens, or is about to do . . . some act in violation of
23 the [movant]'s rights respecting the subject of the action, and tending to render the judgment
24 ineffectual."⁴ NRS 33.010(2)-(3). A preliminary injunction may issue with notice to the adverse
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26

27 ⁴ The County previously argued Park Ranch cannot seek a preliminary injunction if it
28 does not seek permanent injunctive relief in its complaint. *See Opp'n Mot. Inj. Pending Appeal,*
at 5-6. That argument is belied by the plain language of NRS 33.010(2)-(3).

1 party. NRCP 65(a). "A party seeking the issuance of a preliminary injunction bears the burden of
2 establishing (1) a likelihood of success on the merits; and (2) a reasonable probability that the
3 non-moving party's conduct, if allowed to continue, will cause irreparable harm." *S.O.C. Inc. v.*
4 *Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243, 246 (2001). While Nevada's precedent does
5 not strictly require it, when considering preliminary injunctions, the Court may "also weigh the
6 potential hardships to the relative parties and others, and the public interest." *Univ. & Cmty. Coll.*
7 *Sys. of Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

9 **B. Analysis of Park Ranch's Likelihood of Success on the Merits**

10 Park Ranch seeks a preliminary injunction on three grounds. First, Park Ranch argues that
11 the County cannot deprive Park Ranch of its Vested Development Rights. Second, the County
12 cannot adversely impact Park Ranch's property or divert regional floodwaters onto Park Ranch's
13 Property. And third, the County cannot encroach upon Park Ranch's property without any legal right
14 to do so. All three arguments require an interpretation of the provisions of the Development
15 Agreement. The object of contract interpretation "is to discern the intent of the contracting parties"
16 and "initially determine whether the language of the contract is clear and unambiguous." An
17 ambiguous contract is one that is susceptible to more than one reasonable interpretation. *Am. First*
18 *Fed. Credit Union v Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015).

21 Park Ranch's first argument rests on an interpretation of paragraph 11.2(c), a default
22 provision in the Development Agreement that reads as follows - "An action taken by the County
23 which is not related to its health, safety or welfare powers, and which directly and substantially
24 affects Owner's rights under this Agreement or Owner's ability to fully perform its obligations under
25 this Agreement." The Court reads this provision to require three elements to be present for the Court
26 to find this default. First, there must be "an action" by the County. Second, the Court finds that the
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1 words "health, safety, or welfare powers" refer to the County's exercise of its police powers. *See*
2 *State v Eighth Jud. Dist. Ct.*, 101 Nev. 658, 663, 708 P.2d 1022, 1025 (1985); *Douglas Disposal,*
3 *Inc. v Wee Haul, LLC*, 123 Nev. 552, 559, 170 P.3d 508, 513. The second element, then, requires
4 a finding that the County's action is "not" related to the exercise of its police powers. And third, such
5 "action" either directly or substantially affects the Owner's rights under the Agreement or the
6 Owner's ability to fully perform its obligations.
7

8 The parties do not offer different interpretations of paragraph 11.2 as much as they differ on
9 the application of the language to the facts that are in dispute in this case. Park Ranch maintains that
10 the County's construction of Muller Parkway and failure to mitigate regional floodwater will
11 adversely affect Park Ranch's ability to develop Buckeye Farms. On the other hand, the County
12 argues that the clause cannot be read to impose an affirmative obligation on the County to ensure that
13 Park Ranch will be able to develop Buckeye Farms or ensure that Park Ranch will receive the
14 approvals necessary to turn agricultural land into residential use. These factual differences, and
15 others discussed below, create genuine issues of material fact that preclude summary judgment and
16 must be resolved at trial, not through a preliminary injunction.
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19 Park Ranch's second ground for preliminary injunction argues that the County is adversely
20 impacting Park Ranch's property or diverting regional flood waters on to Park Ranch's property in
21 violation of the County's Development Code and the specifications for an urban arterial road. The
22 Court begins its interpretation of the Development Agreement on this issue by referring to the
23 Ordinance that approved it. *See* DCC 20.400. In the Courts view, the Ordinance has the force of
24 law as any ordinance enacted under the County's powers in Chapter 244 of NRS. Consequently, the
25 Court must be guided in the interpretation of the Development Agreement by the findings and staff
26 responses contained in the Ordinance.
27
28

1 To begin with, there are statements in the Ordinance adopting the Development Agreement
2 on drainage infrastructure and the timing of its installation that are more definitive than some of the
3 language used in the DA itself. For example, the language on page 5 of the duly approved Ordinance
4 recited earlier within this order and the provisions of Section 1.3 of the Development Agreement
5 make clear that the County and Park entered into the Agreement to: "dedicate a new 205 foot public
6 right of way across the Property for Muller Parkway *and drainage improvements*" . . . and "set a
7 deadline for the County to construct at least two lanes of Muller Parkway from Monterra to Stodick
8 Estates; . . . ". In section 5.1 of the Agreement, the Owner dedicated to the County a public
9 right-of-way as "depicted on the drawing identified on Exhibit E for *use* as Muller Parkway,
10 multi-modal path(s) and *additional drainage facilities*" (emphasis added). While the precise nature
11 of the drainage improvements or facilities need further clarification, for purposes of the Motion, the
12 Court finds that necessary drainage improvements or facilities are to be designed and constructed
13 within the right-of-way by the County, with one exception. Section 5.9 provides for additional
14 detention ponds [that] may be required on Owner's parcel(s) in the area zoned "Industrial"
15 immediately east of the Property the cost of which is to be shared by the Parties.
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19 Concerning the application of the Douglas County Code and DCDCIS to the construction of
20 Muller Parkway and drainage facilities, the Board of County Commissioners, at page 7 of the
21 Ordinance, concurred with their Staff that the Development Agreement was consistent with the
22 Douglas County Code and Douglas County Design Criteria and Improvement Standards (DCDCIS).
23 It is difficult to imagine that the Board of County Commissioners expected the Property or Muller
24 Parkway to be constructed in any other manner than in compliance with "the consolidated
25 development code and all other applicable codes and ordinances." The Court finds that any design
26 or construction of Muller Parkway must be in accordance with applicable provisions of Title 20 of
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1 the Douglas County Code and the DCDCIS. *See* Ordinance Finding C.

2 As to the timing of the installation of drainage infrastructure, the staff response in the
3 Ordinance supporting Finding D concerning whether ". . . provisions have been included to address
4 the completion or phasing of improvements . . ." states in pertinent part "The 2017 Transportation
5 Master Plan indicates that if Muller Parkway is not fully constructed as a 4-lane arterial road by
6 2025, the level of service on US-395 will drop below County and State standards. Muller Parkway
7 is an integral part of the adopted Transportation Plan and will connect future planned urban areas
8 within Minden and Gardnerville and *would be constructed in tandem with regional drainage*
9 *improvements*" (emphasis added). The Court concludes that the Ordinance planned for drainage
10 improvements alongside road construction to address regional issues. But it appears that the current
11 construction of Muller Parkway does not include drainage infrastructure or detention ponds and may
12 not be in compliance with Development Code 20.50.080 ("Adverse impact") or DCIS 6.1.3
13 ("Reasonable Use of Drainage").

14 Mr. Hutchings recent Declaration offers context for the challenges presented by regional
15 floodwaters coming from Pinenut and Buckeye Creeks when he observed "It is my opinion, as
16 County Engineer, that there are no viable designs for Muller Parkway that would remove both
17 Ashland Park and Buckeye Farm from all regulatory floodplains. This can only be accomplished by
18 constructing large upstream storage facilities, such as dams or a series of detention basins. These
19 would need to be constructed off-site and cannot be built within the Muller Parkway right-of-way."
20 The Court believes Mr. Hutchings sobering assessment was as apparent in 2019 as it is today.
21 Regardless, the challenge for this Court is to apply the Board of County Commissioner's Ordinance
22 and Development Agreement to the reality that Mr. Hutchings points out.

23 It appears to this Court that in 2019 the Board of County Commissioners and Park Ranch
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1 expected the parties to cooperate in developing a plan that would *mitigate* the impact of regional
2 flooding until more definitive measures could be achieved, likely through federal funding. Until
3 then, the findings in the Ordinance and the Development Agreement established a plan to mitigate
4 the impact of regional flooding on Buckeye Farms and Ashland Park over time. The staff response
5 to support Ordinance finding D says as much when it optimistically observes that "These
6 improvements [referring to Muller Parkway right-of-way and drainage improvements] would also
7 have the potential to remove much of Minden and Gardnerville from the flood plain for those areas
8 affected by the Pine Nut and Buckeye washes drainages." Why drainage infrastructure or detention
9 ponds are not part of the current design in *tandem* with the current construction of Muller Parkway
10 requires further clarification at the trial of this case, not under the standards for a preliminary
11 injunction.
12
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14 Contrary to the party's expectations and the Development Agreement's requirement of
15 cooperation, however, each party has noticed a default of the Development Agreement by the other
16 for, among other claims, *not cooperating*. The outcome of those conflicting claims and defenses will
17 have a material impact on the parties' rights and obligations concerning the future of Muller
18 Parkway. But these claims and defenses are factual and legal issues that must be resolved at the trial
19 of this case, not under the standards for a preliminary injunction.
20

21 Regarding the parties' dispute over the County's design and construction of the Ashland
22 Segment, Section 5.3(a) and 6.1 make clear that if the County elects to build a two-lane road it must
23 be in accordance with the "specifications contained in the Standard Detail for a 2 Lane Urban
24 Arterial . . .". Douglas County argues that it can deviate from this standard either because the current
25 design conforms with other recently constructed rural roads in the area or Park Ranch does not have
26 the right to enforce Ashland Park's rights or to otherwise interfere with a contractual modification
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1 of the Ashland segment between Ashland Park and the County. The Court disagrees. Nothing in
2 the language of the Development Agreement permits the County to construct the Ashland Segment
3 like other *rural* streets in the area. Further, the County Engineer argues that a minimum 12-foot dry
4 lane requirement in DCIS 6.5.3 does not apply because Muller Parkway is not a designated
5 emergency access route. That reasoning is explicitly contrary to the findings and objectives stated
6 by the Board of County Commissioners in the Ordinance approving the Development Agreement.
7 In addition, the County Engineer's reliance on DCIS 1.4.3 to deviate from the express language of
8 the Development Agreement concerning the criteria for the construction of the Ashland Park
9 Segment is misplaced. In the context of interpretation and conflicts, DCIS 1.4.3 authorizes the
10 County Engineer to make final determinations as to the interpretation and application of the manual.
11 But that language does not permit the Engineer to interpret standards to substitute the construction
12 of an *urban* road as required in the Development Agreement with a rural or even an undefined
13 "hybrid" road for the Ashland Segment. If anything, DCIS 1.4.2 demands the opposite requiring
14 "more restrictive" or "higher standards" to govern any asserted conflicts.
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18 Finally, the County argues that Ashland Park and the County agreed to deviate from the
19 Urban standard for a two-lane arterial and construct that segment at grade. That may be, but the
20 County has failed to provide a cogent argument that precludes Park Ranch from seeking enforcement
21 of the provisions of the Development Agreement. Further, there has been no showing that Ashland
22 Park is an Owner as that term is defined in paragraph 2.2 or a successor, grantee or assignee under
23 paragraph 10. Park Ranch deeded the Muller Parkway right-of-way, including the Ashland segment,
24 to the County. There does not appear to be a record showing Ashland Park was ever in the chain of
25 title for the right-of-way. The term successor in interest is not defined in the Development
26 Agreement but generally a successor in interest is "one who has acquired legal title by deed from a
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1 vendor." *Title Ins. & Trust Co. v. Chicago Title Ins. Co.*, 97 Nev. 523, 526, 634 P.2d 1216, 1218
2 (1981). Further, there is no showing that the Development Agreement has been amended in
3 accordance with paragraph 15 or NRS 278.0205 to 278.0207 inclusive. At least at this stage of the
4 case, the Court finds that Park Ranch will likely prevail on its claim that the County has failed to
5 design or construct the Ashland Segment in accordance with the provisions of paragraph 6.1, the
6 Douglas County Code or the DCIS. But the contractual remedy (and perhaps the sole remedy) for
7 such a default is found in paragraph 6.1, not through a preliminary injunction. Under those
8 circumstances, and assuming the extension sought by the County to extend the time to construct
9 Muller Parkway is invalid, the right-of-way except the easements on APN 1320-31-000-016 would
10 revert to Park Ranch. Like other issues discussed above, this matter must be resolved at trial and not
11 by way of preliminary injunction.
12

13
14 With respect to Park Ranch's third argument for a preliminary injunction, the County
15 acknowledges that its construction plans for Muller Parkway (1) includes an embankment that will
16 divert regional floodwater onto Park Ranch's agricultural property to the north of Muller Parkway;
17 (2) encroaches outside of the right-of-way; and (3) will cause the Ashland Park segment to overtop
18 in a 25-year storm event that will be increase flooding onto Park Ranch's property impacting
19 Buckeye Farms planned Neighborhoods 2-5. Mot., Ex. 23 at 348:2-4, 364:12-19; 384:15-386:2,
20 428:9-22; 478:10-18; *see also* Mot., Ex. 36 ¶¶ 6-7. The County has not secured permission from this
21 Court for these takings, let alone satisfied all the constitutional and statutory prerequisites to initiate
22 an eminent domain action. To pursue eminent domain, a public agency must first comply with the
23 open meeting laws and provide notice to the affected landowner. *See* NRS 241.034. Next, the
24 agency must satisfy the pleading requirements for eminent domain actions. *See, e.g.*, NRS 37.070.
25 Pursuant to NRS 37.070(f), the agency must include "[a] description of each piece of land sought
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1 to be taken."

2 Park Ranch has demonstrated a likelihood of success on the merits that it will obtain a
3 declaration that the County cannot encroach where not permitted by the Development Agreement
4 and without any other legal authority. That said, the areas of encroachment are not clear to the Court
5 and may require a further hearing to specifically identify the locations of encroachment. Further, it
6 is possible that the County's eminent domain action will address areas of encroachment that would
7 address this claim.
8

9 Regarding irreparable harm, encroachment by the county upon real property without adequate
10 authorization may constitute irreparable harm. *See Dixon v Thatcher*, 103 Nev. 414, 416, 742 P.2d
11 1029, 1030 (1987). Whether flooding at issue here rises to irreparable harm is disputed. Indeed, the
12 court observed previously the weight to be placed on Ms. Evan's testimony that construction can still
13 proceed within Neighborhood 1 of the proposed Buckeye Farms property. Based upon the time
14 constraints arising from compliance with the Douglas County Building Permit Allocation and
15 Growth Management Ordinance set forth within DCC 20.560, the court determines that there are
16 time periods available for the county to address regional flood water issues affecting the remaining
17 neighborhoods to be constructed within Buckeye Farms. Thus, the court is not swayed by Park
18 Ranch's emphasis placed on the irreparable harm factor while considering whether to issue a
19 preliminary injunction in this instance. The extent of harm arising from the county's alleged
20 encroachment has yet to be determined.
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24 Therefore, a final decision on the encroachment issue will await the County's amended
25 complaint due on December 1, 2025, and be addressed at a status conference to be conducted by the
26 Court during the week of December 1, 2025. The parties shall schedule the status conference with
27 the Department I judicial assistant at their earliest convenience.
28

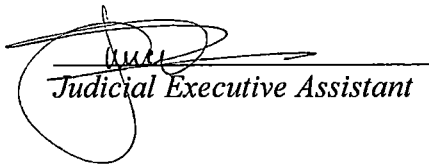
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