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June 1, 2022

Our File Number: 302639.00005

VIA E-MAIL

Chair Vaughan Hartung & Honorable Commissioners  
Board of County Commissioners  
Washoe County, Nevada  
1001 E. Ninth Street, Bldg. A  
Reno, Nevada 89512-2845

RE: Appeal of WSUP22-0006 (Reno Tahoe Business Gateway) ("Application")

Dear Chair Hartung and Honorable Commissioners:

## I. INTRODUCTION AND BACKGROUND

This office represents S3 Development Company, LLC, a Nevada limited liability company, the applicant in the above referenced matter ("Applicant"). The Applicant has only requested a special use permit for grading to vary from the natural slope by more than ten feet in elevation (WCC § 110.438.45(c)) ("Project"). The Project site is located at 10355 Mogul Road, Washoe County 89523, which is more particularly described as Washoe County Assessor's Parcel Numbers ("APN") 038-181-01 and 038-172-14 ("Property"). On April 7, 2022, the Washoe County Board of Adjustment held a public hearing and denied the Application. The Board of Adjustment indicated it could not make three of the required findings of approval: consistency with the Master Plan, that adequate utilities and facilities have been provided, and that the issuance would not be significantly detrimental to the public health. The Applicant appealed.

Despite the Washoe County Board of Adjustment's decision in her favor, Emanuela Heller-MacNeilage ("Appellant"), also appealed this decision. Appellant owns two parcels of land (APN's 038-790-02 and 038-181-07) which are located to the South of the Project site. Appellant's land is separated from the Project site by three parcels owned by Union Pacific Railroad Company, two sets of railroad tracks, and Mogul Road. Regardless, Appellant lacks standing to bring this appeal as (1) Appellant is not aggrieved by the Board of Adjustment's decision denying the special use permit and (2) even if Appellant was aggrieved by the decision, her Arguments are entirely unrelated to the special use permit for grading and are irrelevant to this instant appeal. Accordingly, the Applicant respectfully requests that the Board of Commissioners reject or dismiss Appellant's appeal for lack of standing.

## II. ANALYSIS

### a. Appeals Procedure and Standing Requirement

Pursuant to WCC § 110.810.50, an action of the Board of Adjustment in approving or denying an application for special use permit may be appealed to the Board of Count

Commissioners in accordance with the provisions of Section 110.912.20 of the Development Code. WCC § 110.912.20(9) provides that “[a] party of record who is aggrieved by a decision of the Board of Adjustment may [...] (ii) Appeal the decision to the Board of County Commissioners.” Appellant has improperly appealed the decision of the Board of Adjustment and lacks standing to bring her appeal as she cannot demonstrate that she is an aggrieved party. WCC § 110.910.01 defines “aggrieved person” as follows:

“Aggrieved person” means a person or entity who has suffered a substantial grievance (not merely a party who is dissatisfied with a decision) in the form of either:

- (a) The denial of or substantial injury to a personal or property right, or
- (b) The imposition of an illegal, unjust or inequitable burden or obligation by an enforcement official, the Board of Adjustment or an administrative hearing officer.

Accordingly, Appellant must adequately describe how her property rights have been denied or substantially injured or show that an illegal, unjust, or inequitable burden has been imposed upon her by the Board of Adjustment in order to establish standing to appeal.

**b. Appellant is not an Aggrieved Party and Therefore Lacks Standing to Appeal**

Appellant cannot show that she is aggrieved by the Board of Adjustment’s denial of the Applicant’s special use permit for grading at the Project site—a favorable decision. Appellant cannot demonstrate “the denial of or substantial injury to any personal or property rights” nor can she show that the Board of Adjustment’s decision imposes an illegal, unjust or inequitable burden or obligation upon her. In fact, Appellant’s concerns consist of generalized grievances which apply to the general public and are not applicable to any specific personal or property right held by her. This is exactly the kind of appeal that the clear language defining “aggrieved person” is intended to prevent. Accordingly, Appellant is not an “aggrieved person” and lacks standing to appeal the Board of Adjustment’s decision under WCC § 110.912.20 and her appeal must be rejected or dismissed.

**c. Even if Appellant was Aggrieved by the Decision, Her Arguments are Entirely Unrelated to the Special Use Permit for Grading**

*i. Grading will Have No Impact on Traffic and Does Not Require Roadway Improvements*

This limited request is only to permit the Applicant to perform grading that varies more than ten feet from the natural slope. There is no need for any roadway improvements for this permit as there will be no increase in traffic. Even assuming that Appellant’s concerns regarding increased industrial traffic, increased traffic from unrelated residential development, and the length of the on ramp from Mogul Road onto I-80 are meritorious, none of those purported issues are affected in any way by Applicant’s requested special use permit for grading. The proposed use under this special use permit is strictly limited to grading, and does not include a request for any future construction. Appellants traffic concerns related to the Project are solely based on not-yet-proposed development, which will comply with all requirements at the time of permitting. Any

such concerns are not at issue in this appeal and are premature and therefore do not confer Appellant standing for this appeal.

ii. *Grading Will Not Negatively Impact Historical Markers or The Scenic Overlook*

The Property is vacant, undeveloped land which has been subject to “significant disturbance [...] as a result of the railroad, I-80 corridor and various utility projects in the immediate vicinity.”<sup>1</sup> The Property is also crossed by numerous dirt roads, and has previously been significantly altered by a variety of earth works projects and grading. The Applicant has prepared an exhibit with historical aerial images depicting the disturbance to the Property since 1948.<sup>2</sup> Public projects such as the Truckee Meadows Water Authority culvert, the introduction of I-80 and related construction, and Union Pacific Railroad maintenance have clearly had significant impact.

Moreover, the proposed grading will not impact the historical markers referenced by Appellant. Historical Marker #62 of the Nevada State Historic Preservation office, the Lincoln Highway Bridge Rails and Interpretive Sign, as well as the Emigrant Trail Marker for the Truckee Trail River Crossings are all located at the Scenic Overlook/Truck Parking adjacent to the Southwest corner of the Property. None of these historical markers are located on the Property or would be impacted in any way by Applicants grading of the property. Applicant has no knowledge of the removal of Historical Marker #62 and Appellant’s seeming accusation that Applicant was involved in its removal is baseless. Although there is one existing historical marker on the Property commemorating the Emigrant Trail, the Applicant has agreed to a condition of approval whereby this marker shall either be preserved or provided to the Parks Program for incorporation into the interpretive program on the neighboring open space property.<sup>3</sup>

As the Property has already been “significantly disturbed” by previous earth works and utility projects, there would be no negative impact to any scenic resources. The existing topography and I-80 create a natural buffer which will serve to minimize the visual impact on other existing development in the area. On its own, the grading permit will only result in the movement of cut and fill which will not leave a lasting impact on the surrounding area. Further, Appellant lacks standing for the instant appeal based on these issues as the proposed grading project would in no way deny or substantially injure her property rights.

iii. *Future Uses of the Land, Including Future Development, are not at Issue in this Appeal.*

Appellant’s concerns regarding future uses of the land are irrelevant for purposes of whether Applicant’s limited-scope request to conduct grading on the property should be permitted. To be clear, at this point, the only issue before the Board of Adjustment which is now on appeal is the special use permit for grading—no further land use or development has been approved or denied. Appellant’s concerns related to future land uses and development on the property are based only on not-yet-proposed development, which will comply with all requirements at the time of permitting and are not at issue in the instant appeal. Therefore, Appellant’s concerns related to

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<sup>1</sup> Board of Adjustment Staff Report on WSUP22-0006 (“Staff Report”), at 7.

<sup>2</sup> The Historical Aerials Exhibit is enclosed herewith.

<sup>3</sup> Staff Report, at 16 (Washoe County Parks and Regional Open Space condition).

the impacts of future development and appropriate uses of the land are premature and, as such, do not confer standing upon her for the appeal.

### III. CONCLUSION

Appellant lacks standing to bring this appeal. As the Board of Adjustment's decision was favorable to Appellant's position, she is necessarily not an "aggrieved party" within the meaning of WCC § 110.912.20(9). Moreover, Appellant fails to meet the definition of an "aggrieved person" as she has not suffered a "substantial grievance" and cannot demonstrate the denial of or substantial injury to any of her personal or property rights nor can she show that the Board of Adjustment's decision imposes an illegal, unjust or inequitable burden or obligation upon her.<sup>4</sup> Even if Appellant was aggrieved by the decision of the Board of Adjustments (which she is not), her arguments are entirely unrelated to the Applicant's requested special use permit for grading. As such, she lacks standing to bring the instant appeal. Appellant's concerns regarding increased traffic, potentially necessary road improvements, appropriate land use, and future development of the Project are solely based on not-yet-proposed development, which will comply with all requirements at the time of permitting. Simply stated, these arguments are irrelevant at this juncture and Appellant lacks standing to make them even if they were relevant.

For the foregoing reasons the Applicant respectfully requests that the Board of County Commissioners reject or dismiss Appellant's appeal.

Sincerely,

*/s/ Garrett D. Gordon*

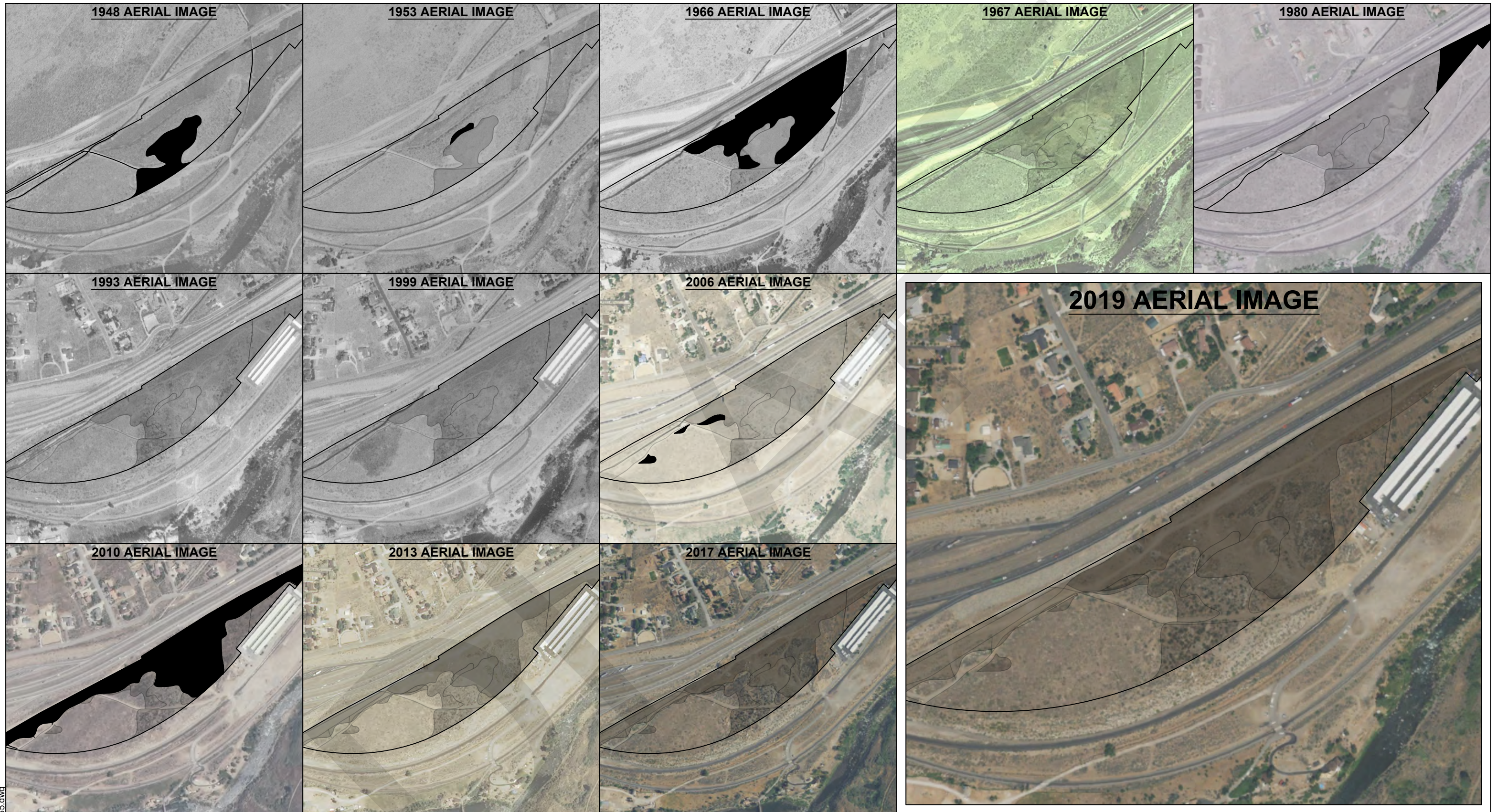
Garrett D. Gordon  
Lewis Roca Rothgerber Christie LLP

GDG/ctb

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<sup>4</sup> See WCC § 110.910.01.





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**CME** CONSTRUCTION MATERIALS ENGINEERS INC.  
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 Reno, NV 89511

S3 DEVELOPMENT  
 RENO TAHOE BUSINESS GATEWAY - MOGUL  
 HISTORICAL AERIALS EXHIBIT  
 WASHOE COUNTY, NEVADA  
 PROJECT NO.: 2965      DATE: 4/25/2022

**LEGEND**  
 ■ DISTURBANCE LIMITS FROM PREVIOUS HISTORIAL AERIAL  
 ■ PREVIOUS DISTURBANCE  
 HISTORICAL AERIAL MAPS OBTAINED FROM WWW.HISTORICAERIALS.COM

PLATE  
**D-1**