OVIDIU ENE, Individually; and INTERNATIONAL PROPERTY HOLDINGS, LLC, a Domestic Limited Liability Company, Appellants, *v.* LAURA GRAHAM, Respondent.

No. 84800

April 18, 2024 546 P.3d 1232

Appeal from a district court judgment on a jury verdict in a personal injury action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Reversed and remanded.

Roger P. Croteau & Associates, Ltd., and *Roger P. Croteau* and *Christopher L. Benner*, Las Vegas, for Appellants.

Moss Berg Injury Lawyers and *John C. Funk* and *Marcus A. Berg*, Las Vegas, for Respondent.

Before the Supreme Court, Herndon, Lee, and Parraguirre, JJ.

OPINION

By the Court, Lee, J.:

Generally, a limited liability company's members and managers are not liable for the debts and liabilities of the company. Here, however, the district court found that a limited liability company's sole member and manager was the alter ego of the company and thus held him personally liable for injuries sustained on company property. We issue this opinion to clarify that the alter ego analysis for a limited liability company is the same as the analysis that is applied to determine whether an alter ego relationship exists with respect to a corporation. As with the alter ego analysis for a corporation, a district court must make specific findings as to influence over and governance of the company, the unity of interest and ownership between the alleged alter ego and the company, and whether adherence to the notion of separate entities would sanction fraud or promote injustice. Reviewing the district court's findings under this analysis, we conclude that substantial evidence does not support the district court's alter ego determination. Accordingly, we reverse the district court's judgment as to its alter ego determination and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

Respondent Laura Graham sustained injuries when she tripped and fell over a sprinkler box on the property of appellant International Property Holdings, LLC (IPH). IPH was the sole owner of the property, and appellant Ovidiu Ene was the sole member of IPH. Graham filed a complaint against IPH and Ene, among others, alleging negligence. Graham did not assert alter ego theories of liability against Ene in her complaint or in any amended complaint.

During trial, Graham moved to amend her complaint to assert that Ene was the alter ego of IPH. Although Graham's motion was never resolved by the district court, the motion ultimately resulted in the initial inclusion, followed by the later exclusion, of jury instructions related to corporate protections and the alter ego theory of liability. Specifically, after Graham rested her case, the defense recalled Ene. Ene testified generally to his relationship with IPH and the property, ostensibly to establish facts to limit his liability as the owner and manager of IPH. After Ene's testimony, and over the objection of Ene and IPH, the district court added jury instructions on the protections of a limited liability company (LLC) and on the alter ego doctrine. Thereafter, Ene and IPH moved for a directed verdict, arguing that Ene was not individually liable and that the determination of alter ego liability was a legal issue for the court to decide. The district court denied the motion.

Ene and IPH then moved the district court to determine as a matter of law whether the evidence established Ene was the alter ego of IPH. The district court determined that Ene was the alter ego of IPH because he was the sole member of the LLC, there was a unity of interest and ownership, and adherence to the corporate fiction would promote an injustice. In making its decision, the district court relied on the following facts: (1) Ene had his own personal gate code to the property and had accessed the property on multiple occasions for personal use when it was not being rented, (2) Ene did not pay IPH or the property management company when he used the property for personal reasons, (3) Ene's father maintained a garden and a chicken coop on the property, (4) insurance for the property was in Ene's name, and (5) he remained the guarantor on the mortgage loan for the property.

The district court ultimately removed the jury instructions on the protections of an LLC and the alter ego theory based on its determination that Ene was the alter ego of IPH. The jury returned a verdict finding Ene and IPH partially liable. Ene and IPH appeal, challenging the district court's determination that Ene was the alter ego of IPH and the propriety of the alter ego theory being introduced by Graham mid-trial.

DISCUSSION

Introduction of the alter ego issue

"When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. . . . [F]ailure to amend does not affect the result of the trial of that issue." NRCP 15(b)(2).[1] The district court's determination under NRCP 15(b) is reviewed for an abuse of discretion. *Yount v. Criswell Radovan, LLC*, 136 Nev. 409, 415, 469 P.3d 167, 172 (2020).

Our analysis here is stifled by the incomplete and disorganized record before us on appeal.[2] What does appear from the record, however, is that the issue of alter ego was not impliedly tried by either party and should not have been entertained by the district court during trial. Regardless, even if Ene had consented to try the alter ego issue, substantial evidence does not support the district court's determination that Ene was the alter ego of IPH, as we discuss further below.

Substantial evidence does not support the district court's determination that Ene was the alter ego of IPH

Ene and IPH assert that the district court improperly applied the three-part analysis for determining alter ego of an LLC set forth in NRS 86.376. Graham asserts that the district court properly applied the analysis and that substantial evidence exists to support the decision. We recognize that the alter ego analysis for LLCs is the same as that for corporations and conclude that substantial evidence does not support the district court's determination that Ene was the alter ego of IPH.

The alter ego analysis for LLCs under NRS 86.376 is the same as the analysis for corporations under NRS 78.747

This court has yet to interpret NRS 86.376. Questions of law, including issues of statutory interpretation, are reviewed de novo. *State Indus. Ins. Sys. v. United Exposition Servs. Co.*, 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

NRS 86.376, setting forth the corporate veil protections and alter ego exceptions as pertains to LLCs, was enacted by the Legislature in 2019. Prior to its enactment, this court relied on NRS 78.747,

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[1]The parties do not cogently argue this issue under NRCP 15(b)(2), nevertheless we conclude that NRCP 15(b)(2) provides the correct analysis.

[2]We note that the trial was rescheduled for an earlier date, that no motions in limine or other substantive pretrial motions are included in the record before us, and that the trial judge was replaced right before trial. There is some indication that Graham attempted to amend her complaint intra-trial; however, the district judge either deferred ruling on her motion or did not rule on it at all, perhaps because Ene's counsel was late on the morning of trial and thus was not present. Instead, the district judge appears to have included jury instructions on alter ego, which was incorrect because alter ego is a question of law. NRS 86.376. Ene's subsequent recall of himself as a witness and motion for a ruling on the alter ego issue as a matter of law appears to be in response to the improper jury instructions.

which sets forth the corporate veil protections and alter ego exceptions for *corporations*, when analyzing individual liability for managers or members of LLCs. *See, e.g.*, *Gardner v. Eighth Jud. Dist. Ct.*, 133 Nev. 730, 736, 405 P.3d 651, 656 (2017).

NRS 86.376 states that the question of whether a person acts as the alter ego of an LLC is a matter of law and requires the court to make findings under the three following elements: whether (a) the LLC is influenced and governed by the person, (b) there is a unity of interest and ownership such that the person and LLC are inseparable, and (c) adherence to the notion of separate entities would sanction fraud or promote injustice. NRS 86.376 mirrors the language and elements of NRS 78.747, simply replacing the term "corporation" with "limited liability company."

Additionally, "LLCs provide the same sort of possibilities for abuse as corporations, and creditors of LLCs need the same ability to pierce the LLCs' veil when such abuse exists." *Gardner*, 133 Nev. at 736, 405 P.3d at 656. Based on the mirroring language of the statutes, the similar potentials for abuse, and the need for creditors to pierce the LLCs' veil to prevent abuse, it is clear the Legislature intended the analysis and application of the alter ego doctrine for LLCs to be the same as that of corporations. Therefore, our caselaw analyzing the alter ego doctrine for corporations remains instructive when reviewing a district court's application of the doctrine to an LLC.

Substantial evidence does not support the district court's alter ego determination under NRS 86.376

"[A]lthough corporations are generally to be treated as separate legal entities, the equitable remedy of piercing the corporate veil may be available to a plaintiff in circumstances where it appears that the corporation is acting as the alter ego of a controlling individual." *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 902, 8 P.3d 841, 845 (2000) (internal quotations omitted). This court "will uphold a district court's determination with regard to the alter ego doctrine if substantial evidence exists to support the decision." *LFC Mktg. Grp., Inc.*, 116 Nev. at 904, 8 P.3d at 846. However, "[t]he corporate cloak is not lightly thrown aside." *Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220, 452 P.2d 916, 916 (1969).

"[T]he essence of the alter ego doctrine is to do justice whenever it appears that the protections provided by the corporate form are being abused." *LFC Mktg. Grp., Inc.*, 116 Nev. at 903, 8 P.3d at 845-46 (internal quotation marks omitted). "[T]he following factors, though not conclusive, may indicate the existence of an alter ego relationship: (1) commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4) treatment of corporate assets as the individual's own; and (5) failure to observe corporate formalities." *Id.* at 904, 8 P.3d at 847. However, "[t]here is no litmus test for determining when the corporate fiction should be disregarded; the result depends on the circumstances of each case." *Id.* (quoting *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 602, 747 P.2d 884, 887 (1987)). Finally, the evidence supporting a finding of an alter ego "must also be the cause of [the] injury and must have sentenced a fraud or promoted an injustice before the corporate veil can be pierced." *Polaris*, 103 Nev. at 602, 747 P.2d at 887; *see also N. Arlington Med. Bldg., Inc. v. Sanchez Constr. Co.*, 86 Nev. 515, 522, 471 P.2d 240, 244 (1970) (concluding that the alter ego doctrine did not apply where the party seeking to pierce the corporate veil "failed to show any causal connection between the [corporation's alleged inadequate] financing and the inability to pay" a promissory note).

As noted, a person acts as the alter ego of an LLC only if (a) the LLC is influenced and governed by the person, (b) there is a unity of interest and ownership such that the person and LLC are inseparable, and (c) adherence to the notion of separate entities would sanction fraud or promote injustice. NRS 86.376(2). Here, the district court found that IPH was a "one-person LLC," with Ene as the only member, and therefore, the first alter ego element—influence and government by the person—was satisfied. As to the second element—a unity of interest and ownership such that the person and LLC are inseparable—the district court noted that the mortgages on the property were held by Ene personally, that the property was insured by Ene personally, and that, even assuming all of the corporate formalities were observed, Ene would access the property for personal use at times without paying anything to the LLC. Thus, the district court found the second alter ego element was satisfied. As to the third element—fraud or injustice—the district court specifically found no fraud and instead summarily found that adherence to the idea that IPH was a separate entity from Ene would promote an injustice. We address each of the district court's findings below and conclude that substantial evidence does not support the district court's finding of alter ego.

Substantial evidence supports the district court's finding that IPH was influenced and governed by Ene

We agree with the district court that single member LLCs structurally tend toward a finding that the LLC is "influenced and governed by the person." NRS 86.376(2)(a). We therefore hold that substantial evidence supports the district court's finding that the first element of alter ego analysis was satisfied. However, we emphasize that the mere fact that ownership and management of the LLC are accomplished by the supposed alter ego is insufficient by itself to support veil piercing without further findings. *See Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 377, 566 P.2d 819, 823 (1977) (holding that "the fact that [company 1] owned all shares of [company 2] and that the officers of [company 1 and company 2] were identical" was insufficient to satisfy the first two requirements of the alter ego doctrine); *see also Bonanza Hotel Gift Shop, Inc. v. Bonanza No. 2*, 95 Nev. 463, 466, 596 P.2d 227, 229 (1979) ("Nor is mere mutuality of interest sufficient to make such a showing [of alter ego], without evidence of a commingling of funds or property interests, or of prejudice to creditors.").

Substantial evidence does not support the district court's finding of a unity of interest and ownership

We also agree with the district court that there is some evidence that Ene would occasionally use the subject property for his own personal enjoyment. This evidence alone, however, does not satisfy the unity of interest and ownership element without further findings as to a lack of observance of corporate formalities, maintenance of corporate records, commingling of funds, or prejudice to creditors. *LFC Mktg. Grp., Inc.*, 116 Nev. at 903, 8 P.3d at 845-46; *Bonanza Hotel Gift Shop, Inc.*, 95 Nev. at 466, 596 P.2d at 229-30. Most notably, there were no findings by the district court as to a causal connection between the occasional use of the property by Ene and the injury sustained by the plaintiff. Thus, we conclude that substantial evidence does not support the district court's conclusion under the second element of unity of interest and ownership that Ene is the alter ego of IPH.

Substantial evidence does not support the district court's finding of manifest injustice

Turning to the third element of the alter ego analysis, courts determine whether "[a]dherence to the notion of the limited-liability company being an entity separate from the person would sanction fraud or promote manifest injustice." NRS 86.376(2)(c) (emphasis added). The district court specifically considered and rejected fraud; therefore, we limit our review to whether substantial evidence supports a finding of injustice.

For the third element, "[i]t is enough if the recognition of the two entities as separate would result in an injustice." *Polaris*, 103 Nev. at 601, 747 P.2d at 886. An injustice may be found, for example, where the controlling officers misuse the corporate form to the detriment of their creditors. *See id.* at 602-03, 747 P.2d at 887-88 (determining veil piercing was appropriate where individual officers advanced withdrawals for personal use from corporate accounts after a complaint was filed, resulting in an undercapitalized corporation and an unpaid debt). An injustice may also be found where the owner makes "personal assurances to the creditor that [the owner] would be personally responsible for the debt."

Mosa v. Wilson-Bates Furniture Co., 94 Nev. 521, 524, 583 P.2d 453, 455 (1978). "Undercapitalization, where it is clearly shown, is an important factor in determining whether the doctrine of alter ego should be applied." *N. Arlington Med. Bldg., Inc.*, 86 Nev. at 522, 471 P.2d at 244. Absent fraud or injustice, however, "it is not an absolute ground for disregarding a corporate entity." *Id.*

The district court made the following statement as to the injustice inquiry:

> THE COURT: That adherence to the corporate—that because he has—the LLC is almost a fictitious entity, right? I mean, he has all of these things in his personal name. He's treating it—whenever it's not being rented, he's treating it as his personal property, that that would promote an injustice by adhering to the corporate fiction.

The district court made no findings as to the causal connection to the injury. Consequently, it is unclear how recognition of IPH as a separate entity would result in an injustice to Graham. Instead of making findings specific as to an injustice, the district court effectively collapsed its analysis of the first and second elements into its analysis of the third element. Because substantial evidence does not support the district court's determination of alter ego, we reverse. *See LFC Mktg. Grp., Inc.*, 116 Nev. at 904, 8 P.3d at 846.

CONCLUSION

We clarify that the alter ego analysis for LLCs under NRS 86.376 is the same analysis that applies to corporations under NRS 78.747. But as substantial evidence does not support the district court's determination that Ene was the alter ego of IPH, we reverse the district court's alter ego determination. As a result, we hold that Ene is not personally liable for the negligence of IPH and remand for further proceedings in accordance with this opinion.

Herndon and Parraguirre, JJ., concur.

BO JONES and DAN JONES, Husband and Wife, Appellants, *v.* HAMED GHADIRI, an Individual, Respondent.

No. 85305

April 18, 2024 546 P.3d 831

Appeal from a district court summary judgment in a real property dispute. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Affirmed.

Black & Wadhams and *Allison R. Schmidt*, Las Vegas, for Appellants.

Law Office of Malik W. Ahmad and *Malik W. Ahmad*, Las Vegas, for Respondent.

Maupin, Cox & LeGoy and *Rick R. Hsu*, Reno, for Amicus Curiae the State Bar of Nevada, Real Property Section.

Before the Supreme Court, En Banc.[1]

OPINION

By the Court, Stiglich, J.:

Long before the parties acquired ownership of their respective properties, a block wall was erected to divide the neighboring lots. When respondent discovered that the wall did not follow the property line and, consequently, that he was being denied the use of his property, he sought to remove the wall and build a new one on the property line. In response, appellants filed a complaint in the district court for, among other things, a prescriptive easement or adverse possession. The district court found that appellants could not prevail on their claim for adverse possession because they did not pay the property taxes on the disputed property. The district court further found that a prescriptive easement was unavailable because it would result in respondent's complete exclusion from the subject property. Accordingly, the district court granted summary judgment for respondent, determining that appellants are not entitled to a prescriptive easement or adverse possession as a matter of law.

We take this opportunity to distinguish the two concepts, as they are fundamentally different and give rise to distinct relief. As Nevada law does not concretely declare whether we recognize

[1]The Honorable Patricia Lee, Justice, being disqualified, did not participate in the decision of this matter.

comprehensive prescriptive easements, easements that result in the complete exclusion of the servient estate from the subject property, we examine the approaches taken by sister jurisdictions. While several states have categorically rejected comprehensive prescriptive easements, California has adopted the view that exceptional circumstances may give rise to such easements. Considering both our caselaw and California caselaw, we are persuaded that exceptional circumstances may warrant comprehensive prescriptive easements. However, we stress that such relief is rare. As appellants have not demonstrated exceptional circumstances, we affirm the district court's order granting summary judgment in favor of respondent.

FACTS AND PROCEDURAL HISTORY

In 2015, appellants Bo and Dan Jones purchased property in Las Vegas. Immediately thereafter, the Joneses made substantial improvements near a block wall that had been erected in 1989 and that ran between their property and the neighboring property. These improvements included the installation of recreational vehicle utility hookups and a new iron gate. When not traveling, the Joneses also stored their recreational vehicle next to the block wall.

In 2016, respondent Hamed Ghadiri purchased the property located on the other side of the block wall. Several years later, Ghadiri discovered that a portion of his property was on the Joneses' side of the block wall (the disputed property). The disputed property is 591 square feet in size. Ghadiri commissioned a survey of the property line, which confirmed that the wall was not on the property line and that the disputed property was on Ghadiri's side of the lot line. Ghadiri acquired a permit to destroy the block wall and install a new wall on the property line at his expense.

The Joneses filed a complaint against Ghadiri for, *inter alia*, a prescriptive easement, adverse possession, and a temporary restraining order. Although the district court granted a temporary restraining order, it denied the Joneses' subsequent motion for a preliminary injunction. This court affirmed the district court's denial, *Jones v. Ghadiri*, No. 83184, 2022 WL 3336143 (Nev. Aug. 11, 2022) (Order of Affirmance), and Ghadiri removed the wall sometime thereafter.

Later, Ghadiri moved for summary judgment against the Joneses' claims for adverse possession and a prescriptive easement. Ghadiri asked the court to dismiss the Joneses' claim for adverse possession because the Joneses had not paid property taxes on the disputed property. Relying heavily on California caselaw, Ghadiri further contended that a prescriptive easement was unavailable, as it would result in his complete exclusion from the disputed property. The Joneses asserted that a question of fact remained as to who paid taxes on the disputed property and that Nevada caselaw recognizes prescriptive easements resulting in a landowner's complete exclusion from the subject property.[2]

After granting summary judgment in Ghadiri's favor as to the claim for adverse possession, the district court noted that the Joneses' claim for a prescriptive easement was "essentially a meshing of adverse possession with a prescriptive easement." Given the dearth of Nevada caselaw on the availability of such easements, the district court considered cases from neighboring states, such as California and Arizona. Following those cases, the court determined that a prescriptive easement "simply cannot be so extensive as to create the practical equivalent of an exclusive possessory estate" and that adverse use, as an element of a claim for a prescriptive easement, "cannot result in the complete exclusion of the owner of the servient estate." The district court noted that an unpublished Nevada case, *CSA Development, LLC v. Bryant*, No. 68444, 2016 WL 7105072 (Nev. Dec. 2, 2016) (Order of Affirmance), arguably recognized the availability of prescriptive easements that result in the servient estates' complete exclusion from the subject property. Ultimately, however, the district court indicated that the case had little persuasive value because it lacked clarity as to when such a prescriptive easement was available. Finding that no exceptional circumstances justified the Joneses' requested prescriptive easement, the district court granted summary judgment in favor of Ghadiri on the claim. The Joneses now appeal.

DISCUSSION

The Joneses' primary contention on appeal is that because they were entitled to a prescriptive easement as a matter of law, the district court erred in granting Ghadiri's motion for summary judgment.[3] We review a district court's grant of summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate . . . when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Id.* at 731, 121 P.3d at 1031. We

[2]In relation to their claim for adverse possession, the Joneses argued that a question of fact remained as to who paid taxes on the disputed property because property taxes are partly based on visual inspections conducted every five years. As the Joneses do not challenge the district court's order as to their claim for adverse possession, we do not address it further.

[3]The Joneses also contend that the district court erred by admitting Ghadiri's survey because it was unauthenticated. As the Joneses did not raise this argument below, we decline to entertain it. *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.").

"review questions of law, including interpretation of caselaw, de novo." *Martin v. Martin*, 138 Nev. 786, 789, 520 P.3d 813, 817 (2022).

Adverse possession versus easements

As acknowledged by the district court, the arguments and claims for adverse possession and a prescriptive easement became muddled below. And while the Joneses do not challenge the district court's rejection of their adverse possession claim, it is necessary for us to distinguish the concepts before considering the propriety of the Joneses' claim for a prescriptive easement.

"Adverse possession is a doctrine under which a person in possession of real property owned by someone else may acquire valid title . . . ." 142 Am. Jur. 3d *Proof of Facts* 349 (originally published in 2014). The holder of valid title is vested with all property rights, including the right to *exclusively control* the property, subject to any easements. *See City of Fredericktown v. Osborn*, 429 S.W.2d 17, 22 (Mo. Ct. App. 1968) (explaining that generally, "an owner has the right to the exclusive possession and control of his property") (citing *Hoffmann v. Kinealy, Mo.*, 389 S.W.2d 745 (Mo. 1965)). "[A]n adverse possessor is required to show that the occupation of the property is hostile, actual, peaceable, open, notorious, continuous and uninterrupted." *Triplett v. David H. Fulstone Co.*, 109 Nev. 216, 219, 849 P.2d 334, 336 (1993) (internal quotation marks omitted). An adverse possessor must also show "that the land has been occupied and claimed for the period of 5 years, continuously, and that the party or persons, their predecessors and grantors have paid all taxes, state, county and municipal, which may have been levied and assessed against the land for the period mentioned." NRS 11.150.

A prescriptive easement is a common law claim by which one may acquire the legal right to *use* land that he or she does not own. *See* Restatement (Third) of Property (Servitudes) § 1.2(1) (1998) (explaining that easements create "a nonpossessory right to *use* land in the possession of another" (emphasis added)). "[A]dverse, continuous, open and peaceable use for a five-year period are the requisite elements for claiming" a prescriptive easement. *Jordan v. Bailey*, 113 Nev. 1038, 1044, 944 P.2d 828, 832 (1997). Importantly, an easement, whether prescriptive, implied, or otherwise, generally grants a "*non-possessory interest* in the land of another which entitles the owner of the easement to a *limited use* or enjoyment of said land." Hall & Buckley, *Nevada Real Property Practice & Procedural Manual*, 32 (Nev. State Bar 2021) (citing Restatement (First) of Property § 450 (1944)) (emphases added). As this court explained in *Boyd v. McDonald*, "[a]n easement is a right, distinct from ownership, to use in some way the land of another. . . . It gives no right to possess the land upon which it is imposed, but a right merely to the party in whom the easement is vested to enjoy it." 81 Nev. 642, 647, 408 P.2d 717, 720 (1965) (internal quotation marks and alterations omitted). Thus, the crucial difference between adverse possession and an easement is that the former results in the acquisition of title and the right to exclusively control the subject property while the latter results in the right to a limited use of the subject property. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 231 n.3 (Minn. 2008).

Here, the Joneses asserted a claim for a prescriptive easement, but their requested relief aligns with adverse possession. After all, the Joneses demanded more than the mere *use* of the disputed property; they sought *exclusive control* of it. And to seek exclusive control of the disputed property is to seek adverse possession. The trouble for the Joneses, as recognized by the district court, is that they have not paid the requisite property taxes on the disputed property. Thus, the Joneses sought adverse possession under the guise of an extraordinary prescriptive easement. This type of easement is known as a "comprehensive prescriptive easement," as, unlike a typical easement, it results in the owner of the servient estate being completely excluded from the subject property. Will Saxe, *When "Comprehensive" Prescriptive Easements Overlap Adverse Possession: Shifting Theories of "Use" and "Possession*,*"* 33 B.C. Env't Aff. L. Rev. 175, 193 (2006).

We will not lightly allow the long-recognized distinction between adverse possession and prescriptive easements to collapse. Nor will we lightly allow parties to reap the fruits of adverse possession without complying with statutory requirements. We therefore reject the liberal use of comprehensive prescriptive easements and clarify when comprehensive prescriptive easements may be available in Nevada.

Comprehensive prescriptive easements are available only in exceptional circumstances

The Joneses argue that Nevada law recognizes comprehensive prescriptive easements and that the district court erred by relying on California authority to hold otherwise. The Real Property Section of the Nevada State Bar, as amicus curiae, argues that *CSA* blurred the line between adverse possession and prescriptive easements and that the distinction between the two, as recognized in *Boyd*, should be followed. Ghadiri argues that this court should follow California cases, which he asserts have rejected comprehensive prescriptive easements. We begin by examining Nevada caselaw to see whether comprehensive prescriptive easements are available.

In *CSA*, Patrick and Eleanor Bryant graded their lot and constructed a block wall thereon. No. 68444, 2016 WL 7105072, at *1. The block wall encroached onto an adjacent vacant lot. *Id*. At least 16 years later, CSA purchased the vacant lot and filed suit, alleging quiet title, nuisance, trespass, and unjust enrichment. *Id*. The Bryants claimed they had a prescriptive easement over the area encroached upon by the block wall, and the district court agreed. *Id*. Although *CSA* affirmed the district court's ruling, *id*. at *3, this court did not consider or analyze the circumstances under which we will recognize comprehensive prescriptive easements. As is common of unpublished dispositions, *CSA* also did not include a detailed factual background, such as a description of the wall, how much it encroached onto the vacant property, or whether the easement would prevent CSA from using and enjoying a substantial portion of its property. As a result, we are unable to rely on *CSA* for the broad interpretation proposed by the Joneses. Thus, we disavow any language in *CSA* that may be read as allowing for a comprehensive prescriptive easement without articulation of a rationale for granting such an extraordinary easement.

The Joneses' reliance on our decision in *Boyd*, where we affirmed a district court order granting an easement that resulted in the servient estate's complete exclusion from the subject property, is likewise misplaced. 81 Nev. at 652, 408 P.2d at 722. In *Boyd*, a supporting wall and overhanging roof of a motel extended 2.6 feet onto an adjacent property. *Id*. Additionally, the motel maintained a sign that was "some distance from the boundary" line.[4] *Id*. at 644, 408 P.2d at 718. After recognizing that "[a]n easement is a right, distinct from ownership," this court concluded that an easement existed only as to the 2.6-foot encroaching wall and roof. *Id*. at 647, 408 P.2d at 720 (internal quotations omitted). However, we held that the sign could not be classified as an easement because it was too far from the boundary line. *Id*. at 652, 408 P.2d at 722-23.

Unmistakably, there was no argument for a prescriptive easement in *Boyd*. *Id.* at 650 n.8, 408 P.2d at 721 n.8. Rather, this court considered whether there was an easement by implication, or whether "the owner of two parcels had so used one to the benefit of his other that, on selling the benefited parcel, a purchaser could reasonably have expected, without further inquiry, that these benefits were included in the sale." *Id.* at 649, 408 P.2d at 721. Unlike a prescriptive easement, which we described in passing as "a condition generally analogous to adverse possession," an easement by implication depends on the intention of the parties, as shown by the reasonable expectation of a person purchasing or receiving land. *Id.* at 647-49, 408 P.2d at 720-21. Despite the different type of easement at issue, *Boyd* is instructive as it recognized a comprehensive easement *only* as to the roof and wall that encroached a mere 2.6 feet; this court refused to extend such an easement to the

[4]Also in dispute was a patio and driveway; however, this court remanded those issues for further proceedings. *Id.* at 652, 408 P.2d at 723.

sign that "was so removed from the boundary . . . that no reasonable purchaser could have considered it part of the transaction without at least some inquiry." *Id.* at 652, 408 P.2d at 722-23. Thus, *Boyd* implicitly acknowledged limits on a comprehensive easement, albeit not in the context of a prescriptive easement.

Because Nevada lacks caselaw directly on point, we turn to the approaches taken by jurisdictions that, like Nevada, require adverse possessors to pay taxes on property subject to an adverse possession claim. Many of these jurisdictions, including Arizona, Florida, Idaho, Montana, and Utah, have categorically rejected comprehensive prescriptive easements. *See generally Etz v. Mamerow*, 233 P.2d 442, 444 (Ariz. 1951); *Platt v. Pietras*, 382 So. 2d 414, 416 (Fla. Dist. Ct. App. 1980); *Oakley Valley Stone, Inc. v. Alastra*, 715 P.2d 935, 938-39 (Idaho 1985); *Burlingame v. Marjerrison*, 665 P.2d 1136, 1140 (Mont. 1983); *Nyman v. Anchor Dev., LLC*, 73 P.3d 357, 362 (Utah 2003). They have done so for two common reasons. First, comprehensive prescriptive easements blur the distinction between adverse possession and easements. Second, comprehensive prescriptive easements subvert the tax requirement for adverse possession.

California, however, has recognized that a comprehensive prescriptive easement may be warranted in exceptional circumstances. *See Mehdizadeh v. Mincer*, 54 Cal. Rptr. 2d 284, 290 (Ct. App. 1996) ("There are some circumstances in which the grant of an exclusive easement, which resembles or is nearly the equivalent of a fee interest, can be justified."). Such circumstances may include a "socially important duty of a utility to provide an essential service, such as water or electricity[,]" *id.* at 290, or where public health or safety is at issue, *cf. Otay Water Dist. v. Beckwith*, 3 Cal. Rptr. 2d 223, 226 (Ct. App. 1991).

Though the categorical rejection of comprehensive prescriptive easements is well-reasoned, we adopt the view, as taken by California, that comprehensive prescriptive easements may be warranted if a party demonstrates exceptional circumstances. While there is no exhaustive list of exceptional circumstances that will justify a comprehensive prescriptive easement, the determination as to whether a circumstance is exceptional is generally a fact-intensive question.

Here, the Joneses have not demonstrated exceptional circumstances warranting a comprehensive prescriptive easement. Unlike our decision in *Boyd*, where we recognized a comprehensive easement when a nonmovable building encroached by a mere 2.6 feet and resulted in a de minimus loss of usable property for the servient estate, here the Joneses merely made improvements to an RV parking space and the grant of a comprehensive prescriptive easement would deprive Ghadiri of nearly 600 square feet of usable space. We therefore conclude that the district court did not err and affirm the district court's grant of Ghadiri's motion for summary judgment.

CONCLUSION

Nevada has long recognized the distinction between adverse possession and prescriptive easements. While we continue to recognize that important distinction, today we also recognize that exceptional circumstances may warrant comprehensive prescriptive easements. The determination as to when an exceptional circumstance is present is generally a fact-intensive question. As the Joneses failed to demonstrate any such circumstance, we affirm the judgment of the district court.

Cadish, C.J., and Pickering, Herndon, Parraguirre, and Bell, JJ., concur.

NEVADANS FOR REPRODUCTIVE FREEDOM, a Political Action Committee, Appellant, *v.* DONNA WASHINGTON, an Individual; COALITION FOR PARENTS AND CHILDREN, a Political Action Committee; and FRANCISCO V. AGUILAR, in His Official Capacity as the Nevada Secretary of State, Respondents.

No. 87681

April 18, 2024 546 P.3d 801

Appeal from a district court order granting injunctive relief preventing the Secretary of State from placing an initiative petition on the ballot. First Judicial District Court, Carson City; James Todd Russell, Judge.

Reversed.

Elias Law Group LLP and *David R. Fox*, *Elisabeth C. Frost*, and *Daniel J. Cohen*, Washington, D.C.; *Bravo Schrager, LLP*, and *Bradley S. Schrager* and *Daniel Bravo*, Las Vegas, for Appellant.

Aaron D. Ford, Attorney General, and *Laena St-Jules*, Senior Deputy Attorney General, Carson City, for Respondent Francisco V. Aguilar, Secretary of State.

Guinasso Law, Ltd., and *Jason D. Guinasso*, Reno, for Respondents Donna Washington and Coalition for Parents and Children.

Stranch, Jennings & Garvey, PLLC, and *Nathan R. Ring*, Las Vegas; *Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.*, and *Joseph Sandler*, Washington, D.C., for Amicus Curiae Ballot Initiative Strategy Center Foundation.

Before the Supreme Court, En Banc.[1]

OPINION

By the Court, Stiglich, J.:

Appellant Nevadans for Reproductive Freedom (NRF) intends to place an initiative petition on the ballot that would establish a constitutional right to reproductive freedom. The initiative petition would grant every individual a right to make their own decisions regarding all matters related to a pregnancy, including prenatal care, childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care, management of a miscarriage, and

[1]The Honorable Patricia Lee, Justice, voluntarily recused herself from participation in the decision of this matter.

infertility care. Respondents Donna Washington and Coalition for Parents and Children (collectively Washington) filed a complaint in district court challenging the petition. They alleged that the petition failed to meet statutory and constitutional requirements and sought to enjoin respondent the Secretary of State from placing the initiative on the ballot. Specifically, Washington asserted that the initiative petition violated the single-subject requirement because it considered multiple medical procedures, instead of being limited to only pregnancy or abortion. The district court granted the injunction, finding the initiative petition invalid for three reasons: (1) it does not contain a single subject, (2) its description of effect is misleading, and (3) it requires an expenditure of money without raising the necessary revenue.

We conclude the district court erred. First, all the medical procedures considered in the initiative petition concern reproduction. To assert that they could not all be addressed together because they are separate procedures is improper. Each medical procedure relates to human reproduction, and they are germane to each other and the initiative's single subject of establishing a right to reproductive freedom. We further conclude that the description of effect was legally sufficient and the initiative petition does not require an expenditure of funds. Accordingly, we reverse.

FACTS AND PROCEDURAL HISTORY

In September 2023, NRF filed its notice of intent to circulate an initiative petition that proposes adding a section to Article 1 of the Nevada Constitution recognizing a person's right to reproductive freedom. Subsection 1 of the initiative describes the right to reproductive freedom as follows:

> Every individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including, without limitation, prenatal care, childbirth, postpartum care, birth control, vasectomy, tubal ligation, abortion, abortion care, management of a miscarriage and infertility care. The right of an individual to reproductive freedom shall not be denied, burdened or infringed upon unless justified by a compelling State interest that is achieved by the least restrictive means available.

Subsection 2 permits the State to regulate abortions after fetal viability but prohibits such regulation when, in the professional judgment of an attending provider of health care, an abortion would protect the pregnant individual. Subsections 3 and 5 prohibit the State from penalizing or prosecuting a pregnant individual based on the outcome of a pregnancy or penalizing or prosecuting an individual or entity who assists another person in exercising their right to reproductive freedom. Subsection 4 provides similar protections to health care providers:

> The State shall not penalize, prosecute or otherwise take adverse action against a provider of health care, who is licensed by the State, for acting consistent with the applicable scope of practice and standard of care for performing an abortion upon, providing abortion care to, or providing reproductive care services to an individual who has granted their voluntary consent.

Additionally, subsection 6 states that nothing in the initiative "limits the rights to equality and equal protection."

The initiative includes two definitions. It defines a "compelling state interest" as "an interest which is limited exclusively to the State's interest in protecting the health of an individual who is seeking reproductive health care that is consistent with accepted clinical standards of practice." It also defines "fetal viability" as the point when, in the professional judgment of an attending provider of health care, there is a "significant likelihood" that a fetus could survive outside of the uterus without extraordinary medical measures.

NRF included the following description of effect on the signature pages for the petition:

> If enacted, this initiative would add a new section to Article 1 of the Nevada Constitution establishing a fundamental right to reproductive freedom. This initiative enables individuals to make and carry out decisions about matters relating to their pregnancies, including prenatal care, childbirth, postpartum care, birth control, vasectomies and tubal ligations, abortion and abortion care, and care for miscarriages and infertility.
>
> If this measure is enacted, the State still may regulate provision of abortion care after fetal viability, except where medically indicated to protect the life or physical or mental health of the pregnant individual.
>
> Under this measure, the State may not penalize, prosecute, or take adverse action against any individual based on the outcome of a pregnancy of the individual, or against any licensed health care provider who acts consistent with the applicable scope and practice of providing reproductive health care services to an individual who has granted their voluntary consent. Neither may the State penalize, prosecute, or take adverse action against any individual or entity for aiding or assisting another individual in the exercise of the rights established by this initiative.

Washington filed the underlying complaint seeking to enjoin the Secretary of State from placing the initiative on the 2024 election ballot. Washington challenged the initiative on three grounds: (1) it violates Nevada's single-subject requirement, (2) the description of effect is misleading and fails to provide essential information, and (3) the initiative requires the expenditure of money but does not provide the necessary funding.[2]

After a hearing, the district court granted Washington's request for declaratory and injunctive relief, barring the Secretary of State from placing the initiative on the ballot. The court concluded that the initiative embraces a multitude of subjects that are covered under various chapters of the Nevada Revised Statutes. The court also concluded that the description of effect was misleading and omitted important effects of the initiative petition. Lastly, the court concluded that the initiative requires the State to create a board to determine whether a provider of health care acted within the standard of care in providing reproductive care, that creating such a board would require the expenditure of money, and that the initiative does not provide a revenue source for that expenditure. This appeal followed.

DISCUSSION

The Nevada Constitution gives the people the authority to place an initiative on the ballot to make law directly by proposing legislation and constitutional amendments. That power is broad but subject to some limitations. In particular, an initiative petition must be limited to a single subject, include a legally sufficient description of effect, and provide a revenue source for any required expenditure of funds. When considering whether an initiative petition complies with those requirements, a reviewing court must ensure the people's right to the initiative process is not quelled. *See Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37-38, 293 P.3d 874, 876 (2013) (explaining that a court must construe an initiative petition's compliance with the description of effect requirement in such a way that does not "obstruct, rather than facilitate, the people's right to the initiative process"). Thus, the party challenging an initiative petition bears the burden of demonstrating the initiative is clearly invalid or does not comply with these requirements. *See Las Vegas Taxpayer Accountability Comm. v. City Council of Las Vegas* (*LVTAC*), 125 Nev. 165, 176, 208 P.3d 429, 436 (2009) (holding that the party challenging ballot measures "bear[s] the burden of demonstrating that the measures are clearly invalid"). Our review is de novo given that the district court resolved the challenge to the underlying initiative petition without any factual disputes. *Helton v. Nev. Voters First PAC*, 138 Nev. 483, 486, 512 P.3d 309, 313 (2022).

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[2]The Secretary of State was listed as a defendant but did not file an answer and took no position on the matter at the hearing. Likewise, the Secretary has filed an answering brief on appeal that takes no position.

The initiative petition complies with the single-subject requirement

NRF asserts that because the initiative contains a single subject, "creating and defining a fundamental right to reproductive freedom," the district court erred when it concluded that the initiative petition violated Nevada's single-subject requirement. We agree.

Under Nevada law, "[e]ach petition for initiative or referendum must . . . [e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto." NRS 295.009(1). A petition meets this single-subject requirement if its provisions "are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative." NRS 295.009(2).

Applying these provisions, we have stated that the "preliminary inquiry . . . is whether the initiative's parts are 'functionally related' and 'germane' to each other." *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller* (*NPPRI*), 122 Nev. 894, 907, 141 P.3d 1235, 1243 (2006). To answer that question, the court must first determine the initiative's overarching purpose or subject and then determine if each provision is functionally related and germane to that purpose or subject. *See id.* at 907-09, 141 P.3d at 1244-45; *LVTAC*, 125 Nev. at 180, 208 P.3d at 439. In determining an initiative's purpose or subject, we look to the initiative's textual language and the proponents' arguments. *LVTAC*, 125 Nev. at 180, 208 P.3d at 439.

We recently applied this analysis in *Helton*. 138 Nev. 483, 512 P.3d 309. That case concerned an initiative petition seeking to implement open primary elections and ranked-choice general elections for specified officeholders. *Id.* at 484-85, 512 P.3d at 312-13. We first identified that the initiative's purpose was "the framework by which specified officeholders are presented to voters and elected."[3] *Id.* at 487, 512 P.3d at 314 (emphasis omitted). We then analyzed the changes proposed—an open primary and ranked-choice general election—and concluded that even though the two changes concerned different steps in the election process, they were functionally related and germane to each other and the initiative's purpose. *Id.* at 487-88, 512 P.3d at 314-15. Thus, we concluded the initiative complied with the single-subject requirement. *Id.* at 488, 512 P.3d at 315.

The initiative petition here has the single subject of establishing a fundamental right to reproductive freedom. All the initiative's provisions functionally relate and are germane to that subject and each other. Subsection 1 establishes and describes the right to reproductive freedom. Subsections 2 through 5 ensure that the right established in

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[3]To the extent Washington argues that *Helton* created a new single-subject compliance criteria by requiring an initiative to include a *framework* concerning the subject, instead of addressing the *mechanics* of a subject, we reject this contention. Our discussion of those terms in *Helton* was to help explain why the initiative there did not violate the single-subject requirement.

subsection 1 cannot be violated by the State. Subsection 6 clarifies that the initiative does not narrow or limit equal protection rights. Lastly, subsection 7 defines terms used within the initiative. Thus, subsections 2 through 7 all functionally relate to subsection 1 and the creation of a right to reproductive freedom.

The inclusion of enforcement provisions that ensure the State does not violate the newly established reproductive freedom right does not violate the single-subject requirement. We acknowledge that some of the proposed prohibitions against penalties and regulatory allowances contained in subsections 2 through 5 could have been proposed in separate initiative petitions. Nevertheless, that possibility does not preclude a single initiative that presents them together when they are all germane to the creation of a right to reproductive freedom. In *Helton*, we recognized that an initiative petition can propose more than one change and still comply with the single-subject requirement as long as the changes are functionally related and germane to each other and the overall subject of the initiative. 138 Nev. at 488, 512 P.3d at 315. This is true here, as all the initiative's sections relate to reproduction. Further, even though the medical treatments or conditions discussed in the initiative may be addressed by various NRS chapters, they each concern the subject of reproduction and can be addressed together in a petition addressing that subject.

Washington takes issue with this view of the petition's subject, arguing that characterizing the broad idea of "reproductive freedom" as the petition's single subject results in "logrolling." The term "logrolling" was used by the concurring and dissenting justices in *NPPRI* to describe what the single-subject requirement is intended to prevent. 122 Nev. at 918, 141 P.3d at 1251 (Maupin, J., concurring and dissenting); *id.* at 922, 141 P.3d at 1254 (Hardesty, J., concurring and dissenting). As Justice Hardesty explained, "logrolling" occurs "when two or more completely separate provisions are combined in a petition, one or both of which would not obtain enough votes to pass without the other." *Id.* at 922, 141 P.3d at 1254 (Hardesty, J., concurring and dissenting). In that scenario, an unpopular provision typically is buried in the text of an initiative addressing a more popular provision that the proponent expects will easily be approved by the voters. *Id.* The single-subject requirement thus aims to prevent logrolling by ensuring that the voters' attention is focused on the one subject being advanced, "without creating confusion over what that subject is, and without making them choose between competing policy goals." *Id.* at 923, 141 P.3d at 1254. This court expanded upon that discussion of logrolling in *LVTAC*, stating that logrolling may also occur when an unpopular provision is concealed in a lengthy, complex initiative. 125 Nev. at 176-77, 208 P.3d at 436-37.

We are not convinced this initiative petition involves logrolling. The petition itself is rather short and limited to protecting reproductive rights. Additionally, the initiative petition does not tie a highly attractive proposal to one that may struggle to get votes. Notably, Washington does not identify a popular provision that NRF is using to hide a less popular provision. In fact, the most contentious provision in the petition, abortion, is prominent and clearly identified both in the petition and in the description of effect. We cannot say that NRF is hiding an unpopular provision in a lengthy, complex petition or attaching an unpopular provision to a popular one. Thus, logrolling has not occurred here.

This initiative petition's single subject is the creation of a fundamental right to reproductive freedom. All the petition's provisions are fundamentally related or germane to that single subject. There is no logrolling. We therefore conclude that the district court erred by determining that the initiative petition did not comply with the single-subject requirement.

The description of effect is legally sufficient

Next, NRF challenges the district court's conclusion that the initiative petition's description of effect is defective. NRF asserts that the description of effect is a straightforward, succinct, and nonargumentative summary of the initiative's effect. Thus, NRF argues the description of effect complies with NRS 295.009(1)(b).

NRS 295.009(1)(b) requires each initiative petition to "[s]et forth, in not more than 200 words, a description of the effect of the initiative . . . if the initiative . . . is approved by the voters." Because the description of effect is statutorily required to be no more than 200 words, it "cannot constitutionally be required to delineate every effect that an initiative will have; to conclude otherwise could obstruct, rather than facilitate, the people's right to the initiative process." *Educ. Initiative*, 129 Nev. at 38, 293 P.3d at 876. In sum, the description of effect "must be a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals." *Helton*, 138 Nev. at 489, 512 P.3d at 316 (quoting *Educ. Initiative*, 129 Nev. at 37, 293 P.3d at 876).

The district court concluded that the description of effect is legally insufficient. In doing so, the court concluded that the description of effect is "misleading because it fails to mention that the law will bar the State from prosecuting, fining, or regulating any miscarriage or stillbirth"; fails to clarify what provider of health care would make a decision that an abortion is necessary; and does not define the term "medically indicated," which "misleads voters into believing that there is a specific set of criteria to determine when the mother's physical or mental health requires an abortion." The district court was also concerned that the description of effect does not address the equal protection section.

We disagree with the district court. The description of effect addresses the initiative's goals: to recognize and protect a fundamental right to reproductive freedom. The description of effect also addresses how the initiative intends to reach those goals: by defining what is included in the right to reproductive freedom and limiting the State's regulation and prosecution of reproductive decisions. Although Washington and the district court express concern with the failure to address specific effects of the petition, we reiterate that a description of effect cannot be required to address all possible ramifications of an initiative in the limited 200-word summary. *See Helton*, 138 Nev. at 491, 512 P.3d at 317 ("With so few words in which to explain the effect of an initiative petition, a challenger will always be able to find some ramification of or provision in an initiative petition that the challenger feels is not adequately addressed in the description of effect."). Most of the omitted effects identified by Washington and the district court do not concern the initiative's primary goal. Instead, the identified omissions involve how the initiative may apply in a variety of hypothetical situations, such as whether a prosecution may be permitted after a miscarriage or stillbirth. The court cannot, after the fact, conclude that the description of effect must discuss certain potential issues when the proponents do not allege that the primary goal of the initiative petition was to address those potential issues. *See id.* (explaining that the sufficiency of the description of effect does not depend "on whether someone else could have written it better"). Because the description of effect for this initiative petition is "a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals," we conclude the description of effect is legally sufficient. 138 Nev. at 491, 512 P.3d at 317-18 (internal quotation marks omitted).

The initiative petition does not require an expenditure of money

Lastly, NRF argues that the district court erred when it concluded that the initiative violates the Nevada Constitution because it requires an expenditure of money but does not provide a source of revenue. We agree that the initiative does not require an expenditure of money.

Article 19, Section 2 of the Nevada Constitution generally guarantees the people the power to legislate and to amend the Nevada Constitution by initiative petition. That power is limited by Article 19, Section 6, which precludes "the proposal of any statute or statutory amendment which makes an appropriation or otherwise requires the expenditure of money, unless such statute or amendment also imposes a sufficient tax, not prohibited by the

Constitution, or otherwise constitutionally provides for raising the necessary revenue." *See also* Nev. Const. art. 19, § 2(1) (stating that the people's power to legislate by initiative petition is "subject to the limitations of Section 6 of this Article"); *Educ. Freedom PAC v. Reid*, 138 Nev. 513, 519-20, 512 P.3d 296, 302-03 (2022) (holding that Article 19, Section 6's limitation on the initiative power applies to petitions that propose constitutional changes). Thus, "an initiative that makes an appropriation or requires an expenditure of money is void if it does not also provide for the necessary revenue." *Educ. Freedom*, 138 Nev. at 520, 512 P.3d at 303 (internal quotation marks omitted).

The district court concluded that the initiative requires an expenditure of money to create a board to determine if abortions are performed within the standard of care. In particular, the district court focused on subsection 4 of the initiative, which provides the State cannot "penalize, prosecute or otherwise take adverse action against a provider of health care, who is licensed by the State, for acting consistent with the applicable scope of practice and standard of care for performing an abortion upon, providing abortion care to, or providing reproductive care services to an individual." The district court reasoned that only a provider of health care can testify as to the standard of care and thus a panel or board would need to be created to evaluate whether an abortion had been provided within the standard of care.

The district court reads too much into subsection 4. The provision limits the State's ability to prosecute a health care provider for providing abortion services or reproductive care that a party has consented to receive. It does not require that such providers be prosecuted if their care falls below the standard of care. Nor does the provision clearly contemplate a new State entity to determine the standard of care or to evaluate whether a provider performed within the standard of care. As the district court's order seemingly recognizes, if a health care provider were prosecuted or sued for substandard care, appropriate expert testimony could be presented to address the applicable standard of care. If a provider's care fell below the standard of care, current laws and procedures for penalizing or prosecuting a health care provider could address such a situation. *See, e.g.*, NRS Chapter 41A (permitting an action for professional negligence when a health care provider's treatment falls below the standard of care, causing damages); NRS Chapter 630 (governing licenses of health care providers and providing procedures for discipline). Further, to the extent the district court construed the initiative as requiring a standard of care to be set as a matter of law, the state government already includes entities that the Legislature could task with adopting such regulations. *See, e.g.*, NRS 442.007(1) (providing that "[t]he State Board of Health shall adopt regulations establishing standards for perinatal care provided by any provider of health care"); NRS 442.260(1) (providing that the Division of Public and Behavioral Health "shall adopt and enforce regulations governing the conditions under and the methods by which abortions may be performed"). Accordingly, it is not a foregone conclusion that the initiative requires an expenditure of money to create a board to make those determinations. The idea that the initiative requires such an expenditure is speculative, at best.

Washington failed to meet her burden of demonstrating that the initiative petition includes an appropriation or requires the expenditure of money. Washington provided no relevant evidence below, and the fiscal report did not indicate that the initiative petition would require an expenditure of funds. Even at oral argument before this court, Washington acknowledged that any appropriation or expenditure of funds would be merely speculative at this point. Accordingly, we conclude the initiative petition does not violate Article 19, Section 6 of the Nevada Constitution.

CONCLUSION

The district court erred when it credited Washington's challenge to the initiative petition and enjoined the Secretary of State from placing the measure on the ballot. The initiative petition has a single subject: the establishment of a fundamental right to reproductive freedom. All the provisions of the initiative petition are germane or functionally related to that subject. Additionally, the description of effect is legally sufficient, as it is a straightforward, succinct, and nonargumentative summary of the initiative's goals and how it intends to achieve those goals. Lastly, Washington did not meet her burden of demonstrating that the initiative petition requires an expenditure of money. Accordingly, we reverse the district court's order enjoining the Secretary of State from placing the initiative petition on the 2024 ballot.

Cadish, C.J., and Pickering, Herndon, Parraguirre, and Bell, JJ., concur.

CITY OF LAS VEGAS, a Political Subdivision of the State of Nevada, Appellant, *v.* 180 LAND CO., LLC, a Nevada Limited Liability Company; and FORE STARS, LTD., Respondents.

No. 84345

180 LAND CO., LLC, a Nevada Limited Liability Company; and FORE STARS, LTD., a Nevada Limited Liability Company, Appellants/Cross-Respondents, *v.* CITY OF LAS VEGAS, a Political Subdivision of the State of Nevada, Respondent/Cross-Appellant.

No. 84640

April 18, 2024 546 P.3d 1239

Consolidated appeals and cross-appeal from a district court judgment and post-judgment order in an inverse condemnation action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Affirmed.

[Rehearing denied June 12, 2024]

Leonard Law, PC, and *Debbie A. Leonard*, Reno; *Jeffry M. Dorocak*, City Attorney, and *Jeffrey L. Galliher* and *Rebecca L. Wolfson*, Deputy City Attorneys, Las Vegas; *McDonald Carano LLP* and *George F. Ogilvie, III*, *Amanda C. Yen*, and *Christopher Molina*, Las Vegas; *Shute, Mihaly & Weinberger, LLP*, and *Andrew W. Schwartz* and *Lauren M. Tarpey*, San Francisco, California, for City of Las Vegas.

Law Offices of Kermitt L. Waters and *Kermitt L. Waters*, *James J. Leavitt*, *Michael A. Schneider*, and *Autumn L. Waters*, Las Vegas; *Claggett & Sykes Law Firm* and *Micah S. Echols*, Las Vegas, for 180 Land Co., LLC, and Fore Stars, Ltd.

Davison Van Cleve, PC, and *Robert D. Sweetin*, Las Vegas; *Matthew Leo Cahoon*, Las Vegas, for Amicus Curiae Nevada League of Cities.

Goicoechea, Di Grazia, Coyle & Stanton, Ltd., and *Nancy Porter* and *Lauren A. Landa*, Elko, for Amicus Curiae City of West Wendover.

Nicholas G. Vaskov, City Attorney, and *Amanda Kern* and *Brandon P. Kemble*, Assistant City Attorneys, Henderson, for Amicus Curiae City of Henderson.

Nossaman, LLP, and *Steven M. Silva*, Reno; *Karl Hall*, City Attorney, and *Jonathan Shipman*, Assistant City Attorney, Reno; *Micaela Moore*, City Attorney, North Las Vegas, for Amici Curiae City of Reno, City of North Las Vegas, and International Municipal Lawyer's Association.

Before the Supreme Court, En Banc.[1]

OPINION

By the Court, Herndon, J.:

Our constitutional takings jurisprudence has long recognized that regulatory agency decisions that deprive a landowner of all economically beneficial use of their property—a per se regulatory taking—require just compensation to the landowner under both the Fifth Amendment of the United States Constitution and Article 1, § 8(3) of the Nevada Constitution. In this matter, the City of Las Vegas challenges the district court's determination that a per se regulatory taking occurred and its $48 million award to the landowner, 180 Land Co., LLC. In its separate appeal, 180 Land challenges the district court's award of prejudgment interest.

The totality of the circumstances surrounding the City's handling of 180 Land's attempts to develop the 35 acres at issue, demonstrated through 180 Land's applications to develop the property, the official actions of the city council, and statements and actions of City representatives and employees, evinces the futility of 180 Land's past and future development efforts on the property. With any efforts to develop the property rendered futile, the district court did not err in determining that a per se regulatory taking occurred. The district court also did not err in relying on 180 Land's expert's valuation of the property to determine just compensation, especially as the City neither challenged the valuation nor provided alternative valuations. Finally, both parties' challenges to other aspects of the district court's damages award fail to present a basis for reversal. Accordingly, we wholly affirm the district court.[2]

[1]The Honorable Kristina Pickering, Justice, and the Honorable Patricia Lee, Justice, voluntarily recused themselves from participation in the decision of this matter. The Honorable Abbi Silver, Senior Justice, and the Honorable Egan Walker, District Judge, respectively, were appointed by the court to sit in their places. Nev. Const. art. 6, § 19; SCR 10.

[2]In light of this opinion, we vacate the stay ordered by this court on May 9, 2022.

FACTS AND PROCEDURAL HISTORY

Development of the golf course

In 1981, the City adopted a Generalized Land Use Plan to reclassify 2,200 acres of land, called Peccole Ranch, to allow for "residential densities" that would align with the City's General Plan. In 1986, the City preliminarily approved, subject to a resolution of intent, a request to zone the proposed golf course within Peccole Ranch for residential planned-unit development, or R-PD.[3] Other conditions having been met, a revised master plan, the Peccole Ranch Master Development Plan, was fully approved in 1990, with the golf course acreage zoned as R-PD7.

The golf course was developed between 1992 and 1996. In 1992, the City adopted a new Las Vegas General Plan classifying the golf course acreage as "Parks/Schools/Recreation/Open Space" (PR-OS). However, the land was not rezoned; rather, the 1992 ordinance adopting the General Plan stated that it "shall not be deemed to modify or invalidate any . . . zoning designation." In line with that ordinance, the City confirmed to the golf course acreage's owner in a 1996 letter that the zoning remained R-PD7 for the golf course. The golf course acreage also retained the PR-OS land designation in subsequent iterations of the General Plan through 2018. In 2001, the City adopted another ordinance regarding the golf course acreage that formally rezoned it to R-PD7 on the Official Zoning Map Atlas, and repealed any previous conflicting ordinances. Zoning Bill No. Z-2001, Ordinance 5353. In 2015, the operator of the golf course informed the then-landowners, Fore Stars, Ltd., that it could no longer make a profit operating the golf course and thereafter terminated its lease in 2016.

180 Land purchases and seeks to develop the golf course acreage

180 Land eventually came to hold all of the ownership interest in Fore Stars, which included the golf course acreage and Fore Stars' business assets, with the acquisition being finalized in or around 2016. According to a manager of 180 Land, Yohan Lowie, in 2001 he began negotiating a "handshake deal" with the former landowners of Peccole Ranch to partner with them to purchase certain properties, and in exchange, Lowie would have the right of first refusal if the golf course acreage ever went up for sale. When the Peccole Ranch landowners started to have financial and legal struggles regarding their various properties, including the golf

[3]R-PD zoning was established in 1972 "to allow a maximum flexibility for imaginative residential design and land utilization in accordance with the General Plan" and "to promote an enhancement of residential amenities by means of an efficient consolidation and utilization of open space, separation of pedestrian and vehicular traffic and a homogeneity of use patterns."

course, Lowie was able to negotiate an agreement that, in relevant part, provided him, or entities he owned or managed, ownership of the golf course acreage at a purported cost of $30 million. The 2005 meeting minutes from the board of directors for the Peccole-Nevada Corporation show that the board adopted a resolution "to reserve . . . approximately $30 million to pay off the current loan in full with Nevada State Bank related to the purchase of the leasehold interest of the . . . Golf Course when such loan can be paid." A separate 2014 contract, however, showed a purchase price of $7.5 million for the ownership interest in Fore Stars, which included the golf course acreage.

Although the golf course acreage contained nine parcels, 180 Land segmented it into four areas for development purposes: (1) the 35-acre site at issue in these appeals, (2) a 17-acre site, (3) a 65-acre site, and (4) a 133-acre site. 180 Land first sought development by way of an application to develop the 17-acre site filed in November 2015, which the City approved in February 2017. That approval, however, was met with significant opposition from a group of homeowners. In 2020, following litigation instituted by the homeowners, the City notified 180 Land of its entitlement to move forward to develop 435 multifamily housing units on the 17-acre parcel, with such approvals remaining valid for two years.[4] This included changing the PR-OS designation to high-density residential and rezoning the site from R-PD7 to medium-density residential (R-3).

180 Land first sought to develop the 35-acre site in December 2016, filing (1) a General Plan Amendment as to the golf course acreage to change the designation from PR-OS to low-density residential, and, specifically as to the 35-acre site contained therein, (2) a site development review for 61 lots, (3) a Tentative Map Plan application, and (4) a waiver on the size of private streets. City planning staff recommended approving the applications.

In May 2017, while the foregoing applications regarding the 35 acres were still pending, 180 Land also applied for a new, comprehensive Master Development Agreement for the entire golf course acreage. City planning staff recommended approving the Master Development Agreement application as well. Indeed, 180 Land had collaborated on this application with the City's planning staff for more than two years, requiring numerous meetings and revisions to the proposed application.

In March 2017, the homeowner group filed its challenge to the to the City's approval of the 17-acre application. While that case was being litigated, the proposed development of the 35 acres was

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[4]The district court granted the homeowners' petition for judicial review, but this court reversed the district court on appeal such that the City's approval of the development application was reinstated. *See Seventy Acres, LLC v. Binion*, No. 75481, 2020 WL 1076065 (Nev. Mar. 5, 2020) (Order of Reversal).

discussed at a contentious City Council hearing in June 2017, with strong public opposition to 180 Land's applications. The City ultimately denied the applications despite the City's planning staff having recommended approval. The City's final decision stated that the denials were "due to significant public opposition to the proposed development, concerns over the impact of the proposed development on surrounding residents, and concerns on piecemeal development of the Master Development Plan area rather than a cohesive plan for the entire area." Despite rejecting the 35-acre application, in part because of concerns over "piecemeal development," the City also rejected the comprehensive Master Development application in August 2017, two months after rejecting the 35-acre application. Also in August 2017, the City rejected applications from 180 Land pending since 2016 for three access points to the golf course acreage from neighboring public streets and to install fencing around two water features on the acreage. The City stated it denied the applications because of "the various public hearings and subsequent debates concerning the development on the subject site" and instructed 180 Land to file an application for a "Major Review" under the City's municipal code. 180 Land did not file any Major Review applications. The City also denied 180 Land's application for a technical drainage study, though Las Vegas Municipal Code (LVMC) 19.16.105 requires such a study before residential development is allowed.

City employees and representatives respond to 180 Land's residential development proposals

Although the City rejected 180 Land's development proposals, its representatives had previously recognized the site's ability to be developed residentially. At a 2016 Special Planning Commission Meeting, an attorney for the City, along with a public works employee, confirmed that the area was "hard zon[ed]" R-PD7: "[T]he Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in and develop." The same attorney for the City confirmed this again before the City Council in 2017 when it was considering whether to amend the master plan, stating that "[i]f you do not grant the general plan amendment tonight, you will merely leave in place a general plan that's inconsistent with the zoning, and the zoning trumps, in my opinion." A year later at another City Council meeting, the same city attorney and a member of the City's planning staff reconfirmed the R-PD7 zoning and told the City that "the [master plan] was changed after the zoning was in place." A planning director for the City testified in a 2016 deposition regarding development of the golf course acreage that "[i]f the land use and the zoning aren't in conformance, then the zoning would be a higher order entitlement." And in 2019, when responding to a discovery request, the City stated that it "does not dispute that the [35 acres] is zoned R-PD7."

Members of the City Council also commented regarding 180 Land's development proposals. While seeking election, former City Councilperson Steve Seroka stated in a news interview that the City would have the golf course acreage turned over to it in a land swap. Former Councilperson Bob Coffin also said, in a group text, that he was looking for "intel on the scum behind the [golf course] takeover. Dirt will be handy if I need to get rough." Councilperson Coffin further directed others to use their personal emails to discuss the golf course development issue and not to use the name of the golf course to avoid the communications being subject to disclosure under a previously issued subpoena. In an email, Councilperson Coffin referred to someone from 180 Land, presumably Lowie, as a "motherfucker," "son-of-a-bitch," and "[a]sshole."

180 Land successfully sues for inverse condemnation

After the denial of its applications, 180 Land sued the City for inverse condemnation.[5] The district court entered numerous orders to resolve 180 Land's claims after taking evidence and holding multiple hearings. It first found that the hard zoning for the site was R-PD7 and that such zoning permitted, as a right, single-family and multiresidential development. It also granted summary judgment on all four theories of takings claims raised by 180 Land. In the just compensation portion of the proceedings, the district court ultimately adopted 180 Land's expert's valuation of the land, $34,135,000, noting that the City did not present any contrary valuations or any other rebuttal evidence and did not depose 180 Land's expert. The district court also granted 180 Land's requests for reimbursement of its property taxes, prejudgment interest, and attorney fees. In doing so, the district court rejected 180 Land's request for a 23-percent prejudgment interest rate, calculating its prejudgment interest award using a prime plus 2-percent rate. The final judgment in favor of 180 Land totaled $48,114,039.30.

Both parties now appeal. The City challenges the district court's finding that a taking occurred, the just compensation award, and the other monetary awards made to 180 Land. 180 Land challenges only the amount of the prejudgment interest award.

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[5]180 Land also sought judicial review of the City's decisions. The district court denied judicial review but severed the inverse condemnation claims and allowed 180 Land to proceed on those claims. As no party appealed the district court's order denying judicial review, that order is not before us, and we do not address it in this opinion.

DISCUSSION

We first address the parties' arguments regarding the interaction between the PR-OS designation on the 35-acres and its R-PD7 zoning. We then address whether the district court properly determined that a taking occurred. Finally, we resolve the City's challenges to the just compensation award and the parties' challenges to the other damages awarded by the district court.

Land designation and zoning

An overarching issue in this case is whether the site's R-PD7 residential zoning or its PR-OS land designation governed 180 Land's ability to develop the property and/or conferred certain rights on 180 Land. The City argues that the district court erred in rejecting the PR-OS land designation in the Peccole Ranch Master Plan, especially because that designation predated 180 Land's purchase of the land at issue. The City acknowledges the R-PD7 zoning but asserts that zoning must comply with the general plan. Based on these assertions, and because it claims the discretion to deny any development applications, the City argues that the district court also erred in concluding that the R-PD7 zoning conferred a vested right on 180 Land to develop the land residentially. The amici briefs received by this court also argue that the PR-OS designation bars any finding that 180 Land had a right to develop the property residentially, foreclosing any takings claims.[6] 180 Land responds that zoning is the appropriate basis to determine any rights it may have to develop the property, noting that the City confirmed the R-PD7 zoning before 180 Land came to own the property and that this creates a "vested right to use the 35 Acre Property for single-family and multi-family residential, as a matter of law."

A master or general plan is a "comprehensive, long-term general plan for the physical development of the city." NRS 278.150(1). Nevada law authorizes a city to create zoning districts wherein "it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land." NRS 278.250(1). Such zoning regulations must, among other things, "be adopted in accordance with the master plan for land use." NRS 278.250(2). When exercising zoning powers, a city "may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate." NRS 278.250(4).

We have previously held that zoning enactments are "entitled to a presumption of validity" and that, while a master or general plan "is a standard that commands deference," "it is not a legislative

[6]The cities of Reno, Henderson, North Las Vegas, and West Wendover, along with the International Municipal Lawyer's Association and Nevada League of Cities, filed amici briefs.

mandate from which no leave can be taken." *Sustainable Growth Initiative Comm. v. Jumpers, LLC*, 122 Nev. 53, 64, 128 P.3d 452, 460 (2006). We have further held that "a zoning ordinance need not be in perfect conformity with every master plan policy." *Id.* at 64-65, 128 P.3d at 461. In tandem with these holdings, we have recognized that "zoning regulations shall be adopted in accordance with the master plan for land use," referring to this as a "consistency requirement." *Id.* at 64, 128 P.3d at 460 (quoting *Nova Horizon v. City Council, Reno*, 105 Nev. 92, 96, 769 P.2d 721, 723 (1989)).

The problem with applying the consistency requirement in this case is that substantial evidence demonstrates that the R-PD7 zoning *predated* the PR-OS land designation. Thus, the zoning had already been adopted at the time the land was designated as PR-OS in the master plan. The record shows that, as early as 1986, the City had preliminarily approved zoning the golf course acreage as residential, albeit subject to a later-satisfied resolution of intent. The PR-OS designation, on the other hand, was first imposed on the subject acreage in 1992 when the City adopted a new Las Vegas General Plan. Also detrimental to the City's argument, the ordinance adopting the PR-OS designation explicitly stated that it did not "modify or invalidate any . . . zoning designation, or development approval that occurred before the adoption of the Plan." Indeed, in line with that ordinance, the City confirmed to the golf course acreage's owner in a 1996 letter that the zoning remained R-PD7.

Ample authority supports our conclusion that the zoning ordinance trumps the designation on the master plan. NRS 278.349(3)(e) provides that when deciding whether to approve a tentative map to subdivide property, the governing body must consider whether the subdivision conforms with "zoning ordinances and [the] master plan, except . . . if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence." *See also* Op. Att'y Gen. 84-6 (1984) (concluding that amending the land use Master Plan "does not require immediate amendment of preexisting zoning ordinances that are not in strict compliance with the amended plan" and noting that "the Nevada Legislature expressly declared its intention [in the statute that eventually became NRS 278.349(3)(e)] that zoning ordinances take precedence over provisions contained in a master plan"); *Clark Cnty. Off. of the Coroner/Med. Exam'r v. Las Vegas Rev.-J.*, 136 Nev. 44, 57 n.5, 458 P.3d 1048, 1058 n.5 (2020) (explaining that "while Attorney General opinions are not binding legal authority, they are of persuasive legal significance").

Further, the record includes admissions by the City's attorney that he could not determine how the PR-OS designation was placed on the land and that zoning would trump any inconsistent land use designation in the master plan. Indeed, the City's own "land use hierarchy" places zoning designation at the pinnacle.[7] Although the City now claims that this means that a zoning designation is inferior to a land use designation, it stated the opposite in its briefing in the case involving the 17-acre site:

> In the hierarchy, the land use designation is subordinate to the zoning designation, for example, because land use designations indicate the intended use and development density for a particular use, while zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses.

Thus, we reject any assertion that the PR-OS land designation overrides the R-PD7 zoning.[8]

The City's assertions that the district court committed reversible error in finding that 180 Land had a vested right to develop the 35 acres because the City retains discretion to reject any application, even where it complies with applicable zoning, are likewise unavailing. Rather than considering if 180 Land had vested rights to development, this case requires us to determine whether the City's actions destroyed the economic value of the land such that it amounts to a taking, which could still occur under the City's discretionary authority. *See Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 245-46, 871 P.2d 320, 324-25 (1994) (rejecting a takings claim where the government's use of its discretionary authority to reject "a permit to build living quarters for the elderly did not destroy all viable economic value of the prospective property").

The takings claim

"Whether the government has inversely condemned private property is a question of law that we review de novo." *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 661, 137 P.3d 1110, 1121 (2006). 180 Land asserted four theories in support of its takings claim below: (1) a *Penn Central*[9] taking alleging that the City's actions destroyed nearly all the economic value of the 35 acres; (2) a per se regulatory taking alleging that the City's actions destroyed all of the site's economic value; (3) a per se regulatory physical taking

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[7]According to the City's "Land Use & Rural Neighborhoods Preservation Element" (adopted Sept. 2, 2009), the hierarchy "is designed to progress from broad to specific," with the master plan at the bottom, followed by the land use element, the land use designation, the master development plans/special area plans and, finally, the zoning designation at the top of the hierarchy.

[8]We further note that other documents, including governmental records, recognized the 35 acres as being residential. For instance, 180 Land's 2017-18 statement of the taxable value of its land lists the 35 acres as residential, and the Clark County Assessor's valuation stated that the parcel was zoned as R-PD7 and that its "probable use" is "residential."

[9]*Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

alleging that the City granted the public access to the site, ousting 180 Land from the site; and (4) a nonregulatory de facto taking alleging that the City obstructed its right to residentially develop the property such that it became valueless. Because we ultimately conclude that a per se regulatory taking occurred, we need not address the three other theories.

"The Takings Clause of the Fifth Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment, prohibits the government from taking private property for public use without just compensation." *Sisolak*, 122 Nev. at 661-62, 137 P.3d at 1121 (footnote omitted). The Nevada Constitution similarly provides that "[p]rivate property shall not be taken for public use without just compensation having been first made, or secured." Nev. Const. art. 1, § 8(3). Courts initially viewed these provisions as protecting only against an owner's ouster from possession but later recognized "that state regulation of property may also require just compensation." *Sisolak*, 122 Nev. at 662, 137 P.3d at 1121 (citing *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)). This occurs when government regulation is "so onerous that its effect is tantamount to a direct appropriation or ouster." *Id.* at 662, 137 P.3d at 1121-22. "[S]uch 'regulatory takings' may be compensable under the Fifth Amendment." *Id.* at 662, 137 P.3d at 1122 (quoting *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 537 (2005)).

Initial considerations

Property interest

"An individual must have a property interest in order to support a takings claim." *Id.* at 658, 137 P.3d at 1119. Thus, when considering inverse condemnation claims, a "court must first determine 'whether the plaintiff possesses a valid interest in the property affected by the governmental action.'" *Id.* (quoting *Karuk Tribe of Cal. v. Ammon*, 209 F.3d 1366, 1374 (Fed. Cir. 2000)). Stated another way, a court must ensure that "'the plaintiff possesse[s] a stick in the bundle of property rights,' before proceeding to determine whether the governmental action at issue constitute[s] a taking." *Id.* (quoting *Karuk Tribe*, 209 F.3d at 1374). Property rights include the rights to possess, use, and enjoy the property. *Id.* There is no question that 180 Land, the owner of the 35 acres, has a valid interest in the property to support a takings claim.

The property at issue

Pertinent to our takings analysis is a determination of the property at issue. The City contends that, rather than considering the 35-acre site individually, the entire 250 acres comprising the golf course must be considered together to determine if a complete loss of economic value occurred. "'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated." *Penn Cent.*, 438 U.S. at 130. Instead, we focus "both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole." *Id.* at 130-31.

Because the test for a per se regulatory taking requires "compar[ing] the value that has been taken from the property with the value that remains in the property, one of the critical questions is determining how to define the unit of property whose value is to furnish the denominator of the fraction." *Murr v. Wisconsin*, 582 U.S. 383, 395 (2017) (quoting *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497 (1987)). Indeed, "[t]o the extent that any portion of property is taken, that portion is always taken in its entirety; the relevant question, however, is whether the property taken is all, or only a portion of, the parcel in question." *Id.* (quoting *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 644 (1993)).

We recognize that "no single consideration can supply the exclusive test for determining the denominator" in a takings action. *Id.* at 397. Instead, we must attempt to "determine whether reasonable expectations about property ownership would lead a landowner to anticipate that [their] holdings would be treated as one parcel, or, instead, as separate tracts." *Id.* Factors to consider include "the treatment of the land under state and local law; the physical characteristics of the land; and the prospective value of the regulated land." *Id.* As to the first factor, the court should give substantial weight to how the state measures metes and bounds and divides the land. *Id.* at 398.

Turning to the property's physical characteristics, we must consider "the physical relationship of any distinguishable tracts, the parcel's topography, and the surrounding human and ecological environment." *Id.* The City asserts that the entirety of the golf course acreage had related topography and thus should be considered the relevant parcel for 180 Land's takings claim. But we see no such unique concerns regarding the golf course acreage, which the record demonstrates is in a suburban area surrounded by residential and commercial development, that might require treating the entirety of the golf course acreage as a single parcel. *Cf. Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1014 (1992) (Kennedy, J., concurring) (noting that "[c]oastal property may present . . . unique concerns for a fragile land system") (cited with approval by *Murr*, 582 U.S. at 398).

As to the prospective value of the regulated land, "courts should assess the value of the property under the challenged [governmental action], with special attention to the effect of burdened land on the value of other holdings." *Murr*, 582 U.S. at 398; *see id.* at 398-99 (providing an example of where a restriction on one property's use may increase another property's value "by increasing privacy, expanding recreational space, or preserving surrounding beauty"). We recognize that the City's approval of development on the 17-acre parcel would likely derive value that would have to be considered in resolving 180 Land's takings claim if we considered the golf course acreage to be the denominator acreage in this case.[10]

Applying these principles here demonstrates that treating the 35 acres as the denominator parcel of land for 180 Land's takings claim is appropriate. It is a single parcel with an individual parcel number and was treated as an individual parcel throughout the entirety of 180 Land's attempts to obtain the City's approval to develop it, even when 180 Land submitted applications regarding the entire 250 acres. And that the City approved development on the 17-acre parcel, but not on the 35-acre parcel, further demonstrates the 35 acres' separate nature. While the 35 acres used to be part of the 250 acres making up a golf course, there are no ecological or other physical aspects of the land that warrant us treating the 250 acres as the whole parcel in this case. The approval of development on the 17 acres adding value to the entire 250 acres does not outweigh these other considerations.

Ripeness

We next address the City's assertion that 180 Land's takings claim was not ripe, such that the district court exceeded its jurisdiction by allowing the claim to proceed. "[A]n essential prerequisite to [the] assertion [of a regulatory takings claim] is a final and authoritative determination of the type and intensity of development legally permitted on the subject property." *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 348 (1986); *see also Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001) ("[O]nce it becomes clear that . . . the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened."); *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985) ("[A] claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue."). This is so the court can understand the "nature and extent of permitted development before

[10]To the extent 180 Land argues that the City has since acted in a manner that prohibits development on the 17-acre parcel, that issue was not before the district court, and we therefore do not consider it. *See FDIC v. Rhodes*, 130 Nev. 893, 897, 336 P.3d 961, 964 (2014) (providing that this court generally does not consider issues not raised before the district court when it rendered its decision).

adjudicating the constitutionality of the [government actions] that purport to limit it." *Sisolak*, 122 Nev. at 664, 137 P.3d at 1123 (quoting *Lucas*, 505 U.S. at 1011). Otherwise, "it is impossible to tell whether the land retain[s] any reasonable beneficial use or whether [existing] expectation interests ha[ve] been destroyed." *MacDonald*, 477 U.S. at 349 (alternations in original) (quoting *Williamson Cnty.*, 473 U.S. at 190 n.11).

Finality is normally achieved by exhausting administrative remedies, *Sisolak*, 122 Nev. at 664, 137 P.3d at 1123, but "[w]hen exhausting available administrative remedies . . . is futile, a matter is deemed ripe for review," *State ex rel. Dep't of Transp. v. Eighth Jud. Dist. Ct.* (*Ad Am.*), 131 Nev. 411, 418, 351 P.3d 736, 742 (2015). Futility occurs when "the state agency charged with enforcing a challenged land-use regulation entertains an application from an owner and its denial of the application makes clear the extent of development permitted, and neither the agency nor a reviewing state court has cited noncompliance with reasonable state-law exhaustion or pre-permit processes." *Palazzolo*, 533 U.S. at 625-26; *see also id.* at 626 (concluding that, under such facts, "federal ripeness rules do not require the submission of further and futile applications with other agencies").

The Ninth Circuit Court of Appeals has further commented on ripeness and futility as they apply to regulatory takings claims in *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 920 F.2d 1496 (9th Cir. 1990). That court held that a landowner "must submit one formal development plan and seek a variance from any regulations barring the development proposed in the plan [and] a landowner may need to resubmit modified development proposals that satisfy the local government's objections to the development as initially proposed." *Id.* at 1501. But the Ninth Circuit recognized that further applications would be futile if they required the landowner to apply "through piecemeal litigation or unfair procedures." *Id.* Whether a takings claim is ripe is a question of law reviewed de novo. *MHC Fin. Ltd. v. City of San Rafael*, 714 F.3d 1118, 1130 (9th Cir. 2013).

The City and the amici argue that 180 Land submitted only one development application for the 35-acre site before filing suit and that neither the City's denial of the master plan amendment for the entire 250-acre site, nor its rejection of two other nondevelopment applications, nor the City's other actions constituted a final decision ripening 180 Land's per se regulatory takings claim. 180 Land argues that its per se regulatory takings claim is ripe because it exhausted its administrative remedies or, alternatively, that such efforts would have been futile.[11]

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[11]We reject 180 Land's argument that the ripeness requirement does not apply to per se regulatory takings claims. We have previously held that "courts

Considering the totality of the City's actions, we conclude that any further attempts to apply for development by 180 Land would have been futile, such that its takings claim was ripe. While the City is correct that 180 Land submitted only one application specifically regarding residential development to the 35 acres, the City's denial of that application failed to provide 180 Land with any basis for the denial that would allow it to "seek a variance" or "satisfy the [City]'s objections to the development as initially proposed." *Del Monte Dunes*, 920 F.2d at 1501. The City merely stated that it was concerned with piecemeal development and there was public opposition to 180 Land's request to develop. Regarding the alleged concern over piecemeal development, the City had already approved piecemeal development when it approved the development of the 17-acre site. And although the City stated in its denial that it wanted to see a "cohesive plan for the entire area," referring to all of the golf course acreage, the City also denied 180 Land's Master Development application. This latter denial occurred despite City planning staff collaborating with 180 Land on the application for more than two years and recommending that the City approve it. While the Master Development application does not constitute a formal request for a variance, we conclude that it satisfies the mandate that the landowner attempt to comply with the bases for denial by submitting an amended or second development proposal to the requisite governmental agency because it aligned with the City's stated desire for a cohesive development plan regarding all of the golf course acreage.

As to public opposition, the City provided 180 Land with no indication of what request for a variance or modified development application 180 Land could submit in the future that would avoid another denial due to public opposition. The comprehensive Master Development application was started, in part, because 180 Land was told by the City that a Master Development application was the only development request that would be considered due to the public opposition voiced by neighboring property owners. The Master Development application was then denied, and it is unclear from the record what, if any, specific issues were raised by the public opposition that the City concluded warranted denying 180 Land's

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only consider ripe regulatory takings claims, and 'a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding application of the regulations to the property at issue.'" *Ad Am.*, 131 Nev. at 419, 351 P.3d at 742 (quoting *Williamson Cnty.*, 473 U.S. at 186). As both per se regulatory and *Penn Central* takings claims analyze whether regulations caused a loss of property value, either totally (per se) or nearly totally (*Penn Central*), it follows that the City's decision of how to apply the regulations must be final, or further efforts must be futile, for such claims to be ripe.

applications. Without any insight into why the City concluded that the public's opposition was a valid basis to deny 180 Land's development applications, further applications attempting to resolve the unspecified concerns would be futile.

Other evidence also supports our conclusion that any further submissions by 180 Land to residentially develop the 35 acres would have been futile because the City showed a general hostility to allowing any development on the site. The City stated it denied 180 Land's basic requests for additional access points and to place fencing around water features because such requests had to be made via a "Major Modification" application under LVMC 19.16.100(G)(1). But that ordinance provides that such an application is only necessary when "through prior action, [the City] has determined that the proposed project or improvement shall be processed as a Major Review; or [it is] determine[d] that the proposed development could significantly impact the land uses on the site or surrounding properties." LVMC 19.16.100(G)(1). It does not appear that access points to vacant land or fences around water features would meet the standards for this more rigorous application process, which requires a pre-application conference, drawings and plans, and notice and a hearing, among other items or actions not required for a minor review under subsection (F). LVMC 19.16.100(G)(2). Indeed, the City's denials did not rely on LVMC 19.16.100(G)(1) but instead stated that it required a "Major Review" because of the pressure from the public debates over the land's development. *See Del Monte Dunes*, 920 F.2d at 1501 (stating that a governmental agency subjecting a landowner to "unfair procedures" supports a finding of futility). The statements of City representatives in relation to 180 Land's attempts to develop the land bolster our futility conclusion. Indeed, the emails and text messages from councilpersons demonstrated a general hostility towards 180 Land's attempts to develop its land.[12] *See Ad Am.*, 131 Nev. at 420, 351 P.3d at 742 (considering the statement of a councilperson when resolving an allegation of futility in a takings case). Having determined 180 Land's property rights, ascertained the relevant scope of the property at issue, and deemed the takings claim ripe, we now address the district court's conclusion that a taking occurred.

Per se regulatory taking

A per se regulatory taking occurs when government regulation "completely deprives an owner of all economical beneficial use of

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[12]To the extent the City argues that we cannot consider such statements in a futility analysis, we reject that argument. In *Ad America*, we considered a councilperson's statement that the developer offered as evidence of futility without stating it was improper, instead concluding that the statement from "only one of seven City Council members" was insufficient to demonstrate futility in light of the contrary evidence. 131 Nev. at 420, 351 P.3d at 742.

[the] property." *Sisolak*, 122 Nev. at 662, 137 P.3d at 1122; *see also Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 245-46, 871 P.2d 320, 324-25 (1994) (finding no violation of the Fifth Amendment where the denial of a permit to develop senior citizen housing "did not destroy all viable economic value of the prospective development property"). When resolving this variant of a takings claim, there is no need to "inquir[e] into the public interest advanced in support of the restraint." *Lucas*, 505 U.S. at 1015. That is because "the Fifth Amendment is violated when land-use regulation 'does not substantially advance legitimate state interests *or denies an owner economically viable use of his land*.'" *Id.* at 1016 (quoting *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980)). Moreover, when governmental actions deprive an owner of all economically beneficial use of their property, "it is less realistic to indulge [the Court's] usual assumption that the [governmental body] is simply 'adjusting the benefits and burdens of economic life' in a manner that secures an 'average reciprocity of advantage' to everyone concerned." *Id.* at 1017-18 (quoting *Penn Cent.*, 438 U.S. at 124, and *Penn. Coal*, 260 U.S. at 415).

The City's denials of 180 Land's applications and the discussion of those applications at various city council meetings show no meaningful indication that the City would allow any development on the 35 acres. As noted above, the City's denials stated it was rejecting the applications based on strong public opposition and that 180 Land had not provided a cohesive plan for the entire golf course acreage. But the City provided no regulatory basis for the denials[13] that would allow 180 Land to seek a variance or submit an amended application that would resolve any such issues. The City similarly rejected 180 Land's Master Plan application that provided a cohesive plan for the golf course acreage. That these denials occurred despite the City's planning office working with 180 Land on at least one of the proposals and repeatedly recommending that the City approve the applications underscores an unwillingness to allow any development. And the City did not provide 180 Land with any viable alternatives for it to reap economic benefit from the 35 acres when denying its applications. In short, the City's actions demonstrate that it would not approve any development on the 35 acres. Further, we discern no error in the district court adopting 180 Land's expert's opinion that, without the ability to develop the 35 acres, it had no economic value.[14] *See Waldman v. Maini*, 124 Nev. 1121, 1129, 195 P.3d 850, 856 (2008) (providing that a court will only disturb factual findings if they are not supported by substantial

[13]This is especially true considering our conclusion that the PR-OS land designation does not trump the R-PD7 zoning.

[14]This included evidence that continuing to operate a golf course would result in an economic loss rather than provide economic value.

evidence). We therefore agree with the district court that a taking occurred because the City's actions deprived 180 Land of all of the economic value of the 35 acres at issue in this case.

Just compensation

Having determined that a taking occurred, we turn to the just compensation owed for that taking. Before addressing the amount of the award entered by the district court, we address the City's assertions that the district court improperly excluded evidence and used the wrong date of valuation.

Exclusion of evidence

The City challenges the district court's exclusion of the PR-OS designation and the $7.5 million purchase contract regarding the acquisition of Fore Stars and its assets from the just compensation trial. Reviewing these decisions for an abuse of discretion, we find none. *See Cox v. Copperfield*, 138 Nev. 235, 239, 507 P.3d 1216, 1222 (2022) (reviewing the exclusion of evidence for an abuse of discretion). As to evidence regarding the PR-OS designation or any general/master plans showing such a land use designation for the 35 acres at issue, the district court had already concluded, in the first phase of the trial, that R-PD7 zoning trumped the PR-OS designation. As we agree with that conclusion, we necessarily find no abuse of discretion in the district court's decision to exclude that evidence from the just compensation portion of the trial.

As to the purchase contract, the district court noted that the City failed to provide an expert to contravene 180 Land's expert's opinion that it was irrelevant. The court found that the transaction was for much more than the 35 acres and that the 2005 start date of that transaction was too remote to aid in properly determining the property's value. Moreover, as discussed more in the damages analysis below, just compensation is determined by looking at a property's value at its "highest and best use." Nev. Const. art. 1, § 22(3); *see also Clark County v. Alper*, 100 Nev. 382, 391, 685 P.2d 943, 949 (1984) ("Inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings."). As the contract did not identify what portion of the purchase price was attributable to the 35 acres, and because the City failed to show how the purchase price was relevant to determining the 35 acres' value at its highest and best use, we conclude that the district court did not abuse its discretion in excluding this evidence.

Date of value

The district court set the "date of value" for the property's valuation as September 14, 2017, the day of the issuance of the first summons in the underlying matter. The court relied on NRS 37.120(1), which addresses eminent domain and provides that "the date of the first service of the summons is the date of valuation," unless the matter is not taken to trial in two years. The City argues that NRS 37.120 only applies in eminent domain actions and that the district court's ruling was otherwise arbitrary because the City denied the application regarding the 35 acres on June 21, 2017, not September 14. It asserts that the fact that the district court used a different date from which to calculate the property tax and prejudgment interest award (August 2, 2017) further shows the arbitrary nature of using September 14, 2017, as the date of value.[15]

We have previously rejected the argument that NRS 37.120 does not apply in inverse condemnation proceedings. In *Alper*, an inverse condemnation case, we held that NRS 37.120 provided the date of value and rejected the County's argument that the statute was "applicable only to eminent domain proceedings brought by the condemnor under the authority of NRS Chapter 37 and [was] not applicable to inverse condemnation suits." 100 Nev. at 391, 685 P.2d at 949. Deeming no error in the district court's application of NRS 37.120 to find the September 14, 2017, valuation date, we necessarily decline to impose a different date.

Amount awarded for just compensation

"The landowner . . . has the burden of establishing the value of the land . . . taken." *City of Las Vegas v. Bustos*, 119 Nev. 360, 362, 75 P.3d 351, 352 (2003). The appropriate value for just compensation "is determined by the property's market value 'by reference to the highest and best use for which the land is available and for which it is plainly adaptable.'" *Id.* (quoting *Alper*, 100 Nev. at 386-87, 685 P.2d at 946). The highest and best use must still, however, "be reasonably probable." *Id.*

Here, 180 Land met its burden by providing an expert to opine on the land's value at its highest and best use. The expert submitted a detailed report that stated a golf course was no longer profitable and that the highest and best use for the land was residential development, making comparisons to five similar vacant properties sold between 2015 and 2017. The expert report also provided detailed analyses supporting the opinions contained therein, citing relevant literature and attaching exhibits in support. The City presented no contrary evidence, did not depose the expert, and made no attempt to rebut the expert report. Instead, the City noted that, given the district court's rulings on the motions in limine that barred the City from presenting certain evidence, it had "no evidence to admit at the bench trial in rebuttal of [180 Land's expert's] valuation." In light of 180 Land's uncontradicted evidence, we find no error in the

[15]The City does not present an alternative date of value for our consideration.

district court adopting 180 Land's expert's determination that the value of the 35 acres at its highest and best use was $34,135,000.

Additional awards of damages

The City's final arguments challenge the district court's award of property taxes and attorney fees to 180 Land. We also consider 180 Land's challenge to the district court's prejudgment interest award.

Property taxes

The district court ordered the City to reimburse 180 Land for its property taxes on the 35 acres starting from the date the court found the City had dispossessed 180 Land of the property, August 2, 2017, totaling $976,889.38.[16] The City argues that the caselaw relied on by the district court does not apply because it involved eminent domain rather than inverse condemnation action. It claims that it did not physically dispossess the property from 180 Land and that the just compensation award already made 180 Land whole.

Our caselaw recognizes that "[a]n owner who is dispossessed from [their] land when it is taken for public use is no longer obligated to pay taxes." *Alper*, 100 Nev. at 395, 685 P.2d at 951. As noted, *Alper* also holds that inverse condemnation and eminent domain proceedings are "constitutional equivalents." *Id.* at 391, 685 P.2d at 949. Thus, the district court did not err in ordering reimbursement to 180 Land for the taxes it paid. And we decline to consider the City's challenge to the date the district court used, as the date was reasonable and the City provides no alternative date for this court to evaluate. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider arguments that a party does not argue cogently or support with relevant authority).

Attorney fees

The City next challenges the district court's award of $2,468,751.50 in attorney fees to 180 Land. The district court may only award attorney fees where a statute, rule, or contract allows it, and we review such an award for an abuse of discretion. *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006). The district court concluded an award was proper under (1) the federal Uniform Relocation Assistance and Real Property Acquisition Act, per NRS 342.105; (2) Article 1, Section 22(4), of the Nevada Constitution; and (3) NRS 18.010(2)(b).

[16]We reject the City's argument that 180 Land caused the increased taxes by not appealing the assessor's conclusion that the land was residential rather than open space.

We conclude that an award was proper under NRS 342.105. NRS 342.105(1) makes any "political subdivision of the State" subject to the Relocation Act's regulations, and 49 C.F.R. § 24.107(c) provides:

> The owner of the real property [whose property is taken] shall be reimbursed for any reasonable expenses, including reasonable attorney . . . fees, which the owner actually incurred because of a condemnation proceeding, if . . . [t]he court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding . . . .

And we have already held that the Relocation Act's "plain terms" support such an award when "a property owner . . . was successful in [their] inverse condemnation action."[17] *Sisolak*, 122 Nev. at 675, 137 P.3d at 1130.

The City's final argument is a single sentence that the fee amount was not supported by billing statements and, without such statements, the district court cannot find the fees to be reasonable. But the City fails to cite the record or to salient authority and does not make any further argument; therefore, we need not consider it. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; NRCP 54(d)(2)(A) (setting out the procedure to seek attorney fees). Based on the foregoing, we will not disturb the district court's attorney fees award.

Prejudgment interest

Below, 180 Land requested a prejudgment interest rate of 23-percent per year for the period bookended by the taking and the entry of the prejudgment interest award, approximately 4.5 years. 180 Land based this request on two experts who calculated the rate of return on vacant residential properties in Las Vegas between 2017 and 2021. The district court rejected 180 Land's request and set the prejudgment interest rate at prime plus 2 percent, for a total of $10,258,953.30. We review a district court's ruling on prejudgment interest for an abuse of discretion. *Sisolak*, 122 Nev. at 675, 137 P.3d at 1130.

The district court did not abuse its discretion in setting the prejudgment interest rate at prime plus 2 percent. "The purpose of awarding interest is to compensate the landowner for the delay in the monetary payment that occurred after the property had been taken." *Alper*, 100 Nev. at 392, 685 P.2d at 950 (citing *Refining Co. v. Dir. of Pub. Works*, 244 A.2d 853, 855 (R.I. 1968)). And "[t]he statutory interest rate establishes at least a *prima facie* basis for

[17]Because we conclude that the award of fees was proper under the Relocation Act, we need not consider whether an award was proper under the Nevada Constitution or NRS 18.010(2)(b).

determining a fair rate." *Id.* at 394, 685 P.2d at 951. Here, rather than seeking compensation for the delay in payment, 180 Land seeks an interest rate that would reimburse it for the purported profit it lost had it been able to develop the land. This is not the purpose of a prejudgment interest award. *See Interest*, *Black's Law Dictionary* (11th ed. 2019) (defining "interest" as "[t]he compensation . . . allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use"). We therefore decline to overturn the district court's prejudgment interest award.

CONCLUSION

When a governmental agency acts in a manner that removes all the economic value from privately owned land, just compensation must be paid. Here, the City's actions demonstrated a refusal to allow any development on the 35-acre parcel owned by 180 Land such that the parcel no longer had any economic value. The district court therefore did not err in finding that a taking occurred. Nor did the district court err in its just compensation award, as it based that decision on uncontroverted evidence from a duly admitted expert witness. Finally, because we find no error in the district court's other awards, we affirm the orders appealed in both Docket Nos. 84345 and 84640 in their entirety.[18]

Cadish, C.J., Stiglich, Parraguirre, and Bell, JJ., Silver, Sr. J., and Walker, D.J., concur.

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[18]Recognizing that the parcels making up the remainder of the golf course acreage are, or may become, the subject of similar litigation, we emphasize that our decision here is based only on the specific facts and circumstances surrounding 180 Land's attempts to develop the 35-acre parcel.

STEPHEN SISOLAK, Governor of Nevada; AARON D. FORD, Attorney General of Nevada; GEORGE TOGLIATTI, Director of the Nevada Department of Public Safety; and MINDY McKAY, Administrator of the Records, Communications, and Compliance Division of the Nevada Department of Public Safety, Appellants, *v.* POLYMER80, INC., Respondent.

No. 83999

April 18, 2024 546 P.3d 819

Appeal from a district court order declaring unconstitutional and granting a permanent injunction against the enforcement of several statutes regulating unfinished firearms.[1] Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Reversed.

Aaron D. Ford, Attorney General, *Steven G. Shevorski*, Chief Litigation Counsel, and *Kiel B. Ireland*, Deputy Solicitor General, Carson City, for Appellants.

Simons Hall Johnston PC and *Brad M. Johnston*, Yerington, for Respondent.

Before the Supreme Court, En Banc.

OPINION

By the Court, Stiglich, J.:

This appeal involves a facial challenge to the constitutionality of several statutes regulating so-called "ghost guns." Except for transactions between firearms importers and manufacturers and where imprinted with a serial number, NRS 202.3625 generally criminalizes the sale or transfer of an unfinished firearm frame or receiver, and NRS 202.363(1) generally criminalizes the possession, purchase, transport, or receipt of an unfinished frame or receiver. Respondent argues that the definition of "unfinished frame or receiver" in NRS 202.253(9) is impermissibly vague, rendering it, NRS 202.3625, and NRS 202.363(1) unconstitutional. The district court agreed and concluded that the definition did not explain key terms or notify ordinary individuals precisely when raw materials would become an unfinished frame or receiver. The district court also concluded that the definition enabled arbitrary and discriminatory enforcement.

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[1]The clerk of the court shall amend the caption on this court's docket so that it is consistent with the caption appearing on this opinion.

We disagree and reverse. The terms used to define "unfinished frame or receiver" have ordinary meanings that provide sufficient notice of what the statutes proscribe, such that it cannot be said that vagueness pervades their texts. We further conclude that the statutes are general intent statutes that do not lack a scienter requirement and do not pose a risk of arbitrary or discriminatory enforcement. The district court thus erred in declaring that the statutes are unconstitutionally vague and enjoining them.

FACTS AND PROCEDURAL HISTORY

The federal Gun Control Act (GCA) and its amendments regulate the possession, manufacture, sale, and transfer of "firearms." *See* 18 U.S.C. §§ 921-934. The GCA requires gun manufacturers, importers, and dealers to obtain a federal firearms license. *Id.* §§ 922(a)(1), 923(a). Licensed entities are called federal firearms licensees. Federal firearms licensees are required to serialize each firearm, run a background check before selling a firearm, and record each transaction. *Id.* §§ 922(c), (t)(1), 923(g), (i). A firearm is defined, in relevant part, as "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive" or "the frame or receiver of any such weapon." *Id.* § 921(a)(3).

In 2021, Nevada legislators put forward a bill, A.B. 286, to regulate firearm components that are not imprinted with a serial number. Assemblyperson Sandra Jauregui—a sponsor of A.B. 286—spoke on the purpose of the bill. She said that it "deals with the rising epidemic of unmarked, untraceable guns known as 'ghost guns.'" She explained that "[g]host guns are growing in popularity because they circumvent background checks and are untraceable" and that they are "types of guns [that] are manufactured in homes and also sold online as kits that are often easily assembled." An advocate testified to the Legislature that ghost guns evade regulation under the GCA as they "exploit[ ] a loophole in the way the federal government regulates firearms" because companies that sell ghost guns "sell a frame or receiver that has not quite been fully manufactured [often referred to as 80% receiver or frame] and, as a result, the federal government does not classify it as a firearm." As such, "it is not required to be serialized and not subject to any form of background check under the federal guidelines." Another advocate testified that respondent Polymer80 sold "a 'Buy, Build, Shoot' kit" that contained every piece needed to assemble a firearm within 20 to 40 minutes using simple hand tools.

A representative for the National Shooting Sports Foundation, Inc., however, raised vagueness concerns, arguing that "[u]nder this bill, there is not a clear definition of when that frame or receiver becomes a firearm. . . . At what point would a manufacturer or retailer need to comply with or treat that hunk of metal as a firearm?"

The Legislature ultimately passed the bill, and then-Governor Stephen Sisolak approved A.B. 286 on June 7, 2021. *See* 2021 Nev. Stat., ch. 496, at 3222. A.B. 286 amended NRS Chapter 202 to "prohibit[ ] a person from engaging in certain acts relating to unfinished frames or receivers under certain circumstances" and proscribe "certain acts relating to firearms which are not imprinted with a serial number." *Id.* Pointedly, A.B. 286 enacted NRS 202.253(9), NRS 202.3625, and NRS 202.363. NRS 202.253(9) defines "unfinished frame or receiver":

> "Unfinished frame or receiver" means a blank, a casting or a machined body that is intended to be turned into the frame or lower receiver of a firearm with additional machining and which has been formed or machined to the point at which most of the major machining operations have been completed to turn the blank, casting or machined body into a frame or lower receiver of a firearm even if the fire-control cavity area of the blank, casting or machined body is still completely solid and unmachined.

NRS 202.3625 provides

> 1. A person shall not sell, offer to sell or transfer an unfinished frame or receiver unless:
> (a) The person is:
> (1) A firearms importer or manufacturer; and
> (2) The recipient of the unfinished frame or receiver is a firearms importer or manufacturer; or
> (b) The unfinished frame or receiver is required by federal law to be imprinted with a serial number issued by an importer or manufacturer and the unfinished frame or receiver has been imprinted with the serial number.
> 2. A person who violates this section:
> (a) For the first offense, is guilty of a gross misdemeanor; and
> (b) For the second or any subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

And NRS 202.363 provides

> 1. A person shall not possess, purchase, transport or receive an unfinished frame or receiver unless:
> (a) The person is a firearms importer or manufacturer; or
> (b) The unfinished frame or receiver is required by federal law to be imprinted with a serial number issued by a firearms

importer or manufacturer and the unfinished frame or receiver has been imprinted with the serial number.

2. A person who violates this section:

(a) For the first offense, is guilty of a gross misdemeanor; and

(b) For the second or any subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

Polymer80 is a Nevada corporation that manufactures gun-related products and aftermarket accessories. It sells gun-related kits "that provide ways for [its] customer[s] to participate in the build process." Polymer80 argued that these newly enacted statutes are unconstitutionally vague and sought declaratory and injunctive relief against appellants Stephen Sisolak, then-Governor of Nevada; Aaron Ford, Attorney General of Nevada; George Togliatti, Director of Nevada Department of Public Safety; and Mindy McKay, then-Administrator of the Records, Communications, and Compliance Division of the Nevada Department of Public Safety (collectively Sisolak). After discovery, Polymer80 and Sisolak filed cross-motions for summary judgment. Polymer80 argued that (1) NRS 202.253(9)'s definition of unfinished frame or receiver is vague because it does not define what a finished frame or receiver is; (2) the statute's definition of unfinished frame or receiver does not define "blank," "casting," or "machined body"; and (3) the definition does not clarify precisely when raw material becomes an unfinished frame or receiver. The district court granted summary judgment in Polymer80's favor, entered a declaratory judgment that the statutes are unconstitutionally vague, and issued a permanent injunction barring enforcement of NRS 202.3625 and NRS 202.363. Sisolak appeals.

DISCUSSION

Sisolak argues that the challenged statutes are not unconstitutionally vague and provide fair notice of what is prohibited. He argues that the definition of "unfinished frame or receiver" uses terms commonly understood in the industry and that have ordinary dictionary definitions. Polymer80 maintains, as it did below, that several material terms in NRS 202.253(9) have uncertain definitions, specifically highlighting that "blank," "casting," and "machined body" are not defined by statute and that "unfinished frame or receiver" also does not define what a "finished" frame or receiver is.

We review de novo whether a statute is constitutional and presume that it is valid. *Silvar v. Eighth Jud. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). A statute is unconstitutionally vague if the statute either (1) "fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited" or (2) "lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." *Gallegos v. State*, 123 Nev. 289, 293, 163 P.3d 456, 458 (2007). Vagueness on either basis will invalidate a statute. *State v. Castaneda*, 126 Nev. 478, 482 n.1, 245 P.3d 550, 553 n.1 (2010). In reviewing a criminal statute, we examine whether "vagueness so permeates the text that the statute cannot meet these requirements in most applications." *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 513, 217 P.3d 546, 554 (2009). Accordingly, "this standard provides for the possibility that some applications of the law would not be void, but the statute would still be invalid if void in most circumstances." *Id.*

Ordinary meaning in context and trade usage provides sufficient clarity

The terms challenged here may be ascertained with sufficient specificity by consulting their ordinary meanings in context. "[W]here the Legislature does not define each term it uses in a statute, the statute will not be deemed unconstitutional if the term has a well-settled and ordinarily understood meaning." *Collins v. State*, 125 Nev. 60, 63, 203 P.3d 90, 92 (2009). "When a word has more than one plain and ordinary meaning, the context and structure inform which of those meanings applies," *Lofthouse v. State*, 136 Nev. 378, 380, 467 P.3d 609, 611 (2020), and we interpret statutes "in light of the policy and spirit of the law," *Flamingo Paradise*, 125 Nev. at 509, 217 P.3d at 551. "[V]agueness analysis does *not* treat statutory text as a closed universe." *Castaneda*, 126 Nev. at 483, 245 P.3d at 553. As a result, "[e]nough clarity to defeat a vagueness challenge may be supplied by judicial gloss on an otherwise uncertain statute." *Id.* (internal quotation marks omitted).

Where a statute targets a group engaging with a specifically regulated subject, resources specific to that subject may provide additional guidance. *See Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 501 & n.18 (1982) (consulting and finding accord between ordinary and specialized dictionaries in examining vagueness of an ordinance regulating drug paraphernalia from the perspective of a "business person of ordinary intelligence" and concluding that "roach clip" was a "technical term [that] has sufficiently clear meaning in the drug paraphernalia industry"); *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391-92 (1926) (recognizing that statutes generally have been upheld "as sufficiently certain" when "they employed words or phrases having a technical or other special meaning, well enough known to enable those within their reach to correctly apply them").[2] In such instances, trade reference materials such as specialized dictionaries and industry association publications may be consulted to ascertain a term's meaning. *See Flipside*, 455 U.S. at 501 n.18; *United States v. Elias*, 269 F.3d 1003, 1015 (9th Cir. 2001) (considering a definition from a chemical manufacturer trade association, among others, in concluding that a regulation of a particular type of chemical waste was not vague).

As vagueness analyses do not treat a statute as a closed universe, at the outset let us consider what the criminal statutes at issue aim to cover. It is common knowledge that firearms are heavily regulated objects, and existing law provides notice that the mere possession of firearms that do not comply with the applicable regulations constitutes a crime. *See* 26 U.S.C. § 5861 (enumerating prohibited acts involving firearms). The statutes here only regulate conduct involving an object that is intended to ultimately become a firearm. *See* NRS 202.253(9); NRS 202.3625; NRS 202.363. They prohibit acts involving such not-yet-complete firearms that have not been imprinted with a serial number. NRS 202.3625(1)(b); NRS 202.363(1). But the object must be intended to become a firearm. Should it become so and lack an imprinted serial number so as to fall within the scope of the criminal sanctions here, existing law already subjects the possessor of such a firearm to criminal liability. 26 U.S.C. § 5842(b) (requiring a serial number), § 5861(i) (providing that receipt or possession of firearm lacking a serial number is a crime). Further, the act of converting the uncompleted firearm into a firearm is also a crime unless one complies with federal restrictions as to the manufacture of a firearm. 26 U.S.C. § 5861(f) (criminalizing acts "to make a firearm in violation of the provisions of this chapter"). In recognizing that statutes need not provide mathematical precision and that "the practical necessities of discharging the

[2]And though we do not deal here with statutes solely regulating a particular industry, where parties practice within a regulated industry, trade usage has particular salience. For instance, parties who "were knowledgeable in the wastewater field" were charged with being able to understand Environmental Protection Agency regulations restricting the discharge of effluent into navigable water. *United States v. Weitzenhoff*, 35 F.3d 1275, 1286-87, 1289 (9th Cir. 1993). Similarly, technical language in the Commodity Futures Trading Act regulating commodity options was not unconstitutionally vague where members of the regulated group held specialized expertise and thoroughly knew what was prohibited, *Precious Metals Assocs., Inc. v. CFTC*, 620 F.2d 900, 907-08 (1st Cir. 1980), just as "fish trap" is not vague most critically because it has a definite meaning within the fishing industry, *Se. Fisheries Ass'n v. Dep't of Nat. Res.*, 453 So. 2d 1351, 1354 (Fla. 1984) (concluding as well that an ordinary person may grasp the meaning of the term), and "tidal marshlands" is not vague when considering the commercial knowledge of a company that dredges sand and gravel, *Potomac Sand & Gravel Co. v. Governor*, 293 A.2d 241, 252 (Md. 1972). *See also Silverwing Dev. v. Nev. State Contractors Bd.*, 136 Nev. 642, 645-46, 476 P.3d 461, 464-65 (2020) (recognizing authorities giving terms in a statute their trade meaning when the common meaning does not apply).

business of government inevitably limit the specificity with which legislators can spell out prohibitions," the United States Supreme Court has explained that it is not "unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line." *Boyce Motor Lines v. United States*, 342 U.S. 337, 340 (1952). Here, one cannot dance up to the line of criminality and then plead ignorance of terms commonly known in the regulated subject.

An "unfinished frame or receiver"

With that in mind, we return to the text. To recall, NRS 202.253(9) defines an "unfinished frame or receiver" as

> a blank, a casting or a machined body that is intended to be turned into the frame or lower receiver of a firearm with additional machining and which has been formed or machined to the point at which most of the major machining operations have been completed to turn the blank, casting or machined body into a frame or lower receiver of a firearm even if the fire-control cavity area of the blank, casting or machined body is still completely solid and unmachined.

The district court had three bases for declaring NRS 202.3625 and NRS 202.363 unconstitutionally vague: (1) NRS 202.253(9) does not specifically define blank, casting, machined body, frame or lower receiver, major machining operations, and fire-control cavity area; (2) the definition does not make clear precisely when a raw material becomes a prohibited unfinished frame or receiver; and (3) NRS 202.3625 and NRS 202.363 lack a scienter requirement. We conclude, however, that the meanings of the terms contested here are readily ascertainable, and their meanings resolve the district court's second and third reservations.

A "blank," a "casting," or a "machined body"

Dictionary definitions supply meaning to each of the terms of the first component of NRS 202.253(9) based on the context of statutes aiming to regulate firearm components designed to be firearms with additional manufacturing. A "blank" is "a roughly cut metal . . . block intended for further shaping or finishing." *Blank*, *The New Oxford Dictionary of English* (3d ed. 2010). A "casting" is "an object made by shaping molten metal or other material in a mould." *Casting*, *The New Oxford Dictionary of English*. And a "machined body" is "a material object" that has been "ma[d]e or operate[d] on with a machine." *Body*, *Machine*, *The New Oxford Dictionary of English*. Industry definitions accord and similarly encompass a generic object. *See, e.g.*, *Casting*, *Glossary of the Association of Firearm & Tool Mark Examiners* (6th ed. 2021) (defining "casting" as "the process of pouring a liquid or suspension into a mold to produce an object of desired shape"); *Glossary*, *Sporting Arms and Ammunition Manufacturers' Institute*, https://saami.org/saami-glossary/?letter=C (last visited Feb. 28, 2024) (defining "casting" as "[t]he act of forming an object, such as a bullet, by pouring molten material into a mold"). Moreover, the terms "blank," "casting," and "machined body" are used in describing firearm components in guidance provided for these specific products. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), *Are "80%" or "unfinished" receivers illegal?*, https://www.atf.gov/firearms/qa/are-"80"-or-"unfinished"-receivers-illegal (last visited Feb. 28, 2024) ("ATF has long held that items such as receiver *blanks*, '*castings*' or '*machined bodies*' in which the fire-control cavity area is completely solid and un-machined have not reached the 'stage of manufacture' which would result in the classification of a firearm according to the GCA." (emphasis added)). And Polymer80's counsel's letters to the ATF use "blank," "casting," and "machined" in reference to its own products, showing that these terms are commonly understood.

That the terms "blank," "casting," and "machined body" are generic and broad does not render them vague; rather, it requires interpreting them in context with the modifying clause, namely that they are "intended to be turned into the frame or lower receiver of a firearm." *Cf. Blackburn v. State*, 129 Nev. 92, 97, 294 P.3d 422, 426 (2013) ("A statute cannot be dissected into individual words, each one being thrown onto the anvil of dialectics to be hammered into a meaning which has no association with the words from which it has violently been separated." (internal quotation marks omitted)). The definition of an "unfinished frame or receiver" thus encompasses a wide range of materials *intended to ultimately be firearms* where other elements are also met, as we will revisit in discussing the mens rea the State must show.

The "frame or lower receiver of a firearm"

We next turn to the meaning of "frame or lower receiver of a firearm." These terms likewise may be understood by their ordinary meanings, which accord with and are given greater specificity by the firearms industry. A "frame" is "the basic unit of a handgun which serves as a mounting for the barrel and operating parts of the arm." *Frame*, *Webster's Third New International Dictionary* (2002); *see also Frame*, *Glossary of the Association of Firearm & Tool Mark Examiners* (defining "frame" as "[i]n revolvers, pistols, and break-open guns, the basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and grips are attached"). And a "receiver" is "the metal frame in which the action of a firearm is fitted and to which the breech end of the barrel is attached" or "the main body of the lock in a breech mechanism." *Receiver*, *Webster's Third New International Dictionary*. Industry groups also accord with these ordinary meanings and tend to describe the frame and receiver in relation to each other. *See Receiver*, *Glossary of the Association of Firearm & Tool Mark Examiners* (defining "Receiver" as "the basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled. In revolvers, pistols, and break-open guns, it is called the Frame"); *Receiver*, *Glossary*, *Sporting Arms and Ammunition Manufacturers' Institute*, https://saami.org/saami-glossary/?letter=R (last visited Feb. 28, 2024) (same). This understanding aligns with a definition that Polymer80's own counsel used and described as "ordinary nomenclature" in a letter to the ATF. Indeed, even the district court judge remarked at a temporary-restraining-order hearing that "frame or lower receiver" were not vague but were instead "common terms in relation to firearms." As such, we conclude that this language is not vague.

"Most of the major machining operations"

The next component of NRS 202.253(9) requires the State to show that "most of the major machining operations have been completed." Here too, dictionaries provide critical notice. "[M]ost" in this context means "the majority of"; that is, more than 50 percent. *Most*, *The New Oxford Dictionary of English*. And "major machining operations" designates "greater or more important" "mak[ing] or operat[ing] on with a machine" in the process of "functioning or being active." *Machine*, *Major*, *Operations*, *The New Oxford Dictionary of English*. Insofar as "greater or more important" manufacturing lacks definiteness, we distinguish major operations from minor operations and interpret this term contextually to mean that "major" operations are those that pertain to the ultimate functioning of the object as a firearm—as distinct from "minor" operations that may be merely decorative or otherwise incidental to the object's operation as a firearm. *See Castaneda*, 126 Nev. at 483, 245 P.3d at 553 (recognizing that a judicial gloss on an uncertain term may cure vagueness). And while the district court singled out both "machining" and "major machining operations" as lacking clarity, we construe them in the same sense and conclude that "machining" means "mak[ing] or operat[ing] on with a machine." *See In re Nev. State Eng'r Ruling No. 5823*, 128 Nev. 232, 240, 277 P.3d 449, 454 (2012) (recognizing that "[t]he same words used twice in the same [statute] are presumed to have the same meaning" (quoting 2A Norman J. Singer & Shambie Singer, *Statutes and Statutory Construction* § 46:6 (7th ed. rev. 2014))).

Whether a given operation constitutes a major machining operation should be determined by a district court based on the facts of each case. *See Palakiko v. Harper*, 209 F.2d 75, 102 & n.37 (9th Cir. 1953) (concluding that whether the cruelty or atrocity there at issue was "extreme" was not vague but a matter of degree and recognizing that it presented a question for resolution by the factfinder). In the context of a facial challenge, we are ill-situated to determine as a factual matter whether the work performed on a blank, casting, or machined body would constitute a major machining operation. Doing so may involve assessing the condition of the object, the degree of its completion, the types of processes that have been performed to manipulate the object, and other factual circumstances. That the statutes have not provided granular precision in this regard does not render them facially vague, and courts will be able to determine whether a given object falls within their scope in the ordinary course of factfinding. *See Castaneda*, 126 Nev. at 482, 245 P.3d at 553 ("[M]athematical precision is not possible in drafting statutory language." (internal quotation marks omitted)).

The district court here declared the statutes unconstitutional in part because "[t]he definition [of unfinished frame or receiver] does not tell anyone when during the manufacturing process a blank, casting, or machined body . . . has gone through the 'major machining operations' (whatever those are) to turn that blank, casting, or machined body into a frame or lower receiver." This conclusion neglected to closely engage with the text of the statutes, particularly in light of the presumption that a statute is constitutional. That the meaning of the terms at issue appeared obscure to the district court when presented with hypotheticals does not render them vague. Rather, it highlights the difficulty of analyzing vagueness when considering a facial challenge to the statutory definition of an object, and we conclude that Polymer80 has not shown vagueness in this regard. *See Silvar v. Eighth Jud. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006) ("The challenger bears the burden of showing that a statute is unconstitutional."); *cf. State v. Peters*, 534 So. 2d 760, 767 n.12 (Fla. Dist. Ct. App. 1988) ("Most vagueness challenges concern laws which define conduct, not objects.").

"Fire-control cavity area"

And lastly we clarify the meaning of "fire-control cavity area." This term refers to "an empty space within a solid object" "allocated for a specific use," which is to "regulate (a mechanical . . . process)," namely, to "discharge a gun or other weapon in order to propel (a bullet or other projectile)." *Area*, *Cavity*, *Control*, *Fire*, *The New Oxford Dictionary of English*. NRS 202.253(9) provides that an object may still constitute an unfinished frame or receiver even if the fire-control cavity area is still solid or unmachined. Notably, this forecloses a defense but does not present an element that a potential prosecution must show. We conclude that ordinary meanings of "fire-control cavity area" provide sufficient guidance to interpret this terminology in context.

In sum, the meaning of the terms used in NRS 202.253(9) are readily ascertainable through their ordinary usage and understandings common to the heavily regulated subject of firearms. A district court will be well situated to determine whether a particular object constitutes an unfinished frame or receiver in the course of performing its customary functions. On its own terms, the language of NRS 202.253(9) provides sufficient notice, and vagueness does not permeate its text.[3]

A defendant must know that the object is intended to be turned into a firearm to be subject to potential criminal liability under NRS 202.3625 or NRS 202.363

Sisolak argues that the district court erred in concluding that express scienter language was required. The district court concluded that the offenses set forth in NRS 202.3625 and NRS 202.363 lack a scienter requirement because the definition of an "unfinished frame or receiver" in NRS 202.253(9) is silent as to scienter. The court stated that "the object itself cannot transfer specific intent to the possessor of the item." In this, we conclude that the district court erred.

Nevada law requires each crime to involve the union of act and intent. NRS 193.190. Though the statutes in question do not state mens rea requirements, it does not necessarily follow that they exclude such elements, as "mere omission from a criminal enactment of any mention of criminal intent should not be read as dispensing with it." *Elonis v. United States*, 575 U.S. 723, 734 (2015) (internal quotation marks omitted). Notwithstanding certain exceptions, a "guilty mind" is necessary to establish that a crime was committed, and courts generally construe "criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them." *Id.* (internal quotation marks omitted).

While the definition of an "unfinished frame or receiver" refers to an object *intended* to be turned into a frame or lower receiver

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[3]Polymer80's invocation of *Gallegos* does not compel a different outcome. *Gallegos* held a statute using, without defining, "fugitive from justice" to be unconstitutionally vague. 123 Nev. 289, 291, 163 P.3d 456, 457 (2007). Unlike here, *Gallegos* concluded that the challenged term lacked an ordinary meaning and was subject to multiple definitions that significantly differed. *Id.* at 295, 163 P.3d at 460. Nor is Polymer80's argument that the statute is infirm for failing to define "finished frame or receiver" persuasive. Not only is "finished" not used in the statutes, but the term may be readily understood by the broader regulatory context—a finished frame or receiver would be a completed frame or receiver, that is, one subject to the GCA. *See* 18 U.S.C. § 921(a)(3) (defining "firearm").

of a firearm, that definition does not state a crime. Instead, NRS 202.3625 and NRS 202.363 set forth the conduct that is criminalized here. NRS 202.3625 generally bars the sale, offer to sell, or transfer of an unfinished frame or receiver, and NRS 202.363 generally bars the possession, purchase, transport, or receipt of the same. While the Legislature did not designate the necessary mental state, the statutes do not indicate that it intended to require either strict liability or specific intent. Accordingly, we conclude that NRS 202.3625 and NRS 202.363 are general intent statutes. *See Busefink v. State*, 128 Nev. 525, 535-36, 286 P.3d 599, 606-07 (2012) (construing criminal statute as requiring general intent where it omitted mention of mental state and provided adequate notice of what was prohibited); *Jenkins v. State*, 110 Nev. 865, 870-71, 877 P.2d 1063, 1066-67 (1994) (concluding that statute criminalizing statutory sexual seduction that omitted a mental-state term was a general intent crime); *Glegola v. State*, 110 Nev. 344, 346-47, 871 P.2d 950, 952 (1994) (concluding that the Legislature intended for two criminal statutes that did not mention mental state to create general intent offenses where it omitted any language indicating that specific intent was required).

Where a criminal statute includes an element that an object be intended for use in a particular way, the prosecution must show that a defendant knew of the characteristics bringing the object within the scope of the statute. For example, the United States Supreme Court has construed the phrase "intended for use" to "refer[ ] to a product's likely use rather than to the defendant's state of mind" and noted that the phrase should "be understood objectively and refers generally to an item's likely use." *Posters 'N' Things, Ltd. v. United States*, 511 U.S. 513, 519, 521 (1994) (construing a statute criminalizing the sale of drug paraphernalia); *see also id.* at 522 (remarking that Congress's omission of language stating that the product was "knowingly" intended to be so used did not establish a legislative intent to eliminate the scienter requirement). And thus, to be convicted of selling drug paraphernalia, a defendant must know the proscribed characteristic of the paraphernalia, that is, that the objects would likely be used with illegal drugs. *Id.* at 524. Similarly, the Court has held that a conviction for mailing obscene materials required the prosecution to show that a defendant knew the characteristics of the contents of a mailed package—but not that they were obscene as a matter of law. *Hamling v. United States*, 418 U.S. 87, 119-21 (1974). More analogously, the Court overturned a conviction for criminal possession of an unregistered machinegun where the State showed that the defendant knowingly possessed the firearm but failed to show that the defendant knew that the firearm was capable of firing automatically so as to constitute a machinegun. *Staples v. United States*, 511 U.S. 600, 611-12, 620 (1994).

Applying these principles here bolsters our conclusion that the challenged statutes are not unconstitutionally vague due to the lack of an express scienter requirement. In prosecuting an offense pursuant to NRS 202.3625 or NRS 202.363, the State must show that the defendant willfully sold, offered to sell, transferred, possessed, purchased, transported, or received an unfinished frame or receiver and that the defendant knew that the object at issue had the objective characteristics of being intended to be turned into a firearm. Our discussion of specific factual characteristics showing the knowledge element is limited, given that the district court here conducted a facial rather than as-applied vagueness analysis. Accordingly, it did not enter findings as to specific characteristics of any challenged object. It is not our role to speculate about what facts future cases may present, and it suffices here to recognize that, once again, this knowledge element will require a factual determination in the district court and the statutes are not unconstitutionally vague on this basis.

The statutes do not pose a risk of arbitrary enforcement

Sisolak argues that the challenged statutes provide sufficient guidance to alleviate any risk of arbitrary enforcement. Polymer80 counters that the statutes lack meaningful standards and encourage discriminatory enforcement. We agree with Sisolak.

A statute is impermissibly vague if it would "allow the police, prosecutors, and juries to 'pursue their personal predilections.'" *Silvar*, 122 Nev. at 293, 129 P.3d at 685 (quoting *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)). We conclude that the definition of NRS 202.253(9) provides sufficient notice of what is prohibited and the conduct proscribed in NRS 202.3625 and NRS 202.363 is sufficiently definite that these statutes do not present a risk of arbitrary enforcement. Whatever discretion they leave is no greater than any other criminal statute.

The district court erred in granting summary judgment

In light of our determination that NRS 202.253(9) is not unconstitutionally vague, we conclude that the district court erred in granting declaratory relief and abused its discretion issuing a permanent injunction enjoining the enforcement of NRS 202.3625 and NRS 202.363. *See Sowers v. Forest Hills Subdiv.*, 129 Nev. 99, 108, 294 P.3d 427, 433 (2013) (reviewing the district court's decision to issue a permanent injunction for abuse of discretion but reviewing purely legal issues de novo).

CONCLUSION

The district court erred in declaring that the definition of "unfinished frame or receiver" in NRS 202.253(9) is unconstitutionally vague and in enjoining the enforcement of NRS 202.3625 and NRS 202.363. Given that the definition employs terms ascertainable by their ordinary meanings and that align with trade and industry usage, we conclude it is not vague. Further, we conclude the statutes are general intent statutes and are sufficiently definite that they do not risk arbitrary or discriminatory enforcement. Accordingly, summary judgment in favor of Polymer80 on the basis of vagueness was not warranted. Given the foregoing, we reverse.

Cadish, C.J., and Pickering, Herndon, Lee, Parraguirre, and Bell, JJ., concur.