

THE DI LORETO COMPANIES

January 25, 2023

Trina Magoon
Director of Utility Services
City of Reno

Reno City Council
c/o Office of City Clerk
1 E. First Street
Reno, Nevada 89501

RE: Business Impact Statement Response – Stormwater Utility Ordinance (RMC Sec. 12.17)

Reno City Council and Staff:

This letter is written on behalf of Nevada Tri Partners (NTP); DD-1, LLC; DDLP, LLC; Veterans Parkway Land Holdings, LLC; Di Loreto Homes of Nevada; Terreno Development LLC; Damonte Ranch Commerce Center, LLC; Liberty Dogs, LLC; Nevada Pacific Development Corporation; Terreno Homeowners Association; Damonte Ranch Trade Center Maintenance Association; Damonte Ranch Landscape Maintenance Association; and the Damonte Ranch Drainage District (DRDD) in response to the City of Reno's proposed ordinance to create a stormwater utility. While we generally support the City's desire to improve stormwater management, **the owners in Damonte Ranch should not have to pay twice for a problem the County and City already addressed in Damonte Ranch.**

Executive Summary

When it comes to stormwater mitigation, the Damonte Ranch PUD is unique. Over thirty years ago, Nevada Tri Partners, working in cooperation with Washoe County, the Army Corps of Engineers, and NDEP developed a comprehensive regional system for stormwater detention, flood control, and wetland enhancement and preservation as identified in the Southeast Truckee Meadows Wetlands Corridor Plan, the Southeast Truckee Meadows Flood Control Master Plan, US Army Corps wetland Mitigation Plan, and related documents. Unlike any other development in the City of Reno, Nevada Tri Partners, as master developer: i) expended over \$10 million to construct regional flood control facilities, detention ponds, wetland mitigation areas, open channels, private culverts, private storm drain facilities and maintenance paths to manage stormwater throughout the Southeast Truckee Meadows watershed; ii) restored, enhanced and permanently dedicated 172 acres of wetlands and open channels to mitigate impervious development; iii) permanently dedicated 185 acre feet of water rights to maintain wetland hydrology and improve water quality; iv) established the Damonte Ranch Drainage District under NRS Chapter 116 to assess fees against properties in Damonte Ranch and manage and operate in perpetuity the comprehensive

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regional stormwater discharge system in compliance with prescribed, ongoing operational criteria. All of this was mandated by local, state and federal government agencies in conformance with flood control master plans and regulatory requirements as a condition of development.

The result is stormwater discharges in Damonte Ranch are already addressed through a comprehensive, privately funded, government mandated regional drainage system, none of which impacts, contributes to or flows into the City of Reno's system. Most notably, all property owners within the Damonte Ranch PUD (as well as some outside the PUD¹) are required to pay assessments to the Damonte Ranch Drainage District in perpetuity (currently \$12.50/month for single family; up to \$50/month/acre for commercial) to fund the operation and management of these regional stormwater and flood control facilities. **Making owners in Damonte Ranch pay for mitigation of stormwater discharges they neither cause nor contribute to would result in an inequitable and unfair burden on business and residential owners, essentially making owners pay twice for a benefit they already receive from the existing government-mandated, privately funded regional stormwater infrastructure they fund.** Nor are these concerns adequately addressed by the City's proposed "credit policy", which, while well intentioned, does not go far enough nor is it clear enough in its parameters to provide the appropriate relief for Damonte Ranch property owners.

For all of these reasons, we ask that the ordinance and "credit policy" be revised to clearly exempt Damonte Ranch properties from assessments in the new utility.

Background

A background on the development history and stormwater mitigations imposed on the Damonte Ranch PUD is set forth below.

In 1992, NTP proposed a master planned development of the 2,000 acre Damonte Ranch. One of the first steps taken by NTP was to retain Nimbus Engineering and Huffman & Associates to develop a comprehensive wetland preservation, enhancement and mitigation plan with the intention of creating storm water drainage and floodway facilities, open space and wildlife corridors and wetland mitigation areas to facilitate development of the project. Working in conjunction with Washoe County public works, the mitigation plan proposed restoring the surface and subsurface hydrology, replacing any lost wetland functions, restoring and relocating portions of White's Creek and establishing an environmental corridor along White's Creek and Steamboat Creek. Based on these studies and additional coordination and input from Washoe County, NDEP and the US Army Corps

¹ Properties in Caramella Ranch Estates and a limited number of homes in Double Diamond Ranch are encumbered by covenants on title requiring them to pay assessments to the DRDD.

of Engineers, and in accordance with USACE approved 404 Permits and Wetland Mitigation Plans, NTP dedicated and set aside over 172 acres within Damonte Ranch for the express purpose of providing wetland, flood control and stormwater mitigation functions in perpetuity.

NTP's proactive stormwater planning efforts were relied upon and incorporated by Washoe County into various zoning plans developed to manage and mitigate stormwater discharge in the southeast Truckee Meadows, including: i) adoption of the Southeast Truckee Meadows Wetland Corridor Plan as part Washoe County's master plan in early 1993; ii) adoption of the Southeast Truckee Meadows Specific Plan on November 9, 1993, which served as the basis for master planning and stormwater discharge in the Southeast Truckee Meadows and development of Damonte Ranch; iii) completing a study of stormwater management in Damonte Ranch in November 1995, which identified the need for regional detention basins and flood control facilities in the Southeast Truckee Meadows Specific Plan Area ("SETMSPA") as a condition of development in the SETMSPA; and iv) adoption of the Southeast Truckee Meadows Flood Control Master Plan in 1995.

In furtherance of NTP's 404 Permits, Wetland Mitigation Plan, and Washoe County's regional stormwater planning requirements, in April 1998 NTP and Washoe County entered a Development Agreement in accordance with NRS 278.0201 which established zoning and development entitlements for the Damonte Ranch master planned community. Relevant to stormwater, Washoe County noted that NTP's proposals for maintenance and operation of the wetlands (including a Master Flood Control Maintenance Agreement and development of a maintenance association) were critical to approval of the agreement, and that the agreement "included proper maintenance associations and districts to care for required infrastructure and flood control." Notably, the County approval expressly included "the addition of new language concerning the adequacy of fee assessments to sustain the maintenance of the flood control facilities" in perpetuity. *See BCC Minutes of approval, April 2, 1998.* The Development Agreement was codified on April 14, 1998 through the adoption of Ordinance No. 1012.

Under the Development Agreement, Washoe County required NTP to construct regional detention basins and related flood control facilities more particularly described in the 1995 Southeast Truckee Meadows Flood Control Master Plan. These facilities benefitted not only the Damonte Ranch PUD, they provided regional stormwater management benefits for the Southeast Truckee Meadows watershed. In accordance with the Development Agreement and the Southeast Truckee Meadows Flood Control Master Plan, NTP set aside all required land and constructed the regional flood control and detention basin facilities at a cost to NTP of approximately \$10 million (excluding land and water rights values).

In furtherance of this comprehensive stormwater mitigation planning, on January 13, 1998, Washoe County adopted a drainage facility impact fee ordinance (Washoe County Ordinance No. 1003) establishing an impact fee in the SETMSPA pursuant to NRS 278B "to assure that new development in the SETMSPA contributes its proportionate share of the cost of providing, and benefits from such provision of, required area drainage related facilities". By definition, the imposition of an impact fee under NRS 278B could only occur if the purpose of the fee was to mitigate stormwater and drainage impacts necessitated by the development of the land assessed. To the best of our knowledge, Damonte Ranch is the only PUD in the City of Reno upon which an impact fee for drainage facilities has been assessed. As such, Damonte Ranch owners have already been assessed for the cost of regional storm and flood control facilities whose sole purpose is to fully mitigate stormwater discharges within and adjacent to Damonte Ranch.

The Development Agreement required not only the construction of these regional drainage facilities, it also required the creation of the Damonte Ranch Drainage District (DRDD) to "care for required infrastructure and flood control" facilities in perpetuity. Thus, in addition to paying the NRS 278B impact fee, the Development Agreement further required all benefitted properties pay "fee assessments to sustain the maintenance of the flood control facilities" and that all property within Damonte Ranch be encumbered by CC&R's which among other things: i) expressly state the property "shall be subject to periodic assessments or charges ("DRDD Assessments") . . . for a share of the expenses of maintenance and repair of the Drainage Facilities"; ii) recognize that the regional Drainage Facilities are beneficial to the development of the land and "shall or are intended to comprise a connected system extending throughout the Project"; iii) require all owners to comply with certain project wetlands provisions; iv) reserve easements for the DRDD for drainage of surface waters; and v) provide a covenant that each Owner, by acceptance of a deed to its property, is conclusively deemed to covenant and agree to pay DRDD Assessments for maintenance of the DRDD facilities in perpetuity. In accordance with the Development Agreement, NTP recorded the Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Damonte Ranch on February 14, 2003 (See Doc. No. 2906863) which included these covenants. NTP subsequently formed the Damonte Ranch Drainage District as limited purpose association which assumed responsibility for the ongoing operation and maintenance costs of the regional drainage facilities and continues to operate and maintain such drainage facilities to this day².

In 2002, various properties within the SETMSPA were annexed into and/or included within the sphere of influence of the City of Reno. On December 10, 2002, the Final

² On August 18, 2005, Nevada Tri Partners recorded the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Damonte Ranch Trade Center East as Document No. 3263015, Official Records Washoe County, subjecting commercial portions of the Project to DRDD assessments.

Development Agreement was amended to substitute the City of Reno for Washoe County. *See Doc. No. 3188093, recorded March 25, 2005*, and the City of Reno adopted Resolution No. 6098 pursuant to which Reno agreed to administer future impact fees assessed against new development in the SETMSPA under the County Ordinance. At that time, the City indicated a desire to assume control of and take over the operations of the DRDD in the future, but to date such has not occurred. As a result, DRDD operations continue to be privately funded by property owners in Damonte Ranch.

On January 19, 2011, Reno and Washoe County entered a Cooperative Agreement for Transfer and Administration of Drainage Facility Impact Fee Ordinance in the Southeast Truckee Meadows, pursuant to which the County transferred and the City assumed the administration of the impact fee ordinance, including obligations to administer the future imposition, calculation, collection and disbursement of impact fees to NTP. Since 2011, the City has imposed and collected the impact fee from all development in the SETMSPA, and the City continues to assess and collect drainage impact fees to this day.

In October 2012, the City of Reno approved amendments to the Design Standards Handbook for the Damonte Ranch PUD. The PUD Handbook expressly recognizes that it is to be used in conjunction with the Southeast Truckee Meadows Flood Control Master Plan, the City of Reno Public Works Design Manual, and City Development Code; provided, however, that if any conflict exists between any of those documents the PUD Handbook controls. The PUD Handbook delineates the wetlands and flood control facilities as undevelopable open space.

Beginning in 2007, various operation and maintenance manuals were prepared in accordance with the Mitigation Plan and County and federal regulatory requirements which establish the criteria for ongoing management and operation of the DRDD facilities. These operational manuals, which are updated and revised from time to time by authorized reviewers, include the following: i) the Stormwater Facilities Operation and Maintenance Plan, which prescribes operational criteria "to ensure the public and private stormwater facilities are regularly maintained and inspected as prescribed by the Truckee Meadows Structural Controls Design and Low Impact Development Manual and the Truckee Meadows National Pollutant Discharge Elimination Systems (NPDES) Municipal Separate Storm Sewer System (MS4) Stormwater Permit No. NVS00001."; ii) the "Operation and Maintenance Manual for Waters of the United States/Wetlands at Damonte Ranch, Nevada Tri Partners Permit #199400866", which defines operational requirements to maintain compliance with federal 404 Permits; and iii) the "Emergency Action Plan – Damonte Ranch Flood Control Structures" which further govern operations. These operations manuals, along with other elements of the overarching regulatory framework, provide accountability and ensure the

DRDD continues to operate and maintain the drainage facilities in the manner required to achieve their intended benefits.

Discussion and Analysis

Unlike any other area within the City of Reno, the Damonte Ranch PUD has fully mitigated storm water discharge issues arising from its development through the construction of millions of dollars of stormwater discharge and flood control facilities, and through the creation and perpetual funding of the Damonte Ranch Drainage District which is responsible in perpetuity for operating and maintaining these stormwater facilities in compliance with government-mandated requirements, US Army Corps permits, and operation manual requirements. All homeowners in Damonte Ranch are currently assessed \$12.50/month, multi-family properties are assessed \$12.50/month for every 4 units, and commercial owners in Damonte Ranch are assessed \$50/acre/month, to fund the operations and maintenance of the DRDD stormwater facilities. These payment obligations have existed since 2003 and will continue in perpetuity, subject to increases as necessary to meet expense obligations. All property within Damonte Ranch is further encumbered by restrictions in the CC&R's which require all owners to comply with any activities pertaining to compliance with project wetland provisions and requirements of 404 Permits issued to create the flood control channels.

We fully appreciate and agree with the City's desire to stand up a stormwater utility. However, for all the reasons stated above owners in Damonte Ranch should be exempt from such assessments. Damonte Ranch is unique. The City's proposal to implement a stormwater utility fee on a community that has already completely mitigated its stormwater discharge and which is already required to pay a stormwater mitigation fee is unreasonable and essentially serves as double taxation. It is inequitable and unfair to penalize Damonte Ranch owners for proactively solving stormwater discharge issues decades ago and make them pay twice as much as any other property owner in the City. All stormwater discharges originating in Damonte Ranch flow into and are fully detained and managed by the DRDD stormwater discharge facilities, which then flow into Steamboat Creek and the Truckee River (not the City's utility system) and which cause no upstream, on-site or downstream impacts. In fact, the DRDD facilities confer regional benefits by providing critical flood control retention and detention, benefitting both the City and neighboring developments at no cost to either. In short, not only does Damonte Ranch not contribute to the City's stormwater management burden, the benefits its regional facilities provide actually reduce the City's burden by enhancing water quality and reducing/mitigating offsite stormwater impacts.³

³As a legal matter, courts have traditionally identified three requirements for valid fees. First, the party being charged must benefit from the governmental service being funded or the regulatory program being implemented and the charge must stand in direct and substantial relationship to the reason for which the

The ordinance also improperly proposes to levy assessments against the flood control facilities and wetlands areas operated by the Damonte Ranch Drainage District. While the proposed fee credit *policy* may provide some potential partial relief for the DRDD, the availability of such relief is discretionary and not being part of the ordinance itself creates uncertainty as to whether or how it will be implemented.

With respect to the proposed “credit policy” referenced in Sec. 12.17.240⁴, the intent is good but as drafted does not fully address the unique conditions at Damonte Ranch. First, the policy credit is only available to non-single family residences. As stated, all properties within the Damonte Ranch PUD, regardless of use, pay into and benefit from the comprehensive regional stormwater system operated by the Damonte Ranch Drainage District and should be eligible for credits. Second, the credit in Section 2.1.1 is capped at 30%. Even a 70% assessment on properties within the Damonte Ranch PUD would be inequitable. This is especially true of the wetlands and flood control facilities owned by NTP and managed by the DRDD, which should be 100% exempt from any fee. Third, the credit under Section 2.1.2 is only available to homeowner associations or drainage districts. All properties within the Damonte Ranch PUD, including those privately owned (such as NTP which owns many of the wetlands and flood control channels) should be eligible for the 100% credit since the Damonte Ranch facilities they fund clearly qualify as a community stormwater system. Fourth, the credit under Section 2.1.3 does not appear available to all properties within Damonte Ranch and appears limited to new facilities constructed after adoption of the ordinance. All properties in Damonte Ranch should be eligible for this 100% credit since their development and funding of the private DRDD system “alleviates the City’s cost of providing regional stormwater management” within the Damonte Ranch development. Fifth, the credits under 2.1.1 and 2.1.2 are only available for existing developments if they meet current development and maintenance standards, which can change over time. Damonte Ranch was required to construct its regional system in compliance with County and federal design and development standards, which it cannot change. The DRDD is also required to meet operational and management standards established under its Operations Manuals, the US Army Corps Mitigation Plan and federal 404 permits. It cannot, nor should it, be subject to new and varying operational standards which may conflict with its PUD Handbook and current regulatory requirements. See NRS 278B.570 (after approval of a PUD, “zoning and subdivision regulations otherwise applicable

charge is assessed. Second, utility fees must be voluntary – consumers are electing service. And third, the charges must correspond to the cost of the governmental activity being funded and be commensurate with the benefit received or with the impact being offset. *See, e.g., Blaser v. East Bay Township*, 617 N.W.2d 742, 744 (Mich. Ct. App. 2000) (finding that undeveloped wetlands that would not benefit from a sewer system could not be assessed to fund it).

⁴ Sec. 12.17.240 provides that the City “may provide credits” to non-single family properties as set forth in a separate “Stormwater Utility Fee Credit Policy Manual”.

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to the land included in the plan cease to apply”); NRS 278.0201 (once a development agreement is entered, only the ordinances and regulations in effect at the time of the agreement apply to the land). Sixth, all credits are discretionary, not mandatory. Given the unique circumstances, the policy should be clear that so long as the DRDD is operating in conformance with its operations manuals, owners in Damonte Ranch automatically qualify for a 100% credit. Finally, putting the credit in a “policy” rather than the ordinance itself raises a number of legal issues with enforcement. Will modifying the policy require an amendment to the ordinance? What process is required to enforce or modify it? The mechanism for interpretation and enforcement creates a number of uncertainties, and it seems any credit would be better addressed through clear language in the ordinance itself.

Conclusion

Damonte Ranch is unique. For all the reasons stated above, we respectfully request properties benefitting from the Damonte Ranch Drainage District be exempt from the new stormwater utility. This is fair and equitable, and appropriately recognizes the perpetual government-mandated stormwater discharge operations and maintenance obligations already imposed on these owners which, in themselves, eliminate any need for intervention from a new utility. To achieve this end, we request the proposed ordinance be revised as follows:

Sec. 12.17.010 Definitions: Add the following new definition:

Damonte Ranch Drainage Mitigation Area means i) all real property located within the Damonte Ranch Planned Unit Development and ii) all real property located outside the Damonte Ranch Planned Unit Development which is otherwise subject to assessments by the Damonte Ranch Drainage District.

Sec. 12.17.120 Jurisdiction (Service Area). Add the following new paragraph to subsection (b):

(b) The following property shall be exempt:

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(7) all real property located within the Damonte Ranch Drainage Mitigation Area.

Alternatively, we request the “credit policy” in Section 2.1.2 be revised to provide that all property owners within the Damonte Ranch Mitigation Area are eligible for and entitled to receive a 100% credit so long as the DRDD operates and maintains its stormwater facilities and wetlands in accordance with applicable operations manual.

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We appreciate your consideration of this request and welcome the opportunity to work with the City to equitably address the unique circumstances in Damonte Ranch.

Sincerely,



Michael A. T. Pagni
Exec. Vice President/General Counsel