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City of Reno
One East 1st Street
Reno, NV 89501

Re: Webb Data Center Appeal (LDC25-00014)

Dear Mayor Schieve and members of the City Council,

Ellis Partners, the applicant in the above captioned matter, supports the Planning Commission's December 18, 2024, approval of a conditional use permit authorizing development of a data center project near the intersection of North Virginia Street and Stead Boulevard on APNs 082-101-13, 14, and 19 (LDC25-00014, the "Project"). On January 3, 2025, that approval was appealed to the City Council by the Sierra Club, which did not participate in, or provide comment on, the nearly five hours of hearings – across two meetings – required by the Planning Commission to decide the issue. In fact, no public opposition to this project was made to the Planning Commission. The Sierra Club's appeal is based on an untimely challenge to a near year old administrative interpretation, abstract policy concerns with the city's zoning code, and unfounded complaints concerning Nevada's Open Meeting Law which cannot be adjudicated by the City Council. The Sierra Club has not contested the sufficiency of the evidence in the record supporting approval of the Project and the appeal should be dismissed.

The Appeal of Administrative Interpretation ADM24-00020 is Time-barred

Appeals of determinations made by the Administrator¹ concerning new or unlisted uses are taken in the same manner as other land use appeals to the City Council. RMC 18.03.205(d); RMC 18.08.502(b). Such appeals must be filed within ten business days of the underlying decision. RMC 18.08.307(j)(1)(b)(1). Administrative Interpretation ADM24-00020, identifying data centers as a distinct use in the Reno Development Code, is dated January 25, 2024 – any challenge to the decision had to have been made by February 8, 2024.

The Nevada Supreme Court has repeatedly held that administrative appellate deadlines "establish[] a jurisdictional bar to further review." *Williams v. United Parcel Servs.*, 129 Nev. 386, 390, 302 P.3d 1144, 1146 (2013); *see also Dickinson v. Am. Med. Response*, 124 Nev. 460, 466, 186 P.3d 878, 882 (2008) (recognizing administrative appellate timeframes as "jurisdictional and mandatory and that, subject to narrow exceptions[,],... the failure to timely

¹ The "Administrator" is the "City of Reno Director of Community Development, or their authorized designee..." RMC 18.09, Article 4.

file an administrative appeal operates as a final decision on the matter, which cannot be relitigated”) and City of Reno Notice of Appeal Form (“Untimely appeals will be rejected by the City Clerk, and any appeal fees paid will be refunded”). Having missed the period in which to challenge the sufficiency of the administrative interpretation by nearly 11 months, the Sierra Club’s appeal of Administrative Interpretation ADM24-00020 is barred by the passage of time and should not be considered by the City Council.

The Appeal is Moot and Does Not State a Claim on Which Effective Relief May Be Granted

Because the city’s zoning code “clean up” had not yet been adopted on December 18, 2024, the Sierra Club urges the City Council to remand LDC25-00014 for reconsideration by the Planning Commission under an ordinance “that caters to [data centers’] unique impacts” instead of the then-existing zoning standards by which the Project was evaluated. But now that the zoning code has been formally amended by the City Council to include data centers as a specifically identified use, data centers are allowed in the *exact* same zoning districts as earlier prescribed by administrative interpretation, and through the lens of the *exact* same findings attached to the *exact* same discretionary review process required for the *exact* same reason. None of the zoning standards governing development of a data center in Reno changed at all with the City Council’s recent amendment of the city’s development code, so the Sierra Club’s appeal of the Project based evolving zoning requirements is moot.

Mootness is a question of justiciability; the role of any entity hearing an appeal is to “resolve actual controversies by an enforceable judgment.” *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). A controversy must be present through all stages of a proceeding, *see Arizonans for Official English v. Arizona*, 520 U.S. 43, 67, 117 S. Ct. 1055, 137 L.Ed. 2d 170 (1997), and even though a case may present a live controversy at its beginning, subsequent events may render the case moot. *University Sys. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004); *Wedekind v. Bell*, 26 Nev. 395, 413-15, 69 P. 612, 613-14 (1902). Where the presiding body cannot render effective relief, appeals are typically dismissed. *Personhood Nev.*, 126 Nev. at 602, 245 P.3d at 574.

The Sierra Club argues the city’s zoning and development standards for data centers are insufficient because they do not explicitly address “the impact of data centers on public utilities.” The most-recently adopted amendments to the city’s zoning code were developed over a span of about 18 months and feedback from:

- meetings with every Neighborhood Advisory Board
- two meetings with the Historic Resource Commission
- seven meetings with the Technical Advisory Committee
- nine meetings with stakeholders
- innumerable meetings with trade and industry groups
- three meetings with the Planning Commission
- a meeting with the City Council

Once a comprehensive redline document was compiled, city staff took the proposed changes back to every Neighborhood Advisory Board and the Planning Commission before introducing

the measure to the City Council. On November 21, 2024, city staff explained to the Planning Commission that until data centers could be permanently memorialized in the city's zoning code, the use was governed by an administrative interpretation, and that while no data centers had yet been developed in the city, the use was allowed with an approved conditional use permit. November 21, 2024, Reno Planning Commission Meeting Video Recording at 2:53:00-2:55:17. Commissioner Villanueva expressed concern with the mix of zoning districts in which data centers would be allowed, but said her objection was for the future and suggested no change to the proposed zoning code amendment. *Id.* at 3:34:44-3:41:25. Commissioner Rohrmeier asked whether the conditional use permit process could prescribe unique findings for data centers because of their energy demands. *Id.* at 3:41:26-3:41:42. City staff explained that the issue of resource consumption was outside the boundaries of the city's zoning code. *Id.* at 3:41:43-3:42:32. The Planning Commission unanimously recommended approval of the proposed text amendment without change to the provisions related to data centers. *Id.* at 3:43:00-3:43:26. The Reno City Council adopted the zoning code amendment, without change to the standards governing development of data centers, on January 8, 2025 – five days after the Sierra Club filed the instant appeal.

This dispute must be resolved under the law as it was and is, not what the Sierra Club might prefer it be. In this case the law is unchanged - the administrative interpretation under which the Project was evaluated to the newly adopted zoning code prescribe the same standards for development of a data center - making the argument advanced by the Sierra Club moot. The relief requested by the Sierra Club is similarly ineffective, because any reevaluation of the Project would occur under the exact same standards as before without any evidence to support a different outcome. The Sierra Club makes no argument concerning the sufficiency of the findings made by the Planning Commission in approving the Project, only that the administrative interpretation and the zoning code inadequately regulate data centers. The request should be rejected by the City Council and the Planning Commission's approval of the Project should be affirmed.

The Reno City Attorney Cannot Violate the Open Meeting Law

The Sierra Club alleges conversations between counsel for Ellis Partners and the Reno City Attorney violate the Open Meeting Law (NRS Chapter 241). This is not a serious argument. Nevada's Open Meeting Law is not intended to prohibit every private discussion of a public issue – it “only prohibits collective deliberations or actions where a quorum [of the public body] is present.” *Dewey v. Redevelopment Agency of Reno*, 119 Nev. 87, 94-65, 64 P.3d 1070, 1075 (2003). The Reno City Attorney is not a member of the Planning Commission. *See* NRS 278.030-278.040 (requiring cities to adopt ordinance creating planning commissions and defining membership thereof); RMC 18.08.903(d) (prescribing method of composition of Reno Planning Commission). Because the City Attorney is not a member of the Planning Commission, he cannot “deliberate” or take “action” on matters before the Planning Commission. *See* NRS 241.015(1) and (3) (defining “action” and “deliberate” in the context of public meetings). Resultantly, the Reno City Attorney cannot violate the Open Meeting Law by having a conversation outside the earshot of the Planning Commission or the public during a public

meeting.² The Reno City Council has no jurisdiction over enforcement of the Open Meeting Law and the contention should be dispensed with as unsupported by law and beyond the authority of the City Council. *See* NRS 241.037.

The Approved Conditional Use Permit is Supported by Substantial Evidence

The grant or denial of a request for conditional use permit is a discretionary act. *See City of Las Vegas v. Laughlin*, 111 Nev. 557, 558, 893 P.2d 383, 384 (1995). When a discretionary act is supported by substantial evidence – that which “a reasonable mind might accept as adequate to support a conclusion” – a court will sustain the decision. *State, Emp. Security v. Hilton Hotels*, 102 Nev. 6060, 608, 729 P.2d 497, 498 (1986). The conditional use permit procedure provides a mechanism for the city to evaluate proposed uses of land that have unique or widely varying operating characteristics or unusual features to assure compatibility with surrounding areas by mitigating anticipated impacts. RMC 18.08.605(a). The zoning code requires six findings to support granting a conditional use permit. RMC 18.08.605(e).

The proposed location of the use is in accordance with the objectives of the zoning code and the purpose of the zoning district in which the site is located

The Project is located on three parcels designated Industrial by the city’s master plan inside a Mixed-Use Suburban zoning district. Data centers are a permitted use in Mixed-Use Suburban zoning districts (with a conditional use permit). *See* ADM24-00020; RMC 18.03.206. The Project is developing in exactly the location and way contemplated by the city’s Master Plan, which identifies a desire for Reno to evolve into a technology center, to “foster growth in high-tech and knowledge-based industries,” and promote the city as a destination for testing of new technologies (ReImagine Reno, 1.3B) whether by facilitating access to advanced telecommunications technologies (ReImagine Reno, 1.3E), assuring a business climate open to new technologies (ReImagine Reno, 1.4B), or building a more talented labor pool (ReImagine Reno, 1.5F). Data centers are the foundational infrastructure of a technology-based economy; these projects attract additional investment in the community by attracting tech companies needing close physical proximity to data facilities.

The proposed land use and project design is compatible with surrounding development

The Project is surrounded by existing industrial development and vacant land designated by the city for industrial development. The nearest residential properties are a pair of nonconforming mobile home parks approximately 500 feet from the Project. The Planning Commission imposed a pair of conditions limiting delivery and construction hours (Conditions of Approval 5 and 6) a condition related to operation and testing of emergency generators (Condition of Approval 7) and several conditions related to screening and site aesthetics to assure compatibility with the surrounding area (Conditions of Approval 8 and 9).

² Similarly, conversations with a single member of a public body cannot violate the Open Meeting Law, absent substantial evidence that the conversations were part of a broader scheme of serial communications to a constructive quorum of the public body. *See Attorney General v. Board of Regents*, 114 Nev. 388, 400, 956 P.2d 770, 778 (1998).

The proposed land use and project design is compatible with applicable development standards

Because the Project is being developed in a vestigial Mixed-Use Suburban zoning district, the landscaping requirements are more stringent than they would otherwise be in a conforming zoning district – the Project exceeds those standards and creatively staggers live elements to help screen the building. The Planning Commission considered architectural standards in the municipal code related to building height, façade articulation, ground floor transparency, building lighting, and determined the Project satisfied all applicable development standards as designed.

Public services and facilities area available to serve the project, or will be provided with development

Concurrency is the principle that the public facilities and services necessary to support a proposed development shall be available, or shall be made available, concurrent with the impacts of the development. The Project does not employ evaporative cooling, and so does not require the amount of water resources often associated with data centers. The dearth of agency comments regarding public safety, schools, traffic, and solid waste indicates that the Project will not impact the delivery of those services in the area. Instead, the Planning Commission’s focus fell on the ability of NV Energy to provide power to the Project while maintaining adequate service to existing users in the area – a well-intentioned inquiry that goes far beyond the conditional use permit process.

In Nevada, most concurrency planning is evaluated through the lens of the legislatively prescribed regional and master planning processes. NRS 278.0274 defines the statutory requirements of a regional plan – including provisions for “public facilities and services,” which relate to “sanitary sewer facilities, solid waste, flood control, potable water and groundwater aquifer recharge which are correlated with principles and guidelines for future land uses, *and which specify ways to satisfy the requirements created by those future uses.*” NRS 278.0274(5) (emphasis added); *see also* 2019 Regional Plan, PF 1 (identifying public facility and service standards to be used in evaluating master plan amendments and projects of regional significance). The boundaries of this scope of services and facilities is similarly adopted by Reno’s own master plan, and for good reason: the city directly oversees the operation of these services (whether in its own name as a municipal corporation, through Northern Nevada Public Health, the Truckee Meadows Flood Management Authority, or the Truckee Meadows Water Authority) and therefore has actual authority over the capital improvement programs and funding that governs delivery and future expansion of those services and facilities. Because municipalities have no such control over the timely development of power generation and transmission infrastructure, analysis concerning physical capacities of the existing grid is not included in the 2019 Regional Plan, the 2024 Public Infrastructure Plan, the 2024 Natural Resources Plan, or the city’s Master Plan. Instead, these documents impose standards for development of power infrastructure to assure compatibility with the built environment and anticipated future uses. *See* NRS 278.26503 (requiring adoption of a local planning and zoning process by which utility projects will be evaluated), 2019 Regional Plan, PF 11-14, ReImagine Reno, 2.4G-H (explaining new electrical transmission infrastructure should generally be

constructed in existing regional transmission corridors), and RMC 18.03.305(b) (prescribing use standards for utility development). Neither electric nor natural gas service are included in the public services and facilities contemplated by the statute for inclusion in those planning documents, which means they are necessarily excluded from the same categorical status.

Moreover, Chapter 27 of the International Building Code requires proof of adequate electrical supply for an intended use as part of a building permit application, providing a “fail safe” for the concerns expressed by the Planning Commission.³ Nevertheless, Ellis Partners, in partnership with NV Energy, has committed considerable financial resources to the development of a new substation and related transmission infrastructure needed to serve the Project. This utility project is already underway: in 2023 the Reno Planning Commission, City Council, and Truckee Meadows Regional Planning Commission approved development of a 120kV substation for the express purpose of providing load relief to the Silver Lake and Valley Road substations and increasing electrical reliability for the North Valleys while mitigating capacity concerns based on projected growth by creating additional capacity for yet unbuilt development loads. *See* Staff Report, Agenda Item B.25, Reno City Council Meeting, April 12, 2023. On condition of completion of the substation, NV Energy has agreed to provide power to the Project. *See* NVE Conditional Will Serve Letter. No better evidence of concurrency will ever be available at this stage of the entitlement process.

The characteristics of the use as proposed and as may be conditioned are reasonably compatible with the types of use permitted in the surrounding area

The Project is located along a Suburban Corridor within the Industrial/Logistics Employment Area of the Reno Master Plan in the middle of a sea of planned Industrial land. The Industrial land use designation is intended to support industrial uses, including manufacturing/processing operations, maintenance and repair shops, and warehousing and distribution facilities. The Project is compatible with the types of uses already established, and that may be established, in the surrounding area.

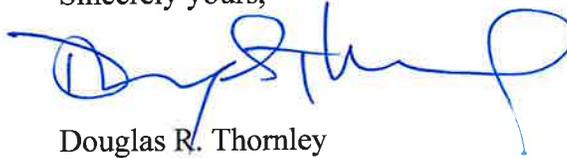
The granting of the conditional use permit will not be materially detrimental to the public health, safety, or welfare

The zoning code lists the considerations relevant to this finding: property damage or nuisance resulting from noise, smoke, odor, dust, vibration, or illumination, and any hazard to persons and property. RMC 18.08.605(e)(6). There is no evidence in the record even suggesting the Project will cause any of these detrimental impacts. To the contrary, Ellis Partners is committed to developing a forward-thinking, environmentally conscious project that far exceeds the city’s development standards, the many benefits of which will extend to the community at large, whether in the form of a more reliable power supply or considerable new general fund revenue that can be invested in services that improve quality of life.

³ Such absence of authority over the issue was confirmed to the City Council, as discussion related to data centers in the context of the city’s zoning code update. *See* December 11, 2024, Reno City Council Meeting at 6:22:30 – 6:24:25.

For all these reasons, the appeal of LDC25-00014 filed by the Sierra Club should be rejected and the Planning Commission's approval of the Project affirmed. Ellis Partners has gone above and beyond the city's development standards by designing a building that can support a photovoltaic system array (Conditions of Approval 11 and 12) including a pair of Level 2 electric vehicle chargers in the site design (Condition of Approval 13) utilizing low-flow domestic water fixtures (Condition of Approval 14) specifying low volatile organic compound materials (where available) for construction of the building shell (Condition of Approval 15) and requiring source separation and diversion of construction debris from the landfill whenever possible (Condition of Approval 16) – conditions Ellis Partners first proposed to the city that were then applied by the city to later-considered data center projects. The Project approval is supported by substantial evidence and should be affirmed.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Douglas R. Thornley". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

Douglas R. Thornley
Of Counsel
for Holland & Hart LLP