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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

STEVEN E. KROLL,
Plaintiff

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, aka IVGID, a governmental subdivision of the State of Nevada; JOHN A. BOHN; GENE BROCKMAN; BEA EPSTEIN, CHUCK WEINBERGER and ROBERT C. WOLF, individually and as Trustees of IVGID; DOES 1 through 25, inclusive, each in their individual and official capacities,
Defendants.
_____/

Case No. 3:08-CV-0166-ECR-RAM

REPLY MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COME NOW, Defendants, INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, JOHN A. BOHN, GENE BROCKMAN, BEA EPSTEIN, CHUCK WEINBERGER and ROBERT C. WOLF by and through their attorneys, Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and pursuant to FRCP 12(b)(1) and FRCP 12(b)(7), hereby file their reply in support of their Motion to Dismiss Plaintiff's Complaint for lack of subject matter jurisdiction under Article III of the United States Constitution and for failure to join a necessary party under FRCP 19.

INTRODUCTION

Defendants raised three basic issues concerning Plaintiff's ability to prosecute the instant action, including standing, ripeness, and failure to join a necessary party. These issues are not

novel, but instead fundamental.

While Plaintiff has made it abundantly clear that he would like to use the IVGID beaches at issue, he has not plead nor has he otherwise informed the Court that he has ever made an attempt to exercise his First Amendment rights at any of the IVGID beaches. While Plaintiff argues that the First Amendment is not the primary prong of his grievance, neither the Equal Protection Clause of the Fourteenth Amendment nor the Fifth Amendment provide a better theory of relief than the First Amendment.

Indeed, what Plaintiff's Complaint makes perfectly clear is that the owners of parcels of real property in IVGID on or before May 30, 1968 are treated differently than owners of parcels annexed to IVGID after May 30, 1968. Respectfully, there is no dissimilar treatment of similarly situated property owners in the instant matter. Instead, all of the owners of parcels of real property in IVGID as of May 30, 1968 are all treated similarly. Indeed, each of these owners was responsible for paying for the real property on which the IVGID beaches are located. Equally clear is that the same property owners have been responsible for paying for all of the improvements to the IVGID beaches. Nowhere does Plaintiff maintain otherwise either in his Complaint or in any documents he has provided to the Court.

Similarly, all of the owners of parcels of real property which were annexed to IVGID after May 30, 1968 have not been assessed for either the purchase of the property on which the IVGID beaches are located or any of the improvements to the IVGID beaches. Once again, Plaintiff's Complaint does not contend otherwise nor do any of the documents Plaintiff has provided to the Court contest this fact. This being so, there are no facts either plead or otherwise provided to the Court which allow this claim to proceed beyond on the instant Motion to Dismiss.

With respect to Plaintiff's "takings" claim which is based upon the Fifth Amendment, once again, Plaintiff has neither plead nor otherwise provided facts to the Court which can sustain such a claim. Plain and simply, nowhere does Plaintiff contend that his property at 550 Gonowabie Road in Crystal Bay, Nevada has in any way, shape or form been taken by IVGID. Without more, this claim cannot survive a Motion to Dismiss.

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Finally, Plaintiff acknowledges in his Complaint that the owners of real property in IVGID as of May 30, 1968 have an interest which may be affected by the Court's ruling on Plaintiff's claim for declaratory judgment. See, ¶ 85 of Plaintiff's Complaint. Further, Plaintiff acknowledges in his Certificate of Interested Parties (#6) filed with this Court that every owner of real property in Incline Village as of 1968 may have a direct or pecuniary interest in the outcome of this litigation. This being so, it is difficult to understand how this lawsuit can proceed without the joinder of all property owners who arguably hold rights under the restrictive covenant set forth in the deed at issue. Leaving these parties out of the lawsuit would leave IVGID vulnerable to multiple lawsuits in potentially numerous different forums.

LEGAL ANALYSIS

I. PLAINTIFF LACKS STANDING TO BRING THE INSTANT ACTION.

A. PLAINTIFF HAS NO STANDING TO ASSERT A FIRST AMENDMENT CLAIM IN THE INSTANT MATTER.

Federal jurisdiction is limited by Article III to actual cases and controversies. See, Alaska Right to Life v. Feldman, 504 F.3d 840 (9th Cir. 2007). Article III of the United States Constitution requires that the federal courts decide only cases or controversies. See, Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982). Accordingly, Article III requires the Plaintiff to show (1) that he has suffered an injury in fact that is concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) that the injury is fairly traceable to the challenged action of IVGID; and (3) that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Id.

In their Motion, Defendants argue that Plaintiff cannot demonstrate that he has suffered an injury in fact that is concrete and particularized and actual or imminent. In his opposition, nowhere does Plaintiff ever assert that he attempted to exercise his First Amendment rights on any of the IVGID beaches or after requesting to exercise his First Amendment rights on the IVGID beaches was denied the opportunity. Even though Plaintiff's Complaint makes no mention of any attempt to exercise his First Amendment rights on the IVGID beaches, Plaintiff

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did not offer his own affidavit to refute the Affidavit of Bill Horn. Without more, there simply is no case and controversy. Ordinance No. 7, §62 serves only to define those individuals permitted to take advantage of the recreational facilities of the IVGID beaches. It does not suggest that a person such as Plaintiff who is interested in accessing the properties to give a speech or otherwise exercise his First Amendment rights would be subject to prosecution or would even be denied permission to do so.[1]

In an apparent acknowledgment of the problems presented by Plaintiff having never attempted to access the IVGID beaches to exercise his First Amendment rights, Plaintiff offers the Affidavit of Ronald L. Code. Respectfully, the Affidavit of Ronald L. Code adds nothing to the instant matter. Initially, the Affidavit of Mr. Code provides no evidence that Plaintiff has sought to use the IVGID beaches to exercise his First Amendment rights. Further, the statement by Mr. Code that he was wearing a t-shirt which made a policy statement regarding Yucca Mountain, again adds little or nothing to the instant matter. Nowhere in his affidavit does Mr. Code indicate that he wanted to access the IVGID beaches for purposes of exercising his First Amendment rights. To accept Plaintiff's argument from the Affidavit of Mr. Code, one would have to believe the gate attendant at the IVGID beaches was capable of reading the mind of Mr. Code as to his intent and purpose in desiring to use the IVGID beaches. Further, the Affidavit of Mr. Code adds little to the instant matter in that IVGID has specifically adopted a policy which allows exercise of First Amendment rights on its properties, including the IVGID beaches. See Policy No. 136 attached here to as Exhibit E, a color copy of which will be manually filed with the Court.

Plaintiff next argues that if the Affidavit of Mr. Code is insufficient, certainly the new First Amendment policy adopted by IVGID on April 30, 2008 gives him standing. Once again, Procedure No. 136 provides no better avenue of standing than the allegations of his Complaint.

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[1] On March 30, 2008, the IVGID Board of Trustees adopted Policy No. 136, a true and correct copy of which is attached hereto as Exhibit E. This policy clearly puts to rest the issue of whether Plaintiff has the ability to access the IVGID beaches for purposes of exercising his First Amendment rights.

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Once again, Plaintiff has offered no evidence in either his Complaint or by way of affidavit that he has attempted to access the beaches to exercise his First Amendment rights at any time and certainly not since the adoption of Procedure No. 136.[2]

In an attempt to create standing where it otherwise does not exist, Plaintiff argues that Policy No. 136 is overbroad, and accordingly, an exception from the general standing has occurred. Respectfully, at the time that Plaintiff filed his lawsuit, Procedure No. 136 had not even been adopted by the IVGID Board of Trustees.

Secondly, Plaintiff argues that the ordinance is overbroad in that it vests overly broad discretion in a decision matter referenced in the policy. Respectfully, the Board of Trustees is the entity which adopted Policy No. 136 and nowhere in Policy No. 136 is there a delegation of any discretion to the IVGID General Manager or anyone else to change the provisions of the policy. Accordingly, Plaintiff's attempt to inject IVGID's General Manager as a decision-maker who is vested with overly broad discretion under the policy must fail as a matter of law.[3]

Policy No. 136 will be addressed more in depth in response to Plaintiff's Motion to Enjoin the Enforcement of Policy No. 136. However, for purposes of the instant motion, it is sufficient to note that Policy No. 136 involves no prior restraint. People can choose to exercise their First Amendment rights when they choose by simply going to the IVGID beaches. Secondly, Policy No. 136 in no way, shape or form regulates the content of speech, but instead includes reasonable time, place, and manner restrictions. Accordingly, once again, Policy No. 136 does not solve the standing problem exhibited through Plaintiff's Complaint in the instant matter.

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[2] As noted in Defendants' Motion, requiring an individual to make a request to a governing agency prior to holding a rally, giving a speech, or otherwise utilizing public property for First Amendment purposes is wholly permissible. See, Forsyth County v. Nationalist Movement, 505 U.S. 123, 130 (1992).

[3] Also, Plaintiff's attachment of an alleged newspaper article, which at times appears to quote Bill Horn, General Manager of IVGID, should be rejected by this Court as hearsay. Plain and simply, Policy No. 136 was adopted by the IVGID Board of Trustees and it is this Board and no one else who has the ability to amend this policy.

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B. PLAINTIFF HAS NO STANDING TO ASSERT A FIFTH AMENDMENT CLAIM IN THE INSTANT MATTER.

Plaintiff asserts a "takings" claim in the instant matter. From Defendants' initial reading of Plaintiff's Complaint, it appeared Plaintiff's "takings" claim was based upon his being assessed taxes for both the purchase price as well as costs of improvement to the IVGID beaches. Apparently, Plaintiff is not making such an argument in the instant matter.

Instead, Plaintiff appears to argue that his property in Crystal Bay is being used to secure the repayment of the 1999 public bond without his permission. See, ¶75 of Plaintiff's First Amended Complaint. Initially, it is important to note that Plaintiff has not been required to pay any sum toward repayment of the 1999 public bond which was used to improve the IVGID beaches. See, Affidavit of Ramona Cruz, attached to Defendants' Opposition to Plaintiff's Motion to Strike her affidavit (#15). Plaintiff has not argued otherwise or offered any evidence to indicate he has paid even a penny of the indebtedness of the1999 public bond which was used to make improvements to the IVGID beaches. Further, there is a procedure set forth in NRS 350.020(3) wherein a registered voter of IVGID is authorized to protest the issuance of said public bond within 90 days after publication of a resolution of intent to issue the bond. No such protest occurred in the instant matter. See, Affidavit of Ramona Cruz, attached hereto as Exhibit F.

Finally, but not least importantly, Plaintiff simply has not plead that a "takings" has occurred in the instant matter. Generally, a taking occurs where government requires an owner to suffer a permanent physical invasion of his property or where regulations completely deprive an owner of all economic beneficial use of their property. See, Lingle v. Chevron USA, 544 U.S. 528, 537-38 (2005). In the instant matter, Plaintiff has not plead that he has suffered a physical invasion of his property. Id. at 538. Secondly, Plaintiff has not plead nor has he proven that he has been deprived of "all economically beneficial use" of his property. Id. Without more, Plaintiff's "takings" claim must fail as a matter of law.[4]

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[4] Even if Plaintiff had been required to pay taxes to retire the indebtedness of a public bond used to improve the IVGID beaches, regulatory actions requiring the payment of money

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This being so, Plaintiff has no standing to assert a Fifth Amendment claim against Defendants in the instant matter and his claim fails to state a claim upon which relief may be granted.

C. PLAINTIFF'S CLAIMS PREMISED UPON THE FIRST AMENDMENT AND FIFTH AMENDMENT ARE NOT RIPE FOR REVIEW.

As set forth in Arguments I.A. and I.B., supra, Plaintiff's claims asserted under the First Amendment and Fifth Amendment are not ripe for review. As noted in Defendants' motion, ripeness is a question of timing designed to "prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." See, Thomas v. Anchorage Equal Rights Comm'n., 220 F.3d 1134, 1138 (9th Cir. 2000). The United States Supreme Court has stated that the ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction. Id.

With respect to the constitutional issue of ripeness, it is often treated under the rubric of standing. Id. Whether the question is viewed in terms of standing or ripeness, however, the Constitution mandates that prior to the court's exercise of jurisdiction, there appear a case or controversy and that the issues presented are definite and concrete, not hypothetical or abstract. Id. at 1139.

For the reasons set forth in Arguments I.A. and I.B., supra, it is respectfully submitted that Plaintiff has not been denied any opportunity to exercise his First Amendment rights at the IVGID beaches nor has he requested use of the beaches to exercise said rights. Also, as set forth in Arguments I.A. and I.B., supra, Plaintiff failed to protest the issuance of the 1999 public bond at issue, and accordingly, he has no standing to challenge the bond at this time. Further, as a matter of law, there has been no "takings" of Plaintiff's property to date, and accordingly, this issue is not ripe for review.

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have long been held not to be "takings." See United States Shoe Corporation v. United States, 296 F.3d 1378, 1383 (D.C. Cir. 2002).

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II. PLAINTIFF'S COMPLAINT PREMISED UPON VIOLATION OF HIS EQUAL PROTECTION RIGHTS FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

In order to state a claim for violation of one's Equal Protection rights under the Fourteenth Amendment, it is fundamental that a party bringing such a claim must demonstrate that he is a member of a class and was treated dissimilarly from other members of the class. As the United States Supreme Court has held, the Fourteenth Amendment of the United States Constitution commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike." See, City of Cleburne, Texas v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985).

In the instant matter, while Plaintiff has argued that he was treated dissimilarly from the members of a class of persons of which he is not a member, such is insufficient to sustain a claim premised upon the Equal Protection Clause.

As this Court is aware, at the time IVGID took ownership of the IVGID beach properties, they took ownership subject to a covenant which limited the use of those properties to people who owned parcels of real property in IVGID as it was constituted in June, 1968. These property owners have been assessed taxes for the payment of the purchase price for the IVGID beach property as well as improvements to the IVGID beaches. Contrarily, individuals of parcels of real property annexed to IVGID after June, 1968 have not been assessed taxes for either the purchase price or the improvements to the IVGID beaches. This being so, to the extent Plaintiff's complaint asserts a claim for violation of his Equal Protection rights under the Fourteenth Amendment, it fails to state a claim upon which relief can be granted in that Plaintiff fails to plead that he is a member of a class of persons and as a member has been treated dissimilarly.

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III. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO JOIN NECESSARY PARTIES UNDER FRCP 19 AND FRCP 12(b)(7).

Federal Rule of Civil Procedure 19 governs compulsory party joinder in federal courts. FRCP 19(a) provides as follows:

> (a) **Persons Required to Be Joined if Feasible.**
>
> **(A) Required Party.** A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

This rule prescribes the joinder of persons needed for the just adjudication of a particular case. See, Kettle Range Conservation Group v. United States, 150 F.3d 1083, 1086 (9th Cir. 1998). Whenever possible, all interested parties should be joined in a declaratory judgment action in order to avoid piecemeal litigation of the matters in controversy and a declaratory judgment should not be entered unless it disposes of the controversy, thus serving a useful and practical purpose. See, Delno v. Market Street Railroad Co., 124 F.2d 965 (9th Cir. 1942). "Rule 19(a) is concerned with consummate rather than partial or hollow relief as to those already parties, and with precluding multiple lawsuits on the same cause of action." See, EEOC v. Peabody Western Coal Co., 400 F.3d 774, 780 (9th Cir. 2005).

The Ninth Circuit Court of Appeals has set forth a three-part test to be used in addressing the question of the possible dismissal of an action for the failure to join necessary parties under FRCP 19. See, EEOC v. Peabody Western Coal Co., supra. at 779. First, the court must determine whether a non-party should be joined as a "necessary" party under the elements set forth in FRCP 19(a). A person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction shall be joined if, (1) in the person's absence,

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complete relief cannot be accorded among those already parties to the lawsuit or (2) the person claims an interest relating to the subject matter and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the person already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest. See, United States v. Bowne, 172 F.3d 682, 688 (9th Cir. 1999) and FRCP 19(a).

In this case, it is clear that there are necessary persons who are not parties to this case whose rights would be impaired or impeded should this Court issue any injunctive or declaratory relief sought by Plaintiff prohibiting IVGID from enforcing the restrictive covenant in the 1968 deed or invalidating Ordinance 7 which is based on the restrictive covenant.[5] At this time, there are 8,215 properties located within IVGID's boundaries. Of that number, 7,785 are within the 1968 boundaries of IVGID, thereby permitting them to use the beach properties, while 430 parcels were annexed after 1968 and do not. Plaintiff has acknowledged in both his amended complaint and elsewhere that the owners of real property in IVGID as of May 30, 1968 have an interest which may be affected by the Court's ruling on Plaintiff's claim for a declaratory judgment. See, ¶85 of Plaintiff's first amended complaint. Also importantly, Plaintiff acknowledges in his Certificate of Interested Parties (#6) filed with this Court that every owner of real property in Incline Village as of 1968 may have a direct or pecuniary interest in this litigation.

The joinder of these interested property owners clearly would not deprive this Court of subject matter jurisdiction, as the same is premised, in part, upon 28 U.S.C. §1331 (federal question) and all of the property owners are subject to service of process.

The deed at the very center of this case expressly provides that the restrictive covenant set forth therein is for the benefit of those property owners situated within the 1968 boundaries of

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[5]In Plaintiff's opposition, he argues that in his amended complaint, he is not challenging the constitutionality of the restrictive covenant at issue. However, in his amended complaint, Plaintiff argues that the restrictive covenant at issue is unconstitutional and void on its face. See, §20 and 27 of Plaintiff's amended complaint.

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IVGID, expressly provides those owners with the right to enforce the restrictive covenant and expressly reserves an easement for the benefit of those property owners. See, Exhibit "C," to Defendant's Motion to Dismiss, Deed. If this Court finds in favor of Plaintiff and grants him the declaratory relief sought, the practical result of such a victory would threaten the legal rights of the owners of the properties within the 1968 boundaries of IVGID which are expressly recognized in the restrictive covenant set forth in the deed.

In Kettle Range Conservation Group v. United States, supra, the Ninth Circuit Court of Appeals affirmed the decision of the district court that it was without authority to grant injunctive relief without the joinder of certain private parties that were found to be indispensable. In that case, the plaintiffs (two environmental/conservation groups) sought the court's intervention in the exchange of 44 parcels (roughly 4,500 acres) of public forest land to private parties for 8 parcels (roughly 25,000 acres) of private, shrub-steppe land. Id. at 1085. The private parties were made up of timber companies seeking ownership of the land for commercial harvest of the trees located thereon. Id. The plaintiffs sued the Bureau of Land Management alleging that it had violated the National Environmental Policy Act in connection with the exchange. Id. at 1084. By the time the case reached the district court for decision, over 90% of the public lands had already been transferred to the private commercial timber companies. Id.

One of the remedies sought by the plaintiffs was the recission of the contract for the exchange of land between the BLM and the private timber companies. However, the private parties to whom the land had been transferred were not named as parties in the lawsuit. The district court concluded that it could not order the remedy sought, recission of the contract, because it would have had the effect of destroying legal entitlements to the land which had vested in the private parties. Id. at 1084-85. The Ninth Circuit affirmed and, in so doing, stated the following:

> "While we do not sanction the BLM's conduct during this transaction, we have found no precedent for destroying the legal entitlements of absent parties in order to vindicate public rights. Nor can we say that the district court abused its discretion in determining that equity might not be served by attempting to undo the completed portion of the transaction. . ."

Id.

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The Ninth Circuit Court of Appeals then went on to agree with the district court that it would have been improper to issue the declaratory relief sought, as such action would impair and impede the rights of the private parties who were not before the court in contravention of FRCP 19(a). Id. at 1086.

If Plaintiff were to prevail in the instant matter, the practical result would threaten the legal rights of the owners of properties within the 1968 boundaries of IVGID which are expressly set forth in the deed. As was true in Kettle Range, supra., any court action in which the restrictive covenant were held to be unconstitutional would impact the 1968 property owners who are not before the Court. As such, they are necessary parties within the meaning of FRCP 19.

There can be no question that the property owners who are not involved in this lawsuit (on both sides of the issue) are necessary parties whose rights might well be impaired or impeded should Plaintiff obtain the relief sought. As the Ninth Circuit noted in Kettle Range, supra., which was a case brought by those who sought to assert "public interests" in the form of environmental protection or concerns, it would have been improper for the court to order injunctive relief in the form of recission of a contract for the exchange of property entered into between the BLM and private timber companies where its decision would have the effect of destroying legal entitlements to the land which had vested in private parties not before the court. Id. at 1084-85. A decision by this Court granting injunctive relief and/or declaratory relief on the issue of the restrictive covenant in the deed in question or Ordinance No. 7 which is based on the restrictive covenant would similarly affect private property rights.

In addition, and as Plaintiff completely fails to acknowledge, if the instant lawsuit is allowed to proceed absent these necessary parties, IVGID would be left vulnerable to multiple lawsuits in potentially numerous different forums, as the restrictive covenant at issue contains language which expressly grants these property owners with rights to enforce their interests in same.

In the instant case, Plaintiff has wholly disregarded the mandate of FRCP 19 that the interests of absent parties be considered, as well as the interest of named parties in the lawsuit in

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avoiding multiple lawsuits and inconsistent judgments. There is no question in this case that the individuals who own properties which are subject to the restrictive covenant in the 1968 deed have a legally protected interest in the subject matter of the current case. In addition, failure to require joinder of these parties carries with it the real danger that IVGID would be subject to multiple litigation and inconsistent judgments. Given that all of these necessary parties are subject to the process of this court and their joinder would not destroy subject matter jurisdiction, said parties must be joined or Plaintiff's complaint dismissed in accordance with FRCP 19.

IV

CONCLUSION

Based upon all of the foregoing, IVGID respectfully requests that Plaintiff's complaint be dismissed pursuant to Article III of the United States Constitution, as Plaintiff lacks standing in this matter and because Plaintiff's case is not ripe for review. Further, Plaintiff's "takings claim" asserted under the Fifth Amendment claim fails to state a claim on which relief can be granted, as does Plaintiff's Equal Protection claim.

Lastly, dismissal is warranted by the fact that Plaintiff has failed to join as necessary parties, all those whose presence is required within the meaning of FRCP 19.

DATED this 30th day of May, 2008.

THORNDAL, ARMSTRONG,
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By: _____

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this date I caused the foregoing **Reply Memorandum of Points & Authorities in Support of Defendants' Motion to Dismiss** to be served on all parties to this action by:

__x__ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

__x__ U.S. District Court E-Filing (CM/ECF)

_____ personal delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

_____ Reno/Carson Messenger Service

fully addressed as follows:

Steven E. Kroll, Esq.
Post Office Box 8
Crystal Bay, NV 89402
krolllaw@mac.com

DATED this 30th day of May, 2008.

Employee of Thorndal, Armstrong

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EXHIBIT "E"

POLICY OF INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT CONCERNING ACCESS TO DISTRICT PROPERTY AND THE USE OF DISTRICT FACILITIES FOR EXPRESSION

PREAMBLE

The Incline Village General Improvement District (the "District") is a special purpose district existing under Chapter 318 of the Nevada Revised Statutes for the purposes of providing curbs, gutters, sidewalks, storm drainage, sewer disposal, water supply and recreational facilities

The District owns real property and facilities that it uses to fulfill its special purposes, and those uses by the District take precedence over any other activity or use.

The District recognizes that public expression, speech and assembly is a fundamental right. The District must, however, balance the exercise of that fundamental right with its significant interests to:

(a) satisfy its special purposes;

(b) assure orderly conduct;

(c) protect the rights of persons authorized to use District real property and facilities to the unique recreational experiences provided by the natural environment of such real property and facilities;

(d) protect and preserve the unique environment on which the various District properties and facilities reside;

(e) reasonably provide an opportunity for access to the District community for expression; and,

(f) reasonably protect persons entitled to use District real property and facilities from activities or practices which would make them involuntary audiences, or which are inappropriate to the purpose and enjoyment of a specific real property and facility.

Through this Policy, the District designates public forum areas within its real property and facilities, and encourages any individual or group to use such designated public forum areas for the exercise of expression, speech and assembly, in accordance with this Policy. The District will not further regulate such exercise except as consistent with applicable law. In order to preserve the peace, however, and to promote the significant interests of the District, including those listed above, the District may make reasonable, lawful rules and regulations with respect to the time, place and manner of any use of its real property and facilities for purposes of expression, speech and assembly

DESIGNATION OF PUBLIC FORUM AREAS

The District designates as public forum areas the following areas of the real properties and facilities listed on Exhibit 1 to this Policy: the parking lots, the walkways within and adjacent to the parking lots, and the sidewalks adjacent to any public entrance to any building open to the public, located on such listed real properties and facilities. A copy of this Policy and Exhibit 1, which Exhibit is made a part of this Policy, shall be available at each such real property and facility, and shall also be available at the District Administrative Office.

The designated public forum areas as described above for the real properties and facilities listed on Exhibit 1 are areas where all persons may exercise the activities of expression, speech and assembly, to the extent permitted by law and this Policy and any rules and regulations which the District may adopt. Such activities must be consistent with the maintenance and operation of District real properties and facilities, and must not interfere with the intended use of such

facilities, or with parking, the flow of vehicular traffic, and ingress to and egress from the property and all buildings and facilities. Such activities must not create an imminent health or safety hazard or result in a violation of the privacy or rights of others. The location and size of the designated public forum areas with respect to each real property and facility listed on Exhibit 1 reflects an appropriate balance of the significant interests of the District with the recognized right of expression, speech and assembly.

While it is the District's intention to assure use of the designated public forum areas as described in this Policy for each real property and facility listed on Exhibit 1 for the purpose of expression, speech and assembly, some of the real properties and facilities may have existing practical limitations. The District may make additional reasonable rules and regulations for the use of each real property and facility as it determines to be necessary

BOARD MEETING ROOM

The meeting room at the District Administrative Office in which the Board of Trustees of the District conducts its meetings is also available for expression, speech and assembly consistent with the conduct of the Board's business during such meetings and with the provisions of N.R.S. § 241.020(3).

NON-PUBLIC FORUM AREAS

The portions of the District real properties and facilities listed on Exhibit 1 and not designated in this Policy as a public forum area, and all other District real properties and facilities, including without limitation, the real properties and facilities described in Exhibit 2, where public access may be limited or restricted, are deemed to be and are designated as "non-public forum areas."

EXHIBIT 1

LOCATIONS AND MAPS OF PROPERTIES

WITH DESIGNATED PUBLIC FORUM AREAS

1. Administration Building
2. Recreation Center
3. Tennis Complex
4. Chateau
5. Diamond Peak
6. Preston Field
7. Mountain Golf Course
8. Burnt Cedar Beach
9. Incline Beach
10. Ski Beach
11. Aspen Grove—Village Green

EXHIBIT 2

NON-PUBLIC FORUM AREAS

1. Public Works Building
2. Water Treatment Plant
3. Wastewater Treatment Plant
4. Wetlands Effluent Disposal Facility
5. Sewer Pumping Station
6. Water Pumping Stations
7. Spooner Effluent Pumping Station
8. Water Storage Reservoirs and Tanks
9. Parks Storage Building
10. Overflow Parking Lot

Not to Scale

ANNE VORDERBRUGEN BUILDING
IVGID ADMINISTRATION
893 SOUTHWOOD BLVD.

EXHIBIT 1, MAP 1

Not to Scale

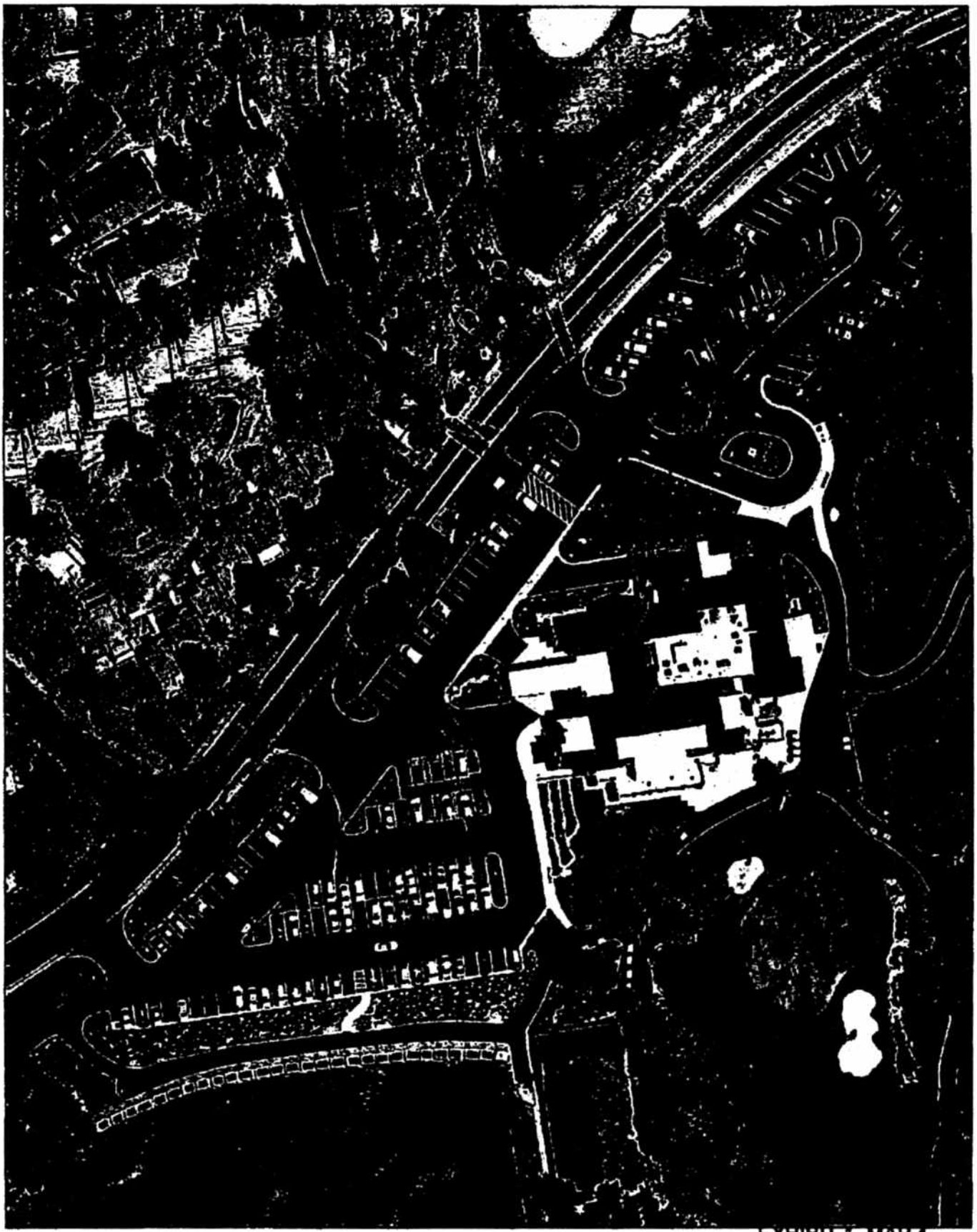
RECREATION CENTER
964 INCLINE WAY

EXHIBIT 1, MAP 2

EXHIBIT 1, MAP 3

Not to Scale

TENNIS COMPLEX
969 INCLINE WAY



Not to Scale

CHATEAU
955 FAIRWAY

EXHIBIT 1, MAP 4

Not to Scale

DIAMOND PEAK
1210 SKI WAY

EXHIBIT 1, MAP 5

Not to Scale

PRESTON FIELD
700 TAHOE BLVD.

EXHIBIT 1, MAP 6

Not to Scale

MOUNTAIN GOLF COURSE
687 WILSON WAY

EXHIBIT 1, MAP 7

EXHIBIT 1, MAP

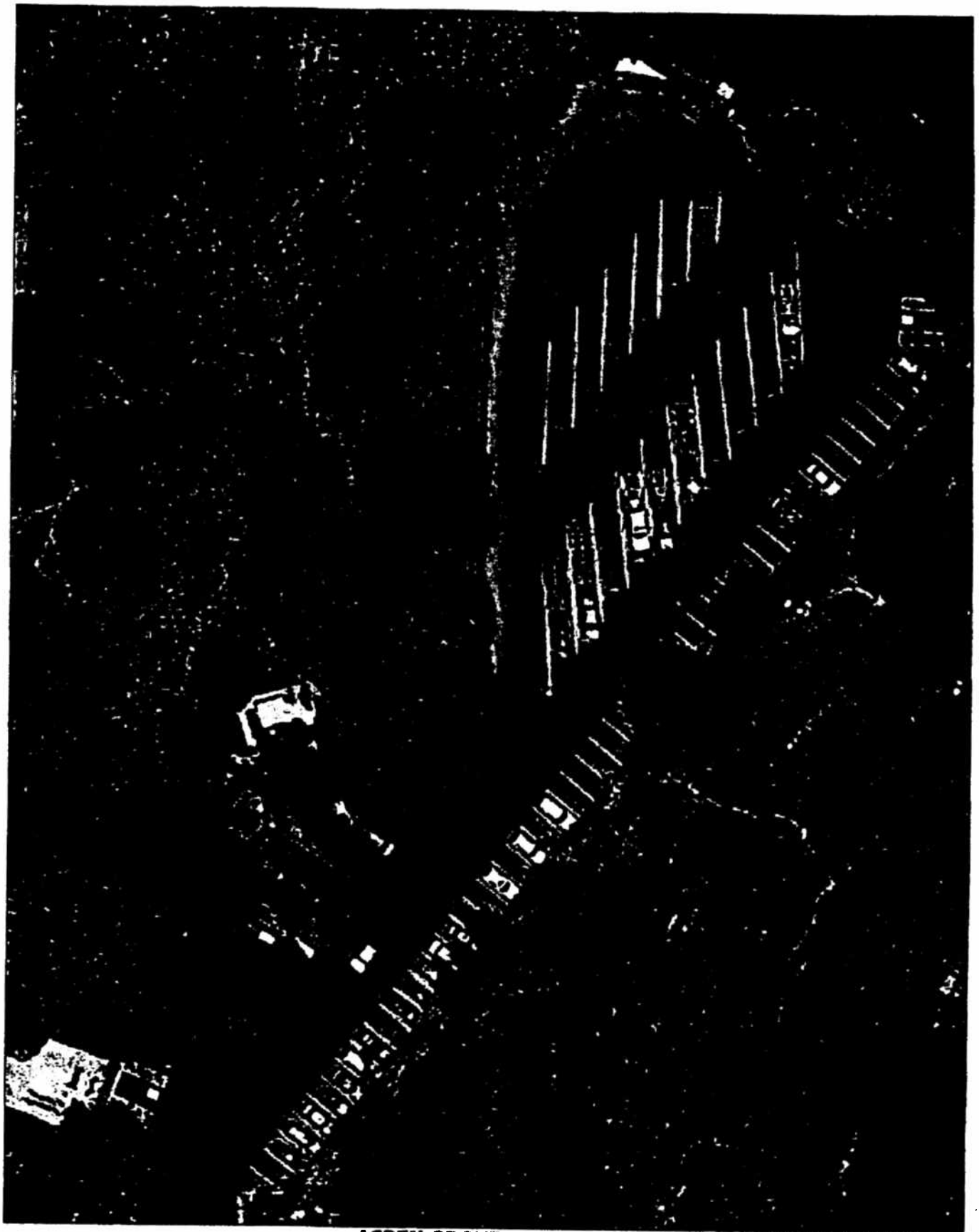
BURNT CEDAR BEACH
665 LAKESHORE BLVD.

Not to Scale

SKI BEACH
967 LAKESHORE BLVD.

Not to Scale

EXHIBIT 1, MAP 10



Not to Scale

ASPEN GROVE
960 LAKESHORE BLVD.

EXHIBIT 1, MAP 11

EXHIBIT "F"

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Attorneys for Defendants
Incline Village General Improvement District,
John A. Bohn, Gene Brockman, Bea Epstein,
Chuck Weinberger, and Robert C. Wolf

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

STEVEN E. KROLL,

Plaintiff

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, aka IVGID, a governmental subdivision of the State of Nevada; JOHN A. BOHN; GENE BROCKMAN; BEA EPSTEIN, CHUCK WEINBERGER and ROBERT C. WOLF, individually and as Trustees of IVGID; DOES 1 through 25, inclusive, each in their individual and official capacities,

Defendants.
_____/

Case No. 3:08-cv-00166-ECR-RAM

AFFIDAVIT OF RAMONA CRUZ

STATE OF NEVADA)
:ss
COUNTY OF WASHOE)

RAMONA CRUZ, being first duly sworn, deposes and says under penalty of perjury as follows:

1. I am over the age of eighteen (18) and I have personal knowledge of the information contained herein.

2. I have been employed by Incline Village General Improvement District (hereinafter IVGID) for approximately 15 years and am currently employed as the Director of Finance, Accounting, and Information Technology for IVGID.

3. On September 29, 1999, the IVGID Board of Trustees adopted Resolution No. 17-11 which authorized the issuance of general obligation recreational facilities improvement bonds

in the amount of $3,500,000.00. No registered voter of IVGID protested the issuance of said public bond after publication of the resolution of intent to issue the bond.

RAMONA CRUZ

SUBSCRIBED and SWORN to before before me this 30th day of May, 2008.

NOTARY PUBLIC

SUSAN A. HERRON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 98-2732-2 - Expires December 8, 2010

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