

City of Carson City  
Agenda Report

Item #8B

**Date Submitted:** November 28, 2006

**Agenda Date Requested:** December 7, 2006

**Time Requested:** 20 minutes

**To:** Mayor and Supervisors

**From:** Parks and Recreation Department

**Subject Title:** Action to approve a "Joint Use Parking Agreement" between the City of Carson City and Michael Pegram for a proposed parking lot to be constructed or funded by Mr. Pegram at the Carson City Fairgrounds at Fuji Park.

**Staff Summary:** As a condition of his donation of \$1,000,000 Mr. Pegram is asking for joint use of the proposed fairgrounds parking lot. The intent is that the parking lot will be shared and used equally by the fairgrounds and the casino. The attached parking agreement includes the following provisions:

1. The Developer will provide everything, including but not limited to, the design, engineering, demolition, purchase of materials, grading, paving, curbing, landscaping, and lighting associated with the construction of the new parking lot.
2. The City will own the parking lot.
3. The City and Casino Developer will share equally in the maintenance of the parking lot.
4. The Casino Developer will obtain all necessary permits and the City will assist to the greatest extent possible in their effort.
5. The City agrees to allow the Casino Developer to utilize the parking lot as overflow parking for an initial term of 40 years.
6. The Developer may request an extension of the agreement after the initial 40 year term for successive 10 year periods.
7. The Casino Developer agrees to indemnify the City for any expenses and damages resulting from any activities of the Casino or its invitees on or about the parking lot.
8. The City, Casino, and renters of the facility will not charge for parking.

**Type of Action Requested:** (check one)

Resolution

Ordinance

Formal Action/Motion

Other (Specify)

**Does This Action Require A Business Impact Statement:**  Yes  No

**Recommended Board Action:** I move to approve a "Joint Use Parking Agreement" between the City of Carson City and Michael Pegram for a proposed parking lot to be constructed or funded by Mr. Pegram at the Carson City Fairgrounds at Fuji Park.

**Explanation for Recommended Board Action:** During the November 21, 2006 Parks and Recreation Commission meeting, the Commission approved by a vote of 7-1 to recommend approval to the Board of Supervisors of a "Joint Use Parking Agreement" between Michael Pegram and the City of Carson City. The motion by Commissioner McKenna read:

"I move to recommend to the Board of Supervisors to allocate at least one million dollars of Question 18 funds from the JohnD Winters Centennial Park project and, if they do that, they negotiate an agreement with the developer of the Bodine's property for a joint use parking

lot with the developer's contribution of at least one million dollars and negotiate a joint use parking agreement that will allow for City control of the use of the parking lot on a mutually-agreed upon basis in a manner that completes the Fuji Park improvements at the same time as the Bodine's developer completes his project."

**Applicable Statute, Code, Policy, Rule or Regulation:**

**Fiscal Impact:** A donation of \$1,000,000 in either cash, in-kind services, or a combination of both.

**Explanation of Impact:** With approval of the Board of Supervisors, the City will receive \$1,000,000 in cash, in-kind services, or a combination of both for improvements to the Fairgrounds at Fuji Park.

**Funding Source:** N/A

**Alternatives:** Deny the recommendation of the Parks and Recreation Commission and the "Joint Use Parking Agreement" with Michael Pegram.

**Supporting Material:**  
"Joint Use Parking Agreement" (Pages 1-11)

**Prepared By:** Roger Moellendorf **Date:** 11/27/06  
Roger Moellendorf, Parks & Recreation Director

**Reviewed By:** Linda Ritter **Date:** 11/28/06  
Linda Ritter, City Manager

District Attorney's Office **Date:** 11/28/06

Finance Department **Date:** 11/28/06

**Board Action Taken:**

Motion: \_\_\_\_\_ 1: \_\_\_\_\_ Aye/Nay  
2: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

DRAFT 11-29-06

JOINT USE PARKING AGREEMENT

This Agreement (the "Agreement"), is made and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the City and County of Carson City, a political subdivision of the State of Nevada (hereinafter referred to as "City") and Michael Pegram or assignee with an office located at 6010 N. Inver Gordon Road, Paradise Valley, AZ 85253 (hereinafter referred to as "Developer").

RECITALS

WHEREAS, the City is the owner in fee simple of certain real property located in Carson City, Nevada on Carson Street and Old Clear Creek Road commonly referred to as Carson City Fairgrounds at Fuji Park and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("Lot A"); and

WHEREAS, the Developer or assignee is in escrow to purchase, in fee simple, certain real property located in Carson City, Nevada on Carson Street and Highway 50, commonly referred to as Bodines, and more particularly described in Exhibit "B" attached hereto and incorporated herein by reference ("Lot B"); and

WHEREAS, the parcels above described are adjacent parcels of land; and

WHEREAS, the Developer has adequate parking according to Carson City Municipal Code for the anticipated use on Lot B; and

WHEREAS, upon the close of the aforementioned escrow, the Developer will provide everything including, but not limited to, the design, engineering, demolition, purchase of materials,

grading, paving, curbing, landscaping and lighting associated with the construction of a new parking lot around and adjacent to the Carson City Fairgrounds' Arena, more particularly described in "Exhibit C" attached hereto and incorporated herein by reference ("Parking Lot") that the City will own; and

WHEREAS, the Developer desires to utilize the newly constructed Parking Lot as overflow parking for his adjacent business; and

WHEREAS, the City finds that allowing the Developer to utilize the parking around the Arena's proposed newly constructed Parking Lot will increase the use and enjoyment of Carson City Fairgrounds by the patrons of the Developer's business and that the use of the Developer's business by Carson City Fairgrounds' visitors will provide additional amenities to these visitors of Carson City Fairgrounds; and

WHEREAS, the City desires to have a new parking lot constructed around the Carson City Fairgrounds' Arena; and

WHEREAS, the City finds that providing paved parking at the Carson City Fairgrounds' Arena will generally increase the use of the Arena and will enhance the experience to residents, visitors and tourists to the City; and

WHEREAS, as an express condition of the grant right to utilize Parking Lot, the City has required certain conditions, one of which is an agreement to fully indemnify the City as more particularly described in this Agreement; and

WHEREAS, the Developer considers it to be in his best interest to comply with such conditions as required by the City.

NOW, THEREFORE, in consideration of the mutual promises, agreements, and covenants

contained herein, the City and the Developer agree as follows:

1. The Developer agrees to provide everything including, but not limited to, the design engineering, demolition, purchase of materials, grading, paving, curbing, landscaping and lighting associated with the construction of the Parking Lot more specifically described in "Exhibit C."

2. The City agrees to cooperate and coordinate with the Developer with the construction of the Parking Lot. The City shall cooperate with developer to the greatest extent possible to obtain all necessary permits.

3. The City agrees to complete all demolition and relocation of the arena and horse barns on or before September 1, 2007. In the event the City fails to complete these items, the City will refund the arena lighting donation, more particularly described in the "Offer and Acceptance to Donate One Million Dollars to Carson City for Carson city Fairgrounds at Fuji Park," dated this same date, to the Developer. The Developer agrees to complete all demolition, grading, and construction associated with the shared Parking Lot on or before September 1, 2007. If the work is not completed by the date specified, the balance of the One Million Dollar (\$1,000,000.00) donation, more particularly described in the "Offer and Acceptance to Donate One Million Dollars to Carson City for Carson City Fairgrounds at Fuji Park," dated this same date, will be paid to the City by the Developer.

4. The City agrees to allow the Developer to utilize the Parking Lot as overflow parking for an initial term of 40 years. The Developer may request an extension of this Agreement by providing a written request to the City not less than 120 days prior to the termination date of this Agreement. The Board of Supervisors shall approve the renewal request for successive 10 year periods after the initial 40 year term and to commence immediately following the then existing term,

provided the Board specifically finds substantial compliance with all the terms and conditions stated herein and in the other agreements between Developer and the City.

5. The Developer agrees to protect, defend by counsel approved by the City, indemnify and hold the City as well as any of its employees, agents, representatives and invitees, harmless from and against any and all costs, actions, suits, orders, expenses, damages, judgments and liabilities of whatever kind or nature, and by whomsoever asserted, in law, equity or otherwise (including, without limitation, the payment of damages, both actual and consequential, and the payment of the actual fees and expenses of experts and attorneys), arising out of or in connection with any of the activities of the Developer, or any of its successors, assigns, tenants, operators, shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, on or about the Parking Lot. The City shall have the right at its option to participate in any action or to be defended by counsel approved by the City. Said approval of counsel by the City shall not be unreasonably withheld from the Developer.

6. The amount of the indemnity granted by the Developer to the City hereunder shall be in the aggregate sum of Five Million Dollars (\$5,000,000.00) and the requirement that such indemnity, adjusted for inflation, be required of all future transferees, successors and assigns. In no event shall there be any joint or several liability amongst the Developer and any of the other parties indemnifying the City pursuant to separate agreements. Each such party indemnifying the City shall be solely liable for any claims of indemnity by the City due to the use, in any manner whatsoever, by any such party, or any of its successors, assigns, tenants, operators, shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, of the rights granted to any such party and its successors and assigns by the use of the Parking Lot.

7. In the event of any future assignment or transfer of Lot B by the Developer, the City

shall, in order for the continuation of certain rights granted by the use of the Parking Lot, be provided with a new limited indemnity agreement in the amount of Five Million Dollars (\$5,000,000.00), from any such future successor, assign or transferee, adjusted for inflation from the date any such transferee, successor or assign of said parcel takes title to Lot B until the termination of this agreement. Said adjustment for inflation shall be based on the cumulative increases in the cost of living, if any, and shall be calculated based upon the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for the Western Urban Area, Subgroup "all items" (1982-84=100) (the "Index"). The Index published as of the month of the effective date of this Agreement shall be considered the "Base Index". Such adjustment shall reflect a percentage equal to the cumulative percentage increase, if any, in the Index over the Base Index as of the month prior to the date of transfer of title to any such parcel. Notwithstanding any subsequent decrease in the Index, the amount of the new limited indemnity agreement shall be no less than as expressly set forth herein.

8. The City shall not, in any manner whatsoever, be liable for any consequences, injuries, damages, costs, expenses (including payment of reasonable attorneys' fees and costs) or causes of action, of any nature whatsoever, arising out of or suffered by the Developer or its parent corporation, or any of its affiliates, divisions, subsidiaries, employees, agents' representatives, invitees, vendors, service providers or any other entity or person affiliated, in any manner whatsoever, with the Developer as a result, whether direct or indirect, from the use, in any manner whatsoever, by the Developer, or any of its successors, assigns, tenants, operators, shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees of the rights granted to the Developer and its successors and assigns of the Parking Lot.

9. This Agreement in no way controls or addresses the agreements, use and scheduling of events or any other happenings at Carson City Fairgrounds so long as the use and scheduling of

events or any other happenings do not limit Developer's ability to use said parking lot.

10. At no time shall the Parking Lot contemplated and described in this Agreement be designated as paid parking. At all times during the course of this Agreement, said Parking Lot shall be subject to utilization by all persons free of charge.

11. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any and all other agreements, communications, understandings, promises, stipulations, arrangements, whether any of the same are either oral or in writing, or express or implied, between the parties hereto with respect to the subject matter hereof. No change to or modification of this Agreement shall be valid or binding unless the same shall be in writing and signed by a duly authorized representative of City and a duly authorized representative of the Developer.

12. A waiver of any provision of this Agreement shall not be valid unless such waiver is in writing and signed by the party or person to be charged, and no waiver of any provision hereof shall be deemed or construed as a waiver of the same or any different provision in the future. Furthermore, the failure of a party to insist upon strict adherence to any term of this Agreement, or to object to any failure to comply with any provision of this Agreement, shall not be a waiver of that term or provision by laches. The receipt of a party of any benefit from this Agreement shall not effect a waiver or estoppel of the right of that party to enforce any provision of this Agreement.

13. If any provision of this Agreement is found, by a court of competent jurisdiction, to be invalid or unenforceable, such provision shall (i) be modified to the minimum extent necessary to render it valid and enforceable or (ii) if it cannot be so modified, be deemed not to be part of this Agreement and shall not affect the validity or enforceability of the remaining provisions of this Agreement.

14. Subject to the provisions hereof, this Agreement shall be binding upon and shall inure



to the benefit of the parties hereto and their respective heirs, executors, legal representatives, administrators, successors and assigns, and wherever a reference in this Agreement is made to either of the parties hereto such reference shall be deemed to include, wherever applicable, also a reference to the heirs, executors, legal representatives, administrators, successors and assigns of such party, as if in every case so expressed.

15. Nothing contained in this Agreement shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto.

16. This Agreement may be executed in counterparts with the understanding that so long as each of the parties signs one or more such counterpart, this Agreement shall have the same force and effect as though all signatures appeared on one document. The parties expressly agree that a facsimile signature shall be deemed to have the same validity, force, and effect as an original signature.

17. This Agreement shall be governed and construed under the laws of the State of Nevada.

////

////

////

////

////

////

////

////

////

////

////

18. The exhibits to this Agreement consist of the following:

Exhibit "A" - Lot A - the City's Carson City Fairgrounds at Fuji Park

Exhibit "B" - Lot B - the Developer's property commonly referred to as Bodines

Exhibit "C" the Parking Lot

In witness whereof the parties have caused this Agreement to be effective as of the day and year of the signature of the Mayor of Carson City indicated below.

CARSON CITY, a Consolidated  
Municipality of the State of Nevada

\_\_\_\_\_  
Marv Teixeira, Mayor

\_\_\_\_\_  
By: Michael Pegram

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

ATTEST:

\_\_\_\_\_  
Alan Glover, Clerk Recorder

APPROVED AS TO FORM:

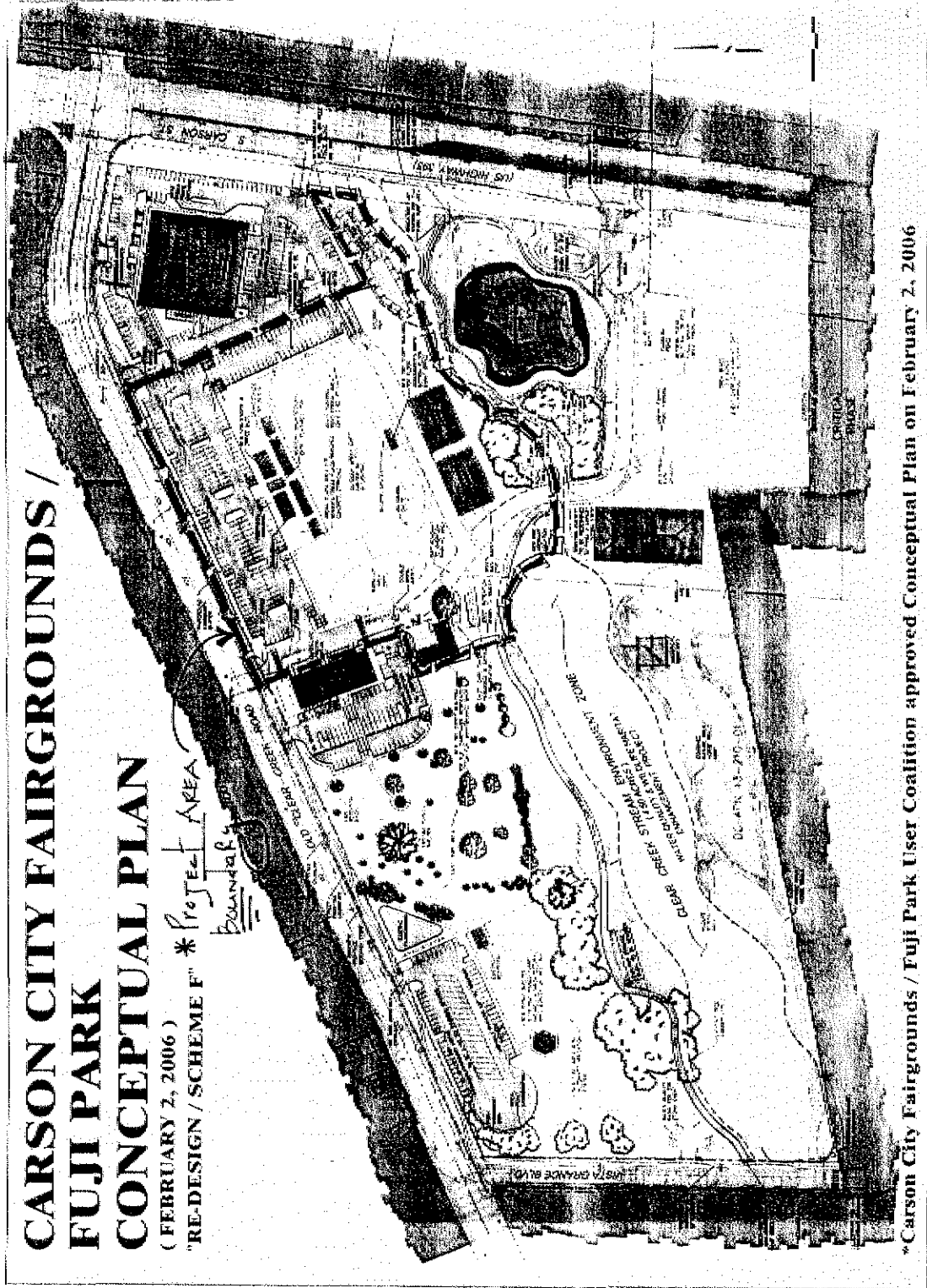
\_\_\_\_\_  
District Attorney

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**CARSON CITY FAIRGROUNDS /  
FUJI PARK  
CONCEPTUAL PLAN**

(FEBRUARY 2, 2006)

"RE-DESIGN / SCHEME F" \* PROJECT AREA

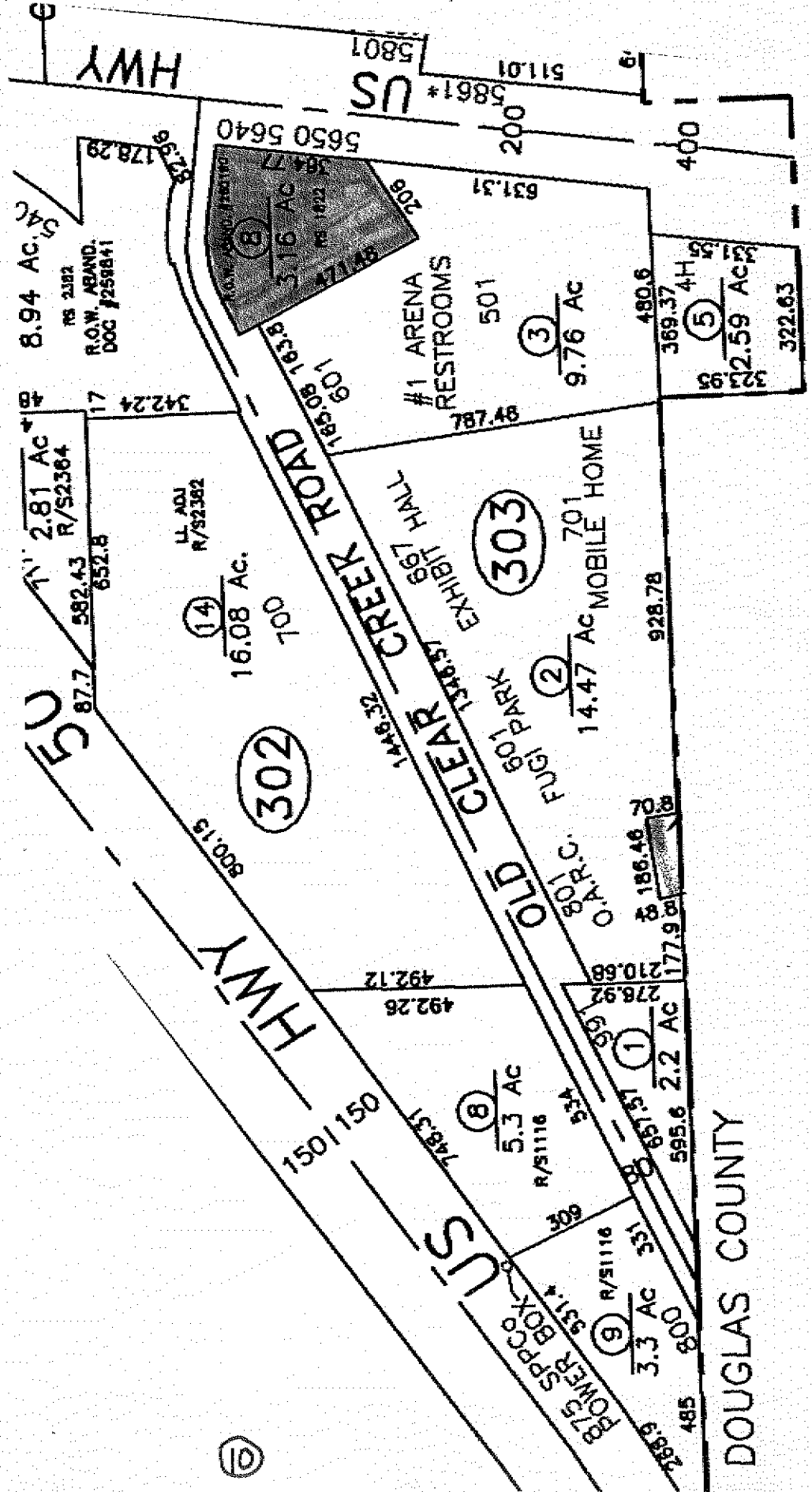


\*Carson City Fairgrounds / Fuji Park User Coalition approved Conceptual Plan on February 2, 2006

Exhibit A

S1/2 SECTION 31, T.15 N., R.20 E., M.D.B. & M.

9-30



DOUGLAS COUNTY

Carson City Fairgrounds/Fuji Park  
 Conceptual Parking Lot Plan  
 (February 2, 2006)  
 "Re-Design / Scheme F"

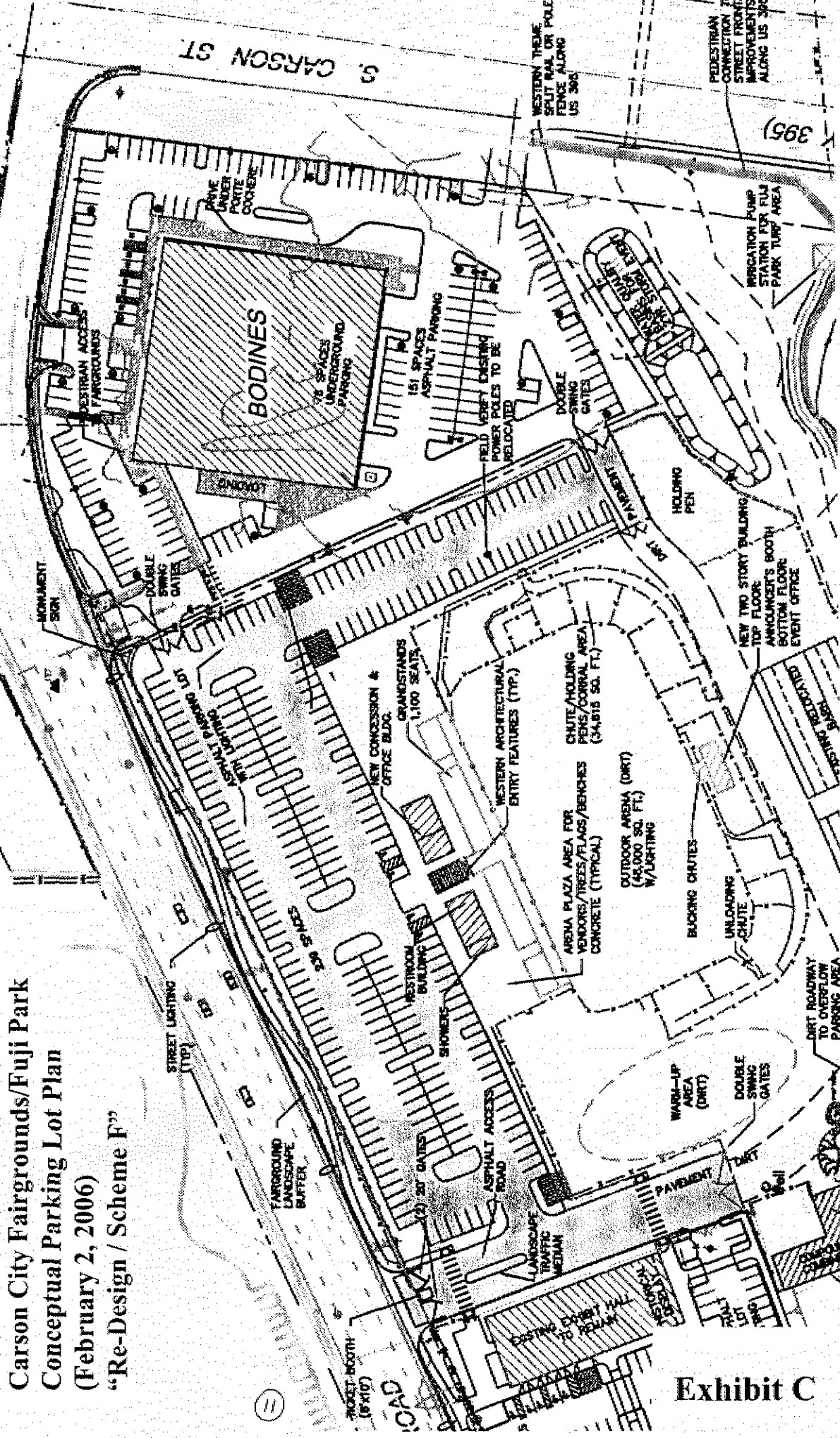


Exhibit C