



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** August 20, 2020

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action regarding Carson City right-of-way, along South Carson Street from near the southerly right-of-way line of Appion Way to the southerly right-of-way line of Fairview Drive, that is not currently planned to be used for roadway or related appurtenances. (Darren Schulz, DSchulz@carson.org and Dan Stucky, DStucky@carson.org)

Staff Summary: In August 2017, the State of Nevada, Department of Transportation (NDOT) opened Phase 2B-3 of the Carson City Freeway completing the link between Reno and Carson City. As a result of the completion of Phase 2B-3 and per Highway Agreement No. R386-04-002 with NDOT, Carson City agreed to take ownership of right-of-way along South Carson Street extending from the northerly right-of-way line of IR-580 to the southerly right-of-way line of Fairview Drive, portions of frontage roads along South Carson Street, one mile of Snyder Avenue extending easterly from South Carson Street, and eighteen surplus parcels located along the IR-580 corridor from Colorado Street to South Carson Street. Certain portions of the South Carson Street right-of-way transfer between Appion Way and Fairview Drive are separate parcels owned in fee simple or are easements for right-of-way use that are located outside of the active roadway prism and are utilized by adjacent commercial property owners for parking or landscape areas. Many of these "surplus" right-of-way areas are not required by the City for the current South Carson Street infrastructure project. Staff has developed options for the sale, abandonment, lease, or license of the surplus right-of-way for the Board of Supervisors to consider based on the state of the City's ownership rights to the right-of-way. At this time, staff recommends licensing the unused right of way, unless liability considerations or other circumstances unique to a property suggest that the best interest of the City would be better served by a different approach. Further action regarding any individual parcel will be brought back to the Board of Supervisors for approval.

Agenda Action: Formal Action / Motion **Time Requested:** 30 minutes

Proposed Motion

I move to direct staff to manage surplus right-of-way along South Carson Street as discussed on the record.

Board's Strategic Goal

Economic Development

Previous Action

April 1, 1997 - Board of Supervisors and NDOT entered into Agreement No. R159-97-060 to facilitate the construction of Phase 1 of the Carson City Freeway (Carson City Bypass), which included preliminary engineering, right-of-way acquisition, construction, and construction engineering.

October 14, 2004 - Board of Supervisors and NDOT entered into Agreement No. R386-04-002, constituting Amendment No. 1 to Agreement No. R159-97-060, for the purpose of addressing construction of Phase 2 of the Carson City Freeway (Carson City Bypass) and addressing Carson's financial contribution to Phase 2.

December 27, 2007 - Board of Supervisors and NDOT entered into Amendment No. 2 to Agreement No. R159-97-060 as amended by Agreement No. R386-04-002, in order to modify Carson City's remaining Phase 1 funding obligation by identifying certain portions of State highways, along with attendant maintenance responsibilities to be relinquished to Carson City by NDOT.

September 4, 2009 - Board of Supervisors and NDOT entered into Amendment No. 3 to Agreement No. R159-97-060 as amended by Agreement No. R386-04-002, in order to modify Carson City's remaining Phase 2 funding obligation, whereby State highways, along with attendant maintenance responsibilities, were relinquished to Carson City.

August 10, 2016 - Board of Supervisors and NDOT entered into Amendment No. 4 to Agreement R159-97-060 as amended by Highway Agreement No. R386-04-002, to provide for the transfer from NDOT to Carson City of portions of State Highways and their attendant maintenance duties, obligations, and responsibilities, and in order to modify Carson City's remaining funding obligations for Phase 2 of the Carson City Freeway.

October 18, 2018 - Board of Supervisors adopted four resolutions consenting to relinquishments and land transfer agreements between Carson City and NDOT. This land transfer included:

1. Approximately 1.83 miles of South Carson Street including portions of frontage road extending from the northerly right-of-way line of IR-580 to the southerly right-of-way line of Fairview Drive;
2. Approximately 1,485 feet of frontage road extending from Arthur Street to south of Clear Creek Avenue;
3. Approximately one mile of Snyder Avenue extending east from the easterly line of South Carson Street; and
4. Eighteen surplus parcels located along the IR-580 corridor from Colorado Street to South Carson Street.

March 19, 2020 - Board of Supervisors discussed the process to implement the South Carson Street Neighborhood Improvement District (SCNID) and determined to not create the SCNID in 2020 and not assess the property owners in fiscal year 2021. The Board further directed staff to continue working on the SCNID, but to first bring back a future agenda item to discuss the disposition of the South Carson Street surplus right-of-way or "NDOT" parcels along the corridor to see how the disposition of those properties would factor into the SCNID.

Background/Issues & Analysis

In April 1997, Carson City and NDOT entered into an agreement to facilitate the construction of Phase 1 of the Carson City Freeway (Carson City Bypass), a limited access freeway passing downtown Carson City on the east side of Carson City, from US-395 north at Lakeview Hill to the intersection of US-395/US-50 south. Several amendments to the agreement transpired over the years which identified maintenance responsibilities and funding obligations, as well as right-of-way and parcels to be relinquished to Carson City upon completion of the bypass.

In August 2017, NDOT opened Phase 2B-3 of the Carson City Freeway completing the link between Reno and Carson City. In anticipation of receipt of the South Carson Street right-of-way, in July of 2016 Carson City embarked on a planning effort, the South Carson Street Complete Streets Corridor Study, to evaluate 2.5 miles of South Carson Street for conceptual design alternatives. The study was completed in June of 2017 and provided a recommended conceptual design which was vetted and approved by the public. The Carson City Gateway: South Carson Street Complete Street Project includes a corridor-wide road diet, narrowed travel lanes, a modern roundabout, a multi-use path with landscaping buffer, dedicated bicycle facilities, pedestrian safety measures, ADA-compliant sidewalks and curb ramps, gray and green stormwater infrastructure, lighting fixtures, new signals, and fiber optic communications.

In October 2017, Carson City submitted an application for a \$7.5 million Transportation Investment Generating Economic Recovery (TIGER) Grant in order to implement the Carson City Gateway: South Carson Street Complete Streets Project. In March of 2018, Carson City was notified of award of the \$7.5 million which will be used to transform South Carson Street from a State-owned major arterial into a calmer, City-owned multi-modal street.

Pursuant to the previously approved agreements, on April 30, 2018, NDOT submitted the Resolution Consenting to Relinquishment and Land Transfer Agreement for the remaining four areas to be relinquished to the City. The Board of Supervisors adopted four resolutions consenting to relinquishments and land transfer agreements between Carson City and NDOT on October 18, 2018. This land transfer included:

1. Approximately 1.83 miles of South Carson Street including portions of frontage road extending from the northerly right-of-way line of IR-580 to the southerly right-of-way line of Fairview Drive;
2. Approximately 1,485 feet of frontage road extending from Arthur Street to south of Clear Creek Avenue;
3. Approximately one mile of Snyder Avenue extending east from the easterly line of South Carson Street; and
4. Eighteen surplus parcels located along the IR-580 corridor from Colorado Street to South Carson Street.

Regarding the South Carson Street corridor, certain portions of property which have been relinquished extend beyond the boundary of the active roadway prism (asphalt, curb & gutter, sidewalk, multi-use path and associated roadway landscaping), thus creating small areas of property that have been relinquished to Carson City but are actually fully utilized by the neighboring commercial property owners for their business use, including but not limited to parking areas or landscape. Historically, NDOT has leased some of those properties to the neighboring commercial property owners. However, the City has not yet determined how to approach the surplus right-of-way. The City's options are to sell, abandon, lease, or license the surplus right-of-way, depending in large part on the way that NDOT acquired the right-of-way: purchase in fee, by donation, by dedication, by eminent domain, or by acquiring an easement.

Accordingly, staff has conducted a preliminary assessment of each individual property that are in excess of the actual area necessary for the current South Carson Street expansion to determine what interests Carson City has actually acquired, including whether there is evidence that the property was donated, dedicated, or acquired under threat of eminent domain, and whether the property is subject to any restrictions. That analysis has revealed that the City has acquired some easements and some property in fee simple, some of the property was donated and other property was purchased, and most of the property is subject to restrictions for highway use. As set forth in more detail in the exhibits, which will be presented to the Board of Supervisors at the meeting, Carson City has some options to sell the majority of the property, can abandon the property, has very limited options to lease the property, and may generally license the property. However, more research into specific properties is needed. And if any particular property is to be sold, further research will be necessary to determine whether there are any specific issues associated with the title to that property. In addition, if a property is to be sold or abandoned, it may be necessary for the City or the acquiring party to obtain an appraisal or survey of the specific property.

Another consideration is that Carson City should not be put in the position of disposing of and then reacquiring necessary right-of-way. The re-construction of South Carson Street is not yet complete, and the conservative approach would be to retain the right-of-way and license its use at least in the initial years after the re-construction. Accordingly, given the research to date, to allow necessary research to continue, to protect the City from liability, to preserve the City's interest in the property, to allow the productive use of the property, and to take a consistent approach to all parcels, staff recommends licensing the use of the property, unless liability considerations or other circumstances unique to a property suggest that the best interest of the City would be better served by selling or abandoning the property. Further action regarding any individual parcel will be brought back to the Board of Supervisors for approval.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 244.281 and 244.290; CCMC 17.15

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Depending on property disposal an account will be determined at a future Board meeting.

Is it currently budgeted? No

Explanation of Fiscal Impact: If City staff is directed to prepare for the sale and/or abandonment of surplus right-of-way, then appropriate legal descriptions and exhibits will be required for each area, thus resulting in the need for the City or the benefiting property owner to hire a licensed land surveyor to complete the required documents. Additionally, a more accurate fiscal impact showing the potential revenue resulting from any sale of surplus right-of-way would be determined and provided at a future Board meeting along with the request for approval of the sale.

Alternatives

Provide other direction to staff.

Attachments:

[1 ROW Memo.pdf](#)

[2_S Carson St ROW Exhibits.pdf](#)

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

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INTERNAL MEMORANDUM

TO: Board of Supervisors
FROM: Todd Reese, Deputy District Attorney
DATE: August 11, 2020
RE: Options for Certain South Carson Street Right-of-Way

I. Introduction

In conjunction with the construction of Interstate Route 580 (IR-580) through Carson City, NDOT transferred to Carson City certain right-of-way for South Carson Street. Some of the right-of-way extends beyond the roadway and associated appurtenances. The Carson City Board of Supervisors has asked what the City's options may be (including, but not limited to, sale or other divestment, leasing, or licensing), concerning right-of-way along South Carson Street that will not be needed for the current redesign of South Carson Street.

This memorandum generally reviews the rights and privileges attached to the City's ownership interest in the right-of-way, and provides the options available to the City for working with the right-of-way. Other documents provide a more detailed synopsis of the City's ownership interests in, and options for, specific parcels of right-of-way.

II. Background

From approximately 2004 to 2017, the Nevada Department of Transportation (NDOT) constructed IR-580 through Carson City, terminating at the interchange of US 50 and IR-580 in south Carson City. The freeway largely replaced South Carson Street as the major arterial connector through south Carson City into Douglas County. Upon completion of the freeway project in April 2017, NDOT relinquished to Carson City certain right-of-way along South Carson Street extending from the northerly right-of-way line of IR-580 to the southerly right-of-way line of Fairview Drive, portions of frontage roads along South Carson Street, one mile of Snyder Avenue extending easterly from South Carson Street, and 18 surplus parcels located along the IR-580 corridor from Colorado Street to South Carson Street.

As to South Carson Street, Carson City began to implement the Carson City Gateway: South Carson Street Complete Streets Project (South Carson Street Project), to convert South Carson Street from a major arterial street to a City-owned multi-modal street, including narrowed

travel lanes, a modern roundabout, a multi-use path with landscaping buffer, dedicated bicycle facilities, pedestrian safety measures, ADA-compliant sidewalks and curb ramps, gray and green stormwater infrastructure, lighting fixtures, new signals, and fiber optic communications. The South Carson Street right-of-way relinquished to Carson City, however, includes right-of-way that extends beyond the boundary of the active South Carson Street roadway prism and is fully utilized by adjacent commercial property owners for, among other things, parking or landscape areas. These "surplus" right-of-way areas are not required by the City for the current South Carson Street Project, and many of them have historically been leased by NDOT to the adjoining property owners.

Though the right-of-way has collectively been referred to up to this point as "right-of-way," "right-of-way" is both a generic term describing a strip of land over which a road is built, and is a legal description of certain rights that can be conveyed to another person. After this point, right-of-way is used in the legal sense. The City has varying ownership interest in the South Carson Street property. The City owns some parcels in fee simple, while others are easements or legal right-of-way. The City's rights and options depend on how a parcel was acquired by the City's predecessors, which may be by purchase, donation, dedication, eminent domain, or threat of eminent domain, whether restrictions have been placed on the parcel, and other specifics that the document conveying the interest may state.

III. Options Available to Carson City

A. Easements and Right-of-Way

An easement is an interest in land that conveys a right to utilize the property of another but does not convey a right to possess or own the underlying property. *Boyd v. McDonald*, 81 Nev. 642, 647, 408 P.2d 717, 720 (1965). Easements are generally classified as either "appurtenant" or "in gross," and easements for roadways or other public use are generally deemed in gross. *Shoen v. Maddi's Fresian Ranch, LLC*, 2018 Nev. Unpub. LEXIS 453, *4 (Nev. 2018) (unpublished disposition); 25 Am Jur 2d Easements and Licenses in Real Property § 6; Restatement 3d of Property: Servitudes ("Restatement"), § 1.5 (3rd 2000). A "right-of-way" is an easement conveying "[t]he right to pass through property owned by another." *City of Las Vegas v. Cliff Shadows Profl Plaza, LLC*, 129 Nev. 1, 7, 293 P.3d 860, 864 (2013) (quoting Black's Law Dictionary 1440 (9th ed. 2009)). Easements in gross are, modernly, transferrable. Restatement § 4.6 & cmt. b, *Box L Corp. v. Teton County*, 92 P.3d 811, 819 (Wyo. 2004)

The vacation, abandonment, or sale of easements and right-of-way for Carson City is governed by NRS 278.480 and CCMC 17.15. Under NRS 278.480, to vacate an easement or right-of-way, Carson City must make an application to the planning commission, give notice to the adjacent owners and the utility companies (the utility companies can request the easement), publish a notice 10 days before a hearing, hold a hearing on vacating the easement before the Planning commission, hold a hearing before the Board of Supervisors on the Planning Commissions' recommendations, and enter an order with any conditions vacating the easement. NRS 278.480(4), (5), (6); CCMC 17.15. Once the conditions in the order are met, the easement or right-of-way reverts back to the abutting property owners. If the easement or right-of-way was originally

dedicated, it reverts without cost to the abutting owner. NRS 278.480(7), (8). If the easement or right-of-way was separated from the dedicating parcel by the road, however, the City may sell the easement or right-of-way upon terms in the best interests of the City, but must offer a right of first refusal to the abutting property owners and cannot cause a loss of access to a street for a parcel. NRS 278.480(7). If the easement or right-of-way was not acquired by dedication (e.g., purchased), the City may sell the easement or right-of-way by making the order vacating the easement conditional upon payment by the abutting property owner or other purchaser. NRS 278.480(7), (8).

Easements may not be leased because a lease conveys a right to exclusive possession of property and an easement does not include a right to possess the property. 49 Am Jur 2d Landlord and Tenant § 18.

A license or a permit is an agreement for the use of property that does not convey an interest in the property. Restatement 1st of Property, § 512. A license or permit is generally personal to the licensee and may not be transferred. 25 Am Jur 2d Easements and Licenses in Real Property § 105. If desired, Carson City could retain its easement or right of way and license the use of the easement area to the owner of the adjacent parcel, such as through an encroachment permit or other agreement.

B. Property Owned in Fee Title

Carson City's options for the property owned in fee simple depends on how the property was acquired. If NDOT purchased a parcel in fee simple for consideration, and the parcel was subsequently conveyed to Carson City, Carson City may then do with the parcel what it pleases; for example, selling or leasing a parcel for whatever it may be worth. Any sale or lease, however, must be consistent with NRS 244.265 through NRS 244.296, which generally requires appraisals and action to be taken in the best interest of Carson City. Several exceptions to the appraisal requirement exist, however, including the sale to an adjoining land owner.

If the property was acquired by donation, dedication, or eminent domain, or threat of eminent domain, then Carson City's rights to transfer the property are more limited. If property was acquired in this manner, under NRS 244.290 Carson City may, upon determining that maintenance is too burdensome or reconveyance would be in the best interest of the City, offer to reconvey the property to the person or entity that dedicated the property, or his, her, or its successors in interest, "upon such terms as may be prescribed by a resolution of the board," or "for an amount equal to the amount paid for the land by the board" if acquired by eminent domain or threat of eminent domain. NRS 244.290(1). The person or entity then has 45 days to accept the offer. NRS 244.290(1). If the person or entity does not accept the offer, the City may reconvey sell or lease the real property as indicated above.

In either of these instances, the City may lease the land or license or permit its use because the City owns the property in fee, regardless of whether acquired by purchase, donation, dedication, eminent domain, or threat of eminent domain.

C. The Effect of Restrictions

The easements and property that Carson City owns along South Carson Street are, with only two exceptions, limited or deed restricted to highway use. This affects the ability of the City to sell or lease the property. As to a sale, the property would continue to be deed restricted for highway use after the sale, unless the adjacent property owner who is the successor in interest to the original grantor released the restriction. A release would most likely be given in a sale to the adjacent property owner. Similarly, an easement limited to highway use would also be limited to highway use if sold, unless sold to the underlying property owner.

As to a lease, the restrictions effectively preclude the City from leasing any of the property that it owns. Because a lease conveys a right to possess the property and the City can only convey as much of a right to possess the property as the City itself owns, any lease would also be restricted to highway use.

A license, however, may be used because it does not convey an interest in the property and only permits another person to use the property. If licensed to the adjoining property owner, who has the right to enforce any restrictions, the license effectively permits the use of the property by the adjoining property owner.






D. The State of the Parcels; Continuing Research

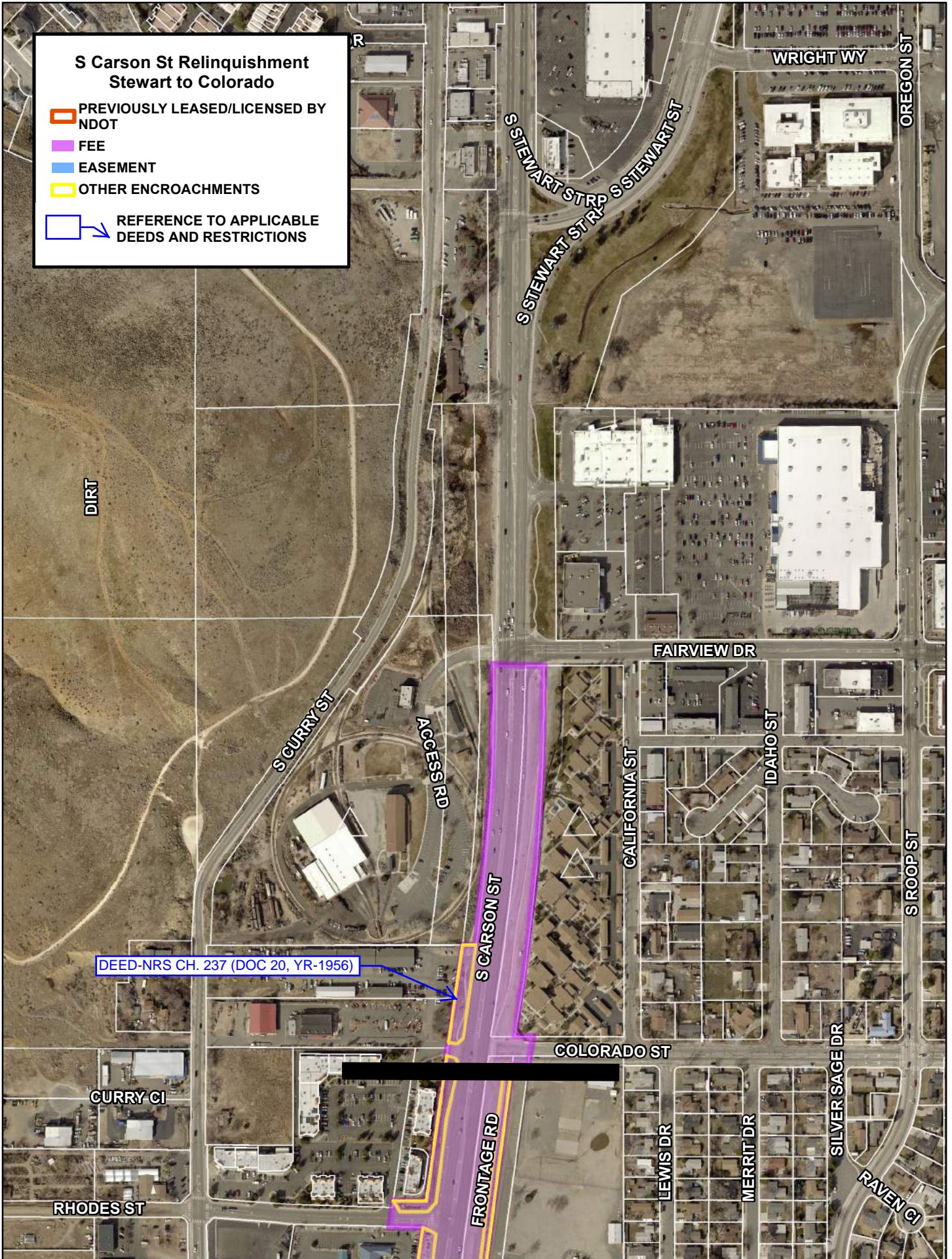
This memorandum has summarized the known state of the property along South Carson Street for the majority of the properties. However, further research is needed on many properties. For instance, two parcels have been conveyed to NDOT without restrictions, and it is necessary to search the title further back than NDOT's ownership to vet the City's ownership interests. In addition, certain easements were conveyed by Ormsby County, and it is necessary to examine the title to the underlying property to determine if Carson City still owns the underlying interest or whether that interest was transferred to the adjoining property owner. Because this requires research into records from the late-1800s and the early- to mid-1900s, this will likely take some time.

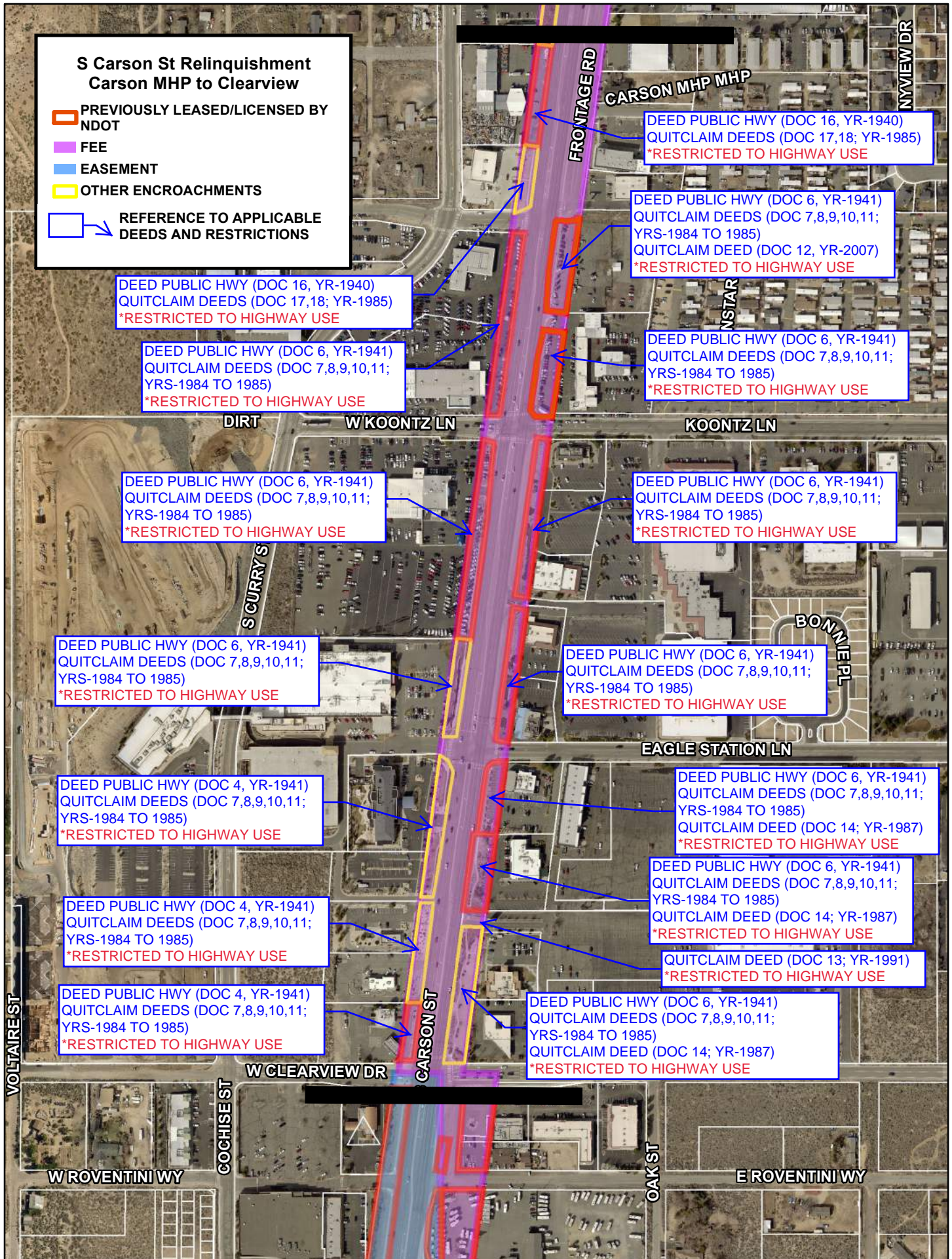
Summary of Memorandum

<u>Right Owned</u>	<u>Sell</u>	<u>Abandon/ Reconvey</u>	<u>Lease</u>	<u>License</u>
Easement (Donation or Dedication) with restrictions	X (if separated from original parcel, but subject to restriction for highway use only)	X		X
Easement (Purchase) with restrictions	X (but cannot cause loss of access of a parcel to the road, and subject to restriction for highway use only)	X		X
Fee Simple (Donation or Dedication) with restrictions	X (if person to whom abandonment offer was made refuses the property, but subject to restriction for highway use only)	X		X
Fee Simple (Eminent Domain) with restrictions	X (transfer for an amount equal to what was paid by the City, but subject to restriction for highway use only)	X		X
Fee Simple (Purchase) with restrictions	X (transfer subject to restriction for highway use only)	X		X
Fee Simple (Purchase) without restrictions	X	X	X	X

**S Carson St Relinquishment
Stewart to Colorado**

-  PREVIOUSLY LEASED/LICENSED BY NDOT
-  FEE
-  EASEMENT
-  OTHER ENCROACHMENTS
-  REFERENCE TO APPLICABLE DEEDS AND RESTRICTIONS





**S Carson St Relinquishment
Carson MHP to Clearview**

- PREVIOUSLY LEASED/LICENSED BY NDOT
- FEE
- EASEMENT
- OTHER ENCROACHMENTS
- REFERENCE TO APPLICABLE DEEDS AND RESTRICTIONS

DEED PUBLIC HWY (DOC 16, YR-1940)
QUITCLAIM DEEDS (DOC 17,18; YR-1985)
***RESTRICTED TO HIGHWAY USE**

DEED PUBLIC HWY (DOC 6, YR-1941)
QUITCLAIM DEEDS (DOC 7,8,9,10,11;
YRS-1984 TO 1985)
***RESTRICTED TO HIGHWAY USE**

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QUITCLAIM DEEDS (DOC 17,18; YR-1985)
***RESTRICTED TO HIGHWAY USE**

DEED PUBLIC HWY (DOC 6, YR-1941)
QUITCLAIM DEEDS (DOC 7,8,9,10,11;
YRS-1984 TO 1985)
QUITCLAIM DEED (DOC 12, YR-2007)
***RESTRICTED TO HIGHWAY USE**

DEED PUBLIC HWY (DOC 6, YR-1941)
QUITCLAIM DEEDS (DOC 7,8,9,10,11;
YRS-1984 TO 1985)
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YRS-1984 TO 1985)
QUITCLAIM DEED (DOC 14; YR-1987)
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QUITCLAIM DEEDS (DOC 7,8,9,10,11;
YRS-1984 TO 1985)
***RESTRICTED TO HIGHWAY USE**

QUITCLAIM DEED (DOC 13; YR-1991)
***RESTRICTED TO HIGHWAY USE**

DEED PUBLIC HWY (DOC 6, YR-1941)
QUITCLAIM DEEDS (DOC 7,8,9,10,11;
YRS-1984 TO 1985)
QUITCLAIM DEED (DOC 14; YR-1987)
***RESTRICTED TO HIGHWAY USE**

