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8  
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 CLARK COUNTY, a political subdivision of  
the State of Nevada,

12 Plaintiff,

13 vs.

14 SAVE RED ROCK; GYPSUM RESOURCES,  
15 LLC; DOES I-X; DOE PARTNERSHIPS I-X;  
ROE CORPORATIONS I-X,

16 Defendants.

Case No. A-16-747882

Dept. No.: XXX

**DEFENDANT SAVE RED ROCK'S  
[PROPOSED] SECOND AMENDED  
COUNTERCLAIM**

17  
18 SAVE RED ROCK, a Nevada non-profit  
corporation,

19 Counterclaimant,

20 vs,

21 CLARK COUNTY, a political subdivision of  
22 the State of Nevada; GYPSUM RESOURCES,  
23 LLC;

24 Counterdefendants.

25  
26 COMES NOW the Counterclaimant SAVE RED ROCK, by and through its attorneys of  
27 the law firm of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, and states the following as its  
28 amended counterclaim against Counterdefendants CLARK COUNTY and GYPSUM

1 RESOURCES, LLC, as follows:

2 **PARTIES**

3 1. Counterclaimant SAVE RED ROCK is a grassroots Nevada non-profit corporation  
4 committed to protecting the rural, recreational, and scenic nature of Red Rock Canyon and  
5 surrounding areas. Save Red Rock represents the interests of those who live near and/or recreate in  
6 and around Red Rock Canyon, including those who frequent the Red Rock Scenic Byway  
7 (“Highway 159”) and thus are directly impacted by current and proposed development in Red  
8 Rock Canyon.

9 2. Counterdefendant CLARK COUNTY is a political subdivision of the State of  
10 Nevada.

11 3. Counterdefendant GYPSUM RESOURCES, LLC (“Gypsum”) is a Nevada limited  
12 liability company.

13 **JURISDICTION AND VENUE**

14 4. The Court has subject matter jurisdiction over this matter pursuant to Article 6,  
15 Section 6 of the Nevada State Constitution and NRS 14.065.

16 5. The Eighth Judicial District Court is the proper venue for this matter pursuant to  
17 NRS 13.010 through NRS 13.040.

18 **GENERAL ALLEGATIONS**

19 6. Red Rock Canyon is geologic formation located approximately seventeen miles  
20 west of downtown Las Vegas, Nevada.

21 7. In 1990, the United States Congress passed special legislation designating a large  
22 area of Red Rock Canyon as Nevada’s first ever national conservation area.

23 8. The Red Rock Canyon National Conservation Area (“RRCNCA”) is enjoyed by  
24 Clark County residents as well as visitors from the United States and many foreign countries.

25 9. Red Rock Canyon also contains Spring Mountain Ranch State Park, which includes  
26 the historic home of Howard Hughes and an outdoor theater venue.

27 10. Visitorship to Red Rock Canyon has increased substantially over the past few  
28 years, with millions of visitors each year enjoying the spectacular desert landscape, climbing and

1 hiking opportunities, and interpretive programs of the RRCNCA, Spring Mountain Ranch State  
2 Park and other areas in and around Red Rock Canyon.

### 3 **Gypsum's Purchase of Land in Red Rock Canyon**

4 11. In 2002, Gypsum acquired approximately 2,464 acres of land on and around Blue  
5 Diamond Hill in Red Rock Canyon, formerly the James Hardie gypsum mine and surrounding  
6 land (the "Gypsum Property").

7 12. At the time of purchase, the Gypsum Property was zoned R-U, Rural Open Land,  
8 which allows for one dwelling unit per two acres.

9 13. The Gypsum Property is surrounded on three sides by the RRCNCA.

10 14. In fact, several hundred acres of the Gypsum Property lie within the boundaries of  
11 the RRCNCA.

12 15. The two larger Gypsum Property parcel groups touch only at a corner. That same  
13 corner is surrounded on both sides by parcels included within the RRCNCA.

14 16. The two larger Gypsum Property parcel groups are not accessible to one another  
15 except by way of an easement granted by the Bureau of Land Management ("BLM") across BLM  
16 lands not within the RRCNCA.

17 17. Some parcels within the Gypsum Property are not connected at all to other parcels  
18 and are surrounded on all sides by either the RRCNCA or BLM lands.

19 18. At the time Gypsum purchased the Gypsum Property, there were existing rights-of-  
20 way to the property on Blue Diamond Hill from Highway 159 via prior roads used for mining  
21 operations.

22 19. Mining operations continued after Gypsum purchased the property, but mining  
23 operations ceased in or about April 2005.

24 20. At that time, the mine operator, operating under an agreement with Gypsum,  
25 notified the BLM that it was ceasing mining operations and relinquishing rights-of-way to  
26 Gypsum's property.

### 27 **The Gypsum Lawsuit and Settlement Agreement**

28 21. On or about May 21, 2003, the Clark County Board of County Commissioners

1 (“Clark County Commission”) adopted an ordinance (“CCO 2914”) to expand the Red Rock  
2 Overlay District and make other changed to the Clark County Code which had the effect of  
3 limiting changes to zoning of the Gypsum Property.

4 22. On or about May 10, 2005, Gypsum filed both a federal and a separate state lawsuit  
5 against Clark County seeking to invalidate CCO 2914.

6 23. In or about May 2010, Gypsum and Clark County executed a Settlement  
7 Agreement to settle the lawsuits brought by Gypsum.

8 24. Pursuant to the Settlement Agreement, Clark County agreed to pass an ordinance  
9 amending CCO 2914 to relieve certain parcels from the restrictions of the Red Rock Overlay  
10 District (the “Exception Area”).

11 25. Clark County thereafter passed the ordinance creating the Exception Area, as  
12 agreed under the Settlement Agreement.

13 26. Clark County also agreed to process in good faith a major projects application from  
14 Gypsum for the development of its property.

15 27. However, the Settlement Agreement expressly states: “Gypsum understands that  
16 the County, by this Agreement, cannot and is not committing to approval of any particular Major  
17 Project and/or any particular densities or uses.”

18 **Gypsum’s 2011 Concept Plan**

19 28. In 2011, Gypsum submitted an application to Clark County, through its major  
20 projects process, for approval of a Gypsum Reclamation Concept Plan (the “2011 Concept Plan”)  
21 to “reclaim, restore, and develop the historic gypsum mining land commonly known as ‘Blue  
22 Diamond Hill’.”

23 29. Submission of a concept plan is the first step in the major projects process under  
24 Chapter 30 of the Clark County Code for approval of projects larger than 700 acres. Subsequent to  
25 approval of a concept plan, a developer must then submit a specific plan and public facilities needs  
26 assessment (“PFNA”), and, if approved, enter into a development agreement with Clark County.

27 ///

28 ///

1           30.     Gypsum’s 2011 Concept Plan states: “The mining plan of operations contemplated  
2 a reclamation plan that included the development of housing after the mining operations were  
3 ceased.”

4           31.     The 2011 Concept Plan further states: “[T]he Gypsum Reclamation Plan offers a  
5 new model for mining reclamation and community development in the desert southwest.”

6           32.     The 2011 Concept Plan states that it includes all 2,464 acres of the Gypsum  
7 Property; however, several hundred acres of the Gypsum Property lie outside of the Exception  
8 Area and are thus subject to development restrictions.

9           33.     Gypsum’s 2011 Concept Plan also proposed to develop an additional 992 acres of  
10 BLM land (the “BLM Parcels”) adjacent to the Gypsum Property that would connect Gypsum’s  
11 two disjointed parcel groups, for a combined 3,466 acres.

12          34.     Gypsum’s 2011 Concept Plan proposed to build 7,269 dwelling units on the  
13 combined Gypsum Property and BLM Parcels.

14          35.     Gypsum’s 2011 Concept Plan proposed an average density of dwelling units of 2.5  
15 units per acre; however, the 2011 Concept Plan also includes a maximum density greater than 8  
16 dwelling units per acre for more than half of the acres.

17          36.     On August 17, 2011, the Clark County Commission heard Gypsum’s application  
18 for approval of the 2011 Concept Plan.

19          37.     Save Red Rock and hundreds of community members appeared on August 17, 2011  
20 to testify in opposition to Gypsum’s 2011 Concept Plan, expressing concerns ranging from  
21 damage to sensitive plant and animal species to disruption of the views in and from the RRCNCA  
22 to increased traffic along Blue Diamond Road and Highway 159.

23          38.     Despite near unanimous opposition to the 2011 Concept Plan from the community,  
24 the Clark County Commission approved the 2011 Concept Plan with certain conditions, including,  
25 but not limited to, the following:

- 26                 • No access onto Highway 159
- 27                 • The portions of the Concept Plan on BLM lands are not approved

28

- 1           • Maximum average density of 2.5 units per acre overall on applicant's land within
- 2           the exception area, approximately 1,880 acres
- 3           • Right-of-way approval from the BLM for primary access is required prior to
- 4           approval of Specific Plan

5           39. The Clark County Commission's approval of up 2.5 units per acre was five times

6 the existing R-U zoning of one per two acres.

7           40. Looking to the 1,880 acres of the Gypsum Property within the Exception Area, as

8 identified in the Clark County Commission conditions, the 2011 Concept Plan would increase the

9 allowable units from 940 homes to a maximum of 4,700 homes.

10          41. Also on August 17, 2011, on an unrelated agenda item, the Clark County

11 Commission adopted Clark County Ordinance No. 3975, which made substantial changes to the

12 major projects process.

13          42. On August 25, 2011, Clark County issued a Notice of Final Action to Gypsum

14 providing notice to Gypsum that approval of its 2011 Concept Plan was subject to the conditions

15 stated at the August 17, 2011 County Commission meeting, including, but not limited to, the

16 following conditions:

- 17           • No access onto Highway 159
- 18           • The portions of the Concept Plan on BLM lands are not approved
- 19           • Maximum average density of 2.5 units per acre overall on applicant's land within
- 20           the exception area, approximately 1,880 acres
- 21           • Right-of-way approval from the BLM for primary access is required prior to
- 22           approval of Specific Plan

23          43. Pursuant to NRS 278.0235, Gypsum had 25 days from the date of filing of the

24 Notice of Final Action to seek judicial review of the Clark County Commission's approval of

25 Gypsum's 2011 Concept Plan with conditions.

26          44. Gypsum did not timely seek judicial review within 25 days of the date of filing of

27 the Notice of Final Action.

28

1           45.     Thus, the restriction on access onto Highway 159, limitation to 1,880 acres, and  
2 requirement for right-of-way approval prior to approval of a Specific Plan became unreviewable.

3 **Gypsum’s Inaction Leads to Expiration of Its 2011 Concept Plan**

4           46.     Under Chapter 30 of the Clark County Code, Gypsum had one year from the date  
5 of approval of its 2011 Concept Plan to submit a draft specific plan and PFNA to Clark County or  
6 seek an extension of time to avoid expiration of its 2011 Concept Plan.

7           47.     Chapter 30 of the Clark County Code has specific requirements for submission of a  
8 specific plan and PFNA, including certain documentation and payment of required fees.

9           48.     Gypsum allegedly provided copies of a draft specific plan (“Specific Plan”) and  
10 PFNA to Clark County on September 28, 2011; however, Clark County, until this lawsuit, had  
11 repeatedly and publicly taken the position that Gypsum failed to pay the required fees associated  
12 with submission of a specific plan and PFNA.

13          49.     Gypsum did not seek an extension of time to fulfill the requirements under Chapter  
14 30 of the Clark County Code.

15          50.     Under Chapter 30 of the Clark County Code, after an applicant properly submits a  
16 preliminary specific plan and PFNA to Clark County, the applicant is required to present the  
17 preliminary specific plan and PFNA to the applicable town board or citizens advisory council and  
18 work with Clark County staff and agencies before submitting a final specific plan and PFNA.

19          51.     Gypsum did not present its preliminary specific plan and PFNA to the Red Rock  
20 Citizens Advisory Council (“RRCAC”), as required.

21          52.     Gypsum also never submitted a final specific plan or PFNA to Clark County.

22          53.     Accordingly, under Chapter 30 of the Clark County Code, Gypsum’s 2011 Concept  
23 Plan application expired.

24 **Gypsum Loses Its Rights-of-Way Legal Battle, But Starts Mining Anyway**

25          54.     On January 23, 2012, the Red Rock/Sloan (Nevada) Field Office of the BLM  
26 issued decisions that the rights-of-way to Gypsum’s property from Highway 159 had been  
27 relinquished.

28

1           55.     On or about June 10, 2015, an administrative law judge affirmed the January 23,  
2 2012 decision of the Red Rock/Sloan (Nevada) Field Office of the BLM that the rights-of-way to  
3 Gypsum’s property from Highway 159 had been relinquished.

4           56.     Despite losing its rights-of-way and despite the express condition in the approval of  
5 Gypsum’s 2011 Concept Plan of “No access onto Highway 159,” in or about 2014, Gypsum began  
6 reclamation work on the Gypsum Property.

7           57.     Gypsum’s reclamation work involves numerous large trucks accessing Highway  
8 159 every day.

9 **Clark County Takes the Position that Gypsum’s 2011 Concept Plan Expired**

10          58.     On June 21, 2016, Gypsum asked that Comprehensive Planning restart review of  
11 Gypsum’s 2011 Concept Plan, also submitting an amended plan.

12          59.     Clark County thereafter advised Gypsum that its 2011 Concept Plan had expired  
13 and that Gypsum would need to submit a new concept plan application.

14          60.     Upon information and belief, Gypsum did not object to, or otherwise seek review  
15 from the Clark County staff of, Clark County’s determination that Gypsum’s 2011 Concept Plan  
16 had expired.

17          61.     Gypsum did not pursue legal action against Clark County to challenge Clark  
18 County’s determination that Gypsum’s 2011 Concept Plan had expired.

19          62.     On July 14, 2016, Gypsum submitted a new major projects application (the “2016  
20 Concept Plan Application”), which included its new Gypsum Reclamation Concept Plan (“2016  
21 Concept Plan”).

22          63.     Gypsum’s 2016 Concept Plan Application identifies 54 parcel numbers as part of  
23 its application.

24          64.     Gypsum’s 2016 Concept Plan Application was assigned application number MP-  
25 0505-16.

26          65.     Clark County required Gypsum to pay a total of \$5,845.00 in fees for review of its  
27 new 2016 Concept Plan, which Gypsum paid on July 14, 2016.

28



1           66.     Upon information and belief, Clark County thereafter employed substantial staff  
2 time in its Comprehensive Planning Department to review Gypsum’s 2016 Concept Plan  
3 Application.

4 **The RRCAC Recommends Denial of Gypsum’s 2016 Concept Plan**

5           67.     On July 27, 2016, Gypsum presented the RRCAC with a summary of the 2016  
6 Concept Plan for development of its property in Red Rock Canyon, adjacent to the RRCNCA.

7           68.     Gypsum advised the RRCAC that because its 2011 Concept Plan had expired, it  
8 was in the process of submitting a new 2016 Concept Plan Application.

9           69.     Clark County thereafter noticed Gypsum’s 2016 Concept Plan for review and  
10 recommendation before the RRCAC on August 31, 2016.

11          70.     At its August 31, 2016 meeting, based upon unanimous opposition from those in  
12 attendance, the RRCAC recommended denial of Gypsum’s 2016 Concept Plan.

13          71.     At no time during the two RRCAC meetings did Clark County staff take the  
14 position that Gypsum’s 2011 Concept Plan had not expired.

15 **The Planning Commission Unanimously Recommends Denial of Gypsum’s 2016 Concept**  
16 **Plan**

17          72.     Clark County thereafter scheduled Gypsum’s 2016 Concept Plan for review and  
18 recommendation before the Clark County Planning Commission on September 20, 2016.

19          73.     The Planning Commission Agenda Sheet published by Clark County for the  
20 September 20, 2016 meeting states: “This is a request to consider a Concept Plan for the Gypsum  
21 Reclamation project. The original Concept Plan was approved by the Board of County  
22 Commissioners in August of 2011 but subsequently expired.”

23          74.     Included with the published Planning Commission Agenda Sheet was a  
24 “Commission Agenda Map” prepared by the Clark County Comprehensive Planning Department  
25 identifying the parcels included in Gypsum’s 2016 Concept Plan Application.

26          75.     The “Commission Agenda Map” reflects two large parcels that appear to touch at a  
27 common corner, as well as two other parcels, or parcel groups, that do not touch the other parcels  
28 at all.

1           76.     At the September 20, 2016 Planning Commission meeting, Save Red Rock  
2 presented public comments raising a number of concerns with Gypsum’s 2016 Concept Plan.

3           77.     The Planning Commission “held,” or delayed, its decision on Gypsum’s 2016  
4 Concept Plan to October 18, 2016 to permit additional public outreach by Gypsum.

5           78.     The Planning Commission Agenda Sheet published by Clark County for the  
6 October 18, 2016 meeting states: “This is a request to consider a Concept Plan for the Gypsum  
7 Reclamation project. The original Concept Plan was approved by the Board of County  
8 Commissioners in August of 2011 but subsequently expired.”

9           79.     Included with the published Planning Commission Agenda Sheet was a  
10 “Commission Agenda Map” prepared by the Clark County Comprehensive Planning Department  
11 identifying the parcels included in Gypsum’s 2016 Concept Plan Application.

12           80.     The “Commission Agenda Map” reflects two large parcels that appear to touch at a  
13 common corner, as well as two other parcels, or parcel groups, that do not touch the other parcels  
14 at all.

15           81.     At the October 18, 2016 Planning Commission meeting, Save Red Rock again  
16 presented public comments raising a number of concerns with Gypsum’s 2016 Concept Plan.

17           82.     With the exception of the Gypsum’s developer representative, Ron Krater, and  
18 lobbyist, Jay Brown, public comment at the October 18, 2016 Planning Commission meeting was  
19 unanimously in opposition to Gypsum’s 2016 Concept Plan.

20           83.     Written comment cards submitted regarding Gypsum’s 2016 Concept Plan were  
21 also unanimously in opposition to Gypsum’s 2016 Concept Plan.

22           84.     Citing a number of concerns raised by the public, including, but not limited to,  
23 concerns raised by Save Red Rock, the Clark County Planning Commission, unanimously voted to  
24 recommend denial of Gypsum’s 2016 Concept Plan.

25           85.     At no time during the September 20, 2016 or October 18, 2016 Clark County  
26 Planning Commission meetings did Clark County Comprehensive Planning staff or the Clark  
27 County Deputy District Attorney, Rob Warhola, who were present, take the position that  
28 Gypsum’s 2011 Concept Plan had not expired.

1           86.     Likewise, at no time during the two Clark County Planning Commission meetings  
2 did Clark County Comprehensive Planning staff or the Clark County Deputy District Attorney,  
3 Rob Warhola, who were present, take the position that the Planning Commission could not  
4 consider the Clark County Comprehensive Master Plan as a basis for recommending denial of  
5 Gypsum’s 2016 Concept Plan.

6           87.     Subsequent to the October 18, 2016 Clark County Planning Commission meeting,  
7 upon information and belief, Clark County sent a Notice of Final Action to Gypsum regarding the  
8 Clark County Planning Commission’s unanimous recommendation of denial of Gypsum’s 2016  
9 Concept Plan.

10 **Clark County Schedules County Commission Hearing that Gypsum’s 2016 Concept Plan,**  
11 **While Repeatedly Telling Public that 2011 Concept Plan Expired**

12           88.     Clark County thereafter scheduled Gypsum’s 2016 Concept Plan for a hearing  
13 before the Clark County Commission on December 7, 2016.

14           89.     The Clark County Commission Agenda Sheet published by Clark County for the  
15 December 7, 2016 meeting states: “This is a request to consider a Concept Plan for the Gypsum  
16 Reclamation project. The original Concept Plan was approved by the Board of County  
17 Commissioners in August of 2011 but subsequently expired.”

18           90.     The Clark County Commission held its decision on Gypsum’s 2016 Concept Plan  
19 to its February 8, 2017 Commission meeting.

20           91.     The Clark County Commission Agenda Sheet published by Clark County for the  
21 February 8, 2017 meeting states: “This is a request to consider a Concept Plan for the Gypsum  
22 Reclamation project. The original Concept Plan was approved by the Board of County  
23 Commissioners in August of 2011 but subsequently expired.”

24           92.     The Clark County Commission again delayed its decision on Gypsum’s 2016  
25 Concept Plan to its February 22, 2017 Commission meeting.

26 **Clark County Uses Taxpayer Funds to Sue Save Red Rock**

27           93.     On December 9, 2016, Clark County filed the present taxpayer-funded lawsuit.  
28

1           94.     Among Clark County’s claims are one for declaratory relief asserting for the first  
2 time that Gypsum’s 2011 Concept Plan did not expire.

3           95.     Based upon Clark County’s newfound position that Gypsum’s 2011 Concept Plan  
4 did not expire, a position contrary to its repeated public statements, Save Red Rock made a public  
5 records request to Clark County for any documentation concerning Gypsum’s alleged submission  
6 of a specific plan and PFNA within one year of the Clark County Commission’s conditional  
7 approval of Gypsum’s 2011 Concept Plan.

8           96.     Clark County responded to the public records request by stating that there was no  
9 record of Gypsum paying the required fees associated with submission of a specific plan or PFNA.

10          97.     On December 30, 2016, Clark County filed a Motion for Partial Summary  
11 Judgment in this matter. Clark County stated that the controversy regarding whether Gypsum’s  
12 2011 Concept Plan expired had to be resolved before the Clark County Commission could proceed  
13 with a hearing on Gypsum’s 2016 Concept Plan.

14          98.     In a sworn declaration in support of Clark County’s Motion for Partial Summary  
15 Judgment, Clark County Assistant Planning Manager Joel McCulloch stated that “County records  
16 indicate that Gypsum did not pay an application fee or submit a land use application form when it  
17 submitted the specific plan and PFNA to Clark County on or about September 28, 2011.”

18          99.     On February 9, 2017, the Court held a hearing on Clark County’s Motion for  
19 Partial Summary Judgment.

20          100.    The Court denied Clark County’s Motion for Partial Summary Judgment and  
21 thereby did not resolve the issues of: 1) whether Gypsum’s 2011 Concept Plan expired (First  
22 Cause of Action); 2) whether all parcels in Gypsum’s 2016 Concept Plan application are  
23 contiguous (Fourth Cause of Action); and 3) whether Gypsum’s 2016 Concept Plan application  
24 may be denied on the basis that it conflicts with the applicable land use plan (Fifth Cause of  
25 Action).

26 **The Clark County Commission Conducts a Sham Hearing While Violating Open Meeting**  
27 **Laws**

28          101.    Although Clark County repeatedly represented to the Court that it could not

1 proceed with a hearing before the Clark County Commission on Gypsum’s 2016 Concept Plan  
2 unless and until the Court resolved the issue of whether Gypsum’s 2011 Concept Plan had  
3 expired, Clark County nevertheless went forward with noticing Gypsum’s 2016 Concept Plan for  
4 a hearing on February 22, 2017.

5 102. The February 22, 2017 Clark County Commission Agenda contained the following  
6 agenda item description:

7  
8 **MP-0505-16 – GYPSUM RESOURCES, LLC:**  
9 **HOLDOVER MAJOR PROJECT**

10 for a Concept Plan for a mixed use  
11 comprehensive planned community and the identification of related issues of  
12 concern to Clark County, affected property owners, and the applicant on  
13 approximately 2,010.6 acres in an R-U (Rural Open Land) Zone. Generally  
14 located on the north side of State Route 159, approximately 1.5 miles west of the  
15 intersection of State Route 160 (Blue Diamond Road) and State Route 159 within  
16 all or portions of Sections 4, 5, 7, 8, and 9, Township 22 South, Range 59 East;  
17 Sections 24, 25 and 36 of Township 21 South, Range 58 East; and Sections 20,  
18 28, 29, 30, 31, 32, and 33, Township 21 South, Range 59 East (description on  
19 file). SB/jvm/ml (For possible action)

20 103. The Clark County Commission Agenda Sheet published by Clark County for the  
21 February 22, 2017 meeting states: “This is a request to consider a Concept Plan for the Gypsum  
22 Reclamation project. The original Concept Plan was approved by the Board of County  
23 Commissioners in August of 2011 but subsequently expired.”

24 104. This public notification, identical in substance to prior public notifications for the  
25 September 20, 2016 and October 18, 2016 Planning Commission meetings and December 7, 2016  
26 and February 8, 2017 Clark County Commission meetings, marked the fifth time that Clark  
27 County had notified the public that Gypsum’s 2011 Concept Plan had expired.

28 105. At a February 13, 2017 meeting between Save Red Rock representatives and Clark  
County Commission Chairman Steve Sisolak and Commissioner Susan Brager, Chairman Sisolak  
expressed concern that Save Red Rock supporters might fill all of the seats in the Commission  
Chambers and leave no room for applicants and others speaking on agenda items prior to the  
Gypsum agenda item.

106. Chairman Sisolak advised that he did not believe the Gypsum agenda item would

1 be heard until after 10:00 a.m. and that if the other agenda items did finish before 10:00 a.m., he  
2 would break and start the Gypsum agenda item at 10:00 a.m.

3 107. Chairman Sisolak asked that Save Red Rock and its supporters avoid filling the  
4 Commission Chambers before 10:00 a.m. when the Gypsum agenda item would be called.

5 108. Relying upon Chairman Sisolak's representations, Save Red Rock requested that its  
6 supporters avoid filling the Commission Chambers prior to 10:00 a.m., before which time  
7 Chairman Sisolak stated the Gypsum agenda item would not be heard.

8 109. At the February 22, 2017 Clark County Commission meeting, the Clark County  
9 Commission adopted the agenda without any change to the agenda item for consideration of  
10 Gypsum's 2016 Concept Plan.

11 110. Nothing in the published Agenda or associated Agenda Sheet notified the public  
12 that Clark County had changed its official position, which Clark County had now published five  
13 times, regarding expiration of Gypsum's 2011 Concept Plan, or that it would discuss the 2011  
14 Concept Plan at the February 22, 2017 Clark County Commission meeting.

15 111. At the February 22, 2017 Clark County Commission meeting, the County  
16 Commission also discussed an item that was not on the published meeting agenda, which is Clark  
17 County's alleged discovery of documents demonstrating that Gypsum had paid the required fees in  
18 connection with its alleged submission of a specific plan and PFNA in September 2011.

19 112. Nothing in the Agenda or associated Agenda Sheet notified the public that Clark  
20 County had made such a discovery, that it had changed its official position regarding whether  
21 Gypsum had paid the required fees in connection with its alleged submission of a specific plan and  
22 PFNA in September 2011, or that it would discuss these topics at the February 22, 2017 Clark  
23 County Commission meeting.

24 113. Contrary to Chairman Sisolak's express representations, the Gypsum agenda item  
25 was called at approximately 9:20 a.m. and no break was taken to allow Save Red Rock to be  
26 present when the Gypsum agenda item was called.

27 114. Prior to calling the Gypsum agenda item, Clark County posted security guards at  
28 the doors to the Commission chambers and would not let in members of the public.

1           115. In fact, Save Red Rock's own President, Heather Fisher, and other Save Red Rock  
2 officers and designated speakers, after identifying themselves, were refused admission by said  
3 security guards to the Commission chambers and were unable to hear statements by Clark County  
4 staff, the Clark County Commission and Gypsum's representative in order to respond to such  
5 statements in the public comment period.

6           116. Many Save Red Rock supporters left because they were not allowed to enter the  
7 Commission chambers during the hearing.

8           117. More than 120 members of the public testified at the hearing. With the exception of  
9 a few employees of Jim Rhodes, the public testimony was overwhelmingly against the 2016  
10 Concept Plan.

11           118. In addition, Save Red Rock presented more than 45,000 petition signatures on a  
12 petition asking that Red Rock's rural zoning be maintained.

13           119. The County Commission allowed many hours of public testimony on Gypsum's  
14 2016 Concept Plan before revealing to the public that the Clark County Commission was taking  
15 the legal position that Gypsum 2011 Concept Plan had never expired.

16           120. At the conclusion of public testimony, the Clark County Commission admitted that  
17 the entire day of testimony was a sham designed to satisfy a perceived requirement of this Court.

18           121. The Clark County Commission also revealed that Clark County staff allegedly  
19 discovered documents demonstrating that Gypsum had paid the required fees in connection with  
20 its alleged submission of a specific plan and PFNA in September 2011.

21           122. Upon information and belief, Joel McCulloch, the same Clark County employee  
22 who swore to the Court that no fee documentation existed, provided the alleged documents  
23 demonstrating that Gypsum had paid the required fees in connection with its alleged submission of  
24 a specific plan and PFNA in September 2011 to Mr. Warhola, the Clark County Commission's  
25 counsel, nearly one week prior to the February 22, 2017 Clark County Commission meeting.

26           123. Despite the fact that Save Red Rock had made a public records request for  
27 documentation regarding Gypsum's alleged submission of a specific plan and PFNA in September  
28 2011, and despite Clark County's sworn position prior to the Clark County Commission that no

1 such documents existed in legal filings with the Court, Clark County concealed the alleged  
2 documents and failed to provide the same to Save Red Rock prior to the February 22, 2017 Clark  
3 County Commission meeting.

4 124. In fact, it appears that although Mr. Warhola was in possession of the alleged fee  
5 documents several days prior to the February 22, 2017 Clark County Commission meeting, he  
6 withheld the documents from members of the Clark County Commission who opposed Gypsum's  
7 2016 Concept Plan until late in the afternoon of that meeting.

8 125. Thereafter, in an orchestrated off-agenda maneuver, Chairman Sisolak and  
9 Commissioner Brager invited Gypsum's representative, Jay Brown, to withdraw its 2016 Concept  
10 Plan, and Mr. Brown, on cue, immediately agreed.

11 126. Upon information and belief, Mr. Brown was provided with advanced notice of the  
12 plan by Chairman Sisolak and Commissioner Brager to invite Gypsum to withdraw its 2016  
13 Concept Plan and proceed forward with development under Gypsum's 2011 Concept Plan.

14 127. A 5-2 majority of the Clark County Commission then voted to allow Gypsum to  
15 withdraw its 2016 Concept Plan without prejudice and proceed forward under the 2011 Concept  
16 Plan.

17 128. If Save Red Rock had known about the Clark County Commission's hidden agenda  
18 to authorize Gypsum to withdraw its 2016 Concept Plan and allow Gypsum to proceed on its 2011  
19 Concept Plan, which Clark County repeatedly stated in public was expired, Save Red Rock would  
20 have presented its public comments differently.

21 **FIRST CAUSE OF ACTION**

22 **Declaratory Relief – Expiration of 2011 Concept Plan**

23 **(Against Clark County)**

24 129. Save Red Rock repeats and realleges all preceding paragraphs of its Counterclaim  
25 as though fully set forth herein.

26 130. Chapter 30 of the NRS provides that courts of record within their respective  
27 jurisdictions shall have power to declare rights, status and other legal relations whether or not  
28 further relief is or could be claimed.



1           131. Declaratory judgments bring to the present a litigable controversy, which otherwise  
2 might only be tried in the future. Its purpose is to give the parties an early opportunity to  
3 adjudicate rights or obligations before the controversy has reached a more critical stage in order to  
4 avoid the threat of impending litigation.

5           132. Clark County notified the public on at least five separate occasions in published  
6 agenda notices for meetings of the Planning Commission and Clark County Commission that  
7 Gypsum’s 2011 Concept Plan expired.

8           133. Clark County further stated in a sworn declaration filed in this matter that Gypsum  
9 “did not pay an application fee or submit a land use application form when it submitted the  
10 specific plan and PFNA to Clark County on or about September 28, 2011.”

11           134. Pursuant to Chapter 30 of the Clark County Code, “[a]ny Concept Plan shall expire  
12 within one (1) year if a Public Facilities Needs Assessment/Plan and Specific Plan has not been  
13 submitted, unless an extension of time application has been submitted....”

14           135. Based upon Clark County’s sworn statements, Gypsum did not fulfill the submittal  
15 requirements under Chapter 30 of the Clark County Code by failing to pay the required fees.

16           136. Gypsum also failed to present its preliminary Specific Plan and PFNA to the  
17 RRCAC, as required under Chapter 30 of the Clark County Code.

18           137. Gypsum also failed to submit a final Specific Plan or PFNA to Clark County, as  
19 required under Chapter 30 of the Clark County Code.

20           138. Accordingly, Gypsum’s 2011 Concept Plan expired.

21           139. Despite Clark County’s repeated, public statements that Gypsum’s 2011 Concept  
22 Plan expired, and the passage of more than five years, Clark County has, in the face of  
23 overwhelming public opposition, reversed its stated position regarding expiration of Gypsum’s  
24 2011 Concept Plan.

25           140. At the February 22, 2017 Clark County Commission meeting, Clark County  
26 deviated from the published agenda and declared that the entire day’s worth of public testimony  
27 was moot, and that it would begin processing Gypsum’s 2011 Specific Plan and PFNA.

28           141. A justiciable controversy exists between Save Red Rock on the one side and Clark

1 County on the other. Save Red Rock contends that Gypsum’s 2011 Concept Plan expired for the  
2 reasons stated above and that Gypsum’s 2011 Specific Plan and PFNA may not be processed.  
3 Clark County erroneously contends, now, that Gypsum’s 2011 Concept Plan did not expire and  
4 that Gypsum’s 2011 Specific Plan and PFNA may be processed.

5 142. A declaration is necessary and appropriate at this time so that Clark County and  
6 Save Red Rock can determine their respective rights and obligations.

7 **SECOND CAUSE OF ACTION**

8 **Injunctive Relief – Processing of 2011 Specific Plan/PFNA**

9 **(Against Clark County)**

10 143. Save Red Rock repeats and realleges all preceding paragraphs of its Counterclaim  
11 as though fully set forth herein.

12 144. Clark County repeatedly stated in public agenda notices, including before the  
13 Planning Commission and Clark County Commission, that Gypsum’s 2011 Concept Plan expired.

14 145. Clark County further stated in a sworn declaration filed in this matter that Gypsum  
15 “did not pay an application fee or submit a land use application form when it submitted the  
16 specific plan and PFNA to Clark County on or about September 28, 2011.”

17 146. Pursuant to Chapter 30 of the Clark County Code, “[a]ny Concept Plan shall expire  
18 within one (1) year if a Public Facilities Needs Assessment/Plan and Specific Plan has not been  
19 submitted, unless an extension of time application has been submitted....”

20 147. Gypsum did not fulfill the submittal requirements under Chapter 30 of the Clark  
21 County Code and, accordingly, its 2011 Concept Plan expired.

22 148. Despite Clark County’s repeated, public statements that Gypsum’s 2011 Concept  
23 Plan expired, and the passage of more than five years, Clark County has now reversed its stated  
24 position regarding expiration of Gypsum’s 2011 Concept Plan.

25 149. At the February 22, 2017 Clark County Commission meeting, Clark County  
26 announced that it would begin processing Gypsum’s 2011 Specific Plan and PFNA.

27 150. Clark County’s processing of Gypsum’s 2011 Specific Plan and PFNA is in  
28 violation of Chapter 30 of the Clark County Code.

1 151. Absent preliminary and permanent injunctive relief enjoining and restraining Clark  
2 County from processing Gypsum’s 2011 Specific Plan and PFNA, Save Red Rock will suffer  
3 irreparable harm for which compensation would be insufficient.

4 152. It has been necessary for Save Red Rock to retain the services of legal counsel for  
5 which Save Red Rock is entitled to recover such costs and expenses from Clark County.

6  
7 **THIRD CAUSE OF ACTION**

8 **Injunctive Relief – Violation of Condition for No Access onto Highway 159**  
9 **(Against Gypsum)**

10 153. Save Red Rock repeats and realleges all preceding paragraphs of its Counterclaim  
11 as though fully set forth herein.

12 154. On August 17, 2011, the Clark County Commission approved Gypsum 2011  
13 Concept Plan with a condition that there be no access onto Highway 159.

14 155. On August 25, 2011, Clark County issued a Notice of Final Action to Gypsum  
15 providing notice to Gypsum that approval of its 2011 Concept Plan was conditioned upon “[n]o  
16 access onto Highway 159.”

17 156. Gypsum did not timely seek judicial review of Clark County’s Notice of Final  
18 Action conditioning approval of Gypsum’s 2011 Concept Plan upon Gypsum having no access  
19 onto Highway 159.

20 157. Gypsum is presently accessing Highway 159 for reclamation work in violation of  
21 this condition.

22 158. Absent preliminary and permanent injunctive relief enjoining and restraining  
23 Gypsum from accessing Highway 159 for reclamation work, Save Red Rock will suffer  
24 irreparable harm for which compensation would be insufficient.

25 159. It has been necessary for Save Red Rock to retain the services of legal counsel for  
26 which Save Red Rock is entitled to recover such costs and expenses from Clark County.

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1 **FOURTH CAUSE OF ACTION**

2 **Open Meeting Law Violation – NRS 241.020 et seq.**

3 **(Against Clark County)**

4 160. Save Red Rock repeats and realleges all preceding paragraphs of its Counterclaim  
5 as though fully set forth herein.

6 161. Pursuant to NRS 241.020 *et seq.*, Nevada’s Open Meeting Law, written notice of  
7 all public meetings must be given at least three (3) working days before the meeting. The notice  
8 must include an agenda consisting of:

9 (1) A clear and complete statement of the topics scheduled to be considered  
10 during the meeting.

11 (2) A list describing the items on which action may be taken and clearly denoting  
12 that action may be taken on those items by placing the term “for possible action”  
13 next to the appropriate item or, if the item is placed on the agenda pursuant  
14 to NRS 241.0365, by placing the term “for possible corrective action” next to the  
15 appropriate item.

14 162. Under Nevada’s Open Meeting Law, a public body such as the Clark County  
15 Commission may not discuss matters at a noticed meeting that “exceed the scope of a clearly and  
16 completely stated agenda topic.” *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

17 163. The February 22, 2017 Clark County Commission Agenda contained the following  
18 agenda item description:

19 **MP-0505-16 – GYPSUM RESOURCES, LLC:**  
20 **HOLDOVER MAJOR PROJECT** for a Concept Plan for a mixed use  
21 comprehensive planned community and the identification of related issues of  
22 concern to Clark County, affected property owners, and the applicant on  
23 approximately 2,010.6 acres in an R-U (Rural Open Land) Zone. Generally  
24 located on the north side of State Route 159, approximately 1.5 miles west of the  
25 intersection of State Route 160 (Blue Diamond Road) and State Route 159 within  
26 all or portions of Sections 4, 5, 7, 8, and 9, Township 22 South, Range 59 East;  
27 Sections 24, 25 and 36 of Township 21 South, Range 58 East; and Sections 20,  
28 28, 29, 30, 31, 32, and 33, Township 21 South, Range 59 East (description on  
file). SB/jvm/ml (For possible action)

26 164. The published Clark County Agenda Sheet describing the Gypsum 2016 Concept  
27 Plan agenda item states:

28 This is a request to consider a Concept Plan for the Gypsum Reclamation project.

1 The original Concept Plan was approved by the Board of County Commissioners  
2 in August of 2011 but subsequently expired.

3 165. Based upon the express statement in the published Clark County Agenda Sheet, any  
4 discussion to the contrary was per se excluded from the agenda. Absent an agenda item declaring  
5 that the expiration of the 2011 Concept Plan was being revisited, it was not lawful for the Clark  
6 County Commission to discuss actions concerning the 2011 Concept Plan.

7 166. At the February 22, 2017 Clark County Commission meeting, the County  
8 Commission raised the off-agenda item that Clark County had decided to arbitrarily and  
9 capriciously reverse its legal position, now stating that the Gypsum 2011 Concept Plan had not  
10 expired.

11 167. At the February 22, 2017 Clark County Commission meeting, the County  
12 Commission also raised the off-agenda item that Clark County had allegedly discovered  
13 documents demonstrating that Gypsum had paid the required fees in connection with its alleged  
14 submission of a specific plan and PFNA in September 2011.

15 168. These issues were not identified as topics for consideration at the February 22,  
16 2017 Clark County Commission meeting; rather, the topics were in direct contradiction to the  
17 positions stated in the published agenda sheet and in their sworn statements.

18 169. Based upon its off-agenda discussion of the expiration of the 2011 Concept Plan  
19 and alleged discovery of documents demonstrating that Gypsum had paid the required fees in  
20 connection with its alleged submission of a specific plan and PFNA in September 2011, issues  
21 outside the scope of its published agenda and for which Save Red Rock and the public had not  
22 been properly noticed, and therefore could not have been prepared, the Clark County Commission  
23 proposed to Gypsum that it withdraw its 2016 Concept Plan and proceed forward under the 2011  
24 Concept Plan.

25 170. A majority of the Clark County Commission then voted to allow Gypsum to  
26 withdraw its 2016 Concept Plan without prejudice and proceed forward under the 2011 Concept  
27 Plan.

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1 171. Clark County violated Nevada's Open Meeting Law by failing to identify the topic  
2 of expiration of the 2011 Concept Plan in its agenda.

3 172. Clark County further violated Nevada's Open Meeting Law by exceeding the scope  
4 of the stated agenda topic regarding Gypsum's 2016 Concept Plan.

5 173. Because Clark County violated Nevada's Open Meeting Law, its vote to allow  
6 Gypsum to withdraw its 2016 Concept Plan without prejudice and proceed forward under the 2011  
7 Concept Plan is void.

8 174. As a result of Clark County's violation of Nevada's Open Meeting Law, it has been  
9 necessary for Save Red Rock to retain the services of legal counsel for which Save Red Rock is  
10 entitled by statute to recover such costs and expenses from Clark County.

11 **FIFTH CAUSE OF ACTION**

12 **Open Meeting Law Violation – NRS 241.020 et seq.**

13 **(Against Clark County)**

14 175. Save Red Rock repeats and realleges all preceding paragraphs of its Counterclaim  
15 as though fully set forth herein.

16 176. Pursuant to NRS 241.020 *et seq.*, Nevada's Open Meeting Law, all meetings of  
17 public bodies, including the Clark County Commission, must be open and public, and all persons  
18 must be permitted to attend any meeting of these public bodies.

19 177. At the February 22, 2017 Clark County Commission meeting, Clark County posted  
20 security guards at the doors to the Commission chambers and would not let in members of the  
21 public.

22 178. In fact, Save Red Rock's own President, Heather Fisher, and other Save Red Rock  
23 officers and designated speakers, after identifying themselves, were refused admission by said  
24 security guards to the Commission chambers and were unable to hear statements by Clark County  
25 staff, the Clark County Commission and Gypsum's representative in order to respond to such  
26 statements in the public comment period.

27 179. Many Save Red Rock supporters left because they were not allowed to enter the  
28 Commission chambers during the hearing.

1 180. The Open Meeting Law violation was exacerbated by Chairman Sisolak's  
2 representation to Save Red Rock that the Gypsum agenda would not be called until at least 10:00  
3 a.m. and request prior to the meeting that Save Red Rock and its supporters avoid filling the  
4 Commission Chambers before 10:00 a.m. when the Gypsum agenda item would be called, a  
5 request with which Save Red Rock complied.

6 181. Because Clark County violated Nevada's Open Meeting Law, its vote to allow  
7 Gypsum to withdraw its 2016 Concept Plan without prejudice and proceed forward under the 2011  
8 Concept Plan is void.

9 182. As a result of Clark County's violation of Nevada's Open Meeting Law, it has been  
10 necessary for Save Red Rock to retain the services of legal counsel for which Save Red Rock is  
11 entitled by statute to recover such costs and expenses from Clark County.

12 **SIXTH CAUSE OF ACTION**

13 **Declaratory Judgment – Acceptance of 2016 Concept Plan Application**

14 **(Against Clark County)**

15 183. Save Red Rock repeats and realleges all preceding paragraphs of its Counterclaim  
16 as though fully set forth herein.

17 184. Chapter 30 of the NRS provides that courts of record within their respective  
18 jurisdictions shall have power to declare rights, status and other legal relations whether or not  
19 further relief is or could be claimed.

20 185. Declaratory judgments bring to the present a litigable controversy, which otherwise  
21 might only be tried in the future. Its purpose is to give the parties an early opportunity to  
22 adjudicate rights or obligations before the controversy has reached a more critical stage in order to  
23 avoid the threat of impending litigation.

24 186. In the event that the Court finds that Gypsum's 2011 Concept Plan expired and/or  
25 that the Clark County Commission's vote to allow Gypsum to withdraw its 2016 Concept Plan  
26 was void, Save Red Rock expects that Gypsum will seek to proceed with a vote on its 2016  
27 Concept Plan.

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1 187. Title 30 of the Clark County Code states that “[a]ll parcels of land included within  
2 a single petition or application must be contiguous.”

3 188. On July 14, 2016, Gypsum submitted, and Clark County accepted, a 2016 Concept  
4 Plan Application which identifies 54 parcel numbers as part of its application.

5 189. The 54 parcels of land included within the 2016 Concept Plan Application are not  
6 contiguous under the Nevada Revised Statute or Clark County Code definitions of “contiguity.”

7 190. A justiciable controversy exists between Save Red Rock on the one side and Clark  
8 County on the other. Save Red Rock contends that Clark County should have rejected Gypsum’s  
9 2016 Concept Plan Application, and should not process it further, because it contains parcels of  
10 land which are not contiguous. Clark County erroneously contends that the 2016 Concept Plan  
11 meets Clark County’s requirements for contiguity, which is false on its face.

12 191. Clark County has taken the position that resolution of the controversy is necessary  
13 before the 2016 Concept Plan Application is heard by the Clark County Commission. Thus a  
14 declaration is necessary and appropriate at this time so that Clark County and Save Red Rock can  
15 determine their respective rights and obligations.

16 192. Resolution of the issue may end the controversy between the parties and could save  
17 the parties from undergoing lengthy and expensive litigation in the future.

18 **SEVENTH CAUSE OF ACTION**

19 **Declaratory Judgment – Deference to Comprehensive Plan**

20 **(Against Clark County)**

21 193. Save Red Rock repeats and realleges all preceding paragraphs of its Counterclaim  
22 as though fully set forth herein.

23 194. Chapter 30 of the NRS provides that courts of record within their respective  
24 jurisdictions shall have power to declare rights, status and other legal relations whether or not  
25 further relief is or could be claimed.

26 195. Declaratory judgments bring to the present a litigable controversy, which otherwise  
27 might only be tried in the future. Its purpose is to give the parties an early opportunity to  
28



1 adjudicate rights or obligations before the controversy has reached a more critical stage in order to  
2 avoid the threat of impending litigation.

3 196. In the event that the Court finds that Gypsum’s 2011 Concept Plan expired and/or  
4 that the Clark County Commission’s vote to allow Gypsum to withdraw its 2016 Concept Plan  
5 was void, Save Red Rock expects that Gypsum will seek to proceed with a vote on its 2016  
6 Concept Plan.

7 197. Title 30 of the Clark County Code states “[t]he Clark County Comprehensive Plan  
8 shall serve as a pattern and guide for the orderly physical growth and development of Clark  
9 County. Unless otherwise provided, *all development approved through this Title shall be in*  
10 *conformance with the Comprehensive Plan....*” Clark County Code § 30.12.020 (emphasis added).

11 198. Title 30 of the Clark County Code states that land use applications may be denied  
12 “based on the plans, policy statements, goals contained anywhere within the Comprehensive Plan,  
13 or any amendment thereto, or element thereof.” Clark County Code § 30.12.020(5).

14 199. The Nevada Supreme Court has made clear that the Clark County Comprehensive  
15 Plan is a standard that commands deference and a presumption of applicability in land use  
16 decisions. *See Enterprise Citizens Action Committee v. Clark County Board of Commissioners*,  
17 112 Nev. 649, 659-60, 918 P.2d 305, 311-12 (1996) (quoting *Nova Horizon v. City Council, Reno*,  
18 105 Nev. 92, 96, 769 P.2d 721, 723 (1989); *County of Clark v. Doumani*, 114 Nev. 46, 54, 952  
19 P.2d 13, 18 (1998)).

20 200. The Clark County Comprehensive Plan (“Comprehensive Plan”) was adopted by  
21 the Planning Commission on December 3, 2013 and by the BCC on January 8, 2014.

22 201. The Comprehensive Plan adopted by the Planning Commission and County  
23 Commission includes the following formal policies, among many others, to be complied with in  
24 reviewing land use applications:

- 25 • Implement a comprehensive land use plan to promote economic viability, employment  
26 opportunities with development that is compatible with adjacent land uses, the natural  
27 environment and is well integrated with appropriate circulation systems, services, and  
28 facilities.

- 1 • Implement land use planning principles that can change the current development pattern of  
2 urban sprawl to more compact urban forms, and improve the air quality by encouraging or  
3 creating alternative transportation modes (such as: walking, biking, and using existing or  
4 planned mass transit corridors).
- 5 • Encourage an increase in residential densities and commercial intensities around future  
6 transportation corridors (including rail, bus, and multi-modal systems as identified by the  
7 RTC) in order to reduce vehicle miles traveled and the number of vehicle trips.
- 8 • Land uses that are complementary and are of similar scale and intensity should provide  
9 appropriate connectivity and not be segregated.
- 10 • Ensure that a Major Project provides a mix of residential, commercial, industrial, or public  
11 facilities land uses where residents will have the opportunity to live, work, and recreate.  
12 The design of a Major Project should be compatible within the development, as well as  
13 with adjoining land uses and the natural environment.

14 202. A justiciable controversy exists between Save Red Rock on the one side and Clark  
15 County on the other. Save Red Rock contends that Clark County must presume applicability of,  
16 and give deference to, the Clark County Comprehensive Plan in reviewing Gypsum’s 2016  
17 Concept Plan Application. Clark County erroneously contends that it is not required to consider,  
18 or give deference to, the Clark County Comprehensive Plan in reviewing Gypsum’s 2016 Concept  
19 Plan Application.

20 203. A declaration is necessary and appropriate at this time so that Clark County and  
21 Save Red Rock can determine their respective rights and obligations.

22 204. Resolution of the issue may end the controversy between the parties and could save  
23 the parties from undergoing lengthy and expensive litigation in the future.

24 **EIGHTH CAUSE OF ACTION**

25 **Declaratory Judgment – Duty to Defend and Indemnify**

26 **(Against Clark County)**

27 205. Save Red Rock repeats and realleges all preceding paragraphs of its Counterclaim  
28 as though fully set forth herein.

206. Chapter 30 of the NRS provides that courts of record within their respective  
jurisdictions shall have power to declare rights, status and other legal relations whether or not  
further relief is or could be claimed.

1           207. Declaratory judgments bring to the present a litigable controversy, which otherwise  
2 might only be tried in the future. Its purpose is to give the parties an early opportunity to  
3 adjudicate rights or obligations before the controversy has reached a more critical stage in order to  
4 avoid the threat of impending litigation.

5           208. Pursuant to Chapter 41 of the NRS, the Clark County District Attorney is obligated  
6 to provide for the defense of members of the Clark County Commission “based on any alleged act  
7 or omission relating to the that person’s public duties or employment....”

8           209. Also pursuant to Chapter 41 of the NRS, Clark County is obligated to indemnify  
9 members of the Clark County Commission “based on any alleged act or omission relating to the  
10 that person’s public duties or employment....”

11           210. Members of the Clark County Commission have expressed concern that the Clark  
12 County District Attorney may not provide for their defense and/or that Clark County will not  
13 indemnify them in the event that a lawsuit is brought against them personally in connection with  
14 the exercise of their public duties relating to Gypsum’s development proposals.

15           211. A justiciable controversy exists between Save Red Rock on the one side and Clark  
16 County on the other. Save Red Rock contends that Clark County is obligated to defend and  
17 indemnify members of the Clark County Commission in connection with the exercise of their  
18 public duties relating to Gypsum’s development proposals. Based upon statements of members of  
19 the Clark County Commission, Clark County erroneously contends that it may not be obligated to  
20 defend and indemnify members of the Clark County Commission if they do not follow the advice  
21 of Mr. Warhola in connection with the exercise of their public duties relating to Gypsum’s  
22 development proposals.

23           212. A declaration is necessary and appropriate at this time so that Clark County and  
24 Save Red Rock can determine their respective rights and obligations.

25           213. Resolution of the issue may end the controversy between the parties and could save  
26 the parties from undergoing lengthy and expensive litigation in the future.

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1 **NINTH CAUSE OF ACTION**

2 **Declaratory Judgment – Good Faith Obligation Under the Settlement Agreement**  
3 **(Against Clark County)**

4 214. Save Red Rock repeats and realleges all preceding paragraphs of its Counterclaim  
5 as though fully set forth herein.

6 215. Chapter 30 of the NRS provides that courts of record within their respective  
7 jurisdictions shall have power to declare rights, status and other legal relations whether or not  
8 further relief is or could be claimed.

9 216. Pursuant to the Settlement Agreement between Clark County and Gypsum:

10 The County agrees that it will process the Major Project Application under the  
11 Major Projects process in good faith. Gypsum understands that the County, by  
12 this Agreement, cannot and is not committing to approval of any particular Major  
13 Project and/or any particular densities or uses.

14 217. A justiciable controversy exists between Save Red Rock on the one side and Clark  
15 County on the other. Save Red Rock contends that it is not a breach of Clark County’s good faith  
16 obligations under the Settlement for the Clark County Commission to deny Gypsum’s 2016  
17 Concept Plan or, alternatively, to reduce the density of the development to its existing R-U zoning  
18 density. Clark County erroneously contends that it would be a breach of its good faith obligations  
19 under the Settlement Agreement for the Clark County Commission to deny Gypsum’s 2016  
20 Concept Plan, or, alternatively, to reduce the density of the development to its existing R-U zoning  
21 density.

22 218. A declaration is necessary and appropriate at this time so that Clark County and  
23 Save Red Rock can determine their respective rights and obligations.

24 219. Resolution of the issue may end the controversy between the parties and could save  
25 the parties from undergoing lengthy and expensive litigation in the future.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Save Red Rock prays for judgment as follows:

28 A. For a declaration that Gypsum’s 2011 Concept Plan expired and that Gypsum’s  
2011 Specific Plan and PFNA may not be processed;

1 B. For preliminary and permanent injunctive relief enjoining and restraining Clark  
2 County from processing Gypsum’s 2011 Specific Plan and PFNA;

3 C. For preliminary and permanent injunctive relief enjoining and restraining Gypsum  
4 from accessing Highway 159 for reclamation work;

5 D. For a declaration voiding the actions of the Clark County Commission in violation  
6 of Nevada’s Open Meeting Law;

7 E. For a declaration that Clark County should have rejected Gypsum’s 2016 Concept  
8 Plan Application, and may not process the Application further, because it contains parcels of land  
9 which are not contiguous;

10 F. For a declaration that Clark County must presume applicability of, and give  
11 deference to, the Clark County Comprehensive Plan in reviewing Gypsum’s 2016 Concept Plan  
12 Application;

13 G. For a declaration that Clark County is obligated to defend and indemnify members  
14 of the Clark County Commission in connection with the exercise of their public duties relating to  
15 Gypsum’s development proposals;

16 H. For a declaration that it is not a breach of Clark County’s good faith obligations  
17 under the Settlement for the Clark County Commission to deny Gypsum’s 2016 Concept Plan or,  
18 alternatively, to reduce the density of the development to its existing R-U zoning density;

19 I. For an award of its reasonable attorneys’ fees and costs incurred; and,

20 J. For such other and further relief as the Court deems just and proper.

21 DATED this 13th day of March, 2017.

22 **WOLF, RIFKIN, SHAPIRO,**  
23 **SCHULMAN & RABKIN, LLP**

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