

1 John Buse (SBN 163156)
2 Aruna Prabhala (SBN 278865)
3 Peter Broderick (SBN 293060)
4 Ross Middlemiss (SBN 323737)
5 CENTER FOR BIOLOGICAL DIVERSITY
6 1212 Broadway, Suite 800
7 Oakland, California 94612
8 Telephone: (510) 844-7100
9 Facsimile: (510) 844-7150
10 aprabhala@biologicaldiversity.org
11 pbroderick@biologicaldiveristy.org
12 rmiddlemiss@biologicaldiversity.org

13 Attorneys for Center for Biological Diversity,
14 Preserve Wild Santee, Endangered Habitats
15 League, and California Chaparral Institute

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN DIEGO**

18 PRESERVE WILD SANTEE, CENTER
19 FOR BIOLOGICAL DIVERSITY,
20 ENDANGERED HABITATS LEAGUE,
21 and CALIFORNIA CHAPARRAL
22 INSTITUTE

23 Petitioners,

24 v.

25 CITY OF SANTEE, CITY OF SANTEE
26 CITY COUNCIL; and DOES 1 through
27 20, inclusive,

28 Respondents.

HOMEFED FANITA RANCHO, LLC;
and DOES 21 through 40, inclusive,

Real Parties in Interest.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[Pub. Res. Code § 21000, et seq.
(California Environmental Quality Act);
Code Civ. Proc. §§ 1094.5, 1085)]

Petition Filed October 21, 2020

1 **INTRODUCTION**

2 1. Petitioners Preserve Wild Santee, Center for Biological Diversity, California
3 Chaparral Institute, and Endangered Habitats League challenge Respondents City of Santee
4 (“City”) and the City Council of the City of Santee’s approval of the Fanita Ranch Project
5 (“Project”) and certification of an Environmental Impact Report (“EIR”) for the Project (State
6 Clearinghouse # 2005061118). The Project includes a general plan amendment, vesting tentative
7 map, a development review permit, conditional use permits, a specific plan, and development
8 agreement and various other associated approvals.

9 2. The Project is proposed for a large, undeveloped site on the northern edge of the
10 City. The 2,638-acre site is located within a state-designated Very High Fire Hazard Severity
11 Zone and contains a rich diversity of native animal and plant life, much of which would be lost
12 or extremely degraded by the Project’s 2,900 to 3,000 residential units, commercial structures,
13 road network, and other infrastructure.

14 3. Previous efforts to develop the site have failed. In 1999, voters rejected the first
15 Fanita Ranch Specific Plan approved by the City. In 2012, courts invalidated the City’s two
16 subsequent attempts to approve a smaller project consisting of about 1,380 residential units
17 based on the City’s failure to properly evaluate fire safety, wildlife, and water supply impacts.

18 4. The Project Petitioners challenge here is even larger and in many respects more
19 impactful than the version that was set aside in 2012. It would subject more residents to severe
20 wildfire risks, generate more vehicle trips, and sever the site’s largest remaining open space area
21 from surrounding wildlands, obliterating wildlife movement and ecological connectivity.

22 5. At the eleventh hour, the City also changed the Project by eliminating one of its
23 primary roadway connections—exacerbating traffic and fire evacuation impacts—but failed to
24 recirculate its environmental analysis of these concerns for public review.

25 6. In approving the Project, the City failed to comply with the California
26 Environmental Quality Act (Pub. Res. Code § 21000 et seq., herein “CEQA”). Petitioners
27 petition this Court for a writ of mandate under Code of Civil Procedure sections 1085 and/or

1 1094.5 directing Respondents to vacate and set aside their approval of the Project and
2 certification of the EIR for the Project. These claims are based on the following allegations:

3 **JURISDICTION AND VENUE**

4 7. This Court has jurisdiction to issue a writ of mandate to set aside Respondents'
5 decision to approve the Project under California Code of Civil Procedure section 1094.5 and/or
6 1085, and Public Resources Code sections 21168.5, 21168 and/or 21168.9.

7 8. Venue for this action properly lies in the Superior Court of San Diego County
8 because Respondents and the proposed site of the Project are located in the County. Many of the
9 significant environmental impacts from the Project that are the subject of this lawsuit would
10 occur in the County, and the Project would affect the interests of County residents, including
11 members of Petitioners.

12 9. Respondents have taken final agency actions with respect to approving the Project
13 and certifying the EIR. Respondents had a duty to comply with applicable state laws, including
14 but not limited to CEQA, prior to undertaking the discretionary approvals at issue in this
15 lawsuit.

16 10. Petitioners have a complied with the requirements of Public Resources Code
17 section 21167.5 by serving a written notice of Petitioners' intention to commence this action on
18 Respondents on October 21, 2020. A copy of the written notice and proof of service is attached
19 hereto as Exhibit A.

20 11. Petitioners have complied with the requirements of Public Resources Code section
21 21167.6 by concurrently notifying Respondents of Petitioners' request to prepare the record of
22 administrative proceedings relating to this action. A copy of the Petitioners' Election to Prepare
23 Administrative Record of Proceedings is attached hereto as Exhibit B.

24 12. Petitioners have performed any and all conditions precedent to filing this instant
25 action and have exhausted any and all administrative remedies to the extent required by law,
26 including, but not limited to, timely submitting extensive comments objecting to the approval of
27 the Project and identifying in writing to Respondents the deficiencies in Respondents'

1 environmental review for the Project on December 10, 2018, July 13, 2020, September 1, 2020,
2 September 17, 2020, and September 23, 2020, and orally during the City Council’s hearing on
3 September 23-24, 2020.

4 13. This Petition is timely filed in accordance with Public Resources Code section
5 21167 and California Code of Regulations, title 14, section 15112.

6 **THE PARTIES**

7 14. Petitioner PRESERVE WILD SANTEE is a volunteer community environmental
8 organization that has worked to protect and enhance the quality of life and preserve natural
9 resources in the City of Santee and surrounding areas since 1994. Preserve Wild Santee’s
10 members offer input into local land use decisions in an effort to produce better development
11 projects with fewer environmental and fire safety impacts, and those members will be directly
12 and adversely affected by approval and construction of the Project. Preserve Wild Santee
13 submitted written comments to the City objecting to and commenting on the Project.

14 15. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-
15 profit conservation organization dedicated to the protection of native species and their habitats
16 through science, policy, and environmental law. The Center has approximately 74,000 members
17 worldwide, including members who reside within communities in the vicinity of the Project.
18 The Center has worked for many years to protect imperiled plants and wildlife, open space, air
19 and water quality, and the overall quality of life for people in the region where the Project is
20 proposed. Members of the Center will be directly and adversely affected by the approval and
21 construction of the Project. The Center submitted written comments to the City objecting to and
22 commenting on the Project.

23 16. Petitioner ENDANGERED HABITATS LEAGUE is a tax-exempt non-profit
24 California corporation dedicated to the conservation of native ecosystems and to sustainable
25 land use and transportation planning. Since 1991, Endangered Habitats League has engaged in
26 planning partnerships across Southern California. Endangered Habitats League is extremely
27 active in the San Diego region, where many of its members live and enjoy the biological

1 diversity in the area, including the vicinity of the Project site, and will be directly and adversely
2 affected by the Project. Endangered Habitats League submitted written comments to the City
3 objecting to and commenting on the Project.

4 17. Petitioner CALIFORNIA CHAPARRAL INSTITUTE is an education, research,
5 and advocacy organization dedicated to the preservation of native shrubland habitats throughout
6 the West (including San Diego County and the vicinity of the Project site) and to supporting the
7 creative spirit as inspired by nature. California Chaparral Institute's members will be directly
8 and adversely affected by the approval and construction of the Project. California Chaparral
9 Institute submitted written comments to the City objecting to and commenting on the Project.

10 18. Respondent CITY OF SANTEE (the "City"), a political subdivision of the State of
11 California, is responsible for regulating and controlling land use in the City, including
12 implementing and complying with the provisions of CEQA. The City is the "lead agency" for
13 the Project for the purposes of Public Resources Code Section 21067, with principal
14 responsibility for conducting environmental review of the Project. The City has a duty to
15 comply with CEQA and other state laws.

16 19. Respondent CITY COUNCIL OF THE CITY OF SANTEE (the "Council") is the
17 duly elected decision-making body of the City. As the decision-making body, the Council is
18 responsible for granting the various approvals necessary for the Project and for ensuring that the
19 City has conducted an adequate and proper review of the Project's environmental impacts under
20 CEQA.

21 20. On information and belief, Real Party in Interest HOMEFED FANITA RANCHO,
22 LLC ("Real Party in Interest"), is registered to do business in the State of California, is the
23 owner of the real property that is the subject of the approvals challenged in this action, is the
24 Project applicant for purposes of CEQA, and is the recipient of the approvals challenged in this
25 action. HOMEFED FANITA RANCHO, LLC is also identified as the "Project Applicant" in the
26 two CEQA Notices of Determination ("NODs") the City issued for the Project.

1 21. Petitioners do not know the true names and capacities, whether individual,
2 corporate, associate, or otherwise, of respondents DOES 1 through 20, inclusive, and therefore
3 sue said respondents under fictitious names. Petitioners will amend this Petition to show their
4 true names and capacities when the same have been ascertained. Each of the respondents is the
5 agent and/or employee of Respondents, and each performed acts on which this action is based
6 within the course and scope of such respondent's agency and/or employment.

7 22. Petitioners do not know the true names and capacities, whether individual,
8 corporate, associate, or otherwise, of real parties in interest DOES 21 through 40, inclusive, and
9 therefore sue said real parties in interest under fictitious names. Petitioners will amend this
10 Petition to show their true names and capacities when the same have been ascertained.

11 **GENERAL ALLEGATIONS**

12 **Environmental Setting**

13 23. The Project site covers about 2,638 acres on the City's northern edge. The site is
14 currently undeveloped open space consisting almost entirely of "biological core" areas as
15 identified in the San Diego County Multiple Species Conservation Plan. It is characterized by
16 moderate to steep slopes and ridges that form a topographic boundary with existing urban
17 development to the south. The site is generally surrounded by other contiguous open space areas
18 to the west, north, and east.

19 24. The majority of the Project site is covered by vegetation communities considered
20 sensitive by the California Department of Fish and Wildlife ("CDFW"), including over 1,400
21 acres of coastal sage scrub, over 600 acres of chaparral, about 1,775 acres of native valley
22 needlegrass grassland, about 30 acres of coast live oak woodland, and approximately 20 acres of
23 riparian forest and other riparian vegetation.

24 25. The site's diverse sage scrub, chaparral, riparian, and vernal pool ecosystems
25 support dozens of endangered, threatened, and rare wildlife and plant species. The site includes
26 an estimated 1,471 acres of suitable habitat for the coastal California gnatcatcher, protected as a
27 threatened species under the federal Endangered Species Act, making the site one of the most
28

1 significant remaining unprotected gnatcatcher habitats in southern California. The EIR states
2 that 39 gnatcatcher “use areas” (areas used by a pair of gnatcatchers) were observed on the site
3 in 2016, as well as an additional 42 individuals. Gnatcatchers have been observed throughout the
4 site, with most of the use areas concentrated in the south. The U.S. Fish and Wildlife Service has
5 designated more than 2,400 acres of the site as critical habitat for the gnatcatcher. The federal
6 Endangered Species Act defines occupied critical habitat areas, such as designated gnatcatcher
7 critical habitat on the Project site, as areas that are essential for the conservation and recovery of
8 the species.

9 26. The federally endangered Quino checkerspot butterfly has been observed on the
10 site, and it is estimated that about two-thirds of the site contains suitable Quino habitat. Most of
11 these areas occur in the northern portion of the site, in or near the Project’s footprint. The U.S.
12 Fish and Wildlife Service considers the Project site to be a conservation priority due to its
13 importance for the recovery of Quino in the region.

14 27. The Hermes copper butterfly, which is proposed for listing under the federal
15 Endangered Species Act as a threatened species, has been observed on the site. Based on the
16 City’s criteria for suitable habitat, the site is estimated to contain about 148 acres of potential
17 Hermes copper habitat. Most of these areas occur in the northern portion of the site, in or near
18 the Project’s footprint. The U.S. Fish and Wildlife Service, however, has proposed that most of
19 the site (about 2,426 acres) should be designated as Hermes copper critical habitat.

20 28. Other rare or sensitive avian species have been observed or are likely to be found
21 on the Project site, including the Bell’s sage sparrow, southern California rufous-crowned
22 sparrow, cactus wren, and grasshopper sparrow. The least Bell’s vireo, a federally- and state-
23 listed endangered bird, has also been observed on the site.

24 29. The Project site contains numerous vernal pool or other seasonal wetland features
25 that contain endangered San Diego fairy shrimp, western spadefoot toads, or other vernal pool
26 indicator species. Although the Project’s EIR estimates that the site contains only 0.8 acres of
27 vernal pool habitat, this figure represents over one hundred individual vernal pool features—a
28

1 significant concentration of this imperiled habitat. It is estimated that about 98 percent of the
2 original vernal pools in San Diego County have been destroyed.

3 30. The Project site is located in an area designated by CalFire as a Very High
4 Severity Fire Hazard Zone, and has been subject to numerous wildfires. The 2003 Cedar fire
5 burned an estimated 95 percent of the vegetation on the site. While sage scrub and chaparral on
6 the site have largely recovered from the Cedar fire, fire ecologists have shown that more
7 frequent wildfires can result in “type conversion” and the permanent loss of native vegetation.

8 31. The Project site is within an area covered by the San Diego Multiple Species
9 Conservation Program (“MSCP”), which affords participating municipalities in southwestern
10 San Diego County a limited exception to the prohibition on the “taking” of federally- and state-
11 protected species. Each participant is required to prepare an MSCP Subarea Plan, subject to the
12 approval by the U.S. Fish and Wildlife Service and CDFW. The City does not yet have a final,
13 approved MSCP Subarea Plan, but has prepared various draft Subarea Plans over the previous
14 25 years without ever successfully securing approval from the U.S. Fish and Wildlife Service or
15 CDFW. As the largest remaining undeveloped open space in the City, the Project site would
16 constitute the core biological reserve for any City Subarea Plan.

17 32. The Project site contains several functional biological linkages that connect core
18 habitat to the northeast to habitat to the southwest. Drafts of the City’s MSCP Subarea Plan
19 identify several wildlife corridors on the site. The site includes areas used by Southern
20 California mountain lions, which are candidates for listing under the California Endangered
21 Species Act.

22 **Previous Development Plans for the Project Site**

23 33. Following the City’s incorporation in 1980, the Fanita Ranch site has been subject
24 to several development proposals of varying intensity. In 1983, the Carlton Santee Corporation
25 applied for a 606-unit project on a portion of the site. Following preparation of an EIR, the City
26 approved this development in 1984, but the property was sold and the approvals expired. In
27 1997, a subsequent owner, Westbrook Communities (and its subsidiary, Westbrook Fanita
28

1 Ranch, LP), proposed a 3,000-unit development, the Fanita Ranch Specific Plan, and an
2 amendment to the City’s General Plan to accommodate the development. The City approved this
3 project in 1999, but voters rejected this approval by referendum.

4 34. In 2005, the next property owner, Barratt American, submitted an application for a
5 1,380-unit project consisting of four distinct development bubbles dispersed throughout the site.
6 The City approved the vesting tentative tract map and certified an EIR for this project in 2007.
7 Three of the present Petitioners—Preserve Wild Santee, Center for Biological Diversity, and
8 Endangered Habitats League—challenged these approvals under CEQA and the Subdivision
9 Map Act (“*Fanita I*”). The trial court found the City’s environmental review of the project to be
10 inadequate and issued a writ of mandate requiring the City to reconsider its conclusion that the
11 project’s fire safety impacts were less than significant. The City prepared a Revised EIR
12 containing a new analysis of fire safety impacts, and certified the Revised EIR in 2009. The
13 *Fanita I* petitioners again challenged this approval (“*Fanita II*”). The trial court again found the
14 City’s environmental review to be deficient and issued a writ of mandate. The *Fanita II*
15 amended writ of mandate, issued on August 21, 2012, directed the City to set aside all project
16 approvals and the EIR certification.

17 35. The *Fanita I* petitioners also appealed the Superior Court’s judgment in that case.
18 Ultimately, the Court of Appeal held that, in addition to the inadequate fire safety analysis, the
19 project also improperly deferred mitigation for impacts to the Quino checkerspot butterfly and
20 provided an inadequate analysis of water supply. (*Preserve Wild Santee v. City of Santee* (2012)
21 210 Cal.App.4th 260.)

22 36. In April 2013, the City adopted a resolution setting aside the project approvals and
23 EIR certification.

24 37. During the *Fanita I* and *Fanita II* litigation, and amidst the 2008 financial crisis,
25 Barratt American and its subsidiary, Fanita Ranch, LP entered bankruptcy proceedings. In a
26 court-approved settlement disposition, Westbrook Fanita Ranch, LP re-acquired ownership of
27

1 the Fanita Ranch property. In 2011, the Homefed Corporation acquired the property from
2 Westbrook Fanita Ranch, LP.

3 **The Current Proposed Project**

4 38. Real Party in Interest and applicant Homefed Fanita Rancho, LLC submitted an
5 application for the current Project in 2018. The Project differs significantly from previously
6 proposed Fanita Ranch developments. It would be considerably larger and more intensive than
7 the development approved in 2007. The Project described in the EIR would include up to 3,008
8 units, 80,000 square feet of commercial development, and associated roadways and other
9 infrastructure.

10 39. In contrast to the 2007 project, with its four development bubbles, the current
11 Project would locate development in two large clusters in the northern part of the property.
12 While this avoids most development on the southern portion of the property and allows
13 preservation of a large, contiguous area of about 1,650 acres in the south, this configuration
14 would render the Habitat Preserve an isolated island in a sea of existing and future residential
15 development, largely severed from any connection with remaining wildlands and open space
16 areas.

17 40. Also in contrast to the 2007 project, the current Project was inconsistent with the
18 City's General Plan, requiring an amendment. To accommodate the larger, more intensive
19 Project, the Project approvals included a General Plan amendment changing the site's land use
20 designation to "Specific Plan."

21 41. According to the EIR, the Project would destroy or degrade about 989 acres of
22 sensitive habitat, including 14 California gnatcatcher use areas, over 100 vernal pools and other
23 seasonal wetland features (including 34 that support San Diego fairy shrimp), 14 basins
24 occupied by western spadefoot toads, about 581 acres of Quino checkerspot butterfly habitat,
25 and 53 acres of Hermes copper butterfly habitat, among other impacts.

1 42. At build-out, the Project would be populated by about 8,000 residents, all housed
2 within a Cal Fire designated “Very High Fire Hazard Severity Zone,” and who would require
3 evacuation through areas subject to large, intense flames during wildfires.

4 43. At build-out, the Project would require about 1,600 acre-feet of water per year.

5 **The Project Approvals and EIR**

6 44. On or about November 5, 2018, the City issued a Notice of Preparation (“NOP”)
7 of a Draft Revised EIR (“DREIR”) for the Project, in which it notified public agencies and
8 interested individuals that, as a lead agency, it would be preparing a DREIR to analyze the
9 proposed Project’s potentially significant environmental impacts.

10 45. On or about December 10, 2018, the Center and Preserve Wild Santee submitted
11 comments on the NOP. The comments requested that the City carefully consider in the EIR the
12 proposed Project’s potential impacts to wildfire risk and public safety, traffic, greenhouse gas
13 emissions, water supply, and biological resources including wildlife and habitat, and encouraged
14 the City to consider in the EIR alternatives, including a Conservation Alternative and a Climate
15 Action Alternative, that would reduce these impacts.

16 46. On or about May 29, 2020, Respondents published a Notice of Availability of the
17 DREIR for the Project and circulated it for public review and comment.

18 47. Petitioners and numerous others, including public agencies, conservation
19 organizations, tribal groups, and individual members of the public, submitted comments on the
20 DREIR. Commenters voiced concern over the Project’s significant impacts and identified
21 numerous deficiencies in the DREIR. For example, commenters explained that the Project
22 would have significant impacts on biological resources (including special status species),
23 wildfire risk and wildfire safety, transportation and traffic, greenhouse gas emissions, water
24 supplies, and land use, and that the EIR’s analysis and proposed mitigation of those impacts was
25 woefully inadequate.

26 48. On July 13, 2020, before the close of the comment period on the DREIR,
27 Petitioners Center for Biological Diversity and Endangered Habitats League submitted written
28

1 comments on the DREIR to the City. The comments explained, among other things, that the
2 DREIR failed to comply with CEQA in the following respects:

- 3 a. The DREIR relied on a fundamentally flawed statement of Project objectives
4 because it required that sweeping aspects of the Project—including use
5 designations, the Project footprint, and open space preserve—be designed in order
6 to conform to a draft planning document (the City of Santee’s Draft Multiple
7 Species Conservation Program Subarea Plan) that is unlikely ever to be approved
8 by the requisite agencies, which include the U.S. Fish and Wildlife Service;
- 9 b. The DREIR failed to adequately analyze and mitigate the Project’s significant
10 impacts to biological resources, including impacts to coastal California
11 gnatcatchers and their designated critical habitat, the western spadefoot toad,
12 vernal pool habitat, the Southern California mountain lions (a candidate species
13 under the California Endangered Species Act), Quino checkerspot butterfly,
14 Hermes copper butterfly, Crotch bumble bee, and wildlife movement and habitat
15 connectivity;
- 16 c. The DREIR failed to adequately analyze the Project’s significant greenhouse gas
17 emissions and failed to adopt adequate mitigation measures to reduce or avoid
18 those impacts;
- 19 d. The DREIR failed to disclose the Project’s inconsistency with the applicable
20 Multiple Species Conservation Plan and applicable federal law, including the
21 Endangered Species Act; and
- 22 e. The DREIR failed to adequately analyze or mitigate the Project’s impacts on water
23 supplies by relying on artificially narrow thresholds of significance,
24 misrepresenting the Project’s water demand, failing to properly assess the water
25 supplies available to serve the Project, failing to account for the effect of climate
26 change on the Project’s water supply, and failing to acknowledge or consider
27 likely limits on the Metropolitan Water District’s supply capabilities.

1 49. On July 13, 2020, before the close of the comment period on the DREIR,
2 Petitioner Preserve Wild Santee submitted written comments on the DREIR to the City. The
3 comments explained, among other things, that the DREIR failed to comply with CEQA in the
4 following respects:

- 5 a. The DREIR failed to fully disclose, analyze or mitigate the Project’s significant
6 wildfire risks, including its cumulative impacts, and failed to adequately evaluate
7 the Project’s wildfire safety impacts, including evacuation;
- 8 b. The DREIR failed to adequately analyze or mitigate the Project’s impacts to
9 biological resources, including special status species with habitat on the Project
10 site;
- 11 c. The DREIR failed to adequately analyze or mitigate the Project’s impacts to
12 cultural and tribal resources on the Project site;
- 13 d. The DREIR failed to adequately analyze or mitigate the Project’s energy-related
14 impacts;
- 15 e. The DREIR failed to adequately analyze or mitigate the Project’s greenhouse gas
16 emissions; and
- 17 f. The DREIR’s analysis of Project alternatives was flawed.

18 50. On July 13, 2020, before the close of the comment period on the DREIR,
19 Petitioner California Chaparral Institute submitted written comments on the DREIR to the City.
20 The comments explained, among other things, that the DREIR failed to comply with CEQA
21 because it failed to fully disclose, analyze or mitigate the Project’s significant wildfire risks,
22 including its cumulative impacts.

23 51. Numerous other commenters wrote to express their concerns about the Project and
24 the DREIR’s inadequate environmental review. For example, on or about July 13, 2020, David
25 McNeil, a retired firefighter and community development planner, wrote to inform the City that
26 in his “expert opinion the Revised DEIR has failed to disclose, avoid and mitigate the significant
27 adverse wildfire public safety impacts associated with the proposed Fanita Ranch development
28

1 project.” Also on or about July 13, 2020, the California Native Plant Society, a non-profit
2 organization dedicated to conserving California native plants and their natural habitats,
3 commented on the Project and observed that the DREIR’s analysis of, and consideration of
4 mitigation and alternatives to address, the Project’s impacts to biological resources (particularly
5 native plant species), greenhouse gas emissions, and wildfire risk and evacuations was
6 inadequate.

7 52. On or about July 28, the Center transmitted additional expert comments on the
8 DREIR prepared by SWAPE regarding the Project’s greenhouse gas and health risk impacts.
9 The SWAPE comments concluded that the DREIR failed to adequately evaluate the Project’s
10 greenhouse gas and health risk impacts, and therefore that emissions and health risk impacts
11 associated with construction and operation of the Project were underestimated and inadequately
12 addressed.

13 53. The City noticed a public hearing for August 26, 2020 to consider and approve the
14 Project and certify the EIR.

15 54. In a letter dated August 20, 2020 the Project applicant informed the City that it
16 planned to eliminate the Magnolia Avenue Extension from the Project plan, stating that the
17 Magnolia Avenue Extension “is not necessary for the development of Fanita Ranch.”

18 55. Subsequently, the City took the public hearing to approve the Project and certify
19 the EIR off calendar for August 26.

20 56. On September 1, 2020, Preserve Wild Santee submitted supplemental comments
21 on the Project and the environmental review process. The comments requested that the City
22 provide the public with the Final EIR (including the responses to comments), which had already
23 been provided to public agencies. The Comments also requested that the City publish a
24 statement regarding why Council member Rob McNelis was going to be disqualified from
25 voting on the project unless the Magnolia Avenue Extension was removed from the developer’s
26 originally proposed project.

1 57. On September 17, 2020, the Center and Endangered Habitats League submitted a
2 letter to the City objecting to the City’s withholding of the Final EIR from release and public
3 review even though it was only six days before the scheduled public hearing regarding Project
4 approval and the certification of the EIR. The letter also transmitted comments on the DREIR by
5 transportation expert Neal Liddicoat, P.E., of Griffin Cove Transportation Consulting, PLLC.
6 Among other things, Mr. Liddicoat’s comments noted that:

- 7 a. The proposed removal of the Magnolia Avenue Extension from the Project would
8 result in a significant impact on traffic levels from the Project and on fire safety
9 and emergency evacuation; and
- 10 b. The DREIR failed to adequately evaluate the Project’s emergency evacuation
11 needs.

12 58. On or about September 18, 2020, approximately five days before the scheduled
13 public hearing to approve the Project, the City released a Final EIR for the Project to the public,
14 along with a staff report and other materials related to the upcoming public hearing to approve
15 the Project. The Final EIR contained text changes to the DREIR and Respondents’ responses to
16 public comments on the Draft EIR. Many of the defects identified in the Draft EIR identified by
17 Petitioners and other commenters persisted in the Final EIR. The Final EIR also included a so-
18 called “Second Errata to the Final Revised Environmental Impact Report” in which the City
19 described the late change to the proposed Project from the removal of the Magnolia Avenue
20 Extension and provided a discussion of the potential effects that the change would have on the
21 impact analysis provided in the Final EIR. The City did not recirculate the EIR for public review
22 and comment.

23 59. On the morning of September 23, 2020, prior to the start of that evening’s public
24 hearing to approve the Project, Preserve Wild Santee submitted comments on the Final EIR for
25 the Project. The comments explained, among other things, that the City’s environmental review
26 failed to comply with CEQA in the following respects:

- a. The EIR’s analysis of and mitigation for the Project’s significant wildfire, wildfire safety, and wildfire evacuation impacts remained inadequate;
- b. The Final EIR failed to adequately respond to comments on the DREIR raised by Preserve Wild Santee and others; and
- c. The modification of the Project to eliminate the Magnolia Avenue escape route from a Cal Fire designated “Very High Fire Hazard Severity Zone” was a significant change to the project requiring analysis, full disclosure, and recirculation of the EIR for public review.

60. On the morning of September 23, 2020, prior to the start of that evening’s public hearing to approve the Project, the Center submitted, and Endangered Habitats League joined, comments on the Final EIR for the Project. The comments explained, among other things, that the City’s environmental review failed to comply with CEQA in the following respects:

- a. The City’s decision to withhold the Final EIR from the public until a mere five days before the public hearing to approve the Project thwarted CEQA’s purposes of public transparency, disclosure, and public participation;
- b. The Final EIR failed to adequately respond to the Center’s prior comments on the DREIR;
- c. The EIR failed to adequately analyze or mitigate the Project’s significant impacts to biological resources, including western spadefoot toad, coastal California gnatcatcher, mountain lions, Quino checkerspot butterfly, Hermes copper butterfly, and Crotch bumble bee; failed to evaluate the impacts of the Project’s increased fire risk on species and habitat; failed to adequately analyze or mitigate the Project’s significant impacts to wildlife movement and habitat connectivity;
- d. The EIR’s analysis of and mitigation for the Project’s significant water supply impacts remained inadequate because it failed to consider the impacts of providing the entirety of the Project’s water supply and relied on two differing demand projections in its water supply analysis; and

1 e. The Final EIR’s analysis of and mitigation for the Project’s significant
2 transportation and traffic impacts remained inadequate and the late removal of the
3 Magnolia Avenue Extension from the Project—and the resulting traffic impacts—
4 constituted significant new information requiring the EIR to be recirculated for
5 public review and comment.

6 61. The Center’s September 23, 2020 letter also transmitted comments on the Final
7 EIR and associated materials by transportation expert Neal Liddicoat, P.E., of Griffin Cove
8 Transportation Consulting, PLLC. Among other things, Mr. Liddicoat’s comments noted that
9 the deficiencies he had identified in the DREIR largely persisted in the Final EIR and that:

- 10 a. The changes to the Project and the “Second Errata” resulted in significant new
11 information regarding the Project’s transportation and traffic impacts warranting
12 recirculation and additional public review;
- 13 b. The analysis in the “Second Errata” of the Project’s transportation and traffic
14 impacts was deficient because it contradicted information in the DREIR, obscured
15 the revised Project’s significant impacts, and its conclusions were not supported
16 by substantial evidence;
- 17 c. The EIR failed to adequately analyze the Project’s impacts on wildfire evacuation
18 times and road capacity; and
- 19 d. The Final EIR failed to adequately respond to comments on the DREIR regarding
20 its analysis of transportation and traffic impacts.

21 62. On the evening of Wednesday, September 23, 2020, the Council began the public
22 hearing to approve the Project and certify the EIR. Numerous representatives of environmental
23 organizations and members of the public testified at the hearing in opposition to the Project.
24 Commenters also pointed out the significant new information resulting from the Project
25 applicant’s late removal of the Magnolia Avenue Extension from the Project and objected to the
26 limited time the City provided the public to review the Final EIR and Errata, and requested that
27 the City recirculate the EIR for public comment and review. Although members of the public

1 were limited to one minute of testimony apiece, the hearing lasted into the early hours of the
2 following morning.

3 **Respondents' Approval of the Project and Certification of the EIR**

4 63. In the early morning of September 24, 2020, at the conclusion of the public
5 hearing on the Project, the Council voted to approve the Project, (including a General Plan
6 amendment and other Project-related entitlements), certify the EIR, and adopt findings in
7 support of the Project approval and certification of the EIR.

8 64. On or about September 24, 2020, the City filed a Notice of Determination for the
9 Project with the County Clerk, which stated that the City had approved the Project, prepared an
10 EIR, and adopted Findings and a Statement of Overriding Considerations. The City filed the
11 Notice of Determination even though various Project approvals had not yet undergone a second
12 reading as required by California law.

13 65. On October 14, 2020, the Council conducted second readings for the remaining
14 approvals and adopted ordinances approving the Project's Specific Plan and authorizing the City
15 to enter a development agreement with the applicant.

16 66. On or about October 15, 2020, the City filed a second Notice of Determination for
17 the October 14 approvals. The second Notice of Determination also stated that the City had
18 approved the Project, prepared an EIR, and adopted Findings and a Statement of Overriding
19 Considerations, but noted that it was "not intended to replace, repeat or supersede the Previously
20 Filed NOD."

21 67. The Notices of Determination listed HomeFed Fanita Rancho, LLC as the sole
22 Project applicant.

23 68. As a result of Respondents' actions in approving the Project, certifying the EIR for
24 the Project, and adopting Findings and a Statement of Overriding Considerations, Petitioners
25 and their members will suffer significant and irreparable harm. Petitioners have no plain,
26 speedy, or adequate remedy at law for this irreparable harm. Unless this Court grants the
27

1 requested writ of mandate to require Respondents to set aside certification of the EIR and
2 approval of the Project, Respondents' approval will remain in effect in violation of state law.

3 69. Respondents have prejudicially abused their discretion and failed to proceed in the
4 manner required by law in the following ways:

5 **FIRST CAUSE OF ACTION**

6 **Violation of CEQA – Inadequate EIR (Public Resources Code § 21000, et seq.,**
7 **CEQA Guidelines 14 Cal. Code Regs. § 15000 et seq.)**

8 70. Petitioners hereby incorporate by reference each and every allegation set forth
9 above.

10 71. CEQA was enacted by the legislature to ensure that the long-term protection of the
11 environment is a guiding criterion in public decisions. CEQA requires the lead agency for a
12 project with the potential to cause significant environmental impacts to prepare an EIR for the
13 project that complies with the requirements of the statute, including, but not limited to, the
14 requirement to disclose and analyze the project's potentially significant environmental impacts.
15 The EIR must provide sufficient environmental analysis such that the decisionmakers can
16 intelligently and fully consider environmental consequences when acting on the proposed
17 project. Such analysis must include and rely upon thresholds of significance that are based on
18 substantial evidence in the record.

19 72. CEQA also mandates that the lead agency analyze and adopt feasible and
20 enforceable mitigation measures that would reduce or avoid any of a project's significant
21 environmental impacts. If any of the project's significant impacts cannot be mitigated to a less
22 than significant level, then CEQA bars the lead agency from approving a project if a feasible
23 alternative is available that would meet the project's objectives while avoiding or reducing its
24 significant environmental impacts.

25 73. CEQA requires that substantial evidence in the administrative record support all of
26 the agency's findings and conclusions, including those contained in the EIR, and that the agency
27 explain how the evidence in the record supports the conclusions the agency has reached.

1 74. Respondents committed a prejudicial abuse of discretion and failed to proceed in a
2 manner required by law because the Project relies on an EIR that fails to meet CEQA’s
3 requirements for the disclosure, analysis, mitigation, reduction, and/or avoidance of significant
4 environmental impacts from the Project, including direct and cumulative impacts relating to
5 biological resources, wildfire and wildfire safety, transportation and traffic, greenhouse gas
6 emissions, water supply, and land use.

7 75. **Project Description.** The EIR’s Project Description failed to describe the whole
8 of the proposed action and failed to accurately describe the nature and extent of the project
9 approvals being considered as a part of the Project.

10 76. **Project Objectives.** The EIR is fundamentally flawed because it relied on a
11 statement of Project objectives that demanded that sweeping aspects of the Project—including
12 use designations, the Project footprint, and open space preserve—be designed to conform to a
13 planning document (the City of Santee’s Draft Multiple Species Conservation Program Subarea
14 Plan) that is inapplicable, in draft form, and unlikely ever to be approved by the requisite
15 agencies, which include the U.S. Fish and Wildlife Service and CDFW.

16 77. **Biological Resources.** The EIR fails to adequately disclose, analyze, and/or
17 mitigate the Project’s significant direct and cumulative impacts to biological resources,
18 including numerous special status wildlife and plant species affected by the Project and their
19 habitat. Those wildlife species include, but are not limited to: coastal California gnatcatchers,
20 Western spadefoot toad, the Southern California mountain lions (a candidate species under the
21 California Endangered Species Act), Quino checkerspot butterfly, Hermes copper butterfly,
22 Crotch bumble bee, and numerous special-status native plant species. The EIR’s biological
23 resources analysis is also inadequate because, *inter alia*, the EIR:

- 24 a. fails to include and fully analyze all biological resources impacts resulting from
25 the Project;
26 b. relies on mitigation measures that are vague, ineffective, deferred, unenforceable,
27 unsupported by substantial evidence, and/or otherwise inadequate;

- c. relies heavily on establishment of a Habitat Preserve as a generic measure for impacts to multiple, distinct wildlife species and vegetation communities, without actually and effectively addressing these impacts;
- d. fails to incorporate all feasible mitigation or avoidance measures;
- e. fails to adequately disclose, analyze, and/or mitigate the Project's significant impacts on habitats and features such as vernal pool habitat;
- f. fails to adequately disclose, analyze, and/or mitigate the Project's inconsistency and conflicts with the San Diego MSCP; and
- g. fails to adequately disclose, analyze, and/or mitigate the direct, indirect, and cumulative impacts of the Project on other biological resources, including but not limited to cumulative impacts to wildlife movement and impacts to wildlife from increased fire risk.

78. **Wildfire and Wildfire Safety.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project's significant direct, indirect, and cumulative impacts relating to wildfire and wildfire safety. The EIR's analysis of wildfire and wildfire safety related impacts is inadequate because, inter alia, the EIR:

- a. fails to include and fully analyze all wildfire and wildfire safety impacts resulting from the Project (including an accurate description of existing conditions and wildfire ignition risks resulting from the Project), and fails to support with substantial evidence its conclusions regarding the Project's wildfire and wildfire safety impacts, including, but not limited to, increased wildfire ignition risks from the Project and increased exposure of persons in the Project and the vicinity to wildfire risk;
- b. fails to adequately analyze the Project's impacts on wildfire evacuation times and road capacity;

- c. relies on wildfire and wildfire safety mitigation measures that are vague, ineffective, deferred, unenforceable, unsupported by substantial evidence, and/or otherwise inadequate; and
- d. fails to incorporate all feasible mitigation and avoidance measures to reduce impacts related to wildfire and wildfire safety.

79. **Transportation and Traffic.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project’s significant direct, indirect, and cumulative transportation and traffic impacts. The EIR’s analysis of traffic impacts is inadequate because, *inter alia*, the EIR:

- a. fails to include and fully analyze all transportation and traffic impacts resulting from the Project, and fails to support with substantial evidence its conclusions regarding the Project’s traffic and transportation impacts, including impacts resulting from late revisions to the Project;
- b. fails to adequately analyze the Project’s impacts on wildfire evacuation times and road capacity;
- c. relies on traffic mitigation measures that are vague, ineffective, deferred, unenforceable, unsupported by substantial evidence, and/or otherwise inadequate; and
- d. fails to incorporate all feasible mitigation and traffic reduction measures.

80. **Greenhouse Gas Emissions.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project’s significant direct, indirect, and cumulative greenhouse gas impacts. The EIR’s analysis of greenhouse gas impacts is inadequate because, *inter alia*, the EIR:

- a. fails to include and fully analyze all greenhouse gas emissions resulting from the Project;
- b. fails to support its selection of thresholds of significance with substantial evidence in the record;

- c. relies on greenhouse gas mitigation measures that are vague, ineffective, deferred, unenforceable, unsupported by substantial evidence, and/or otherwise inadequate; and
- d. fails to incorporate all feasible mitigation and avoidance measures.

81. **Air Quality.** The EIR does not adequately disclose, analyze, and/or mitigate the health risks associated with the Project’s construction and operational air quality impacts.

82. **Water Supply.** The EIR does not adequately disclose, analyze, and/or mitigate the environmental consequences of supplying water and adequate utilities service to the Project. The EIR’s utilities and water supply analysis is inadequate because, *inter alia*, the EIR:

- a. fails to include and adequately analyze the impacts of providing the Project with long-term potable water supply;
- b. fails to adequately disclose, analyze, and/or mitigate the Project’s impacts on groundwater;
- c. relies on mitigation measures that are vague, ineffective, deferred, unenforceable, unsupported by substantial evidence, and/or otherwise inadequate; and
- d. fails to incorporate all feasible mitigation measures to reduce the impacts of supplying the Project with potable water and long-term utilities service.

83. **Land Use.** The EIR fails to disclose the Project’s conflicts with applicable land use plans, policies, and regulations adopted for the purpose of avoiding or mitigating an environmental effect, including conflicts and inconsistencies with the San Diego MSCP.

84. **Cultural Resources.** The EIR does not disclose or provide adequate mitigation for the Project’s impacts to culturally significant or sacred sites. The City approved the Project prior to completing the consultation with California Native tribes required by CEQA.

85. **Alternatives.** The EIR fails to provide an adequate selection and discussion of alternatives for consideration that foster informed decision-making and informed public participation. The alternatives analysis in the EIR does not meet CEQA’s requirement that an EIR consider a reasonable range of alternatives that lessen the Project’s significant

1 environmental impacts, does not focus on alternatives that either eliminate adverse impacts or
2 reduce them to insignificance even if they would to some degree impede the Project's
3 objectives, failed to consider feasible alternatives that would lessen significant impacts,
4 unlawfully rejects alternatives without adequately analyzing whether their impacts would be less
5 significant than the Project's, and fails to support with substantial evidence its conclusions
6 regarding alternatives.

7 86. **Response to Comments.** The responses to comments in the Final EIR fail to meet
8 CEQA's requirements in that they neither adequately dispose of all the issues raised, nor provide
9 specific rationale for rejecting suggested Project changes, including the consideration or
10 adoption of feasible mitigation measures or alternatives. CEQA requires that a lead agency
11 evaluate and respond to all environmental comments on the Draft EIR that it receives during the
12 public review period. The responses must describe the disposition of the issues raised and must
13 specifically explain reasons for rejecting suggestions and for proceeding without incorporating
14 the suggestions. The Final EIR's responses to comments fail to satisfy the requirements of law.

15 87. Based upon each of the foregoing reasons, the EIR is legally defective under
16 CEQA. Respondents prejudicially abused their discretion in violation of CEQA in approving the
17 Project. As such, the Court should issue a writ of mandate directing Respondents to set aside the
18 certification of the EIR and approval of the Project.

19 **SECOND CAUSE OF ACTION**

20 **Violation of CEQA — Failure to Recirculate Environmental Impact Report (Public** 21 **Resources Code § 21000, et seq., CEQA Guidelines § 15000 et seq.)**

22 88. Petitioners hereby incorporate by reference each and every allegation set forth
23 above.

24 89. CEQA requires that if significant new information is added to an EIR after a draft
25 EIR is prepared, but before certification of the final EIR, an amended EIR must be recirculated
26 for public review and comment.

1 90. After the close of the public comment period for the Draft EIR, the City added
2 significant new information to the EIR (including a so-called “Errata” with extensive new
3 analysis) and made substantial changes to the Project (including the elimination of the Magnolia
4 Avenue Extension) prior to certifying the EIR and approving the Project.

5 91. Despite the changes to the Project and the addition of new environmental review
6 and Project materials, Respondents failed to recirculate the EIR or any portion of the EIR as
7 required CEQA. As a result of Respondents’ failure to recirculate the EIR, the public and public
8 agencies were deprived of any meaningful opportunity to review and comment on the approved
9 Project, its substantial adverse environmental consequences, and the new information regarding
10 other unanalyzed environmental effects of the Project.

11 92. By failing to amend and recirculate the EIR, Respondents failed to proceed in the
12 manner required by law, and their decision to approve the Project was not supported by
13 substantial evidence.

14 **THIRD CAUSE OF ACTION**

15 **Violation of CEQA — Inadequate Findings and Statement of Overriding Considerations**
16 **(Public Resources Code § 21000, et seq., CEQA Guidelines § 15000 et seq.)**

17 93. Petitioners hereby incorporate by reference each and every allegation set forth
18 above.

19 94. Respondents’ Findings of Fact and Statement of Overriding Considerations violate
20 the requirements of CEQA and the CEQA Guidelines. Respondents’ findings fail to identify the
21 changes or alterations that are required to avoid or substantially lessen the project’s significant
22 environmental effects, and do not provide adequate reasoning or disclose the analytic route from
23 facts to conclusions, as required by law. The purported benefits of the Project cited in the
24 Statement of Overriding Considerations do not outweigh the Project’s substantial costs to public
25 health and the environment. Respondents’ Findings and Statement of Overriding Considerations
26 are not supported by substantial evidence in the record.

1 4. For a declaration that Respondents’ actions in certifying the EIR and approving
2 the Project violated CEQA and the CEQA Guidelines, and that the certification and approvals
3 are invalid and of no force or effect, and that the Project is inconsistent with other applicable
4 plans, policies, or regulations;

5 5. For costs of the suit;

6 6. For attorney’s fees as authorized by Code of Civil Procedure section 1021.5 and
7 other provisions of law; and,

8 7. For such other and future relief as the Court deems just and proper.

9
10
11 DATED: October 21, 2020

CENTER FOR BIOLOGICAL DIVERSITY

12
13 By: 

14 _____
15 John Buse
16 Aruna Prabhala
17 Peter Broderick
18 Ross Middlemiss

19 Attorneys for Petitioners CENTER FOR
20 BIOLOGICAL DIVERSITY, PRESERVE WILD
21 SANTEE, ENDANGERED HABITATS
22 LEAGUE, AND CALIFORNIA CHAPARRAL
23 INSTITUTE