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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 PRESERVE WILD SANTEE, CENTER
12 FOR BIOLOGICAL DIVERSITY,
13 ENDANGERED HABITATS LEAGUE,
and CALIFORNIA CHAPARRAL
14 INSTITUTE

15 Petitioners,

16 v.

17 CITY OF SANTEE, CITY OF SANTEE
18 CITY COUNCIL; and DOES 1 through
20, inclusive,

19 Respondents.

20 HOMEFED FANITA RANCHO, LLC;
21 JEFF O'CONNOR; and DOES 21 through
40, inclusive,

22 Real Parties in Interest.
23
24
25
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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);
Gov. Code § 65000 et seq. (State Planning
and Zoning Law); Gov. Code § 66410 et
seq. (Subdivision Map Act); Pub. Res.
Code § 4290; Code Civ. Proc. §§ 1094.5,
1085]

Petition Filed October 14, 2022

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 a Recirculated Revised Environmental Impact Report
6 (“Recirculated REIR”) for the Project (State Clearinghouse 2005061118).

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

13 3. The City has a long history of authorizing development on the site in violation of
14 state law. In 2012, this Court twice invalidated the City’s attempts to approve a prior version of
15 the project consisting of about 1,380 residential units, based on the City’s failure to properly
16 evaluate fire safety, wildlife, and water supply impacts under CEQA. In 2020, the City approved
17 an even larger, more destructive project, and once again environmental groups sued. This Court
18 found that the City had again violated CEQA and failed to properly evaluate the 2020 project’s
19 wildfire and public safety impacts, and directed the City to rescind the Projects’ approvals.

20 4. The 2020 project approvals were also the subject of a voter referendum, which the
21 City removed from the November 2022 ballot after the Court’s ruling. In November 2020, the
22 City’s voters approved a ballot initiative called “Measure N.” The measure imposed a
23 requirement that certain development projects—like the 2020 Fanita Ranch Project—would
24 require voter approval.

25 5. In 2022, the City and the developer revived the Fanita Ranch Project. Although it
26 made virtually no material changes to the proposed development, the City prepared a
27

1 “recirculated” environmental impact report that purported to evaluate the Project’s wildfire and
2 evacuation impacts.

3 6. Fearing a public vote due to the project’s longstanding unpopularity, the City and
4 the developer crafted the 2022 Project approvals in a manner calculated to evade the
5 requirements of Measure N. In doing so, they ran afoul of the State Planning and Zoning Law
6 and Subdivision Map Act, which require development projects to be consistent with the
7 applicable general plan. The City also violated the Elections Code by re-approving a project
8 subject to a qualifying referendum without waiting the requisite 12 months after rescinding the
9 project. Additionally, the City’s recirculated environmental review continues to fall short of
10 CEQA’s requirements in numerous respects. These claims are based on the following
11 allegations:

12 **JURISDICTION AND VENUE**

13 7. This Court has jurisdiction to issue a writ of mandate to set aside Respondents’
14 decision to approve the Project under California Code of Civil Procedure section 1094.5 and/or
15 1085, and Public Resources Code sections 21168.5, 21168 and/or 21168.9.

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

21 9. Respondents have taken final agency actions with respect to approving the Project
22 and certifying the EIR. Respondents had a duty to comply with applicable state laws, including
23 but not limited to CEQA, the State Planning and Zoning Law, and the Elections Code, prior to
24 undertaking the discretionary approvals at issue in this lawsuit.

25 10. Petitioners have complied with the requirements of Public Resources Code section
26 21167.5 by serving a written notice of Petitioners’ intention to commence this action on
27

1 Respondents on October 14, 2022. A copy of the written notice and proof of service is attached
2 hereto as Exhibit A.

3 11. Petitioners have complied with the requirements of Public Resources Code section
4 21167.6 by concurrently notifying Respondents of Petitioners' request to prepare the record of
5 administrative proceedings relating to this action. A copy of the Petitioners' Election to Prepare
6 Administrative Record of Proceedings is attached hereto as Exhibit B.

7 12. Petitioners will comply with Public Resources Code section 21167.7 and Code of
8 Civil Procedure section 388 by furnishing the Attorney General of the State of California with a
9 copy of the Petition on or before October 17. Attached hereto as Exhibit C is the true and correct
10 copy of the letter transmitting the Petition to the Attorney General.

11 13. Petitioners have satisfied any and all conditions precedent to filing this instant
12 action and have exhausted any and all administrative remedies to the extent required by law,
13 including, but not limited to, timely submitting extensive comments objecting to the approval of
14 the Project and identifying in writing to Respondents the deficiencies in Respondents'
15 environmental review for the Project on June 6, July 24, July 25, August 30, September 2, and
16 September 14.

17 14. This Petition is timely filed in accordance with Public Resources Code section
18 21167 and California Code of Regulations, title 14, section 15112, and Government Code
19 section 65009.

20 **THE PARTIES**

21 15. Petitioner PRESERVE WILD SANTEE is a volunteer community environmental
22 organization and political committee that has worked to protect and enhance the quality of life
23 and preserve natural resources in the City of Santee and surrounding areas since 1994. Preserve
24 Wild Santee's members offer input into local land use decisions in an effort to produce better
25 development projects with fewer environmental and fire safety impacts, and those members will
26 be directly and adversely affected by approval and construction of the Project. Preserve Wild
27 Santee submitted written comments to the City objecting to and commenting on the Project.

1 16. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-
2 profit conservation organization dedicated to the protection of native species and their habitats
3 through science, policy, and environmental law. The Center has approximately 86,000 members
4 worldwide, including members who reside within communities in the vicinity of the Project.
5 The Center has worked for many years to protect imperiled plants and wildlife, open space, air
6 and water quality, and the overall quality of life for people in the region where the Project is
7 proposed. Members of the Center will be directly and adversely affected by the approval and
8 construction of the Project. The Center submitted written comments to the City objecting to and
9 commenting on the Project.

10 17. Petitioner ENDANGERED HABITATS LEAGUE is a tax-exempt non-profit
11 California corporation dedicated to the conservation of native ecosystems and to sustainable
12 land use and transportation planning. Since 1991, Endangered Habitats League has engaged in
13 planning partnerships across Southern California. Endangered Habitats League is extremely
14 active in the San Diego region, where many of its members live and enjoy the biological
15 diversity in the area, including the vicinity of the Project site, and will be directly and adversely
16 affected by the Project. Endangered Habitats League joined written comments to the City
17 objecting to and commenting on the Project.

18 18. Petitioner CALIFORNIA CHAPARRAL INSTITUTE is an education, research,
19 and advocacy organization dedicated to the preservation of native shrubland habitats throughout
20 the West (including San Diego County and the vicinity of the Project site) and to supporting the
21 creative spirit as inspired by nature. California Chaparral Institute’s members will be directly
22 and adversely affected by the approval and construction of the Project. California Chaparral
23 Institute submitted written comments to the City objecting to and commenting on the Project.

24 19. Respondent CITY OF SANTEE (the “City”), a political subdivision of the State of
25 California, is responsible for regulating and controlling land use in the City, including
26 implementing and complying with the provisions of CEQA. The City is the “lead agency” for
27 the Project for the purposes of Public Resources Code Section 21067, with principal

1 responsibility for conducting environmental review of the Project. The City has a duty to
2 comply with CEQA, the State Planning and Zoning Law, the Elections Code, and other state
3 laws.

4 20. Respondent CITY COUNCIL OF THE CITY OF SANTEE (the “Council”) is the
5 duly elected decision-making body of the City. As the decision-making body, the Council is
6 responsible for granting the various approvals necessary for the Project and for ensuring that the
7 City has conducted an adequate and proper review of the Project’s environmental impacts under
8 CEQA.

9 21. On information and belief, Real Party in Interest HOMEFED FANITA RANCHO,
10 LLC (“Real Party in Interest”), is registered to do business in the State of California, is the
11 owner of the real property that is the subject of the approvals challenged in this action, is the
12 Project applicant for purposes of CEQA, and is the recipient of the approvals challenged in this
13 action. HOMEFED FANITA RANCHO, LLC is also identified as the “Project Applicant” in the
14 September 15, 2022 CEQA Notice of Determination (“NOD”) the City issued for the Project.

15 22. On information and belief, JEFF O’CONNOR is the Vice President of Community
16 Development for HomeFed Fanita Rancho, LLC, has an interest in the real property that is the
17 subject of the approvals challenged in this action, is the Project applicant for purposes of CEQA,
18 and is the recipient of the approvals challenged in this action. JEFF O’CONNOR is identified as
19 the “Project Applicant” in the September 15, 2022 CEQA NOD the City issued for the Project.

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

26 24. Petitioners do not know the true names and capacities, whether individual,
27 corporate, associate, or otherwise, of real parties in interest DOES 21 through 40, inclusive, and
28

1 therefore sue said real parties in interest under fictitious names. Petitioners will amend this
2 Petition to show their true names and capacities when the same have been ascertained.

3 **GENERAL ALLEGATIONS**

4 **The Proposed Project Site and Environmental Setting**

5 25. The Project would be located on an approximately 2,638-acre site on the City’s
6 northern edge. Visitors to the site are treated to moderately steep slopes and ridges, the Santee
7 Lakes Recreation Preserve, open space/recreational areas including Goodan Ranch Regional
8 Park and Sycamore Canyon Open Space Preserve to the north and west. The Project site would
9 be accessed from new planned road extensions and is now entirely undeveloped.

10 26. The Project site is at extremely high risk of wildfire; it is located in an area
11 designated by the California Department of Forestry and Fire Protection as a Very High Fire
12 Hazard Severity Zone, the highest fire risk designation in California. This high designation is
13 well deserved, as the area has burned at least 65 times in the last 100 years. The most notable
14 recent fire—the 2003 Cedar fire—burned over 280,000 acres, including an estimated 95 percent
15 of the Project site. Given the site’s alignment with the Santa Ana winds, steep topography, and
16 flammable vegetation, that fire spread southwest at speeds up to 6,000 acres per hour.

17 27. The features of the Project site make it uniquely at-risk for these fast-moving,
18 wind-driven fires. Its topography is in alignment with the Santa Ana winds, which can influence
19 fire spread by creating wind-driven fires. The site is surrounded by nonnative grassland,
20 chaparral, and coastal sage scrub, all of which, as the Recirculated REIR recognizes, is highly
21 flammable. The grasslands are also characterized by much more rapid fire spread rates than
22 other vegetation types. The steep terrain and rural landscapes surrounding the Project area,
23 which are not managed for vegetation fuel, would make fire suppression difficult.

24 28. The site contains a wealth of biological resources. The site consists almost entirely
25 of “biological core” areas as identified in the San Diego County Multiple Species Conservation
26 Plan. The majority of the Project site is covered by vegetation communities considered sensitive
27 by the California Department of Fish and Wildlife (“CDFW”), including over 1,400 acres of

1 coastal sage scrub, over 600 acres of chaparral, about 1,775 acres of native valley needlegrass
2 grassland, about 30 acres of coast live oak woodland, and approximately 20 acres of riparian
3 forest and other riparian vegetation. The site also supports dozens of endangered, threatened,
4 and rare wildlife and plant species. These include Quino checkerspot butterfly, Hermes copper
5 butterfly, California gnatcatcher, and Crotch’s bumblebee, which was determined to be a
6 candidate species under the California Endangered Species Act by the California Fish & Game
7 Commission. Crotch’s bumblebee has experienced a 98 percent population decline in the last
8 decade, in large part due to development of its natural habitat and human encroachment.

9 **Santee General Plan**

10 29. The Santee City Council adopted its General Plan, which guides development in
11 the City including the Project site, on August 20, 2003. The City’s General Plan is “the
12 constitution” for all future development. It serves as the long-term policy guide for the City’s
13 physical, economic, and environmental growth. The City has described its General Plan as the
14 “statement of the community’s vision” for growth within the City limits.

15 30. The General Plan designates the Project site as PD—Planned Development. The
16 PD designation allows mixed use development on the site, but the development must still be
17 consistent with the City’s General Plan.

18 31. The Land Use Element is one of seven mandatory elements in the City’s General
19 Plan. It is intended to guide the ultimate pattern of development in the community; it specifies
20 the location, type and amount of housing, commercial services, and open space that will
21 comprise the City at buildout.

22 32. The Land Use Element of the General Plan sets forth requirements specific to the
23 Project site including, but not limited to: traffic, transportation, and roadway improvements,
24 planning requirements, park dedication, and specific amenities. The Land Use element also
25 imposes minimum lot requirements on the Project site: 6,000 square foot lots for 20 percent of
26 residential lots, 10,000 square foot lots for 20 percent of residential lots, and 20,000 square foot
27 lots for 60 percent or greater of the residential lots.

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

2 33. Following the City’s incorporation in 1980, the Fanita Ranch site has been subject
3 to several development proposals of varying intensity. In 1983, the Carlton Santee Corporation
4 applied for a 606-unit project on a portion of the site. Following preparation of an environmental
5 impact report (EIR), the City approved this development in 1984, but the property was sold and
6 the approvals expired. In 1997, a subsequent owner, Westbrook Communities (and its
7 subsidiary, Westbrook Fanita Ranch, LP), proposed a 3,000-unit development, the Fanita Ranch
8 Specific Plan, and an amendment to the City’s General Plan to accommodate the development.
9 The City approved this project in 1999, but voters rejected this approval by referendum.

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

23 35. The *Fanita I* petitioners also appealed the Superior Court’s judgment in that case.
24 Ultimately, the Court of Appeal held that, in addition to the inadequate fire safety analysis, the
25 project also improperly deferred mitigation for impacts to the Quino checkerspot butterfly and
26 provided an inadequate analysis of water supply. (*Preserve Wild Santee v. City of Santee* (2012)
27 210 Cal.App.4th 260.)

1 amendment to the zoning, vesting tentative map, development review permit, conditional use
2 permit, and a development agreement), certified the EIR, and adopted findings in support of the
3 Project approval and certification of the EIR.

4 42. The General Plan Amendment made two changes to the Santee General Plan—
5 first, it changed the land use designation for Fanita Ranch from Planned Development to
6 Specific Plan, and second, it amended the text of the Santee General Plan, including the
7 “guiding principles” for development of the Fanita Ranch property. These two changes to the
8 General Plan were to accommodate a more intensive residential development than the City’s
9 General Plan allowed.

10 43. Approximately one month later, on or around October 29, 2020, City residents
11 filed a signed referendum petition (Referendum) with the City Clerk. The Referendum proposed
12 to refer the 2020 Project’s General Plan Amendment to the voters of the City before it could
13 become law.

14 44. Once filed with the City, the Referendum had an immediate effect on the General
15 Plan Amendment. First, it suspended the effective date of the General Plan Amendment.
16 Second, it imposed a mandatory duty on the Council to either repeal the General Plan
17 Amendment or to place the Referendum on the ballot. The City Council on January 13, 2021
18 opted not to repeal the General Plan Amendment and instead chose to submit the Referendum to
19 the voters at the next regularly scheduled election, almost two years later, on November 8, 2022.
20 While Measure N, if passed, would apply to all future proposed General Plan amendments in the
21 City, the Referendum specifically concerned whether the 2020 General Plan Amendment for the
22 2020 Fanita Ranch project could take effect.

23 45. Meanwhile, the *Fanita I and II* petitioners challenged the 2020 Project approval
24 (“*Fanita IIP*”). The trial court again found the City’s environmental review to be inadequate. It
25 identified a number of deficiencies, including that:

- 26 a. The City had not modelled evacuation times or assessed those modelled times
27 under traffic scenarios.

- 1 b. Absent evacuation modelling and an analysis of the modelling’s results, the City
2 had no evidence to show that its reliance on a “staggered” evacuation would be
3 adequate to safely evacuate residents and the surrounding community, let alone a
4 mass evacuation of the project and surrounding communities.
- 5 c. The City had failed to study how the project and its additional nine thousand
6 residents would impact evacuation times for the surrounding community.
- 7 d. The City’s environmental analysis lacked any methodology or evidence
8 supporting that residents would be safe under its stopgap plan for residents to
9 remain at home while fires surrounded the development.
- 10 e. The City had failed to study whether the project would expose people or structures
11 to a significant risk of loss, injury or death involving wildland fires, as CEQA
12 requires.

13 46. The trial court again found the City’s environmental review of the project to be
14 inadequate and issued a writ of mandate requiring the City to reconsider its conclusion that the
15 project’s fire safety and evacuation impacts were less than significant.

16 47. The *Fanita III* amended writ of mandate, issued on April 26, 2022, directed the
17 City to set aside all project approvals, including the 2020 General Plan amendment, and the EIR
18 certification.

19 **Santee Requires a Vote of the People Before Certain Land Use Changes Can Go Into**
20 **Effect**

21 48. On November 3, 2020, the voters of Santee adopted Measure N. Voters now have
22 the legislative final say before any amendment to certain land use documents becomes effective.
23 Measure N states, in part:

24 **Section 2: Amendment of the General Plan**

25 The Land Use Element of the General Plan of the City of Santee shall be amended
26 as hereinafter set forth. This amendment shall not be modified or rescinded without
27 the approval of a simple majority of the voters of the City voting at a special or
28 general election.

1 The following shall be added to the General Plan under the Land Use Element ‘7.0
2 Objectives and Policies’ as ‘Objective 12.0 Maintain the Integrity and Consistency
3 of the General Plan.’

4 ‘Policy 12.1 Permitted land uses in the City shall be intensified only when the voters
5 approve such changes. **No General Plan amendment, Planned Development
6 Area** or new Specific Planning Area **shall be adopted** which would:

- 7 1) increase the residential density permitted by law,
- 8 2) change, alter, or increase the General Plan Residential Land Use categories
9 if the change intensifies use; or
- 10 3) change any residential designation to commercial or industrial designation
11 on any property, or visa versa, if the change intensifies use;

12 **unless and until such action is approved and adopted by the voters of the City**
13 at a special or general election, or approved first by the City Council and then
14 adopted by the voters in such an election.’

15 49. Measure N’s “Purpose and Findings” section expressly identified the importance
16 of protecting the General Plan against “unwise densification and intensification amendments,”
17 as well as the special interests that may pressure the City Council to approve such amendments.
18 Measure N specifically called attention to the voters’ concerns over development at Fanita
19 Ranch, and noted that the California Fair Political Practices Commission had levied fines against
20 Santee for the City Council’s laundering of campaign contributions related to the proposed
21 Fanita Ranch development, specifically the project’s request for a “density intensifying General
22 Plan Amendment.”

23 50. Measure N includes specific exemptions for General Plan amendments necessary
24 to comply with state or federal affordable housing requirements.

25 51. Pursuant to the adoption of Measure N, the City requires a vote of the people
26 before it may adopt certain General Plan amendments.

27 **The City’s Efforts to Circumvent Its General Plan and Voter Accountability**

28 **City Council Adopts Ordinance to Avoid General Plan Requirements**

52. On August 25, 2021, City Council approved urgency ordinance No. 592, enacting
an “Essential Housing Program” (“Program”). Under the Program, the City may qualify a
project for the Program, which then “exempts” the project from “needing to seek legislative
approvals,” including any necessary General Plan amendments.

53. The City’s stated purpose for the Essential Housing Program was the City’s desire
to “amend its local regulatory process.”

1 59. According to the City’s most recent draft housing element, the City is in need of
2 200 low-income households and 406 extremely-low income households. On information and
3 belief, since June 30, 2020, and since the passage of the Essential Housing Program, the City
4 has not issued a building permit for a single unit of low-income housing.

5 **The City Removes the Voters’ Pending Referendum from the Ballot**

6 60. On April 26, 2022, after finding that the City violated state law when it approved
7 the Fanita Ranch Project without conducting the requisite environmental review, the San Diego
8 Superior Court, Judge Bacal presiding, ordered the City to rescind all project approvals for the
9 Fanita Ranch Project, including the 2020 General Plan Amendment, which was the subject of
10 the referendum.

11 61. Pursuant to the court’s writ of mandate in *Fanita III*, on or about May 25, 2022,
12 the City Council set aside all project approvals for the *Fanita III* project, which included
13 repealing the 2020 General Plan amendment.

14 62. On or around one week later, the City Council noticed a meeting, at which it
15 would consider whether to remove the Referendum from the ballot.

16 63. On the morning of June 8, 2022, the Center submitted a letter to the City. It noted
17 that the City could not use its failure to comply with the law when it adopted the General Plan
18 Amendment for the 2020 Project as a justification for avoiding voter accountability and the
19 City’s obligations under the Elections Code to submit the referendum to the voters. These
20 comments included that the City lacked discretionary authority to conclude that a qualifying
21 referendum was moot and that allowing the voting public to weigh in on the Fanita Ranch
22 Project is a key aspect of participatory decision-making, serving the underlying democratic
23 purpose of California’s constitutionally authorized voter referendum process.

24 64. On June 8, 2022, the City removed the referendum from the ballot. This was
25 despite its prior commitment to placing the referendum on the ballot when it decided in January
26 2021 to submit the referendum to the voters.

1 **The City Reapproves the Project and Certifies a Recirculated EIR**

2 65. On June 10, 2022, the day after the City removed the Referendum from the ballot,
3 the City issued a Notice of Availability (“NOA”) of the Draft Recirculated Sections of the Final
4 Revised EIR (“Draft Recirculated REIR”) for the Project and circulated it for public review and
5 comment. The proposed Project made no changes to the footprint or design of the Project, but
6 for reincorporating a road extension that was initially part of the 2020 Project. Of the project’s
7 3,000 plus units, the proposed Project still did not include a single unit of low-income housing.
8 The Draft Recirculated REIR purported to remedy the deficiencies in the prior EIR that the
9 Court had identified in *Fanita III*.

10 66. Petitioners and numerous others, including federal, state, and local agencies,
11 conservation organizations, and individual members of the public, submitted comments on the
12 Draft Recirculated REIR. Numerous commenters voiced concern over the Project’s significant
13 impacts and identified numerous deficiencies in the Draft Recirculated REIR. For example,
14 commenters explained that the Project would have significant impacts on wildfire risk and
15 wildfire safety, and that the Draft Recirculated REIR’s analysis and proposed mitigation of those
16 impacts was woefully inadequate.

17 67. The United States Fish and Wildlife Service and CDFW both requested clarity on
18 the City’s Essential Housing Program, and expressed skepticism of the program’s mechanism to
19 exempt projects from the General Plan’s requirements, because those wildlife Agencies look to
20 the General Plan for “guidance” on how the City “would approve the build-out of development
21 projects as well as achieve conservation goals.”

22 68. Also on or about July 25, 2020, the California Native Plant Society, a non-profit
23 organization dedicated to conserving California native plants and their natural habitats,
24 commented on the Project and observed that the Draft Recirculated REIR’s analysis of, and
25 consideration of mitigation and alternatives to address, the Project’s impacts to biological
26 resources and wildfire risk and evacuations was inadequate. The letter noted that the Crotch’s
27 Bumblebee had been observed numerous times on the Project site, yet the City had never

1 conducted surveys or considered the impacts development could have on this endangered
2 species.

3 69. Former wildland firefighters also commented on the Project, noting that the City’s
4 wildfire and evacuation analysis relied upon wildly unsupported assumptions and ignored
5 evidence of increasing fire severity.

6 70. The analysis contained in the Draft Recirculated REIR was deeply flawed. For
7 instance, despite the extreme fire risk at the Project site and the foreseeable ignition and
8 evacuation risks that the Project would create, the Draft Recirculated REIR concluded that any
9 impacts would be less than significant.

10 71. On July 25, 2022, before the close of the comment period on the Draft
11 Recirculated REIR, Petitioners Center for Biological Diversity submitted written comments on
12 the Recirculated REIR to the City. These comments included that:

- 13 a. The Draft Recirculated REIR did not adequately analyze the individual and
14 cumulative impacts due to increased wildfire risk, or the effects on evacuation,
15 created by bringing almost ten thousand new people—constituting a 16 percent
16 increase in the City’s total population—and significant development to a very high
17 fire hazard severity zone, and fails to mitigate or avoid such impacts. In addition,
18 the City’s wildfire evacuation plan relied on wildly optimistic assumptions,
19 incorrect information, and flawed traffic modeling; even with these errors, the
20 technical appendix still revealed that the evacuation plan would not always work.
- 21 b. The Draft Recirculated REIR did not analyze the land use impacts, including the
22 project’s consistency with the General Plan. For example, the Project proposed a
23 higher density of development than the General Plan allows, and the Draft
24 Recirculated REIR did not acknowledge these designations and the resulting
25 irreconcilable conflict between the Project and the General Plan. Accordingly, the
26 Draft Recirculated REIR failed to consider the environmental impacts that would
27 follow from developing the area contrary to the General Plan.

- 1 c. Finally, given the significant flaws, CEQA required the Draft Recirculated REIR
2 to be recirculated for additional public comment prior to bringing the Project
3 forward to the City Council.

4 72. The Center also submitted traffic/evacuation expert comments on the Draft
5 Recirculated REIR prepared by Neal Liddicoat, P.E., of Griffin Cove Transportation Consulting,
6 PLLC regarding the Project's wildfire risk impacts. The Liddicoat comments concluded that the
7 Draft Recirculated REIR failed to adequately evaluate the Project's wildfire and evacuation risk
8 impacts, and wildfire risks associated with the Project were underestimated and inadequately
9 addressed. These comments included that:

- 10 a. The results of the evacuation analysis in the Draft Recirculated REIR lacked
11 credibility. For example, in comparing the time estimates for different evacuation
12 scenarios, for the City's assumptions to stand, an additional 782 vehicles would
13 need to be evacuated in one minute.
- 14 b. The evacuation times were incomplete and misleading. The time estimates in the
15 Draft Recirculated REIR failed to include many of the time-consuming tasks in an
16 evacuation effort, including but not limited to the time to notify the public and
17 mobilization times as people prepare to evacuate.
- 18 c. The evacuation time also failed to adequately analyze the Project's impacts on
19 wildfire evacuation times. It also failed to disclose critical assumptions underlying
20 its analysis, such as the assumed roadway capacity.

21 73. On or around July 24, 2022, before the close of the comment period on the Draft
22 Recirculated REIR, Petitioner Preserve Wild Santee submitted written comments on the Draft
23 Recirculated REIR to the City. The comments explained, among other things, that the Draft
24 Recirculated REIR failed to comply with CEQA in the following respects:

- 25 a. The Draft Recirculated REIR failed to fully disclose, analyze or mitigate the
26 Project's significant wildfire risks, including its cumulative impacts, and failed to
27

1 adequately evaluate the Project's wildfire safety impacts, including evacuation;
2 and

- 3 b. The Draft Recirculated REIR failed to analyze consistency with the General Plan,
4 and the City's efforts to circumvent the General Plan's requirements were a
5 violation of CEQA and California constitutional law.

6 74. On or around July 25, 2022, before the close of the comment period on the Draft
7 Recirculated REIR, Petitioner California Chaparral Institute submitted written comments on the
8 Draft Recirculated REIR to the City. The comments explained, among other things, that the
9 Draft Recirculated REIR failed to comply with CEQA in the following respects:

- 10 a. The Draft Recirculated REIR failed to fully disclose, analyze or mitigate the
11 Project's significant wildfire risks, including its cumulative impacts, and failed to
12 adequately evaluate the Project's wildfire safety impacts, including evacuation;
13 and
14 b. The Draft Recirculated REIR ignored the scientific literature unanimously
15 showing that increased human presence increases both the frequency and severity
16 of ignitions in the wildland-urban interface.

17 75. On or around July 25, 2022, before the close of the comment period on the Draft
18 Recirculated REIR, Petitioner Endangered Habitats League submitted written comments on the
19 Draft Recirculated REIR to the City, signing on to the comments submitted by the Center for
20 Biological Diversity, the California Native Plant Society, and Preserve Wild Santee on the Draft
21 Recirculated REIR.

22 76. On or about August 30, the Center transmitted additional expert comments on the
23 Draft Recirculated REIR prepared by Reax Engineering regarding the Project's wildfire risk and
24 evacuation impacts. The Reax Engineering comments concluded that the Draft Recirculated
25 REIR failed to adequately evaluate the Project's wildfire risk and evacuation impacts, and
26 therefore that wildfire risk and evacuation risk impacts associated with the Project were
27 underestimated and inadequately addressed.

1 77. On September 2, the Center submitted supplemental comments on the Project and
2 the environmental review process. The comments requested that the City provide the public with
3 the Final Recirculated REIR (“Final EIR”) (including the responses to comments), in order to
4 give the public adequate time to review and comment on the document.

5 78. One week later, approximately three business days before the scheduled public
6 hearing to approve the Project, the City released a Final EIR for the Project to the public, along
7 with a staff report and other materials related to the upcoming public hearing to approve the
8 Project. The Final EIR contained minimal line edit text changes to the Draft Recirculated REIR
9 and Respondents’ responses to some public comments on the Draft Recirculated REIR. Many of
10 the defects identified in the Draft Recirculated REIR identified by Petitioners and other
11 commenters persisted in the Final EIR. The City did not recirculate the Final EIR for public
12 review and comment.

13 79. In early September 2022, California experienced three simultaneous, fast-moving
14 fires. News reports highlighted the difficulty of evacuating in a fast-moving conflagration and
15 the ineffectiveness of fire hardening, defensible space, and shelter-in-place plans.

16 80. On the morning of September 14, 2022, prior to the start of that evening’s public
17 hearing to approve the Project, the Center submitted, and Endangered Habitats League, Preserve
18 Wild Santee, and the California Chaparral Institute joined on comments regarding the Final EIR
19 for the Project. The letter addressed the City’s response to Petitioners’ submission on the Draft
20 Recirculated REIR by providing additional information and legal argument, and explaining why
21 the City’s responses to comments were inadequate. The comments explained, among other
22 things, that the City’s environmental review failed to comply with CEQA in the following
23 respects:

- 24 a. The EIR’s analysis of and mitigation for the Project’s significant wildfire, wildfire
25 safety, and wildfire evacuation impacts remained inadequate;
- 26 b. The live evacuations going on statewide demonstrated that fire agencies take a
27 conservative approach to evacuation and will instruct large swathes of people in
28

1 the potentially affected areas to evacuate, which undercut the “surgical,” block-by-
2 block evacuation plan posed by the City;

- 3 c. The documented sighting of Crotch’s bumblebee on site constituted significant
4 new information requiring recirculation of the EIR;
- 5 d. The Final EIR failed to respond to the Center’s comments and failed to adequately
6 respond to comments on the Draft Recirculated REIR raised by Preserve Wild
7 Santee and others.
- 8 e. Project approval, absent the required General Plan Amendment, would violate the
9 State Planning and Zoning Law and the Subdivision Map Act;
- 10 f. Project approval would violate the City’s own voter approval requirement laid out
11 in Measure N; and
- 12 g. The City’s withholding of the Final EIR from release and public review until three
13 business days before the scheduled public hearing regarding Project approval and
14 the certification of the EIR undercut public participation.

15 81. On the evening of Wednesday, September 14, 2022, the Council began the public
16 hearing to approve the Project and certify the EIR. Numerous representatives of environmental
17 organizations and members of the public testified at the hearing in opposition to the Project.

18 **Respondents’ Approval of the Project and Certification of the EIR**

19 82. At the conclusion of the public hearing on the Project, the Council voted to
20 approve the Project, certify the EIR, and adopt findings in support of the Project approval and
21 certification of the EIR.

22 83. The next day, on or about September 15, 2022, the City filed a Notice of
23 Determination for the Project with the County Clerk, which stated that the City had approved the
24 Project, prepared an EIR, and adopted Findings.

25 84. The Notice of Determination listed HomeFed Fanita Rancho, LLC, c/o Jeff
26 O’Connor as the Project applicant.

1 alternative is available that would meet the project’s objectives while avoiding or reducing its
2 significant environmental impacts.

3 90. CEQA requires that substantial evidence in the administrative record support all of
4 the agency’s findings and conclusions, including those contained in the EIR, and that the agency
5 explain how the evidence in the record supports the conclusions the agency has reached.

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

12 92. **Project Description.** The EIR’s Project Description failed to describe the whole
13 of the proposed action and failed to accurately describe the nature and extent of the project
14 approvals being considered as a part of the Project.

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

21 94. **Biological Resources.** The EIR fails to adequately disclose, analyze, and/or
22 mitigate the Project’s significant direct and cumulative impacts to biological resources,
23 including numerous special status wildlife and plant species affected by the Project and their
24 habitat. Those wildlife species include, but are not limited to: coastal California gnatcatchers,
25 Western spadefoot toad, the Southern California mountain lions (a candidate species under the
26 California Endangered Species Act), Quino checkerspot butterfly, Hermes copper butterfly,
27

1 Crotch's bumble bee, and numerous special status native plant species. The EIR's biological
2 resources analysis is also inadequate because, *inter alia*, the EIR:

- 3 a. fails to include and fully analyze all biological resources impacts resulting from
4 the Project;
- 5 b. relies on mitigation measures that are vague, ineffective, deferred, unenforceable,
6 unsupported by substantial evidence, and/or otherwise inadequate;
- 7 c. relies heavily on establishment of a Habitat Preserve as a generic measure for
8 impacts to multiple, distinct wildlife species and vegetation communities, without
9 actually and effectively addressing these impacts;
- 10 d. fails to incorporate all feasible mitigation or avoidance measures;
- 11 e. fails to adequately disclose, analyze, and/or mitigate the Project's significant
12 impacts on habitats and features such as vernal pool habitat;
- 13 f. fails to adequately disclose, analyze, and/or mitigate the Project's inconsistency
14 and conflicts with the San Diego MSCP; and
- 15 g. fails to adequately disclose, analyze, and/or mitigate the direct, indirect, and
16 cumulative impacts of the Project on other biological resources, including but not
17 limited to cumulative impacts to wildlife movement and impacts to wildlife from
18 increased fire risk.

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

- 23 a. fails to include and fully analyze all wildfire and wildfire safety impacts resulting
24 from the Project (including an accurate description of existing conditions and
25 wildfire ignition risks resulting from the Project), and fails to support with
26 substantial evidence its conclusions regarding the Project's wildfire and wildfire
27 safety impacts, including, but not limited to, increased wildfire ignition risks from
28

1 the Project and increased exposure of persons in the Project and the vicinity to
2 wildfire risk;

3 b. fails to adequately analyze the Project's impacts on wildfire evacuation and road
4 capacity;

5 c. relies on wildfire and wildfire safety mitigation measures that are vague,
6 ineffective, deferred, unenforceable, unsupported by substantial evidence, and/or
7 otherwise inadequate; and

8 d. fails to incorporate all feasible mitigation and avoidance measures to reduce
9 impacts related to wildfire and wildfire safety.

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

13 a. fails to include and fully analyze all transportation and traffic impacts resulting
14 from the Project, and fails to support with substantial evidence its conclusions
15 regarding the Project's traffic and transportation impacts, including impacts
16 resulting from late revisions to the Project;

17 b. fails to adequately analyze the Project's impacts on wildfire evacuation times and
18 road capacity;

19 c. relies on traffic mitigation measures that are vague, ineffective, deferred,
20 unenforceable, unsupported by substantial evidence, and/or otherwise inadequate;
21 and

22 d. fails to incorporate all feasible mitigation and traffic reduction measures.

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

26 a. fails to include and fully analyze all greenhouse gas emissions resulting from the
27 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.

98. **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.

99. **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.

100. **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 but not limited to conflicts and inconsistencies with the applicable limitations on dead-end road lengths in State Responsibility Areas.

101. **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.

1 102. **Alternatives.** The EIR fails to provide an adequate selection and discussion of
2 alternatives for consideration that foster informed decision-making and informed public
3 participation. The alternatives analysis in the EIR does not meet CEQA’s requirement that an
4 EIR consider a reasonable range of alternatives that lessen the Project’s significant
5 environmental impacts, does not focus on alternatives that either eliminate adverse impacts or
6 reduce them to insignificance even if they would to some degree impede the Project’s
7 objectives, failed to consider feasible alternatives that would lessen significant impacts,
8 unlawfully rejects alternatives without adequately analyzing whether their impacts would be less
9 significant than the Project’s, and fails to support with substantial evidence its conclusions
10 regarding alternatives.

11 103. **Inconsistency With Applicable Plans.** CEQA requires that an EIR discuss any
12 inconsistencies between the proposed project and applicable general plans, specific plans, and
13 regional plans. (Guidelines § 15125(d).) The EIR failed to disclose the Project’s inconsistency
14 with the General Plan.

15 104. **Response to Comments.** CEQA requires that a lead agency evaluate and respond
16 to all environmental comments on the Draft EIR that it receives during the public review period.
17 The responses must describe the disposition of the issues raised and must specifically explain
18 reasons for rejecting suggestions and for proceeding without incorporating the suggestions. The
19 Final EIR’s responses to comments fail to meet CEQA’s requirements in that they fail to
20 adequately dispose of all the issues raised, fail to provide specific rationale for rejecting
21 suggested Project changes, including the consideration or adoption of feasible mitigation
22 measures or alternatives, or fail to address the comments. The Final EIR’s responses to
23 comments, including Petitioners’, fail to satisfy the requirements of law.

24 105. **Recirculation.** CEQA requires an amended EIR to be recirculated for public
25 review and comment if significant new information is added to an EIR after a draft EIR is
26 prepared, but before certification of the final EIR and/or the EIR is inadequate and conclusory in
27 nature. Despite new significant information and an inadequate and conclusory EIR, Respondents
28

1 failed to recirculate the EIR as required CEQA. As a result of Respondents' failure to recirculate
2 the EIR, the public and public agencies were deprived of any meaningful opportunity to review
3 and comment on the approved Project, its substantial adverse environmental consequences, and
4 the new information regarding other unanalyzed environmental effects of the Project. By failing
5 to amend and recirculate the EIR, Respondents failed to proceed in the manner required by law,
6 and their decision to approve the Project was not supported by substantial evidence.

7 106. Based upon each of the foregoing reasons, the EIR is legally defective under
8 CEQA. Respondents prejudicially abused their discretion in violation of CEQA in approving the
9 Project. As such, the Court should issue a writ of mandate directing Respondents to set aside the
10 certification of the EIR and approval of the Project.

11 107. Respondents' Findings of Fact and Statement of Overriding Considerations violate
12 the requirements of CEQA and the CEQA Guidelines. Respondents' findings fail to identify the
13 changes or alterations that are required to avoid or substantially lessen the project's significant
14 environmental effects, and do not provide adequate reasoning or disclose the analytic route from
15 facts to conclusions, as required by law. The purported benefits of the Project cited in the
16 Statement of Overriding Considerations do not outweigh the Project's substantial costs to public
17 health and the environment. Respondents' Findings and Statement of Overriding Considerations
18 are not supported by substantial evidence in the record.

19 108. When an EIR concludes that a project would result in significant environmental
20 effects, but where mitigation measures and alternatives identified in the EIR are deemed
21 infeasible, the CEQA findings must identify the specific economic, legal, social and
22 technological and other considerations that make infeasible the adoption of mitigation measures
23 or alternatives. All CEQA findings must be supported by substantial evidence in the record and
24 must disclose the analytical route by which approval of a project is justified. Here, the findings
25 regarding the impacts, mitigation measures, and alternatives relied upon by Respondents'
26 approval of the Project are not supported by substantial evidence in the record, and do not
27 disclose the links between evidence and conclusions. Respondents' Findings of Fact and
28

1 Statement of Overriding Considerations fail to reflect the independent judgment of Respondents.
2 As a result of the foregoing defects, Respondents failed to proceed in a manner required by law,
3 and their decision to approve the Project and adopt Findings of Fact and a Statement of
4 Overriding Considerations was not supported by substantial evidence.

5 **SECOND CAUSE OF ACTION**

6 **Violation of State Planning and Zoning Law — Inconsistency with General Plan**
7 **(Government Code § 65000 et seq.)**

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

10 110. The California State Planning and Zoning Law requires the legislative body of
11 each county to adopt a general plan for the physical development of the city. The City’s General
12 Plan is a fundamental land use planning document and serves as the constitution for future
13 development within the City. Land use actions, including the approvals associated with the
14 Project, must be consistent with the General Plan. Government Code section 65030.1 directs
15 that decisions about growth “should be guided by an effective planning process, including the
16 local general plan.” Government Code section 65300.5 requires that the local general plan be
17 “integrated, internally consistent and compatible.”

18 111. The Project is inconsistent with mandatory City General Plan policies, including,
19 but not limited, to policies regarding: the density of allowable development on the Project site;
20 the requirement to prepare a specific plan for the site; traffic, transportation, and roadway
21 improvements; minimum lot sizes; planning requirements; park dedication; and specific required
22 amenities. In approving the Project, the City did not amend its General Plan to address these
23 inconsistencies. The City’s purported justifications for approving the Project despite its
24 inconsistencies with the General Plan do not excuse the City’s violation of the State Planning
25 and Zoning Law.

1 112. The City’s approval of the Project is inconsistent with the General Plan policy
2 adopted by voter initiative (“Measure N”) requiring that certain land use changes within the City
3 must be approved by a vote of the people.

4 113. By approving a project inconsistent with the City’s General Plan, Respondents
5 prejudicially abused their discretion and violated provisions of the State Planning and Zoning
6 Law, requiring invalidation of the City’s approvals.

7 **THIRD CAUSE OF ACTION**

8 **Violation of Subdivision Map Act — Inconsistency with General Plan**
9 **(Government Code § 66410 et seq.)**

10 114. Petitioners hereby incorporate by reference each and every allegation set forth
11 above.

12 115. The Subdivision Map Act is a state statute designed to regulate the subdivision of
13 real property in California. *Gardner v. County of Sonoma* (2003) 29 Cal.4th 990, 996-97; Gov.
14 Code § 66411. The purposes of the Act include, among other things, ensuring that a
15 community’s growth is orderly and that necessary improvements are made so that the
16 subdivision does not become a burden on neighbors and taxpayers. *Gardner*, 29 Cal.4th at 997.
17 To implement these purposes, the Subdivision Map Act mandates that subdivision approvals,
18 including approvals of vesting tentative maps, be consistent with an adopted general plan,
19 specific plans, and local zoning regulations. Gov. Code §§ 66473.5, 66498.3(a).

20 116. The City violated the requirements of state law by approving a vesting tentative
21 map for the Project that is inconsistent with the requirements of the City’s General Plan. For
22 example, and as described above, the Project is inconsistent with, *inter alia*: mandatory City
23 General Plan policies, regarding the density of allowable development on the Project site; the
24 requirement to prepare a specific plan for the site; traffic, transportation, and roadway
25 improvements; minimum lot sizes; planning requirements; park dedication; and specific required
26 amenities.

1 **FOURTH CAUSE OF ACTION**

2 **Violation of State Very High Fire Hazard Severity Zone Regulations — Dead-End Road**
3 **Limitations**

4 **(Pub. Res. Code § 4290; 14 Cal. Code Regs § 1270.00 et seq.)**

5 117. Petitioners hereby incorporate by reference each and every allegation set forth
6 above.

7 118. The Project is located in a state-designated Very High Fire Hazard Severity Zone.
8 The Project includes numerous dead-end roads that exceed the length limits specified in the
9 state’s regulations governing development in Very High Fire Hazard Severity Zones. (See Cal.
10 Code. Regs., tit. 14, § 1273.08.)

11 119. Respondents’ actions in approving the Project are, therefore, a prejudicial abuse of
12 discretion and/or not in accordance with law. Accordingly, Respondents’ approval of the Project
13 must be set aside under Code of Civil Procedure section 1085 and/or 1094.5, Public Resources
14 Code section 4290, and Government Code sections 65000 et seq.

15 **FIFTH CAUSE OF ACTION**

16 **Violation of Elections Code — Approval of Project Despite Qualifying Referendum**
17 **(Elections Code § 9000 et seq.)**

18 120. Petitioners hereby incorporate by reference each and every allegation set forth
19 above.

20 121. The right of California voters to participate directly in legislative decision-making
21 is enshrined in the California Constitution and set forth in the Elections Code, which empower
22 voters to adopt legislation through initiative and reject legislation through referendum.

23 122. On September 23, 2020, Santee City Council certified an EIR and adopted
24 approvals, including a General Plan Amendment, for the Fanita Ranch Project. On October 29,
25 2020, the proponents of a referendum on the City’s approval of the Fanita Ranch Project
26 (“Referendum”) filed a signed Referendum petition with the City Clerk’s office. On January 23,
27 2021, the City Clerk presented the Certificate of Sufficiency for the Referendum to the City

1 Council. The City Council voted to place the Referendum on the ballot at the next regularly
2 scheduled election, on November 8, 2022. On May 25, 2022, after the Court found that the City
3 violated state law when it approved the Fanita Ranch Project, the City repealed the Fanita Ranch
4 Project approvals, including those subject to the Referendum. On June 8, 2022, the City
5 removed the referendum from the ballot.

6 123. Elections Code section 9241 provides that, subsequent to a referendum’s
7 qualifying for the ballot, once “the legislative body repeals the ordinance or submits the
8 ordinance to the voters” and the ordinance is rejected, “the ordinance shall not again be enacted
9 by the legislative body for a period of one year. The one-year period starts from the date of its
10 repeal by the legislative body or disapproval by the voters. (*Id.*) This provision temporarily
11 reverts legislative power over the particular subject matter to the people, and the legislative body
12 may not violate that stay by enacting essentially the same legislation on the same subject matter.
13 (*Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1110.)

14 124. By removing a duly qualified referendum certified as sufficient by the City Clerk,
15 from the November 8, 2022 ballot, then readopting the Fanita Ranch Project, which was the
16 subject of the referendum, well before one year had elapsed following the City’s May 25, 2022
17 repeal of the Fanita Ranch Project approvals, the City violated the Elections Code.

18
19 WHEREFORE, Petitioners pray for relief as follows:

20 **PRAYER FOR RELIEF**

21 1. For alternative and peremptory writs of mandate directing Respondents to vacate
22 and set aside certification of the REIR, adoption of the Findings and Statement of Overriding
23 Considerations, and approval of all associated Project permits, entitlements, and approvals;

24 2. For alternative and peremptory writs of mandate directing Respondents to comply
25 with CEQA and the CEQA Guidelines, the State Planning and Zoning Law, the Subdivision
26 Map Act, the Elections Code, and all applicable state regulations, and take any other action as
27 required by Public Resources Code section 21168.9;

1 3. For a temporary stay, temporary restraining order, and preliminary and permanent
2 injunctions restraining Respondents or Real Party in Interest, and their agents, servants, and
3 employees, and all others acting in concert with them or on their behalf, from taking any action
4 to implement, fund or construct any portion or aspect of the Project, pending full compliance
5 with the requirements of CEQA and the CEQA Guidelines, the State Planning and Zoning Law,
6 the Subdivision Map Act, the Elections Code and all applicable state regulations;

7 4. For a declaration that Respondents' actions in certifying the REIR and approving
8 the Project violated CEQA and the CEQA Guidelines, the State Planning and Zoning Law, the
9 Subdivision Map Act, the Elections Code, and state Very High Fire Hazard Severity Zone
10 regulations, and that the certification and approvals are invalid and of no force or effect, and that
11 the Project is inconsistent with other applicable plans, policies, or regulations;

12 5. For costs of the suit;

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

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

16
17
18 DATED: October 14, 2022

CENTER FOR BIOLOGICAL DIVERSITY

19
20 By: 

21 John Buse
22 Peter J. Broderick
23 Hallie Kutak

24 Attorneys for Petitioners CENTER FOR
25 BIOLOGICAL DIVERSITY, PRESERVE WILD
26 SANTEE, ENDANGERED HABITATS
27 LEAGUE, AND CALIFORNIA CHAPARRAL
28 INSTITUTE

1 **VERIFICATION**

2 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

3
4 I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and
5 Injunctive Relief and know its contents.

6 I am the director of Preserve Wild Santee, which is a party to this action, and am
7 authorized to make this verification for and on its behalf, and I make this verification for that
8 reason. I have read the foregoing document and know its contents. The matters stated in it are
9 true of my own knowledge except as to those matters that are stated on information and belief,
10 and as to those matters I believe them to be true.

11
12 Executed on October 14, 2022, at Santee, California.

13
14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct.

16
17 

18 _____
19 Van Collinsworth, Director
20 Preserve Wild Santee
21
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25
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27
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Exhibit A



Via FedEx

October 14, 2022

City of Santee
c/o Shawn Hagerty, City Attorney
Best Best & Krieger LLP
655 W Broadway
San Diego, CA 92101

Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act

Dear Mr. Hagerty,

Preserve Wild Santee, Center for Biological Diversity, Endangered Habitats League and California Chaparral Institute (“Petitioners”) intend to commence an action for writ of mandate to vacate and set aside the decision of the City of Santee and the City of Santee City Council (“Respondents”) approving the Fanita Ranch Project (the “Project”) and certifying a Final Revised Environmental Impact Report for the Project. Petitioners submit this notice pursuant to Public Resources Code section 21167.5.

The action will commence on October 14, 2022 and will be based upon on Respondents’ failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*) in adopting the Environmental Impact Report and approving the Project.

Sincerely,

Hallie Kutak
Staff Attorney | Senior Conservation Advocate
Center for Biological Diversity
1212 Broadway, Suite #800
Oakland, CA 94612
Tel: (510) 844-7117
hkutak@biologicaldiversity.org



Via FedEx

October 14, 2022

Annette Fagan Ortiz, City Clerk
Santee City Council
City Hall, Building 3
10601 Magnolia Ave.
Santee, CA 92071

Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act

Dear Ms. Fagan Ortiz and Councilmembers,

Preserve Wild Santee, Center for Biological Diversity, Endangered Habitats League and California Chaparral Institute (“Petitioners”) intend to commence an action for writ of mandate to vacate and set aside the decision of the City of Santee and the City of Santee City Council (“Respondents”) approving the Fanita Ranch Project (the “Project”) and certifying a Final Revised Environmental Impact Report for the Project. Petitioners submit this notice pursuant to Public Resources Code section 21167.5.

The action will commence on October 14, 2022 and will be based upon on Respondents’ failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*) in adopting the Environmental Impact Report and approving the Project.

Sincerely,

Hallie Kutak
Staff Attorney | Senior Conservation Advocate
Center for Biological Diversity
1212 Broadway, Suite #800
Oakland, CA 94612
Tel: (510) 844-7117
hkutak@biologicaldiversity.org

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ALAMEDA

3 I am employed in Oakland, California. I am over the age of 18 and not a party to the foregoing
4 action. My business address is Center for Biological Diversity, 1212 Broadway, Suite 800,
5 Oakland, California 94612. My email address is trettinghouse@biologicaldiversity.org.

6 On October 14, 2022, I served a true and correct copy of the following document(s):

7 **Notice of Commencement of Legal Action Pursuant to CEQA**

8 BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
9 Center for Biological Diversity’s electronic mail system to the email address(s) shown below.

10 BY FEDERAL EXPRESS: By placing a true and correct copy thereof in sealed envelope(s).
11 Such envelope(s) were addressed as shown below. Such envelope(s) were deposited for
12 collection and mailing following ordinary business practices with which I am readily familiar.

14 City of Santee	Annette Fagan Ortiz, City Clerk
15 c/o Shawn Hagerty, City Attorney	Santee City Council
16 Best Best & Krieger LLP	City Hall, Building 3
17 655 W Broadway	10601 North Magnolia Ave.
18 San Diego, CA 92101	Santee, CA 92071

19
20 STATE: I declare under penalty of perjury under the law of California that the foregoing
21 is true and correct.

22 Executed on October 14, 2022 at Alameda, California.

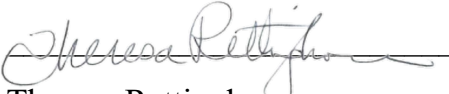
23 
24 Theresa Rettinghouse

Exhibit B

1 Hallie Kutak (SBN 322407)
John Buse (SBN 163156)
2 Peter Broderick (SBN 293060)
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway, Suite 800
3 Oakland, California 94612
Telephone: (510) 844-7117
4 Facsimile: (510) 844-7150
hkutak@biologicaldiversity.org
5 pbroderick@biologicaldiveristy.org
jbuse@biologicaldiversity.org
6

7 Attorneys for Center for Biological Diversity,
Preserve Wild Santee, Endangered Habitats
8 League, and California Chaparral Institute

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 PRESERVE WILD SANTEE, CENTER
FOR BIOLOGICAL DIVERSITY,
12 ENDANGERED HABITATS LEAGUE,
and CALIFORNIA CHAPARRAL
13 INSTITUTE

14 Petitioners,

15 v.

16 CITY OF SANTEE, CITY OF SANTEE
CITY COUNCIL; and DOES 1 through
17 20, inclusive,

18 Respondents.

19
20 HOMEFED FANITA RANCHO, LLC;
JEFF O'CONNOR and DOES 21 through
21 40, inclusive,

22 Real Parties in Interest.

Case No.

**PETITIONERS' NOTICE OF
ELECTION TO PREPARE
ADMINISTRATIVE RECORD**

[Pub. Res. Code § 21167.6]

Petition Filed October 14, 2022

1 **TO RESPONDENTS CITY OF SANTEE AND CITY OF SANTEE CITY**

2 **COUNCIL:**

3 In the above-captioned action, Petitioners Preserve Wild Santee, Center for Biological
4 Diversity, Endangered Habitats League and California Chaparral Institute (“Petitioners”)
5 petition this Court for a Writ of Mandate, directed to the City of Santee and the City of Santee
6 City Council (“Respondents”). Petitioners challenge Respondents’ September 14, 2022 approval
7 of the Fanita Ranch Project (“Project”) and certification of the Final Revised Environmental
8 Impact Report (“EIR”) for the Project (State Clearinghouse # 2005061118). Petitioners seek a
9 determination that Respondents’ approvals were inconsistent with, among other things, the
10 requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code
11 section 21000 *et seq.*, and the CEQA Guidelines, Title 14, California Code of Regulations,
12 section 15000 *et seq.*

13 Pursuant to Public Resources Code section 21167.6(b)(2), Petitioners hereby elect to
14 prepare the record of proceedings for this action. The record will be organized chronologically,
15 paginated consecutively, and indexed so that each document may be clearly identified as to its
16 contents and source, in form and format consistent with California Rules of Court, Rule 3.2205.

17 Petitioners will include in the record of proceedings all documents, including transcripts,
18 minutes of meetings, notices, correspondences, reports, studies, proposed decisions, final drafts,
19 and any other documents or records relating to Respondents’ approval of the Fanita Ranch
20 Project and certification of the Project EIR.

21
22 ///

1 DATED: October 14, 2022

CENTER FOR BIOLOGICAL DIVERSITY

2
3 By: 

4 Hallie Kutak
5 Peter Broderick
6 John Buse

7 Attorneys for Petitioner CENTER FOR
8 BIOLOGICAL DIVERSITY

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Exhibit C



Via Fedex

October 17, 2022

Mr. Rob Bonta, Attorney General
Office of the Attorney General
Attn: Environmental/CEQA Filing
1300 I Street
Sacramento, CA 95814-2919

Re: Notice of Commencement of Legal Action Alleging Environmental Harm

Dear Mr. Bonta:

The enclosed Petition for Writ of Mandate in *Preserve Wild Santee et al. v. City of Santee et al.* (San Diego County Superior Court), is submitted to your office pursuant to Code of Civil Procedure section 388 and Public Resources Code 21167.7.

Petitioners in this case challenge the City of Santee's approval of the Fanita Ranch Project ("Project"), and certification of a Revised Final environmental impact report for the Project. Petitioners allege environmental harms that could affect the public generally and the natural resources of the state. Petitioners are specifically concerned that the Project will have significant negative environmental impacts on, among other things, wildfire, community safety, land use, and biological resources.

Please acknowledge receipt in the enclosed prepaid, self-addressed envelope. Thank you for your attention to this matter.

Sincerely,

Hallie Kutak
Staff Attorney | Senior Conservation Advocate
Center for Biological Diversity
hkutak@biologicaldiversity.org

Enclosure: Verified Petition for Writ of Mandate