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14 Attorneys for Los Padres ForestWatch and California Chaparral Institute

15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 **LOS PADRES FORESTWATCH**, a )  
18 California nonprofit corporation; and )  
19 **CALIFORNIA CHAPARRAL** )  
20 **INSTITUTE**, a California nonprofit )  
21 corporation, )  
22 Plaintiffs, )

23 vs. )

24 **UNITED STATES FOREST SERVICE**, )  
25 an agency of the United States Department )  
26 of Agriculture; and **JOHN SMITH**, )  
27 District Ranger, Santa Barbara Ranger )  
28 District, in his official capacity, )  
Defendants. )

Case No. \_\_\_\_\_

**COMPLAINT FOR  
VACATUR OF ILLEGAL  
AGENCY DECISION,  
INJUNCTIVE AND  
DECLARATORY RELIEF**

## INTRODUCTION

1  
2 1. Plaintiffs Los Padres ForestWatch and California Chaparral Institute  
3 (collectively Plaintiffs) challenge the Defendant United States Forest Service’s  
4 (Forest Service’s) Decision Memorandum (Decision Memo) approving the  
5 creation of the Gaviota/Refugio Canyon fuel break (Gaviota Fuel Break) as part of  
6 the Santa Barbara Mountain Community Defense Zone Project (Project or Fuel  
7 Break Project) in the Los Padres National Forest. Defendant John “Pancho” Smith  
8 (Smith) signed the Decision Memo on September 8, 2016. The Decision Memo  
9 violates the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–  
10 4370(h), and its implementing regulations, 40 C.F.R. §§ 1500–1508 (2015); 36  
11 C.F.R. §§ 220.1–220.7 (2015), and the National Forest Management Act (NFMA),  
12 16 U.S.C. § 1600–1614. This Court has jurisdiction over this action pursuant to 5  
13 U.S.C. §§ 701–706 (Administrative Procedure Act or APA), 28 U.S.C. § 1331  
14 (federal question), 28 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2202  
15 (injunctive relief), and 28 U.S.C. § 2412 (costs and fees).

16 2. The Decision Memo approves the creation of eight (8) fuel breaks in  
17 the Los Padres National Forest, including the six (6) mile, 300-foot-wide Gaviota  
18 Fuel Break that is primarily located on a ridge between Gaviota Peak and Refugio  
19 Pass (Gaviota Ridge). This ridge is in an undeveloped stretch of shoreline known  
20 as the Gaviota Coast, which is one of the highest conservation priorities in the  
21 region. The Forest Service states that all of the project fuel breaks, including the  
22 Gaviota Fuel Break, will be cleared every 3–10 years into the foreseeable future.

23 3. The project area is composed of chaparral, a unique shrubland  
24 ecosystem with few trees that is shaped by coastal climatic influences, localized  
25 soils, and restricted habitat types. According to the Forest Service, chaparral  
26 harbors more rare plants than any other plant community found in the Los Padres  
27 National Forest. One of these rare plants—the Refugio manzanita (*Arctostaphylos*  
28 *refugioensis*)—is found only in a few places within a narrow band along the

1 ridgeline of Gaviota coastal mountains, including in the project area. It exists no  
2 place else in the world.

3 4. The stated purpose of the Project is to protect mountain communities  
4 by reducing the threat of wildfire, as well as improve the communities' ability to  
5 recover from fire. Defendants Forest Service and Smith (collectively Defendants)  
6 did not identify improving timber stands or wildlife habitat as a purpose for the  
7 Project.

8 5. Defendants improperly applied a categorical exclusion (CE) to the  
9 Project. Relying on that CE allowed Defendants to avoid conducting the legally-  
10 required review of the Project's environmental impacts and accepting and  
11 responding to public comments on those impacts before approving it. The CE cited  
12 in the Decision Memo, 36 C.F.R. § 220.6(e)(6) (2015) (Timber Stand  
13 Improvement CE), allows the Forest Service to exclude certain timber stand or  
14 wildlife habitat improvement activities from NEPA's requirement to prepare an  
15 environmental assessment (EA) and/or environmental impact statement (EIS); yet,  
16 the Project is neither occurring within timber stands nor intended to improve  
17 timber stands or wildlife habitat.

18 6. Plaintiffs believe the entire project violates NEPA because the Forest  
19 Service illegally used the Timber Stand Improvement CE to approve it. However,  
20 in this action, Plaintiffs only challenge and seek to stop implementation of the  
21 largest and most remote of the approved fuel breaks—the Gaviota Fuel Break.  
22 According to the Decision Memo, the Gaviota Fuel Break would be approximately  
23 six (6) miles long, 300 feet wide, and span approximately 213 acres.

24 7. Even if a proposed action fits within an established CE, the Forest  
25 Service cannot apply a CE when it determines that extraordinary circumstances  
26 exist within a project area. Extraordinary circumstances are present when a  
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1 proposed action will materially harm a Forest Service sensitive species or when it  
2 is uncertain whether such impacts will occur.

3 8. The Gaviota Fuel Break contains at least three sensitive species: the  
4 Refugio manzanita, late-flowering mariposa lily (*Calochortus fimbriatus*), and  
5 California legless lizard (*Anniella pulchra*). The Forest Service's 2005 sensitive  
6 species guidance documents, which are incorporated into the binding Land  
7 Management Plan for the Southern California National Forests, including Los  
8 Padres National Forest (Forest Plan), require conservation of all Refugio manzanita  
9 plants in the Los Padres National Forest to protect species viability. U.S. Forest  
10 Serv., *Species Accounts—Plants—Arctostaphylos refugioensis* (2005).

11 9. There are known individuals and stands of Refugio manzanita directly  
12 in the path of the Gaviota Fuel Break. *See* Exhibit A (map using primarily U.S.  
13 Forest Service data showing known occurrences of Refugio manzanita in the path  
14 of the Gaviota Fuel Break). These individuals and stands will be permanently  
15 destroyed by the creation of the fuel break and the ongoing clearing of the fuel  
16 break that will continue at intervals into the foreseeable future.

17 10. The Forest Service's site-specific analysis regarding this Project  
18 recognized that when creating the Gaviota Fuel Break, the agency would destroy  
19 individual Refugio manzanita plants. U.S. Forest Serv., *Biological Evaluation for*  
20 *Threatened, Endangered, Proposed, and Sensitive Plant Species, Santa Barbara*  
21 *Mountain Communities Defense Zone Project 11* (2015) [hereinafter *Biological*  
22 *Evaluation—Plants*]. Further, in its response to public comments, the Forest  
23 Service admitted that this destruction be would be "perceptible" to the population  
24 of Refugio manzanita and "most unfortunate" for the species because it would  
25 bisect the existing Refugio manzanita population in the Gaviota area. U.S. Forest  
26 Serv., *Public Scoping Comments on the Santa Barbara Mountain Communities*  
27 *Defense Zone Project 2* (2016) [hereinafter *Public Scoping Comments*].  
28

1           11. The Forest Service’s Biological Evaluation of the Project’s impacts on  
2 plants admitted that the Project could have substantial direct effects on the late-  
3 flowering mariposa lily. *Biological Evaluation—Plants* at 11. Additionally, 2012  
4 Forest Service sensitive species guidance documents, also incorporated into the  
5 binding Forest Plan, indicate that there might be significant effects on the  
6 California legless lizard. Given these material impacts on sensitive species, the  
7 Forest Service incorrectly determined that extraordinary circumstances do not  
8 exist, rendering its conclusion in the Decision Memo arbitrary and capricious.

9           12. The Forest Service is also required to conduct a cumulative impacts  
10 analysis when determining whether extraordinary circumstances exist under  
11 Council on Environmental Quality (CEQ) NEPA regulations and Forest Service  
12 scoping regulations. The agency did not adequately do so when determining  
13 whether the Fuel Break Project would materially affect sensitive plant species. For  
14 example, the agency failed to look at the effects of past projects on Refugio  
15 manzanita.

16           13. NFMA requires that all site-specific projects be consistent with  
17 applicable Forest Plans. The Forest Plan mandates conservation of all existing  
18 populations of Refugio manzanita to protect species viability in the Los Padres  
19 National Forest. The Decision Memo does not mention or consider this mandatory  
20 requirement. But its response to public comments admits that implementation of  
21 the Gaviota Fuel Break would be “most unfortunate” for Refugio manzanita and  
22 bisect the population of that species that currently exists in the Gaviota area.

23           14. The Forest Plan also requires the Forest Service to use information  
24 found in species guidance documents to develop project-specific design criteria to  
25 avoid or at least mitigate impacts on sensitive species. U.S. Forest Serv., *Land*  
26 *Management Plan Part 3 Design Criteria for the Southern California National*  
27 *Forests, Appendix H* 71 (2005) [hereinafter *LMP Appendix H*]. For similar past  
28

1 projects, the Forest Service included mitigation measures to reduce or avoid harm  
2 to the Refugio manzanita in order to comply with this mandatory Forest Plan  
3 requirement. However, for the Fuel Break Project, the Forest Service did not do so  
4 even though it acknowledged that the Gaviota Fuel Break would directly impact  
5 habitat for Refugio manzanita, among other sensitive species, and destroy  
6 individual Refugio manzanita plants.

7 15. To prevent the Forest Service from clearing chaparral to create the  
8 Gaviota Fuel Break, violating NFMA by harming the viability of sensitive species,  
9 and acting in ways that contravene the agency's duties under NEPA, Plaintiffs seek  
10 from this Court declaratory and injunctive relief, including preliminary injunctive  
11 relief if necessary, and an order setting aside the portion of the Decision Memo  
12 illegally allowing the construction of the Gaviota Fuel Break.

### 13 **PARTIES**

14 16. Plaintiff **LOS PADRES FORESTWATCH** (ForestWatch) is an  
15 environmental nonprofit organization that restores and secures lasting protection  
16 for forests, chaparral, grasslands, rivers, wildlife, and wilderness along California's  
17 Central Coast. ForestWatch and its members actively participate in governmental  
18 decision-making processes throughout the Los Padres National Forest and nearby  
19 public lands.

20 17. ForestWatch is headquartered in Santa Barbara, California. The  
21 organization's mission is to protect and restore the natural and cultural heritage of  
22 public lands along the Central Coast through legal advocacy, scientific  
23 collaboration, and community outreach. ForestWatch focuses its work throughout  
24 the Los Padres National Forest and nearby public lands. To further its mission and  
25 protect the interests of its members and supporters in preserving public lands,  
26 ForestWatch monitors forest conditions and activities in the Los Padres National  
27 Forest and reviews and comments on proposed Forest Service projects.  
28

1 ForestWatch also organizes habitat restoration and forest stewardship projects  
2 using crews of volunteers, making the forest a better place for all to enjoy and visit.

3 18. ForestWatch's members plan to continue using and enjoying Los  
4 Padres National Forest frequently and on an ongoing basis.

5 19. If Defendants affirmatively implement the Project as described in the  
6 Decision Memo and clear Refugio manzanita and other vegetation to create the  
7 Gaviota Fuel Break, they will adversely affect and irreparably injure the aesthetic,  
8 recreational, and scientific interests of ForestWatch's members and prevent them  
9 from going to the project area to use and enjoy it. These are actual, concrete  
10 injuries caused by the Defendants' failure to comply with mandatory duties under  
11 NEPA and NFMA. The injuries of ForestWatch's members would be redressed by  
12 the relief sought.

13 20. ForestWatch has an organizational interest in the proper and lawful  
14 management of the Los Padres National Forest. The organization seeks injunctive  
15 and declaratory relief.

16 21. ForestWatch participated in administrative actions to protect its  
17 interests in the Los Padres National Forest. The organization actively participated  
18 in the limited administrative process for the Project, including submitting  
19 substantive comments on the scoping notice. Because the Forest Service  
20 categorically excluded this project, ForestWatch was not afforded an opportunity  
21 to submit a pre-decisional objection or otherwise appeal the project  
22 administratively. ForestWatch exhausted any and all available administrative  
23 remedies. Reviewable final agency action exists that is subject to this Court's  
24 review under 5 U.S.C. § 702 and 5 U.S.C. § 704.

25 22. Plaintiff **CALIFORNIA CHAPARRAL INSTITUTE** (Chaparral  
26 Institute) is an environmental nonprofit organization dedicated to preserving native  
27 shrubland habitats and supporting the creative spirit as inspired by nature. The  
28

1 Chaparral Institute and its members actively participate in governmental decision-  
2 making processes on public lands, including the Los Padres National Forest.

3 23. The Chaparral Institute is based in Escondido, California. The  
4 organization's mission is to promote an understanding of and appreciation for the  
5 chaparral and the Mediterranean-type climate in which it thrives. The Chaparral  
6 Institute's goals in doing so are to preserve native shrubland ecosystems,  
7 encourage the use of fire science in community planning and land management  
8 policies, and facilitate enforcement of environmental laws protecting chaparral. To  
9 further its mission and protect the interests of its members in preserving native  
10 shrubland habitats, the Chaparral Institute monitors activities on public lands,  
11 including the Los Padres National Forest, and comments on proposed Forest  
12 Service projects.

13 24. The Chaparral Institute's members plan to continue using and  
14 enjoying Los Padres National Forest frequently and on an ongoing basis.

15 25. If Defendants affirmatively implement the Project as described in the  
16 Decision Memo and clear Refugio manzanita and other vegetation to create the  
17 Gaviota Fuel Break, they will adversely affect and irreparably injure the aesthetic,  
18 recreational, and scientific interests of the Chaparral Institute's members and  
19 prevent them from going to the project area to use and enjoy it. These are actual,  
20 concrete injuries caused by the Defendants' failure to comply with mandatory  
21 duties under NEPA and NFMA. The injuries of the Chaparral Institute's members  
22 would be redressed by the relief sought.

23 26. The Chaparral Institute has an organizational interest in the proper and  
24 lawful management of the Los Padres National Forest. The organization seeks  
25 injunctive and declaratory relief.

26 27. The Chaparral Institute participated in administrative actions to  
27 protect its interests in the Los Padres National Forest. The organization actively  
28



1 participated in the limited administrative process for the Project, including  
2 submitting substantive comments on the scoping notice. The Chaparral Institute  
3 has exhausted any and all available administrative remedies. Reviewable final  
4 agency action exists that is subject to this Court's review under 5 U.S.C. § 702 and  
5 5 U.S.C. § 704.

6 28. Defendant **UNITED STATES FOREST SERVICE** is an agency of  
7 the United States and a division of the U.S. Department of Agriculture. The Forest  
8 Service is charged with managing the public lands and resources of the Los Padres  
9 National Forest in accordance and compliance with NEPA and NFMA and their  
10 implementing regulations.

11 29. Defendant **JOHN SMITH** is the District Ranger for the Santa  
12 Barbara Ranger District within the Los Padres National Forest. Smith signed the  
13 Decision Memo challenged in this case. The Decision Memo was the Forest  
14 Service's final agency action regarding the Fuel Break Project. Smith is sued only  
15 in his official capacity.

#### 16 **JURISDICTION AND VENUE**

17 30. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§  
18 701–706 (APA), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2201  
19 (declaratory relief), 28 U.S.C. § 2202 (injunctive relief), and 28 U.S.C. § 2412  
20 (costs and fees). Plaintiffs challenge final agency actions as defined by the APA, 5  
21 U.S.C. § 704. Plaintiffs have exhausted all administrative remedies and seek  
22 judicial review of a final administrative action of the Forest Service.

23 31. Venue is properly rested in this Court pursuant to 28 U.S.C. § 1391(e)  
24 because Defendant Smith in his official capacity resides in this district and the  
25 events or omissions giving rise to the claims occurred in this district.  
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**STATUTORY AND REGULATORY FRAMEWORK**

**National Environmental Policy Act (42 U.S.C. §§ 4321–4370(h))**

1  
2  
3 32. The primary purposes of NEPA, 42 U.S.C. §§ 4321–4370(h), are to  
4 ensure fully informed decision-making and provide for public participation in  
5 environmental analysis and decision-making. 40 C.F.R. §1500.1(b)–(c) (2015).

6 33. The CEQ promulgates regulations implementing NEPA, 40 C.F.R. §§  
7 1500–1518.4 (2015), which are binding on all federal agencies.

8 34. Agency actions taken pursuant to NEPA are reviewable by this Court  
9 under the APA. 5 U.S.C. § 702; 5 U.S.C. § 704; 5 U.S.C. § 706.

10 35. NEPA requires an EIS for all “major federal actions significantly  
11 affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). “NEPA  
12 procedures must [e]nsure that environmental information is available to public  
13 officials and citizens before decisions are made and before actions are taken.” 40  
14 C.F.R. § 1500.1(b) (2015).

15 36. Alternatively, an agency may begin by preparing an EA to gauge  
16 whether an EIS is even necessary under CEQ regulations. 40 C.F.R. § 1501.3–  
17 1501.4 (2015); 40 C.F.R. § 1508.9 (2015).

18 37. An agency is not required to complete an EA or EIS if it can properly  
19 employ a CE, which is a category of actions that “do not individually or  
20 cumulatively have a significant effect on the human environment and which have  
21 been found to have no such effect in procedures adopted by a Federal agency in  
22 implementation of these regulations . . . .” 40 C.F.R. § 1508.4 (2015).

23 38. Forest Service CEs appear in agency regulations at 36 C.F.R. § 220.6  
24 (2015), adopted in implementation of 40 C.F.R. § 1507.3 (2015). The Decision  
25 Memo asserts that the Fuel Break Project is covered by the Timber Stand  
26 Improvement CE, 36 C.F.R. § 220.6(e)(6) (2015), which excludes from EA and/or  
27 EIS review “[t]imber stand and/or wildlife habitat improvement activities that do  
28

1 not include the use of herbicides or do not require more than 1 mile of low  
2 standard road construction.”

3 39. A CE is inappropriate where its use is precluded by extraordinary  
4 circumstances. 36 C.F.R. § 220.6(a) (2015); *see also* 40 C.F.R. § 1508.4 (2015)  
5 (“Any procedures under this section shall provide for extraordinary circumstances  
6 in which a normally excluded action may have a significant environmental  
7 effect.”). Conditions that should be considered when determining whether  
8 extraordinary circumstances exist include “Forest Service sensitive species.” 36  
9 C.F.R. § 220.6(b)(1) (2015). Sensitive species are “plant and animal species  
10 identified by a regional forester for which population viability is a concern . . . .”  
11 Forest Service Manual § 2670.5 (2005).

12 40. In determining whether extraordinary circumstances exist, the Forest  
13 Service must look to the “existence of a cause-effect relationship between a  
14 proposed action and the potential effect on . . . resource conditions, and if such a  
15 relationship exists, the degree of the potential effect of a proposed action on . . .  
16 resource conditions . . . .” 36 C.F.R. § 220.6(b)(2) (2015). According to the Forest  
17 Service Handbook (FSH), “[i]f the degree of potential effect raises uncertainty  
18 over its significance, then an extraordinary circumstance exists, precluding use of a  
19 categorical exclusion.” FSH 1909.15 § 31.2 (2014).

20 41. Consequently, to comply with NEPA through use of a CE, the Forest  
21 Service must rely upon a CE that actually covers or includes the proposed action  
22 and properly determine that extraordinary circumstances do not exist in the project  
23 area. If the Forest Service’s cited CE does not cover or include the proposed action  
24 or if extraordinary circumstances exist, the Forest Service must prepare an EA  
25 and/or EIS before approving the proposed action.  
26

27 42. NEPA’s implementing regulations require all federal agencies to  
28 analyze a project’s cumulative impacts. According to CEQ NEPA regulations,

1 Cumulative impact is the impact on the environment which results from  
2 the incremental impact of the action when added to other past, present,  
3 and reasonably foreseeable future actions regardless of what agency  
4 (Federal or non-Federal) or person undertakes such other actions.  
5 Cumulative impacts can result from individually minor but collectively  
6 significant actions taking place over a period of time.

7 40 C.F.R. 1508.7 (2015). “Significance exists if it is reasonable to anticipate a  
8 cumulatively significant impact on the environment.” 40 C.F.R. § 1508.27(b)(7)  
9 (2015). Forest Service regulations reiterate that the agency must consider past,  
10 present, and reasonably foreseeable future actions and assess “the extent that the  
11 effects of the proposal for agency action . . . will add to, modify, or mitigate . . .”  
12 the effects of these other actions in a cumulative impacts analysis. 36 C.F.R.  
13 220.4(f) (2015).

14 43. Although a CE is a “category of actions which do not . . .  
15 cumulatively have a significant effect on the human environment . . .,” 40 C.F.R.  
16 1508.4 (2015), the above-cited CEQ regulations do not allow agencies to ignore  
17 potential cumulative impacts when deciding whether a CE can be applied to a  
18 specific project, especially when extraordinary circumstances may exist.

19 44. The Forest Service’s own NEPA regulations also require it to consider  
20 cumulative impacts before applying one of its CEs to a specific project. Forest  
21 Service regulations require scoping prior to using a CE in the NEPA context. 36  
22 C.F.R. § 220.4(e); *see also* 40 C.F.R. § 1501.7 (2015) (defining NEPA scoping). If  
23 the Forest Service determines, based on scoping, that it is uncertain that a project  
24 will have a significant environmental effect, the agency is required to complete an  
25 EA or EIS, respectively. 36 C.F.R. § 220.6(c) (2015). The Forest Service  
26 Handbook adds:  
27

28 Scoping is the means to identify the presence or absence of any

1 extraordinary circumstances that would warrant further documentation  
2 in an EA or EIS. Scoping should also reveal any past, present, or  
3 reasonably foreseeable future actions with the potential to create  
4 uncertainty over the significance of cumulative effects.

5 FSH 1909.15 § 31.3 (2014).

6 45. Based on CEQ regulations requiring consideration of cumulative  
7 impacts and Forest Service scoping regulations and policies specifically applicable  
8 to CEs, the Forest Service is required to assess cumulative impacts, and especially  
9 potential cumulative impacts to any extraordinary circumstance, when determining  
10 whether a CE can be used.

11 **National Forest Management Act (16 U.S.C. § 1600-1614)**

12 46. NFMA, 16 U.S.C. §§ 1600–1614, is the primary statute governing the  
13 administration of national forests.

14 47. Agency actions taken pursuant to NFMA are reviewable under the  
15 APA. 5 U.S.C. § 702; 5 U.S.C. § 704; 5 U.S.C. § 706.

16 48. NFMA requires the Forest Service to develop and implement a Land  
17 Management Plan (commonly referred to as a Forest Plan) for each unit of the  
18 National Forest System. 16 U.S.C. § 1604. Forest Plans guide natural resource  
19 management activities forest-wide and set standards, management area goals and  
20 objectives, and monitoring and evaluation requirements. Forest Plans must provide  
21 for multiple uses of the forest, including recreation, range, wildlife, fish, timber,  
22 and wilderness.

23 49. NFMA requires all site-specific actions on a national forest to be  
24 consistent with the provisions of any applicable Forest Plan for that national forest.  
25 16 U.S.C. § 1604(i).

26 50. The Forest Plan, Appendix H, at 71–73, specifically incorporates  
27 sensitive species guidance documents and requires that the information in those  
28

1 guidance documents be used when authorizing site-specific actions to develop  
2 design criteria to avoid or mitigate impacts on sensitive species. The Forest Plan  
3 incorporates guidance documents for the Refugio manzanita, late-flowering  
4 mariposa lily, and California legless lizard.

5 **Administrative Procedure Act (5 U.S.C. §§ 701–706)**

6 51. The APA, 5 U.S.C. §§ 701–706, authorizes courts to review final  
7 agency actions and hold unlawful and set aside final agency actions, findings, and  
8 conclusions that are arbitrary and capricious, an abuse of discretion, or otherwise  
9 not in accordance with law. 5 U.S.C. § 706(2)(A).

10 52. The APA provides a cause of action to challenge any final agency  
11 action where there is no other adequate remedy in a court. 5 U.S.C. § 704.

12 53. NEPA and NFMA do not contain a specific judicial review provision;  
13 therefore, the Forest Service’s actions governed by the statute, such as the Decision  
14 Memo, are therefore subject to judicial review under the APA.

15 **FACTS GIVING RISE TO THE PLAINTIFFS’ CAUSES OF ACTION**

16 54. The Los Padres National Forest encompasses approximately 1.75  
17 million acres of California’s Central Coast and Transverse Ranges. It is divided  
18 into five (5) Ranger Districts, including the Santa Barbara Ranger District in which  
19 the Project is located. The Los Padres National Forest contains diverse wildlife  
20 habitats providing refuge for more than 460 wildlife species. It is one of the most  
21 botanically diverse national forests in the United States, containing more than 100  
22 species that the Forest Service has deemed to be “sensitive” and in need of special  
23 protections.  
24

25 55. The Fuel Break Project would create eight (8) fuel breaks covering  
26 about 411 acres in Santa Barbara County’s Santa Ynez Mountains, which are part  
27 of the Coast Ranges that extend from Alaska to Mexico. The Gaviota Fuel Break,  
28 the only fuel break legally challenged here, is the largest proposed fuel break at

1 213 acres. According to the Forest Service, the fuel break would be about six (6)  
2 miles long with a maximum width of 300 feet. The Gaviota Fuel Break would be  
3 located primarily along Gaviota Ridge.

4 56. As alleged above, NEPA requires the Forest Service to prepare an EA  
5 and/or EIS unless the project is categorically excluded. A decision may be  
6 categorically excluded only if the project is covered or included within one of the  
7 enumerated CEs and there are no extraordinary circumstances.

8 57. When the Forest Service initially listed the Project on its Schedule of  
9 Proposed Actions, it indicated that the Project would require an EA. However, the  
10 Forest Service changed its position when it issued the Scoping Notice for the  
11 Project. In that Scoping Notice, the Forest Service indicated it would rely on a CE  
12 rather than prepare an EA.

13 58. The Decision Memo asserts that the Fuel Break Project is  
14 categorically excluded from NEPA requirements to prepare an EA and/or EIS  
15 under the Timber Stand Improvement CE, which pertains to timber stand or  
16 wildlife habitat improvement activities.

17 59. The Forest Service claims in its responses to public comments on the  
18 Scoping Notice that the Project is a timber stand improvement activity (rather than  
19 a wildlife habitat improvement activity). *See Public Scoping Comments* at 16–18.  
20 But the specifically-declared purpose of the Fuel Break Project is “to help manage  
21 against the wildfire threat posed to the mountain communities in the project area . .  
22 . . .” U.S. Forest Serv., *Scoping Notice* 1 (2015). According to the Decision Memo,  
23 the Project would enhance community wildfire protection, reduce fire risk, and  
24 improve defensible space around communities. Nowhere in the Scoping Notice or  
25 the Decision Memo does the Forest Service identify timber stand or wildlife  
26 habitat improvement as a purpose of the Gaviota Fuel Break.  
27  
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1           60. In addition, the project area contains chaparral, a plant community  
2 dominated by shrubs that supports few trees. There are no lands in the Los Padres  
3 National Forest designated as commercial timber stands, and there is not an  
4 allowable sales quantity for commercial timber production in the Los Padres  
5 National Forest due to the lack of merchantable timber.

6           61. According to the Decision Memo, up to 95 percent of existing woody  
7 vegetation would be cut within the Gaviota Fuel Break, destroying wildlife habitat.  
8 The Forest Service states that the Project would continue into the foreseeable  
9 future and that the fuel breaks will be cleared every 3–10 years.

10           62. Therefore, the express purpose of the Gaviota Fuel Break is not to  
11 improve timber stands or wildlife habitat. The Forest Service’s Decision Memo  
12 and other incorporated analyses for the Project offer no factual or legal basis to  
13 establish that the Fuel Break Project would even arguably improve timber stands or  
14 wildlife habitat.

15           63. The Forest Service states that the project may be implemented as early  
16 as 2016. It does not assert that it must be implemented by a certain time or that  
17 implementation is urgent.

18           64. According to the 2016 Strategic Fuel Assessment for the Los Padres  
19 National Forest prepared for the Forest Service by Adaptive Management Services  
20 Enterprise Team, the Gaviota Fuel Break only has a Fuel Break Maintenance  
21 Priority ranking of 84 out of 163 possible fuel breaks that could be implemented in  
22 the Los Padres National Forest.

23           65. The project area encompasses chaparral rather than timber stands.  
24 According to the Forest Service, chaparral harbors more rare plants than any other  
25 plant community found in the Los Padres National Forest. Two Forest Service  
26 sensitive plant species found within the area proposed for the Gaviota Fuel Break  
27 include the Refugio manzanita and late-flowering mariposa lily.  
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1           66. Refugio manzanita is a tall shrub endemic to the Santa Ynez  
2 Mountains and found in only a few places within a narrow band along the ridgeline  
3 of the Gaviota coastal mountains. It exists nowhere else.

4           67. In the Forest Service’s 2005 sensitive species guidance document for  
5 the Refugio manzanita (which is incorporated into the Forest Plan), the agency said  
6 that it must “continue to protect existing occurrences on National Forest System  
7 land from mechanical injury and habitat loss.” *Species Accounts—Plants—*  
8 *Arctostaphylos refugioensis*. The Forest Service added, “[a]ll of the plants found  
9 on the Los Padres National Forest have been protected through their status as  
10 sensitive plants and the recognition that the limited number of occurrences found  
11 on National Forest [S]ystem lands must be conserved in order to maintain the  
12 viability of the species.” *Id.*

13           68. The Forest Plan also specifically requires that “[w]hen planning  
14 projects . . . in areas that contain habitat for [sensitive species,] use the information  
15 found in various types of species guidance documents to develop project-specific  
16 design criteria” that avoid or mitigate impacts to those sensitive species or their  
17 habitat. *LMP Appendix H* at 71.

18           69. In its response to public comments, the Forest Service acknowledges  
19 that the location of the Gaviota Fuel Break is “most unfortunate” for the Refugio  
20 manzanita because it “bisects the population that occurs in the Gaviota area,” and  
21 will remove and cut back Refugio manzanita plants. *Public Scoping Comments* at  
22 2. Despite this recognition and the agency’s mandate in its Forest Plan that all  
23 individuals in the Los Padres National Forest must be conserved to preserve  
24 viability, the Forest Service arbitrarily concluded, without support, that the Project  
25 will affect the Refugio manzanita but “is not likely to result in a trend toward  
26 Federal listing or loss of viability.” *Decision Memo* at 4.  
27  
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1           70. The map in Exhibit A to this Complaint depicts known observations  
2 of the Refugio manzanita and the location of the Gaviota Fuel Break. The map  
3 demonstrates, as the Forest Service also admitted in its response to public scoping  
4 comments, that the Fuel Break will destroy individual plants that are known to be  
5 in the path of the Gaviota Fuel Break.

6           71. The Decision Memo and its incorporated analyses acknowledge that  
7 creation of the Gaviota Fuel Break would directly and adversely impact habitat for  
8 several sensitive species and, in the case of Refugio manzanita, individual plants.  
9 However, despite the Forest Plan's specific requirement to develop design criteria  
10 to mitigate or avoid such impacts, the Decision Memo contains no such design  
11 criteria to protect Refugio manzanita plants or its habitat in the project area. In the  
12 past for similar projects, the Forest Service included design criteria that avoided or  
13 mitigated impacts on Refugio manzanita.

14           72. In addition to directly destroying Refugio manzanita plants through  
15 removal and mastication and bisecting the Refugio manzanita population in the  
16 Gaviota area, the Project will also indirectly impact the Refugio manzanita by  
17 damaging soil and soil fungi and disrupting microclimates that are important for  
18 the long-term survival of the Refugio manzanita.

19           73. The Forest Service's noxious weed analysis for the Project  
20 acknowledges that fuel breaks remove mature native vegetation and open the sites  
21 to invasion by noxious weeds. It further admits that open bare soil is at very high  
22 risk for invasive weeds because many weed species thrive on disturbed soils. With  
23 respect to this Fuel Break Project in particular, it concludes that there is a moderate  
24 risk of transporting noxious weeds into the project area via dirt and seeds on heavy  
25 equipment, especially since these sites will be maintained in an early successional  
26 state with minimal native vegetation coverage. Previous clearance activities within  
27 parts of the project area have inoculated the soil with invasive weed species, so  
28

1 their spread will likely increase due to additional soil disturbances caused by the  
2 Fuel Break Project.

3 74. Late-flowering mariposa lily is a perennial herb only found in the  
4 Outer South Coast Ranges and Western Transverse Ranges of California. The  
5 Forest Service recognized fuel break maintenance as a threat to the plant in the  
6 2005 sensitive species guidance documents (where it is identified by its previous  
7 scientific name *Calochortus weedii* var. *vestus*) incorporated by reference into the  
8 Forest Plan. *Species Accounts—Plants—Calochortus weedii* var. *vestus*. In the  
9 Biological Evaluation of plants conducted for the Fuel Break Project, the Forest  
10 Service stated that there could be “substantial direct effects” on the late-flowering  
11 mariposa lily depending on the time of year. *Biological Evaluation—Plants* at 11.  
12 The Forest Service arbitrarily concluded that the Project will affect the late-  
13 flowering mariposa lily but “is not likely to result in a trend toward Federal listing  
14 or loss of viability.” Decision Memo at 4. The Forest Service included no design  
15 criteria to avoid or mitigate impacts to this sensitive species.

16 75. In addition to sensitive plant species, the area proposed for the  
17 Gaviota Fuel Break contains a sensitive animal species: the California legless  
18 lizard.

19 76. The Biological Evaluation for Wildlife recognizes that the California  
20 legless lizard prefers loose sandy soils. U.S. Forest Serv., *Wildlife Biological*  
21 *Assessment/Evaluation for Santa Barbara Front Country [Defensible Fuel Profile*  
22 *Zone], Santa Barbara Ranger District, Los Padres National Forest* 12 (2015)  
23 [hereinafter *Biological Evaluation—Wildlife*]. According to Forest Service sensitive  
24 species guidance documents, “California legless lizards are significantly impacted  
25 by bulldozing and plowing which alters and compacts the soil structure rendering it  
26 unusable to this species.” C. Yasuda, U.S. Forest Serv., *Sensitive Species* (2012).  
27 In its response to scoping comments, the Forest Service acknowledges that some  
28

1 soil compaction will occur because of the Project. *Public Scoping Comments* at 3.  
2 The Forest Service further acknowledged that the Project may affect the California  
3 legless lizard through altered habitat or trampling of individuals or egg clutches.  
4 *Biological Evaluation–Wildlife* at 24. Yet, the Forest Service arbitrarily concluded  
5 that the Project is “unlikely to contribute to a population trend which would  
6 warrant listing” or loss of viability, Decision Memo at 5, and included no design  
7 criteria to avoid or mitigate impacts on this sensitive species.

8 77. Based in part on its unsupported and arbitrary conclusions that the  
9 Fuel Break Project would not lead to a trend in Federal listing or loss of viability  
10 for the Refugio manzanita, late-flowering mariposa lily, and California legless  
11 lizard, the Forest Service asserted that no extraordinary circumstances exist in the  
12 project area. Decision Memo at 1.

13 78. The Forest Service improperly and arbitrarily concluded that  
14 extraordinary circumstances do not exist in the project area. The agency  
15 determined that the Project would not significantly affect the Refugio manzanita  
16 despite concluding in its Forest Plan that all individuals of this species needed to  
17 be conserved to ensure viability. Furthermore, the Forest Service’s determination  
18 that the Project’s impact on the late-flowering mariposa lily and California legless  
19 lizard were not significant directly conflicts with agency documents indicating that  
20 there are or could be significant effects on these species.

21 79. When assessing whether extraordinary circumstances exist because of  
22 the potential impact on the Refugio manzanita and late-flowering mariposa lily, the  
23 Forest Service also failed to adequately consider cumulative impacts on these  
24 sensitive species.

25 80. In the Biological Evaluation for plants, the Forest Service states that  
26 cumulative effects do not exist because “[n]o other activities are planned or  
27 ongoing in the project areas where work is to occur” with no additional analysis.  
28

1 *Biological Evaluation—Plants* at 12. Not only is this the wrong standard (as the  
2 Forest Service must consider *past* projects as well as ongoing projects in the  
3 vicinity of the project area that might contribute to cumulative impacts), but this  
4 conclusory statement also conflicts with other statements in the record. *See*  
5 *Biological Evaluation—Wildlife* at 29–30 (discussing recreation, Forest Service  
6 management projects, and other activities occurring within the project area). The  
7 Forest Service’s conclusion ignores public scoping comments that point to past  
8 projects that adversely impacted Refugio manzanita, including the Camino Cielo  
9 Project. The Camino Cielo Project is a fuel break project located directly east of  
10 the proposed Gaviota Fuel Break that also impacted Refugio manzanita plants  
11 occurring in that project area.

12 81. When combined with the effects of past projects like the Camino  
13 Cielo Project, the Gaviota Fuel Break could have significant cumulative impacts  
14 on extraordinary circumstances such as sensitive species. The Forest Service failed  
15 to analyze these cumulative impacts.

## 16 **CLAIMS FOR RELIEF**

### 17 **Plaintiffs’ First Claim for Relief**

#### 18 **(Violations of NEPA and the APA by Defendants)**

##### 19 COUNT ONE

20 82. Plaintiffs reallege and incorporate all preceding paragraphs into this  
21 count.

22 83. The Timber Stand Improvement CE does not cover or include the  
23 Fuel Break Project. Accordingly, the Decision Memo unlawfully relies on that CE  
24 to exclude the installment of the Gaviota Fuel Break from more complete NEPA  
25 analysis and public involvement. The Forest Service’s improper application of the  
26 Timber Stand Improvement CE to this project is arbitrary, capricious, an abuse of  
27 discretion, and not in accordance with law, in violation of 5 U.S.C. § 706(2)(A).  
28

COUNT TWO

1  
2 84. Plaintiffs reallege and incorporate all preceding paragraphs into this  
3 count.

4 85. Neither the Timber Stand Improvement CE nor any other CE applies  
5 to the Gaviota Fuel Break because project and Forest Plan documents indicate that  
6 extraordinary circumstances exist due to the anticipated impacts on the Refugio  
7 manzanita, late-flowering mariposa lily, and California legless lizard.  
8 Consequently, the Decision Memo's conclusion regarding the nonexistence of  
9 extraordinary circumstances is arbitrary, capricious, an abuse of discretion, and not  
10 in accordance with law, in violation of 5 U.S.C. § 706(2)(A).

COUNT THREE

11  
12 86. Plaintiffs reallege and incorporate all preceding paragraphs into this  
13 count.

14 87. The Forest Service failed to properly consider cumulative impacts  
15 when assessing whether extraordinary circumstances exist, including by failing to  
16 consider the effect of past projects on the Refugio manzanita, late-flowering  
17 mariposa lily, and legless lizard. The agency's failure to complete a cumulative  
18 impacts analysis as required by CEQ and Forest Service regulations and policies is  
19 arbitrary, capricious, an abuse of discretion, and not in accordance with law, in  
20 violation of 5 U.S.C. § 706(2)(A).

COUNT FOUR

21  
22 88. Plaintiffs reallege and incorporate all preceding paragraphs into this  
23 count.

24 89. Neither the Timber Stand Improvement CE nor any other CE applies  
25 to the creation of the Gaviota Fuel Break, requiring the Forest Service to prepare  
26 an EA or an EIS pursuant to NEPA and applicable CEQ regulations. The Forest  
27  
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1 Service's failure to follow NEPA is arbitrary, capricious, an abuse of discretion,  
2 and not in accordance with law, in violation of 5 U.S.C. § 706(2)(A).

3 **Plaintiffs' Second Claim for Relief**

4 **(Violations of NFMA and the APA by Defendants)**

5 COUNT ONE

6 90. Plaintiffs reallege and incorporate all preceding paragraphs into this  
7 count.

8 91. The Forest Plan required the Forest Service to conserve all Refugio  
9 manzanita plants found in the Los Padres National Forest. The Gaviota Fuel Break  
10 violates the Forest Plan by destroying and damaging Refugio manzanita plants and  
11 bisecting the population in the Gaviota area. NFMA requires each project in the  
12 Los Padres National Forest to be consistent with the governing Forest Plan. The  
13 Gaviota Fuel Break is inconsistent with the Forest Plan because it will harm  
14 individual Refugio manzanita plants, Refugio manzanita populations, habitat, and  
15 the species as a whole. The Forest Service's failure to follow NFMA is arbitrary,  
16 capricious, an abuse of discretion, and not in accordance with law, in violation of 5  
17 U.S.C. § 706(2)(A).

18 COUNT TWO

19 92. Plaintiffs reallege and incorporate all preceding paragraphs into this  
20 count.

21 93. The Forest Plan requires that "[w]hen planning projects . . . in areas  
22 that contain habitat for [sensitive species,] use the information found in various  
23 types of species guidance documents to develop project-specific design criteria"  
24 that avoid or mitigate impacts to those sensitive species of their habitat. *LMP*  
25 *Appendix H* at 71. NFMA requires each project to be consistent with the governing  
26 Forest Plan. The Gaviota Fuel Break is inconsistent with the Forest Plan because  
27 its implementation would adversely impact habitat for several sensitive species and  
28

1 individual plants for at least one sensitive species, and the Decision Memo  
2 approving the Gaviota Fuel Break contains no design criteria to avoid or mitigate  
3 such adverse impacts to those sensitive species or their habitat. The Forest  
4 Service's failure to follow NFMA is arbitrary, capricious, an abuse of discretion,  
5 and not in accordance with law, in violation of 5 U.S.C. § 706(2)(A).  
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully request that the Court:

9 A. Declare that the portion of Defendants' Decision Memo approving the  
10 creation of the Gaviota Fuel Break violates NEPA and NFMA and is arbitrary,  
11 capricious, an abuse of discretion, and/or not in accordance with law under the  
12 APA, 5 U.S.C. § 706(2)(A);

13 B. Vacate and set aside the parts of the Decision Memo approving the  
14 Gaviota Fuel Break as illegal agency action under the APA;

15 C. Preliminarily and permanently enjoin the Forest Service from  
16 beginning construction of the Gaviota Fuel Break until the agency complies with  
17 NEPA and NFMA;

18 D. Enter appropriate injunctive relief to ensure that Defendants comply  
19 with NEPA and NFMA and ensure that Defendants and their agents take no further  
20 actions toward proceeding with the challenged Gaviota Fuel Break until they have  
21 complied with NEPA and NFMA;

22 E. Award Plaintiffs their reasonable costs, litigation expenses, and  
23 attorney fees associated with this litigation pursuant to the Equal Access to Justice  
24 Act, 28 U.S.C. § 2412 *et seq.*; and

25 F. Grant such further relief as the Court deems just and proper.  
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27 Dated this 6th day of December 2016.  
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Exhibit A. Observations of *Refugio manzanita* in the Gaviota Area and Proposed Location of the Gaviota Fuel Break

