ORDINANCE NUMBER 1123

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, TO ESTABLISH A LOCAL DEVELOPMENT MITIGATION FEE FOR FUNDING THE PRESERVATION OF NATURAL ECOSYSTEMS IN ACCORDANCE WITH THE WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN

WHEREAS, the City Council of the City of Perris ("City") finds that the ecosystems of the City and western Riverside County, and the vegetation communities and sensitive species they support, are fragile, irreplaceable resources that are vital to the general welfare of all residents; and,

WHEREAS, these vegetation communities and natural areas contain habitat value which contributes to the City's and the region's environmental resources; and,

WHEREAS, special protections for these vegetation communities and natural areas must be established to prevent future endangerment of the plant and animal species that are dependent upon them; and

WHEREAS, adoption and implementation of this Ordinance will help to enable the City to achieve the conservation goals set forth in the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"), adopted by the City Council on September 30, 2003, to implement the associated Implementing Agreement approved by the City Council on September 30, 2003 and to preserve the ability of affected property owners to make reasonable use of their land consistent with the requirements of the National Environmental Policy Act ("NEPA"), the California Environmental Quality Act ("CEQA"), the Federal Endangered Species Act ("FESA"), the California Endangered Species Act ("CESA"), the California Natural Community Conservation Planning Act ("NCCP Act) and other applicable laws; and,

WHEREAS, the purpose and intent of this Ordinance is to establish a Local Development Mitigation Fee ("Mitigation Fee") to assist in the maintenance of biological diversity and the natural ecosystem processes that support this diversity; the protection of vegetation communities and natural areas within the City and western Riverside County which are known to support threatened, endangered or key sensitive populations of plant and wildlife species; the maintenance of economic development within the City by providing a streamlined regulatory process from which development can proceed in an orderly process; and the protection of the existing character of the City and the region through the implementation of a system of reserves which will provide for the permanent open space, community edges, and habitat conservation for species covered by the MSHCP; and,

WHEREAS, the findings set forth herein are based on the MSHCP and the studies and environmental documents referenced therein, and the estimated acquisition costs for such property as set forth in the MSHCP, a copy of which is on file in the City Clerk's office; and,

WHEREAS, pursuant to Article 11, Section 7 of the California Constitution, the City is authorized to enact measures that protect the health, safety and welfare of its citizens; and,

WHEREAS, pursuant to Government Code sections 66000 et seq., the City is empowered to impose fees and other exactions to provide necessary funding and public facilities required to mitigate the negative effect of new development projects; and

WHEREAS, on September 30, 2003 the City Council took action to approve the MSHCP and the associated Implementing Agreement, and made appropriate findings pursuant to CEQA; and

WHEREAS, pursuant to Government Code sections 66016, 66017 and 66018, the City has: (a) made available to the public, at least ten (10) days prior to its public hearing on this Ordinance, data indicating the estimated cost required to provide the facilities and infrastructure for which the Mitigation Fee is levied and the revenue sources anticipated to provide those facilities and infrastructure; (b) mailed notice at least fourteen (14) days prior to this meeting to all interested parties that have requested notice of new or increased development fees; and (c) held a duly noticed, regularly scheduled public hearing at which oral and written testimony was received regarding the proposed Mitigation Fee;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Perris, as follows:

Section 1. Findings. The City Council finds and determines as follows:

A. The preservation of vegetation communities and natural areas within the City and western Riverside County which support species covered by the MSHCP is necessary to protect and promote the health, safety and welfare of all the citizens of the City by reducing the adverse direct, indirect and cumulative effects of urbanization and development and providing for permanent conservation of habitat for species covered by the MSHCP.

B. It is necessary to enact and implement certain development impact fees to ensure that all new development within the City pays its fair share of the costs of acquiring and preserving vegetation communities and natural areas within the City and the region which are known to support plant and wildlife species covered by the MSHCP.

C. A proper funding source to pay the costs associated with mitigating the direct, indirect and cumulative impacts of development to the natural ecosystems within the City and the region, as identified in the MSHCP, is a development impact fee for residential, commercial and industrial development. The amount of the fee is properly determined by the nature and extent of the impacts from the development to the identified natural ecosystems and/or the relative cost of mitigating such impacts.

D. The MSHCP and the Mitigation Fee Nexus Report, copies of which are on file in the City Clerk's office, provide a basis for the imposition of the Mitigation Fee on new construction.

E. The use of the Mitigation Fee to mitigate the impacts to the City's and the region's natural ecosystems is reasonably related to the type and extent of impacts caused by development within the City.

F. The costs of funding the proper mitigation of natural ecosystems and biological resources impacted by development within the City and the region are apportioned relative to the type and extent of impacts caused by the development.

G. The facts and evidence provided to the City and reviewed by the City Council establish that there is a reasonable relationship between the need for preserving the natural ecosystems in the City and the region, as defined in the MSHCP, and the direct, indirect and cumulative impacts to such natural ecosystems and biological resources created by the types of development on which the Mitigation Fee will be imposed, and that there is a reasonable relationship between the Mitigation Fee's use and the types of development for which the Mitigation Fee is charged. This reasonable relationship is described in more detail in the MSHCP and the Mitigation Fee Nexus Report.

H. The cost estimates for mitigating the impact of development on the City's and the region's natural ecosystem and biological resources, as set forth in the MSHCP, are reasonable and will not exceed the reasonably estimated total of these costs.

I. The Mitigation Fee set forth herein does not reflect the entire cost of the lands which need to be acquired in order to implement the MSHCP and mitigate the impact caused by new development. Additional revenues will be required from other sources. The City Council finds that the benefit to each development project is

greater than the amount of the Mitigation Fee to be paid by each project.

J. The Mitigation Fee collected pursuant to this Ordinance shall be used to finance the acquisition of the natural ecosystems and certain improvements described or identified in the MSHCP.

Section 2. Administrative Responsibility. The City Manager of the City, or his or her designee, shall be responsible for the administration of this Ordinance. Detailed administrative procedures concerning the implementation of this Ordinance may be established and set forth in a resolution adopted by the City Council.

Section 3. Definitions. As used in this Ordinance, the following terms shall have the following meanings:

"City" means the City of Perris, California.

"City Council" means the City Council of the City of Perris, California.

"Certificate of Occupancy" means a certificate of occupancy issued by the City in accordance with all applicable ordinances, regulations, and rules of the City and state law.

"Credit" means a credit allowed pursuant to Section 11 of this Ordinance, which may be applied against the Mitigation Fee paid.

"Development Project" or "Project" means any project undertaken for the purpose of development pursuant to the issuance of a building permit by the City pursuant to all applicable ordinances, regulations, and rules of the City and state law.

"Final Inspection" means a final inspection of a project as defined by the building codes of the City.

"Gross Acreage" means the total property area shown on a land division map of record, or described through a recorded legal description of the property. This area shall be bounded by road right-of-way and/or legal property lines.

"Local Development Mitigation Fee" or "Mitigation Fee" means the development impact fee imposed pursuant to the provisions of this Ordinance.

"Multiple Species Habitat Conservation Plan" or "MSHCP" means the Western Riverside County Multiple Species Habitat Conservation Plan, adopted by the City Council on September 30, 2003.

"MSHCP Conservation Area" has the same meaning and intent as such term is defined and utilized in the MSHCP.

"Ordinance" means this Ordinance of the City of Perris, California.

"Project Area" means the area, measured in acres, from the adjacent road right-of-way line to the limits of project improvements. Project Area includes all project improvements and areas that are disturbed as a result of the project improvements on an applicant's Gross Acreage, including all areas depicted on the forms required to be submitted to the City pursuant to this Ordinance and/or other applicable development ordinance or regulation of the City. Except as otherwise provided herein, the Project Area is the area upon which the project will be assessed the Local Development Mitigation Fee.

"Residential Unit" means a building or portion thereof used by one family and containing but one kitchen, which unit is designed or occupied for residential purposes, including single-family, multiple-family dwellings, and mobile homes on a permanent foundation, but not including hotels, motels, residential care facilities, or individual spaces in recreational vehicle parks.

"Revenue" or "Revenues" means any funds received by the City pursuant to the provisions of this Ordinance for the purpose of defraying all or a portion of the cost of acquisition of lands necessary to implement the MSHCP>

"Western Riverside County Regional Conservation Authority" means the governing body established pursuant to the MSHCP that is delegated the authority to oversee and implement the provisions of the MSHCP.

Section 4. Local Development Mitigation Fee.

A. To assist in providing Revenue to acquire and conserve lands necessary to implement the MSHCP, a Local Development Mitigation Fee shall be paid for each Development Project or portion thereof to be constructed within the City. The following Mitigation Fee shall be paid for each Development Project to be constructed within the City. The fees are calculated using an Equivalent Benefit Unit methodology:

- Residential, density less than 8.0 dwelling units per acre - $1,651 per dwelling unit.
- Residential, density between 8.1 and 14.0 dwelling units per acre - $1,057 per dwelling unit.
- Residential, density greater than 14.0 dwelling units per acre - $859 per dwelling unit.

- Commercial - $5,620 per acre.
- Industrial - $5,620 per acre.

B. The amount of the Local Development Mitigation Fee for a commercial or industrial Development Project shall be calculated on the basis of the acreage of the Project Area, in accordance with the following:

1. The Project Area shall be determined by City staff based on the subdivision map, plot plan, and other information submitted to or required by the City.

2. An applicant may elect, at his or her own expense, to have a Project Area dimensioned, calculated, and certified by a registered civil engineer or licensed land surveyor. The engineer or land surveyor shall prepare a wet-stamped letter of certification of the Project Area dimensions and a plot plan exhibit thereto that clearly delineates the Project Area. Upon receipt of the letter of certification and plot plan exhibit, the City shall calculate the Local Development Mitigation Fee required to be paid based on the certified Project Area.

3. Where construction or other improvements on Project Area are prohibited due to legal restrictions on the Project Area, such as Federal Emergency Management Agency designated floodways or areas legally required to remain in their natural state, that portion of the Project Area so restricted shall be excluded for the purpose of calculating the Local Development Mitigation Fee.

Section 5. Imposition of the Local Development Mitigation Fee.

Notwithstanding any other provision of the City's Municipal Code, no building permit shall be issued for any Development Project until the Local Development Mitigation Fee applicable to such Development Project is paid, except as otherwise provided by State law.

Section 6. Payment of Local Development Mitigation Fee.

A. The Local Development Mitigation Fee shall be paid in full at time of issuance of the Certificate of Occupancy or upon Final Inspection, whichever occurs first. However, this section shall not be construed to prevent earlier payment. For Projects which do not

require a Certificate of Occupancy or Final Inspection, the Mitigation Fee shall be paid prior to any use or occupancy.

B. The Local Development Mitigation Fee shall be assessed one time per lot or parcel, except in cases of changes in land use or when additional construction or improvement on the lot or parcel results in the disturbance or additional area.

C. The Local Development Mitigation Fee required to be paid under this Ordinance shall be the Mitigation Fee in effect at the time of payment.

D. Notwithstanding anything in the City's Municipal Code, or any other written documentation to the contrary, the Local Development Mitigation Fee shall be paid whether or not the Development Project is subject to conditions of approval by the City imposing the requirement to pay the Mitigation Fee.

E. If all or part of the Development Project is sold prior to payment of the Local Development Mitigation Fee, the Project shall continue to be subject to the requirement to pay the Mitigation Fee as provided herein.

Section 7. Refunds.

There shall be no refund of all or part of any Local Development Mitigation Fee paid under this Ordinance except in cases of overpayment or miscalculation of the applicable fee.

Section 8. Accounting and Disbursement of Collected Local Development Mitigation Fees.

A. All fees paid pursuant to this Ordinance shall be deposited, invested, accounted for, and expended in accordance with Section 66006 of the Government Code and all other applicable provisions of law.

B. Subject to the provisions of this section, all fees collected pursuant to this Ordinance, less a City administrative charge, shall be remitted to the Western Riverside County Regional Conservation Authority at least quarterly, and will be expended solely for the purpose of acquiring and conserving lands necessary to implement the MSHCP. City administrative fee shall be established by the City Council by resolution.

Section 9. Automatic Annual Fee Adjustment.

The Mitigation Fee established by this Ordinance shall be revised annually by means of an automatic adjustment at the beginning of each fiscal year based on the average percentage change over the previous calendar year set forth in the Consumer Price Index for "All Urban Consumers" in the Los Angeles-Anaheim-Riverside area, measured as the month of December in the calendar year which ends in the previous fiscal year. The first fee adjustment shall not be made prior to a minimum of ten (10) months following the effective date of this Ordinance.

Section 10. Exemptions.

The following types of construction shall be exempt from the provisions of this Ordinance.

A. Reconstruction of improvements that are damaged or destroyed by fire or other natural causes.

B. Rehabilitation, remodeling, or minor additions to an existing Development Project.

C. Secondary residential units, constructed on developed residential property and meeting all state and City requirements for such units.

D. Existing improvements that are converted from an existing permitted use to a different permitted use, provided that no additional area of the property is disturbed as a result of such conversion.

E. Development on a Project Area that is currently or has been previously improved.

F. Guest houses or dwellings, as permitted by law.

G. City projects outside Criteria Areas of the Multiple Species Habitat Conservation Plan, including City parks, City public works projects, and City buildings.

Section 11. Fee Credits and Waivers.

Any Local Development Mitigation Fee credit that may be applicable to a Development Project , or any partial or full waiver of a Local Development Mitigation Fee that may be applicable to a Development Project, shall be determined by the City in cooperation

with the Western Riverside County Regional Conservation Authority, which shall have an auditing role in this process.

Section 12. Severability.

This Ordinance and the various parts, sections, and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid, the remainder of this Ordinance shall be affected thereby. If any part, sentence, paragraph, section or clause of this Ordinance, or its application to any person entity is adjudged unconstitutional or invalid, such unconstitutionality or invalidity shall affect only such part, sentence, paragraph, section, or clause of this Ordinance, or person or entity; and shall not affect or impair any of the remaining provision, parts, sentences, paragraphs, sections, or clauses of this Ordinance, or its application to other persons or entities. The City Council hereby declares that this Ordinance would have been adopted had such unconstitutional or invalid part, sentence, paragraph, section, or clause of this Ordinance not been included herein; or had such person or entity been expressly exempted from the application of this Ordinance.

Section 13. Effective Date.

The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in a newspaper published and circulated in the City of Perris. This Ordinance shall take effect immediately upon issuance of the permits authorizing take in connection with the MSHCP by the U.S. Fish and Wildlife Service and California Department of Fish and Game; provided, however, that in no event shall this Ordinance take effect prior to 60 days after the date of its adoption.

ADOPTED, SIGNED and ***APPROVED*** this 14th day of October, 2003.

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Mayor, Daryl R. Busch

ATTEST:

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City Clerk, Margaret Rey

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Margaret Rey, CITY CLERK OF THE CITY OF PERRIS, CALIFORNIA, DO HEREBY CERTIFY that the foregoing Resolution Number 1123, introduced at a regular meeting of the City Council of the City of Perris held on the 30th day of September, 2003, was duly and regularly adopted by the City Council at a regular meeting thereof held on the 14th day of October, 2003, and that it was so adopted by the following called vote:

AYES: Rogers, Yarbrough, Landers, Motte, Busch
NOES:
ABSENT:
ABSTAIN:

_____
City Clerk, Margaret Rey