



## **REPORT TO CITY COUNCIL**

**To: Honorable Mayor and Members of the City Council**

**From: Jason Simpson, City Manager**

**Prepared by: Barbara Leibold, City Attorney**

**Date: April 27, 2021**

**Subject: ORDINANCE TO UPDATE THE LOCAL DEVELOPMENT MITIGATION FEE FOR FUNDING THE PRESERVATION OF NATURAL ECOSYSTEMS IN ACCORDANCE WITH THE WESTERN RIVERSIDE COUNTY MSHCP and LOCAL DEVELOPMENT MITIGATION FEE RESOLUTION**

### **Recommendation**

Adopt by title only and waive further reading an ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, AMENDING AND RESTATING CHAPTER 16.85 OF TITLE 16 OF THE LAKE ELSINORE MUNICIPAL CODE TO UPDATE THE LOCAL DEVELOPMENT MITIGATION FEE FOR FUNDING THE PRESERVATION OF NATURAL ECOSYSTEMS IN ACCORDANCE WITH THE WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN; and

Adopt RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA ESTABLISHING THE WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN LOCAL DEVELOPMENT MITIGATION FEE PURSUANT TO CHAPTER 16.85 OF THE LAKE ELSINORE MUNICIPAL CODE.

### **Background**

The City of Lake Elsinore is a Member Agency of the Western Riverside County Regional Conservation Authority (RCA), a joint powers authority comprised of the County of Riverside and the eighteen (18) cities located in western Riverside County. The RCA was formed to acquire, administer, operate, and maintain land and facilities to establish habitat reserves for the conservation and protection of species covered by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP or Plan).

The Western Riverside County MSHCP, originally adopted in 2004, is a comprehensive, multi-jurisdictional Habitat Conservation Plan (HCP) focusing on the permanent conservation of 500,000 acres and the protection of 146 species, including 33 that are currently listed as threatened or endangered. The MSHCP was developed in response to the need for future growth opportunities in western Riverside County, from housing developments to transportation and infrastructure, while addressing the requirements of the State and federal Endangered Species Acts (ESA). The MSHCP serves as an HCP pursuant to Section 10(a)(1)(B) of the federal Endangered Species Act of 1973 as well as a Natural Communities Conservation Plan (NCCP) under California's NCCP Act of 2001. The MSHCP streamlines environmental permitting processes by allowing the participating jurisdictions such as the City to authorize the "take" of

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plant and wildlife species identified within the Plan Area. Without the MSHCP, each development and transportation project would need to conduct an individual assessment and mitigation for impacts to endangered species, an approach that would be less efficient and effective, and more costly.

The City receipt of local Measure A sales tax funds for local streets and roads is conditioned upon the City participation in the MSHCP. This condition of funding is memorialized in the voter-adopted ordinance that authorizes Measure A.

The MSHCP required a Nexus Study under the Mitigation Fee Act (Gov. Code §§ 66000 *et seq.*) to establish a Local Development Mitigation Fee (LDMF) that would then be adopted by each jurisdiction participating in the MSHCP. The LDMF pays for acquisition of Additional Reserve Lands (ARL) to meet the target conservation acreage that local governments are responsible to acquire per the Plan. The original Nexus Study was completed in 2003 coinciding with the adoption of the MSHCP, Implementing Agreement, and signing of the Permits. Section 8.5.1 of the MSHCP allows the fee to be reevaluated and revised should it be found to insufficiently cover mitigation of new development.

Based on the 2003 Nexus Study, the City Council approve Ordinance No. 1124 in 2004 as part of the adoption of the MSHCP and authorizing the imposition of the LDMF.

Pursuant to the Mitigation Fee Act, RCA prepared a new nexus study ("2020 Nexus Study") to update the fees for the first time since original adoption. On December 7, 2020, the RCA Board of Directors adopted the 2020 Nexus Study. On December 31, 2020 RCA transmitted a model ordinance and model resolution to the City. The RCA Board of Directors also approved the use of the MSHCP Mitigation Fee Implementation Manual to assist Member Agencies with LDMF collection questions.

An updated Nexus Study was needed to ensure adequate funding to complete reserve acquisition to fulfill local governments' responsibilities under the MSHCP. Over the last 16 years, many of the assumptions underlying the original Nexus Study were not borne out by reality. Forces contributing to the unmet expectation include the Great Recession, less acreage dedicated to RCA by private landowners, and less state and federal funding than expected. The 2020 Nexus Study calculated the expected costs to complete ARL acquisition, manage the conservation lands in perpetuity via an endowment, and administration of the MSHCP. The Nexus Study extended the reserve acquisition period by an additional fifteen years. Currently, the acquisition period ends in 2029. By extending the acquisition period, the LDMF increase is lower because it covers more development over a longer period. The RCA Board also adopted a phased increase of the new fee, with 50 percent of the fee increase taking effect on July 1, 2021 and the remainder of the increase taking effect on January 1, 2022. Public deliberation over the 2020 Nexus Study stretched over a year in multiple public meetings.

On April 13, 2021, the City Council introduced the proposed Ordinance and directed staff to set a duly noticed public hearing for the April 27, 2021 regular City Council meeting at which time oral or written presentations can be made regarding the proposed increase in the Local Development Mitigation Fee for funding the preservation of natural ecosystems in accordance with the Western Riverside County MSHCP and otherwise comply with the requirements of Government Code sections 66016, 66017, and 66018. Notice of the hearing was published and provided in accordance with these statutory requirements.

### **Discussion**

The proposed Ordinance provides the legal basis for a revised MSHCP LDMF schedule. The actual MSHCP LDMF schedule is established by the proposed Resolution.

In accordance with the Mitigation Fee Act, the proposed Ordinance and 2020 Nexus Study: (i) identifies the purpose of the revised fees; (ii) identifies the use to which the revised fees is to be put, including identification of any facilities to be financed; (iii) determines how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; (iv) determines how there is a reasonable relationship between the need for the public facilities and the type of development project upon which the fee is imposed; and (v) determines how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

Recognizing the current economic situation, the RCA Board, in consultation with the Building Industry Association (BIA), adopted the lowest possible fee evaluated in the Nexus Study, along with a phase-in of the increase. 50% of the increase will take effect on July 1, 2021, with the remaining 50% taking effect on January 1, 2022. Upon adoption of the Ordinance and the Resolution setting the Local Development Mitigation Fee, the Fee Schedule for the MSHCP mitigation is proposed to increase as shown on the following chart:

Category	Current	July 1, 2021 – Dec 31, 2021	Jan 1, 2022 – June 30, 2022
Residential, density less than 8.0 dwelling units per acre (fee per dwelling unit)	\$2,234	\$2,935	\$3,635
Residential, density between 8.0 and 14.0 dwelling units per acre (fee per dwelling unit)	\$1,430	\$1,473	\$1,515
Residential density greater than 14.0 dwelling units per acre (fee per dwelling unit)	\$1,161	\$670	\$670
Commercial (fee per acre)	\$7,606	\$11,982	\$16,358
Industrial (fee per acre)	\$7,606	\$11,982	\$16,358

The City may accept prepayment of fees at its own discretion for applicants wishing to pay current fee levels prior to July 1, 2021. Generally, a fee increase does not go into effect until 60 days following approval of the required legislative enactments. Accordingly, the City must adopt the updated MSHCP mitigation fee before May 2, 2021 to remain compliant with the MSHCP.

### **Fiscal Impact**

No fiscal impact as all fees collected are passed through to the Western Riverside County Regional Conservation Authority.

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**Exhibits**

- A – Ordinance No. 2021-\_\_\_\_
- B - Resolution
- C – Nexus Study Background Summary
- D – MSHCP LDMF Implementation Frequently Asked Questions
- E – MSHCP Nexus Study
- F – MSHCP Mitigation Fee Implementation Manual