

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

372



FROM: Transportation and Land Management Agency (TLMA)

SUBMITTAL DATE:
December 7, 2007

SUBJECT: Ordinance No. 875 To Establish a Local Development Mitigation Fee for Funding the Preservation of Natural Ecosystems in Accordance with the Coachella Valley Multiple Species Habitat Conservation Plan

RECOMMENDED MOTION: That the Board of Supervisors:

1. Direct the Clerk of the Board to set Ordinance No. 875 to Establish a Local Development Mitigation Fee for Funding the Preservation of Natural Ecosystems in Accordance with the Coachella Valley Multiple Species Habitat Conservation Plan, for public hearing.
2. At the close of the public hearing, introduce and adopt Ordinance No. 875 on successive weeks.

BACKGROUND:

On October 2, 2007 (Item 3.63), the Board of Supervisors approved the Final Recirculated Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and Implementation Agreement. Attached is a proposed ordinance establishing a Local Development Mitigation Fee (LDMF) for the CVMSHCP. A Fee Nexus Study, dated January 15, 2007, was prepared by MuniFinancial to justify the LDMF in conformance with Government Code 66000 et seq. requirements. This nexus study was reviewed by member agencies of the Coachella Valley Association of Governments (CVAG), the Building Industry Association and the public during the hearing process for the CVMSHCP. All pertinent comments were incorporated into the document.

Tony Carstens, Director
Transportation and Land Management Agency

FINANCIAL DATA	Current F.Y. Total Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	

C.E.O. RECOMMENDATION: APPROVE
BY: Tina Grande
County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: KARIN L. WATTS-BAZAN
DATE

Dep't Recomm.: Consent
Per Exec. Ofc.: Consent
Policy Policy

The LDMF, as recommended by the consultant and CVAG, is \$5,730 per acre with a per unit fee for residential development. The LDMF for residential, commercial and industrial uses are as follows:

Residential (density 0-8 units per acre)	\$1,284/unit
Residential (density 8.1-14 units per acre)	\$ 533/unit
Residential (14.1 plus units per acre)	\$ 235/unit
Commercial	\$5730/acre
Industrial	\$5730/acre

The nexus study can be updated by the Coachella Valley Conservation Commission (CVCC), a joint powers authority that was created to implement the CVMSHCP, at least every five years to ensure that the fee is adequate to acquire the necessary conservation land and make improvements to the reserve system. The CVCC will manage the collected LDMF. The nexus study indicated that CVCC would stop collecting the LDMF after the 50-year planning horizon, assuming the acquisition program has been completed.

CVAG, County, and city staffs are currently working to prepare an Implementation Manual for the CVMSHCP. Based on these procedures, County staff will prepare, and present to the Board for its consideration, a resolution establishing procedures and responsibilities for the CVMSHCP to assist the County in implementing the fee program.

1 of economic development within the unincorporated are of Riverside County by providing a streamlined
2 regulatory process from which development can proceed in an orderly process; and the protection of the
3 existing character of the County and the region through the implementation of a system of reserves which
4 will provide for permanent open space, community edges and habitat conservation for species covered by
5 the MSHCP;

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

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

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

14 **WHEREAS**, on October 2, 2007 the Board of Supervisors took action on the MSHCP and the
15 associated Implementing Agreement, and made appropriate findings pursuant to CEQA; and;

16 **WHEREAS**, pursuant to Government Code sections 66016, 66017 and 66018, the City has: (a)
17 made available to the public, at least ten (10) days prior to its public hearing, data indicating the estimated
18 cost required to provide the facilities and infrastructure; (b) mailed notice at least fourteen (14) days prior
19 to this meeting to all interested parties that have requested notice of new or increased development fees;
20 and (c) held a duly noticed, regularly scheduled public hearing at which oral and written testimony was
21 received regarding the proposed fees.

22 **NOW THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF**
23 **RIVERSIDE DOES ORDAIN AS FOLLOWS:**

24 **SECTION 1. SHORT TITLE.** This ordinance shall be known as the "Coachella Valley
25 Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan Mitigation Fee
26 Ordinance."

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1 **SECTION 2. FINDINGS.**

2 **A.** In order to implement the goals and objectives of the Coachella Valley Multiple Species
3 Habitat Conservation Plan/Natural Community Conservation Plan ("MSHCP") and to mitigate the
4 impacts caused by new development in the unincorporated area of Riverside County, lands supporting
5 species covered by the MSHCP must be acquired and conserved.

6 **B.** The Local Development Mitigation Fee ("Fee") is necessary in order to supplement the
7 financing of the acquisition of lands supporting species covered by the MSHCP and to pay for new
8 development's fair share of this cost.

9 **C.** The appropriate source of funding for the costs associated with mitigating the impacts of
10 new development to the natural ecosystems and covered species within the County, as identified in the
11 MSHCP, is a mitigation fee paid for by residential, commercial and industrial development. The amount
12 of the Fee is determined by the nature and extent of the impacts from the development to the identified
13 natural ecosystems and the relative cost of mitigating such impacts.

14 **D.** The Fee does not reflect the entire cost of the lands which need to be acquired in order to
15 implement the MSHCP and mitigate the impact caused by new development. Additional revenues will be
16 required from other sources. The County finds that the benefit to each development project is greater than
17 the amount of the Fee to be paid by that project.

18 **E.** The MSHCP and Mitigation Fee Nexus Report, a copy of which is on file in the Clerk of
19 the Board's office, provide the basis for the imposition of the Fee on new developments.

20 **F.** The use of the Fee is apportioned relative to the type and extent of impacts caused by the
21 development.

22 **G.** The costs of funding the proper mitigation for natural ecosystems and covered species
23 identified in the MSHCP which are impacted by new development are apportioned relative to the type and
24 extent of impacts caused by the development.

25 **H.** The facts and evidence provided to and considered by the Board of Supervisors establish
26 that there is a reasonable relationship between the need for preserving the natural ecosystems and covered
27 species identified in the MSHCP, and the impacts to such natural ecosystems and species created by the
28 types of development on which the Fee will be imposed; and that there is a reasonable relationship

1 between the Fee's use and the types of development for which the Fee is charged. This reasonable
2 relationship is described in more detail in the MSHCP and Mitigation Fee Nexus Report.

3 **I.** The fees collected pursuant to this Ordinance shall be used to finance the acquisition of the
4 lands to protect natural ecosystems and covered species, as set forth in the MSHCP, are reasonable and
5 will not exceed the reasonably estimated total of these costs.

6 **J.** The Fees shall be used to finance the acquisition of lands and certain improvements
7 necessary to implement the goals and objectives of the MSHCP.

8 **K.** To ensure fair implementation of the development impact fees established in this
9 Ordinance, it may be necessary for the County to defer or waive such fees in special cases as may be
10 permitted in accordance with procedures and guidelines established by the Coachella Valley Conservation
11 Commission.

12 **L.** Even though second units on existing single family lots may also contribute to the need for
13 acquisition of lands necessary to implement the MSHCP, the County refrains from imposing the Fee on
14 such development at this time, and in this regard finds that second units: (1) provide a cost effective
15 means of serving development through the use of existing infrastructure, as contrasted to requiring the
16 construction of new costly infrastructure to serve development in undeveloped areas; and (2) provide
17 relatively affordable housing for low and moderate income households without public subsidy.

18 **SECTION 3. ADMINISTRATIVE RESPONSIBILITY.** The County Executive Officer shall
19 serve as chief administrator and be responsible for the administration of this Ordinance. The Director of
20 the Department of Building and Safety shall insure that the Fee is properly collected. Detailed
21 administrative procedures concerning the implementation of this Ordinance may be established and set
22 forth in a resolution adopted by the Board of Supervisors.

23 **SECTION 4. DEFINITIONS.** As used in this Ordinance, the following terms shall have the
24 following meanings:

25 "Board" or "Board of Supervisors" means the Board of Supervisors of the County of Riverside,
26 California.

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

1 "Coachella Valley Conservation Commission" means the governing body established pursuant to
2 the MSHCP that is delegated the authority to oversee and implement the provisions of the MSHCP.

3 "County" mean the County of Riverside, California

4 "Credit" means a credit allowed pursuant to Section 12 of this Ordinance, which may be applied
5 against the Fee paid.

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

9 "Final Inspection" means a final inspection of a project as defined by the Riverside County
10 Ordinance No. 457.

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

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

16 "Multiple Species Habitat Conservation Plan" or "MSHCP" means the Coachella Valley Multiple
17 Species Habitat Conservation Plan/Natural Community Conservation Plan, adopted by the Board of
18 Supervisors on October 2, 2007.

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

21 "Ordinance" means this Ordinance No. 875 of the County of Riverside, California.

22 "Project Area" means the area, measured in acres, from the adjacent road right-of-way line to the
23 limits of project improvements. Project Area includes all project improvements and areas that are
24 disturbed as a result of the project improvements on an owner's Gross Acreage, including all areas
25 depicted on the forms required to be submitted to the County pursuant to this Ordinance and/or other
26 applicable development ordinance or regulation of the County except as otherwise provided herein, the
27 Project Area is the area upon which the project will be assessed the Local Development Mitigation Fee.
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1 "Residential Unit" means a building or portion thereof used by one family and containing but one
2 kitchen, which unit is designed or occupied for residential purposes, including single-family dwelling,
3 multiple-family dwellings, and mobile homes on permanent foundations, but not including hotels and
4 motels.

5 "Revenue" or "Revenues" means any funds received by the County pursuant to the provisions of
6 this Ordinance for the purpose of defraying all or a portion of the cost of acquiring and preserving
7 vegetation communities and natural areas within the County and the region which are known to support
8 threatened, endangered or key sensitive populations of plant and wildlife species.

9 **SECTION 5. LOCAL DEVELOPMENT MITIGATION FEE.** To assist in providing
10 revenue to acquire and conserve lands necessary to implement the MSHCP, the Fee shall be paid for each
11 residential unit, Development Project or portion thereof to be constructed within the County. Five
12 categories of the Fee are defined and include: (1) residential units, density less than 8.0 dwelling units per
13 acre; (2) residential units, density between 8.1 and 14.0 dwelling units per acre; (3) residential units,
14 density greater than 14.1 dwelling unites per acre; (4) commercial acreage; and (5) industrial acreage.
15 Because there can be mixed traditional commercial, industrial and residential uses within the same
16 project, for Fee assessment purposes only, the Fee which is applicable to commercial or industrial
17 development projects shall be applied to the whole project based upon the existing underlying zoning
18 classification of the property at the time of issuance of a building permit. The following Fee shall be paid
19 for each Development Project to be constructed within the boundaries of the Coachella Valley Multiple
20 Species Habitat Conservation Plan/Natural Community Conservation Plan fee area. The fees are
21 calculated using an Equivalent Benefit Unit methodology:

- 22 • Residential, density less than 8.0 dwelling units per acre-\$1,284.00 per dwelling unit
- 23 • Residential, density between 8.1 and 14.0 dwelling units per acre-\$533.00 per dwelling unit
- 24 • Residential, density greater than 14.1 dwelling units per acre-\$235.00 per dwelling unit
- 25 • Commercial-\$5,730.00 per acre
- 26 • Industrial-\$5,730.00 per acre

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1 A. The amount of the Local Development Mitigation Fee for a commercial or industrial
2 development project required to be paid shall be based on the acreage to be developed and shall be
3 calculated on the basis of the Project Area, in accordance with the following:

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

6 2. If the difference between the net acreage, as exhibited on the plot plan, and the
7 Project Area is less than one-quarter acre, the Fee shall be paid on the full gross acreage.

8 3. An applicant may elect, at his or her own expense, to have a Project Area
9 dimensioned, calculated, and certified by a registered civil engineer or licensed land surveyor. The
10 engineer or land surveyor shall prepare a wet-stamped letter of certification of the Project Area
11 dimensions and a plot plan exhibit thereto that clearly delineates the Project Area. Upon receipt of the
12 letter of certification and plot plan exhibit, the County shall review submitted documents. If the Project
13 Area dimensions, the letter of certificate, and the plot plan are acceptable to the County, the County shall
14 calculate the Local Development Mitigation Fee required to be paid based on the certified Project Area.
15 If the Project Area dimensions, the letter of certification, of the plot plan are not acceptable to the County,
16 the applicant shall perform such actions as directed by the County in order to resolve any deficiencies
17 perceived by the County.

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

22 **SECTION 6. COACHELLA VALLEY MULTIPLE SPECIES HABITAT**
23 **CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN FEE AREA**

24 **BOUNDARY.** The boundary of the Coachella Valley Multiple Species Habitat Conservation
25 Plan/Natural Community Conservation Plan fee area is the same as the MSHCP boundary set forth in that
26 document entitled Plan Area which is on file with the Clerk of the Board.

27 **SECTION 7. IMPOSITION OF THE LOCAL DEVELOPMENT MITIGATION FEE.**
28 Notwithstanding any other requirement of the County's ordinances, no permit shall be issued for any

1 Development Project except upon the condition that the Local Development Mitigation Fee applicable to
2 such Development Project has been paid in accordance with the provisions of this Ordinance.

3 **SECTION 8. PAYMENT OF LOCAL DEVELOPMENT MITIGATION FEE.**

4 **A.** The Local Development Mitigation Fee shall be paid in full at the time a certificate of
5 occupancy is issued for the residential unit or development project or upon final inspection, whichever
6 occurs first. No final inspection shall be made, and no certificate of occupancy shall be issued, prior to
7 full payment of the Fee. However, this section shall not be construed to prevent payment of the Fee prior
8 to the issuance of an occupancy permit or final inspection.

9 **B.** The Local Development Mitigation Fee shall be assessed one time per lot or parcel, except
10 in cases of changes in land use. The Fee required to be paid when there is a change in land use shall be
11 reduced by the amount of any previously paid fee for that property. No refunds shall be provided for
12 changes in land use to a lower fee category. It shall be the responsibility of the applicant to provide
13 documentation of any previously paid Fee.

14 **C.** The Local Development Mitigation Fee for commercial and industrial development
15 projects shall be paid in its entirety for the Project Area and shall not be prorated.

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

18 **E.** There shall be no deferment of the Fee beyond final inspection or issuance of certificate(s)
19 of occupancy.

20 **F.** Notwithstanding anything in the County's ordinances, or any other written documentation
21 to the contrary, the Local Development Mitigation Fee shall be paid whether or not the Development
22 Project is subject to conditions of approval by the County imposing the requirement to pay the Fee.

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

26 **H.** For development projects which the County does not require a final inspection or issuance
27 of a certificate of occupancy, the Fee shall be paid prior to any use or occupancy.
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1 I. For purposes of this Ordinance, congregate care residential facilities and recreational
2 vehicle parks shall pay the commercial acreage Fee.

3 J. The Local Development Mitigation Fee for wind turbines and other structures and
4 disturbances related to the location or siting of wind turbines shall be calculated solely upon the net
5 permanent above ground disturbance area. Said fee shall not in this instance be calculated based upon the
6 size of the parcel of land containing the wind turbine, other related structures or disturbances.

7 **SECTION 9. REFUNDS.** There shall be no refund of all or part of any Local Development
8 Mitigation Fee paid under this Ordinance, except in cases of overpayment or miscalculation of the
9 applicable Fee. Only in cases of overpayment or miscalculation of the Fee will the person or entity that
10 paid the Local Development Mitigation Fee be entitled to a refund.

11 **SECTION 10. ACCOUNTING AND DISBURSEMENT OF COLLECTED LOCAL**
12 **DEVELOPMENT MITIGATION FEES.**

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

15 B. Subject to the provisions of this section, all Fees collected pursuant to this Ordinance shall
16 be remitted to the Coachella Valley Conservation Commission at least quarterly, and will be expended
17 solely for the purpose of acquiring and preserving vegetation communities and natural areas within the
18 County and the region which support species covered in the MSHCP in accordance with the provisions of
19 the MSHCP.

20 C. The County may recover the costs of administering the provisions of this Ordinance using
21 the Revenues generated by the Fees, in an amount and subject to the rules and regulations established by
22 the Coachella Valley Conservation Commission.

23 **SECTION 11. AUTOMATIC ANNUAL FEE ADJUSTMENT.** The Fee established by this
24 Ordinance shall be revised annually by means of an automatic adjustment at the beginning of each fiscal
25 year based on the average percentage change over the previous calendar year set forth in the Consumer
26 Price Index for "All Urban Consumers" in the Los Angeles-Anaheim-Riverside Area, measured as of the
27 month of December in the calendar year which ends in the previous fiscal year. The first Fee adjustment
28 shall not be made prior to a minimum of ten (10) months subsequent to the effective date of this

1 Ordinance. The Fee, as revised annually, shall be compiled by the County Executive Office and shall be
2 included in an annual report to the Board of Supervisors pertaining to the accounting for the MSHCP Fee
3 as required by Government Code section 66006.

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5 **SECTION 12. EXEMPTIONS.** The following types of construction shall be exempt from the
6 provisions of this Ordinance:

7 **A.** Reconstruction of a residential unit or commercial or industrial building damaged or
8 destroyed by fire or other natural causes.

9 **B.** Rehabilitation or remodeling to an existing residential unit, commercial or industrial
10 building, and additions to an existing residential unit or commercial or industrial building.

11 **C.** Secondary residential units, constructed on developed residential property and meeting all
12 state and County requirements for such units.

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

15 **E.** Development within a Project Area that was being improved or had been improved prior to
16 the effective date of this Ordinance.

17 **F.** Construction of a family residential unit upon property wherein a mobile-home, installed
18 pursuant to an installation permit, was previously located prior to the effect date of this Ordinance.

19 **G.** Guest dwellings as defined in Section 21.31 of the Ordinance No. 348.

20 **H.** Additional single family residential units located on the same parcel pursuant to the
21 provisions of any agricultural zoning classifications set forth in Ordinance No. 348.

22 **I.** Kennels and Catteries established in connection with an existing single family residential
23 unit and as defined in Sections 21.20 and 21.40a of Ordinance No. 348.

24 **SECTION 13. FEE CREDITS.** The County may grant to owners or developers of real
25 property, a Credit against the Fee that would otherwise be charged pursuant to this Ordinance, for the
26 dedication of land determined to be necessary for inclusion in the MSHCP Conservation Area. The
27 amount of the Credit granted shall be determined by an estimate of the fair market value of the land
28 dedicated. Any Credit granted by the County shall be given in stated dollar amounts only. An applicant

1 for a proposed development may apply for Credit to reduce the amount of the Fee required to be paid
2 prior to approval of the development. Any Credit granted and the amount of the Fee to be paid shall be
3 included as a condition of approval for the development. If an applicant has received the development
4 approval from the County and has not previously applied for a Credit to reduce the amount of the Fee
5 required to be paid, an applicant may apply for such Credit prior to issuance of a grading permit for the
6 development. Any Credit granted and the amount of the Fee required to be paid shall be included as a
7 condition of approval on the grading permit issued for the development.

8 **SECTION 14. SEVERABILITY.** This Ordinance and the various parts, sections, and clauses
9 thereof, are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is
10 adjudged unconstitutional or invalid, the remainder of this Ordinance shall not be affected thereby. If any
11 part, sentence, paragraph, section, or clause of this Ordinance, or its application to any person entity is
12 adjudged unconstitutional or invalid, such unconstitutionality or invalidity shall affect only such part,
13 sentence, paragraph, section, or clause of this Ordinance, or person or entity; and shall not affect or impair
14 any of the remaining provision, parts, sentences, paragraphs, sections, or clauses of this Ordinance, or its
15 application to other persons or entities. The Board of Supervisors hereby declares that this Ordinance
16 would have been adopted had such unconstitutional or invalid part, sentence, paragraph, section, or clause
17 of this Ordinance not been included herein; or had such person or entity been expressly exempted from
18 the application of this Ordinance.

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