

ORDINANCE NUMBER 1038

*AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, REPEALING ORDINANCE NUMBER 840 AND ESTABLISHING DEVELOPMENT REQUIREMENTS TO BENEFIT HABITAT CONSERVATION EFFORTS*

The City Council of the City of Perris ("City Council") does ordain as follows:

*Section 1.*                    *TITLE.* This Ordinance shall be known as the Habitat Conservation Ordinance.

*Section 2.*                    *FINDINGS.* The City Council finds and determines that:

- (a) The Legislature of the State of California has found and declared that certain species of fish, wildlife and plants are in danger of, or threatened with, extinction due to habitat destruction and exploitation.
- (b) The Legislature has further found and declared that these species of fish, wildlife and plants are of historical, economic and scientific value to the people of this State and the conservation, protection and enhancement of these species and their habitat is of state-wide concern.
- (c) The Legislature has further found and declared that it is the policy of the State to conserve, protect, restore and enhance the habitat of species that are listed as threatened or endangered, candidates for such listing as well as other species of concern (collectively, listed candidates for listing and other species of concern shall hereinafter be referred to as "Species of Concern").
- (d) The Congress of the United States has found and declared that the preservation of Species of Concern is an important national and regional issue which requires the cooperation of cities, counties, the states, the federal government and the owners of property affected by these species.
- (e) The listing of the Stephens' Kangaroo Rat as an endangered species has resulted in significant adverse economic impacts upon the City and western Riverside County and is likely to have contributed to the recent decline in property values of not only lands which are occupied, but also lands which are not occupied by that species.

- (f) City, together with the Cities of Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Riverside and Temecula and the County of Riverside have formed the Riverside County Habitat Conservation Agency ("RCHCA") whose purpose is to plan for, acquire, administer, operate and maintain land and facilities for ecosystem conservation and the creation of habitat reserves to implement habitat and ecosystem conservation plans and programs for the Species of Concern. The RCHCA, and each of its members, including City, have recently adopted the "Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County, California" ("SKRHCP") and have been issued an incidental take permit from the United States Fish and Wildlife Service and Management Authorization from the California Department of Fish and Game, all of which documents require certain implementation actions on the part of its members, including the City.
- (g) The City Council has previously adopted Ordinance Number 840 which imposed an impact and mitigation fee of \$1,950 per acre to be used exclusively for the preparation and implementation of a habitat conservation plan for the Stephens' Kangaroo Rat.
- (h) The Board of Directors of the RCHCA has recommended to each of its members that each city and the county amend its Ordinance (i) to enact the implementation measures as set forth in the SKRHCP, the Section 10(a) Permit and the Management Authorization; and, (ii) to reduce the impact and mitigation fee to \$500 per acre. The recommendations of the RCHCA with respect to the Impact and Mitigation Fee is based upon the current cash reserves of the RCHCA, its likely expenditures during the ensuing three (3) years to implement the terms of the SKRHCP, which will benefit many other Species of Concern, and to negotiate and develop an ecosystem based multiple species habitat conservation plan which will protect all species in order to reduce the likelihood of additional state or federal listings and to support permits to take Species of Concern should they be listed in the future.
- (i) The City Council has determined that the benefits accruing to parcels which are occupied by the Stephens' Kangaroo Rat as well as those which are not so occupied are roughly proportional and that a meaningful parcel by parcel evaluation of the benefits which will accrue to those parcels as a result of the implementation of the SKRHCP would not result in a meaningful difference in the amount of the fee so imposed.

*SECTION 3. PURPOSES.* The purposes of this Ordinance are:

- (a) to adopt and require certain implementation measures a required by the SKRHCP, the Section 10(a) Permit and the Management Authorization; and
- (b) to adopt and impose an Impact and Mitigation Fee to provide funds to the RCHCA to implement the terms of the SKRHCP.

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

- (a) *CERTIFICATE OF OCCUPANCY.* "Certificate of Occupancy" shall mean a certificate of occupancy as defined by the Ordinances of the City, or if no definition therein exists, as defined by the laws of the State of California.
- (b) *DEVELOPMENT PERMIT.* An on or offsite grading, building or surface mining permit or mobile home installation permit or mobile home site preparation permit or any other permit or authorization which permits or authorizes the disturbance of land.
- (c) *PLAN AREA.* All real property located within the City situated within the boundaries described in Section 5 of this Ordinance.
- (d) *FINAL INSPECTION.* "Final Inspection" shall mean a final inspection as defined by the Ordinances of the City, or if no definition therein exists, then as such term is defined in the most current adopted version of the Uniform Building Code, or if no definition therein exists, then as such term is defined by the laws of the State of California.
- (e) *HABITAT CONSERVATION PLAN.* A plan prepared pursuant to Section 10(a) of the Federal Endangered Species Act of 1973, 16 U.S.C. Section 1539 and applicable provisions of the California Endangered Species Act, California Fish and Game Code Section 2050 et seq.
- (f) *IMPACT AND MITIGATION FEE.* The fee imposed pursuant to the provisions of this Ordinance.
- (g) *PARCEL.* All real property located within the parcel or parcels for which a development permit is applied.

*SECTION 5. PLAN AREA.* All those certain lands located within the boundaries described in Exhibit "A" attached hereto and incorporated herein by this reference, which are located within the City are hereby designated the Plan Area for the SKRHCP.

*SECTION 6. LAND DISTURBANCE REPORTS.*

- (a) Until the City has been notified by the RCHCA that those certain Core Reserves as identified in the SKRHCP have been completed, the City from information provided by the applicant for the Development Permit, shall complete and deliver to the RCHCA a Land Disturbance Report for all Development Permits issued for real property located within the boundaries of the Plan Area which shall set forth the location of the land disturbed, the number of acres within the parcel to be developed, the amount of the Impact and Mitigation Fee paid, if any, and the number of acres occupied by Stephens' Kangaroo Rats which have been disturbed, if any, as described in a biological survey, if required.
- (b) The City shall complete and deliver to the RCHCA a Core Reserve Land Disturbance Report, from information provided by the applicant, which sets forth the nature of the project, the number of acres occupied by the Stephens' Kangaroo Rats which will be disturbed and the mitigation paid or provided as required by the SKRHCP for Development Permits for real property located within the boundaries of any Core Reserve which may now or in the future be located within the boundaries of the City as identified in the SKRHCP.
- (c) The City shall cause all Land Disturbance Reports and all Core Reserve Land Disturbance Reports to be forwarded to the RCHCA no later than the 15th day of each month.

*SECTION 7. BIOLOGICAL SURVEYS.* Prior to the issuance of any Development Permit for any project which meets the following criteria, the applicant for such Development Permit for projects located within the boundaries of the Plan Area shall provide the City with a biological survey for Stephens' Kangaroo Rat:

- (a) Until the City has been notified by the RCHCA that the Core Reserves as identified in the SKRHCP have been completed, any Development Permit for projects within known Stephens' Kangaroo Rat occupied habitat according to the most recent Stephens' Kangaroo Rat distribution map available to the City.
- (b) Any Development Permit for projects within any Core Reserve as identified in the SKRHCP.
- (c) Notwithstanding the foregoing, a biological survey shall not be required in the following instances:
  - (1) *Emergencies:* Actions taken by the City or other public agencies in response to public emergencies including but not limited to, floods,

earthquakes and fires.

- (2) *Secondary Structures:* Construction of secondary structures including, but not limited to garages, granny units and swimming pools on developed lots.
- (3) *Agriculture:* Bona fide agricultural activities which do not involve the construction of permanent improvements which require building permits.
- (4) *Fire Prevention:* Fire prevention activities as set forth in that certain Cooperative Agreement regarding Fire Prevention entered into among the City, the California Department of Fish and Game and the United States Fish and Wildlife Service dated February 16, 1995 and any subsequent amendments thereto.

*SECTION 8. IMPOSITION OF IMPACT AND MITIGATION FEE.*

- (a) All applicants for Development Permits within the boundaries of the Plan Area shall pay an Impact and Mitigation Fee of Five Hundred Dollars (\$500) per gross acre located within the parcel to be developed and the area disturbed by related offsite improvements except as provided in Section 10 hereof. No Development Permit for real property located within the boundaries of the Plan Area shall be issued or approved without the payment of the Impact and Mitigation Fee and the submission of the biological survey as required by this Ordinance.
- (b) Impact and Mitigation Fees shall be reduced by seventy-five percent (75%) for nonprofit entities. For purposes of this section, nonprofit entities shall be defined as those entities identified in 26 U.S.C. 501(c)(3).
- (c) Impact and Mitigation Fees for single family residential developments, wherein all lots within the development are greater than one-half (1/2) gross acre in size, shall be Two Hundred Fifty Dollars (\$250) per residential unit.
- (d) Agricultural development which requires a development permit, including but not limited to dairy farms and excluding poultry farms and the construction of single family residences in connection with said agricultural development, an Impact and Mitigation Fee of One Dollar (\$1) per square foot of the buildings to be constructed shall be paid provided that at no time shall such fee exceed the amount required to be paid if a fee of \$500 per gross acre were applied to the parcel proposed for agricultural development.

*SECTION 9. PAYMENT OF FEE.*

- (a) The Impact and Mitigation Fee shall be paid upon issuance of a Development Permit or a Certificate of Occupancy or upon Final Inspection, whichever first occurs after the effective date of this Ordinance. In those cases where a Development Permit has been previously issued and Impact and Mitigation Fees have previously been paid pursuant to the provisions of this Ordinance or Ordinance Number 840 but such Development Permit has expired, the applicant for a new Development Permit on the same property, upon submission of proof of such payment satisfactory to the Director of Planning and Community Development shall pay the Impact and Mitigation Fee less the amount previously paid. In the event the fee previously paid was more than the Impact and Mitigation Fee, the applicant shall not be entitled to a rebate.
  
- (b) The Impact and Mitigation Fee payable for parcels for which a surface mining permit is sought shall be paid upon submission of an application for a special inspection permit pursuant to Riverside County Ordinance Number 555 ("Ordinance Number 555") prior to the commencement of the mining operation or in the alternative, may be paid in increments upon submission of an application for a special inspection permit under Ordinance Number 555 prior to the commencement of each phase of the mining operation authorized by the surface mining permit. Each increment of payment shall be equal to \$500 multiplied by the sum of (1) the total number of acres of land within the applicable phase pursuant to the surface mining permit; and (2) the quotient which results from dividing the total number of acres of land covered by the surface mining permit and subject to this Ordinance which are prohibited from disturbance or designated as setback or buffer areas pursuant to the surface mining permit, by the total number of approved phases. The total number of acres of land within each phase shall be determined by a physical survey prepared by a licensed surveyor or registered civil engineer.

*SECTION 10. EXEMPTIONS.* For purposes of this Ordinance, applicants for Development Permits for the following types of development shall not be required to pay an Impact and Mitigation Fee unless such applicant voluntarily participates in order to mitigate the disturbance of habitat occupied by the Stephens' Kangaroo Rat.

- (a) Reconstruction of any structure damaged or destroyed by fire or other natural causes.
  
- (b) Rehabilitation or remodeling of existing structures, or additions to existing structures.
  
- (c) Development of any parcel for which the California Department of Fish and Game and the United States Fish and Wildlife Service has approved other mitigation procedures; provided, however, that in the event the cost of such mitigation measures equal an amount less than the total amount of the Impact

and Mitigation Fee imposed hereby, the applicant for a Development Permit shall pay the difference between the cost of the approved mitigation procedures and the Impact and Mitigation Fee which would otherwise be payable pursuant to the terms of this Ordinance.

- (d) Development of any parcel used by local, state or federal governments for governmental purposes (i.e. public works, schools).
- (e) Development of any parcel for which an Impact and Mitigation Fee has been previously paid pursuant to this Ordinance or Ordinance Number 840. However, in instances where the fee previously paid was the fee for single family residential development, wherein all lots within the development were greater than one-half (1/2) gross acre in size, and the applicant for a development permit subsequently requests an increase in residential density or a change from a residential to a non-residential use, or in instances where the parcel has previously been developed for agricultural purposes and the applicant for a Development Permit subsequently requests a change from an agricultural to a residential, commercial or industrial use, the fee shall be recalculated for the new density or use pursuant to the provisions of this Ordinance. Any difference between the recalculated fee and the previously paid fee shall be required to be paid by the applicant, but in the event the fee previously paid is more than the Impact and Mitigation Fee imposed by this Ordinance the applicant shall not be entitled to a rebate.
- (f) The construction of public utility transmission facilities. Said exemptions shall not include substations, treatment facilities or pumping stations.
- (g) Development of any parcel for construction of a detached or attached accessory living quarters will be constructed on a parcel of real property upon which the main building to which the detached or attached accessory living quarters has previously been lawfully constructed.

*SECTION 11. REPEAL.* The provisions of this Ordinance are intended to repeal and replace in its entirety Ordinance Number 840.

*SECTION 12. FEE ADMINISTRATION.* All Impact and Mitigation Fees collected pursuant to the provisions of this Ordinance shall be deposited into an interest-bearing Impact and Mitigation Fee account and the fee and any interest earned shall be forwarded to the RCHCA on or before the 15th day of each month, for expenditure by it for the purposes for which it was created.

*SECTION 13. VALIDITY.* 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 not be affected thereby. In any part, sentence, paragraph, section or clause of this Ordinance, or its application to any person or 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 provisions, 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 14. URGENCY MEASURE.* This Ordinance is declared to be an urgency measure and shall become effective immediately. The facts which constitute such urgency are as follows:

- (a) The RCHCA and its constituent members, including the City were issued in their Section 10(a) permit from the United States Fish and Wildlife Service and their Management Authorization from the California Department of Fish and Game which allows the incidental take of the Stephens' Kangaroo Rat on or about May 7, 1996. The terms of such permit require that certain implementation measures be immediately instituted by both the RCHCA and its members, including the City.
- (b) The failure to immediately adopt such implementation measures are grounds for termination or suspension of said Section 10(a) Permit and Management Authorization, The Provisions of this Ordinance adopt the measures necessary in order to allow the City to implement the terms of the Section 10(a) Permit and Management Authorization.
- (c) The previous Mitigation Fee adopted by Ordinance Number 840 was \$1950 per acre. The RCHCA and its constituent members, including the City, have been discussing the possible reduction of the fee to the level set by this Ordinance for over 3 months. As a result of these discussions, those seeking Development Permits have delayed applications for such permits in the hope that the Fee would be reduced. A further delay of 60 days in seeking Development Permits would have significant economic effects not only on the construction and building industries, but also upon the financial affairs of the City as well as the RCHCA which relies upon the Impact and Mitigation Fee to implement the provisions of the SKRHCP. Failure to implement the terms of the SKRHCP and the attendant Section 10(a) Permit and Management Authorization could result not only in the revocation, termination or suspension thereof, but could also have a significant deleterious effect upon the conservation, protection, restoration and enhancement of the Stephens' Kangaroo Rat populations in western Riverside County.

*ADOPTED, SIGNED and APPROVED* this 8th day of July, 1996.

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MAYOR OF THE CITY OF PERRIS

Attest:

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City Clerk

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

I, Beti An Hynes, duly elected City Clerk of the City of Perris, California, do hereby certify that the foregoing Ordinance Number 1038 was introduced at a regular meeting thereof held on July 8, 1996 and adopted by the City Council of the City of Perris at a regular meeting thereof held on the 8th day of July, 1996, by the following called vote:

Ayes:           Landers, Yarbrough, Torres, Denney and Long  
Noes:           None  
Absent:         None

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CITY CLERK