

## RESOLUTION 2021-32

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ESTABLISHING THE WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN LOCAL DEVELOPMENT MITIGATION FEE APPLICABLE TO ALL DEVELOPMENTS IN THE PLAN AREA**

**WHEREAS**, the City of Banning (“City”) is a member agency of the Western Riverside County Regional Conservation Authority (“RCA”), a joint powers agency comprised of the County of Riverside and the 18 cities located in western Riverside County; and

**WHEREAS**, the member agencies of RCA recognized that a habitat conservation plan is necessary to provide special protections for vegetation communities and natural areas containing habitat values to prevent future endangerment of the plant and animal species impacted by new development in western Riverside County; and

**WHEREAS**, in order to address these issues, the member agencies formulated a plan called the Western Riverside County Multiple Species Habitat Conservation Plan (the “MSHCP”) whereby a mitigation fee would be assessed on new development and would be used to fund the implementation of the MSHCP; and

**WHEREAS**, in furtherance of the MSHCP, the City is approving and adopting the updated “Western Riverside County Multiple Species Habitat Conservation Plan Nexus Fee Study”, dated October 2020 (the “2020 Nexus Study”) attached hereto and incorporated herein by this reference as Exhibit “A,” and

**WHEREAS**, based on the 2020 Nexus Study, the City adopted Ordinance 1572 on May 11, 2021, (the “2021 Local Development Mitigation Fee Ordinance”) pursuant to California Government Code sections 66000 *et seq.* authorizing the County to impose the Local Development Mitigation Fee upon new development; and

**WHEREAS**, section 4.A. of the 2021 Local Development Mitigation Fee Ordinance authorizes the City to adopt an applicable Local Development Mitigation Fee schedule by resolution; and

**WHEREAS**, the fees collected pursuant to this Resolution shall be used to finance the public facilities described or identified in the 2020 Nexus Study; and

**WHEREAS**, the levying of Local Development Mitigation Fee has been reviewed by the City Council and staff in accordance with the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines and it has been determined that the adoption of this resolution is exempt from CEQA pursuant to Section 21080(b)(8) of the California Public Resources Code and Sections 15273 and 15378(b)(4) of the State CEQA Guidelines.

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

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

A. The preservation of vegetation communities and natural areas within western Riverside County which support species covered by the MSHCP is necessary to protect and promote the health, safety, and welfare of all the residents 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 establish a mitigation fee 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 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 2020 Nexus Study, a copy of which is on file in the City Clerk's office, provides a basis for the imposition of development impact fees on new construction.

E. The use of the development impact fees 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 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 fee will be imposed, and that there is a reasonable relationship between the fee's use and the types of development for which the fee is charged. This reasonable relationship is described in more detail in the MSHCP and the 2020 Nexus Study.

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 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 fee to be paid by the project.

J. The fees collected pursuant to this Resolution shall be used to finance the acquisition and perpetual conservation of the natural ecosystems and certain improvements necessary to implement the goals and objectives of the MSHCP.

**SECTION 2. Local Development Mitigation Fee.** There is hereby adopted the Local Development Mitigation Fee schedule as set forth below:

<b>MSHCP Local Development Mitigation Fee Schedule</b> Effective July 1, 2021 through December 31, 2021	
<b>Fee Category</b>	<b>Fee</b>
Residential density less than 8.0 dwelling units per acre (fee per dwelling unit)	\$2,935
Residential density between 8.0 and 14.0 dwelling units per acre (fee per dwelling unit)	\$1,473
Residential density greater than 14.0 dwelling units per acre (fee per dwelling unit)	\$670
Non-Residential/Commercial (fee per acre)	\$11,982
Industrial (fee per acre)	\$11,982

<b>MSHCP Local Development Mitigation Fee Schedule</b> Effective January 1, 2022	
<b>Fee Category</b>	<b>Fee</b>
Residential density less than 8.0 dwelling units per acre (fee per dwelling unit)	\$3,635
Residential density between 8.0 and 14.0 dwelling units per acre (fee per dwelling unit)	\$1,515
Residential density greater than 14.0 dwelling units per acre (fee per dwelling unit)	\$670
Non-Residential/Commercial (fee per acre)	\$16,358
Industrial (fee per acre)	\$16,358

**SECTION 3. Collection Fee Schedule.** The City may also add an additional cost to the Local Development Mitigation Fee schedule to cover the costs of collecting and remitting the fees from project proponents.

**SECTION 4: Periodic Fee Adjustment.** The Local Development Mitigation Fee schedule set forth above may be periodically reviewed and the amounts adjusted as set forth in the MSHCP Mitigation Fee Implementation Manual adopted pursuant to the Local Development Mitigation Fee Ordinance

**SECTION 5. Automatic Annual Fee Adjustment.** In addition to the Periodic Fee Adjustment mentioned above, the RCA shall provide the City with an automatic annual fee adjustment for the Local Development Mitigation Fee established by this Ordinance as set forth in the MSHCP Mitigation Fee Implementation Manual adopted pursuant to the Local Development Mitigation Fee Ordinance.

**SECTION 6. Adoption of 2020 Nexus Study.** The City Council hereby adopts the 2020 Nexus Study and its findings.

**SECTION 7. CEQA Findings.** The City Council hereby finds that in accordance with CEQA and the State CEQA Guidelines the adoption of this Resolution is exempt from CEQA pursuant to Section 21080(b)(8) of the California Public Resources Code and Sections 15273 and 15378(b)(4) of the State CEQA Guidelines.

**SECTION 8. Severability.** This Resolution 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 Resolution shall not be affected thereby. If any part, sentence, paragraph, section, or clause of this Resolution, 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 Resolution, or person or entity; and shall not affect or impair any of the remaining provision, parts, sentences, paragraphs, sections, or clauses of this Resolution, or its application to other persons or entities. The City Council hereby declares that this Resolution would have been adopted had such unconstitutional or invalid part, sentence, paragraph, section, or clause of this Resolution not been included herein; or had such person or entity been expressly exempted from the application of this Resolution.

If the fees collected for the conservation of the land, including the monitoring and management thereof, are later adjudged by a final unappealable judgment of a court of competent jurisdiction to be unconstitutional or invalid, the prior Local Development Mitigation Fee adopted under the prior 2003 Local Development Mitigation Fee Nexus Study and the corresponding Ordinance No. 1305 shall each be revived and shall continue for the life of the MSHCP.

**PASSED, APPROVED AND ADOPTED** this 25<sup>th</sup> day of May 2021.

  
Colleen Wallace, Mayor  
City of Banning

**ATTEST:**

  
Caroline Patton, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM AND  
LEGAL CONTENT:**

  
Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**


I, Caroline Patton, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2021-32 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 25<sup>th</sup> day of May 2021 by the following vote, to wit:

AYES: Council Members Hamlin, Happe, Pingree, Sanchez, and Mayor Wallace.

NOES:

ABSTAIN:

ABSENT:

  
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Caroline Patton, Deputy City Clerk  
City of Banning, California

