

# Inland Valley Daily Bulletin

## **Houses, stores may have to wait**

New wrinkle in development rule

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**Monday, January 19, 2004** - FONTANA - The unbroken swath of prime potential residential real estate between Summit Avenue and the mountains isn't just grass, it's development gold.

Young Homes and the Lewis Group of Cos. announced plans this week to work together on a 430-acre planned community there.

But before pink houses and terra-cotta shopping malls can sprout, the developers will have to deal with the endangered San Bernardino kangaroo rat and other rare creatures native to a shrinking habitat of alluvial sage.

A court ruling handed down in December complicates that process, already started by the city, of identifying more remote habitat to replace land planned for development.

Filed first in August, the city's habitat conservation plan lists what threatened and endangered species live in an 11-square-mile swath of open space on the city's north end and suggests how to replace the habitat lost when the area is developed.

"It's causing significant delays in the processing of the new Multiple Species Habitat Conservation Plan. For a while, when the court decision first came down, the service's initial reaction was a sort of a de facto moratorium on processing. There's been some delay caused by that," Fontana Planning Director Don Williams said.

Alluvial sage scrub habitat in the area slated for the Young Homes and Lewis group planned community could be home to the Plummer's mariposa lily, the kangaroo rat and the coastal California gnatcatcher, among other rare and endangered creatures, the plan states.

The December court ruling shelved a U.S. Fish and Wildlife Service policy called the No Surprises rule, which guaranteed developers they would not be forced to pay for environmental problems that arise after their permit is issued. The judge said the policy was entwined with another Fish and Wildlife rule that had not been properly considered in public before it was adopted.

Described as a carrot for developers, No Surprises had made it easier to create long-term habitat conservation plans that include several endangered species, because developers could be confident they would not be made to do more conservation than they originally promised - even if a natural or man-made disaster unexpectedly threw a group of creatures into crisis.

"No Surprises locks in the rules of the game," Building Industry Association general counsel David Smith said, which is attractive for developers making long-term business plans.

Fish and Wildlife issued just 14 permits allowing development on land with endangered species before 1994, when the No Surprises rule went into effect, and 379 permits between 1994 and 2002.

The environmentalists who sued to stop No Surprises seven years ago argue the policy is an unacceptable compromise.

"It gave assurances to the developers instead of the species. At least our lawsuit brought it back to where the species had the assurances," said Leeona Klippstein, executive director of Spirit of the Sage Council.

Building industry lawyers say they believe No Surprises remains in effect until Fish and Wildlife has a chance to review and reconsider both it and the invalid rule with which it was entwined.

The environmentalists who brought the suit have asked the court to set a deadline for reconsideration of the rule and to tell the service what to do about permits in the meantime.

For the moment, Fish and Wildlife Service officials are still reviewing habitat conservation plans.

"They' re just not being approved, by and large," agency spokesman Mike Snow said.

The service' s lawyers are still debating whether the ruling leaves No Surprises on the books.

In the meantime, Smith said, builders may be better off doing their own individual environmental work instead of counting on habitat conservation plans.

"Without No Surprises, habitat conservation plans are not better than just seeking permit-by-permit approval on projects," Smith said.

Williams said the delay has left some developers - including Young Homes and Centex - to consider doing just that, instead of signing on to the city' s plan.

"It means a disjointed effort in conservation," Williams said, and it could make environmental review in north Fontana more complicated in the end.

Young Homes Chief Executive Officer Reggie King said he isn't familiar with the No Surprises ruling and supports the city taking an active role to get development approved in the area.

Randall Lewis, executive vice president of the Lewis group, said he wasn't aware of any work by his company on a strategy to address No Surprises.

"We know there are environmental issues, and we'll work hard on solving them," Lewis said. "We're still at the very beginning of this project."

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