

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF APPLE VALLEY AND THE COUNTY OF SAN BERNARDINO REGARDING FUTURE DEVELOPMENT WITHIN THE TOWN'S SPHERE OF INFLUENCE

SUMMARY STATEMENT

On July 8, 2008, the Town Council adopted a Memorandum of Understanding (MOU) between the Town of Apple Valley and the County of San Bernardino regarding review and consultation procedures of projects within the Town's Sphere of Influence. The County Board of Supervisor's twice placed this item on its agenda, only to have it tabled at both meetings, due to concerns voiced by the building industry. Since then the Town has worked with the building industry and the County to modify the language in the MOU.

The purpose of the MOU is to assist in providing a better land-use planning relationship between the Town and the County of San Bernardino regarding future development within the Town's Sphere of Influence. At the February 2007 Council/Staff workshop, Council directed staff to draft an agreement between the Town and the County that would allow the Town to have more input and influence in its review of future development within the Sphere area. As part of this effort, the Council also directed staff to amend the General Plan and Pre-zone the land within its Sphere of Influence, which was completed in March 2008.

Chapter 82.22 of the County's Development Code allows special sphere standards to be applied to the cities' spheres of influence. Pre-zoning the Sphere of Influence by adopting equivalent land use designations to the County's designations was the first step in this process. The intent of these actions are to preserve the existing County designations and preserve the Sphere areas from future development that would impact the rural character of the Sphere area. This MOU would provide for the development of special Development Standards to be applied to the Town of Apple Valley Sphere of Influence. These Development Standards would be agreed upon by both the Town and the County, adopted by Ordinance and amended into the County's Development Code. The City of Fontana was the first and only other city to take advantage of this provision in the County Development Code, which was adopted by the County Board of Supervisors in 2008.

RECOMMENDED ACTION:

Authorize and direct the Mayor, Town Clerk and Town Attorney to execute the Memorandum of Understanding and direct staff to forward the agreement to the County Board of Supervisors for its signature.

Proposed by: Planning Division **Item Number** _____

T. M. Approval: _____ **Budgeted Item** Yes No N/A

Town Council Meeting September 14, 2010

BACKGROUND

The process of drafting and reviewing the MOU began in May 2007. Town staff first forwarded the draft MOU to First District Supervisor Mitzelfelt and met with the Supervisor Mitzelfelt and County staff on June 20, 2007 to discuss the agreement, which was forwarded to the County Land Use Services Department for review and comments. In October 2007 staff met again with County staff regarding the MOU, which enabled the County Land Use Services Department to forward its comments to Supervisor Mitzelfelt's office and County Counsel in November 2007.

On May 15, 2008, staff met with County staff from the Land Use Services Department, Supervisor Mitzelfelt's office and County Counsel to discuss the County's comments to the draft MOU. County comments were incorporated by Town staff and substantially complete versions of the MOU were forwarded by Town staff to the County in early June 2008. A final draft version was agreed upon by Town staff and County staff on June 26, 2008. The Town Council took action on July 10, 2008 adopting the MOU. The agendaized MOU was tabled twice by the County Board of Supervisors in both July 2008 and September 2008. Supervisor's Mitzelfelt's office indicated that they would consult with the BIA and try to resolve the particular issues of concern. During this time, the County had staff changes to the Director of Land Use Services, County Counsel and the County Administrative Officer.

In late, 2009, Town staff contacted the BIA and was successful in preparing revised language in the MOU with which the BIA was satisfied, which includes provisions identifying the BIA as stakeholders in the process of preparing the Development Standards for the Sphere of Influence. This change enables the BIA to be included on the discussions between the Town and the County. On April 28, 2010, staff met with Mr. Greg Devereaux, County Administrative Officer and reviewed the changes made with the BIA, which he forwarded to the new Director of Land Use Services, Dena Smith. On July 12, 2010, staff met with Ms. Smith and her staff regarding the MOU language. Modifications were made to reflect the County's review timeline of projects and the notification process to the Town. These changes have been included within this modified MOU. The new language includes provisions regarding the preparation of the future Development Code within the Sphere between the Town and the County to include stakeholders such as the Building Industry Association (BIA). The new language also reflects the County review process for projects in the Sphere and the notification procedures to the Town.

At the earlier referenced May 15, 2008 meeting, County staff agreed that Town staff would prepare the Development Standards and the necessary environmental review for compliance with the California Environment Quality Act (CEQA) for the Town's Sphere of Influence. Both the Development Standards and the environmental documentation would then be reviewed by the County, incorporating any agreed upon comments. The Town Council would then adopt by Ordinance the Sphere Development Standards, which would also be adopted by County Ordinance as an amendment to the County Development Code. Once the MOU has been adopted by both the Town and the County, this process will commence and should take approximately six (6) months to complete. Town staff has already prepared the draft and will forward it to the County Land Use Services staff once the MOU has been adopted by the Town and the County.

Until the Development Code for the Sphere of Influence has been adopted, the MOU establishes that all discretionary projects within the boundaries of the Town's Sphere of Influence be forwarded to the Town Planning Staff for review and comment prior to an administrative or Planning Commission hearing. Also, the County will encourage applicants to meet with, and consult, Town staff at the earliest opportunity for the purpose of assuring conformance with the Town of Apple Valley General Plan and Development Code.

*Sphere of Influence Memorandum of Understanding
Town Council Meeting of September 14, 2010*

Staff is comfortable with the language in the MOU, including the modifications. The MOU enables Town staff to have significant influence on future development in the Town's Sphere until the Development Standards are adopted. After the Development Standards are adopted by both the Town and the County, County staff will have clear direction through the parameters and regulations adopted for review, analysis and recommendations on future projects as contained in the adopted Development Standards. The Development Standards will also give the County Planning Commission and Board of Supervisors clear regulations for entitling future development in the Town's sphere.

The MOU does not cover the northern territory included in the General Plan and pre-zoned, since it is outside of the Town's Sphere of Influence. Future inclusion of the northern territory area in a Sphere expansion would allow this area to be included within this MOU and the future Development Standards for the Town's Sphere.

Attachments: 1. Draft Memorandum of Understanding

TOWN OF APPLE VALLEY/COUNTY OF SAN BERNARDINO

**MEMORANDUM OF UNDERSTANDING
(Sphere of Influence)**

This Memorandum of Understanding (“MOU”) is entered into between (1) the Town of Apple Valley, a California general law city and municipal corporation (“Town”) and, (2) the County of San Bernardino, a political subdivision of the State of California (“County”). The Town and the County are sometimes referred to in this MOU, individually, as a “Party” and, collectively, as the “Parties”.

RECITALS

A. The Town, incorporated in 1988, and located entirely within the County, is approximately 78 square miles in size, with an additional 130 square miles (122,921 acres) of unincorporated area located within the Town’s Sphere of Influence (“Sphere”). A map depicting the Town boundaries, and the Sphere areas is attached hereto as Exhibit “A” and incorporated herein by reference.

B. Differences currently exist between the Town’s General Plan and Development Standards (“Town Development Standards”) and the County’s General Plan and Development Standards (“County Development Standards”), which relate to development within the Sphere.

C. On August 11, 2009, the Town approved an amended General Plan which includes pre-zoning for the Sphere. The Town’s General Plan land use designations and pre-zoning adopted by the Town for the Sphere lands are equivalent to the County’s land use designations and zoning.

D. The County’s Development Code (Section 82.22.010) provides that the County may adopt a sphere standards overlay (“Sphere Standards Overlay”) in city spheres of influence to allow the implementation of County development standards that more closely conform to city development standards within the specified sphere. The intent of the Sphere Standards Overlay is to “ensure that the County’s approval of a proposed development in a sphere of influence is consistent with the shared objectives of the County and the applicable city where the County has determined it is appropriate to adopt similar standards.” No Sphere Standards Overlay has been adopted by the County for the Sphere.

E. Adoption of a mutually agreed upon set of development standards that apply to the Sphere area will ensure that future development in the Sphere will be compatible with, and closely conform to the shared objectives of both the County and Town development standards.

F. The purpose of this MOU is to establish a process for the County and Town to collaboratively develop compatible land use standards for the Sphere. In addition, the MOU provides for timely consultation by the Parties on development entitlements within the Sphere.

G. Nothing in this MOU and/or Sphere Standards Overlay shall be interpreted to alter the County of San Bernardino’s land use authority over the unincorporated area of the County lying within the Town’s Sphere or as an abrogation or delegation of that authority to the Town.

THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

Section 1. Incorporation of Recitals. The Recitals are incorporated into and are a part of the MOU.

Section 2. County and Town's Development Code and Development Standard Changes. The County Land Use Services Department staff and the Town of Apple Valley Economic and Community Development Department, Planning Divisions staff and successor agencies (at times collectively or individually referred to as "Staff"), shall work cooperatively to prepare a set of development standards for the Sphere ("Sphere Development Standards") that are acceptable to each jurisdiction. The Sphere Development Standards will set out the development requirements within each land use district for discretionary development permits/approvals within the Sphere to be applied until such time as the Town annexes various portions of the unincorporated Sphere and assumes land use jurisdiction or this MOU is terminated pursuant to Section 5 herein. To foster the continued development of the Sphere consistent with the above stated objective, the County and the Town agree as follows:

2.1. Staff from both agencies shall work in good faith to develop a process and timeline to complete the Sphere Development Standards for proposed adoption by the Town and inclusion in the County's Development Code as a Sphere Standards Overlay. This process shall be initiated upon the County's receipt of the Town's proposed Sphere Development Standards.

2.2. To ensure the public is fully informed and has the opportunity to provide input, the Parties shall seek comment from key stakeholders during the development of provisions for the Sphere Standards Overlay. The Parties shall also circulate the draft document for public comment prior to consideration for approval by the Town Council and County Board of Supervisors.

2.3. Following the Town's adoption of the Sphere Development Standards, County Staff shall present a proposed Sphere Standards Overlay for the Town of Apple Valley sphere of influence ("Town Sphere Standards Overlay") for consideration by the County. The Town and the County shall comply with any and all obligations related to the California Environmental Quality Act ("CEQA") (Public Resources Code Sections 21000, et. seq.) prior to taking any action to adopt the Sphere Development Standards and the Town Sphere Standards Overlay. To the extent practicable while maintaining its legal obligation to exercise its independent judgment, the County will use the environmental analysis prepared for the Town to substantiate the actions taken by the County.

2.4. The Town's pre-zoning and adoption of the Sphere Development Standards, together with the County's adoption of the Sphere Standards Overlay for the Town will provide the procedural mechanism for implementation of this MOU and future development shall be evaluated in accordance with Sphere Development Standards.

2.5 Any project requesting changes to the Sphere Development Standards shall be reviewed by both agencies prior to adoption in accordance with Section 3.1 below.

Section 3. Notification and Consultation on Development Entitlements. The County shall continue to inform Town Staff at the earliest opportunity when it becomes aware of a discretionary development project or concept proposed within the boundaries of the Town's Sphere.

3.1. Staff from the County and Town shall meet at regularly scheduled times to review and discuss applications for development projects or other entitlements and proposed General Plan amendments and Development Code amendments, including changes to the Sphere Standards Overlay and zoning changes within the Sphere. The County will continue to provide notice of all discretionary projects within the boundaries of the Town's Sphere to the Town's Planning Staff for review and comment at least 10 days prior to zoning administrator or other administrative hearings and at least 30 days prior to Planning Commission or Board of Supervisors hearings. The County agrees to reasonably consider the Town's comments and incorporate Town-recommended changes to the extent practicable.

3.2. For projects within the Sphere, the County shall continue to encourage applicants to meet with and consult with Town Staff at the earliest opportunity for the purpose of assuring, to the extent possible, conformance with the Town of Apple Valley General Plan and Development Code.

Section 4. Implementation of Sphere Development Standards. The County will implement the Sphere Development Standards prepared jointly by the Town and the County, as provided in Sections 2.1 through 2.3 herein, for all future discretionary development projects.

Section 5. Term of MOU. This MOU will become effective on the date on which it has been approved by both the Town Council on behalf of the Town and the Board of Supervisors on behalf of the County and fully executed counterpart originals have been exchanged between the Parties. The term shall end upon either Party's election to terminate this MOU, which right to terminate may be exercised without cause by giving the other part no less than 30 days written notice as provided by Section 6 herein.

Section 6. Notices. All notices permitted or required under this MOU shall be given to the respective Parties at the following addresses, or at such other address as the respective parties may provide in writing for this purpose.

Town

Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307
Attn: Town Manager

County

County of San Bernardino
385 North Arrowhead Avenue
San Bernardino, CA 92415
Attn: Land Use Services Director

Section 7. Integration/Modifications. This MOU contains the entire understanding of the Parties with respect to the matters set forth in this MOU and supersedes any and all prior writings and oral discussions concerning the same. This MOU may not be amended except by a writing duly signed and duly approved by the Town and County. This MOU is not intended to and shall not accrue to the benefit of any person or entity other than the Town and the County.

Section 8. Governing Law. This MOU shall be governed by the procedural and substantive laws of the State of California

Section 9. Invalidity: Severability. If any portion of this MOU is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

Section 10. Counterpart Originals. This MOU may be executed by the Parties in counterparts, all of which together shall constitute a single MOU.

Section 11. Attorney's Fees. If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, shall bear its own costs and attorney's fees.

Section 12. Authority to Enter into MOU. Town and County both warrant that the individuals who have signed this MOU have the legal power, right and authority to make this agreement and bind both respective Parties to this MOU.

[Signatures on following page]

SIGNATURE PAGE TO
MEMORANDUM OF UNDERSTANDING
(Sphere of Influence)

COUNTY:

COUNTY OF SAN BERNARDINO

By: _____
Gary C. Ovitt, Chairman
Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN
OF THE BOARD

LAURA H. WELCH
Clerk of the Board of Supervisors

By: _____
Deputy

Dated: _____

APPROVED AS TO LEGAL FORM:

County Counsel

By: _____
Deputy County Counsel

Dated: _____

CITY:

TOWN OF APPLE VALLEY, a
California legal law city and
municipal corporation

By: _____
Peter Allan, Mayor

Dated: _____

ATTEST:

Town Clerk

Dated: _____

APPROVED AS TO LEGAL FORM:

Town Attorney

Dated: _____

