

Public Review Draft

Town of Apple Valley NCCP Planning Agreement
Planning Agreement 2810-2017-001-06

Planning Agreement

by and among

the Town of Apple Valley,
the California Department of Fish and Wildlife,
and
the United States Fish and Wildlife Service

regarding the

Town of Apple Valley
Multi-Species Habitat Conservation Plan
and
Natural Community Conservation Plan

March 2017

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Town of Apple Valley Natural Community Conservation Plan and Habitat Conservation Plan Planning Agreement

This agreement regarding the Town of Apple Valley Natural Community Conservation Plan and Habitat Conservation Plan (“Planning Agreement”) is entered into as of the Effective Date by and among the Town of Apple Valley (“Town”), the California Department of Fish and Wildlife (“CDFW”), and the United States Fish and Wildlife Service (“USFWS”). These entities may be referred to collectively as “Parties” and each individually as a “Party.” The CDFW and USFWS may be referred to collectively as “Wildlife Agencies.”

1. Definitions

A. Terms used in this Planning Agreement that are defined in the Natural Community Conservation Planning Act have the meanings set forth in California Fish and Game Code Section 2805.

B. The following terms as used in this Agreement will have the meanings set forth below.

1.1. “Anti-Deficiency Act” means Title 31 of the United States Code Section 1341.

1.2. “Areas of Critical Environmental Concern” means those lands designated by the United States Bureau of Land Management and defined in the Federal Land Policy and Management Act as requiring special management to protect the area’s resource values.

1.3. “Bald and Golden Eagle Protection Act” means the act prohibiting the taking or possession of and commerce in bald and golden eagles, Title 16 of the United States Code Section 668-668d.

1.4. “BLM” means the Bureau of Land Management, a technical bureau under the United States Department of the Interior.

1.5. “CDFW” means the California Department of Fish and Wildlife, a state agency formed pursuant to Fish and Game Code Section 700.

1.6. “CEQA” means the California Environmental Quality Act, Public Resources Code, Section 21000, *et seq.*

1.7. “CESA” means the California Endangered Species Act, California Fish and

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Game Code, Section 2050, *et seq.*

- 1.8. "Clean Water Act" means the 1972 amendments to the Federal Water Pollution Control Act, Title 33 of the United States Code, Sections 1251-1387, as amended by Public Law 92-500.
- 1.9. "Cooperative Endangered Species Conservation Fund" means the funding available through USFWS from the Federal Endangered Species Act (FESA), alternatively known as the Section 6 Non-traditional grants program.
- 1.10. "County" means the government of the County of San Bernardino.
- 1.11. "Covered Activities" means the land development, land use, and other activities that will be specified in the MSHCP/NCCP and for which the Town will seek a Natural Community Conservation Planning Act (NCCPA) permit pursuant to Fish and Game Code, Section 2835 and an incidental take permit pursuant to Section 10 (a)(1)(B) of FESA.
- 1.12. "Covered Species" means those species, both listed and non-listed, conserved and managed under an approved Plan that may be authorized for take under state and/or federal law.
- 1.13. "Effective Date" means the date on which this Planning Agreement is fully executed by the Parties.
- 1.14. "FESA" means the Federal Endangered Species Act, Title 16, U.S.C.A., Section 1531, *et seq.*
- 1.15. "General Plan" means a plan prepared in conformance with California Government Code, Section 65300, which establishes the requirements for all jurisdictions to maintain a plan to regulate the development of lands within its boundaries.
- 1.16. "Habitat Conservation Plan" or "HCP" means a plan prepared pursuant to Section 10(a)(1)(B) of FESA.
- 1.17. "Implementing Agreement" or "IA" means the anticipated future agreement required pursuant to Fish and Game Code Section 2820, subdivision (b) and authorized under Title 16 of the United States Code Section 1539 (a)(2)(B) that will define or clarify the terms and conditions of the NCCPA and FESA Section 10 permits for implementing the MSHCP/NCCP.

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- 1.18. “Independent Science Advisors” or “Science Advisors” means a team consisting of scientists to provide independent scientific input and analysis to assist in the preparation of the Plan.
- 1.19. “Land and Water Conservation Fund” means a program administered by the State Parks Department to provide matching grants to local governments for the acquisition and development of public outdoor recreation areas and facilities.
- 1.20. “Lead Agency” means the Town of Apple Valley.
- 1.21. “Listed Species” means those species designated as candidate, threatened, or endangered pursuant to CESA and/or listed as threatened or endangered under FESA.
- 1.22. “Local Agencies” means the Town of Apple Valley and the County of San Bernardino.
- 1.23. “Meeting” means a convening of the appropriate personnel and other individuals via conference call and/or WebEx, or when necessary, in person at a central location.
- 1.24. “Migratory Bird Treaty Act” means the act which prohibits without a waiver the pursuit, hunting, taking, capturing, killing, or selling of migratory birds, title 16 of the United States Code Section 703-712.
- 1.25. “NCCP” or “Natural Community Conservation Plan” means a conservation plan pursuant to Fish and Game Code, Section 2801, *et seq.*
- 1.26. “NCCPA” or “Natural Community Conservation Planning Act” means Fish and Game Code, Section 2801, *et seq.*
- 1.27. “MSHCP/NCCP” or “Plan” means the Town’s joint natural community conservation plan and multi-species habitat conservation plan prepared pursuant to the requirements of Fish and Game Code, Section 2800, *et seq.* and 16 United States Code Section 1539 (a)(2)(A).
- 1.28. “NEPA” means the National Environmental Policy Act, Title 42, U.S.C.A., Section 4321, *et seq.*
- 1.29. “Party” and/or “Parties” means the Town, CDFW, and USFWS.
- 1.30. “Plan” means the MSHCP/NCCP, defined in section 1.28 above.

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- 1.31. "Planning Agreement" means this agreement regarding the Town of Apple Valley MSHCP/NCCP, entered into by the Town, CDFW, and USFWS.
- 1.32. "Planning Area" means the geographic area the Town proposes to focus on in the MSHCP/NCCP as depicted or described in Exhibit B.
- 1.33. "Planning Subareas" means those geographic areas that are smaller units of the planning area that will each have a specific function or jurisdictional boundary within the permitted plan.
- 1.34. "Reportable Interim Project" means a proposed development, construction or other project or activity subject to CEQA that is undertaken by or requires a discretionary permit from a local agency and has the potential to adversely impact Covered Species, natural communities, or conflict with the preliminary conservation objectives contained in the Planning Agreement.
- 1.35. "Section 7" means Title 16 United States Code, Section 1536 of FESA.
- 1.36. "Section 10" means Title 16 United States Code, Section 1539 of FESA.
- 1.37. "Section 2835" means California Fish and Game Code, Section 2835.
- 1.38. "Sphere of Influence" means the area determined by the Local Agency Formation Commission for San Bernardino County to be a logical extension of the Town in the long term.
- 1.39. "Stakeholder Committee" means the ad hoc group formed to support the development of the Plan and consisting of members representing the interests of their organizations with respect to the Plan.
- 1.40. "Steering Committee" means the ad hoc group formed to support the development of the Plan and consisting of members from the Town and/or Local Agencies acting in an administrative capacity and responsible for the preparation of the Plan.
- 1.41. "Take" or "Taking" refers to those terms as defined in FESA and CESA. Under FESA, Section 3(18), "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Harm and harass are further defined in federal regulation (50 CFR 17.3). Under CESA, "Take" means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (California Fish and Game Code, Section 86).

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1.42. “Take Authorization” means authorization issued by USFWS and CDFW to Take listed species, pursuant to FESA (through the FESA Section 10 permit) and/or the California Fish and Game Code. This term may also apply to the statutory exemption from the take prohibition provided under Section 7(o)(2) of FESA.

1.43. “Technical Subcommittee” means an ad hoc group which may be established by the Steering Committee to focus on development of specific aspects of the Plan.

1.44. “Town” means the Town of Apple Valley.

1.45. “USFWS” means the United States Fish and Wildlife Service, a federal agency of the United States Department of Interior.

1.46. “Water Code” means the California Water Code, which includes the Porter-Cologne Water Quality Control Act and all amendments.

1.47. “Wildlife Agencies” means, collectively, the California Department of Fish and Wildlife and the United States Fish and Wildlife Service.

2. Background

2.1. Natural Community Conservation Planning Act

The Natural Community Conservation Planning Act (“NCCPA”) was enacted to form a basis for broad-based planning for effective protection and conservation of the state’s wildlife resources while continuing to allow appropriate development and growth. The purpose of natural community conservation planning is to provide for the conservation of biological diversity by protecting biological communities at the ecosystem or landscape scale. Conservation of biological diversity includes protecting sensitive and more common species, natural communities, and the ecological processes necessary to sustain the ecosystem over time. A Natural Community Conservation Plan identifies and provides for the measures necessary to conserve and manage natural biological diversity within the Planning Area, while allowing compatible and appropriate economic development, growth, and other human uses.

2.2. Purposes of Planning Agreement

The purposes of this Planning Agreement are to:

- Define the Parties’ goals and commitments with regard to the development of the MSHCP/NCCP;
- Agree on the geographic scope of the Planning Area;

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- Identify a preliminary list of natural communities and species expected to be found in those communities, that are intended to be the initial focus of the MSHCP/NCCP;
- Identify preliminary conservation objectives for the Planning Area;
- Identify data gaps and uncertainties so that risk factors can be evaluated;
- Ensure the inclusion of independent scientific input into the MSHCP/NCCP planning process;
- Ensure coordination among the Wildlife Agencies and between the Wildlife Agencies and the Town;
- Establish a process to review interim projects within the Planning Area that will achieve preliminary conservation objectives, including establishing a viable reserve system or equivalent set of long term conservation measures; and
- Ensure the inclusion of public participation and outreach into the MSHCP/NCCP preparation process.

2.3. Regulatory Goals

The Town intends that the MSHCP/NCCP will allow for economic growth that is appropriate and compatible with the Plan's fundamental goals and is consistent with state and federal regulations. By agreeing to assume the responsibility for preparation of the MSHCP/NCCP, and committing staff and financial resources for that purpose, the Town intends for the MSHCP/NCCP to yield numerous benefits for the Town in addition to natural resource conservation, including greater regulatory efficiency, streamlining, and certainty.

2.3.1. Compliance with CESA and FESA

The Planning Area contains valuable biological resources, including native species of wildlife and their habitat. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under CESA, FESA, or both CESA and FESA. The Parties intend to develop a conservation plan that satisfies the requirements for an HCP under Section 10(a)(1)(B) of FESA, and an NCCP under the NCCPA, to serve as the basis for take authorizations under both acts.

Section 2835 of the Fish and Game Code provides that after the approval of an NCCP, CDFW may permit the taking of any covered species, both listed and non-listed, whose conservation and management is provided for in the NCCP. Take of state-listed species may be authorized pursuant to CESA during development of the Plan. However, at the time of Plan approval, state authorized take is to be provided pursuant to the NCCPA.

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FESA provides that after the approval of an HCP, USFWS may permit the taking of species covered in the HCP if the HCP and permit application meet the requirements of Section 10(a)(2)(A) of FESA. Take authorization for federally listed species covered in the HCP is generally effective upon approval of the HCP and issuance of an incidental take permit. Take authorization for non-listed species covered in the HCP becomes effective if and when the species is listed pursuant to FESA. Take authorization during the planning period for species listed pursuant to FESA shall be provided pursuant to individual permits issued pursuant to Section 10(a)(1)(B) or consultations under Section 7 of FESA.

2.3.2. Other Fish and Wildlife Protection Laws

Based on the Plan, the Town may seek approval or authorization under other state and federal fish and wildlife protection, including but not necessarily limited to, the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, and various provisions of the Water Code and Fish and Game Code. The Parties agree to collaborate on the feasibility of developing the Plan to ensure the Covered Activities also comply with these additional laws.

2.3.3. Concurrent Planning for Wetlands and Waters of the United States

The Town intends to address impacts to wetlands and waters of the United States and changes to the bed, bank or channel of rivers, streams and lakes resulting from Covered Activities in the Planning Area. Based on the Plan, the Local Agencies may seek future programmatic permits or authorizations under the Clean Water Act and Section 1600 *et seq.* of the Fish and Game Code as necessary for Covered Activities. The Parties agree to work together to explore the feasibility of undertaking concurrent but separate planning regarding these permits. However, such programmatic permits or authorizations are not necessary for approval of the Plan or for issuances of take permits.

2.3.4. Assurances

2.3.4.1. Regulatory Assurances Under FESA

The Parties anticipate that the USFWS will provide assurances consistent with their regulatory authority upon issuance of the FESA incidental take permit to the Town. Specifically, the Parties expect that if the MSHCP/NCCP meet the criteria for issuance of an incidental take permit under Section 10(a)(2)(B) of FESA, the Town will receive the assurances that, so long as the Plan is being properly implemented, in the event of unforeseen circumstances the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for Covered Species will not be imposed without the consent of the Town and

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as identified in the “no surprises” regulations of the United States Department of the Interior at 50 C.F.R. 17.22(b)(5) and 17.32(b)(5) for all species adequately covered under the MSHCP/NCCP. Such assurances would be provided upon approval of the MSHCP/NCCP and issuance of the FESA incidental take permit to the Town.

2.3.4.2. Regulatory Assurances Under NCCPA

The Parties expect that if the NCCP meets the criteria for a NCCPA take permit under Section 2835 of the Fish and Game Code, CDFW will provide assurances consistent with its statutory authority upon approval of the Plan and issuance of NCCPA take authorization to the Town. Under Section 2820(f) of the NCCPA, CDFW may provide assurances for plan participants commensurate with long-term conservation assurances and associated implementation measures pursuant to an approved NCCP. In order to ensure that assurances are legally binding, any such provisions will be included in an Implementing Agreement negotiated between the Town and the Wildlife Agencies.

2.4. Planning Goals

The MSHCP/NCCP planning goals include the following:

- Provide for the conservation and management of Covered Species within the Planning Area;
- Allow appropriate and compatible economic growth and development that is consistent with applicable laws;
- Provide a basis for permits and authorizations necessary to lawfully take Covered Species;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements of FESA, CEQA, NEPA, and NCCPA within the Planning Area
- Provide a less costly, more efficient alternative project review process which results in greater conservation values than the current project-by-project, species-by-species review and regulatory regime; and
- Provide clear expectations and regulatory predictability for persons carrying out Covered Activities within the Planning Area.

2.4.1. Departure from Project-by-Project Planning Approach

The Parties agree that the process of undertaking conservation planning on a project-by-project basis is both costly and inefficient. All Parties expect that the development of a successful Plan will be a less expensive and more effective method of complying with the species conservation requirements of FESA,

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CESA, NCCPA, and the environmental review processes of NEPA and CEQA than a project-by-project approach. The Parties also agree that a successful Plan allows for more effective habitat conservation and economic development than that which would occur under individual project permitting.

2.4.2. Covered Activities

Covered Activities are the activities that will be addressed in the MSHCP/NCCP and for which the Town will seek an NCCPA take permit pursuant to Fish and Game Code Section 2835 and an incidental take permit pursuant to Section 10 of FESA. Covered Activities under the Plan will be limited to land uses over which the Town has land use authority and will include planning authorizations within its Sphere of Influence. In order to facilitate the MSHCP/NCCP, the Town entered into a Memorandum of Understanding (MOU) with San Bernardino County, which allows the Town to act as the Lead Agency in preparing and implementing the MSHCP/NCCP locally on County lands included within the Planning Area. Future projects permitted in these areas will be required by the County to verify that the Town has reviewed the project and found it compliant with the MSHCP/NCCP. The Town may also include certain agricultural activities and adaptive habitat management and monitoring activities in the Planning Area as part of the Plan's Covered Activities. The Parties intend that local permits issued based on the Plan will authorize Covered Activities in the Planning Area to be carried out in compliance with NCCPA and FESA subject to the limitations and conditions identified in the Plan and the incidental take permits.

2.4.3. Natural Communities and Covered Species

The Parties intend for the MSHCP/NCCP to mitigate the impacts of taking likely to result from Covered Activities in the Planning Area on natural communities, on certain endangered and threatened species listed under FESA and/or CESA, and on certain other unlisted species. The purpose of including unlisted species will be to provide for the conservation and management of the species and to help ensure that such species do not become listed as threatened or endangered under FESA or CESA.

It is the Parties' goal to include, at a minimum, measures sufficient to enable the USFWS to issue incidental take authorization for certain unlisted species should such species become listed in the future. A preliminary list of natural communities and the endangered, threatened, candidate, or other species known, or reasonably expected to be found in those communities, that are intended to be the initial focus of the MSHCP/NCCP is attached as Exhibit A. Exhibit A identifies the species that the Town and the Wildlife Agencies will initially evaluate for inclusion in the MSHCP/NCCP.

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Exhibit A does not necessarily represent the final list of species and natural communities that will be the focus of the MSHCP/NCCP or included in incidental take authorizations issued by the Wildlife Agencies.

3. Planning Area and Participating Entities

3.1. Area

The Planning Area is the Town of Apple Valley, its Sphere of Influence, and additional San Bernardino County lands to the north and east as shown in Exhibit B. It currently includes approximately 221,180 acres (346 square miles). The boundaries of the Planning Area include the entire incorporated area of the Town (48,150 acres, 75 square miles) and 173,030 acres (271 square miles) of unincorporated county lands.

The Planning Area is in the western Mojave Desert between the City of Victorville on the west, the City of Hesperia and Lucerne Valley to the southwest and southeast, respectively, and Barstow to the north. The entire Planning Area is located in the southwestern portion of San Bernardino County (County), California. The desert environment is comprised of low mountains and foothills, dry lakes and alluvial fans with a coarse sandy floor. Topographically, the Planning Area gently slopes from the mountains and foothills in the northeast towards the Mojave River in the southwest.

The MSHCP/NCCP will also conserve approximately 44,400 acres of identified wildlife linkages that connect the Planning Area to approximately 2.4 million acres of conserved habitat in the Mojave Desert. The Planning Area is strategically located at the intersection of three significant wildlife linkages that are not only important to the region but also to the Mojave Desert at large. The identification and protection of these linkages will facilitate wildlife movement and gene flow across a wider regional landscape, making the entire region more resilient to the effects of climate change by ensuring the long-term viability of six (6) Areas of Critical Environmental Concern.

It is expected that during this planning effort recommendations may be made to change the size and configuration of the Planning Area or to divide the Planning Area into Subareas. All recommended changes based on input from stakeholders, the Scientific Advisory Committee, USFWS, CDFW, and/or other interested parties will be considered. Those that further the goals of the Planning Agreement will be adopted.

3.2. Town of Apple Valley

The Town of Apple Valley is the Lead Agency responsible for development and implementation of the MSHCP/NCCP. The Town of Apple Valley has committed to undertake a collaborative, systematic approach to protecting the Planning Area's

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ecologically significant resources, including candidate, threatened and endangered species, and their habitats, open space, and working landscapes, to ensure that Covered Activities comply with applicable federal and state laws. The Town of Apple Valley will manage and coordinate funding for the development of the MSHCP/NCCP for submission to USFWS and CDFW.

3.3. San Bernardino County

San Bernardino County has land use jurisdiction over the unincorporated county lands included in the Planning Area. San Bernardino County entered into a MOU with the Town of Apple Valley to facilitate coordination of planning activities within the Town's Sphere of Influence, including preparation of the MSHCP/NCCP. The MOU allows for the Town to act as the Lead Agency in preparing and implementing the MSHCP/NCCP on County lands included within the Planning Area. Future projects permitted in these areas will be required by the County to verify that the Town has reviewed the project and found it compliant with the MSHCP/NCCP. Upon approval of the Plan, both entities will amend their General Plans to ensure consistency with the Plan.

3.4. California Department of Fish and Wildlife

CDFW is the agency of the State of California authorized and empowered to act as trustee for wildlife (as defined in Fish and Game Code Section 1802) of the State on behalf of its residents. CDFW is authorized to develop and approve NCCPs pursuant to the NCCPA, to administer and enforce CESA and other provisions of the Fish and Game Code, and to enter into agreements with federal and local governments and other entities for the conservation of species and habitats pursuant to CESA and the NCCPA.

3.5. United States Fish and Wildlife Service

USFWS is an agency of the United States Department of the Interior authorized and empowered by Congress to administer and enforce FESA with respect to the species within its jurisdiction and to enter into agreements with States, local governments, and other entities to conserve threatened, endangered, and other species of concern. The NCCPA and this Planning Agreement require coordination with the USFWS with respect to FESA.

3.6. United States Bureau of Land Management

BLM is an agency of the United States Department of the Interior authorized by Congress to manage and regulate multiple-use activities on federal public lands located within the Planning Area under the Federal Land Policy and Management Act of 1976. In addition to land use planning authorities, the BLM regulates public land use and occupancy through promulgated rules and regulations. BLM has exclusive authority to permit the use of federal public land through its FLPMA authorities. Approximately 34 percent of lands within the Planning Area are in public ownership, of which 94 percent are BLM lands. The Town intends to work

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with BLM to ensure that activities proposed by the Town in the MSHCP/NCCP are consistent with BLM's California Desert Conservation Plan, as amended. During the planning process, the BLM, the Town, and Wildlife Agencies will work together to identify common and mutual objectives for achieving long-term conservation throughout the Plan Area.

4. Preliminary Conservation Objectives

The preliminary conservation objectives of the plan are to:

- Provide for the conservation of Covered Species, natural communities and ecosystems on a landscape level within the Planning Area;
- Preserve the diversity of plant and animal communities throughout the Planning Area;
- Minimize and mitigate the take or loss of Covered Species;
- Identify and designate sensitive habitat areas and wildlife linkages both within the Planning Area and to adjacent habitat areas outside of the Planning Area;
- Preserve and enhance conservation areas and habitat linkages within the Planning Area;
- Ensure Covered Activities are appropriately designed to avoid, minimize and/or mitigate impacts to Covered Species, natural communities, and designated conservation areas and habitat linkages;
- Reduce the necessity to list additional species pursuant to FESA and/or CESA;
- Establish specific species and habitat-based goals and objectives for Covered Species and for the amount, quality, and connectivity of habitat;
- Estimate the extent of impacts to species from incidental take caused by Covered Activities;
- Provide an adaptive management and monitoring strategy for Covered Species and natural communities within the Planning Area in order to assess and respond to changing ecological conditions or implementation approaches.

4.1. Ecosystems, Natural Communities, and Covered Species List

The Plan will employ a strategy that focuses on the conservation of ecosystems, natural communities, and ecological processes in the Planning Area. In addition, the Plan will employ species-specific avoidance, minimization, and mitigation measures as required to meet federal and state take authorization standards under FESA, CESA, and NCCPA.

A description of natural communities and preliminary list of "Covered Species" that are intended to be the initial focus of the Plan is attached as Exhibit A. This

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list identifies the species that the Parties will evaluate for inclusion in the Plan and is not necessarily the Plan's final Covered Species list. The Parties anticipate that species may be added or removed from the list. The Parties acknowledge that inclusion of a particular species as a Covered Species in the Plan will require an individual determination by each applicable Wildlife Agency that the Plan is in accordance with state and/or federal take authorization requirements.

4.2. Conservation Areas and Viable Habitat Linkages

The Plan will protect, enhance, and restore habitat throughout the Planning Area and provide or enhance habitat linkages where appropriate within the Planning Area. The Plan will also identify where linkages should occur between conservation areas within the Planning Area and important habitat areas outside the Planning Area. The Plan's conservation strategy will include the full range of environmental gradients and ecological functions representative of the Planning Area, and will incorporate appropriate principles of reserve design, ecosystem management, ecosystem restoration and population biology.

4.3. Climate Change

The Plan will use results from climate change adaptation research to establish climate change adaptation goals. Conservation actions will retain representative natural communities and habitat types in a matrix with sufficient ecological diversity to accommodate anticipated climate change outcomes.

4.4. Project Design

The Plan will ensure that Covered Activities will be appropriately designed to avoid and/or minimize and mitigate impacts to Covered Species, natural communities and ecosystems. Conservation measures will be designed to meet species and habitat-based goals and objectives and contribute to the preservation and enhancement of designated conservation areas and habitat linkages.

5. Preparing the Plan

The Parties intend that this Planning Agreement will fulfill the NCCPA requirements pertaining to planning agreements and will establish a mutually agreeable process for preparing the Plan that fulfills the requirements of the NCCPA and FESA. The process used to develop the Plan will incorporate independent scientific input and analysis, and include extensive public participation with ample opportunity for comment from the general public as well as advice solicited by the Town from key groups of stakeholders as described below.

5.1. Best Available Scientific Information

The MSHCP/NCCP will compile, use, and be based on the best available scientific information, including, but not limited to:

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- Principles of conservation biology, community ecology, landscape ecology, individual species' ecology, and other scientific knowledge and thought including biotic and abiotic processes and climate change;
- Information about all natural communities, proposed Covered Species, and species of federal, State and local concern on lands throughout and adjacent to the Planning Area; and
- Advice from well-qualified, independent scientists.

5.2. Data Collection

The science advisory process and analysis of existing information may identify unforeseen data gaps. These data gaps will need to be focused on by targeted studies, if feasible, to develop a comprehensive and accurate Plan. Therefore, the Parties agree that information regarding the subjects in Section 5.3 and other topics identified during the science advisory process are important and needed for preparation of the Plan. The Parties therefore agree that data collection for preparation of the Plan should be prioritized to develop complete information on these subjects. Preference should be given to collecting data essential to fulfill conservation requirements of natural communities and Covered Species. Data needed for preparation of the Plan may not be known at this time nor identified herein. Therefore, the Parties anticipate that subjects identified and data collection priorities may be adjusted from time to time during the planning process. All data collected for the preparation and implementation of the Plan will be made available to the Wildlife Agencies and the Local Agencies in hard and digital formats, as requested.

5.3. Types of Data

The Parties agree that information on a wide range of subjects is important for preparation of the MSHCP/NCCP. Priority for data collection has been given to the data essential to clarify conservation requirements of natural communities and Covered Species. In addition, data needed to establish baseline conditions, evaluate impacts of Covered Activities on Covered Species, and develop conservation strategies and measures for Covered Species are a priority for study design and collecting. Data needed to accomplish these tasks may include, but will not necessarily be limited to: species life histories, species occurrence, population abundance and distribution, population trends, population genetics, habitat locations and conditions, hydrologic regime, hydrodynamics, temperature, flow patterns, barrier and hazard types and locations, habitat connectivity, ecological threats, and stressors.

5.4. Independent Scientific Input

The Parties intend that preparation of the MSHCP/NCCP will be guided by independent scientific input and analysis. For that purpose, the Town will convene an independent Science Advisory Panel. The role of the Science Advisory Panel is to,

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at a minimum, provide recommendations, advice, and guidance on the following:

- Scientifically sound conservation strategies for species and natural communities proposed to be covered by the plan;
- Reserve design principles that address the needs of species, landscapes, ecosystems, and ecological processes in the Planning Area proposed to be addressed by the Plan;
- Management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the Plan; and
- Data gaps and uncertainties, in order to evaluate risk factors can be evaluated.

The Science Advisory Panel will consist of a minimum of six scientists, assembled by the Town in consultation with the Wildlife Agencies, to provide technical expertise on the representative taxonomic groups, larger scale ecological processes, principles of conservation biology, conservation and land use planning in practice, and/or statistical and gap analysis. The Independent Science Advisors may be asked to provide additional feedback on key issues during preparation of the Plan, and may prepare reports regarding specific scientific issues throughout the process, as deemed necessary by the Town and the Wildlife Agencies.

Design and implementation of the Science Advisory process must be done in a coordinated fashion and with the mutual agreement of the Parties. The Parties will establish funding and payment procedures. The Independent Science Advisory process will include the development of a detailed scope of work, use of a facilitator as agreed upon by the Wildlife Agencies, input from technical experts, and production of a report by the scientists. In addition, the Parties will make the report available for use by all participants and the public during the planning process.

5.5. Public Participation

The MSHCP/NCCP will be prepared in an open and transparent process, with emphasis on obtaining input from a balanced variety of public and private interests including state, local, and tribal governments; landowners; the Off-Highway Vehicle (OHV) community and other recreational organizations; conservation organizations; and the general public. The Town is committed to working with all members of the public to receive their input and address their concerns and comments. The process used to prepare the MSHCP/NCCP will provide for thorough public review and comment consistent with Section 2815 of the Fish and Game Code.

5.5.1. Outreach

The Parties expect and intend that public outreach regarding preparation of the MSHCP/NCCP will be conducted largely by and through meetings of the Town

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and/or one of the Committees or Subcommittees formed to support the development of the plan. These ad hoc groups may include a Steering Committee, as described below, and any Subcommittees established by the Steering Committee as necessary. In addition, the Town will include periodic briefings to its Town Council or governing boards at public meetings with opportunities for public comment. Other outreach efforts will include maintenance of a project website, presentations to interested organizations, and public workshops.

5.5.1.1. Steering Committee

The Steering Committee will consist of members from the Town and/or Local Agencies and act in an administrative capacity and will be responsible for the preparation of the Plan. Responsibilities of the Steering Committee include:

- Managing the consultants and working with the consultants, including, but not limited to, reviewing MSHCP/NCCP scopes of work, budgets, and scope modifications of the consultants, and establishing timelines, work products and outreach processes;
- Providing input during plan preparation on key MSHCP/NCCP elements (*e.g.*, Covered Species, Planning Area, Covered Activities, conservation strategy, impact assessment, implementing entity, monitoring and adaptive management, funding, and alternatives);
- Establishing Subcommittees as necessary and providing guidance as requested by Subcommittees;
- Monitoring MSHCP/NCCP preparation budgets and issuing reports in accordance with Section 6 grant requirements;
- Securing grant funding to complete Plan preparation;
- Providing oversight of MSHCP/NCCP development;
- Communicating MSHCP/NCCP progress and issues to other committees and interested parties in a timely manner;
- Providing for public participation and outreach; and
- Reviewing and responding to recommendations for MSHCP/NCCP development made by CDFW, USFWS, the Science Advisory Panel, and any Subcommittees.

Staff from the Wildlife Agencies will work with the Steering Committee and provide technical expertise and information. These meetings will be used to resolve issues regarding the development and implementation of the Plan. The Steering Committee will meet as needed. Pertinent information about the Town's planning effort will be made available as part of the public

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outreach process.

5.5.2. Availability of Public Review Drafts and Comment Period Prior to Adoption

Any draft document associated with the MSHCP/NCCP that is being considered for adoption by the Town will be available for public review and comment for a minimum of 60 days prior to adoption. The Parties expect to fulfill this obligation by distributing the draft MSHCP/NCCP and Implementing Agreement with the draft documents prepared for the Plan pursuant to CEQA and NEPA.

Other public review documents including, but not limited to, draft plans, memoranda of understanding, maps, conservation guidelines, species coverage lists, and other planning documents will be made available for public review in a reasonable and timely manner. The Town will provide materials for review at least ten working days prior to any public hearing. This obligation will not apply to all documents drafted during preparation of the MSHCP/NCCP. The Town will designate as “public review drafts” various pertinent documents drafted during development of the MSHCP/NCCP and will make these documents available to the public.

The Parties agree that the documents pertaining to the MSHCP/NCCP will be made available for public review using the Town’s internet website (<http://www.applevalley.org>), as well as more traditional means such as distribution and display of hard copies of such documents.

5.5.3. Public Hearings

Public hearings regarding development of the Plan will be planned and conducted in a manner that satisfies the requirements of CEQA, NEPA, and any other applicable state or federal laws.

5.6. Covered Activities

The Plan will identify and address the Covered Activities carried out by the Town that may result in take of Covered Species and impacts to natural communities within the Planning Area. Covered Activities may include: those land uses over which the Town and County have land use authority; certain agricultural activities over which the Town and County exercise control for purposes of the Plan; minimization and mitigation activities in the Planning Area, including habitat restoration and other conservation actions; and adaptive habitat management and monitoring activities in the Planning Area. The Parties intend that the Plan will allow Covered Activities in the Planning Area to be carried out in compliance with NCCPA and FESA.

5.7. Interim Project Processing

The Parties recognize that before the Wildlife Agencies approve the Plan, certain projects and activities may be proposed within the Planning Area. The Parties agree to the following interim project process to: (1) help ensure that Reportable Interim Projects approved or initiated in the Planning Area before completion of the Plan are consistent with the preliminary conservation objectives (Section 4) and do not compromise successful completion and implementation of the Plan; (2) facilitate CEQA, CESA, NEPA, and/or FESA compliance for interim projects that require such compliance; and (3) ensure that the processing of interim projects is not unduly delayed during preparation of the Plan. The Wildlife Agencies may consider independent scientific input when reviewing such projects and activities. To facilitate interim project processing, the Town adopted Interim Guidelines/Mitigation Measures during their 2009 General Plan Update (Exhibit C) and executed an MOU with the County regarding interim project review by the Town for projects within the County's jurisdiction (Exhibit D).

5.7.1. Reportable Interim Projects

The Town will notify the Wildlife Agencies pursuant to Section 5.7.2 about Reportable Interim Projects. A Reportable Interim Project is a proposed development, construction or other project or activity subject to CEQA that is undertaken by or requires a discretionary permit from a local agency and has the potential to adversely impact Covered Species, natural communities, or conflict with the preliminary conservation objectives contained in the Planning Agreement.

5.7.2. Notification Process

The Town, when proposing to undertake or approve a Reportable Interim Project, will notify the Wildlife Agencies of the project prior to the time, or as soon as possible after, the project application is deemed complete pursuant to Section 65943 of the Government Code. The Town will notify the Wildlife Agencies' designated contact person of Reportable Interim Projects. The Town will provide the Wildlife Agencies with (1) a depiction of the project location on a USGS 7.5 minute quadrangle map with the quadrangle name and section, township, and range identified; (2) a description of the project along with the land cover types present on the project site using the most current land cover data available to the Town and/or other Local and Wildlife Agencies; (3) the name of the property owner and applicant; (4) parcel description including size and assessor's parcel number; (5) a map of the proposed project on an 11" X 17", 1:24,000 aerial photo of the site, similarly formatted map or digital plans which include a GIS compatible project footprint (the map should show the project in a regional context that identifies major streets and highways); and (6) any other biological information available to the Town and/or Local and Wildlife Agencies about the project area.

5.7.3. Wildlife Agency Review

The Wildlife Agencies will review Reportable Interim Projects in a timely manner, and will use reasonable efforts to provide any comments on the projects to the Town within the legally prescribed comment periods. The Wildlife Agencies will recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and will not preclude important conservation planning options or connectivity between areas of high habitat values. Any take of listed or candidate species arising out of a Reportable Interim Project must be authorized pursuant to applicable federal and/or state law.

5.7.4. Coordinating Interim Process with Plan Preparation

Representatives of the Parties will meet as needed to discuss Reportable Interim Projects and to coordinate development of the Plan. The Parties may also consider independent scientific input during interim project review. Individual project compliance with state and federal laws will be the responsibility of the Town.

5.7.5. Mitigation of Interim Projects

Mitigation for impacts from interim projects will be designed to complement the long-term conservation strategy of the Plan. Prior to the adoption of the Plan, Local Agencies will approve mitigation on a case-by-case basis in coordination with the Wildlife Agencies, with the goal of satisfying preliminary conservation goals and objectives and not precluding any conservation strategy alternatives. Any unavoidable impacts to habitat and Covered Species should be mitigated to less than significant levels as defined by CEQA using one or more of the following methods:

- Acquisition of compensation habitat;
- Dedication of habitat that fits with the Plan's conservation design;
- Restoration of degraded habitat;
- Payment of mitigation fees that will cover replacement habitat protection, management, and monitoring in perpetuity;
- Transfer of development rights that results in permanently protected habitat;
- Purchase of credits at a CDFW-approved mitigation or conservation bank and;
- Other mitigation measures approved in writing by the Wildlife Agencies.
- In order to facilitate interim project processing, the Town adopted Interim Guidelines/Mitigation Measures during their 2009 General Plan Update

(Exhibit C).

Appropriate mitigation should be identified in a mitigation plan prepared by the project applicant. The take of candidate, threatened, or endangered species that occurs during the interim period can only be authorized through the processes available under CESA and FESA.

5.8. Protection of Habitat Land During Planning Process

5.8.1. Conservation Lands Acquired/Protected

The Parties may elect to preserve, enhance or restore, either by acquisition or other means (*e.g.*, conservation easements, etc.), lands in the Planning Area that support native species of wildlife or natural communities prior to approval of the Plan. The Town will confer with the Wildlife Agencies regarding potential lands to be protected. The Wildlife Agencies agree to consider such lands toward the land acquisition or habitat protection requirements of the Plan as appropriate, provided the lands are permanently conserved, restored, or enhanced; permanently managed; and contribute to the Plan's conservation strategy for the Covered Species.

5.8.2. Mitigation Lands

Lands, or portions of lands, acquired or otherwise protected solely to mitigate the impacts of specific projects, actions, or activities approved prior to Plan approval will only be considered as mitigation for those projects, actions or activities and generally not as mitigation for the MSHCP/NCCP. Such mitigation lands will be considered during the Plan analysis, but generally will not count toward future mitigation obligations of the Plan, except in cases where the amount of mitigation exceeds that required by the Wildlife Agencies and acquisition/protection is consistent with criteria in Section 5.8.1, above. Any excess mitigation that is provided may be counted towards the conservation objectives of the MSHCP/NCCP with approval from the Wildlife Agencies.

5.9. Implementing Agreement

The NCCPA requires that any NCCP approved by CDFW include an Implementing Agreement (IA) that contains provisions (as defined in Fish and Game Code Section 2820 (10)(b)) for:

- Defining species coverage, including conditions of species coverage;
- Establishing long-term protection of habitat reserves and/or other conservation measures that provide equivalent conservation of covered species;
- Implementation of mitigation and conservation measures;
- Terms for suspension or revocation of the take permit;

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- Procedures for amendment of the Plan and IA;
- Ensuring implementation of monitoring and adaptive management;
- Oversight of Plan implementation for purposes of assessing mitigation performance, funding, and habitat protection measures to ensure Plan effectiveness;
- Periodic reporting to the Wildlife Agencies and the Public;
- Mechanisms to ensure adequate funding to carry out conservation actions identified in the Plan; and
- Ensuring that implementation of mitigation and conservation measures on a plan basis is roughly proportional in time and extent to the impact on habitat or covered species authorized under that plan.

While the Plan is being developed, the Parties will negotiate a draft Implementing Agreement that will satisfy the requirements of the NCCPA and FESA, and include specific provisions and procedures for implementation, compliance monitoring, effectiveness monitoring, adaptive management, and funding of the Plan.

A draft of the Implementing Agreement will be made available for public review and comment along with other draft public review documents.

6. Commitment of Resources

6.1. Funding

The Parties agree that they will assist in identifying and securing available funding, where appropriate and available, that can be used in this planning effort. Notwithstanding the foregoing, the Town has assumed the primary responsibility for funding or procuring the funds for the preparation and implementation of the Plan.

6.1.1. Local Funding

Notwithstanding the foregoing, the Parties recognize that the costs and mechanisms for funding the implementation of the Plan shall be determined in the future through the planning process. The Local Agencies recognize that, as prospective applicants for state and federal permits, they have the primary responsibility for developing a plan that meets applicable legal requirements and that as a result, the development and implementation of the Plan must be funded primarily from locally assured sources.

6.1.2. CDFW Funding

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CDFW agrees to cooperate with the other Parties in identifying and securing, where appropriate and available, federal and state funds earmarked for natural community conservation planning. The parties agree that the Local Agencies shall not provide reimbursement to CDFW for its participation in the planning phase of the Plan as provided in Fish and Game Code, Section 2810, except as provided in Section 7.7 of this Planning Agreement. CDFW's commitments and obligations under this Planning Agreement are subject to the availability of appropriated funds and the written commitment of funds by an authorized CDFW representative.

6.1.3. USFWS Funding

The USFWS agrees to cooperate with the other Parties in identifying and securing, where appropriate, federal and state funds earmarked for habitat conservation planning purposes. Potential federal funding sources may include: the USFWS' Cooperative Endangered Species Conservation Fund, Land and Water Conservation Fund, and land acquisition grants or loans through other federal agencies such as the Environmental Protection Agency, the Army Corps of Engineers, or the Departments of Agriculture or Transportation. The commitments of the USFWS under this Planning Agreement are subject to the requirements of the federal Anti-Deficiency Act (31 U.S.C. Section 1341) and the availability of appropriated funds. The Parties acknowledge that this Planning Agreement does not require any federal agency to expend its appropriated funds unless and until an authorized officer of that agency provides for such expenditures in writing.

6.1.4. BLM Funding

BLM agrees to cooperate with the other Parties in identifying and securing, where appropriate, funding for habitat conservation and recreational planning purposes. The Parties acknowledge that this Planning Agreement does not require any federal agency to expend its appropriated funds unless and until an authorized officer of that agency provides for such expenditures in writing.

6.2. Assistance from Wildlife Agencies

Subject to funding and staffing constraints, the Wildlife Agencies agree to provide technical and scientific information, analyses and advice to assist the Town with the timely and efficient development of the MSHCP/NCCP. The Parties further agree that the Town will share with the Wildlife Agencies information obtained through the development of the Plan.

7. Miscellaneous Provisions

7.1. Public Officials Not to Benefit

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No member of or delegate to Congress or the California Legislature will be entitled to any share or part of this Planning Agreement, or to any benefit that may arise from it.

7.2. Statutory Authority

The Parties will not construe this Planning Agreement to require any Party to act beyond, or inconsistent with, its statutory authority.

7.3. Multiple Originals

This Planning Agreement may be executed by the Parties in multiple originals, each of which will be deemed to be an official original copy.

7.4. Effective Date

The Effective Date of this Planning Agreement will be the last date on which it is fully executed by all of the parties.

7.5. Duration

This Planning Agreement will be in effect until the MSHCP/NCCP is approved by CDFW and USFWS, but shall not be in effect for more than ten years following the Effective Date, unless extended by amendment or terminated. This Planning Agreement may be terminated pursuant to Section 7.7 below.

7.6. Amendments

This Planning Agreement can be amended only by written agreement of all Parties.

7.7. Termination and Withdrawal

Subject to the requirement in Section 7.7.1 of the Planning Agreement, any party may withdraw from this Planning Agreement upon 30 days' written notice to the other Parties. The Planning Agreement will remain in effect as to all non-withdrawing Parties unless the remaining Parties determine that the withdrawal requires termination of the Planning Agreement. This Planning Agreement can be terminated only by written agreement of all Parties.

7.7.1. Funding

In the event that State or federal funds have been awarded for the MSHCP/NCCP preparation or implementation, the Town will return any unspent grant funds to the grantor within 30 days of withdrawing. The Town will also provide all Parties with a complete accounting of the use of any State or federal funds it received regardless of whether unspent funds remain at the time of withdrawal. In the event of termination of this Planning Agreement, all Parties who received grant funds from another Party will return any unspent grant funds to the grantor within 30 days of termination.

7.8 Liability

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None of the Parties shall be liable in damages to the other Parties or to any other person or entity for any breach of this Planning Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Planning Agreement, or any other cause of action arising from this Planning Agreement. Notwithstanding the foregoing, each Party shall retain whatever liability it would possess for its present and future acts or failure to act apart from and independent of this Planning Agreement. Notwithstanding any language to the contrary in this Planning Agreement, this Planning Agreement is not intended to create, and shall not be construed to create, an enforceable contract between the USFWS and the other Parties. The USFWS is a Party to this Planning Agreement to memorialize its commitment to cooperate with the other Parties in the planning and development of the Plan.

[Signatures on following page]

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In witness whereof, the Parties hereto, each intending to be bound by the terms set forth herein, have executed this Agreement as of the last date written below.

TOWN OF APPLE VALLEY

By:
Title:

Date

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By:
Title:

Date

**UNITES STATES DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE**

By:
Title:

Date

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Exhibit A. PROPOSED COVERED SPECIES AND NATURAL COMMUNITIES FOR THE TOWN OF APPLE VALLEY MSHCP/NCCP

Table 1: Proposed Species List

Common Name	Scientific Name	State Status	Federal Status (Listing Rule)
Agassiz's desert tortoise	<i>Gopherus agassizii</i>	Threatened	Threatened
Arroyo toad	<i>Anaxyrus californicus</i>		Endangered
Barstow wooly sunflower	<i>Eriophyllum mohavense</i>	Species of Special Concern (SSC)	
Beaver dam breadroot	<i>Pediomelum castoreum</i>	1B.2	
Bendire's thrasher	<i>Toxostoma bendirei</i>	SSC	
Bighorn sheep	<i>Ovis canadensis</i>	SSC	
Booth's evening primrose	<i>Camissonia boothii</i> ssp. <i>boothii</i>	CNPS List 2	
Brown-crested flycatcher	<i>Myiarchus tyrannulus</i>	SSC	
Burrowing owl	<i>Athene cunicularia</i>	SSC FGC Sec. 3503.5	
California red-legged frog	<i>Rana draytonii</i>		Threatened
Coast (San Diego) horned lizard	<i>Phrynosoma coronatum blainvillii</i>	SSC	
Cooper's hawk	<i>Accipter cooperii</i>	SSC FGC Sec. 3503.5	
Creamy blazingstar	<i>Mentzelia tridentata</i>	1B.3	
Cushenbury buckwheat	<i>Eriogonum ovalifolium</i> var. <i>vineum</i>	S1	Endangered
Cushenbury oxytheca	<i>Acanthoscyphus parishii</i> var. <i>goodmaniana</i>	1B.1	Endangered
Desert cymopterus	<i>Cymopterus deserticola</i>	CNPS List 1B	
Desert kit fox	<i>Vulpes macrotis arsipus</i>	Protected Furbearing Mammal	
Golden eagle	<i>Aquila chrysaetos</i>	Fully Protected	Protected under the Eagle Act ¹
Latimer's woodland-gilia	<i>Saltugilia latimeri</i>	1B.2	
Le Conte's thrasher	<i>Toxostoma lecontei</i>	SSC	
Least Bell's vireo	<i>Vireo bellii pusillus</i>	Endangered	Endangered
Loggerhead shrike	<i>Lanius ludovicianus</i>		
Long-eared owl	<i>Asio otus</i>	SSC FGC Sec. 3503.5	
Mohave ground squirrel	<i>Xerospermophilus mohavensis</i>	Threatened	
Mohave river vole	<i>Microtus californicus mohavensis</i>	SSC	
Mohave tui chub	<i>Siphateles bicolor mohavensis</i>	Endangered, Fully Protected	Endangered
Mojave monkey flower	<i>Mimulus mohavensis</i>	SSC	
Mojave tarplant	<i>Hemizonia mohavensis</i>	Endangered	
Northern harrier	<i>Circus cyaneus</i>	SSC	
Pallid bat	<i>Anthrozous pallidus</i>	SSC	
Pallid San Diego pocket mouse	<i>Chaetodipus fallax pallidus</i>	SSC	
Pinyon rockcress	<i>Boechea dispar</i>	2.B3	
Prairie falcon	<i>Falco mexicanus</i>	SSC FGC Sec. 3503.5	
San Bernardino aster	<i>Symphotrichum defoliatum</i>	SSC	

¹ Bald and Golden Eagle Protection Act

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Common Name	Scientific Name	State Status	Federal Status (Listing Rule)
San Bernardino Mountain dudleya	<i>Dudleya abramsii ssp. affinis</i>	1B.2	
San Emigdio blue butterfly	<i>Plebejus emigdionis</i>		
Sharp-shinned hawk	<i>Accipiter striatus</i>	SSC	
Shockley's rockcress	<i>Boechera shockleyi</i>	2.B2	
Southern skullcap	<i>Scutellaria bolanderi ssp. austromontana</i>	CNPS List 1B.2	
Southwestern pond turtle	<i>Actinemys marmorata pallida</i>	SSC	
Southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	Endangered	Endangered
Summer tanager	<i>Piranga rubra</i>	SSC	
Swainson's hawk	<i>Buteo swainsoni</i>	Threatened	
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	CT (Candidate Threatened)	
Vermillion flycatcher	<i>Pyrocephalus rubinus</i>	SSC	
Victorville shoulderband	<i>Helminthoglypta mohaveana</i>	SSC	
Western yellow-billed cuckoo	<i>Coccyzus americanus occidentalis</i>	Endangered	Proposed Threatened
White pygmy-poppy	<i>Canbya candida</i>	S3.2	
Yellow-breasted chat	<i>Icteria virens</i>	SSC	
Yellow warbler	<i>Dendroica petechia brewsteri</i>	SSC	

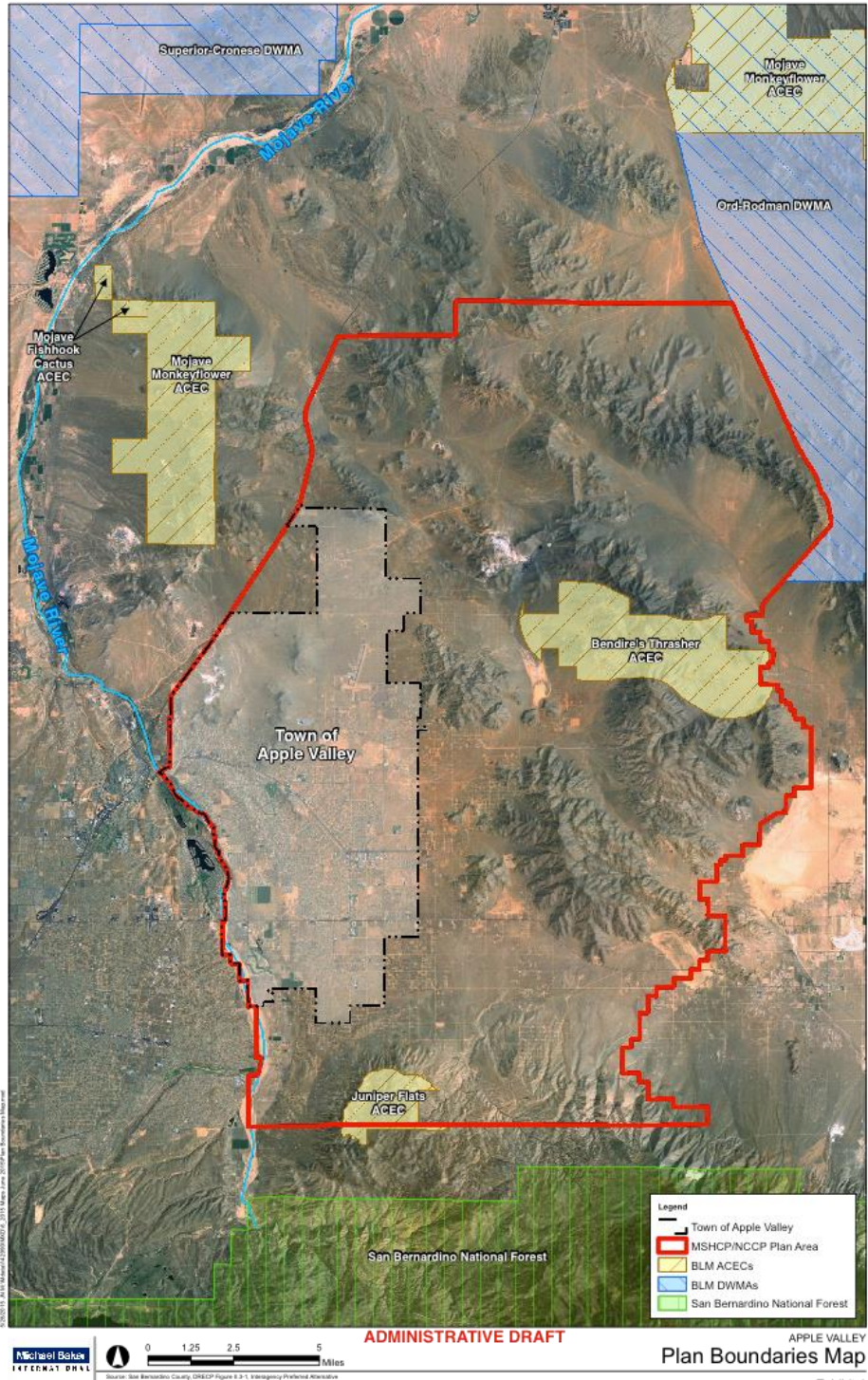
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Table 2: Natural Communities List

Community Name
California Montane Jeffrey Pine (Ponderosa Pine) Woodland
Central and Southern California Mixed Evergreen Woodland
Great Basin Pinyon-Juniper Woodland
Inter-Mountain Basins Juniper Savannah
Mediterranean California Dry-Mesic Mixed Conifer Forest and Woodland
Inter-Mountain Basins Big Sagebrush Shrubland
Inter-Mountain Basins Mixed Salt Desert Scrub
Mojave Mid-Elevation Mixed Desert Scrub
Sonora-Mojave Creosotebush-White Bursage Desert Scrub
Sonora-Mojave Mixed Salt Desert Scrub
Sonora-Mojave Semi-Desert Chaparral
Southern California Coastal Scrub
Southern California Dry-Mesic Chaparral
California Central Valley and Southern Coastal Grassland
North American Warm Desert Playa
Mediterranean California Foothill and Lower Montane Riparian Woodland
North American Warm Desert Riparian Woodland and Shrubland
Temperate Pacific Freshwater Emergent Marsh
North American Warm Desert Active and Stabilized Dune
North American Warm Desert Bedrock Cliff and Outcrop
North American Warm Desert Volcanic Rockland

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Exhibit B. PLANNING AREA



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Exhibit C. MSHCP INTERIM GUIDELINES/MITIGATION MEASURES ADOPTED BY THE TOWN OF APPLE VALLEY ON AUGUST 11, 2009

The Town of Apple Valley is preparing a Multispecies Habitat Conservation Plan (MSHCP). It is expected that the MSHCP will be completed by December 2010. Prior to completing the MSHCP, the Town proposes to establish guidelines/mitigation measures to protect sensitive and listed species and their habitats. All projects will be subject to these guidelines. Mitigation ratios are suggestions; the actual required mitigation will be determined in consultation with the responsible agencies (U.S. Fish and Wildlife Service, California Department of Fish and Game).

THE MSHCP

The MSHCP shall be drafted consistent with the *HABITAT CONSERVATION PLANNING AND INCIDENTAL TAKE PERMIT PROCESSING HANDBOOK* (HCP Guidelines) prepared by the U.S. Department of the Interior, Fish and Wildlife Service (November 4, 1996) and all subsequent guidance.

In particular, the Town will develop a land reserve system that will be designed to protect listed and sensitive species covered by the MSHCP. The reserve lands shall be selected based on their ecological significance. Factors that will be considered are plant communities and habitat types, current functional values, present or potential presence of sensitive/listed species, corridor/linkage values, amount of habitat disturbance, potential of long-term management/restoration, etc. A management plan consistent with the HCP Guidelines will be prepared, including a cost analysis. Adequate funding mechanisms will be identified and implemented. Funding will include impact fees and/or conveyance fees based upon a nexus study and a PARS or similar analysis.

BASELINE SUMMARY

- The project area is approximately 167,000 acres. Approximately 1/3rd, or 55,666 acres, of the MSHCP project area is in public ownership.
- The General Plan proposes the development of approximately 32,000 acres in mostly creosote shrub habitat.
- Biological information indicates the most valuable natural resources in the area are those associated with the Mojave River.
 - The Mojave River corridor and its associated riparian habitat harbor numerous threatened and endangered species and species of special concern, some of which are endemic to area.
 - The River corridor also provides valuable ecosystem functions and linkages that must be preserved.
- Desert tortoise populations in the area are generally considered to be low.

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- The MSHCP project area is southwest of the Desert Wildlife Management Areas² (DWMAs) and designated critical habitat for the species.
- Major wildlife corridors for this species are north and east of the project area.
- The project area has a low potential to provide habitat for the Mohave ground squirrel. The core population identified for this species is northwest of the project area.
- The MSHCP is within the Planning Area for the West Mojave Habitat Conservation Plan and Conservation Banking Plan (draft WEMO),³ which is in preparation, and will be as consistent as possible with the guidelines developed in the draft WEMO. However, the draft WEMO does not adequately address the Town's unique habitat needs or cover all of the listed and other sensitive species found within the MSHCP's planning area.

SPECIES LISTS

The list of species to be covered, or that are under consideration for coverage, by the MSHCP is attached.

MAPS

The following MSHCP Maps are attached:

- MSHCP Planning Area Map
- MSHCP Habitat Map
- MSHCP Land Ownership Map

DEFINITIONS

- Buffer Areas - The area surrounding a drainage, playa, steep slope, or reserve lands that helps to protect the functions and values of that feature by reducing physical disturbance from noise, activity, etc., and provides a transition zone.
- Covered Species - Those species included in the incidental take authorization issued by the federal or state governments as part of the Town's MSHCP.
- Drainages - Natural or man-made channels that either contain surface flows during a 2-year or greater storm event or considered jurisdictional by either the U.S. Army Corps of Engineers and/or the California Department of Fish and

² Under the California Desert Conservation Plan, as amended, DWMAs are identified as ACECs.

³ The draft WEMO is an ongoing planning effort to develop a private lands HCP in the West Mojave by San Bernardino, Inyo, Kern, and Los Angeles counties and some local jurisdictions including the Town of Apple Valley.

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Game. This term includes associated riparian vegetation such as freshwater marsh, riparian woodlands, riparian scrub, etc.

- Linkages/Connectivity - Linkages and corridors are areas that facilitate local or regional wildlife movement. They are generally centered on linear features such as waterways, riparian corridors, flood control channels, contiguous habitats, and upland habitats. For example, drainages can serve as movement corridors because wildlife can move easily through these areas. Corridors also offer wildlife unobstructed terrain for foraging and for dispersal of young individuals.
- Listed Species - Species listed as threatened or endangered under the State and/or federal Endangered Species Acts.
- Playas - Dry lakes that collect the drainage from surrounding areas and are periodically flooded. Usually drainage channels become less defined, covered with water-borne sediments.
- Reserve Lands - Those lands that have been included within a designated conservation area. Reserve lands shall provide the necessary habitat quantity, quality and connectivity to support the region's biodiversity.
- Steep Slopes - Landforms, including rocky outcrops, with a slope of 25 percent or greater.
- Vegetation Communities - Recognized plant associations such as those used by the California Department of Fish and Game and/or Holland, 1986.

MSHCP SCHEDULE

Approval of the MSHCP is anticipated in December 2010. It is expected that maps of sensitive habitats and conservation areas will be completed by October 2009 for use by the Town.

INTERIM GUIDELINES

Prior to the approval of the MSHCP, the Town will require the following:

All projects shall be in compliance with CEQA and the CEQA guidelines. For biological resources, the following will be required:

A biological survey report for all proposed development projects. The report will include:

- Description and map of the vegetative communities;

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- Description and map of biological resources on the property or potentially on the property;
- Description and map of all drainages/playa with accompanying jurisdictional delineation;
- Description, assessment, and map of wildlife corridors and linkages;
- Surveys (using accepted protocol, if available) of listed and sensitive species potentially present; and
- A map showing the location/territories of listed and sensitive species on the property.

The assessment also will provide a discussion of avoided impacts and a list of proposed mitigation measures. All reports documenting the presence of listed species will be forwarded to the responsible agencies.

In addition, the project applicant will provide an assessment of the direct and indirect project impacts to habitat types, drainages/playas/buffers, and sensitive/listed species. The assessment also will consider whether development of a site would impair the effectiveness of linkage corridors as identified in the General Plan. Cumulative impacts also would be assessed.

The Town will determine the required mitigation on a case-by-case basis, as determined by the technical data accumulated through the preparation of the biological survey report/assessment. The required mitigation is to reduce impacts to below a level of significance and will consist of actions that either

- compensate for the impacts by replacing or providing substitute habitat, or
- rectify the impact by restoring the affected habitats

The mitigation requirement will be based on the type and location of the impacted habitat and the resources on the project site. For project's proposing to restore, enhance or create habitats as mitigation, the project proponent will prepare a Mitigation Plan consistent with requirements in the ACOE Mitigation Rule (*Compensatory Mitigation for Losses of Aquatic Resources, 33 CFR Part 332*).

In the case of drainages and playas other than the Mojave River, the preferred method of mitigation is avoidance. For unavoidable impacts, mitigation will be provided on at least a 1:1 ratio. Unavoidable impacts shall be minimized to the maximum extent practicable. Whether or not an impact is unavoidable will be determined on a case-by-case basis. In addition, the applicant will:

- Provide a buffer for all retained drainages. The buffer will be a minimum of 50 feet in width.

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- Confer with the appropriate federal and state agencies and provide documentation to the Town that all required permits have been received prior to issuance of a grading permit.

For the Mojave River, all impacts shall be avoided, except for essential public facilities projects where no feasible alternative exists. Unavoidable impacts will require the following:

- State and federal delineation report;
- Surveys using required protocols, if available, of listed and sensitive species;
- Construction timing limits to minimize impacts;
 - For example, generally no grading would be allowed from March 1 to August 30 to avoid impacts to listed avian species.
- Mitigation to be provided at a minimum 2:1 ratio for impacts to habitat; mitigation to be implemented in the vicinity of the impact; and
- Development of a Mitigation Plan consistent with requirements in the ACOE Mitigation Rule (*Compensatory Mitigation for Losses of Aquatic Resources, 33 CFR Part 332*).

In the case of endemic plants, the preferred method of mitigation is avoidance. Species may be considered adequately conserved if translocation/restoration of the species is provided at the project level of at least a 2:1 ratio and the translocation/restoration is deemed successful based on the mitigation plan's performance criteria.

In areas with steep slopes, all impacts should be avoided, except for essential public facilities projects where no feasible alternative exists. Mitigation for unavoidable impacts will be developed on a case-by-case basis. A buffer area of 100 feet will be provided at the base of such slopes.

The preferred landscaping of all projects is the use of native species. Planting of invasive species is prohibited. The Town will develop a list of prohibited plants by September 2009.

Higher mitigation ratios can apply in cases where it is determined necessary after consultations with the responsible agencies.

In all cases, mitigation sites must have long-term viability. Long-term viability includes addressing any short-term management issues, providing an adequately funded long-term management plan based on a PARS or similar analysis, and placing a conservation easement over the site and/or providing fee title to a suitable management entity or the Town for management as conservation lands. Mitigation may also be in the form of purchasing mitigation credits at an appropriate agency approved mitigation bank.

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In addition, until the MSHCP is approved, each individual project must show compliance with the State and federal Endangered Species Acts. The project proponent must provide the Town either copies of the State and/or federal Endangered Species Act permits or statements that such permits are not needed prior to the issuance of a grading permit. In addition, the project proponent must implement each special condition of the permit. If there is a difference between the requirements in the Town's approval and such permits, the conditions in the permits shall control.

If projects, after implementation of the above interim guidelines, still have a potentially significant impact further mitigation shall be required. For these types of projects, it may be the case that mitigation/conservation ratios for habitat impacts will need to be adjusted upwards and/or offsite mitigation areas acquired. In all cases, unless mitigation can be devised that would result in reducing the impact to below the significance level, a statement of overriding considerations can be adopted showing that the project benefits outweigh the negative effect of rendering a known habitat area ineffective for the purposes of conserving resident special status species and/or plant communities.

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Exhibit D. MOU BY AND BETWEEN THE TOWN OF APPLE VALLEY AND SAN BERNARDINO COUNTY FOR THE PLANNING AND IMPLEMENTATION OF THE APPLE VALLEY MSHCP/NCCP

Memorandum of Understanding
by and between
The Town of Apple Valley and San Bernardino County
for the Planning and Implementation
of the Apple Valley
Multispecies Habitat Conservation Plan / Natural Community Conservation Plan

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") on November 15, 2016 (the "Effective Date"). The Town and the County are sometimes referred to in this MOU, individually, as a "Party" and, collectively, as the "Parties".

The purpose of this MOU is to memorialize how the Town and the County will work together to develop and implement the Multispecies Habitat Conservation Plan/Natural Community Conservation Plan ("Plan").

RECITALS

Whereas, the Town and County have a history of collaboration to ensure compatible land use standards and processes, to wit, on September 14, 2010, the Town and County entered into an MOU to establish a process to collaboratively develop a Sphere Standards Overlay under the County's Development Code (Section 82.22.010) to ensure compatible land use standards between County development standards and the land use designations and pre-zoning described in the Town's 2009 amended General Plan for the Town's Sphere of Influence ("Sphere") (the September 14, 2010 MOU ("Sphere MOU") is attached hereto as Exhibit "A" and incorporated herein by reference);

Whereas, the Town and the County are jointly developing the Plan, and the Plan Area is approximately 222,382 acres and includes private land under the respective jurisdictions of both the Town and the County, as well as Federal and State lands that are not under the jurisdiction of either the Town or County (a map depicting the Plan boundaries is attached hereto as Exhibit "B" and incorporated herein by reference);

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Whereas, The intent of the Plan is to conserve, restore, and manage large connected natural and semi-natural landscapes to aid in the recovery of endangered, threatened, and at-risk species populations within the Plan Area while also maintaining the Town's and the County's rural character, quality of life, and economic opportunities;

Whereas, the goal of the Plan is to provide a conservation strategy that benefits the larger region while streamlining the economic development process within the Plan Area;

Whereas, The Town, as the Lead Agency for the Plan, has been working collaboratively with the County to address development needs described in the County's 2007 General Plan within the Plan Area;

Whereas, upon approval of the Plan both Parties will be signatories and Permittees under the Plan.

Whereas, both Parties have jurisdiction of private lands within the Plan Area, with the Town having jurisdiction over approximately 47,888 acres of private land and the County having jurisdiction of approximately 80,207 acres of private land, including that within the Town's Sphere; and

Whereas, the Town and County desire to memorialize how they will work together to develop and implement the Plan.

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. Preparation of the Plan. The Town Community Development Department, Planning Division staff, the County Land Use Services Department staff, and the successor agencies (at times collectively or individually referred to as "Staff"), shall work cooperatively to ensure that the Plan is acceptable to each jurisdiction. Similar to the previously adopted Sphere Development Standards, the Plan will set out the development requirements within each land use district for discretionary development permits/approvals within the Plan Area. To foster the continued development of the Plan consistent with the above stated objective, the County and the

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Town agree as follows:

2.1. Staff from both agencies shall work in good faith to develop a process, provide input, and review the Plan for proposed adoption by the Town Council and County Board of Supervisors ("Board").

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 the Plan. The Town shall also circulate the draft document for public comment prior to consideration for approval by the Town Council and County Board.

2.3. Following the Town's adoption of the Plan, County Staff shall present the Plan for consideration by the County Board. 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 Plan. 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 adoption of the Plan, together with the County's adoption of the Plan will provide the procedural mechanism for implementation of this MOU and future development within the Plan Area shall, to the extent possible under the Town's and County's municipal codes and state law, be evaluated in accordance with the Plan standards.

2.5. Once the Plan is approved by the Town and County, any requested changes would be subject to a Plan Amendment Process as outlined in the Plan.

2.6. Nothing herein is intended to abrogate the jurisdiction of the City or the County with respect to projects over which each has land use authority.

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

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3.1. Staff from the County and Town shall meet regularly to review and discuss applications for development projects or other entitlements and proposed General Plan amendments and Development Code amendments. The County will continue to provide notice of all discretionary projects within the Plan boundaries to the Town's Planning Staff for review and comment, consistent with and as described in the Sphere MOU, prior to Planning Commission or Board hearings. The County agrees to reasonably consider the Town's comments and in good faith consider incorporating Town-recommended changes to the extent practicable prior to adoption of the Plan.

3.2. For projects within the boundaries of the Plan Area, 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 Plan.

Section 4. Implementation of the Plan. Upon approval of the Plan, Staff of both Parties will evaluate their General Plans to determine consistency with the Plan and whether General Plan amendments should be recommended to the respective governing bodies.

4.1 The Town, as CEQA Lead Agency and Implementing Entity for the Plan, will coordinate with the County to extend the take authorizations provided by the Plan to projects located on private lands under the County's land use jurisdiction.

4.2 The County will be continue to be responsible for issuing land use approvals on lands under its jurisdiction within the Plan Area. However, for projects under the County's land use jurisdiction and within the Plan Area, the County, as a part of its land use approval process, will consider as an additional criterion the project's compliance with the Plan, including a compliance permit from the Town Planning Division indicating that the project has met all the requirements of the Plan.

Section 5. Term of MOU and Termination. 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 on behalf of the County and fully executed counterpart originals have been exchanged between the Parties. The term of this MOU shall be for the length of the permit term of the Plan. Either Party may terminate this MOU prior to the expiration of the term by providing the other party written notice of intent to termination, which shall be effective sixty (60) days after such notice,

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or where the other Party is in material breach of any of its material obligations under this MOU and fails to cure such breach within sixty (60) days of receiving notice thereof from the non-breaching Party.

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: Assistant Town Manager,
Community Development

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

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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.

IN WITNESS WHEREOF, the Parties, intending to be bound by the terms and conditions set forth herein, have executed this MOU as of the Effective Date.

[Signatures on following page]

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SIGNATURE PAGE TO
MEMORANDUM OF UNDERSTANDING
(Multispecies Habitat Conservation Plan/Natural Community Conservation Plan)

COUNTY:

COUNTY OF SAN BERNARDINO

By: [Signature]
James Ramos, Chairman Board of Supervisors

Dated: NOV 15 2016

CITY:

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

By: [Signature]
Barb Stanton, Mayor

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: [Signature]
Deputy

Dated: _____



APPROVED AS TO LEGAL FORM:
County Counsel

By: [Signature]
Deputy County Counsel

Dated: 11-7-16

ATTEST:

[Signature]
Town Clerk

Dated: 11-21-16

APPROVED AS TO LEGAL FORM:

[Signature]
Town Attorney

Dated: 11-18-16

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Exhibit A - September 14, 2010 MOU between the Town of Apple Valley and San Bernardino County

LAND USE SERVICES DEPARTMENT

ADMINISTRATIVE OFFICE
385 North Arrowhead Avenue • San Bernardino, CA 92415-0187
(909) 387-4141 Fax (909) 387-4288
<http://www.sbcounty.gov/landuseservices>



COUNTY OF SAN BERNARDINO

DENA H. SMITH
Director

October 6, 2010

Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Attention: La Vonda Pearson

Re: Memorandum of Understanding between the County of San Bernardino and the Town of Apple Valley

Dear Ms. Pearson,

Please find the enclosed Memorandum of Understanding (MOU) between the County of San Bernardino (County) and the Town of Apple Valley containing the Mayor's original signature. My apologies for not including this along with the County's signed original.

This MOU was executed in counterparts; thereby two (2) originals exist with each agency's authorized signature on separate documents.

Sincerely,

Nanci Sevelin, Contract Coordinator
Contracts and Compliance Unit
(909) 387-4589



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REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION

September 14, 2010

FROM: DENA M. SMITH, Director
Land Use Services Department

SUBJECT: MEMORANDUM OF UNDERSTANDING WITH THE TOWN OF APPLE VALLEY

RECOMMENDATION(S)

Approve Memorandum of Understanding (Agreement No.10-887) with the Town of Apple Valley to enhance the land use planning relationship between Apple Valley and the County of San Bernardino regarding future development within Apple Valley's Sphere of Influence.

(Affected Districts: First)

(Presenter: Dena M. Smith, Director, 387-4141)

BACKGROUND INFORMATION

Approval of this item will allow the County of San Bernardino (County) to enter into a Memorandum of Understanding (MOU) with the Town of Apple Valley (Apple Valley) to enhance the land use planning relationship between Apple Valley and the County regarding future development within Apple Valley's Sphere of Influence (Sphere).

In early 2007, the Town Council of Apple Valley directed Apple Valley's Planning staff to prepare a draft MOU between the Town and the County for the purpose of enhancing the land use planning relationship between the two jurisdictions regarding future development within Apple Valley's Sphere. The intent was to allow Apple Valley to have more input and influence in its review of future development within the Sphere area. The draft MOU was prepared in May 2007 and was forwarded to the County for review and comment. Since that time, Apple Valley staff has met with County staff several times to come to agreement on the provisions contained in the MOU. A final draft version of the MOU was agreed upon by Apple Valley staff and County staff on August 18, 2010.

Chapter 82.22 of the County's Development Code allows special sphere standards to be applied to projects within cities' spheres of influence. Pre-zoning the Sphere by the Town of Apple Valley, whereby they adopted land use designations equivalent to those of the County, was the first step in this process. The intent of these actions was 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 preparation of special

Page 1 of 2

cc: LUSD-Sevelin w/ agree
Contractor c/o LUSD w/ agree
Auditor-Accts Pay Mgr w/ agree
EBIX-BPO c/o Risk Mgmt
LUSD-Smith;Davis
County Counsel-Brizsee
CAD-Valdez
File - w/ agree
jl 08/24/10

ITEM 50

Rev. 07/08/11

Record of Action of the Board of Supervisors

APPROVED (CONSENT CALENDAR)

COUNTY OF SAN BERNARDINO

Board of Supervisors


SAN BERNARDINO

MOTION	AYE	ABSTAIN	NO	AYE	NOVE
	1	00	00	4	6

LAURA H. WELCH, COUNTY CLERK

BY: *[Signature]*

DATED: September 14, 2010



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**BOARD OF SUPERVISORS
MEMORANDUM OF UNDERSTANDING WITH THE TOWN OF APPLE
VALLEY
SEPTEMBER 14, 2010
PAGE 2 OF 2**

development standards to be applied to Apple Valley's Sphere. To date, the City of Fontana was the first and only other city to take advantage of this provision in the County Development Code.

During the course of coordination between Apple Valley and the County, County staff agreed that Apple Valley staff would prepare the development standards and the necessary environmental review for compliance with the California Environment Quality Act for Apple Valley's Sphere. Both the development standards and the environmental documentation would then be reviewed by the County, incorporating any agreed upon comments. The Apple Valley 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.

In the meantime, this MOU will establish that all discretionary projects within the boundaries of Apple Valley's Sphere will be forwarded to the Apple Valley's Planning Staff for review and comment prior to an administrative or Planning Commission hearing. Also, the County will encourage applicants to consult with Apple Valley's staff at the earliest opportunity for the purpose of assuring conformance with Apple Valley's General Plan and Development Code. After the development standards are adopted by both Apple Valley and the County, County staff will have clear direction through the parameters and regulations adopted for review, analysis and recommendations on future projects. The development standards will also give the County Planning Commission and Board of Supervisors clear regulations for entitling future development in Apple Valley's Sphere.

FINANCIAL IMPACT

Approval of this MOU with Apple Valley will not result in any cost to the County. This is a non-financial MOU.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bart Brizzee, Deputy County Counsel, 387-8946) on August 24, 2010; Land Use Services Department [(Patty Davis, Administrative Supervisor, 387-4148) and (Nanci Sevelin, Contract Coordinator, 387-4598)] on August 24, 2010; and by the County Administrative Office (Beatriz Valdez, Principal Administrative Analyst, 387-1852) on August 25, 2010.

09/14/10 #50

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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.

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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

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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.

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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]

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SIGNATURE PAGE TO
MEMORANDUM OF UNDERSTANDING
(Sphere of Influence)

COUNTY:

COUNTY OF SAN BERNARDINO

CITY:

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

By: 
Gary C. Ovitt, Chairman
Board of Supervisors

By: _____
Peter Allan, Mayor

Dated: SEP 14 2010

Dated: _____

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

ATTEST:

LAURA H. WELLS
Clerk of the Board of Supervisors
By: 
Deputy
Dated: SEP 14 2010

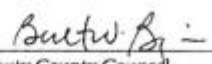


Town Clerk

Dated: _____

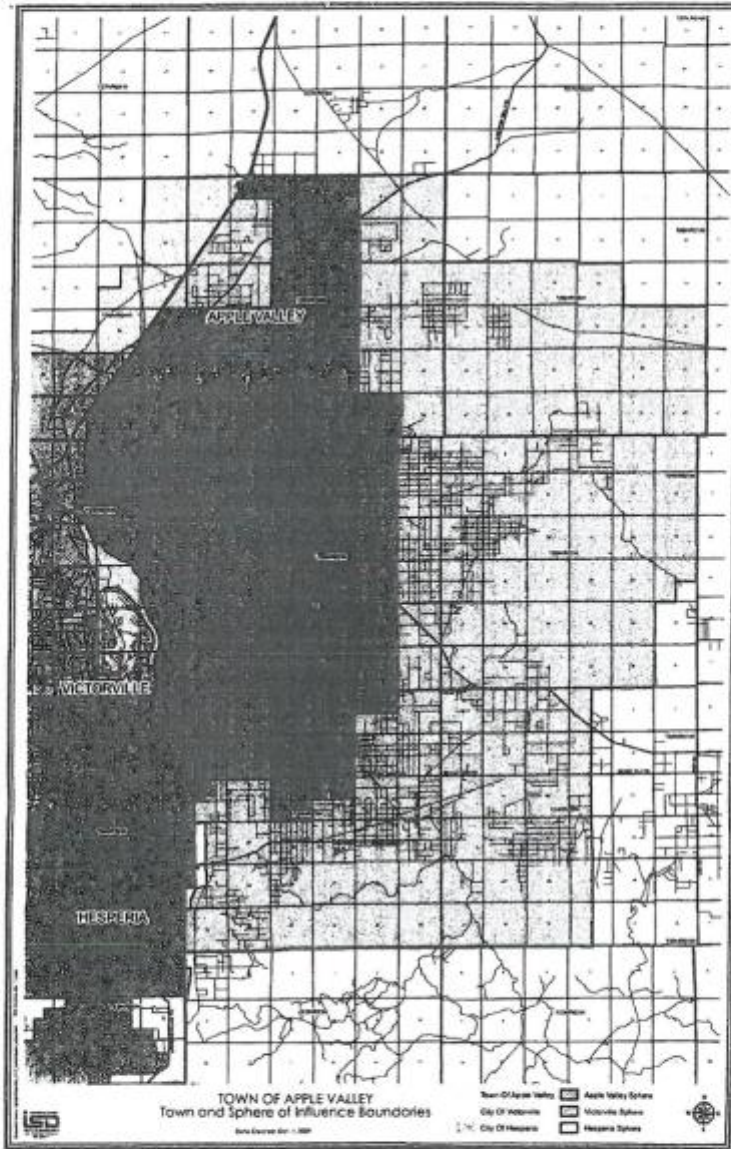
APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

County Counsel
By: 
Deputy County Counsel
Dated: 9.7.10

Town Attorney
Dated: _____

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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.

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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.

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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.

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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]


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SIGNATURE PAGE TO
MEMORANDUM OF UNDERSTANDING
(Sphere of Influence)

COUNTY:
COUNTY OF SAN BERNARDINO

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

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

By:  _____
Peter Allan, Mayor

Dated: _____

Dated: 9/14/10

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

ATTEST:

LAURA H. WELCH
Clerk of the Board of Supervisors


Town Clerk

By: _____
Deputy


Dated: 9-14-10

Dated: _____

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

County Counsel


Town Attorney

By: _____
Deputy County Counsel

Dated: 9/14/10

Dated: _____

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Exhibit B - Plan Boundaries Map



11/15/16

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