



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

**To:** Honorable Mayor and Town Council      **Date:** November 15, 2016

**From:** Lori Lamson, Assistant Town Manager      **Item No:** 5

**Subject:** A MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF APPLE VALLEY AND THE COUNTY OF SAN BERNARDINO REGARDING THE PREPARATION AND IMPLEMENTATION OF THE MULTI-SPECIES HABITAT CONSERVATION PLAN/NATURAL COMMUNITIES CONSERVATION PLAN

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

### RECOMMENDED ACTION:

Approve and direct the Mayor to sign the Memorandum of Understanding (MOU) between the Town and the County of San Bernardino (County) for the continued preparation and implementation of the Multi-Species Habitat Conservation Plan/Natural Communities Conservation Plan (MSHCP/NCCP).

### SUMMARY:

In 2007 the Town of Apple Valley commenced a multi-year effort to prepare a Multi-Species Habitat Conservation Plan. Since this date, the plan has expanded to include a Natural Communities Conservation Plan. The area of the plan has also expanded, to include not only the Town limits, but also include the Town's Sphere of Influence and areas outside the Sphere of Influence in the County jurisdiction. As such, the County agreed to partner with the Town and will be a signatory on the approved and adopted plan.

The attached MOU is an agreement between the Town and the County regarding the ongoing preparation of the plan and the eventual implementation of the Plan. The life of the MSHCP/NCCP is anticipated to be fifty (50) years. This MOU will continue through the life of the plan. The MOU clearly identifies the roles that the Town and the County play in the preparation and implementation of the plan. An administrative draft of the plan has been submitted to the US Department of Fish and Wildlife (USFW) and the California Department of Fish and Wildlife (CDFW) on October 31, 2016. The draft plan is anticipated to be completed for public review in spring 2017. After public review and comments, the final plan will be submitted to USFW and CDFW by the end of 2017. It is anticipated that the agencies will approve and issue permits in 2018.

The MOU is on today's agenda for the County Board of Supervisors with a recommendation from County Land Use Services staff to approve and sign the document.

**FISCAL IMPACT:**

No fiscal impact.

**ATTACHMENTS:**

1. Exhibit A - Proposed Memorandum of Understanding
2. Exhibit B - MSHCP/NCCP Project Area Map

## Exhibit A - PROPOSED MEMORANDUM OF UNDERSTANDING

**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 October 25, 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);

*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 800,207 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

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 Town 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.

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 respective governing bodies.

4.1 The Town, as CEQA Lead Agency, will serve as the Implementing Entity for the Plan and 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, 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 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]**



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

COUNTY:

COUNTY OF SAN BERNARDINO

By: \_\_\_\_\_  
James Ramos, Chairman Board of  
Supervisors

Dated: \_\_\_\_\_

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

LAURA H. WELCH Clerk of the Board of  
Supervisors

By: \_\_\_\_\_  
Deputy

Dated: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

Dated: \_\_\_\_\_

CITY:

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

By: \_\_\_\_\_  
Barb Stanton, Mayor

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

Dated: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Town Attorney

Dated: \_\_\_\_\_

# Exhibit A - Plan Boundaries Map

