

CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT

Agenda Item No. 13
March 25, 2008

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: City Manager's Office
Dave Kiff, Assistant City Manager
949/644-3002 or dkiff@city.newport-beach.ca.us

SUBJECT: **Planning Memorandum of Understanding with the County of Orange –
Three Pending Projects in West Santa Ana Heights**

ISSUE:

How should three pending development projects in West Santa Ana Heights be addressed in light of the January 1, 2008 annexation of West Santa Ana Heights?

RECOMMENDATION:

Authorize the Mayor to execute a Memorandum of Understanding (MOU) between the City and the County of Orange in substantially similar form to the attached MOU regarding planning and building services for three pending development projects in West Santa Ana Heights.

DISCUSSION:

Background: State law (the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 [Government Code §56000 *et seq.*]) governs the way cities, counties, and special districts address boundary issues like incorporations, annexations, detachments, changes in "spheres of influence" ("SOIs"), mergers and consolidations, and combinations of these actions called "reorganizations." Readers can access the Act at www.leginfo.ca.gov. Boundaries for school districts are not set via this Act -- generally, county departments of education follow the California Education Code to set school district boundaries.

The Act describes the membership and role of the Local Agency Formation Commission (LAFCO) in each county. Orange County LAFCO, a seven-member body that meets monthly in Santa Ana, addresses local government boundary changes for our region (www.oclafco.ca.gov).

Newport Beach and Orange County LAFCO have followed the Act to annex the following territory to Newport Beach in recent years:

- The Newport Coast (on January 1, 2002);
- Eastern Santa Ana Heights (on July 1, 2003);
- Bay Knolls (also on July 1, 2003).
- West Santa Ana Heights (January 1, 2008)

On February 14, 2006, the City Council adopted a Resolution of Application to direct staff to work with LAFCO to annex West Santa Ana Heights. On July 11th, 2007, the Orange County

LAFCO approved the City's application to annex West SAH. The annexation took effect on January 1, 2008.

At least three significant development projects were underway with the County of Orange's planning department when the annexation occurred. These projects, which are consistent with the general plan for the WSAH area, are as follows:

1 – Fairway Villas

Location: 20122 to 20162 Santa Ana Avenue

Project Description: Would convert 32 existing apartments to condominiums. This was approved by the County of Orange's Planning Commission on December 5, 2007. It has a Tentative Tract Map number assigned, but no permits issued.

2 – Mesa-Orchard (Waterpointe) Single Family Detached Homes

Location: 1572 Orchard Drive

Project Description: Would develop 32 detached single family homes on 2.24 acres by demolishing 33 apartment units. This project has multiple approvals, including issued Building Permits. A Final Map is not yet recorded.

3 – Hernandez Condominiums

Location: 20362 Santa Ana Avenue

Project Description: Would develop 19 condominiums by converting a convalescent hospital that sits in two buildings on the site. Project has multiple approvals, including a Use Permit/Site Plan, a demolition permit, and residential tract building permits. This Project is nearing completion.

The project proponents would like to continue processing these projects with the County until such time as certificates of occupancy are issued for the projects. At that time, all governance services, including planning and building, would be transferred over to the City as long as the plans for these projects are transferred as well.

The process sought is similar to a process that the City and County agreed to in 2001 when the Newport Coast was about to be annexed. A detailed Cooperative Agreement at that time directed that Newport Coast properties continue being processed through the County until such time that a "Planning Area" was built-out and that the building plans for the same Planning Area were transferred to the City.

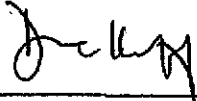
The City's Building Director, Jay Elbetta, believes that a more appropriate process would be to create an agreement that provides that the City take over jurisdiction on each project when each project gets its Building Permits issued. In this manner, the City can be assured that the projects are built to specifications and permits. Mr. Elbetta has seen enough examples in East Santa Ana Heights and in the Newport Coast whereby County inspectors did not appropriately inspect properties that he believes, with the remainder of staff concurring, that this is the way to proceed with two of the three properties (except for the Hernandez Condos, which are nearing completion – this project would stay with the County until final occupancy).

The draft MOU is presented as Attachment A to this Staff Report. A letter sent to the City in early January 2008 from County Planning Director Tim Neely appropriately describes the Projects and includes graphics.

Environmental Review: The Council's action to approve the MOU is statutorially exempt under CEQA ("Ministerial Projects" – CEQA Guidelines Section 15268).

Public Notice: This agenda item may be noticed according to the Brown Act (72 hours in advance of the public meeting at which the City Council considers the item).

Submitted by:



Dave Kiff
Assistant City Manager

Attachments: A – Draft MOU
 B – Letter of January 2, 2008 from Tim Neely (County of Orange)

**MEMORANDUM OF UNDERSTANDING (MOU)
REGARDING
WEST SANTA ANA HEIGHTS REORGANIZATION AREA
PERMIT PROCESSING**

THIS MEMORANDUM OF UNDERSTANDING REGARDING WEST SANTA ANA HEIGHTS REORGANIZATION AREA PERMIT PROCESSING ("MOU"), dated _____, 2008 for purposes of identification, between the COUNTY OF ORANGE ("County") and the CITY OF NEWPORT BEACH ("City") is based on following:

RECITALS

WHEREAS, the City has just annexed approximately 150 acres of unincorporated land commonly known as the West Santa Ana Heights Reorganization to the City of Newport Beach. Within this annexed area are three pending projects that have been filed with and have various entitlement approvals granted by the County (being the Fairway Villas Project, Mesa Orchard Project, and Hernandez Condo Project) and such are described in *Exhibit A*, attached hereto and incorporated herein ("Projects"). The Projects are located on three separate parcels or sites described in *Exhibit B* and depicted in *Exhibit C1-3*, ("Properties"). The Properties are owned by three separate and independent parties or entities ("Owners"). Before the annexation process was complete, various land use entitlement applications were filed with the County, thereby creating an uncertainty as to whether the City or County Land Use Regulations apply to those pending Projects.

WHEREAS, an unanticipated change in Land Use Regulations may ruin reasonable expectations, and undermine the existing economic factors that had prompted owners to acquire properties with a desire to upgrade and improve such, thereby causing undue hardships and leading to unfinished projects and blighting conditions. Certainty as to the timing of the application of the City Land Use Regulations to an annexed site avoids public confusion and a waste of public planning staff resources. An equitable and fair setting of the date or timing for the application of the City Land Use Regulations to pending County land use entitlement processes promotes economic investment and avoids blighting conditions. Therefore, the City and County desire to set forth a reasonable, equitable and fair arrangement for the application of the City Land Use Regulations to the Projects in the area annexed and for the continued processing of the Projects.

WHEREAS, for the Fairway Villas Project and the Mesa Orchard Project, the City will assume the provision of Land Use Authority for each of the Properties when the corresponding Project which is the subject of the pending application has had its plans checked and been issued a Building Permit by the County or the currently pending application is withdrawn or abandoned by the applicant, whichever is sooner. For the

Hernandez Condo Project, the County will retain Land Use Authority up to and including issuance of the final Certificate of Occupancy.

WHEREAS, City and County are public entities possessing the common power to review and approve applications for administrative and ministerial permits for development, including subdivision maps, conditional use permits, grading permits and building permits, and other approvals related to the development of real property. The City and County also have the common power to accept dedications, impose exactions, and to develop and maintain recreational and public facilities pursuant to provisions of State and/or local law. Government Code Sections 51300, *et seq.*, authorize a county to contract with a city for the performance of municipal functions common to both agencies by designated county officers and employees. This Agreement fully complies with all State statutory and constitutional provisions related to the transfer of municipal functions from a city to a county.

WHEREAS, this Agreement achieves the objectives of the Parties, such as the protection of property rights with regard to land use regulation for Projects pending in County land use entitlement processes. This Agreement also provides a vehicle for ensuring that all conditions to development are satisfied, and that any subsequent proposed modification to an individual Development Approval or Development Plan shall not impair or affect the right of the Owner of that corresponding Property to develop the Project to the fullest extent permitted .

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the County and City agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, or all letters capitalized, when used in the Agreement. The defined terms include the following:

1.1.1 "*Agreement*" means this MOU.

1.1.2 "*City*" means the City of Newport Beach.

1.1.3 "*Owners*" means those owners of, and where appropriate in context, their respective successors in interest to, the three listed Properties as follows:

- a. 20122 - 20162 Santa Ana Avenue (Fairway Villas Project) owned by FV Santa Ana, LLC;
- b. 1572 Orchard Drive (Mesa Orchard Project) owned by Mesa Orchard Associates, LLC; and
- c. 20362 Santa Ana Avenue (Hernandez Condo Project) owned by Isabel and Julia Hernandez .

1.1.4 "*County*" means the County of Orange, a political subdivision of the State of California.

1.1.5 "*Development*" whether or not capitalized means the improvement of the Properties for the purposes of completing the structures and improvements on the Properties and for the uses contemplated by the Development Approvals for the Projects. The term "*Development*" includes any necessary tentative and final subdivision map, condominium plan, a use of or conversion to a new use contemplated in a pending application for the Property, grading, construction of any infrastructure and public facilities related to a Project whether located within or outside the subject Property, construction of on site buildings, or repairs or improvements to any existing building or other structure, installation of landscaping and parking facilities, and the occupancy of all buildings on a Property. The term "*Development*" does not mean any planning, building or grading activity after an individual Project is Fully Improved.

1.1.6 "*Development Approvals*" means all use and development permits, subdivision maps, licenses, consents, rights and development privileges, grading permits, building or other permits, agreements and other actions that have been approved or granted by the County for the Projects. The term "*Development Approvals*" also includes all subsequent land use, grading and building approvals or actions that are necessary for the subdivision, development and construction of the Projects before the assumption of Land Use Authority by the City over the Properties, which is to occur for the corresponding specified Property after the individual Project on that Property is Fully Improved. "*Development Approvals*" also includes any modification or amendment of those actions before the assumption of Land Use Authority by the City over a Property.

1.1.7 "*Development Plans*" means the contemplated uses, designs, building elevations, architecture, plans, drawings, densities, building specifications, parking and site coverage ratios, maps and other aspects necessary for Development of the Properties for the

described Project, as based on the County's Land Use Regulations and as conditioned or contained in, and consistent, with the Development Approvals.

- 1.1.8 "*Fully Improved*" means that the County, on behalf of the City, has issued certificates of use and occupancy (or similar evidence that all work in the structures have received the final or all necessary inspections and fully comply with all building codes and other laws and there is no further condition to occupancy) for the residential dwelling use and the sale of condominium ownership(s) units pursuant to the Development Approvals and Development Plan.
- 1.1.9 "Land Use Authority" means the power and authority to accept applications for, process, review, approve, conditionally approve, modify, amend and/or disapprove any and all land use entitlements, building permits or the Development Approvals. "Land Use Authority" also includes the authority and right to inspect any construction work and improvement as normally conducted by a city to determine compliance with any development approval, and to issue a final clearance or certificate of occupancy.
- 1.1.10 "*Land Use Regulations*" means all ordinances, resolutions, codes, rules, regulations and official policies governing Development, notices to, rights of and the relocation of tenants, project phasing and the use of the Properties pursuant to the Development Approvals, the approved Development Plan, and as contemplated for the completion of the Project. The term "*Land Use Regulations*" includes ordinances, resolutions, rules, regulations and official policies governing or related to the permitted use of land, the density or intensity of use, the needed parking, patio/open space and yard requirements, the maximum height and size of proposed buildings, the conversion of apartments to condominiums, the subdivision requirements, all of the adopted Building Codes, the inclusion of affordable housing units, reservation or dedication of land for public purposes, exactions, and the design, improvement and construction standards and specifications applicable to the Development of the Properties.
- 1.1.11 "*Projects*" means the full Development of each Property as described in *Exhibit A* and consistent with the Development Approvals and approved Development Plans.
- 1.1.12 "*Properties*" means the real Properties described in *Exhibit A* and shown on *Exhibit B* to this Agreement.

1.1.13 "*Upon Annexation*" means the date upon which the West Santa Ana Heights Reorganization or annexation to the City is final and effective, in this situation January 1, 2008.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit A – Projects, existing Development Approvals, and Legal Description of the Properties.

Exhibit B – Map of the Properties.

1.3 Construction. The word "include" or any form of the word "include" shall be construed and interpreted to add the phrase "without limitation."

2. OBJECTIVES AND INTENT

2.1 Objectives. The objectives of this Agreement are to:

2.1.1 Ensure that, following annexation of the Properties to the City, the Properties are improved and developed in substantial compliance with and to the full extent permitted by the Development Approvals and any approved Development Plans for the Projects.

2.1.2 Ensure that development of the Properties proceeds in a manner that is reasonable, equitable and fair to the Owners and preserves the public benefits associated with the Development Approvals and any approved Development Plans.

2.1.3 Effect a logical timing of the application of County and then City Land Use Regulations to the pending Projects already filed and active with the County, and to coordinate the transfer of Land Use Authority from the County to the City due to the annexation, with the City to assume Land Use Authority over each Property when the Project on that Property either receives a Building Permit (with regard to the Fairway Villas and Mesa Mesa Orchard Projects), receives final occupancy (with regard to the Hernandez Condo Project), or any currently pending application is withdrawn or abandoned by the applicant, whichever is sooner.

2.1.4 To provide a process for the transfer of documents necessary to City's assumption of Land Use Authority.

2.2. Intent. The Parties, through this Agreement, intend that, for the limited term of this Agreement:

2.2.1 The County have and exercise after the annexation of the Properties the same power and control over the administration, approval and implementation of certain Development Approvals and the County Land Use Regulations over the Fairway Villas and Mesa Mesa Orchard Projects as the County exercised before annexation, up and until the point at which the County issues a Building Permit for each property. The Parties also intend that the City will assume Land Use Authority over the Fairway Villas and Mesa Mesa Orchard Projects immediately after the County issues a Building Permit or the currently pending application is withdrawn or abandoned by the applicant, whichever is sooner.

2.2.2. The County have and exercise after the annexation of the Properties the same power and control over the administration, approval and implementation of certain Development Approvals and the County Land Use Regulations over the Hernandez Condo Project as the County exercised before annexation, up and until the point at which the County issues a Certificate of Occupancy for this Project. The Parties also intend that the City will assume Land Use Authority over the Hernandez Condo Project immediately after the County issues a Building Permit or the currently pending application is withdrawn or abandoned by the applicant, whichever is sooner.

2.2.3. The Parties also intend that the County shall exercise Land Use Authority and other authority in substantial conformance with the Development Approvals and the County's Land Use Regulations as in effect as of the Effective Date of this Agreement. This Agreement shall be administered, implemented, construed and interpreted in a manner that is consistent with the Development Approvals, any approved Development Plans and the "Objectives" and "Intent" provisions of this Agreement (Sections 2.1 and 2.2).

3. AUTHORITY TRANSFERRED TO THE COUNTY

3.1 Transfer of Land Use Authority.

3.1.1 Transfer of Authority. The City transfers to the County, Upon Annexation, the Land Use Authority over the Properties and the Projects and the County shall apply the County's Land Use

Regulations with respect to the Projects. This Land Use Authority includes the review and approval of all plans and specifications for development and the issuance of all grading and building permits. For the Fairway Villas and Mesa Orchard Projects only, after grading and building permits are issued, all inspections of structures and improvements, and the enforcement of ordinances relating to construction, grading, erosion control and site cleanup and occupancy shall be performed by City.

3.1.2 Conditions. The County shall exercise Land Use Authority in substantial compliance with: (i) the provisions of the Development Approvals and any approved Development Plans; (ii) conditions imposed by the County and any State or a local regulatory agency; and (iii) legally enforceable restrictions and limitations on development of the Properties.

4. CITY COMMITMENTS, CONSIDERATION.

4.1 City Commitments. City, in exercising any authority over the Properties, shall fully comply with, and conform to, the provisions of the Development Approvals and any approved Development Plans. City shall not take any action that could prevent, interfere with, or delay development of the Properties to the full extent permitted by the Development Approvals and any approved Development Plans.

4.2 Consideration.

4.2.1 Fees Associated with Development Processing. County shall be entitled to charge, receive and retain all customary fees related to work that County will perform. City shall be entitled to charge, receive and retain all customary fees related to work that City will perform..

4.2.2 Exactions. City and County shall allocate exactions and other impact fees as shown in Exhibit A.

4.3 County Officers. The County Executive Officer ("CEO") shall designate the County officers, employees and contractors that are to perform the services contemplated by, and exercise the authority transferred pursuant to, this Agreement. The Parties contemplate that the CEO will designate the same officers, employees and contractors that have, prior to the effective date of this Agreement, been performing services or exercising powers related to Land Use Authority.

5. **COOPERATION.**

- 5.1 **Cooperation.** City shall provide any assistance requested by County with respect to the implementation and administration of the Development Approvals, any approved Development Plans and this Agreement. City and County shall cooperate with one another relative to any action necessary to ensure that County retains the authority to perform the functions required by, or to achieve the objectives of, this Agreement.
- 5.2 **Monitoring.** City and County shall also cooperate with one another to facilitate City's right to monitor implementation of any approved Development Plans and the conditions to the Development of the Properties.
- 5.3 **Records.** The County and City shall use their best efforts to transfer property documents promptly so as to minimize delays in development of the Projects.

6. **MISCELLANEOUS PROVISIONS**

- 6.1 **Term of Agreement.** This Agreement shall continue in full force and effect until each Project, which is the subject of the pending application, has been issued its Building Permit by the County or until the currently pending application is withdrawn or abandoned by the applicant, whichever is sooner. In no event shall this Agreement continue more than a period of five (5) years, unless the conditions for expiration specified in Section 51302 of the Government Code are satisfied.
- 6.2 **Entire Agreement.** This Agreement sets forth and contains the entire understanding and agreement of the Parties, and all oral or written representations, understandings or agreements are expressly stated in this Agreement. No testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceeding or any kind or nature to interpret or determine the terms or conditions of this Agreement.
- 6.3 **Severability.** If any term, provision, covenant, or condition of this Agreement is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this Agreement shall nonetheless remain in full force and effect as to all remaining terms, provisions, covenants, and conditions.
- 6.4 **Interpretation and Governing Law.** This Agreement and any related dispute shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed according to its fair

language and common meaning to achieve the objectives and purposes of the Parties. The rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement since all Parties have been represented by counsel.

- 6.5. Indemnification.** City shall defend, indemnify, and hold harmless the County and its officers, employees and agents with respect to any claim, damage, loss, cause of action, lawsuit or proceeding that arises out of or is in any way related to any act or omission by City or its officers, employees or agents in the performance or non-performance of any duty or obligation pursuant to this Agreement. County shall defend, indemnify, and hold harmless the City and its officers, employees and agents with respect to any claim, damage, loss, cause of action, lawsuit or proceeding that arises out of or is in any way related to any act or omission by County or its officers, employees, or agents in the performance or non-performance of any duty or obligation pursuant to this Agreement.
- 6.6 Section Headings.** All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 6.7 Singular and Plural.** As used herein, the singular of any word includes the plural.
- 6.8 Waiver.** The failure of a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure of a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of that Party's right to demand and require, at any time, the other Party's strict compliance with the terms of this Agreement.
- 6.9 Successors in Interest.** The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.
- 6.10 Specific Performance.** The Parties acknowledge that monetary damages would be inadequate to remedy any breach of this Agreement by either Party. Accordingly, the Parties agree that any breach of this Agreement shall entitle the non-breaching Party to file an action for specific performance in a court of competent jurisdiction. In no event shall either Party be liable for monetary damages in the event of a breach of this Agreement.

- 6.11 Counterparts.** This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same affect as if all of the Parties had executed the same instrument.
- 6.12 Jurisdiction and Venue.** Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California. The Parties waive all provisions of law providing for the filing, removal or change or venue to any other court.
- 6.13 Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated by this Agreement to achieve the objectives of this Agreement. Upon the request of either Party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record instruments and writing. The Parties shall also take any action as may be reasonably necessary under the terms of this Agreement to carry out the intent and to achieve the objectives of this Agreement.
- 6.14 Amendments in Writing/Cooperation.** This Agreement may be amended only by written consent of the Parties specifically approving the amendment. The Parties shall cooperate in good faith with respect to any amendment proposed in order to clarify that intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters.
- 6.15 Authority to Execute.** Any person or persons executing this Agreement on behalf of the City and County warrants and represents that he/she has the authority to execute this Agreement on behalf of his/her agency and to bind that Agency to the performance of its obligations pursuant to this Agreement.
- 6.16 Notice.** All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and shall be deemed served when delivered personally or on the third business day after deposit in the United States mail, postage prepaid, first class mail, addressed as follows:

All notices, demands, requests or approvals to CITY shall be addressed to:

City of Newport Beach
Building Department
3300 Newport Boulevard
PO Box 1768

Newport Beach, California 92658-8915

All notices, demands, requests or approvals to COUNTY shall be addressed to:

County of Orange
Resources and Development Management Department
Director of Planning and Development Services
Post Office Box 4048
Santa Ana, California 92702-4048

6.17 Effective Date. This Agreement shall become effective as of the date both the City and County have signed this Agreement.

6.18 Third Party Beneficiaries. The City and County agree that there are no third party beneficiaries to this Agreement. By executing this Agreement the County and City do not intend to make the Owners or any other person or entity a third party beneficiary to this Agreement.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

COUNTY:

By: _____
Chair, Board of Supervisors
County of Orange, State of California

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

By: _____
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By: _____
County Counsel

By: _____

Deputy

CITY:

By: _____
Mayor of the City of Newport Beach

ATTEST:

By: _____
City Clerk of the City of Newport Beach

APPROVED AS TO FORM:

By: _____
City Attorney for the City of Newport Beach

Exhibit A

PROJECTS, EXISTING DEVELOPMENT APPROVALS, FEE OBLIGATIONS AND LEGAL DESCRIPTIONS

1. **20162 Santa Ana Avenue (Fairway Villas).** Project is to allow the conversion of 32 residential apartments in nine buildings now on the Property into 32 "For Sale" residential condominiums, including the subdivision map and condominium plan, creation of common areas and associated facilities, building improvements and repairs, CC&Rs and other governing documents necessary for the sale of such 32 residential condominiums.
 - a. **Existing County Entitlements.** County Use Permit no. PA050063. Tentative Tract Map no. 16938 has been assigned to this Project.
 - b. **Legal Description of this Property.**
 - c. **Exactions Charged or to be Charged as a Result of this Project:**
 - Local park fees have been waived because the 32 condominiums are considered equal to the 32 apartments.
 - Road fees shall be paid to the City.
 - School fees shall be paid to the Newport-Mesa Unified School District.

2. **1572 Orchard Drive (Mesa Orchard Project)** Project is a planned development to create 32 residential building sites on the 2.24-acre Property after demolishing 33 apartment units.
 - a. **Existing County Entitlements.** County Use Permit no. PA050047 with Changed Plan CP060014; Tentative Tract Map no. 16924; Final Map no. FM16924; Demolition Permit no. DM070093-105; Grading Permit no. GB060165; and Residential Tract Building Permits no. RT070044-46, RT070099-127, PB070337 (plumbing), and LS070009 (landscape).
 - b. **Legal Description of this Property.**
 - c. **Exactions Charged or to be Charged as a Result of this Project:**
 - Local park fees have been waived because the 32 homes are considered replacement units for 33 demolished apartments.
 - Road fees shall be paid to the County.
 - School fees shall be paid to the Newport-Mesa Unified School District.

3. **20362 Santa Ana Avenue (Hernandez Condo Project).** Project is a planned development to create 19 new residential condominiums to replace a convalescent hospital in two buildings on the Property.
 - a. **Existing County Entitlements.** County Use Permit no. PA070014; Site Plan Review; Tentative Tract Map no. _____; Demolition Permit no.

DM070092; Grading Permit no. GB070100; and Residential Tract Building Permits no. RT070176-177, PB070416 (plumbing), and LS070020 (landscape).

b. **Legal Description of this Property.**

c. **Exactions Charged or to be Charged as a Result of this Project:**

- Local park fees shall be paid to the County.
- Road fees shall be paid to the County.
- School fees shall be paid to the Newport-Mesa Unified School District.

Exhibit B

PROPERTIES AND PROJECTS SITE MAP



COUNTY OF ORANGE

RESOURCES & DEVELOPMENT MANAGEMENT DEPARTMENT

Bryan Speegle, Director
300 N. Flower Street
Santa Ana, CA

P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 834-2300
Fax: (714) 834-5188

January 2, 2008

David Kiff, Assistant City Manager
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92633

Subject: West Santa Ana Heights Annexation Permitting Authority

Dear Mr. Kiff, *Dave*

Effective January 1, 2008, the City of Newport Beach annexed the area known as West Santa Ana Heights. By such action, the City has assumed jurisdiction for all discretionary and ministerial land use decisions for private development projects located within the annexed area. This jurisdiction includes the authority to issue grading permits, building permits, subdivision maps and to determine compliance with all outstanding permit conditions-of-approval. As we have discussed, there are three projects located within the annexation area that are in the middle of the entitlement process. Because these projects have already received discretionary permits through the County in accordance with County standards and procedures, it may be difficult for the City to now assume jurisdiction for the remaining discretionary actions and ministerial permits needed to complete the projects.

The following is a summary list of these pending projects. More detailed information about the projects is attached.

<u>Project</u>	<u>Description</u>	<u>Address</u>
Fairway Villas	32 unit condo conversion	20122 - 20162 Santa Ana Ave.
Mesa Orchard	32 detached single family	1572 Orchard Dr.
Hernandez Condos	19 condominium units	20362 Santa Ana Ave.

Current Status of Projects

The Fairway Villas project has been granted a use permit authorizing the conversion to condominium status. A tentative tract number (16938) has been issued by the County Surveyor for this project as a placeholder. However, this tract map has not yet been filed with the County for formal consideration and would require a discretionary action. The use permit authorizing the condo conversion has a number of conditions-of-approval that need to be satisfied and approved administratively. No building permits have been filed for or issued.

The Mesa Orchard project received approval of both a use permit to allow construction of a planned development as well Tentative Tract 16924 to create 32 building sites. Although the

tentative tract map has been approved by the County, it has not yet been recorded. Furthermore, a number of conditions-of-approval must still be satisfied prior to recordation of the map. Among those conditions are certain bonding and easement dedication requirements. A precise grading permit has been issued for this project but no inspections have been performed. Residential building permit applications have been filed for plan check but no building permits have been issued.

The Hernandez Condo project has received a use permit / site plan approval for the establishment of the condominium project. Building and grading permits have been issued and construction has commenced. The only actions needed to complete this project are intermediate and final inspections.

Conclusions

To minimize confusion, it may be in the best interest of all parties for the County to continue processing all further permits and approvals needed to complete these projects. Since no additional discretionary actions are needed to complete the Hernandez project, and the County is already administering open building and grading permits, it is recommended that the City authorize the County to complete its inspections of these permits.

With respect to the other projects that still require discretionary actions, County Counsel has advised that a Memorandum of Understanding between the City and the County would be necessary to provide the County with the authority to see these projects through to completion on behalf of the City. Such an agreement could be a simplified version of the Newport Coast processing agreement now in effect between the City and County. The agreement should stipulate that the County is to be granted authority to complete all actions and permits for these projects up to and including issuance of certificates of use and occupancy. At that point, the County authority to act on behalf of the City would terminate and all files and records would be transferred to the City. The City would be responsible for any code enforcement matters once the County permits have been finalized. The agreement should also clarify that these projects and their associated public improvements are to be constructed in accordance with County standards unless otherwise stipulated.

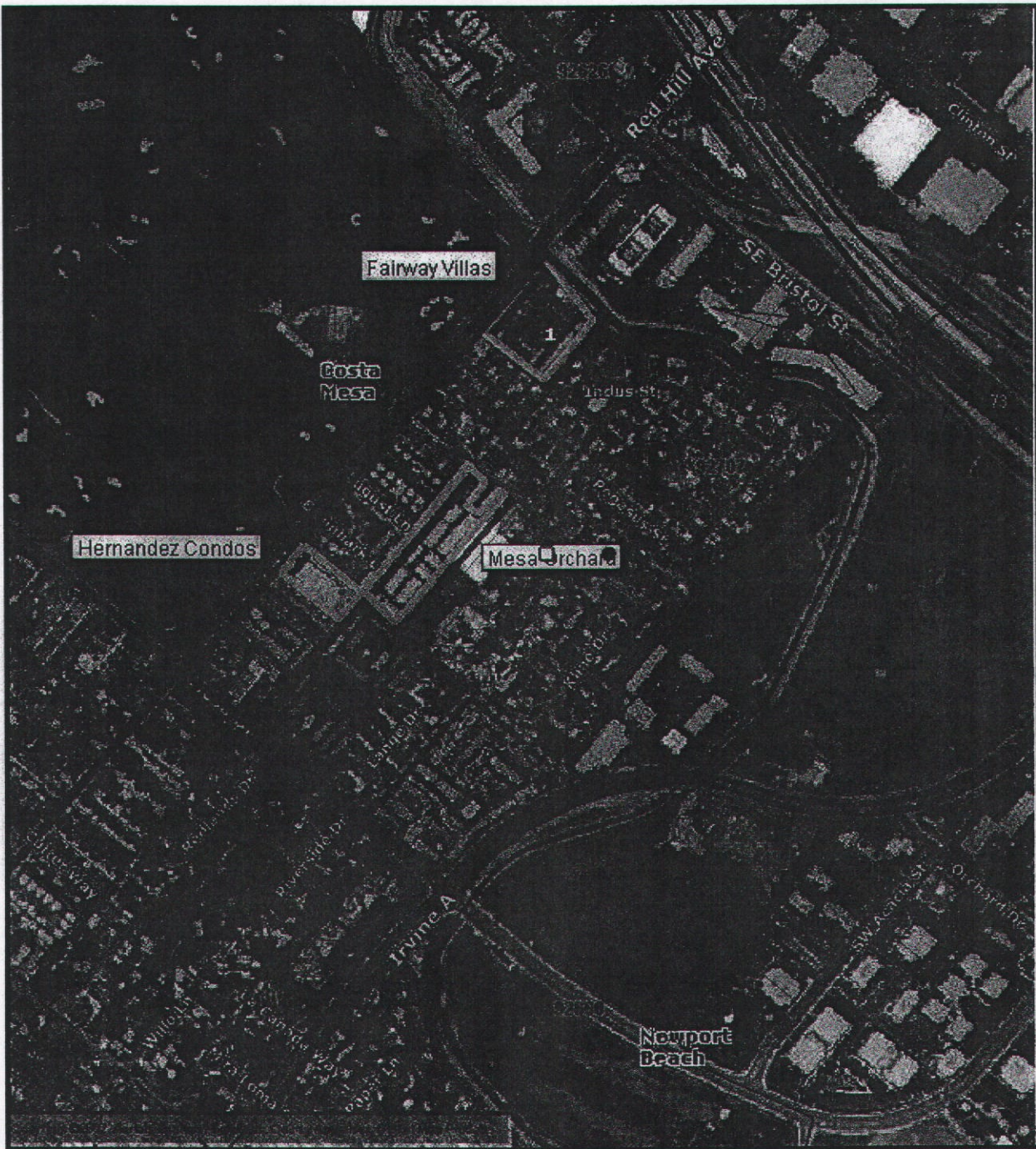
If you agree with the strategy outlined for the Hernandez project, please provide a written confirmation for our records and we will continue with our inspection process. With respect to an MOU for the other projects, please let me know if you would like to proceed with such an agreement. If you have questions regarding the County's position or would like assistance in preparing an MOU, please call me at (714) 834-2552.

Sincerely,



Tim Neely, Director
Planning and Development Services

cc: Supervisor Moorlach
Tom Mauk, CEO
Alisa Drakodaidis, Deputy CEO
Nick Chrisos, County Counsel
Bryan Speegle, Director, RDMD
Fairway Villas Santa Ana, LLC
Mesa Orchard Associates, LLC
Isabel and Julia Hernandez
Homer Bludau, NB City Manager
David Lepo, NB Planning Director



Santa Ana Heights Annexation Area

January 1, 2008



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Fairway Villas

119-361-25, 20122-20162 Santa Ana Ave



200ft

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FAIRWAY VILLAS PROJECT

Address: 20122 and 20162 Santa Ana Avenue

County Permits:

Use Permit (PA050063) to convert an existing 32 unit apartment community to condominium status was approved by the Orange County Planning Commission on December 5, 2007.

Tentative Tract # 16938 has been assigned to this project by the Surveyor, but the map has not yet been filed with the County for review by the Subdivision Committee, nor has it been filed for "First Check" with the Surveyor.



Mesa Orchard

439-241-16, 1572 Orchard Dr



250ft

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**MESA ORCHARD PROJECT
(AKA WATERPOINTE DEVELOPMENT PROJECT)**

1572 Orchard Dr.

Site: 97,600 sq feet (2.24 acres)

Owner: Mesa Orchard Associates LLC

County Permits:

Use Permit (PA050047) for a Planned Development Overlay of 32 single family dwellings in the RMF District of the Santa Ana Heights Specific Plan was denied by the Orange County Planning Commission on February 9, 2006. The Planning Commission denial was appealed by the applicant on February 21, 2006 and the project was subsequently approved by the Orange County Board of Supervisors on April 25, 2006.

Changed Plan (CP060014) to (PA050047) involving changes to plans and lot layout was approved administratively on May 26, 2006.

(Note that an additional Changed Plan is now required for changes to plan elevations. The current applicant, Garrett Calacci, was notified of this requirement on September 14, 2007, and a CP has not yet been submitted.)

Tentative tract 16924 was filed on June 14, 2006 and approved by the County Subdivision Committee on July 25, 2006.

Demolition Permits (DM070093-105) to remove the existing apartment buildings on the site were issued September 4, 2007. These permits have not yet been closed and finalized as of December 31, 2007.

Residential Tract building permits (RT070044-46) for three homes on the site were filed on April 24, 2007.

Residential Tract building permits (RT070099-127) for the remaining 29 homes on the site were filed June 5, 2007.

Landscape Plan (LS070009) was approved August 21, 2007.

Final Map (FM16924) was submitted for recordation on November 27, 2007.

Plumbing Permit (PB070337) for a private sewer system for the 32 SFDs was filed on 4/18/07

MESA ORCHARD PROJECT (continued)
(AKA WATERPOINTE DEVELOPMENT PROJECT)

Grading Plan (GB060165) for grading the entire site was issued November 28, 2007.

Outstanding Issues:

The Final Map (FM16924) has not been recorded and there are dedications to the County of Orange for an ingress and egress easement over Lot A (the private street through the development) for emergency and security vehicle purposes, and an easement dedicated to the County of Orange Sanitary District for sewer and trash collection purposes. These easements should now be offered to and accepted by the City.

An avigation easement has been added to the map and the dedication of this easement is proposed to go to the County of Orange. Can or should the County of Orange accept this easement?

There are easement dedications to the Irvine Ranch Water District that should not be an issue.

Local Park fees will be waived by the County since the 32 new homes are considered "replacement units" for the 33 demolished apartments as outlined in County Ordinance 3910 that amended the Local Park Code to exempt preexisting building sites from payment of local park fees when a dwelling unit is replaced.

Road fees are to be paid to the County.

School fees are to be paid to the school district and the developer must then supply the County with a Certificate of Compliance.

An additional Changed Plan to (PA050047) is required to document the proposed changes to the plan type elevations shown in the Master Plan building permit submittals (RT070044-46). The Changed Plan was requested of the applicant in September but has not been submitted.



Hernandez Condos

439-241-09, 20362 Santa Ana Ave



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HERNANDEZ CONDOMINIUMS PROJECT

Address: 20362 Santa Ana Avenue

County Permits:

Use Permit/Site Plan (PA070014) for 19 condominiums units in two buildings to replace a convalescent hospital was approved by the Orange County Zoning Administrator on June 14, 2007.

Demolition Permit (DM070092) to demolish the convalescent hospital was issued August 21, 2007 and was closed / finalized on December 17, 2007.

Grading Permit (GB070100) was issued November 8, 2007.

Plumbing Permit (PB070416) to construct a private sanitary sewer for the 19 condo units was issued November 19, 2007.

Landscape Plan (LS070020) was approved November 17, 2007.

Residential Tract building permits (RT070176-177) for the two condominium buildings were issued on December 27, 2007.