



CITY COUNCIL AGENDA REPORT

MEETING DATE: MARCH 7, 2006

ITEM NUMBER: _____

SUBJECT: REQUEST TO THE ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION TO INITIATE A SPHERE OF INFLUENCE AMENDMENT RELATIVE TO BANNING RANCH AND TO REACTIVATE THE CITY'S ANNEXATION APPLICATION (CA-01-20) FOR WEST SANTA ANA HEIGHTS.

DATE: FEBRUARY 28, 2006

FROM: DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTATION BY: KIMBERLY BRANDT, AICP, PRINCIPAL PLANNER

FOR FURTHER INFORMATION CONTACT: KIMBERLY BRANDT (714) 754-5604

RECOMMENDATIONS:

1. Mayor Pro Tem Bever and Council Member Foley, members of the Borders Committee, and staff recommend adoption of the attached resolution requesting the Orange County Local Agency Formation Commission (LAFCO) to initiate a sphere of influence amendment for the 357 acres known as Banning Ranch and to reactivate the City's annexation application (CA-01-20) to LAFCO relative to West Santa Ana Heights.
2. Authorize City Manager to process payments for LAFCO application costs in excess of the initial filing fee of \$4,600 up to existing authorization limits (\$25,000) and to report such expenditures in writing to the City Council.

BACKGROUND:

In accordance with City Council's direction, Mayor Pro Tem Bever, Council Member Foley, and staff have been working with the City of Newport Beach regarding the remaining unincorporated County of Orange islands adjacent to the corporate boundaries of both Cities. The meetings between the two Cities have been referred to as the Borders Committee.

A summary of the annexation deliberations between Costa Mesa and Newport Beach is contained in Appendix B. During the deliberations, a key concept that was expressed by Mayor Pro Tem Bever and Council Member Foley is the need for an equitable solution in respect to both Cities' corporate boundaries and spheres of influence. Specifically, if territory is to be removed from Costa Mesa and added to Newport Beach, then an equal amount of Newport Beach territory should be added to Costa Mesa.

Newport Beach City Council representatives have indicated there is not any further need for the Borders Committee to meet. Furthermore, on February 14, 2006, Newport Beach City Council approved a resolution of application to LAFCO to reorganize the territories along their western borders, including the annexation of West Santa Ana Heights, which is currently within the Costa Mesa's sphere of influence.

ANALYSIS:

Newport Beach's action on February 14, 2006 reflects a continuation of the piecemeal annexation of areas that have led both Cities and the County to the current situation. It also invites further conflict over the future annexations of the Santa Ana Country Club and the unincorporated areas south of Mesa Drive to the City of Costa Mesa. Although the latter areas were not included in the Newport Beach City Council action, accounts of the meeting indicated that the Newport Beach City Council would support such changes if proposed by landowners in these areas.

In view of Newport Beach's actions, Mayor Pro Tem Bever, Council Member Foley, and staff recommend that the City request LAFCO to take a comprehensive look at all of the remaining unincorporated areas that are in proximity to Costa Mesa and Newport Beach. To that end, the attached resolution requests a sphere of influence amendment from Newport Beach to Costa Mesa for the area commonly known as Banning Ranch, with the goal of achieving an equitable solution for both Cities. The attached resolution also requests that the City's previous annexation application to LAFCO for West Santa Ana Heights (CA-01-20) be reactivated.

ALTERNATIVES CONSIDERED:

The City Council may adopt the attached resolution or modify the proposed request to LAFCO. Council may also choose not to adopt the proposed resolution.

FISCAL REVIEW:

LAFCO requires an initial fee deposit of \$4,600 to process the sphere of influence amendment application. In addition to the initial filing fee, the City will also be responsible for LAFCO's time & material costs in excess of the \$4,600. It is recommended that the City Manager be authorized to process payments for costs in excess of the initial filing fee up to existing authorization limits (\$25,000) and to report such expenditures in writing to the City Council.

LEGAL REVIEW:

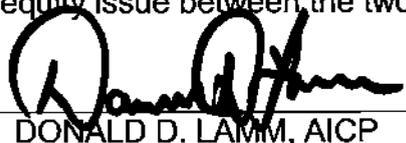
The City Attorney's Office has reviewed the resolution and approved it as to form.

CONCLUSION:

Council adoption of the proposed resolution will allow LAFCO to comprehensively address the territory issues between Costa Mesa and Newport Beach. Furthermore, this comprehensive approach will address the equity issue between the two Cities.



ALLAN ROEDER
City Manager



DONALD D. LAMM, AICP
Deputy City-Mgr. – Dev. Svs. Director



KIMBERLY BRANDT, AICP
Principal Planner

DISTRIBUTION: City Manager
City Attorney
Deputy City Manager – Dev. Svs. Dir.
Public Services Director
City Clerk (2)
Staff (4)
File (2)

Local Agency Formation Commission Executive Officer Joyce Crosthwaite
City of Newport Beach City Manager Homer Bludeau
City of Newport Beach Assistant City Manager David Kiff
County of Orange Supervisor James Silva
County of Orange Chief Executive Office Thomas G. Mauk

ATTACHMENTS: 1 Resolution
2 City Council memorandum dated February 10, 2006

| | | |
|--------------------------|--------------|-----------------|
| File: 030706BanningRanch | Date: 022306 | Time: 9:45 a.m. |
|--------------------------|--------------|-----------------|

ATTACHMENT 1
DRAFT RESOLUTION

RESOLUTION NO. 06-

A RESOLUTION OF APPLICATION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, REQUESTING THE ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION TO INITIATE PROCEEDINGS FOR A SPHERE OF INFLUENCE AMENDMENT FOR BANNING RANCH, ADJACENT TO COSTA MESA'S WESTERN BORDER AND TO REACTIVATE THE CITY OF COSTA MESA ANNEXATION APPLICATION (CA-01-20) FOR WEST SANTA ANA HEIGHTS.

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the City Council of the City of Costa Mesa desires the Orange County Local Agency Formation Commission to initiate a sphere of influence amendment pursuant to the Cortese-Knox-Herzberg Local Government Reorganization Act of 2000, commencing with California Government Code Section 56000.

WHEREAS, the sphere of influence amendment is for the 357.2 acres known as Banning Ranch that is currently within the City of Newport Beach sphere of influence.

WHEREAS, the notice of intent to adopt this resolution has been given by mail to the affected and interested agencies.

WHEREAS, the principal reasons for the proposed sphere of influence amendment are as follows:

- (a) The primary vehicle transportation access to Banning Ranch is through the City of Costa Mesa's streets and neighborhoods, specifically West 17th and West 19th Streets.
- (b) The City of Costa Mesa's municipal services, including fire and police protection, can be logically extended to Banning Ranch from the City's existing street network and neighborhoods.
- (c) The City of Costa Mesa will ensure adoption of land use planning goals and implementation measures for Banning Ranch that is consistent with the City's current Westside revitalization strategies.

WHEREAS, the City of Newport Beach and the County of Orange would be affected by the proposed sphere of influence amendment.

WHEREAS, the proposed amendment would be subject to the terms and conditions established by the Orange County Local Agency Formation Commission.

WHEREAS, in 2001, the City of Costa Mesa applied to the Local Agency Formation Commission for approval of the annexation of several areas, including West Santa Ana Heights (CA-01-20).

WHEREAS, on September 16, 2002, the Local Agency Formation Commission approved a portion of the City's annexation request (CA-01-20), but excluded West Santa Ana Heights from their approval pending consideration of possible annexation of the area by the City of Newport Beach.

WHEREAS, on February 14, 2006, the City of Newport Beach approved a resolution of application to reorganize territory on its western borders that included the annexation of West Santa Ana Heights to the City of Newport Beach.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COSTA MESA that the Costa Mesa City Council does hereby adopt this resolution of application requesting the Orange County Local Agency Formation Commission to initiate a sphere of influence amendment pursuant to the Cortese-Knox-Herzberg Local Government Reorganization Act of 2000, commencing with California Government Code Section 56000 in respect to Banning Ranch as shown in Exhibit A.

BE IT FURTHER RESOLVED THAT the City of Costa Mesa does hereby request that the Orange County Local Agency Formation Commission reactivate its annexation application (CA-01-20) relative to West Santa Ana Heights.

PASSED AND ADOPTED this 7th day of March 2006.

Allan Mansoor
Mayor, City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF COSTA MESA)

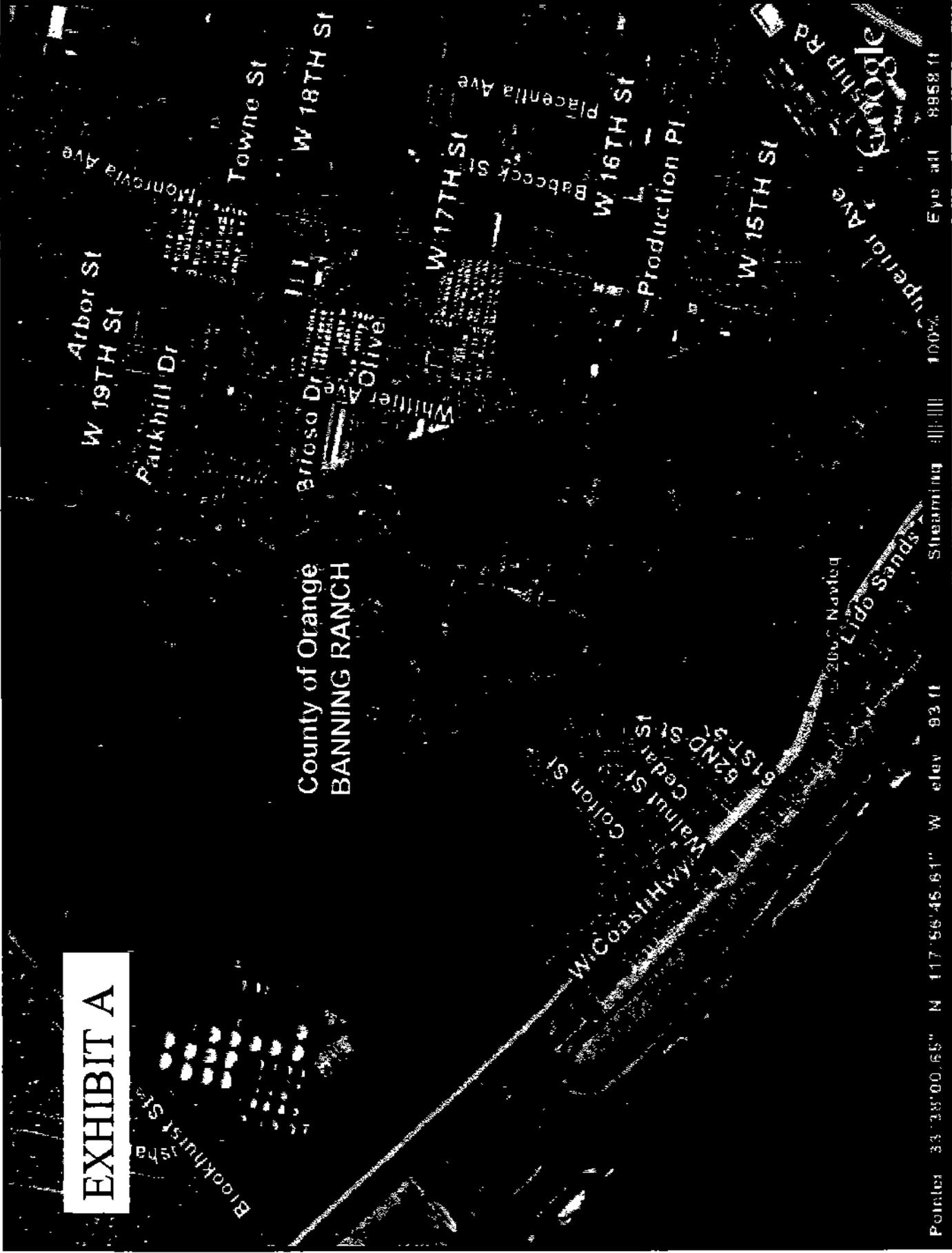
I, Julie Folcik, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certifies that the above and foregoing Resolution No. __ was duly and regularly passed and adopted by said City Council at a regular meeting thereof held on the __ day of _____, 2006.

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this __ day of _____, 2006.

Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa

EXHIBIT A

County of Orange
BANNING RANCH



Pointed 33° 38' 00.65" N 117° 56' 46.81" W elev 93 ft

Streaming

100%

Eye alt 8858 ft

ATTACHMENT 2
CITY COUNCIL MEMORANDUM

**CITY MANAGER'S OFFICE
CITY OF COSTA MESA
INTEROFFICE MEMORANDUM**

TO: City Council
FROM: Allan L. Roeder, City Manager
DATE: February 10, 2006
SUBJECT: ANNEXATION DELIBERATIONS

As you may have noted in this morning's Daily Pilot, the topic of annexations has found its way back into print. In light of pending action by the City of Newport Beach, I thought it timely to provide the full City Council with an update as to where we are at – or better yet, where we aren't.

In accordance with the City Council's direction, Mayor Pro Tem Bever, Council Member Foley and staff have been working on this subject for the better part of the past year. This began with a comprehensive briefing for both Council Members by City staff and staff from the Local Agency Formation Commission (LAFCO) and discussion as to the City's objectives and how those might be achieved? I want to stress that the Council Members took a very global approach to the subject, looking at how we could achieve a comprehensive resolve for both cities.

Out of this discussion, staff prepared the attached materials used by the Council Members in their initial meeting with City Council representatives from the City of Newport Beach (sometimes referred to as the Borders Committee). The following is a very brief summary of each of the attachments:

A. Principles Underlying Discussions with Newport Beach on Annexations

A total of six points were drafted to frame the basis for the City's discussions with Newport Beach. These are foundational statements establishing principles of equity, cost effectiveness to taxpayers, consistency with State law, a comprehensive resolution and the importance of the participation of the County of Orange and LAFCO in the process.

B. Summary/Map of Unincorporated Islands

A series of maps were prepared depicting the various County Unincorporated Islands between the cities of Costa Mesa and Newport Beach. As stated under the "Principles," the maps identify all County areas as part of the comprehensive resolution desired.

Principles Underlying Discussions with Newport Beach on Annexations

1. Any changes/modifications in the existing Sphere of Influence (SOI) should be equitable to both communities. This means any change in the SOI would ultimately result in comparably sized land areas being annexed to each respective community.
2. Any changes/modifications to the SOI must be comprehensive in nature. Annexations should not be piecemealed but result in an overall plan to eliminate all County Islands. In sum, discussions must result in a comprehensive resolution although it is recognized that not all annexations may be processed simultaneously and are still ultimately subject to a majority protest vote.
3. Any changes/modifications to the SOI must result in a plan that is cost efficient for all taxpayers. Creating extended boundaries or non-contiguous boundaries that create inefficient service areas should not be acceptable to either City or the public.
4. Implicit in the discussion is the belief that both Newport Beach and Costa Mesa provide high quality municipal services and that both cities will substantially improve the quality of service to County Unincorporated areas. Parsing about the relative quality and/or quantity of services and representation from each City serves no useful purpose.
5. Whatever accommodations are arrived at by Costa Mesa and Newport Beach must be compliant with State law.
6. A comprehensive resolve to the annexation of County Islands cannot be reached by the two cities but must include the support of the County of Orange and the Local Agency Formation Commission (LAFCO).

CITIES OF COSTA MESA-NEWPORT BEACH BORDERS COMMITTEE

Potential Items of Discussion for November 3, 2005 Meeting:

1. **FIGURE 1:** Retention of existing Sphere of Influence related Annexation Area #7. Costa Mesa is committed to:
 - a. Working with West Santa Ana Heights and the County of Orange/Newport Beach to ensure that their County Redevelopment Development Funds are spent in Santa Ana Heights.
 - b. Negotiating a Municipal Services Agreement with the County of Orange so that Costa Mesa will be able to provide basic services to these areas.
2. **FIGURES 2 and 2A:** Request LAFCO to study West Santa Ana Heights and make recommendations as to its disposition. If LAFCO finds that West Santa Ana Heights should be detached to Newport Beach's Sphere of Influence, then Costa Mesa requests:
 - a. Newport Beach, County of Orange, and LAFCO take official actions that the Santa Ana Country Club, Area South of Mesa Drive, and Annexation Area 5A be retained in Costa Mesa's Sphere of Influence.
 - b. County of Orange enters into a Municipal Services Agreement with Costa Mesa so that Costa Mesa will be able to provide basic services to the remainder of Area #7.
 - c. That Newport Beach provides an equal exchange of its Sphere of Influence to Costa Mesa (Banning Ranch and Newport Terrace).
3. **FIGURE 3:** A variation of #2 is the detachment of West Santa Ana Heights plus a portion of the Area South of Mesa Drive between Mesa and Del Mar.
4. **FIGURES 4-7:** Costa Mesa relinquishes all of Area 7 to Newport Beach with the condition that Newport Beach relinquishes a portion of Banning Ranch, east of Bluff Road and north of W. 16th Street (approximately 100 acres of total 412-acre site) and/or Newport Terrace (39 acres).

Acreage Information:

Santa Ana Country Club- 125 acres

West Santa Ana Heights- 103 acres

Newport Terrace- 39 acres

Banning Ranch- 412 acres

Figure 1

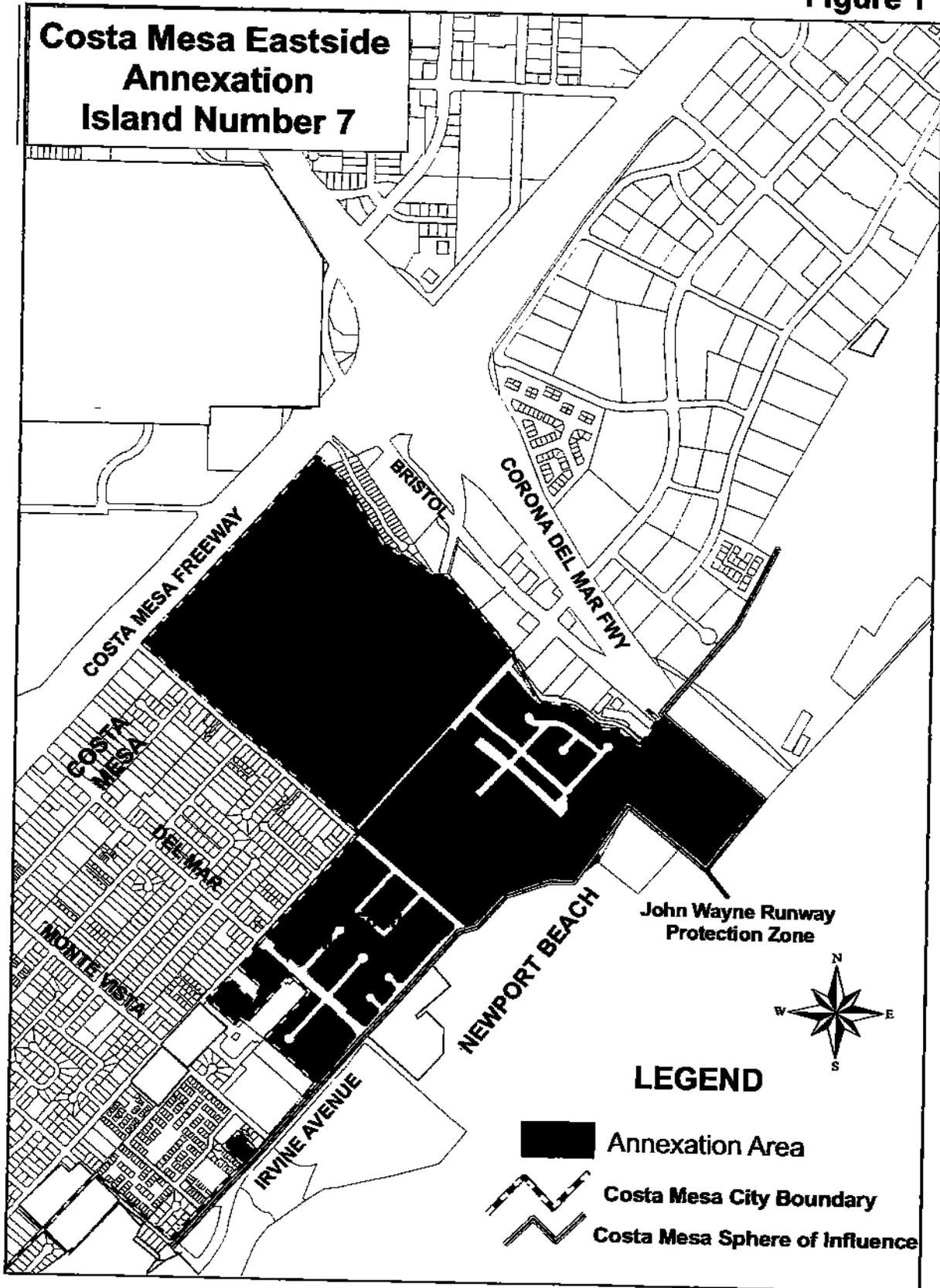


Figure 2

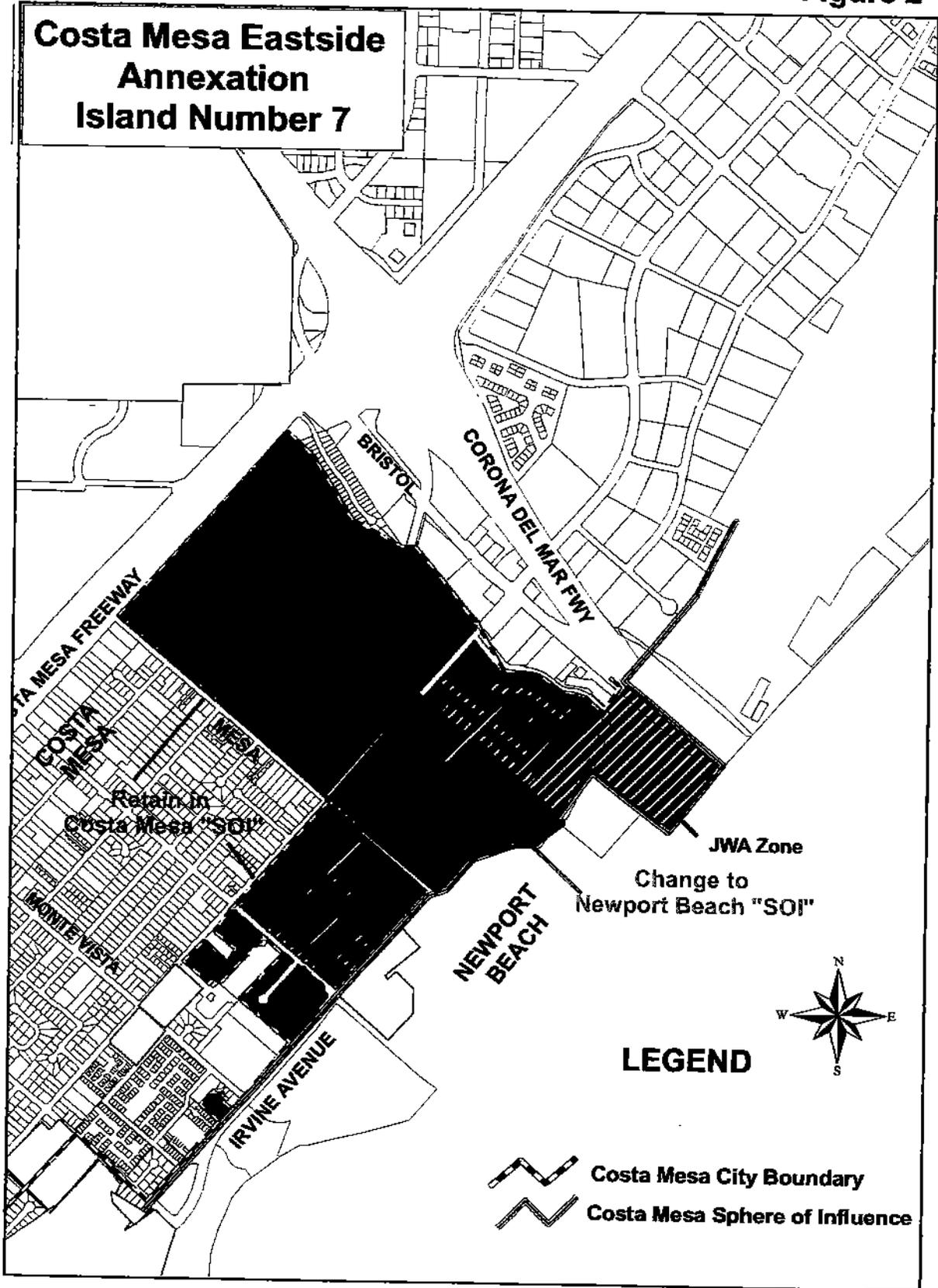


Figure 2A

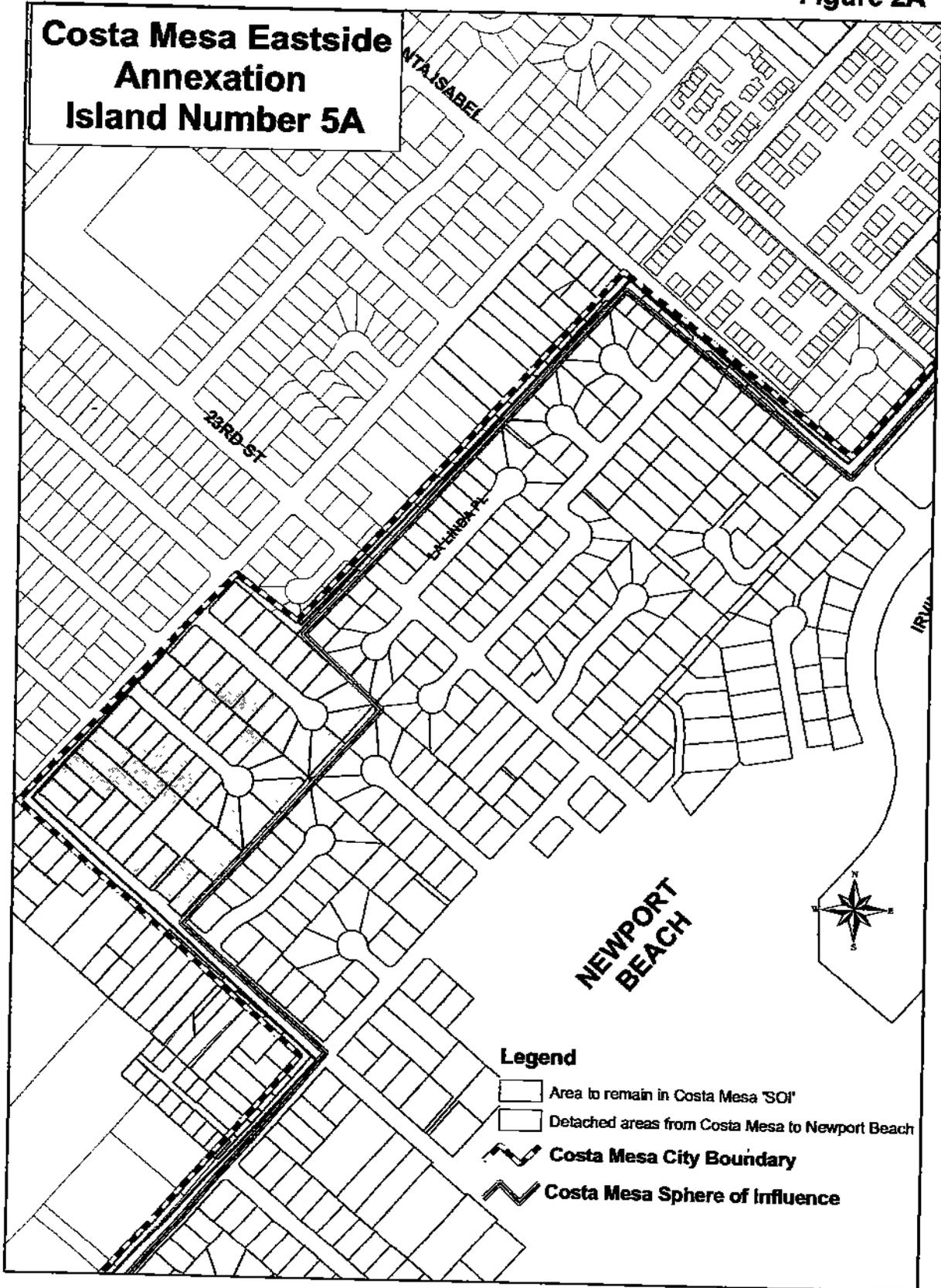


Figure 3

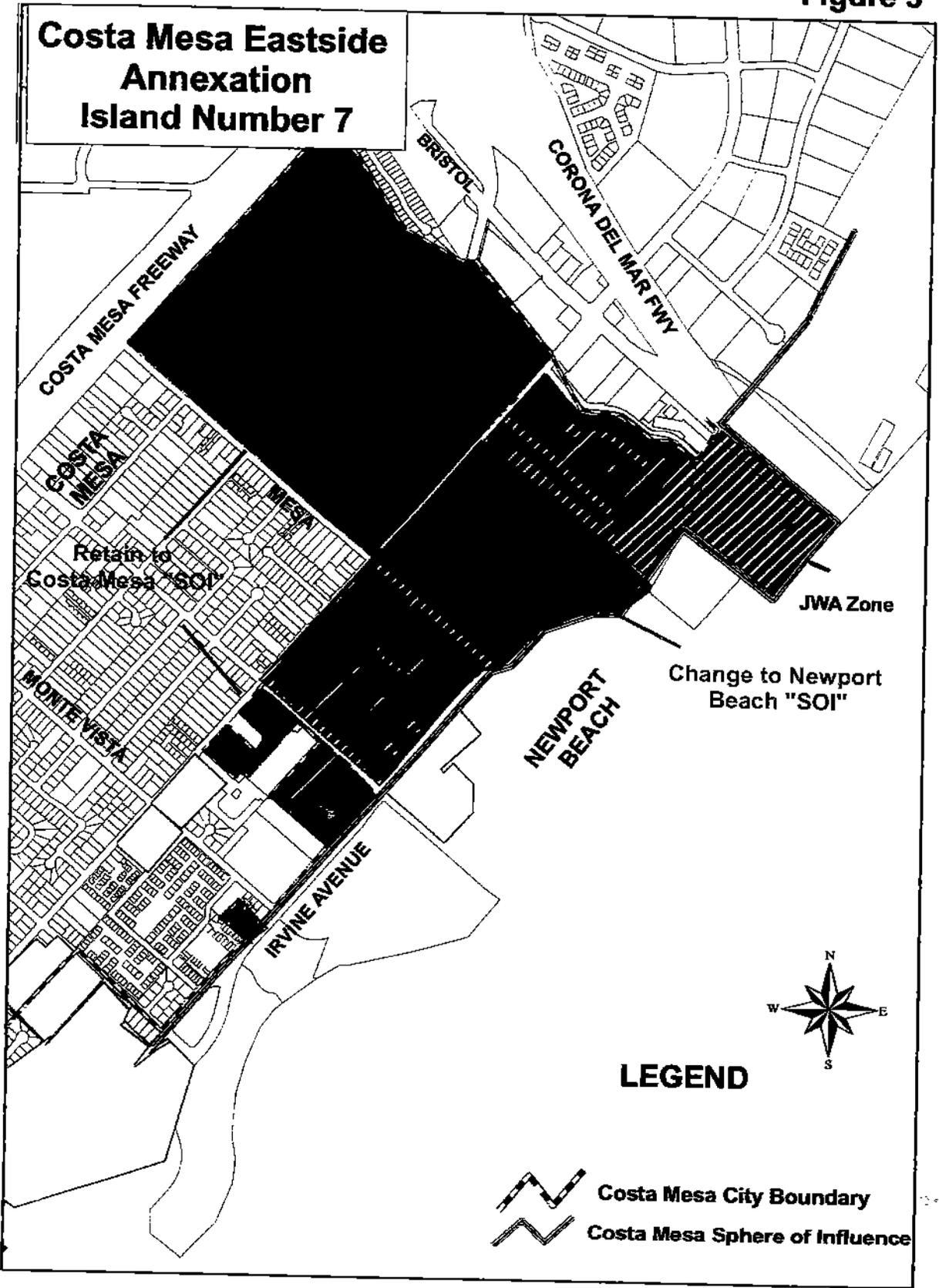
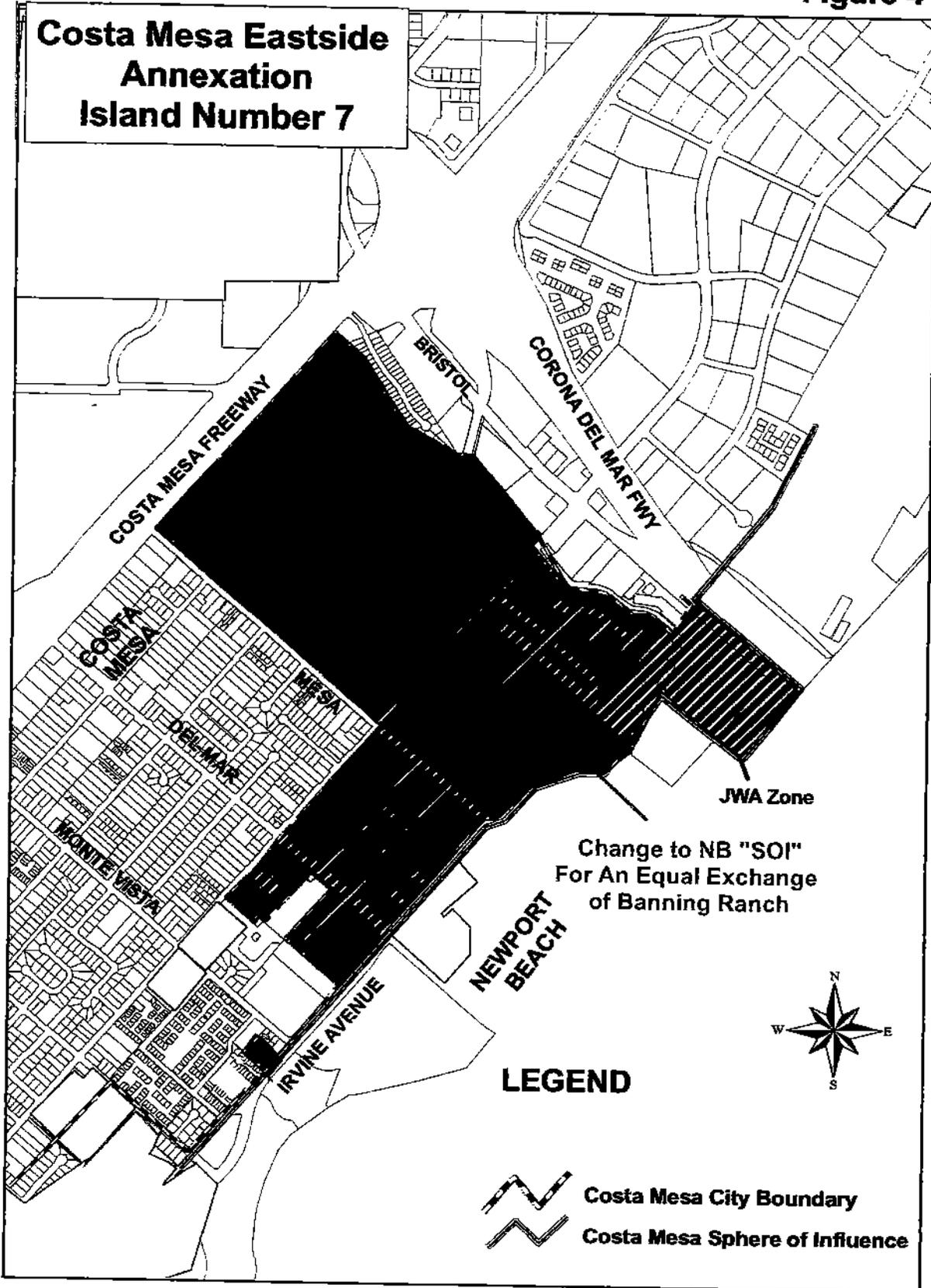


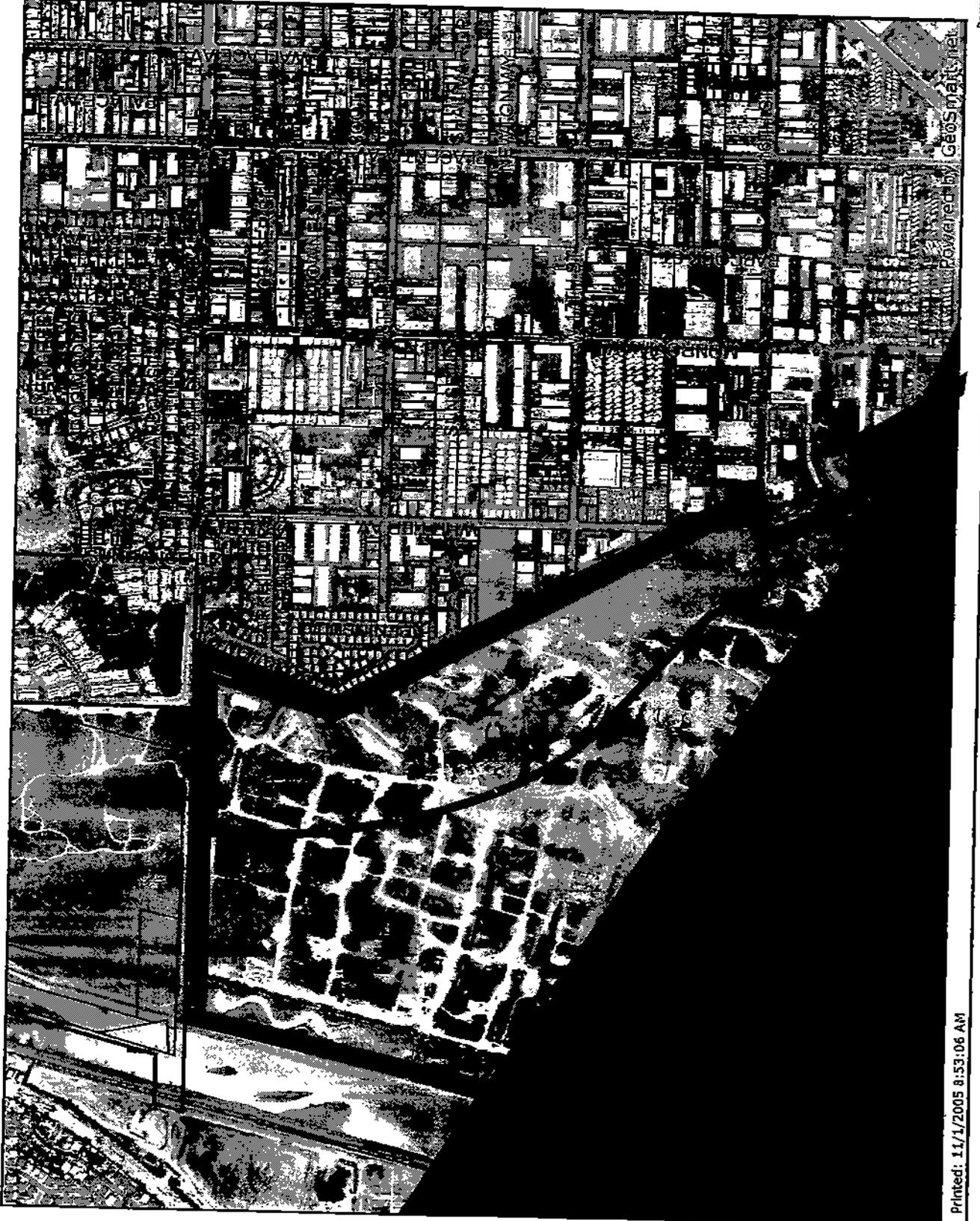
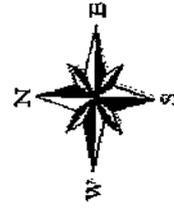
Figure 4



Banning kanch

Legend

-  Identified Features
-  Selected Features
-  Street Names
-  Parcel Lines
-  City Boundary
-  Ortho Photography
-  Parcels



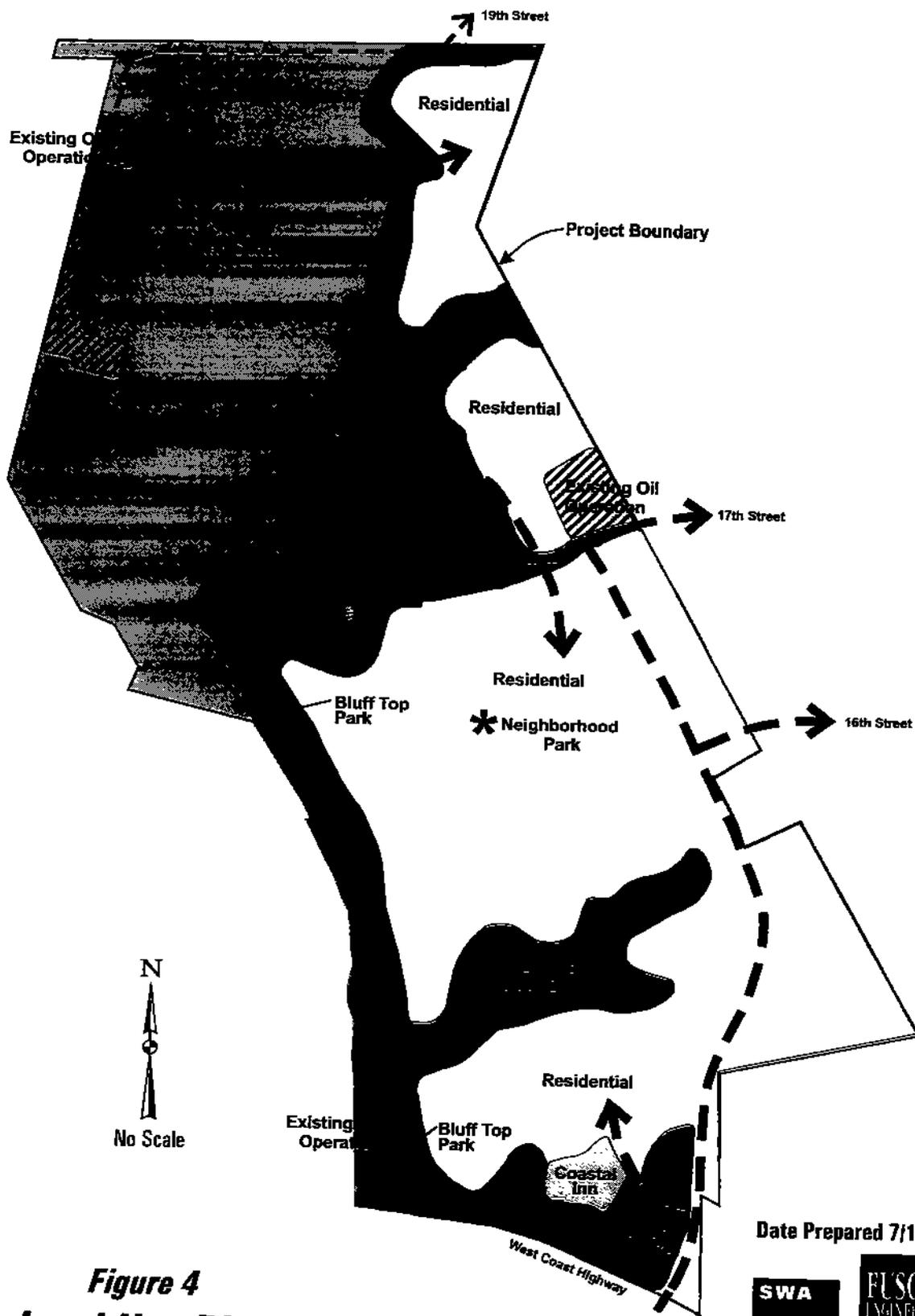


Figure 4
Land Use Plan

Date Prepared 7/17/98

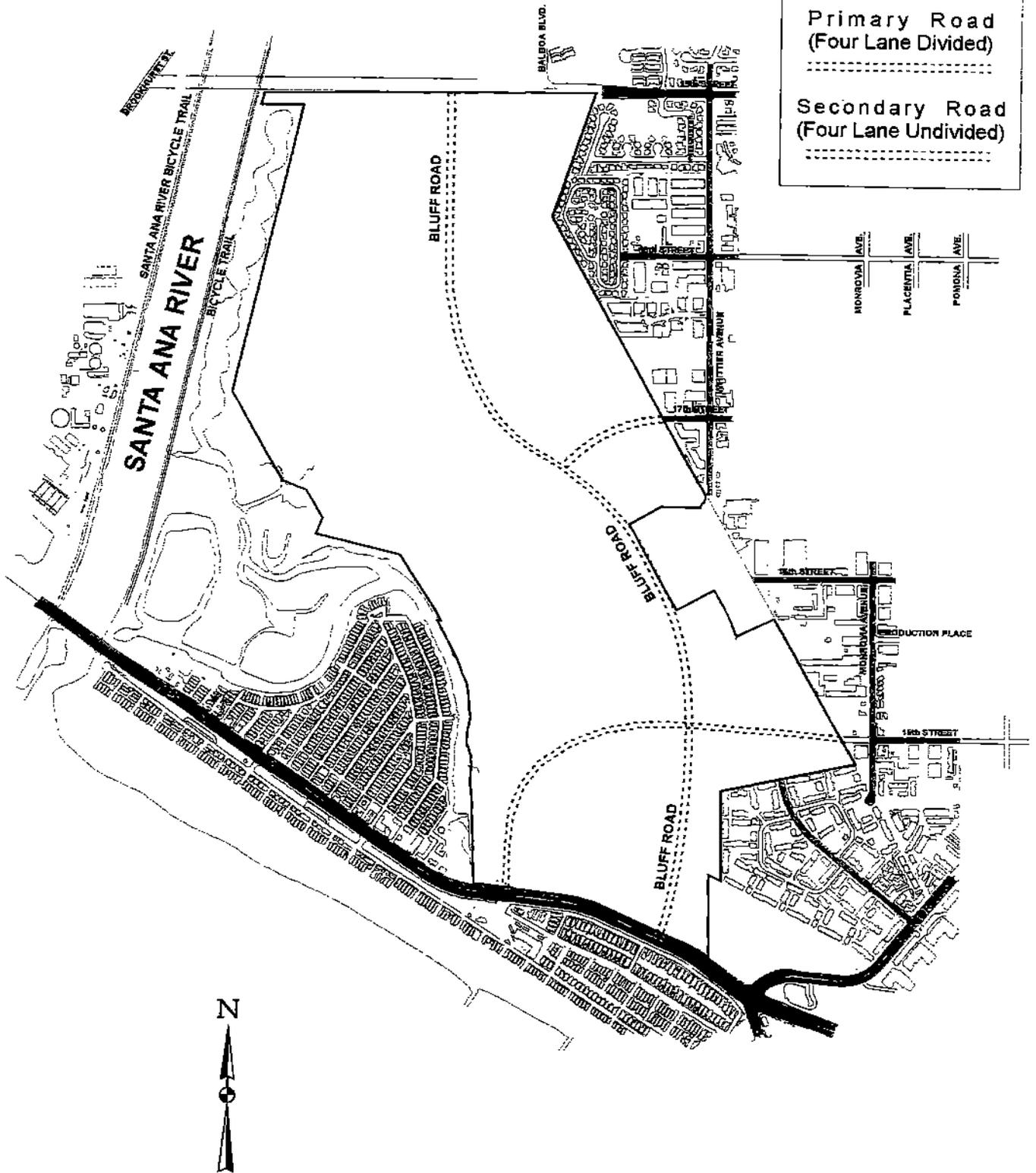


FIGURE 7

Legend

Primary Road
(Four Lane Divided)

Secondary Road
(Four Lane Undivided)



April 14, 1998



CITY MASTER PLAN OF STREETS & HIGHWAYS
 THE NEWPORT BANNING RANCH



TAYLOR WOODROW

**AGREEMENT FOR MUNICIPAL SERVICES BY AND BETWEEN THE
COUNTY**

AND THE CITY OF COSTA MESA

THIS AGREEMENT is made and entered into this ____ day of _____, ____
by and between the COUNTY OF ORANGE, hereinafter referred to as the "COUNTY,"
and the CITY OF COSTA MESA, hereinafter referred to as the "CITY."

W I T N E S S E T H

WHEREAS, CITY intends to annex unincorporated portions of County property
("PROPERTY");

WHEREAS, prior to annexation, it is the parties desire that CITY provide police, fire,
code enforcement, and other municipal services; and

WHEREAS, it is the desire of the parties hereto to address, by this Agreement, all
matters which are related to this arrangement.

SECTION I. EFFECTIVE DATE AND TERM

(A) The effective date of this Agreement shall be _____.

(B) The term of the Agreement shall be for a period of _____ years.

SECTION II. SERVICES

(A) Services to be provided by CITY to unincorporated County Property
("PROPERTY") include police, fire protection, emergency medical services, code
enforcement, fire cause and arson investigation, street sweeping, animal control, crossing
guards, sweet curb and gutter repair, graffiti abatement, hazardous material removal, park
maintenance, parking enforcement, permit processing, recreation programming, storm
drain maintenance, parkway tree trimming, street lighting, pavement markings and traffic
control signs, and weed abatement plus all CITY support services including, but not
limited to, supervision, dispatching, training, equipment maintenance, supplies, and
procurement, collectively referred to as "services."

(B) The power and authority relating to the provision of services, the standards
of performance, the discipline of personnel, and other matters related to the performance
of such services and control of personnel so employed by CITY shall remain within the
sole discretion of the CITY.

(C) All code enforcement, plan check approval, and fire prevention activities

shall be in accordance with County of Orange Fire Code and COUNTY ordinances, regulations, standards, policies and procedures, except as may be amended pursuant to this Agreement.

(D) CITY shall be responsible for street curb and gutter repairs on an emergency basis but shall not be responsible for capital improvements.

(E) CITY shall annually inspect all fire hydrants within PROPERTY to ensure that fire hydrants are mechanically operable and capable of delivering water. CITY shall notify Irvine Ranch Water District ("IRWD") or other COUNTY water purveyors, in writing, of any maintenance requirements as soon as possible after such inspections and at any other time CITY becomes aware of maintenance or repair requirements. CITY shall not be liable to pay IRWD or any other water purveyors for hydrant installation, repair, maintenance, or rental fees or any other related costs or expenses.

(F) The transference of 9-1-1 calls to the CITY by the COUNTY's Public Safety Answering Point (PSAP) shall be performed without cost to the CITY.

(G) At the request of the CITY, COUNTY shall provide to the CITY statistical response information reports. Such reports shall be provided by the COUNTY to the CITY within thirty (30) days from the date of COUNTY's receipt of CITY's request. The criteria utilized in the preparation of such reports shall be determined by the CITY MANAGER and the COUNTY's counterparts.

(H) **CITY code enforcement officers shall be responsible for enforcement of Orange County Codes and/or Ordinances OR will the Costa Mesa Codes be adopted and applied to PROPERTY.**

(I) CITY shall apply existing response time standards to PROPERTY with respect to all services provided herein.

SECTION III. ANNUAL FEE FOR SERVICES

(A) COUNTY shall pay an Annual Fee for CITY services, hereinafter referred to as "Annual Fee". CITY shall be paid monthly, in advance, from funds of COUNTY for the performance of the services referred to in Section II, hereof. The Annual Fee shall be determined by _____. COUNTY shall pay CITY one-twelfth (1/12) of the estimated or actual Annual Fee monthly, in advance, on or before the first day of each

month. The one-year period for payment of the Annual Fee is defined as Jan 1 through December 31, herein referred to as "fiscal year."

(B) CITY shall invoice COUNTY at least thirty (30) days in advance of any scheduled monthly payment. Payment of all invoices under this Agreement shall be due and payable thirty (30) from the date of invoice (hereinafter referred to as "due date").

Invoices and general notices shall be sent to COUNTY at:

COUNTY OF ORANGE

Payments shall be sent to CITY at:

City of Costa Mesa
P.O. Box 1200
Costa Mesa, CA 92628-1200

General notices shall be sent to COUNTY at:

COUNTY OF ORANGE

Either party shall notify the other, in writing, of an address change.

(C) Interest shall be added to any payment invoiced by CITY and that is received by established as the prime lending rate for Bank of America, or any successor financial institution, as of the first day payment is late. The period for computing this interest shall commence the day following the payment due date and end the date of receipt of payment by the CITY. The interest payment shall be computed as follows:

$$\text{No. of Days Late} \times \text{Prime Lending Rate} \times \$ \text{ Amount of} = \text{Late Payment Interest Charge}$$

(D) In the event that an incident occurs within PROPERTY while this Agreement is in effect during which the CITY may be required to deploy a substantial number of CITY apparatus and personnel to such incident, the CITY reserves the right to pursue cost recovery at its sole discretion against the party that caused the incident.

(E) In the event that a billing/payment dispute arises between the COUNTY and CITY, the parties will negotiate in good faith to resolve the dispute and the following procedures will be taken to resolve the dispute:

(1) Arbitration?

SECTION IV. EQUIPMENT, FURNITURE, FURNISHINGS, AND EXPENDABLE EQUIPMENT/FIRE APPARATUS AND EQUIPMENT

On the commencement date of service COUNTY shall transfer/lease to CITY all police and fire apparatus, vehicles, fire equipment, and fire station furnishings, furniture, equipment and expendable tools incidental to police and fire station operations, as inventoried and identified by COUNTY in writing and set forth in _____. All items not transferred to CITY will remain with the COUNTY.

SECTION V. INDEMNIFICATION

(A) Except as specifically otherwise provided in this Agreement, neither party shall be liable for the negligent or wrongful acts of the other in the performance of this Agreement.

(1) CITY agrees to indemnify, defend, and hold harmless COUNTY, their elected and appointed officers, agents, and employees from any and all liability and expenses, including defense costs and legal fees, arising from or connected with claims and lawsuits arising from the negligent or wrongful acts of CITY in the performance of this Agreement.

(2) COUNTY agrees to indemnify, defend, and hold harmless CITY, its elected and appointed officials, agents, officers, and employees from any and all liability and expenses, including defense costs and legal fees, arising from or connected with claims and lawsuits arising from the negligent or wrongful acts of COUNTY in the performance of this Agreement. The defense obligation set forth herein shall be made without any advance showing of negligence.

SECTION VII. ENFORCEMENT OF ORANGE COUNTY FIRE CODE or ADOPTION AND/OR ENFORCEMENT OF COSTA MESA CODES AS APPLIED TO PROPERTY.

SECTION VIII. TERMINATION

(A) Either party may terminate this Agreement by providing written notice to the other party six (6) months prior to termination. In the event of termination, the parties agree that:

(1) CITY shall return to COUNTY all equipment received by COUNTY as set

forth in _____.

(3) As to any apparatus, vehicles, equipment, tools, furnishings, or other personal property for which a monetary or in-kind credit was given to the CITY during the course of this agreement, CITY will not be obligated in any manner to return comparable items to the COUNTY at the time of withdrawal.

SECTION IX. GENERAL PROVISIONS

(A) Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

(B) Representatives. The City Manager or his designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

(Designee for County) shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of COUNTY called for by this Agreement, except as otherwise expressly provided in this Agreement.

(C) Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO COUNTY:

IF TO CITY:

(D) Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

(E) Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

(F) Assignment: Neither party shall voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of its interest in this Agreement without the other party's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement.

(G) Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

(H) No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of CITY and COUNTY and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

(I) Headings: Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

(J) Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or

interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

(K) Amendments: Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

(L) Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

(M) Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

IN WITNESS WHEREOF, CITY, by Resolution adopted by its City Council, has caused this Agreement to be executed by its Mayor and attested to by its Clerk; pursuant to action by a majority vote of the Board of Supervisors, as governing body of COUNTY, the Chair has executed this Agreement on behalf of COUNTY and which execution has been attested to by its Clerk.

CITY OF COSTA MESA

COUNTY OF ORANGE

Mayor

Chairman, Board of

Supervisors

ATTEST:

ATTEST:

Executive Officer

Clerk of the Board of Supervisors

By _____

City Clerk

Deputy

(SEAL)

(SEAL)

APPROVED AS TO FORM:

APPROVED AS TO FORM:

County Counsel

By _____

City Attorney

Deputy

DRAFT

RESOLUTION NO. 06-

**A RESOLUTION OF (AGENCY), CALIFORNIA
REGARDING THE COSTA MESA EASTSIDE
ANNEXATION ISLAND NUMBER 7 IN THE CITY OF
COSTA MESA'S SPHERE OF INFLUENCE.**

THE (AGENCY) HEREBY RESOLVES AS FOLLOWS:

WHEREAS, for nearly a decade, the cities of Costa Mesa and Newport Beach have been working with the Local Agency Formation Commission and County of Orange to annex several unincorporated islands that exist between their respective corporate boundaries in proximity to John Wayne Airport.

WHEREAS, Costa Mesa Eastside Annexation Island Number 7 is composed of the Santa Ana Country Club, West Santa Ana Heights, and Area South of Mesa Drive in the City of Costa Mesa Sphere of Influence, as shown in Figure 1.

WHEREAS, in 1997, the City of Costa Mesa applied to the Local Agency Formation Commission for approval of the annexation of the Santa Ana Country Club in conjunction with other Bristol Street parcels to the City of Costa Mesa (CA-97-21).

WHEREAS, in 1999, the City of Costa Mesa amended its application (CA-97-21) to the Local Agency Formation Commission to exclude the Santa Ana Country Club and the Local Agency Formation Commission subsequently approved the remaining portion of the application on June 14, 2000.

WHEREAS, in 1999, the residents of West Santa Ana Heights applied to the Local Agency Formation Commission for a Sphere of Influence adjustment from the City of Costa Mesa to the City of Newport Beach (CA-99-13).

WHEREAS, in 2001, the City of Costa Mesa applied to the Local Agency Formation Commission for approval of the annexation of West Santa Ana Heights, Santa Ana Country Club, and the Area South of Mesa Drive to the City of Costa Mesa (CA-01-20).

WHEREAS, In 2001, the owners of the Santa Ana Country Club applied to the Local Agency Formation Commission for a sphere of influence adjustment from the City of Costa Mesa to the City of Newport Beach (CA-01-08).

WHEREAS, on September 16, 2002, the Local Agency Formation Commission denied the sphere of influence adjustment for the Santa Ana Country Club (CA-01-08) and approved the annexation of the Santa Ana Country Club and Area South of Mesa Drive to the City of Costa Mesa (CA-01-20). The Local Agency Formation Commission excluded West Santa Ana Heights from their approval of the City of Costa Mesa's application (CA-01-20) pending consideration of possible annexation of the area by the City of Newport Beach.

WHEREAS, the registered voters in both the Santa Ana Country Club and Area South of Mesa Drive subsequently filed sufficient written protests to terminate the annexations; therefore, these areas remain unincorporated and in the City of Costa Mesa's Sphere of Influence.

WHEREAS, on February 17, 2004, the City of Costa Mesa City Council adopted Resolution 04-17, which in part, reiterated their support for the City's existing Sphere of Influence and the annexation of the remaining unincorporated county islands.

WHEREAS, to date the City of Newport Beach has not filed with the Local Agency Formation Commission an annexation application for any portion of Costa Mesa Eastside Annexation Island Number Area 7.

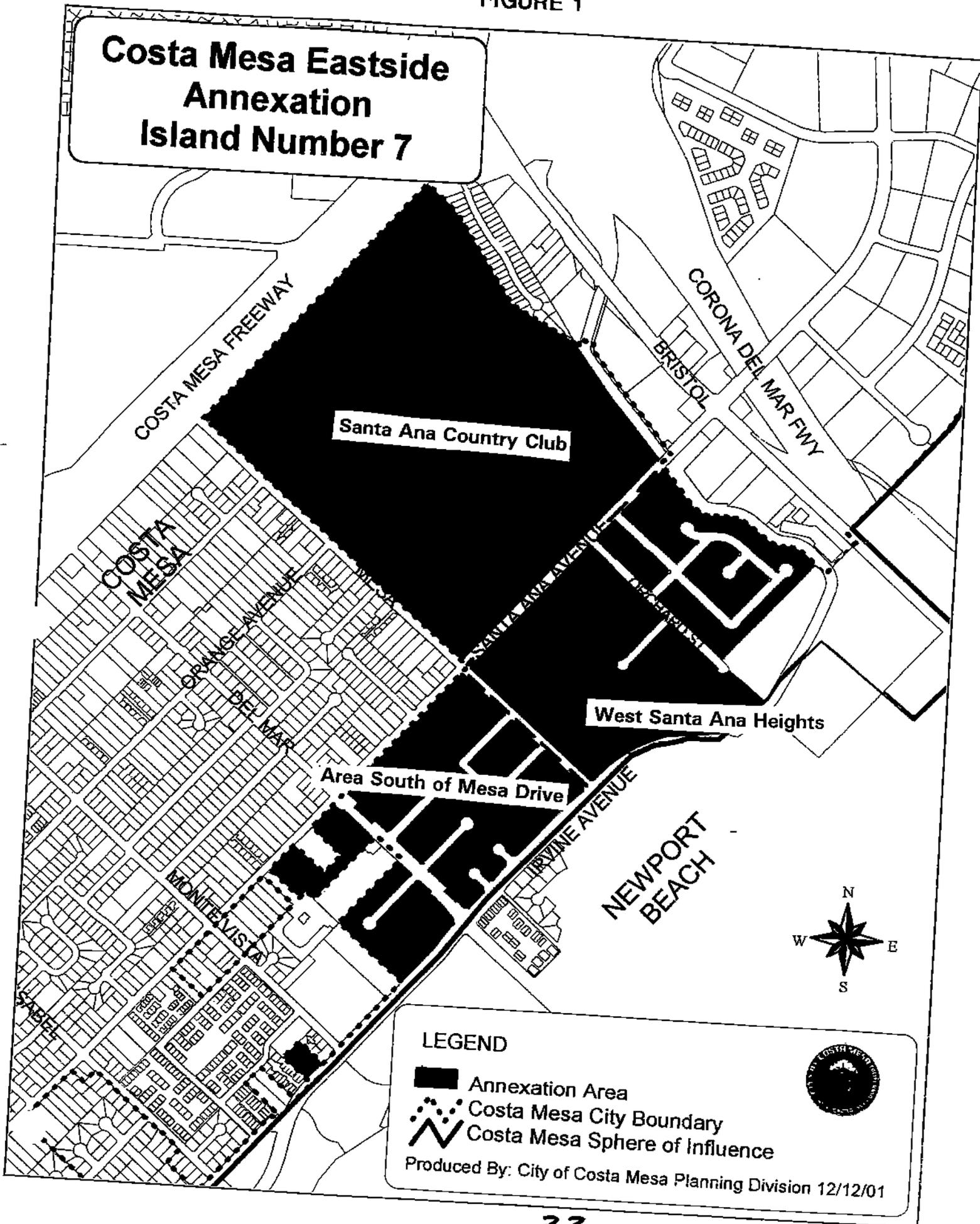
NOW THEREFORE, BE IT RESOLVED BY (AGENCY) that should at a future date, the Local Agency Formation Commission approve a detachment of West Santa Ana Heights from the City of Costa Mesa's Sphere of Influence to the City of Newport Beach's Sphere of Influence for consistency with the existing Redevelopment Project Area, that (AGENCY) supports the retention of the remaining portion of Costa Mesa Eastside Annexation Island Number 7 (Santa Ana Country Club and Area South of Mesa Drive) in the City of Costa Mesa's Sphere of Influence consistent with State law.

BE IT FURTHER RESOLVED, the (AGENCY) supports the ultimate annexation of the remaining portion of Annexation Island Number 7 to the City of Costa Mesa, and as such, the (AGENCY) shall only file an application or support an application that proposes annexation of this area to the City of Costa Mesa.

PASSED AND ADOPTED this ___th day of ___ 2006.

(AGENCY)

FIGURE 1





CITY OF COSTA MESA

CALIFORNIA 92628-1200

P O BOX 1200

FROM THE OFFICE OF THE CITY COUNCIL

February 10, 2006

Honorable Mayor Don Webb and City Council Members
City of Newport Beach
1821 Mariners Drive
Newport Beach, California 92660

**SUBJECT: PROPOSED CITY OF NEWPORT BEACH WESTERN BORDERS
REORGANIZATION**

Dear Honorable Mayor Webb and Council Members,

On your February 14, 2006 agenda is a request to the Local Agency Formation Commission (LAFCO) to reorganize the City of Newport Beach's western borders in respect to territory that is currently within the City of Costa Mesa's corporate boundaries and sphere of influence. We wish to express our strong opposition to this request given that the Costa Mesa City Council, as recently as of January 5, 2005, supported retention of Costa Mesa's current sphere of influence, including West Santa Ana Heights.

Additionally, we have met twice with members of the Newport Beach Borders Committee, including Mayor Webb, Mayor Pro Tem Rosansky, and Council Member Daigle. In both meetings, we expressed the need for an equitable solution between Newport Beach and Costa Mesa in respect to each City's corporate boundaries and sphere of influence. Specifically, if territory is to be removed from the City of Costa Mesa and added to the City of Newport Beach then an equal amount of Newport Beach territory should be added to Costa Mesa.

We believe that Newport Beach's proposed request to LAFCO is premature and ignores the interests of the City of Costa Mesa. We have offered a range of options in the spirit of cooperation, yet to date, we have received no such reciprocation from the City of Newport Beach. It has been made very clear on a number of occasions by Orange County 2nd District Supervisor James Silva and the Board and staff of LAFCO that they desire applications which reflect the collaboration of our two cities. Therefore, we respectfully request that this agenda item be continued so that the Borders Committee may thoroughly explore the exchange of territories between Costa Mesa and Newport Beach and

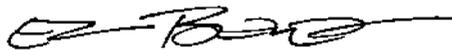
City of Newport Beach

February 10, 2006

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determine a solution that meets the objectives of LAFCO and the County of Orange and is equitable to both cities.

Sincerely,



ERIC BEVER
Mayor Pro Tem



KATRINA FOLEY
Council Member

c: City of Costa Mesa City Council

Ms. Joyce Crosthwaite
Executive Officer
Local Agency Formation Commission
12 Civic Center Plaza, Room 235
Santa Ana, CA 92701